

THE CRIMINAL DAMAGE ACT 1971

DESTROYING OR DAMAGING PROPERTY

INTRODUCTION

Section 1(1) of the CDA 1971 provides that:

“A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.”

ACTUS REUS

The *actus reus* of this offence consists of (1) destroying or damaging (2) property (3) belonging to another (4) without lawful excuse.

1. Destroys or damages

There is no legal definition of “destroys or damages”. According to Smith & Hogan, *Criminal Law*, 1996, p694:

‘What is contemplated by “destroy or damage” is actual destruction or damage; that is, some physical harm, impairment or deterioration which can be usually perceived by the senses.’

The damage or destruction in issue will normally arise from the defendant's freely willed act. However, a defendant may be held responsible for failing to halt the spread of harm started accidentally. See: *R v Miller* [1983] 2 WLR 539.

2. Property

The basic definition of property, for the purposes of this offence, is provided by s10(1) which states:

‘In this Act “property” means property of a tangible nature, whether real or personal, including money and-

- a) including wild creatures which have been tamed or are ordinarily kept in captivity, and any other wild creatures or their carcasses if, but only if, they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession; but
- b) not including mushrooms growing wild on any land or flowers, fruit or foliage of a plant growing wild on any land.

For the purposes of this subsection “mushroom” includes any fungus and “plant” includes any shrub or tree.’

3. Belonging to another

Section 10(2) provides the basic definition of belonging to another. It states:

“Property shall be treated for the purposes of this Act as belonging to any person-

- a) having the custody or control of it;
- b) having in it any proprietary right or interest ... ; or
- c) having a charge on it.”

MENS REA

This offence requires either (1) intention or (2) recklessness.

1. Intention

The defendant must be proved to have intended the damage or destruction of property.

Since a defendant commits no offence under s1(1) in damaging or destroying his own property, it follows in principle that he should not be guilty of an offence where he destroys another person's property under the mistaken belief that it is his own. Whether the defendant's mistake is one of fact or law he commits no offence for he lacks *mens rea*. See:

R v Smith [1974] 1 All ER 632.

2. Recklessness

R v Caldwell [1981] 1 All ER 961, establishes that a defendant is reckless for the purposes of s1(1) if his conduct:

- (1) creates an obvious risk of damage to property; and
- (2) he either (a) gave no thought to the possibility of there being any such risk, or (b) recognising that there is some risk goes on to take it.

This test is objective in nature in that it imposes liability upon the defendant for not advertent to a risk which would have been "obvious" to the reasonable person. Consequently, it does not matter that the defendant was incapable of appreciating the risk: see *Elliott v C (a Minor)* [1983] 2 All ER 1005.

THE LAWFUL EXCUSE DEFENCE

INTRODUCTION

Under s5(2) there are two situations where an accused will be treated as having a lawful excuse to destroying or damaging property. First, where the defendant believed that the owner would consent. Secondly, where the defendant did it to protect some other property.

Section 5(2) provides that a person is to be treated as having a lawful excuse, whether or not he would be so treated apart from its provisions:

"(a) if at the time of the act or acts alleged to constitute the offence he believed that the person or persons whom he believed to be entitled to consent to the destruction or damage to the property in question had so consented or would have so consented to it if he or they had known of the destruction or damage and its circumstances; or

(b) if he destroyed or damaged or threatened to destroy or damage the property in question ... in order to protect property belonging to himself or another or a right or interest in property which was or which he believed to be vested in himself or another, and at the time of the act or acts alleged to constitute the offence he believed-

- (i) that the property, right or interest was in immediate need of protection; and
- (ii) that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances."

On the basis of s5(1), the s5(2) defence applies to ss 1(1), 2(a) and 3(a) only. Under s5(3) it is immaterial whether a belief is justified or not if it is honestly

held. Section 5(5) makes it clear that these provisions operate without prejudice to any other defence available to a criminal charge.

1. Belief in the owner's consent

Section 5(2)(a) covers the situation where a defendant believes that the owner has consented to the destruction or damage, or would have consented if asked. See:

Jaggard v Dickinson [1981] QB 527
R v Denton [1982] 1 All ER 65
Blake v DPP [1993] Crim LR 586.

2. Defence of property

A person is entitled to take steps to protect his own property from harm caused by property belonging to another. In *Johnson v DPP* [1994] Crim LR 673, the Divisional Court held that:

- The Court first had to ask itself the objective question of whether the act of damage was done in order to protect property;

see *R v Hunt* (1978) 66 Cr App R 105.
- There was then the subjective question as to whether the defendant believed that the property was in immediate need of protection and the means of protection were reasonable. The test to be applied was whether he believed immediate action had to be taken to do something which would otherwise be a crime, in order to prevent the immediate risk of something worse happening;

see *R v Hill and Hall* (1989) 89 Cr App R 74.

See also *Blake v DPP* [1993] Crim LR 586.

DESTROYING OR DAMAGING PROPERTY AND ENDANGERING LIFE

INTRODUCTION

Section 1(2) of the CDA 1971 provides that:

“A person who without lawful excuse destroys or damages any property, whether belonging to himself or another-

- a) intending to destroy or damage any property or being reckless as to whether any property would be 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.”

The “aggravating” factor of this offence is the intention to endanger life, or recklessness as to whether this occurs.

ACTUS REUS

The prosecution does not have to show that life was in fact endangered by the damage nor that the damage in fact done created any risk to life so long as the defendant, by damaging the property, intended or was reckless as to the endangering of life. See:

R v Dudley [1989] Crim LR 57

There must be a causal connection between the destroying or damaging of the property and the endangering of life, ie the danger to life must come directly from the damage. See:

R v Steer [1987] 2 All ER 833.

MENS REA

The *mens rea* is intention to endanger life or recklessness as to whether this occurs.

R v Caldwell [1981], establishes that a defendant is reckless for the purposes of s1(2) if his conduct:

- (1) creates an obvious risk of endangering life by damaging property; and
- (2) he either (a) gives no thought to the possibility of there being any such risk, or (b) recognising that there is some risk goes on to take it.

In *R v Sangha* [1988] 2 All ER 385, the Court of Appeal decided that recklessness in this context means that the ordinary prudent bystander would have recognised the risks. The defendant had set fire to a building, but it was argued that an expert would have recognised that the fire could not have spread to endanger life. However, that was irrelevant as ordinary people would have seen it as a danger.

For a case on the 'lacuna' in Lord Diplock's definition, see:

R v Merrick [1996] 1 Cr App R 130.

OTHER PROVISIONS

1. Arson

Under s1(3), if either of the above offences under ss 1(1) and 1(2) are committed by fire the offence shall be charged as arson. Where a defendant destroys or damages property by fire the proper course would be to charge him with an offence contrary to ss 1(1) and (3), or an offence under ss 1(2) and (3) as appropriate.

2. Threats to destroy or damage property

Section 2 creates the offence of:

- (a) making threats to damage or destroy another's property, intending to cause fear thereby, without lawful excuse; or
- (b) making threats to damage his own property in a way which he knows is likely to endanger life, again intending to cause fear as a result

3. Possessing anything with intent to destroy or damage property

Section 3 makes it an offence for any person, without lawful excuse, to have in his control:

- (a) anything he intends to use to damage another's property; or
- (b) which he intends to use to damage his own property in a way which he knows is likely to endanger life.

4. Punishment

A person guilty of arson or of an offence under s1(2) shall on conviction on indictment be liable to imprisonment for life (s4(1)).

A person guilty of any other offence under this Act shall on conviction on indictment be liable to imprisonment for a term not exceeding ten years (s4(2)).