

Legal Causation - Acts of Victim

Fright and flight

If V's escape is **not foreseeable** by the reasonable person, D is **not** the legal cause of the prohibited result

If V did something so **daft and unexpected** that no reasonable man could be expected to foresee it, their voluntary act will break the chain - R v Roberts

In determining if V's acts are foreseeable, the jury should have the same knowledge and characteristics as D at the time D committed the act - R v Roberts

Characteristics are those which would be visible to the reasonable man present at the time of D's act.

Refusing medical treatment

D must take their victim as they find them in both mind and body - R v Blaue

V's refusal of medical treatment on religious grounds does not break the chain - R v Blaue

It does not matter whether D's act was instantly mortal or whether it became the cause of death because the deceased refused recommended treatment - R v Holland

Whether or not the resumption or continuation of an injury was deliberately caused by V, the jury is entitled to find D's conduct made an operative and substantial contribution to V's death - R v Dear

Suicide

Suicide may **not** break the chain if:

- V nonetheless dies from original wound
- Suicide was reasonably foreseeable (e.g. pianist loses fingers; sportsman paralysed)
- D's act was a significant and operating cause of death and at the time of the attack, it was reasonably foreseeable that V would die by suicide as a result of their injuries

Suicide **may break** the chain if:

- injuries inflicted by D have healed but V goes on to die by suicide
- it was a **voluntary and informed** decision by V to act (e.g. drug supplier has not caused the drug to be administered when another injects it)

Theft

Actus reus = appropriation of property belonging to another.

AR: **appropriation** Assuming one of the owner's rights is appropriation

Rights include: **selling, hiring, giving away, destroying, picking up, using.**

D can still be guilty of theft even if they do **not** intend to permanently deprive the owner of the property.

D can still appropriate property even with the **consent** of the owner.

D can be guilty of stealing a **valid gift between living people**.

D's **later assumption of an owner's right**, either by keeping or dealing with property, will be an appropriation.

NOTE: Where D **purchases goods in good faith** and for value, then **later discovers** the seller had no title to the property but decides to **keep** it, D will **not** be liable.

AR: **property** Property includes **money and real/personal tangible/intangible*** property



Theft (cont)

A person **can** steal:

- money
- real property (land in some circumstances)
- personal property
- intangible property (e.g. bank credit, shares, patents)
- unlawful/illegal items (e.g. class A drugs)

A person **cannot** steal:

- land
- wild plants and animals
- electricity
- corpses & body parts
- confidential information
- services
- cheques over overdraft limits

AR: **belonging** to another Property which any person has **possession/control** of, or any **proprietary right** or interest in.

Property can cease to belong to another if it has been **abandoned**.

Property is not abandoned just because the owner has stopped looking for it.

Possession/control of property includes that of the **land** upon which the property is found.

D can steal their **own property** where it is in **possession and control** of another at the relevant time.

Title in property passes when parties **intend** it to.

Where **particular arrangements** are made with D regarding specified property, D may be liable for **theft** if they do not appropriate the property accordingly.

D is **not** required to restore property received by **another's mistake**, **unless** that property is **money** (**both** parties would **own** the money but D is required by law to **restore** it)

A person who gives property **by mistake** retains an **equitable interest** in it.

Mens Rea = performance of the AR dishonestly with the intention to permanently deprive



Theft (cont)

MR: dishonesty

D is **not dishonest** if they believe that:

- they have a **right in law** to deprive the other of the property;
- they would have the other's consent; or
- the **owner** of the property cannot be discovered by taking **reasonable steps**.

D need **not** take reasonable steps. D must only **believe** that taking such steps will not enable the owner to be found.

D's is **not dishonest** if their beliefs are **genuinely held (subjective)**

Where the above does **not** help, the case of **Ivey** is used.

Ivey:

- What was D's **knowledge and belief** as to the facts?
- Given this, was D dishonest by the **standards of ordinary decent people**?

Dishonest intent **must** be formed at the time when the goods **belong to another**.

MR: intention to **permanently deprive**

Where D treats the thing as their own to **dispose of** regardless of the other's rights.

Dispose of =

- to get rid of or sell.
- D attempting to sell the owner their own property;
- D using the owner's property for bargaining;
- D rendering the property useless.

D has the intention is they treat the property in a manner which **risks its loss**

Disposal does **not** mean **merely dealing** with the property; more is required.

Borrowing may be intentional deprivation where it is for a period of time or in circumstances **equivalent to an outright taking/disposal**

Where D **borrow money**, an intention to pay it back does **not** negate the ITPD the owner of the **original notes and coins**

MR: **oblique intention**

If ITPD cannot be found, oblique intention can be considered.

Factual Causation

'But for' the acts or omissions of D, the relevant consequence would not have occurred in the way it did - R v White

Thin Skull Rule

D must take V as they find them - R v Hayward

Natural Events

Natural events will only break the chain if they are **extraordinary and not reasonably foreseeable**

E.g. If D knocks V unconscious on the beach and V drowns in incoming tide, D is the legal cause. The tide coming in is reasonably foreseeable.

Actus Reus - Criminal Liability for Omissions

To secure a conviction based upon a failure to act, the prosecution must prove that:

1. The crime is **capable of being committed by an omission** (some offences can only be committed by an act);
2. D was under a **legal duty** to act;
3. D **breached** that duty;
4. D's **breach caused the AR** of the offence to occur; and
5. Where the offence requires, D had the required **mens rea**.

