



Course Companion for BTEC Nationals Applied Law

Unit 3: Applying the Law

2nd Edition

Endorsed for

**Pearson Edexcel
Qualifications**

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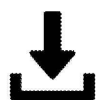


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Teacher's Introduction

This course companion covers the entirety of the **Unit 3: Applying the Law** specification for the Pearson BTEC Level 3 National Extended Certificate in Applied Law for first teaching from 2017.

Each section includes key term definitions and student-friendly notes to support independent study and allow students to discover the law themselves. Varied activities are included throughout for students to engage with and embed learning. These include activities in which students are asked to research them to take charge of their own learning. Other activities require students to evaluate a key skill students must possess for the highest of grades in the exam. Being a high level skill is difficult for students to master with confidence.

There are also practice questions for students to apply their knowledge to scenarios for exam success. Indicative content, including model answers and point-by-point plans, are included to support teachers, as well as students for extra guidance and self-marking.

Although all topics require application and analysis, there is also emphasis through the study of offences, as examiners' reports have stated that this is a requirement for the highest grades. Students struggle to get to grips with. There is reference throughout to the assessment objectives so students can ensure they are working towards what will be examined.

2nd Edition June 2022:

Corrections and improvements have been applied, which include additions and deletions to content throughout the course companion.

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Top Tips for the Exam

1. Fatal offences and police powers – police powers will not be referred to in the lecture so you have to be very familiar with these and be able to spot the potential

- Remember, you can take two sides of brief notes on A4 paper into the exam.

Top tip – the highest grades go to those students who bring evaluation into the for reform, etc.), so remember to do this!

AO1	Selection and understanding of legal principles relevant to context	You need to ensure that you understand if they are statutes or case law, and be able to identify what is relevant to the question asked.
AO2	Application of legal principles and research to information provided	Application of the law to the scenario in order to provide any real legal answers. One tip is to underline key words or phrases on the question paper and refer to them to ensure that you are applying your knowledge.
AO3	Analysis of legal authorities, principles and concepts	Only by truly analysing the law and what the question are you going to be able to answer. Remember that the correct answer is given.
AO4	Evaluation and justifications for decisions	You have to provide a reasoned conclusion. For example, 'question 1 is guilty because...', and remember to refer to the question as this is where the high marks are.
	Presentation and structure	You need to ensure that all elements of the question are covered. Remember, question 1 will cover fatal and dangerous weapons and question 2 will cover property offences.

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Assessment Content

A The Laws Relating to Homicide: Murder and Voluntary Manslaughter

A1 Murder

A2 Voluntary Manslaughter

A3 Involuntary Manslaughter

B The Laws Relating to Corporate Manslaughter

B1 Corporate Manslaughter

C An Introduction to Offences against Property: Theft, Robbery, Burglary, Fraud

C1 Theft: Sections 1–6 of the Theft Act 1968

C2 Robbery: Section 8 of the Theft Act 1968

C3 Burglary: Section 9 of the Theft Act 1968

C4 Fraud by False Representation: Section 2 of the Fraud Act 2006

C5 Criminal Damage: Section 1 of the Criminal Damage Act 1971

D Introduction to General Defences in Criminal Law

D1 Duress

D2 Intoxication

D3 Self-defence

D4 Insanity and Automatism

E An Overview of Police Powers

E1 Stop and Search

E2 Arrest

E3 Detention, Interviews, Searches and Samples

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A: The Laws Relating to Homicide: Voluntary Manslaughter

A1: Murder

actus reus: the guilty action, e.g. stab

causation in law: the main cause of the criminal act

contemporaneity rule: *mens rea* must occur during the continuous act of the crime

de minimis cause: more than a trivial or trifling cause

factual causation: but for the actions of the defendant, the criminality would not

mens rea: the guilty mind

murder: 'The unlawful killing of a reasonable creature in being under the King's Peace, express or implied.' (Lord Justice Coke)

novus actus interveniens: new intervening act

omission: a failure to act

reasonable creature in being: a human being, but not someone who is technically

thin skull rule: that you take your victim as you find them, regardless of any pre

transferred malice: *mens rea* is transferred from one victim to another; however,

under the King's Peace: not in wartime

Notes

Homicide is unlawful killing; the most severe form is murder, which is a common law offence defined by Lord Justice Coke as 'the unlawful killing of a reasonable creature in being under the King's Peace with malice aforethought, express or implied'.

Actus reus of murder

(NB for murder and both involuntary and voluntary manslaughter, the *actus reus* is the death of a person – is the same; the difference between the offences is in the *mens rea*. In involuntary manslaughter, and while there may be a murder in voluntary manslaughter, the defence of either loss of control or diminished responsibility which applies, and the penalty is a lesser penalty.)

1. Unlawful killing

Actus reus for murder may be an omission – the defendant failed to do some legally or contractually recognised duty, for instance). An omission could fall into three categories:

- A contractual duty

1. **AO1** Research what happened on this point in *Pittwood*.

- A duty because of relationship

2. **AO1** Research what was shown in *Gibbins & Proctor*.

- A duty which was undertaken voluntarily

3. **AO1** Research how this was illustrated in *Stone & Dobinson*.

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2. Of a reasonable creature in being, i.e. a human

- **But what of a foetus?**

You cannot murder a foetus unless it has been expelled from the mother independently with its own circulation, although the umbilical cord does not have to be cut, as was seen in the case of *R v Poulton*, which considered when a foetus is born. In *R v Poulton*, the baby was brought into the world and it was decided that the baby's entire body has to be brought into the world freely to be classed as this. (In this case concerning the death of a child, there was a conviction as there was no proof that the baby had been fully born when she strangled it).

- **What of the technically brain-dead?**

In *Airedale NHS Trust v Bland*, the disconnection of a life support machine was considered. Although withdrawing treatment, there is no duty to treat someone if it is not in their best interests. In this case, unfortunately, there was not going to be any improvement in the course of treatment.

3. Under the King's Peace

Or the Queen's Peace! All persons are 'under the King's or Queen's peace' except those who are not.

Causation

The prosecution must show that D's factually and legally the cause of the death of V.

Factual causation

But for the actions of D, the death would not have occurred.

4. **AO3** Contrast causation in *Paggett* and *White*.

AO1 Causation in law

The D's actions do not have to be the only or the main cause of the death, but the *minimis* cause (a very small event in causing the death of the V).

In tort law, which you have already studied, there is the principle that you must take your victim as you find them and this also applies in criminal law. This is known as the *thin skull or eggshell skull* rule. The full extent of any harm to V even when it is more significant than would normally be expected because of the pre-existing vulnerability of V that D was unaware of.

5. **AO1** This was seen in *Blaue*; outline what happened here.

There must also not be a *novus actus interveniens*, or a new intervening act, which breaks the chain of causation between the D's act and the death of the V.

This could be:

- an act of a third party – it really depends on what has been the operating cause

6. **AO3** Contrast *Smith* and *Jordan* to illustrate this point.

- victim's own acts – if V acts in a totally incomprehensible way, then they may be responsible for their own injuries

7. **AO3** Contrast *Roberts* and *Williams* to show this.

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There must be coincidence of *mens rea* and *actus reus* (also known as the

8. **AO1** Detail how this was demonstrated in *Fagan*.
9. **AO1** What is transferred malice?

AO1 *Mens rea* of murder

Murder requires malice aforethought. This is a misleading term as there is no need for malice aforethought (premeditation). What it means in a murder case is that a jury must find that, in killing the victim, the defendant either:

- intended to kill (express malice); or
- intended to cause grievous bodily harm (implied malice).

So, the *mens rea* of murder is that D intends either to kill or to cause GBH. This requires that the courts have also had to consider whether D has sufficient intention.

This is straightforward where a result is D's aim, purpose or desire – this is called direct intention.

However, where an outcome is not D's aim, purpose or desire, but D realises that it is a 'virtually certain' consequence of their action, and D knows this, then a jury is entitled to find that D intended the consequence – this is called indirect intention.

AO3 Reform (remember, to access the highest grades you need to bring in some

10. **AO3** Research what are the criticisms of the current legal system in relation to murder and proposals for reform.

Hint – you might like to start by looking at the 2006 Law Commission report looking at the possibility of infanticide.

One point to start you off... the law of murder is outdated and antiquated, using concepts that are no longer relevant in today's society. Furthermore, the different offences of manslaughter cause confusion! The Law Commission has proposed changes to the law of murder; one of which is the American system whereby there is first degree and second degree murder.

A1: AO1, 2, 3 & 4 Murder Practice Question

DAILY NEWS

GUNSHOT TERROR AT ROCK CONCERT

Head of the notorious C gang, Mr Bernardo Morales, has been charged with the murder of his brother. It happened at the Locke Park rock concert last night. Eyes were drawn to the stage where there was a fight and Mr Bernardo Morales took a revolver out of his pocket and fired it at the known leader of a rival gang, Mr Trebouchet. However, it was not Mr Trebouchet, but Alfonso, who was with his brother at the concert, tried to intervene to stop the fight. In the way of the bullet and was fatally wounded. Ambulance crews were called but Mr Morales was pronounced dead at the scene. Mr Bernardo Morales was arrested and taken to the police station where he was interviewed by officers and was noticeably upset.

After reading the above newspaper article, apply the *mens rea* and *actus reus* of murder to the facts and decide whether Mr Morales is guilty and evaluate the law on murder.

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A2: Voluntary Manslaughter

battered wife syndrome: diagnosed psychiatric condition

diminished responsibility: mental state which gives a defendant a partial defence

discretionary life sentence: where a life sentence can be given by law, but this is at the discretion of the court

loss of control: where manslaughter has been committed due to a loss of control for a qualifying trigger

partial defence: does not absolve the defendant of guilt but lowers the offence to manslaughter

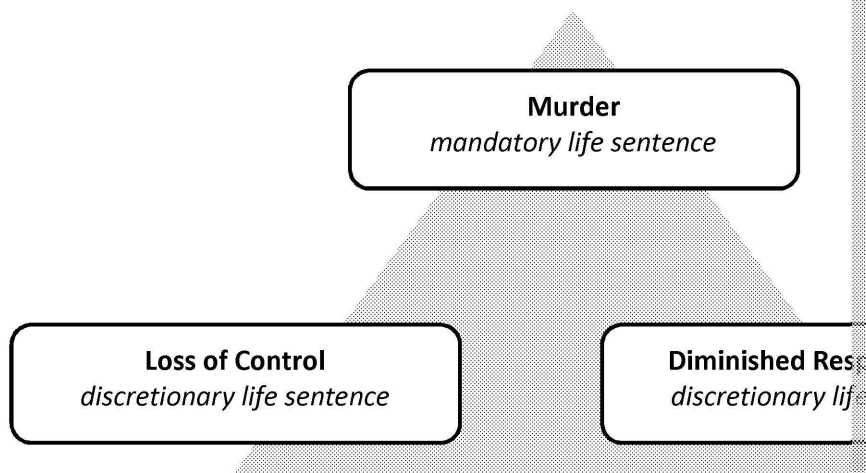
provocation: action which incited someone to kill

qualifying trigger: one of three things from which a loss of control must stem

voluntary manslaughter: where D has been charged with murder but is able to show a partial defence of either loss of control or diminished responsibility and reduce a mandatory life sentence to a discretionary life sentence

Notes

A person charged with murder may be convicted of voluntary manslaughter (and receive a discretionary life sentence) if they have the partial defence of either diminished responsibility or loss of control. This has been radically transformed by the Coroners and Justice Act 2009 and both carry discretionary life sentences instead of the mandatory life sentence for murder.



AO1 Diminished responsibility

The Coroners and Justice Act 2009 s.52 requires that:

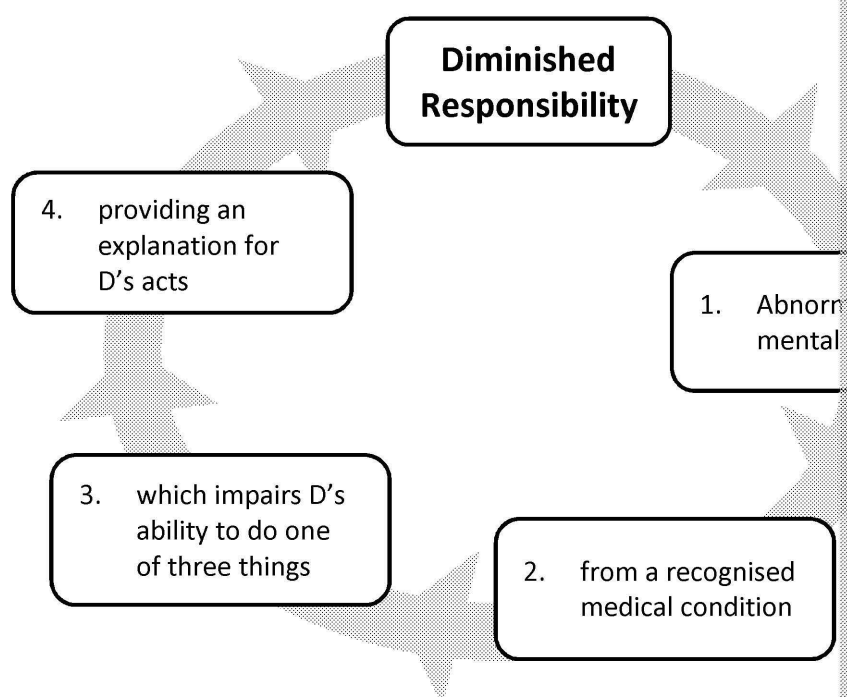
1. D suffers from 'an abnormality of mental functioning'
In *R v Byrne* the definition was seen to be extremely wide.
2. A 'recognised medical condition' is the origin of the abnormality of mental functioning
Case law has suggested that a recognised medical condition may be PMS (*Smyth*) or battered women's syndrome (*Ahluwalia*).
3. The abnormality of mental functioning must substantially impair D's ability to
 - understand the nature of their conduct
 - form a rational judgement
 - exercise self-control

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4. All of the above provide an explanation for D's acts or omissions in killing. There must be a causal link between D's criminal acts and the abnormality of defence to work.

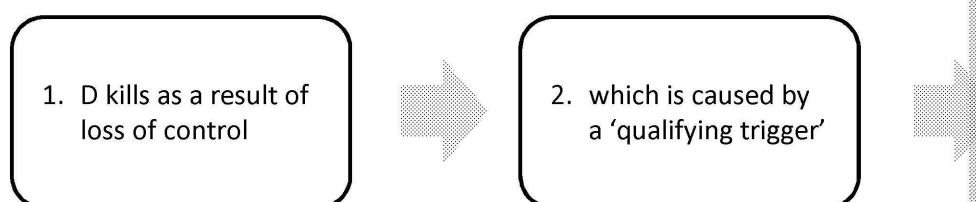


AO1 Loss of control

This takes over from the old partial defence of provocation; the Coroner and Justices of the Peace Act 1997.

1. D must kill as a result of loss of self-control.
Under the new legislation, the loss of self-control does not need to be sudden. There can be a long gap, e.g. four days, as occurred in *Ibrams & Gregory*, then this defence rather than murder will be shown.
2. This loss of self-control must have been caused by a recognised 'qualifying trigger'.
There are three qualifying triggers under the Act:
 - s.55(3) D's fear of serious violence from V against D or another identified person
 - s.55(4) things done and/or said which not only constitute circumstances of grave character but also cause D to have a justifiable sense of being wronged
 - s.55(5) a combination of the above*D cannot incite these triggers to provide an excuse.*
3. A person of D's sex and age with a normal degree of self-restraint might have reacted in a similar way.

This brings in an objective test. The court will consider whether a person of D's sex and age with a normal degree of tolerance and self-restraint in D's circumstances might have reacted in a similar way.



1. **AO4** Evaluate the law of voluntary manslaughter.

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A2: AO1, 2, 3 & 4 Voluntary Manslaughter Practice

DAILY NEWS

FEARFUL FATHER FATALLY INJURES STRANGER

Police were called to Wells Road yesterday morning after Pavel Mustache was stabbed by homeowner Darren Waites. According to neighbours, Darren's daughter was playing in the front garden when there was a disturbance. Darren came out of the garage where he was working on his bicycle, and saw Pavel being pushed into a vehicle.

Full of fear of what was happening, Darren Waites charged at Pavel with a screwdriver he was holding in his hand, stabbing him in the neck. Pavel died at the scene as he suffered from a disease whereby his blood did not clot and he bled to death.

After reading the above newspaper article, apply the *mens rea* and *actus reus* to determine whether Darren Waites is guilty and evaluate the law on voluntary manslaughter.

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A3: Involuntary Manslaughter

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duty of care: legal obligation imposed on an individual to abide by a reasonable standard of care to safeguard the well-being of others

gross negligence: this is where D owes a duty of care to V and breaches it in a way that causes death

involuntary manslaughter: where the *actus reus* of murder is present, but the *mens rea* for murder is not

unlawful act manslaughter: a dangerous unlawful act has occurred which results in death, although the defendant did not have the *mens rea* for murder, only the *mens rea* for the unlawful act

Notes

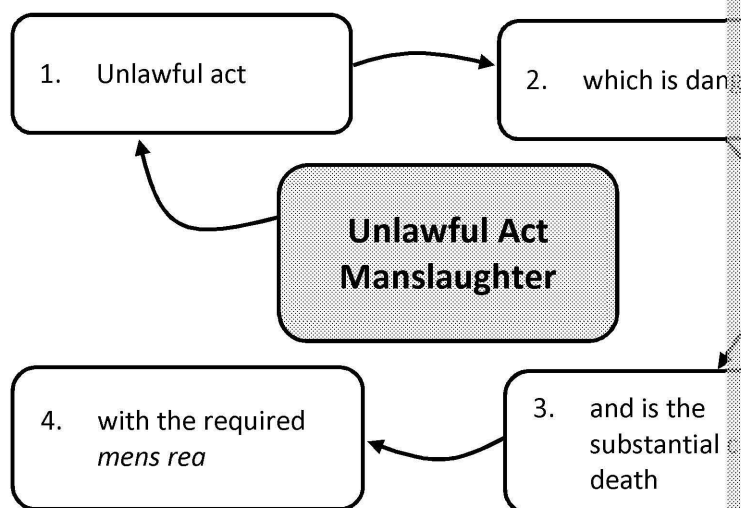
Voluntary manslaughter is where the D commits murder but has a partial defence of **loss of control** or **diminished responsibility**. Involuntary manslaughter is a completely separate offence from murder, as it lacks the *mens rea* for murder. It can range from where someone is highly blameworthy (**gross negligence involuntary manslaughter**), to where someone has been careless (**gross negligence involuntary manslaughter**), accordingly there is debate as to whether it is appropriate to have one offence with two different levels of culpability.

Actus reus

Involuntary manslaughter has the same *actus reus* as murder: unlawfully killing someone.

AO1 Elements of unlawful act manslaughter

1. The act must be **unlawful**.
2. The unlawful act must be considered **dangerous**.
3. The act must be the **substantial cause of death**.
4. There must be the required ***mens rea***.



1. Unlawful

Lamb stated that the unlawful act must also be a criminal offence rather than a civil wrong, as the V did not fear harm when he thought an unloaded gun was being pointed at him. This was held to be an unlawful act manslaughter.

It must also be an act, not an omission, for in *Khan and Khan*, not getting help for a victim was held to be an omission and therefore cannot be unlawful act manslaughter.

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2. Dangerous

The unlawful act must also be dangerous. The test for dangerousness comes from *Welland*, an objective test, meaning that the ordinary reasonable and sober person has to consider it dangerous. It does not matter whether the D regarded their conduct as harmful.

In *Mitchell*, transferred malice can still apply, as the act need not be aimed at the victim. In *Goodfellow*, the dangerous act can be aimed at property.

1. **AO3** Compare *Dawson and Watson*.

3. Which is the substantial cause of death

V's death must have been caused by D's unlawful act, without there being any other substantial cause of death.

2. **AO3** Compare *Cato*, *Dalby* and *Kennedy*.

4. Mens rea

There is no special *mens rea* for this type of manslaughter; it is the *mens rea* of the underlying offence which needs to be proved; nothing in relation to the death.

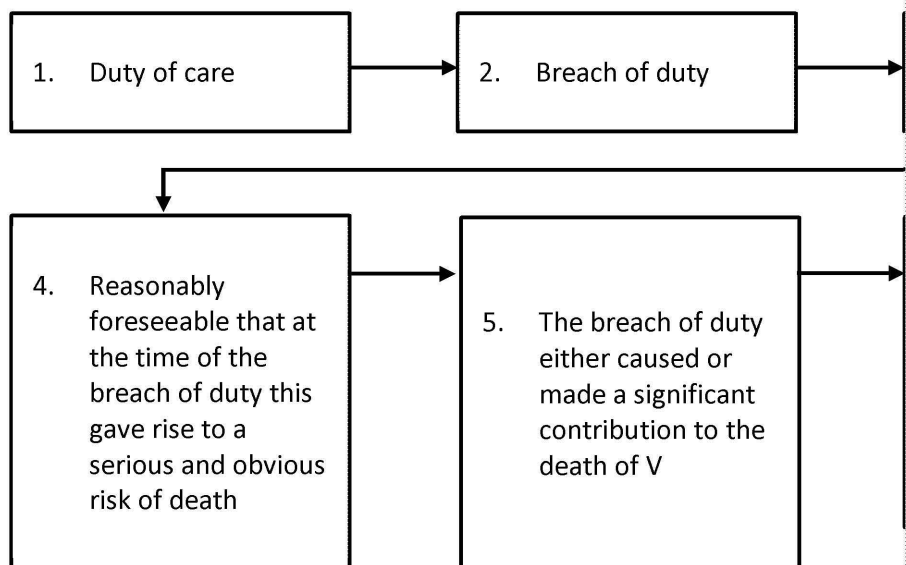
AO1 Gross negligence manslaughter

Gross negligence manslaughter is when a person dies as a result of someone else's negligence and this negligence on their behalf is so bad a jury would find that their conduct amounts to a crime against the state and conduct deserving of punishment. The test was stated as 'does the conduct of the accused show such disregard for the safety of others as to amount to a crime against the state and conduct deserving of punishment?'

Elements of gross negligence manslaughter

Gross negligence manslaughter was defined in *R v Broughton*. It requires:

1. An existing **duty of care** owed by D to V
2. A negligent **breach of that duty** by D
3. There is a **serious and obvious risk of death** at the time of the breach
4. It was **reasonably foreseeable that at the time of the breach of duty this gave rise to a serious and obvious risk of death**
5. The **breach of duty either caused or made a significant contribution to the death of V**
6. The jury must then decide that the **circumstances of the breach were truly reprehensible that these amount to gross negligence**



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1. Duty of care

This topic has already been studied in tort.