Actus Reus - Legal Duty to Act

Statute	Under statutes, many offences can be committed by an omission. E.g. It is an offence to fail to provide a specimen of breath under S 6(4) RTA 1988.
Special relationship	Parents owe a legal duty to their children to act to protect them and to not neglect them. Examples of relationships: - doctors and patients - spouses - teachers and students
Voluntary assumption of a duty of care	A person is not generally under a duty to care for another in distress. If a person voluntarily assumes a duty towards another, that person is liable if they fail to carry out that duty. If D chooses to undertake the care of a person who is helpless (from infancy, mental illness or another infirmity) they are bound to execute that responsibility.
Contract	A duty can be owed by D either to the party with whom D is contracted or to a third party.
D creating a dangerous situation	If D creates a dangerous situation, D has a duty to take reasonable steps to counteract the dangerous situation created. The steps need only be reasonable, e.g. summoning help, warning others.



By [livjharrison](https://cheatography.com/livjharrison/)
cheatography.com/livjharrison/

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Actus Reus - Legal Duty to Act (cont)

D would not be expected to risk their own life to save the lives of others.

Public office Emergency services personnel, especially the police, may have a duty to act in performing their duties when on duty and in uniform.

Mens Rea - Intention

Direct intention Direct intent = the **aim or purpose** of D's act.

This is a **subjective** test from D's point of view at the time of the AR.

Oblique intention Oblique intent = the consequence is not D's purpose but a **side effect** that D accepts as an inevitable or certain accompaniment to D's direct intention.

Used in rare circumstances when the facts require it and when **intention is the only form of MR** for the offence.

Jury cannot find intention unless they find **foresight of virtual certainty**.

E.g. Murder - jury can only find intention where they are sure that death or serious bodily harm was a **virtual certainty** as a result of D's act and D appreciated this.

Mens Rea - Recklessness

To be criminally liable for reckless behaviour, the risk taking must be unjustifiable.

If risk taking is justifiable, then there is social utility or value to the activity against the likelihood and the amount of harm that might happen.

D acts recklessly where (1) **D is aware** of a risk and (2) in the **circumstances known to D**, it is **objectively unreasonable** to take that risk.

The jury should **NOT** consider the circumstances not known to D at the time D committed the offence.

Gross Negligence Manslaughter

D will be liable where D has **breached a duty** of care owed to V through a positive act or omission which causes death and is considered **so bad as to necessitate a criminal charge**.

5 requirements for gross negligence manslaughter

- Duty of care** D will owe such a duty towards anyone where harm caused by their acts was **foreseeable**
A duty may be owed due to **contract, statute** or **special relationship** etc., including the **duty to act**
- Breach of duty** D's acts fell **below the standard** expected of a reasonable person
The reasonable person will be attributed with any **special skill** used by D
- Breach causes death** D's breach must have **factually and legally** caused the death of V.
This is **objective**



Gross Negligence Manslaughter (cont)

4. Risk of death	There must be an obvious and serious risk of not merely injury or serious injury but death An obvious risk is one which is present, clear and unambiguous , not one which might become apparent on further investigation
5. Breach was so bad as to amount to gross negligence	The conduct of D must be so bad in all the circumstances as to amount to a criminal act or omission The negligence must have shown such a disregard for life and safety of others as to amount to a crime There is no requirement for any mental state D's knowledge/experience should be considered if it should have alerted them to the risk D may not be grossly negligent where their mistakes are in part/wholly caused by mistakes of other equally/more senior individuals

Aggravated Criminal Damage

Actus reus = destroy or damage; property; without lawful excuse.

AR: destroy or damage	Destroy & damage hold the same meaning as for basic CD.
AR: property	Property holds the same meaning as for basic CD. D can commit aggravated CD to their own property. It is irrelevant whether the life of another was actually endangered**

Mens Rea = the intention or recklessness as to the damage/destruction of property and as to the endangerment of life by that damage/destruction.

MR: intention	At the time D carried out the AR, it was D's aim or purpose to destroy/damage property.
MR: recklessness	The prosecution must prove that: 1. At the time of committing the AR, D was subjectively aware of a risk ; and 2. In the circumstances known to D, it was objectively unreasonable for D to take that risk.
MR: endangerment of life	Danger to life must arise from the damaged property.

Aggravated Arson

Aggravated arson is aggravated CD by fire.

It is charged under s1(2) and 1(3) CDA 1971.

The AR and MR instead refer to **damage or destruction by fire.**

The lawful defences in s 5(2) CDA 1971 **do not apply.**



Special Defence: Loss of Control

Loss of control is a **partial defence** to murder.

If successful, the conviction is reduced from murder to voluntary manslaughter.

The prosecution must prove **only one** of the elements is absent for the defence to fail.