3. **AO3** What is the distinction between criminal and civil law on this topic in

In *Willoughby*, where D and V are engaged in criminal activity, this does not

In *Evans*, it was seen that a duty of care can still exist where D created a state of affairs which he ought reasonably to know, has become life-threatening.

2. Breach of duty

In gross negligence manslaughter, once a duty of care has been established to the victim, this must also be breached, by the D falling below the standard of care expected of a 'reasonable man'. The distinction between civil law and criminal law here was explained in *Adomako* where he stated it is up to the jury to 'consider whether the extent to which D's conduct departed from the proper standard of care incumbent on him, involving as it must do an element of blameworthiness, was such as it should be judged criminal'.

3. Serious and obvious risk of death

The serious part of the risk here refers to the fact that risk of death must be a real and serious injury would not suffice, it must be risk of death which is not remote. It must be something that is very clear and does not require any further enquiry.

4. Reasonably foreseeable that at the time of the breach of duty this gave rise to an obvious risk of death

There must be a connection at the time of the breach that it is foreseeable that death will flow from this.

5. The breach of duty either caused or made a significant contribution to the death

The issue of causation was a focus in the case of *Broughton* where it was found that there was no certainty when the V's condition reached the point of there being a serious and obvious risk of death what D should have done to prevent this. In this case the court found that the lack of medical attention would have saved V's life, and based on a criminal standard of 'beyond reasonable doubt' and a 90% chance of survival if D had summoned help, this was not enough to establish causation.

6. The jury decides that the circumstances of the breach were truly exceptional and reprehensible that these amount to gross negligence

It is for the jury to decide that the conduct of D was truly exceptionally bad and that it was to it being criminal, and that criminal sanctions must follow.

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DAILY NEWS**MAN DIES AFTER ARGUMENT WITH GIRLFRIEND**

Samantha Johnson was caught on CCTV shouting wildly and storming shared with boyfriend Alan Pennington where she started to damage rocks from the rockery in their garden at the windscreen. Alan Pennington the house screaming at her to stop. According to eye witnesses, Samantha threw a large rock, when she appeared to slip on some mud and although aimed at Alan Pennington on the back of his head. Samantha Johnson ran from the scene, summoned help, calling an ambulance and the police. Alan Pennington was taken to hospital and seen by a junior doctor. He examined Alan Pennington and ordered a CT scan to stem the internal bleeding in his brain in an effort to save his life. The doctor, however, did not check Alan Pennington's blood type and he was given a transfusion during the operation and tragically died the following day.

Samantha Johnson was stopped by police only 500 metres from the scene.

After reading the above newspaper article, apply the *mens rea* and *actus reus* to determine whether Samantha Johnson is guilty and evaluate the law on involuntary manslaughter.

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B: The Laws Relating to Corporate Manslaughter

B1: Corporate Manslaughter

corporate manslaughter: death of individuals attributable to a company

corporate veil: legal concept that separates the actions of a company from its senior officers to evade criminal liability

gross breach of duty of care: a duty of care which has been breached and has fallen far below the level of care expected that it is considered necessary to be criminally punished

senior management: person(s) who play(s) a significant role in decision-making, or the management of the business

Notes

Due to the relatively low conviction rate for this offence, despite some very high-profile cases such as the Hatfield rail disaster, the new, more streamlined statute dealing with this – the Corporate Homicide Act 2007 – came into force, trying to make companies more accountable for what they may cause.

1. **AO4** Go online and research what happened in the Hatfield rail disaster and who was held accountable for what occurred.

AO1 Taking elements of gross negligence manslaughter and the idea that one can be held liable without the need for any *mens rea*, the new statute refers to a duty of care being owed that must be seen by s.1(1) of the Act below:

An organisation to which this section applies is guilty of an offence if the way in which it is managed or organised

- (a) *causes a person's death, and*
- (b) *amounts to a gross breach of a relevant duty of care owed by the organisation*

1. Duty of care

Ultimately, senior officials will be held accountable under this Act and there will be no 'corporate veil' as there was formerly. They will be held liable where they owed a duty of care that could include employees or customers.

Relevant duty of care is covered in section 2(1) of the Corporate Manslaughter and Corporate Homicide Act 2007, stating:

- A 'relevant duty of care', in relation to an organisation, means any of the following duties of negligence—
- (a) *a duty owed to its employees or to other persons working for the organisation;*
 - (b) *a duty owed as occupier of premises;*
 - (c) *a duty owed in connection with—*
 - (i) *the supply by the organisation of goods or services (whether for commercial or non-commercial purposes);*
 - (ii) *the carrying on by the organisation of any construction or maintenance work;*
 - (iii) *the carrying on by the organisation of any other activity on a commercial basis;*
 - (iv) *the use or keeping by the organisation of any plant, vehicle or other thing;*
 - (d) *a duty owed to a person who, by reason of being a person within subsection (1), is owed a duty of care by the organisation in respect of his or her safety the organisation is responsible. (This refers to those being detained in a prison, for example.)*

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2. Breach of duty

After establishing a duty of care there must be a gross breach of a relevant duty of care or senior management failings.

This is covered in section 4 of the Act, which states at subsections b and c the following:

- (b) *a breach of a duty of care by an organisation is a 'gross' breach if the conduct of that duty falls far below what can reasonably be expected of the organisation*
- (c) *'senior management', in relation to an organisation, means the persons who*
 - (i) *the making of decisions about how the whole or a substantial part of its business is organised, or*
 - (ii) *the actual managing or organising of the whole or a substantial part of its business*

3. Causation

There must be causation flowing from the breach of the duty of care which has resulted in the death.

4. Gross breach

Section 8 of the Corporate Manslaughter and Corporate Homicide Act 2007 states how serious that failure was and how much of a risk of death it posed.

2. **AO3** What does an investigation under the new corporate manslaughter legislation involve?
3. **AO3** What are the penalties under the new legislation?

B1: **AO1, 2, 3 & 4** Corporate Manslaughter Practice

DAILY NEWS

EXCLUSIVE – DAILY NEWS INVESTIGATION SHOWS SENIOR MANAGEMENT AT FUN HOLIDAYS AWARE OF CONCERNS OVER DOOMED FLIGHT 992

Last September, Fun Holidays flight 992 encountered difficulties on its way to Lanzarote. All 348 passengers and 16 crew on board were presumed dead.

Daily News can now reveal there were concerns over this aeroplane as its pre-flight maintenance check was two months overdue. Furthermore, a former Fun Holidays employee in an exclusive interview with us told us, 'I was employed by Fun Holidays for 18 months. During this time I saw emails to the Chief Operating Officer, informing him that there were problems with the signalling equipment on board the aircraft. This concerns me as could the Captain have been trying to go to the airport? This haunts me every day thinking of all those poor people who died.'

Daily News has also uncovered documents showing that Fun Holidays had failed to carry out all annual checks overdue on its fleet of aircraft. In addition, there were concerns in respect of annual refresher training for staff of what to do in an emergency, even been done?!

After reading the above newspaper article, apply the law of corporate manslaughter to whether Fun Holidays is guilty and evaluate the law on corporate manslaughter.

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C: An Introduction to Offences against Property Robbery, Burglary, Fraud and Criminal Damage

C1: Theft: Sections 1–6 of the Theft Act 1968

appropriation: assuming the rights of the owner

dishonesty: something that the ordinary, reasonable, honest person would regard as dishonest

property: money and all other property, real or personal, including things in action

proprietary right or interest: right to retain ownership until bill is paid

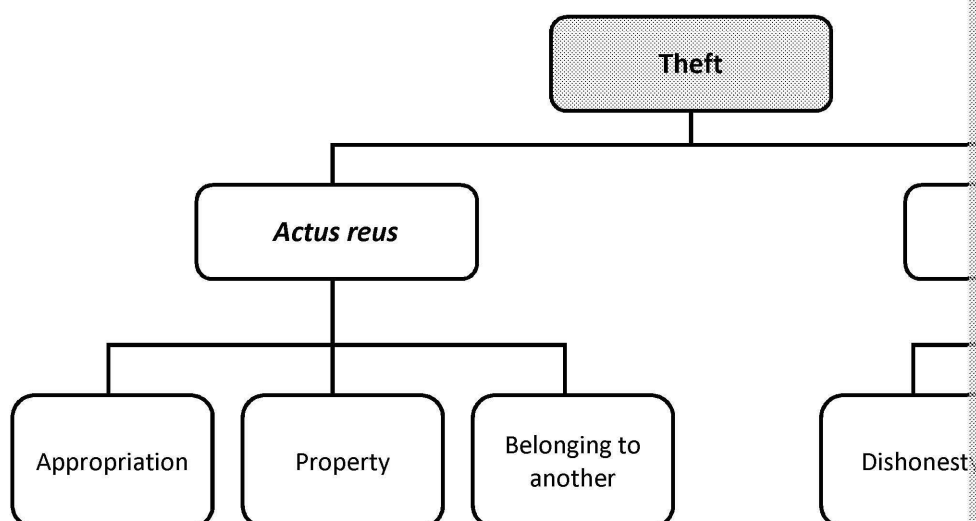
theft: dishonest appropriation of property belonging to another with the intention of permanently depriving the other of it

Notes

AO1 Theft Act 1968, s.1

A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.

There are five parts of the offence of theft which need to be fulfilled to be found guilty. Three of these constitute the *actus reus* and two the *mens rea*.



Actus reus: element 1 – Appropriation

Appropriation is defined in s.3 of the Theft Act 1968 as:

1. Any assumption by a person of the rights of an owner amounts to an appropriation if he has come by the property (innocently or not) without stealing it, any later assumption of control over the property or an intention to assume control, and any keeping or dealing with it as owner
2. Where there has been a transfer for value in good faith then this is not theft

The offence of theft can involve more than simply taking of property; assuming the rights of the owner over property will also fall under this offence – this could include possessing, using, moving or destroying things.

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Examples of cases involving these situations are as follows:

- *Pitham and Hehl* – the D assumed the rights of a homeowner, selling furniture guilty of theft, as although he did not actually handle the furniture himself or example, he assumed the rights of the owner by putting it up for sale and selling something only the actual owner has the right to do.
- *Morris* – in this case it was found that appropriation includes any activity which do, which in this case was setting the price of goods, and, therefore, when the goods this was deemed theft.
- *Lawrence* – here it was seen that appropriation can take place even where the goods are taken over with the consent of the owner, for in this case a foreign passenger handed over the car to take the correct change, and taking too much was theft.

1. **AO1** Make notes on *Gomez* and *Hinks*.

Actus reus: element 2 – Property

The Theft Act 1968 s.4(1) defines property thus:

'Property' includes money and all other property, real or personal including things in action and intangible property

What does this mean?

- Money = £
- Real property = land
- Personal property = personal items, e.g. bag
- Things in action = a right that can be enforced, e.g. cheque
- Intangible property = export quota (*A-G of Hong Kong v Chan Nai-Keung*)

Certain things cannot be stolen:

- Under s.4(3), wild mushrooms, flowers, foliage or plants, unless for reward or otherwise the same would apply to wild animals, e.g. rabbits)
- Electricity – although there is a separate offence under s.11 of dishonestly using electricity or dishonestly causing it to be wasted or diverted

Actus reus: element 3 – Belonging to another

The Theft Act 1968 s.5 deals with this element of the *actus reus* of theft and states that property shall be regarded as belonging to any person having possession or control of it or a proprietary right or interest (not being an equitable interest arising only from an agreement to transfer an interest)

This breaks down the offence into three elements:

- Possession – the physical ability to enjoy
- Control – *Woodman*
- Proprietary right or interest, e.g. right to retain ownership until bill is paid – *Turner*

2. **AO1** Make notes on *Turner* and *Wood*.

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Abandonment

If something is abandoned, if someone takes it then it is not theft. Rubbish placed for collection becomes owned by the council.

Williams v Phillips – in this case it was seen that when rubbish is left out for the council to collect, the council becomes the owner of it.

Property received under an obligation

s.5(3) states: 'Where a person receives property from, or on account of another, and is under an obligation to retain and deal with that property, or its proceeds in a particular way, the property shall be regarded (as against him) as belonging to the other.'

3. **AO1** Make notes on *Hall*, *Klineberg* and *Marsden and Wain*.

Davidge and Bunnett – in this case it was seen that where money or cheques are received, they must be utilised for this; using them for anything other than this is theft.

Property received by mistake

Section 5(4) states: Where a person gets property by another's mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then, if the person makes default in restoration, the property or proceeds shall be regarded (as against him) as belonging to the person to whom the restoration is due, and an intention not to make restoration shall be regarded accordingly as an intention to steal the property or proceeds.

Mens rea: element 1 Dishonestly

This is not defined in the Theft Act 1968, but section 2 states three instances which are dishonest:

- Appropriation of property in the belief there is in law the right to deprive the other of it
- Appropriation of property in the belief that he would have the other's consent if only discovered
- The person to whom the property belongs cannot be discovered by taking reasonable steps

There has also been a common law test of dishonesty developed from the case of *Moynihan*, which is a two-part test of dishonesty, stating that there must be a positive answer:

1. Would D's behaviour be regarded as dishonest by the standard of the honest person?
2. Did D realise that their behaviour would be regarded as dishonest by the standard of the honest person?

The second subjective part of this test was disapproved by Lord Hughes in *Ivey v Genting Casinos*. It was only stated *obiter dictum*, it was not until the case of *R v Barton & Booth* that the court stated that only the objective question of 'would the D's behaviour be regarded as dishonest by a reasonable person' would be the appropriate test for dishonesty.

Willingness to pay

- This does not necessarily mean that no theft has taken place, as just because something is for sale, that does not necessarily mean it is up for sale!
- It is prohibited under s.2(2) of the Theft Act 1968, which states: 'a person's appropriation of property belonging to another may be dishonest notwithstanding that he is willing to pay for the property'

AO1 Mens rea: element 2 Intention to permanently deprive

What about borrowing?

Velumyl – in this case the D took money from a safe with the intention to replace it with the same value. They were still convicted of the offence of theft, for the issue was not whether they were depriving the owner of the particular notes they had taken from the safe, even if they replaced them with notes of the exact same value.

DPP v Lavender – again in this case the D was convicted for replacing property as they took property from one council property with those from another.

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C1: AO1, 2, 3 & 4 Theft Practice Question

DAILY NEWS

RESTAURANT MANAGER ON TRIAL FOR THEFT AFTER MONEY FROM TAKINGS

Mr Paulo Rodriguez, the former manager of popular local tapas restaurant, pleaded not guilty to theft at Abbotstown Magistrates' Court yesterday. He admitted he had stolen £500 from takings last month after discrepancies were found with the cash banked by Mr Rodriguez. Mr Rodriguez stated that he had taken the money from the takings, but he was going to replace this later in the week before the takings were calculated. He said he had put a note in the office to state this as his intention to steal the money.

The case continues.

After reading the above newspaper article, apply the *mens rea* and *actus reus* to determine whether Paulo Rodriguez is guilty and evaluate the law on theft.

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C2: Robbery: Section 8 of the Theft Act 1968

force: this can be minimal and can be at any time during the robbery

robbery: theft with force

Notes

AO1 Robbery is simply theft plus force; it is an aggravated form of theft, made more serious by the use of force.

Robbery is set out in the Theft Act 1968, s.8(1) thus:

'A person is guilty of robbery if he steals, and immediately before or at the time of the stealing, he uses force on any person or puts or seeks to put any person in fear of being the subject of theft.'

The *actus reus* is:

- theft
- force, or putting or seeking to put any person in fear of force

The *mens rea* is:

- theft
- intent or recklessness as to the use or threat of force

Theft

It is essential that the offence of theft has been committed before there can be a robbery. In *Robinson*, D was owed £7 by V's wife. In a struggle D took £5 which V dropped. This was theft (and, therefore, no robbery) as D believed he was entitled to the £5.

In *Corcoran v Anderton*, D hit a woman in the back and tugged at her bag, which she dropped without the bag as the woman was screaming and attracting attention. Despite this, D was found guilty of robbery. Therefore, D could be guilty of robbery.

Force

This is not defined in the Act. However, the force can be small.

In *Dawson and James*, D pushed V, allowing another to take his wallet. This was held to be force; it is an ordinary word and its ordinary application by the jury should be utilized.

In *Clouden*, when a shopping basket was wrenched from V's hand it was seen as force – if it was taken while resting on someone's lap?)

In *B and R v DPP* it was seen that fear is not a determining factor for whether force is used. If boys surrounded another boy, pinning him back while they took his mobile and £5, it did not matter, and, although there was only limited force, this was robbery. It was seen that fear may be force as it is an implied threat.

In *Hale*, when the force was inflicted was addressed. This is normally immediately before the stealing, but in this case, she was tied up after the jewellery was taken, before D started stealing. This was one continuing act, so robbery applied. *Lockley* stated that this is still good law.

AO1 Mens rea

D must have the *mens rea* for theft.

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C2: AO1, 2, 3 & 4 Robbery Practice Question

DAILY NEWS

TERROR AT POST OFFICE ROBBERY

Frank Jones has been charged with the robbery of Bugletown Post Office. He entered the post office with a very poor imitation gun. He pulled the trigger and demanded that they hand over the contents of their tills. It is estimated that he took an excess of £5,000. When he left the post office, a member of staff made contact with him on the High Street 200 yards from the post office, and tried to stop him. It is at this point Frank Jones hit the member of staff. The member of staff then, when he fell to the floor, repeatedly stamped on his chest. The member of staff was taken to hospital and suffered concussion and two broken ribs. The police, who were alerted to the incident by a member of staff calling the police from the back room, caught Frank Jones, who is known to them, and he was arrested on suspicion of robbery. A member of staff at the post office at the time of the incident commented that it was terrifying.

After reading the above newspaper article, apply the *mens rea* and *actus reus* to the facts and decide whether Frank Jones is guilty and evaluate the law on robbery.

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C3: Burglary: Section 9 of the Theft Act 1968

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building: fairly permanent structure

burglary: entering of a building, or part of a building, as a trespasser, either with intent to commit theft or GBH

effective entry: this does not have to be complete, but has to be enough to be able to commit the offence

trespasser: person entering without permission

Notes

The law on burglary is divided into two parts:

- s.9(1)(a) of the Theft Act 1968 is concerned with going into a building as a trespasser with intent to commit one or more of a number of specified offences (theft, GBH, unlawful damage)
- s.9(1)(b) of the Act is concerned with committing one of a specified range of offences (theft, GBH, unlawful damage) after an entry has been made to a building as a trespasser

AO1 S.9(1)(a) of the Theft Act 1968

A person is guilty of burglary if they enter any building or part of a building as a trespasser with intent to commit any such offence as is mentioned in subsection (2) (stealing, inflicting GBH, etc.)

The *actus reus* has three elements:

1. Enters
2. a building or part of a building
3. as a trespasser

1. Effective entry

In *Collins*, it was seen that the entry must be effective for a burglary to be committed. Therefore, entry of only part of the body into a building in order to commit the offence must be shown at court for the offence to be satisfied.

In *Brown*, the D had his head and shoulders inside a shop through its window. This was held to be sufficient for the test for effective entry; he did not actually have to be able to commit the offence.

1. **AO1** Make notes on Ryan.

The overriding principle here is that partial entry is enough.

2. A building, or part thereof

Rather unhelpfully in the legislation, there is no formal definition of a building. It has to be a mostly permanent structure; therefore, for example, theft from a car is theft, and not burglary.

There are references in subsections (1) and (2) of the Theft Act 1968 s.9(3) to vehicles or vessels, and they shall be deemed buildings for the purpose of the Act if they are inhabited or not at the time of the burglary.

In *B and S Leathley*, a 25 ft freezer container that had had its wheels removed and was in a fixed position for over two years was held to be a building.

In *Norfolk Constabulary v Seekings and Gould*, two articulated lorry containers were held to be buildings as they had not had their wheels removed and, therefore, were unfit to move. For the purposes of the Act, it is necessary to enter only part of a building as a trespasser. The requirement to be a trespasser in the whole building, for people often have

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C3: AO1, 2, 3 & 4 Burglary Practice Question

DAILY NEWS

FIGTREE DEPARTMENT STORE STAFF MEMBER INJURED AT CUSTOMER LASHED OUT

Sara Donaldson appeared at court yesterday charged with burglary of Figtree Department Store at the weekend. The court heard that Sara was known for several thefts from the store. After looking around the store for 10 minutes, she went to a counter in the electronics department marked 'Staff only' and started taking items off the shelves. While Sara was doing this, Clare Smyth, a member of staff, noticed her at the counter and confronted her over what she was doing. Miss Donaldson pushed Miss Smyth with such force, her jaw was fractured. Miss Smyth's screams alerted other staff running over. Miss Donaldson jumped over the counter and ran out of the store. She was restrained by security guards near the exit. The police were called and charged her with burglary.

The court also heard that there was a text message on Miss Donaldson's phone saying 'Off to Figgys to nick a laptop – wish me luck! Want anything else?'

After reading the above newspaper article, apply the *mens rea* and *actus reus* to the facts and evaluate whether Sara Donaldson is guilty and evaluate the law on burglary.

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C4: Fraud by False Representation

Section 2 of the Fraud Act 2006

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statement of fact: something said by the defendant to induce another to do something
statement of law: a statement about the law, e.g. the effect of a legal document

Notes

Fraud by false representation is a conduct crime, meaning that the offence is complete when the *actus reus* takes place, when the false representation is made. Nobody even has to actually have to be a fraudulent gain for the defendant; just making the false representation with the necessary *mens rea*!

There are four elements to the offence:

1. The defendant must make a **false representation**
2. **dishonestly**
3. knowing that the representation was or might be **untrue or misleading**
4. with the intent to make a **gain** for themselves or another and to cause **loss** to another or to risk of loss.

1. **AO2** Highlight in one colour the *mens rea* and another colour the *actus reus* of the offence.

1. Make a false representation

The Act, in s.2(2), makes it clear that false means 'untrue' or 'misleading', and the word 'representation' is not defined. The Act does, however, explain what a representation can be about. It must be either:

- i) a statement of fact – something said by the defendant to induce another to do something
- ii) a statement of law – a statement about the effect of a legal document

The representation may be express (in writing or spoken) or implied (through actions, such as shaking someone's hand or using a credit card as if you had permission to do something). Representations can also be made to machines.

Where the representation was true when made, but later becomes false, per the circumstances, the offence can be committed by not telling of the updated circumstances.