3 key aspects to loss of control:

1. D must have **lost self-control** There need not be a complete loss of control so that D does not know what they are doing, but D must be **unable to restrain themselves**

A mere loss of **temper is not enough**

The loss of control **need not be sudden**

The defence does not operate where D was acting out of a **considered desire for revenge**

The **longer the delay** between the trigger and the killing, the **less likely** it is that D has **lost self-control**

2. Due to the **fear and/or anger** qualifying trigger

a) Fear trigger **Fear trigger = fear of serious violence**

D cannot rely on the fear trigger if D caused the trigger as an excuse to use violence

b) Anger trigger **Anger trigger = there must have been something said or done that constitutes circumstances of an extremely grave nature and that caused D to have a justifiable sense of being seriously wronged**

D cannot rely on the anger trigger if D caused the trigger as an excuse to use violence

D cannot rely on the anger trigger if the thing said/done constitutes sexual infidelity

Circumstances of an extremely grave nature are determined **objectively**

Whether the sense of being seriously wronged is justifiable is an **objective** question

3. And a **normal person** might have acted in a similar way to D A normal person = a person of D's sex and age with a normal degree of tolerance and self-restraint.

The jury **cannot** consider any characteristics or circumstances of D that would affect the normal tolerance and ability to exercise restraint.

Bad temper, intoxication, extreme sensitivity, PTSD and personality disorders are **not** characteristics of the normal person.

Limitations

The defence of loss of control cannot be used in:

(1) an act of considered desire for revenge

(2) as an excuse to use violence



Special Defence: Loss of Control (cont)

(3) if the thing said/done constituted sexual infidelity

(4) if the defendant is charged with attempted murder

S 9(1)(a) Burglary

Actus reus = D enters a building or part of a building as a trespasser

AR: D enters Entry is satisfied when **any part of a person's body** enters (part of) a building.

AR: **building** or part of a building Building includes an **inhabited vehicle or vessel**, whether the person living there is present or not.

A structure of **considerable size** and intended to be **permanent** or stay for a **considerable time**.

The **degree of permanence** is relevant.

Where D enters a building lawfully and then goes into an area bounded off, this may still amount to **part of a building**.

AR: as a **trespasser** Entering **without consent** or **in excess of authority**.

Where D **enters with consent** but later exceeds the consent, there can be **no conviction** for burglary.

Where D **enters against or in excess of consent given**, they will be a **trespasser**.

Mens rea = D enters knowing or being reckless that the entry was a trespass and intends to commit an ulterior offence at the time of entry.

MR: enters **knowing or being reckless** that the entry was a trespass It need not be proved that D knew in law that they were a trespasser.

trespass

D merely has to know or be reckless as to facts which make them a trespasser

MR: intends to commit one of the ulterior offences contained in **s 9(2) TA 1968** at the **time of entry** Upon entry, D must intend to:

- **steal** from (part of) the building;
- **inflict GBH** on any person in (part of) the building; and/or
- unlawfully **damage** (part of) the building or anything in it.

.....

If D's intention is simply to **have a look** inside the property and **only steal** anything that is **worth stealing**, this conditional intention will count as an intention.

The maximum sentence for burglary is **14 years** where the building is a dwelling and **10 years** in any other case.



By **livjharrison**
cheatography.com/livjharrison/

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S 9(1)(b) Burglary

D must have: **entered** (part of) a **building** as a trespasser, knowing or being reckless as to entry as a trespasser

- D must have:
- **stolen** something from (part of) the building
 - **attempted to steal** something from (part of) the building
 - **inflicted GBH** on any person
 - **attempted to inflict GBH** on any person

A s 9(1)(b) burglary requires that **once inside** (part of) the building, having entered as a **trespasser**, D goes on to **commit theft or GBH or attempts** to commit these offences.

The burglary is committed **at the time** of the commission or attempted commission of **the offence**.

The **full AR** for theft/attempted theft/offences involving GBH are required.

Arguably, **no offence and thus no MR is needed** in relation to the infliction of GBH (though this is current law).

The maximum sentence for burglary is **14 years** where the building is a dwelling and **10 years** in any other case.

Robbery

Actus reus = Theft involving force on any person immediately before or at the time of stealing

AR: **Theft** Robbery is a aggravated form of theft: **no theft, no robbery**.

AR: **Force** or threat of force Force does **not** require violence and can be applied **through property**.

Force does **not** need to be applied: it is enough to **put V in fear** of being **then and there** subjected to force.

Even if V is **not aware** they are being threatened with force, D can be liable if they **intended to make V believe** that they will be then and there subjected to force.

AR: on any **person** The threat need **not** be directed towards the person from whom the property is stolen, but the (threat of) force **must** be used on a person in being.

AR: immediately **before** or **at the time** of stealing Difficulties with this element may arise if force occurs after the theft has **technically** been committed.

The appropriation may be **treated as a continuous act**.

Mens rea = Act with the MR of theft and intend to use force in order to steal.

MR: Where an **ITPD** is formed at a later point in time than force is used, there is **no theft** at the time **force** is used and so it **cannot** be a robbery.



Legal Causation

The law requires that D is the **operating and substantial cause** of the prohibited consequence - R v Pagett

D's act must be the **substantial cause** - R v Hughes

The consequence must have been **caused by D's culpable act** - R v Dalloway

D's act **need not be the only cause** of the prohibited consequence - R v Bengt

Legal Causation - Medical Negligence

Negligence would need to be so **overwhelming** as to make the **original act merely part of history** - R v Smith

Negligent treatment would need to be so **independent** of D's acts and so **potent** in causing the consequence that **D's contribution becomes insignificant** - R v Cheshire

Courts are **reluctant** to allow medical malpractice to break the chain of causation

Legal Causation - Acts of Third Party

There may only be a break in causation if the actions of the third party were **free, deliberate and informed** - R v Pagett.