2. **AO1** Research what happened in *DPP v Ray* (1974) and *Rai* (2000).
3. **AO1** Research what happened in *MPC v Charles* (1976) and *Lambie* (1987).

2. Dishonestly

This is the first part of the *mens rea* and will be the *Ivey* test previously covered.

4. **AO3** Recap and outline the *Ivey* test.

3. Knowing that the representation was or might be untrue or misleading

The defendant must know that the representation they are making is, or might be, untrue or misleading. This does not include reckless statements. The defendant must have knowledge that the representation might be untrue or misleading.

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4. **With intent to make a gain for himself or another, to cause loss to another or to risk of loss**

There is no need for anyone to have actually suffered any loss or another party to be at risk of loss. If the defendant intends this, then this part of the offence is satisfied.

5. **AO1** Research what happened in *Parkes* (1973).

6. **AO4** Why did the Fraud Act 2006 come into force?

C4: **AO1, 2, 3 & 4** Fraud Practice Question

DAILY NEWS

FRAUD ALLEGATION AT PRESTIGIOUS CULINARY SCHOOL

Pierre Bourdeaux, Head of Culinary Delights Cuisine School, has been accused of using fake qualifications to secure his position at the £10,000 a year culinary school. The school has trained some of the best chefs around the world. When he came for an interview in 2008, he stated that he held the prestigious Platinum Chefs Award, a qualification held only by the best restaurant chefs in the world. He also stated he had graduated from the World Cuisine School in Paris and graduated with honours, which was also false. Likewise, he stated that he had a teaching qualification from a university in America but, although he did attend there for a few months, he never completed any courses. However, last month, and 12 months after Pierre had been interviewed, it was checked by the education authorities, it was discovered that he did not have the qualifications. He had in fact provided fake certificates on interview. The school has been terminated with immediate effect.

Consider whether Pierre Bourdeaux would be held liable for the fraud by false representation. Evaluate the law on fraud by false representation.

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C5: Criminal Damage: Section 1

Criminal Damage Act 1971

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aggravated criminal damage: criminal damage with intent or recklessness as to the endangerment of life

arson: criminal act of deliberately setting something on fire

criminal damage: unlawful damage to property

lawful excuse: criminal damage committed either with the consent of the owner or

Notes

There are four criminal damage offences under section 1 of the Criminal Damage Act 1971:

- s.1(1) Criminal Damage Act 1971 – basic offence of criminal damage
- s.1(2) Criminal Damage Act 1971 – aggravated criminal damage (criminal damage with intent or recklessness as to endangerment of life)
- s.1(3) Criminal Damage Act 1971 – anything committed above, but by fire with intent or recklessness as to endangerment of life

AO1 S.1(1) Criminal Damage Act 1971 – basic offence of criminal damage

Actus reus:

1. **Destroy or damage**
2. **property**
3. **belonging to another**

Mens rea:

1. Specific **intention** to destroy or damage the property **or**
2. **recklessness** as to whether the property is destroyed or damaged

There is also a statutory defence contained in section 5 of the Criminal Damage Act 1971, which provides a **lawful excuse** for the damage of the property.

1. **Actus reus – Destroy or damage**

There is no definition of what this entails and damage should be interpreted broadly as was seen in *Gayford v Chouler*, which involved the trampling of grass.

If it costs time, money and/or effort to remove the damage, then criminal damage has occurred. This was seen in *Blake v DPP* or *Fiak* or *Hardman v Chief Constable of Avon and Somerset CC*. In *Hardman*, the defendant used water-soluble paint to deface a wall. The court held that the choice to remove this, as in *Hardman*, which included the use of water-soluble paint, was not a sufficient effort in clearing up and the property can still be used, there is no criminal damage. However, if the damage could just be wiped off, as in the 1978 case of *A v R*. The type and purpose of the damage must be taken into account, as was seen in *Morphitis v Salmon*, which involves a scaffolding. The scaffolding was not regarded as damaged as it is expected this may occur in ordinary use.

2. **Actus reus – property**

This is defined in s.10(1) Criminal Damage Act 1971 as property of a tangible nature (including buildings) or personal property, including money. It includes animals, wild or tame, and wild, naturally growing items.

3. **Actus reus – belonging to another**

This is set out in s.10(2) Criminal Damages Act 1971. Property is treated as belonging to another if it is in the custody or control of it, or having in it any proprietary right or interest or having a right to possession of it, or having a right to the immediate possession of it. For aggravated criminal damage, the property does not have to belong to another person.

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4. **Mens rea – Intention, or**

It must be shown that the D actually had the intention to destroy or damage else. In the 1974 case of *Smith*, if you have the honest (albeit it wrong) belief there cannot be found any intention to damage property belonging to another.

5. **Mens rea – recklessness**

Mens rea can also be imposed through D's recklessness, where the courts will test by asking whether D realised the risk and decided to take it anyway. If so, the offence is committed through recklessness.

6. **Without lawful excuse**

s.5 of the Criminal Damage Act 1971 defines two lawful excuses to the basic offence.

1. D must honestly (even where intoxicated, as was seen in *Jaggard v Dickman*) believe that the person whose property was damaged would have consented to the damage, as was seen in *Denton*
2. Other property (nothing else, even someone else's life, as was seen in *Denton*) in need of immediate protection and what D did was reasonable in all the circumstances.

AO1 S.1(2) Criminal Damage Act 1971 – aggravated criminal damage; this added element of endangering life

This is set out in s.1(2) of the Criminal Damage Act 1971 as:

A person who without lawful excuse destroys or damages any property, whether

- a) intending to destroy or damage any property or being reckless as to whether it was destroyed or damaged; and
- b) intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered shall be guilty of an offence.

AO1 S.1(3) Criminal Damage Act 1971 – arson

s.1(3) of the Criminal Damage Act 1971 states 'An offence committed under this section in relation to any property shall be charged as arson.' This offence is the same as the basic offence, but with the added element that the damage is caused by fire. As this offence is related to the basic offence, the same principles apply. The maximum penalty is life imprisonment. In *Miller*, it was seen that the offence can be committed by omission, as in this case D accidentally started a fire and then failed to prevent it.

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DAILY NEWS

GOOD NEIGHBOUR ENDS UP IN COURT

David Morris found himself in court when he tried to help his neighbour by knocking down his neighbour's gate completely destroying it when he saw that there was a fire. He immediately set about trying to extinguish the fire with buckets of water but the fire spread to his neighbour's house. However, his irate neighbour was not impressed with Morris' amateur firefighting skills! He says he was burning some gas and there was no need for Mr Morris to have intervened as the fire was under control. Mr Morris has reported him to the police for criminal damage for breaking down his neighbour's gate. Mr Morris told us 'All I was trying to do was help a neighbour so that he could get to his house and now I'm the one in trouble... this is ridiculous!'

After reading the above newspaper article, apply the *mens rea* and *actus reus* to determine whether David Morris is guilty and evaluate the law on criminal damage.

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D: Introduction to General Defences in

D1: Duress

duress by circumstances: the general pressure of circumstances makes someone commit an offence

duress by threats: threats to commit a crime otherwise serious violence will occur

self-induced duress: duress cannot be brought on by oneself

Notes

Duress is where the D is forced to undertake a criminal act. This defence is available where it is viewed that the D was forced to commit the crime due to a threat made to them. The D is not criminally liable for this, despite having the necessary *actus reus* and *mens rea*. It is available for murder and attempted murder. There are two defences of duress: duress by threats

AO1 Duress by threats

This is where another person threatens D with serious violence unless D commits a crime. Death or serious injury; lesser threats do not provide a defence.

The threats can be to friends or family

Test for duress (from *Graham*)

1. Was the D forced to act as they did as they reasonably believed they had good cause to fear death or death because of threats made to them by another? (subjective)
2. If so, would a normal person of reasonable firmness, having the same characteristics as the D, have acted the same way? (objective)

In considering the second point, certain characteristics of D can be taken into account

- Age
- Pregnancy
- Serious physical disability
- Sex
- Recognised mental illness or psychiatric disorder

Chance for escape

There must be no opportunity for D to escape from their fate.

In *Gill*, D and his wife were threatened and he was told to steal a lorry. He was under duress for periods of time when he could have sought help.

The immediacy of the threat

The threat must be immediate and the D can use this the defence only where the threat was at force at the time of the offence and they feared death or serious harm would follow if they did not commit the crime.

In *Hudson and Taylor*, there was no requirement, however, that the threat can be proven. In this case the girls were in court giving evidence.

This criterion was applied loosely in *Abdul-Hussain* concerning Shiite Muslim hijab. In this case, despite there being no immediate threat, the court decided that the police officers' actions put the Ds' minds and they could claim the defence of duress.

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Threat to commit a specific offence

Duress can occur only where there is a threat to commit a stated offence.

In *Cole*, D and family were threatened to get them to pay back money, which forced them to commit a criminal act, but there was no duress as there was no specific threat to do any criminal act, just to pay back money.

AO1 Self-induced duress

Where the D voluntarily puts themselves in a position where they are likely to be threatened with violence to commit an offence, such as joining a known criminal gang, then the defence of duress will not be available. This follows the reasoning behind other defences such as intoxication, where again if the D voluntarily they cannot use this as a defence.

In *Sharp*, the D voluntarily joined a known violent criminal gang and when the gang threatened to commit a criminal act, they could not use the defence of duress.

This case can be contrasted with that of *Shepherd* as in this case the defence of duress was available to a member when they were threatened with violence to commit an offence as this was a shoplifting group.

1. **AO4** Is it right that duress should be open to someone who ought to have foreseen that their association with a known criminal gang might lead to them being forced to commit a criminal act? Justify your response.

AO1 Duress by circumstances

Here it is the circumstances that dictate the crime, but it is very similar in that it is based on subjective tests as in *Graham* and cannot be used against murder or attempted murder.

D1: AO1, 2, 3 & 4 Duress Practice Question**DAILY NEWS****BUILDING SOCIETY WORKER CLAIMS HER BOYFRIEND THREATENED TO KILL HER IF SHE DIDN'T GET HIM £1,000 IN 48 HOURS**

Jennifer Wright appeared in Littleton Court charged with fraud yes. She worked for Littleton Building Society and had sent out text messages to customers saying there had been an error on their account and they had to repay £30 by the end of the month. She had given them an account number, which had been set up in her boyfriend's name. Jennifer was emotional in court and apologised to all her victims, stating that she had committed the offences by her boyfriend, Leighton Browne. She said that he threatened to kill her if she did not amass £1,000 over the next 48 hours from the accounts in her job. The case continues.

After reading the above newspaper article, consider whether Jennifer Wright can use duress to any charges brought against her.

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D2: Intoxication

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basic intent crimes: where an offence is committed intentionally or recklessly

involuntary intoxication: having your drink spiked or being drugged without knowing

voluntary intoxication: knowingly taking drugs/alcohol

Notes

AO1 There is a general defence of intoxication by way of alcohol or drugs, or both, in certain circumstances, for someone may be so intoxicated they may not have been able to commit the offence. However, public policy dictates that it would be morally wrong to allow someone to become intoxicated and then commit any criminal act, without any fear of any legal consequences.

Within this defence, there are differences according to whether the D was intoxicated by alcohol or drugs, and whether the offences they are accused of are of basic or specific intent.