Coincidence of AR and MR

D must have the relevant MR for the offence at the precise moment when D commits the AR.

Continuing act theory D can be guilty of an offence if they form the MR for the offence at some point during the AR continuing.

One transaction principle D's actions may be categorised as a series of acts, making up one transaction and it may be enough for D to have the MR at some time during that transaction.

The transaction can continue for as long as D tries to cover up the crime they believed they had committed.

Transferred malice Operates to allow the MR against the intended victim to be transferred and joined with the AR that causes the prohibited harm to the actual victim.

Cannot operate where D has the MR for one crime but commits the AR for another.

Mistake If D does not know they are breaking the law, this mistake will not help avoid liability, even if it were impossible for D to know.

D may make a mistake of fact or civil law which can mean that the MR of the offence is not fulfilled and will escape criminal liability as a result.

If the MR required for the relevant element of the AR is intention or recklessness, there is no need for the mistake to be reasonable.

If the MR requirement is negligence, then the mistake must be reasonable.



Murder

Actus reus = unlawful; killing; human being; King's peace.

AR: unlawful	Killing it lawful in war , the advancement of justice (death penalty), and self-defence .
AR: killing	Factual and legal causation must be satisfied to show D caused V's death.
AR: human being	A person is 'in being' when born alive and capable of independent life . Any child must be fully expelled from the mother's body and born alive to be 'in being'. It is not necessary for the umbilical cord to be cut.
AR: under the King's peace	Where D is British , they can be tried for murder wherever committed. Where D is not British , they can be tried for murders committed within England and Wales .

Mens rea = intention to kill or cause grievous bodily harm (serious harm).

MR:	Mercy killing is no defence - R v Inglis.
MR:	Motive is not the same as intention but can be used as evidence of intention.
MR:	Where D's aim or purpose is not death or GBH, juries cannot find oblique intention unless: <ul style="list-style-type: none"> - death or serious injury was a virtual certainty as a result of D's action (objective); and - D appreciated that (subjective).

Special Defence: Diminished Responsibility

Diminished responsibility is a **partial defence**.

If successful, D is not acquitted but convicted of voluntary manslaughter.

The defence must prove on BoP that D was acting under diminished responsibility

4 key aspects to diminished responsibility:

1. abnormality of mental functioning	a state of mind so different from that of ordinary humans that the reasonable man would term it abnormal.
2. recognised medical condition	the abnormality must be caused by the recognised medical condition. it is not enough to be suffering from abnormal mental function and have a recognised condition, or to have acted due to hatred, jealousy or bad temper alcohol dependency syndrome is a recognised medical condition
3. substantial impairment of D's ability to do one or more things	substantial = more than merely trivial impairment = inability to understand the nature of their conduct , form a rational judgment ; or exercise self-control



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cheatography.com/livjharrison/

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Special Defence: Diminished Responsibility (cont)

	whether D's ability is impaired is a question of fact
4. provides an explanation for D's acts and omissions	a causal link between the abnormality of mental functioning arising from a recognised medical condition and the killing is needed
	the abnormality need not be the only cause

Unlawful Act Manslaughter

D lacks the MR for murder but kills someone in the course of committing a criminal act.

The prosecution must prove 4 elements

1. D intentionally (voluntarily) did an act	D must have intended to do the act (which resulted in the death of V)
2. the act was unlawful	It must be a criminal act ; an intrinsically unlawful act ; and an act rather than an omission . The AR and the MR of the criminal act must be proven Where reasonable force is used in acting in self-defence or to prevent a crime, there is no unlawful act. The act cannot be a lawful act which becomes unlawful due to negligent or reckless performance, e.g. driving.
3. the act was dangerous	Whether the act was dangerous is objective based on what the sober and reasonable person would appreciate. The sober and reasonable person knows everything they would have known had they been in D's shoes at the time of the offence. The person has any special knowledge that D has/ought to have known The type of harm must be physical and not emotional. Being reasonable, the person does not make any unreasonable mistakes made by D. D could become liable if they become aware of a fact during the offence which would make the act dangerous.
4. the act caused the death of V.	D must have factually and legally caused the death of V. Where D administers a drug to V, D has caused V's death even where V consents to the injection. Where V is aware of what they are taking and D does not inject V, the supplier of drugs is not the cause.



Basic Criminal Damage

The maximum sentence is 10 years' imprisonment.

Actus reus = destroy or damage; property; belonging to another; without lawful excuse

AR: **destroy or damage** Destroy = property **ceases to exist**.

Damage embraces **injury, mischief or harm** done to property.

It is relevant if **time, effort and/or money** is spent restoring the property to its original state.

Damage is not only **permanent/temporary physical harm** but also **permanent/temporary impairment of value/usefulness**.

AR: **property** Anything of a **tangible** nature whether real or personal.

Includes **money, wild creatures** that have been **tamed** or live in **captivity**.

Does **not** include **wild mushrooms, wild flowers, fruit or foliage**.

Information is not classed as property.

AR: **belonging to another** A person has **control** or **custody** of it.

A person has a **proprietary right** or interest in it.

A person takes **charge** of it.

Property can belong to **more than one person**.

If a property is **mortgaged** it belongs to the **bank or mortgage company**.

Mens Rea = the intention or recklessness as to the destruction or damage of property belonging to another

MR: **intention** At the time D carried out the AR, it was D's **aim or purpose** to destroy/damage property belonging to another.