Basic intent crimes – assault, battery, involuntary manslaughter, s.20 GBH, s.47 ABH, criminal damage, arson

Specific intent crimes – s.18 GBH, murder, theft, burglary, robbery, aggravated criminal damage, arson, fraud

Involuntary intoxication – this is where D becomes intoxicated not as a result of their own choice, e.g. a drink spiked with drugs. As long as D did not have the *mens rea* after becoming intoxicated, the defence is applicable as a defence for both basic and specific intent offences.

Voluntary intoxication – this is where D voluntarily, under their own free will, becomes intoxicated. The defence is only available for specific intent offences. Where the intoxicated state prevents D from forming the *mens rea* for the offence, it will reduce this to the lesser basic intent option. It was seen in *Majewski* that if the act is a reckless act it should not apply to basic intent offences which embody recklessness.

1. **AO4** Evaluate the use of intoxication as a defence in the criminal justice system.

D2: Intoxication Practice Question

DAILY NEWS

MAN HAD DRINK SPIKED THEN COMMITTED SERIES OF ASSAULTS

Police were called to popular nightclub CoCo's last night after a man committed a series of assaults on fellow reveller Ezra Franks. Ezra Franks was taken to hospital with serious injuries.

An eyewitness told Daily News, 'It's my mate Matt Evans, he's such a nice guy, but he just went mental, he flipped. He had his drink spiked. He was drinking a beer, it tasted different and then said he felt weird, his vision was blurred. It must have something to do with it, he's just not like that!'

After reading the above newspaper article, consider whether Matt Evans could be charged with intoxication to any charges brought against him.

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D3: Self-defence

necessity of force: where force is necessary in the situation or in the situation which the defendant believes to exist

reasonableness of force: the degree of force used that is reasonably necessary

self-defence: the complete defence of defending oneself

Notes

AO1 At common law, self-defence operates to allow a person to use reasonable force to:

- defend themselves from an attack
- prevent an attack on another person
- defend their property

Section 3 of the Criminal Law Act 1967 also allows a D to use force to prevent any offence if it is reasonable in the circumstances according to the common law definition.

The common law defence and that contained in section 3 of the Criminal Law Act 1967 were replaced by section 76 of the Criminal Justice and Immigration Act 2008.

Two factors have to be considered and decided upon by the jury: necessity of force and reasonableness of force.

- Necessity of force** – the use of force can be found necessary if it is seen to be necessary in the circumstances that D believes to exist. In *Gladstone Williams*, even though the situation had changed, the defence could still be used due to what D believed.

In *Beckford*, Lord Griffiths found that a pre-emptive strike may be necessary if the person who is to be attacked does not have to wait for his assailant to strike the first blow or fire the first shot; circumstances may justify a pre-emptive strike.'

- Reasonableness of force** – in *Palmer*, it was seen that one may do what is 'reasonable' in the circumstances in the exercise of self-defence.

- AO1** What was considered to be unreasonable force in *Martin*?

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D3: AO1, 2, 3 & 4 Self-defence Practice Questions

DAILY NEWS

HOMEOWNER FINDS HIMSELF IN HOT WATER AFTER HE TRIES TO STOP BURGLAR

41-year-old father of two, Robert Sinclair has been charged with GBH after he was caught in the act of attacking a 19-year-old Darren Gold when he disturbed him burgling his property. Robert was awoken by the sound of glass shattering downstairs in the early hours of the morning and rushed into his home office to find a tall youth wearing a balaclava and a dark jacket, now known as Darren Gold, putting Mr Sinclair's work laptop into a rucksack. In the heat of the moment, he picked up a cast iron doorstep and threw it at Darren Gold on his leg, causing a fracture to his tibia.

Police attended at the scene and found other stolen property on Darren Gold's person and in neighbouring properties. Robert Sinclair was arrested for GBH for the assault on Darren Gold. Mr Sinclair's wife, Georgina, a nursery school teacher, has called for her husband to be dropped. She said, 'He was only doing what anybody would do. He was protecting our home and our children when in the dead of night he found somebody in our house.'

After reading the above newspaper article, consider whether Robert Sinclair should face any charges brought against him.

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D4: Insanity and Automatism

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automatism: defence that the defendant was acting involuntarily

defect of reason: more than absent-mindedness; that there was a problem with mind

disease of the mind: mental disorder, or permanent or temporary physical disease

insanity: defence that the defendant is not responsible for their actions due to the fact they were doing or not understanding that what they were doing was wrong

Notes

Both insanity and automatism are full defences.

AO1 Insanity

This defence was formulated in *M'Naghten*, which stated that for the defence to succeed there must be three elements shown:

1. Defect of reason

In *Clarke*, it was held that there must be more than absent-mindedness for a defence of automatism to succeed. In *Clarke*, the defendant went into a shop, put items in her bag and left without paying. When charged with theft, she claimed she had no recollection of the items being there as she was suffering from absent-mindedness, diabetes and depression.

2. which is the result of a disease of the mind

A disease of the mind can be:

- mental disorder, or
- physical disease affecting the mind, whether permanent or temporary.

Examples of these were seen in:

- Kemp* – hardening of the arteries causing problems with the blood supply leading to a GBH against his wife.
- Sullivan* – in this case it was seen that epilepsy can be classified as a disease of the mind. It has to be a permanent condition, but can also include those which are temporary.
- Hennessy* – here, failing to do something, such as not taking insulin causing a diabetic coma, was classified as a disease of the mind.

Fundamentally, however, a disease of the mind must be INTERNAL, e.g. in *Burns* the defendant was injured by an external cause.

An external factor such as not eating after taking insulin and causing low blood sugar was not considered a disease of the mind, as this is caused by the external insulin – *Quinn* (where there was a disease of the mind caused internally by the diabetes.)

3. causing D not to know the nature and quality of their act

D may not know this as:

- may be acting unconsciously
- may be conscious, but due to impairment may have no awareness

But... in *Windle*, after killing his wife he stated, 'I suppose they will hang me for this.' His defence was not open to him, for as soon as D knows their act is wrong they are liable for the defence.

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1. **AO1** Copy and complete the following chart outlining the key facts and legal points on insanity.

INSANITY DEFENCE		
Case Name	Summary Facts	Legal Points
<i>M'Naghten</i>	Suffering from paranoia, D killed Sir Robert Peel's secretary and he claimed insanity as a defence.	Created three-part test for insanity: (1) have a defect of reason (2) which is a result of a disease of the mind (3) causing D not to know the nature and quality of his act.
<i>Clarke</i>		
<i>Kemp</i>		
<i>Sullivan</i>		
<i>Hennessy</i>		
<i>Burgess</i>		
<i>Quick</i>		
<i>Windle</i>		
<i>DPP v H</i>		

2. **AO1** INSANITY QUICK QUIZ. Answer the following questions:
1. On which case are the rules of insanity based?
 2. Complete the following sentence... For a defect of reason to be shown the defendant must...
 3. Can epilepsy be a disease of the mind?
 4. Is it internal or external factors which can constitute a disease of the mind?
 5. Insanity is a common law defence – true or false?

AO1 Automatism

The difference between insanity and automatism is whether the offence is caused by an internal factor: for a successful defence of insanity, the defect of reason causing it must be internal, whereas for automatism the involuntary action causing it must be created by an external factor. This difference also explains the difference in sentencing as for insanity there may be a hospital order, but this is not applicable for automatism as the defendant is not responsible for their actions. For example, a defendant who is attacked by something outside D's control which has given them the defence, e.g. being attacked by a dog, or a reaction to medication.

Requirements for a defence of automatism:

1. There must exist an involuntary action arising from an **external source**.

3. **AO1** Research what were the external sources in these cases:

R v Whoolley

R v T

R v Quick

How does this differ from *Hennessy*?

4. **AO3** Why was this not the case in *Broome v Perkins*?

3. The automatism must not be self-induced.

5. **AO1** Why was the state self-induced in *R v Bailey*?

6. **AO4** Evaluate what you think of the law on automatism and insanity.

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D4: AO1, 2, 3 & 4 Insanity and Automatism Pre

DAILY NEWS

ROBBER BLAMES MUGGER FOR HIS ACTIONS

Mohammed Patel, appearing in court charged with the robbery of £100,000, has tried to blame those who mugged him earlier in the day for his actions. In the early hours of Monday morning he was walking to work as a chef at the restaurant when he was approached by a young man asking if he had a lighter. When he could respond, he was punched in the back of the head by someone who dragged him to the floor, and his wallet, mobile phone and watch were taken. He was dazed but walked back home and reported the incident to the police at his home address and took details.

Later that day, he said he went for a walk to try to clear his head after the incident and walking down the high street he went into TSA Bank, went to a cashier and asked that she hand over the contents of her till, otherwise he would pull a gun on her and go on a rampage with it. The cashier handed over the cash and Mr Patel took it. The police were called and found him at his home address, with the cash in the cupboard. Mr Patel told them he cannot remember the incident and that when he was mugged he was in a daze and unable to think straight. The cashier was also charged with the robbery.

After reading the above newspaper article, consider whether Mohammed Patel is guilty of insanity or automatism to any charges brought against him.

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E: An Overview of Police Powers

E1: Stop and Search

adverse inferences: inference made to the detriment of the defendant if they make a statement of 'no comment' in an interview

arrest: the right of a legal authority to take someone into custody

custody officer: person in charge of the welfare of a suspect while they are detained

detention: taking away someone's right to freedom

stop and search: the right of a police officer to stop and externally search a person on reasonable grounds to do so

warrant: document issued by a legal official to authorise the police to make an arrest or carry out some other activity relating to the administration of justice

Notes

AO1 A breach of police powers means that the evidence which has been obtained is disregarded.

The police have the power to stop and search a person or vehicle if they have reasonable grounds to believe that a person has been involved in a crime, or think that they may be in possession of stolen goods or weapons (e.g. weapons, stolen goods).

1. **AO2** Do you think there are reasonable grounds in the scenario below to stop and search the van?
- West Bank has just been robbed. The robbers, all male and in their 20s, got into a blue van with a registration ending in 'CF'. Carl, a plumber, is in his blue work van with his blue registration ML18 ECF. Could the police lawfully stop and search them?

Police can search a vehicle that has been stopped, ask you to remove outer clothing, search your pockets or ask to see what's in them. They can also put their hands in your pockets, shoes, socks, etc. with reasonable force in any part of a stop and search. Removal of any other items must be carried out in private (not in public (e.g. in the back of a police van)). A strip search can take place only if it is carried out by a same-sex officer.

There are certain formalities which must be followed in any stop and search. Prior to a stop and search, a police officer should provide the following information, often referred to as the 'PCC' (Police Code of Conduct) or 'PCC' (Police Code of Conduct) unoffically by police. (Indeed, while you should not cite this acronym in an exam, it is useful for remembering the criteria.)

- G** grounds for the search
- O** the object the police officer is searching for
- W** the warrant, especially if the police officer is in plain clothes
- I** identification of the police officers
- S** station of the police officer
- E** the entitlement of the person being searched to receive copies of the papers
- L** the law which allows the person to be searched
- Y** the fundamental reasons for the search, so there is no ambiguity on this

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E2: Arrest

AO1 Powers of arrest with a warrant

A warrant may be issued by a magistrate for the arrest of a person and reasonable premises to effect that.

AO1 Powers of arrest without a warrant

The Serious Organised Crime and Police Act 2005 increased police powers to allow a person who reasonably believe has committed an offence or is about to do this, or is in the process of doing so.

AO1

1. What is the purpose of an arrest?
2. What is meant by reasonable here?
3. What is the necessity test in relation to arrest?
4. What procedures must be followed on arrest?
5. What rights are there to search a person on arrest?