It is **insufficient** that D does an act that damages property. D must have **known** or been **reckless** to whether the property **belonged to another**

MR: **recklessness** The prosecution must prove that:

1. At the time of committing the AR, D was **subjectively** aware of a **risk**; and
2. In the circumstances known to D, it was **objectively unreasonable** for D to take that risk.

.....

Basic Arson

Arson is criminal damage by fire.

It is charged under s1(1) and 1(3) CDA 1971.

The AR and MR instead refer to **destruction or damage by fire**

Fraud: Abuse of Position

Actus reus = occupation of a position and abuse of that position

AR: **occupying a position** The position **must** be one requiring D to **look after V's financial well-being**.



Fraud: Abuse of Position (cont)

E.g. trustee/beneficiary; director/company; professional person/client; agent/principal; employee/employer; between partners; within a family.

Where there is no **fiduciary duty** between the parties, an **obligation akin to a fiduciary duty** must be proved.

This is an **objective test** based on the position of the **reasonable person**

AR: an **abuse of position**

Abuse can be defined as **uses incorrectly** or **puts to improper use** their position in a manner that is contrary to the **expectation** that arises because of that position.

An abuse of position can be committed by an **omission** as well as by an act
e.g. where an employee who has a duty to collect payment on behalf of their employer fails to do so.

Mens rea = dishonesty; intention to make a gain/cause a loss.

MR: **dishonesty**

What was **D's knowledge and belief** as to the facts?

Given that knowledge and those beliefs, was D dishonest by the **standards of ordinary decent people?*

MR: intention to **make a gain/cause a loss**

D must **intend** to obtain something.

Gain & loss extend **only** to gains/losses in **money or other property**.

Property may be **real or personal**

Gains/losses may be **temporary or permanent**

Gain includes **keeping what one has** or **getting what one doesn't have**

Loss includes **not getting what one might get** or **parting with what one has**

Extends to gains made for **D or another**; **causing another a loss**, exposing someone to a **risk of loss**.

A false representation made to get **a job** could be an intention to make a **monetary gain**.

Where an employee fails to collect sums owed to their employer, due to laziness (rather than assisting the person who should be paying or punishing their employer), there would be an **oblique intention** to make a gain for another and cause a loss to their employer.



Fraud: False Representation

Actus reus = an express or implied representation as to fact, law or state of mind which is untrue or misleading.

AR: **express or implied** representation

An **implied** representation can arise from what D **says** or D's **conduct**.

E.g. stating something 'may not be correct' implies you are not certain; ordering and eating a meal implies you have the means to pay.

Pure **silence** without an accompanying action **cannot** amount to a representation.

AR: **fact, law or state of mind**

A representation to fact or law is relatively straightforward.

A **state of mind** refers to **D or another's belief/opinion**.

AR: **untrue or misleading**

This is a question of **fact**.

A representation as to D or another's **state of mind** may be untrue where D does **not** in fact hold that opinion/belief.

If D is in a **better position** to express a **belief/opinion** than the other party, this may amount to an untrue/misleading representation.

If D **states an intention** to do something when they have **no such intention**, this may be untrue/misleading.

It may be untrue/misleading where D takes **dishonest advantage** of V by representing as a **fair charge** a sum which D (but **not** V) knows to be **dishonestly excessive**

D may be untrue to a **machine** if they use a bank card to mislead the machine into believing they are **entitled to withdraw funds**.

Mens rea = dishonesty; knowledge or awareness that the representation is untrue/misleading; intention to make a gain/cause a loss.

MR: **dishonesty**

What was **D's knowledge and belief** as to the facts?

Given that knowledge and those beliefs, was D dishonest by the **standards of ordinary decent people?*

MR: **knowledge or awareness** that the statement is untrue/misleading

D must be **subjectively aware of the possibility** that what they are saying/implying is false.

D can be **reckless** as to this knowledge/awareness but **only** there must be an **indifference** to or **disregard** of whether the statement is true or false.



By **livjharrison**

cheatography.com/livjharrison/

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Fraud: False Representation (cont)

If D gives a **clear caveat**, they do **not** make a false statement.

MR: intention to **make a gain/cause a loss**

D must **intend** to obtain something.

Gain & loss extend **only** to gains/losses in **money or other property**.

Property may be **real or personal**

Gains/losses may be **temporary or permanent**

Gain includes **keeping what one has** or **getting what one doesn't have**

Loss includes **not getting what one might get** or **parting with what one has**

Extends to gains made for D or **another**; **causing another a loss**, exposing someone to a **risk of loss**.

A false representation made to get **a job** could be an intention to make a **monetary gain**.

Fraud: Failure to Disclose

Actus reus = the existence of a legal duty to disclose and a failure to disclose.

AR: **existence of a legal duty to disclose**

A duty to disclose may arise:

- from **statute**
- within a **transaction** of the utmost good faith
- in the express or implied terms of a **contract**
- from a **custom** in a particular **trade or market**
- from a **fiduciary relationship**

AR: **failure to disclose**

This is a question of **fact**.

The **prosecution** must prove D **failed to disclose** necessary information to another person.

Mens rea = dishonesty; intention to make a gain/cause a loss.

MR: **dishonesty**

What was D's **knowledge and belief** as to the facts?

Given that knowledge and those beliefs, was D dishonest by the **standards of ordinary decent people?*

MR: intention to **make a gain/cause a loss**

D must **intend** to obtain something.

Gain & loss extend **only** to gains/losses in **money or other property**.

Property may be **real or personal**

Gains/losses may be **temporary or permanent**

Gain includes **keeping what one has** or **getting what one doesn't have**

Loss includes **not getting what one might get** or **parting with what one has**



Fraud: Failure to Disclose (cont)

Extends to gains made for **D or another**; **causing another a loss**, exposing someone to a **risk of loss**.

A false representation made to get a **job** could be an intention to make a **monetary gain**.

Parties to a Crime

Principal offenders: The principal is the person who commits the AR with the MR.

There can be **more than one** principal.

A person can still be **guilty** as a **principal** even if **another person** performs the AR.

A person may be an **innocent agent** where they are **under the criminal age** or are **deceived** as to what they are doing.

Secondary parties:

Actus reus:

A person can be liable as an accessory in **5 ways**:

Aid: **help, support or assist** before the crime

no causal link is necessary

Abet: **encouraging** at the time of the offence

presence at the crime scene is **not** enough

D will abet if they have a duty to control the actions of others and does not: **positive encouragement**
e.g. parent; pub owner; car owner; employer.

no causal link is necessary

Counsel: giving **advice** or **encouragement before** the commission of the offence

no causal link is necessary

Joint enterprise: If crime B is committed **in the course of** or is **incidental** to crime A, party B will be accessorially liable for any offences party A commits, and vice versa

Mens rea: an intention to aid or encourage



Parties to a Crime (cont)

D must:

- **intend** to do the act which aids/encourages; and
- **intend** for it to aid or encourage the commission of the crime.

D **need not** have a positive intent that the crime be committed.

It is sufficient that D intended their act might assist in the crime, even if it cannot be said it definitely will do.

Mens rea: an intention that P will commit the crime with the necessary MR

Conditional intention: It is enough that D has **conditional intent** that P will commit a crime with the necessary MR.
e.g. If D gives P a gun for a burglary intending P to use it only if they are disturbed.

If D is **dismayed** P has committed the crime, **only oblique intention** will suffice.

Mens rea: knowledge of the facts or circumstances

If the offence requires lack of consent, D must know that V does not consent, for example.

A D who **deliberately shuts their eyes** to the obvious will be deemed to have **knowledge**.

D need not know the **exact details** of the crime to be committed.

D need not know the **identity** of V or the **day** the crime will be committed.

It is enough for D to know enough to know that P may commit **any one of a number of crimes including the actual crime**

Withdrawal

D must **communicate to P** or a **law enforcement agency** to withdraw as a party.

Withdrawal **must** take place **before the act of assistance**.



Parties to a Crime (cont)

Communication of D's withdrawal is **not** necessarily needed when any violence of the other party is **spontaneous** or effectively part of a **new attack**.

It is **not** an offence to **attempt** to aid, abet, counsel or procure an offence.

It **is** an offence to aid, abet, counsel or procure an **attempted** offence.

It is possible for D to be convicted but P to be acquitted if **P has a defence**.

Attempts / Inchoate Offences

Actus reus = An act which is more than merely preparatory to the commission of an offence.

AR: **more than merely preparatory** This is a question of **fact**.

Merely preparatory (not an attempt):

- Being outside a post office with a threatening note and fake gun.
- Being in school toilets with a knife and rope but no schoolchildren.

More than merely preparatory (an attempt):

- Getting into a car with a loaded gun and pointing it at the victim.
- Looking at a padlock with cutting equipment in the hedge.

Mens rea = An intention to commit the full offence.

MR: **intention** An intention to cause GBH is **not** enough for **attempted murder**.

If the offence has MR of either **intention or recklessness** as to the AR, proof of **intention only** is required.

Conditional or oblique intent counts as an intention.

Where the MR does **not** relate to the AR in any way, **recklessness is sufficient** - e.g. aggravated criminal damage.

Impossibility

Non-existent crimes D cannot be convicted for a lawful act even if they believe it to be unlawful.

Inadequacy Where the crime is perfectly feasible but D adopts or seeks to adopt a method that cannot work, D can still be convicted of an **attempted offence**.

Impossibility Impossibility is **no longer** a defence to attempt.

E.g. If D stabs V but V is already dead, D **will** be liable for attempted murder.



Defences: Self-Defence

Self-defence can operate where D acts to protect **themselves, someone else, property, prevent a crime or assist in the arrest** of an offender.

If successful, self-defence results in an **acquittal**.

D can rely on self-defence where: D **honestly believed** the use of force was **necessary** ('the **trigger**'); and the level of force D used in response was **objectively reasonable** in the circumstances as D believed them to be ('the **response**').

It is for the **prosecution to disprove** that D acted in self-defence.

.....

The trigger: D believed the use of force was necessary.

D is to be judged on the facts as they **subjectively believed** them to be, whether the belief is **reasonable or not**.

D cannot rely on a **drunken mistake** in belief that force was necessary.

There is **no duty** for D to retreat, though the fact that D had the opportunity to retreat may be a relevant factor.

D may **act first** in anticipation and **still rely** on the defence.

Self-defence **can** be relied upon by the **original aggressor** where the original V's violence is **so out of proportion** that roles are **effectively reversed**.