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E3: Detention, Interviews, Searches and

1. AO3 What is the purpose of detaining someone?

For most offences, a person may be detained only for a maximum of 24 hours which can be extended by 12 hours to 36 hours with permission from an officer of at least rank sergeant. This can further be extended up to a maximum of 96 hours with permission from a senior officer.

When someone is arrested, they should be brought before the **custody officer** as soon as possible. The custody officer has a designated role set out by PACE. The custody officer authorises a detainee to be held in custody if they do not feel there is sufficient evidence against them. The custody officer must keep a record for each detained person. The detained person must be told of the reasons for their detention and their rights, which are:

- have someone informed of their arrest (this can be waived if it is thought that this would cause interference with an investigation)
- access to free legal advice
- reasonable comfort, including medical attention, toilet and food and drink
- receive written notice of their rights, signing the custody record to acknowledge them

AO1 Interviews

Before the commencement of an interview, a person should be cautioned that anything they say may be used in evidence, but it may harm their defence if they do not mention something when questioned which they later rely on in court, and anything they do say may be given in evidence. Legal representation can be suspended for breaks and copies of interviews provided on request.

2. AO1 Can adverse inferences be drawn from exercising the right to silence?

Searches and samples

Some samples can be taken without consent, others with, as set out below.

Without consent	With consent
Saliva	Urine
Photos	Blood
Fingerprints	Semen
Oral swabs	Dental impressions
Footwear imprints	

They can be maintained on a database to be used in identification in future incidents.

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E: AO1, 2, 3 & 4 An Overview of Police Powers Question

DAILY NEWS

LATEST DATA SHOWS COMPLAINTS AGAINST POLICE SOAR

The most recent data on Grantchester Police complaints shows a 22% increase over the last 12 months.

One complainant, referred to as Ms P, was arrested on suspicion of theft from a shop. She said she was walking through the town centre when she was stopped by two police officers, saying she matched the description of someone who had taken items from the shop. She was searched, asking her to strip down to her T-shirt and trousers in a public area. The officers went top to see if anything was concealed. She said this was degrading. She was taken to the local police station, where she was put in a cell, was not allowed to contact her family, and her whereabouts and was denied access to medication, although she had a medical condition. At the station she was diabetic and needed insulin. She said she was questioned for several hours without any legal advice, as she was told this would only delay matters. She was released without charge, but found the whole process traumatic.

When asked for a comment, Grantchester Police stated they cannot comment on individual cases; however, they take all complaints seriously: 'We strive to protect the community and justice to the community and the latest data on the increase in police complaints is disappointing. We will consider this thoroughly, investigating all complaints, reviewing procedures and review how we may need to adapt to move forward and restore confidence in our work.'

After reading the above newspaper article, consider whether there were any breaches of the Code of Practice in how Ms P was dealt with by the police.

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A1: Murder

- **AO1** Murder is defined in case law by Lord Justice Coke as ‘the unlawful killing of a human being and under the King’s Peace with malice aforethought, express or implied’.
- **AO1, 2 and 3** The *actus reus* of murder is the unlawful killing of a reasonable person in the King’s Peace. Mr Bernardo Morales unlawfully killed his brother, Alfonso, by shooting him with a gun he fired and Alfonso was pronounced dead at the scene. Alfonso was a reasonable creature in being, and this was not during a war, so was under the King’s Peace.
- **AO1, 2 and 3** Has Mr Morales caused the death of his brother? This must be proven. Factual causation is proven through the ‘but for’ test (*Paggett*) – but for the gun, his brother would not have died. Legal causation has occurred as the firing of the gun at his brother Alfonso must be more than a minimal cause of his death. There is no *novus actus interveniens*.
- **AO1, 2 and 3** The *mens rea* for murder is either direct intention or indirect intention. Mr Morales taking the revolver out of his jacket and aiming it had direct intention to kill his brother who was killed, but this does not matter as his *mens rea* is transferred to his brother (*Latimer*).
- **AO1, 2 and 3** *Actus reus* and *mens rea* must occur at the same time (*Thabo Meli*). Mr Morales intended to cause harm (*mens rea*) while shooting the gun (*actus reus*).
- **AO1, 2 and 3** Mr Morales has the *actus reus* and *mens rea*, through transfer of malice, and would be sentenced to a mandatory life sentence.
- **AO4** Evaluating murder – although it is arguably the worst offence that the law has, it is not codified and the language is archaic and not fit for purpose. In 2006, the Law Commission suggested a move to a two-tier structure of first and second degree murder in the USA.

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Point-by-point plan	
1.	State the definition of murder – ‘Murder is the unlawful killing of a reasonable person in being under the King’s Peace with malice aforethought, express or implied’ (Lord Coke).
2.	State the ‘ actus reus of murder is the unlawful killing of a reasonable creature under the King’s Peace’ and apply it to the scenario: ‘someone has died, the victim was a reasonable person (Malcherek and Steel) and it was in peacetime’. (Apply it to the scenario – was it murder by an act or an omission? What was the act here?)
3.	If an omission , state what kind of omission and give case law examples. <ul style="list-style-type: none"> • Contractual – <i>Pittwood</i> – he was contractually bound to close the gate and someone died • Duty due to a relationship, e.g. parental – <i>Gibbins and Proctor</i> – not caring for daughter • Duty taken on voluntarily – <i>Stone and Dobinson</i> – not caring for relative
4.	Causation – ‘D must have caused the murder factually ; but for the actions of D, V would not have been harmed. This was shown in <i>Paggett</i> : but for D using his a human shield in face of gunfire from police, she would not have died.’
5.	Causation – ‘D must have caused the murder legally ; D must be the major cause of death.’ (Apply it to the scenario – have there been any breaks in the chain of causation ?) <ul style="list-style-type: none"> • Act of third party, e.g. medical treatment, but must be BIG factor – <i>Smith</i> • V’s own act must be disproportionate to threat – <i>Williams and Roberts</i>
6.	‘Mens rea is malice aforethought, express or implied – must occur at same time as actus reus, as shown in <i>Thabo Meli</i>’. <ul style="list-style-type: none"> • Express malice – intent to kill • Implied malice – intent to cause GBH
7.	Does transferred malice apply here? – <i>Latimer</i> – man had mens rea to hit man with belt, but hit woman; his malice was transferred from man to woman so he is guilty of murder.
8.	Does the thin skull rule apply here? – <i>Blaue</i> – V was Jehovah’s Witness and had blood transfusion; you have to ‘take V as you find them’.
9.	Make a conclusion – ‘D is guilty of murder and would receive a mandatory life sentence’.
10.	‘Evaluating murder...’ – e.g. it is outdated, archaic language; should be considered for move to multi-tier system as in USA, splitting murder into first degree and second degree so that those who intended GBH only and not to kill are recognised.

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A2: Voluntary Manslaughter

- **AO2** In this case it could be argued that the partial defence of loss of control is applicable, which would reduce the mandatory life sentence for murder to a discretionary sentence. There is a murder here as there is an unlawful killing of Pavel by Darren by the use of a knife, which is more than a minimal cause of the injury (*Smith*) and he would seem to have acted with intent, either through indirect intent, that there is some foresight of consequences that death would result from his actions.
- **AO1, 2 and 3** For this to be proven, the first element of the offence which must be proven is that the defendant must have killed due to a loss of self-control, which is indeed evident in this case. The second element self-control must have been caused by a recognised 'qualifying trigger'. Here, the trigger contained in s.55(3) of the Act would be applicable, that Darren feared serious violence to himself or his daughter.
- **AO1, 2 and 3** It would have to be shown that a person with a normal sense of self-control would have acted in a similar way, which it can be assumed they would, as here Darren is a father and his daughter is in danger. It may occur to his daughter.
- **AO2** The fact that Pavel bled out at the scene does not matter, as you have to look at the facts of the case and not them under the thin skull rule (*Blaue*).
- **AO4** By way of evaluation of this offence, the amendments to this defence have made it much easier to prove as Ds now have to show 'things said or done which are of an extremely grave character and cause the defendant a justifiable sense of being seriously wronged' – although critics say that this is too hard to prove! It has taken out sexual infidelity as a trigger, reflecting how societal views have changed over time, and this can no longer be a justifiable sense of being wronged. It also allowed for the loss of control to build up over time to take account of situations like in *Ahluwalia*.

This sheet may help you to plan and structure your answer on questions concerning voluntary manslaughter.

Point-by-point plan	
1.	'Are there any defences available? Is loss of control , as contained in s.54 of the Coroners and Justice Act 2009, applicable?' (Remember to look out for the trigger event in the exam question!)
2.	'D must kill as a result of loss of control . This does not have to be sudden in this case. The new defence which takes over from the old defence of provocation, but, as was said in <i>Smith</i> and <i>Gregory</i> , four days was too much of a gap.'
3.	'This loss of control must have been caused by a " qualifying trigger ":' <ul style="list-style-type: none"> • s.55(3) D's fear of serious violence from V against D or another identified person • s.55(4) things done and/or said which not only constitute circumstances of an extremely grave character but also cause D to have a justifiable sense of being wronged • s.55(5) a combination of the above <p>(Apply this to the scenario – which one has happened here?)</p>
4.	'A person with similar self-control would have acted in the same way.'
5.	Make a conclusion – 'D is guilty of murder but would have a partial defence of loss of control and responsibility and/or loss of control and would receive a discretionary life sentence.'
6.	' Evaluating loss of control... ' – it is more restrictive than the old defence of provocation and could lead to fewer people being able to use this defence.

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A3: Involuntary Manslaughter

- **AO2** Samantha could be guilty of unlawful act involuntary manslaughter as she committed murder.
- **AO1, 2 and 3** The action of causing criminal damage was unlawful (*Lamb*) as it failed the objective test, as the ordinary reasonable and sober person would see something as dangerous enough to throw large rocks. Alan's death was caused by Samantha's unlawful act (Criminal Damage).
- **AO1** The *mens rea* for the offence is for the criminal damage.
- **AO1, 2 and 3** The junior doctor's actions could be a potential break in the chain of causation, however, if the operating cause of Alan's death is the injuries from the criminal damage, Samantha is guilty of unlawful act involuntary manslaughter and could expect a sentence of 2–10 years.
- **AO4** Evaluating involuntary manslaughter – this is a very wide offence, catching a range of conduct in death, irrespective of the particulars of this, from being careless to being reckless. The Law Commission in 1996 saw it as unprincipled that only a foreseeable risk of some harm is required. For this reason, they suggested the abolition of this offence, with a more appropriate offence to be applicable for these offences.

B1: Corporate Manslaughter

- **AO3** Fun Holidays could be guilty under section 1 of the Corporate Manslaughter and Corporate Homicide Act 2007, which could result in an unlimited fine for the company.
- **AO1 and 2** To be found guilty, Fun Holidays must be a qualifying organisation.
- **AO1, 2 and 3** Fun Holidays must have owed a relevant duty of care to the deceased. The company should have holidaymakers in reasonable contemplation when operating the plane.
- **AO1, 2 and 3** There was a gross breach of that duty by Fun Holidays as it appeared that a maintenance check on the plane was overdue and there were problems with the plane that it would appear the Chief Operating Officer was aware of. Thus, the way in which the company was managed or organised by its senior management was a substantial element in the breach.
- **AO1, 2 and 3** This gross breach of Fun Holidays' duty caused or contributed to the death of the passengers and 16 crew.
- **AO4** It is hoped that this new offence will stop companies hiding behind the limited liability for causing multiple deaths due to their failings, as occurred in the Hargrave case, under the current legislative regime.