D can rely on self-defence where the force used was against an **innocent third party** in order to prevent a crime being committed by another.

.....

The response: the level of force was objectively reasonable in circumstances as D believed them to be.

What is **reasonable** depends on whether it is a **householder** or **non-householder** case.

Householder cases:

D is a householder if:

- they are **protecting themselves or another**
- they use force while in (part of) a **building**
- they are **not** a trespasser; and
- they believed V to be in, or entering, (part of) the building as a **trespasser**.

Was the force used **grossly disproportionate** in the circumstances as D believed them to be?

- If **yes**, **no defence**.
- If **no**, was the level of force **reasonable**?

A degree of force that goes **over the top** would be grossly disproportionate.

Non-householder cases:

Force will **not** be reasonable if it was **disproportionate**.

D must be judged in accordance with their **honest belief** and any **danger** they believed themselves to be in.

D may have acted in the **heat of the moment** which is reasonable.



Defences: Self-Defence (cont)

D is **more likely** to have acted reasonably where they have done only what they **honestly and instinctively** thought was necessary.

If D has gone **beyond** what was enough to defend themselves, to a "**revenge**" category, it is likely to be **unreasonable**.

Psychiatric evidence of PTSD may substantiate mistaken beliefs rendering any force objectively reasonable given D's subjective beliefs.

Defences: Consent

It is for the **prosecution** to prove that (1) V did not consent and (2) D did not believe in V's consent.

Whether the defence of consent is available will depend on the **level of harm** inflicted on V and the **circumstances**.

.....

Is the offence **more than** assault/battery?

If **yes**, did D intend to cause ABH+?

If **no**, consent is available if:

- **V consented**; or

- D **honestly believed** that V was consenting.

If **yes**, consent is **not** available.

If **no** and D did **not** see the risk,
consent is **available**.

If **no** and D was **reckless**, consent
may only be available where an
exception applies.

Exceptions

V can consent to offences against the person of ABH+ if the situation falls under one of the **public interest exceptions**.

Medical treatment

Consent can be given for **surgery** and other **medical treatment** that causes harm, and to a **high risk of death**.

Sport

Any **incidental injury** caused while playing within the rules of a game will **not** be an offence.

The **type** of sport, **level** at which it is played, the **nature** of the act, the **degree of force** used, the **extent of the risk** of injury and **D's state of mind** should all be considered in deciding if an incident is **sufficiently grave** as to not be consented to.

Players impliedly consent to force of a kind that could be **reasonably expected** to happen within that sport.

Horseplay

There is a level of consent to injuries sustained through **rough and undisciplined** horseplay.

Tattooing, body piercing and personal adornment

These lawful activities are consensual.

Body modification is **not** an exception.



Defences: Consent (cont)

STDs	It is possible to consent to a risk of contracting an STD but it is not possible to consent to deliberate infection .
Sadomasochistic activity	Where D intends harm and/or sees a risk of causing harm in performing any sadomasochistic activity, there will be no exception. Where D did not intend, nor did they see any risk of causing any harm during sadomasochistic activity, consent is available .

Defences: Intoxication

Involuntary intoxication:	Did D see the risk despite being intoxicated? D may have been forced to consume alcohol/drugs or was deceived into doing so. Where D is aware that they are drinking alcohol but is mistaken as to the strength of the alcohol, this will not be involuntary intoxication. For involuntary intoxication, the defence may be available for any offence .
Voluntary intoxication:	Would D have seen the risk if sober? Voluntary intoxication is not a defence to basic intent charges (i.e. crimes of recklessness).

Intoxication and other defences

Self-defence	If D makes a drunken mistake as to the need to use self-defence, they cannot rely on that mistake.
Loss of control (special)	Did D lose self-control? Did D act due to the fear/anger qualifying trigger? - D's drug/alcohol addiction can be considered in assessing the magnitude of the qualifying anger trigger if D was taunted about the addiction. Normal person test - An intoxicated person is not prevented from using the defence. - If D is addicted to drugs or alcohol this will be a characteristic given to the normal person, but the normal person will still have normal levels of tolerance and self-restraint and be sober ..
Diminished responsibility (special)	D cannot rely on voluntary intoxication on its own.



Defences: Intoxication (cont)

If D has an AMF and is voluntarily intoxicated, then AMF **must**:

- arise from a recognised medical condition.
- have substantially impaired D's ability to do one of the things in s 2(1A) HA 1957.
- provide an explanation for D's conduct (even if alcohol is another cause).

If D's AMF arises from **alcohol dependency syndrome (ADS)**:

- the extent and severity of the ADS causing the AMF should be considered.
- ADS must have substantially impaired D's ability to do one of the things in S 2(1A).
- ADS must provide an explanation for D's conduct, even if it is not the only cause.

Consent The jury must be directed to consider where D **believed** that V consented, even if D **wrongly believed due to intoxication**.

If the jury are satisfied that V consented to D's accidental action, this is a defence.

For murder charges, the MR will ask 'did D form the MR of intention to kill or cause GBH even though intoxication?'. A **drunken intent is still intent**.

Where a defence allows for **honest belief**, D can use the defence even if their belief is due to intoxication; the test is **subjective** and **not** based on **reasonableness**.

Defences: Intoxication (Diagram)

□

S 18 OAPA 1861

Actus reus = wound or causing GBH.

AR: **wound** Follows the same meaning as in S 20 OAPA 1861.