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C1: Theft

- **AO1** Under section 1 of the Theft Act 1968, a person is guilty of theft if they appropriate property belonging to another with the intention of permanently depriving the owner of it. The maximum sentence of seven years' imprisonment.
- **AO1, 2 and 3** Paulo is guilty of the *actus reus* of theft as he appropriated property belonging to another. He appropriated it as he used it as his own (*Morris*), as he did not bank it as he was not supposed to from his employer. It does not matter that he put a note stating that he was not going to repay the exact same notes. The property is the £500 and it belongs to the bank.
- **AO1, 2 and 3** Paulo is also guilty of the *mens rea* of theft as he, under *Ivey*, which amended the *Ghosh* test and took out the subjective element of the test, would be regarded as dishonest. He also had an intention to permanently deprive Don Pedro of the money. He was not going to return the exact same notes (*Velumyl*).
- **AO4** Evaluating the offence of theft by changing the test of dishonesty to take into account individuals' circumstances (*Ghosh*) – has this lost something by not taking into account individuals' circumstances?

C2: Robbery

- **AO1** Robbery is contained in section 8 of the Theft Act 1968 and can result in a maximum sentence of life imprisonment. The section states: 'A person is guilty of robbery if he steals, and immediately before or after the stealing, so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of the use of force and there subjected to force'.
- **AO1, 2 and 3** Robbery is simply theft plus force. There was a theft in this scenario as Frank stole property belonging to another. He appropriated the property (*Morris*) as he took the money from the post office and is, therefore, guilty of the *actus reus* of theft.
- **AO1, 2 and 3** Under *Ivey*, which amended the *Ghosh* test and took out the subjective element of the test, Frank would fulfil the *mens rea* element of theft as what he did would be regarded as dishonest by an ordinary reasonable person. It can also be interpreted that he had an intention to permanently deprive the post office of the money.
- **AO1, 2 and 3** There is also force evident in the scenario alongside the theft. The force here is substantial, causing concussion and broken ribs, although not serious injury (*Dawson and James*). Although the Act states that the force must be immediate to the theft, in this scenario it was after the theft had been committed and when Frank was still at the scene of the incident. However, there is a fluid interpretation of when this force must be used, interpreted to include when the theft has been completed (*Lockley*) so that Frank is guilty of the element of robbery.
- **AO4** Evaluating theft – there are concerns, as seen above, with the fluid interpretation of when the force must be used suggests this can occur at any time of the offence, despite what the legislation states. This can be problematic and needs addressing. It may also seem disproportionate that the sentence for theft is seven years' imprisonment while the maximum for robbery is life imprisonment.

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C3: Burglary

- **AO1, 2 and 3** Burglary is contained in sections 9(1)(a) and (b) of the Theft Act 1968. Sara is charged under both section 9(1)(a) and (b) and could face up to six years' imprisonment.
- **AO1, 2 and 3** To complete the *actus reus* of this offence under section 9(1)(a), Sara must enter the building as a trespasser. She entered (*Collins*) the store, which would be classed as a building. If she could enter the store under *Smith and Jones*, this permission is not given as she has not caused any GBH, so she is a trespasser. (She would become an intentional trespasser when she enters the 'only' area and must have known that she was entering this area as a trespasser 'only'.) For the *actus reus* of an offence under section 9(1)(b) to be proven, the prosecution must prove that Sara entered the building as a trespasser again but with the *actus reus* of theft or GBH, and here she has fractured Clare Smyth's jaw.
- **AO1, 2 and 3** Sara would also have the *mens rea* of the offence under section 9(1)(a) if she recklessly enters as a trespasser, as discussed above, and there is intent to commit theft or GBH. It would seem to be the case with the text message that she sends. The *mens rea* is shown when she recklessly or intentionally enters the store as a trespasser and commits the GBH she commits on Clare Smyth by breaking her jaw in this case.
- **AO1, 2, 3 and 4** Even if Clare's jaw was not fractured, Sara could have been guilty of burglary under the Theft Act 1968 as this does not require any completed theft, GBH or damage. She could commit these, which was certainly the case here, as can be seen from her text message. It has been seen as wrong as someone can be guilty of burglary without actually committing theft or damage, just by intending to do it. Someone could go out to commit a burglary and be guilty of the offence just by intending to do it!

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C4: Fraud by False Representation

- **AO1, 2 and 3** Pierre is guilty of fraud by false representation under section 2 of the Fraud Act 2006 as he could face a maximum sentence of 10 years' imprisonment.
- **AO1, 2 and 3** Pierre made a false representation; this is a statement of fact here, not law, that he did not, although this could be a statement of law. The statement here is expressed but could also be implied through conduct.
- **AO1, 2 and 3** Pierre was also dishonest using the *Ivey* test, using the subjective test, where the subject would be regarded as dishonest by the ordinary reasonable person. They would know that the statement was untrue and the qualifications which you do not is dishonest. Pierre would also have known that the statement was untrue.
- **AO1, 2 and 3** There was intent by Pierre to make a gain and cause a loss to his employer.
- **AO4** By way of evaluation – fraud being a conduct crime, it can seem odd that it is not a result crime, as soon as the *actus reus* takes place. No one has to believe the fraud and no one has to suffer a loss, which can seem heavy-handed.

Below is a model answer:

Fraud by false representation is defined in section 2 of the Fraud Act 2006 as someone who makes a false representation dishonestly knowing that their representation was or might be untrue with the intent to make a gain for themselves or another or cause loss to another or to expose another to a risk of loss.

The *actus reus* is the first part of the offence, that someone makes a false representation. The representation must be false or misleading, as was seen in *Adams*, where he stated that he had a contract when it was not true.

The *mens rea* is the dishonest intention to make a gain for themselves or another or to expose another to risk of loss. The test for dishonesty is from *Ghosh*, as amended by the Fraud Act 2006, which introduced a subjective aspect of the test and developed an objective test only to the question of whether the reasonable man would regard as dishonest. There also has to be an intention to make a gain or cause a loss and a loss to another. All these elements of *mens rea* for fraud are shown in *R v Jia*.

In this scenario, applying the *actus reus*, did Pierre make a false representation knowing it was false or misleading? Pierre made a false representation; this is a statement of fact here, not law, knowing that this is false as he did not have these qualifications. The statement here is expressed but could also be implied through conduct. Applying the test from *Ivey*, modified from the *Ghosh* test, where the subject would be regarded as dishonest by the ordinary reasonable person, would the reasonable person regard Pierre as dishonest? It can be regarded as 'yes' as someone would know by stating that the statement was untrue that this is dishonest. Pierre did intend to make a gain for himself through his false statement as he did not have the qualifications for and to cause a loss to his employer.

Pierre is guilty of fraud by false representation.

There are some problems with this offence. While the Act defines what is untrue and what a representation is, and this is a criticism of the Act. Representations can be made in many ways so there has to be a wide interpretation of the Act, and perhaps this needs to be reviewed. Since 2006 and fraud has changed a lot since then: with developments in technology, fraud has become a major growth area in terms of crime, as the Crime Survey for England and Wales has shown. Another criticism of the *mens rea* of the offence, another criticism is that it does not include a subjective test, as it is unfair.

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C5: Criminal Damage

- **AO1, 2 and 3** David could be guilty of the basic offence of criminal damage under the Criminal Damage Act, where the maximum term of imprisonment is 10 years.
- **AO1, 2 and 3** He has satisfied the *actus reus* of this offence as he has damaged property belonging to another, his neighbour.
- **AO1, 2 and 3** When it comes to the *mens rea*, David did not intend to damage property; he was reckless. However, there may be a lawful excuse as he was trying to stop the neighbour's house when he destroyed the gate.
- **AO1, 2, 3 and 4** The law on criminal damage may appear odd in that there is no defence under the Criminal Damage Act 1971 if one commits criminal damage in order to protect property. It does not include protecting a person's life. So someone could have lawful excuse to destroy a burning car, but not to save a person on fire!

D1: Duress

- **AO1, 2 and 3** Jennifer could try to claim duress. In this case it would be duress of circumstances, as her boyfriend threatened her with death.
- **AO1, 2 and 3** Using *Graham*, she would have to satisfy two questions, the subjective and objective tests.
 1. Was Jennifer impelled to act as she did because she reasonably believed that her boyfriend would kill her? (subjective)
 2. If so, would a sober person of reasonable firmness, sharing the characteristics of Jennifer, have responded in the same way? (objective)
 The subjective test is satisfied, and perhaps the objective also.
- **AO1, 2 and 3** In *Gill*, there must have been no chance for Jennifer to escape; she was told to get money within 48 hours, but if there was a chance to escape or perhaps alert someone, it would probably fail. It would probably work if her boyfriend was with her for the entire 48 hours, for example.
- **AO1, 2 and 3** The threat must also be immediate, operating on Jennifer's mind at the time, in the hands of her boyfriend, when she sent the text messages.
- **AO1, 2 and 3** The threat was also to commit a specific offence, to get £1,000 from her workplace.
- **AO1, 2, 3 and 4** There may be a bar to the defence if it was self-induced, perhaps if her boyfriend was part of a criminal gang, for example, that used threats to extort money, although this is not suggested here.

Below is a part of a model answer explaining the test for duress:

Duress could be claimed as a defence. The two-part test for this was developed in *Graham* using a subjective and objective test as follows:

1. Did the defendant act as they did as they reasonably believed they had good reason to? (subjective)
2. Would a sober person of reasonable firmness with the same characteristics as the defendant have responded in the same way? Characteristics such as age, sex, disability and pregnancy are taken into account at the second point.

There must be no chance for escape; the threat must not be self-induced and it must be a threat of death or serious injury, as in *Adbul-Hussain*.

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D2: Intoxication

- **AO1, 2, 3 and 4** This case involves involuntary intoxication, if Matt's drink was which can be used as defence for both basic and specific intent crimes. Thus, as long as he did not form the *mens rea* for the offences post intoxication.

D3: Self-defence

- **AO1, 2, 3 and 4** Robert could try to use self-defence as he was trying to protect himself from an incident, being the work laptop which Darren was putting into his rucksack.
- **AO1, 2, 3 and 4** Then it needs to be considered whether the force Robert used was reasonable. This is potentially problematic as it is debatable whether it was reasonable to use force at the doorstep, and in *Palmer* it was seen that one may do only what is 'reasonable' in the circumstances. It has been a bit too much in the circumstances.

D4: Insanity and Automatism

AO1 Quick Quiz

1. *M'Naghten*
2. Absent-mindedness
3. Yes, as was seen in *Sullivan*
4. Internal
5. True

AO1, 2, 3 and 4 Practice Question

- Mohammed Patel could potentially claim automatism.
- He says he was unaware of his actions as he cannot remember the incident. This is not a defence as the source of the hit to the back of his head when he was mugged earlier in the day.
- This was completely involuntary.
- The actions which he is trying to rely on are not self-induced as he did nothing to bring about the situation.

E: Police Powers

AO1, 2, 3 and 4 There were the following breaches of police powers in the incident:

- She should not have been asked to strip down and lift up her T-shirt as only her bra should be removed.
- She should have been allowed one phone call.
- It is the custody officer's responsibility to deal with the welfare of detainees. The custody officer should have been responsible for dealing with her medical condition.
- She should have been provided with legal advice.

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