AR: **causing** **Legal and factual causation** must be satisfied.

AR: **GBH** Follows the same meaning as in S 20 OAPA 1861.

Mens rea = intention to cause GBH.

MR: D must actually **intend** to cause **serious harm**.

Recklessness is **not** enough.

Where the AR is a **wound**, the MR is still the **intention to cause GBH**; intention to wound is **not** enough.

Intention can be **direct** or **oblique**.

S 20 OAPA 1861

Actus reus = wound or infliction of grievous bodily harm.

AR: **wound** For a wound, there must be a **break** in the continuity of **both layers** of the skin.

The actual injury **need not be severe**; any breaking of the skin will suffice.



S 20 OAPA 1861 (cont)

AR: **infliction** Infliction means to **cause**, so **legal and factual causation** need be satisfied.

Infliction does **not** require assault; psychological harm will suffice.

AR: **GBH** GBH means **serious harm**.

Psychiatric injury may amount to GBH if **sufficiently serious** as proved by **expert evidence**.

When considering if injuries are **grievous**, the **effect** of the injuries on V and the **totality** of the injuries should be considered.

Mens rea = D must intend or be reckless to the causing of some harm

MR: It is enough for D to foresee that **some harm to some person** might result.

S 47 OAPA 1861

Actus reus = assault occasioning actual bodily harm

AR: **assault** An assault means either an **assault** or a **battery**.

The **AR and MR** of either assault or battery **must** be satisfied.

AR: **occasioning** The assault/battery must **result in actual bodily harm** being caused to V.

Factual and legal causation must be established.

This offence can be committed through an **omission** where D has a **legal duty** to act.

AR: **actual bodily harm** Any **hurt or injury** that interferes with V's **health or comfort**.

Hurt need **not** be **serious or permanent**.

The injury should **not** be so **trivial** as to be wholly insignificant.

A **momentary loss of consciousness** is ABH; it involves an **injurious impairment of V's sensory functions**.

Cutting off hair constitutes ABH.

ABH includes **psychiatric injury** but **not** mere emotions.

Mens rea = No MR is required for S 47, only the MR for the assault or battery.

Battery

Actus reus = the application of unlawful force on another

AR: **application** Battery can be inflicted **directly, indirectly** or by an **omission**.

AR: **unlawful** The battery **cannot** be done in **self-defence** or with **V's consent**.

Consent can be **express** or **implied consent** to inevitable everyday contact.

D's actions will be unlawful where they go **beyond implied consent**.

AR: **force** Force means the **merest of touch**

Force does **not** have to be **rude, hostile or aggressive**.

Touching someone's **clothes** is enough.

An **omission** can constitute force (e.g. by creating a danger which D fails to avert)

Indirect force = e.g. D digs a pit which V then falls into.



Battery (cont)

Mens rea = intention or recklessness as to applying unlawful force on another person

- MR: **intention** D intended to commit battery if it was their **aim or purpose**
- MR: **reckless** D is reckless to an assault if they:
- see a **risk** that their actions will cause unlawful force upon V (subjective); and
- in the circumstances known to D, it was **unreasonable** to take that risk (objective).

Assault

Actus reus = causing V to apprehend immediate and unlawful personal violence

- AR: **apprehension** D must make V **expect or anticipate** but **not necessarily fear** immediate and unlawful personal violence.
D must cause V to believe D **can and will** carry out the threat of force.
Words alone and **silence** is enough - *R v Ireland*.
Words can **negate** an assault - *Tuberville v Savage*.
- AR: **immediate** Immediate does **not** mean instantaneous but **some time not excluding the immediate future** or **imminent**.
- AR: **unlawful** The expectation of personal violence cannot be as a result of **self-defence** or **V's consent**.
- AR: **personal violence** All V has to anticipate is an **unwanted touch**.
V must apprehend **physical** violence, **not phycological**.

Mens rea = D must intend or be reckless as to causing V to apprehend immediate unlawful personal violence

- MR: **intention** D intends an assault if it was their **aim of purpose**.
- MR: **reckless** D is reckless to an assault if they:
- see a **risk** that their actions will cause V to apprehend immediate and unlawful personal violence (subjective); and
- in the circumstances known to D, it was **unreasonable** to take that risk (objective).

Aggravated Burglary

D commits aggravated burglary where D commits burglary and at the time has any firearm or imitation firearm, any weapon of offence or any explosive.

The maximum sentence is **life imprisonment**.

- Firearm** includes:
- **airgun**
- **air pistol**
- anything with the **appearance of a firearm** whether capable of being discharged or not

- Weapon of offence** means:
- any article made/adapted for D (to intend) to use for **causing injury** to or **incapacitating** a person.
- D must **intend** to use the article for either such purpose.
- A cricket bat is **not** naturally a weapon of offence.



Aggravated Burglary (cont)

Explosive means:

- any article manufactured to produce a **practical effect** by **explosion**
- D must intend to use the explosive to produce an explosion.

D must have the offending article with them either **at the point of entry** for a s 9(1)(a) or **on commission or attempted commission** of theft or GBH for a s 9(1)(b).

(Note: *R v Francis* is an interesting case)

The phrase '*intended by D having it with them for such use*' does **not** impose a requirement to prove that the intended use was with respect to the particular burglary.

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By **livjharrison**
cheatography.com/livjharrison/

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