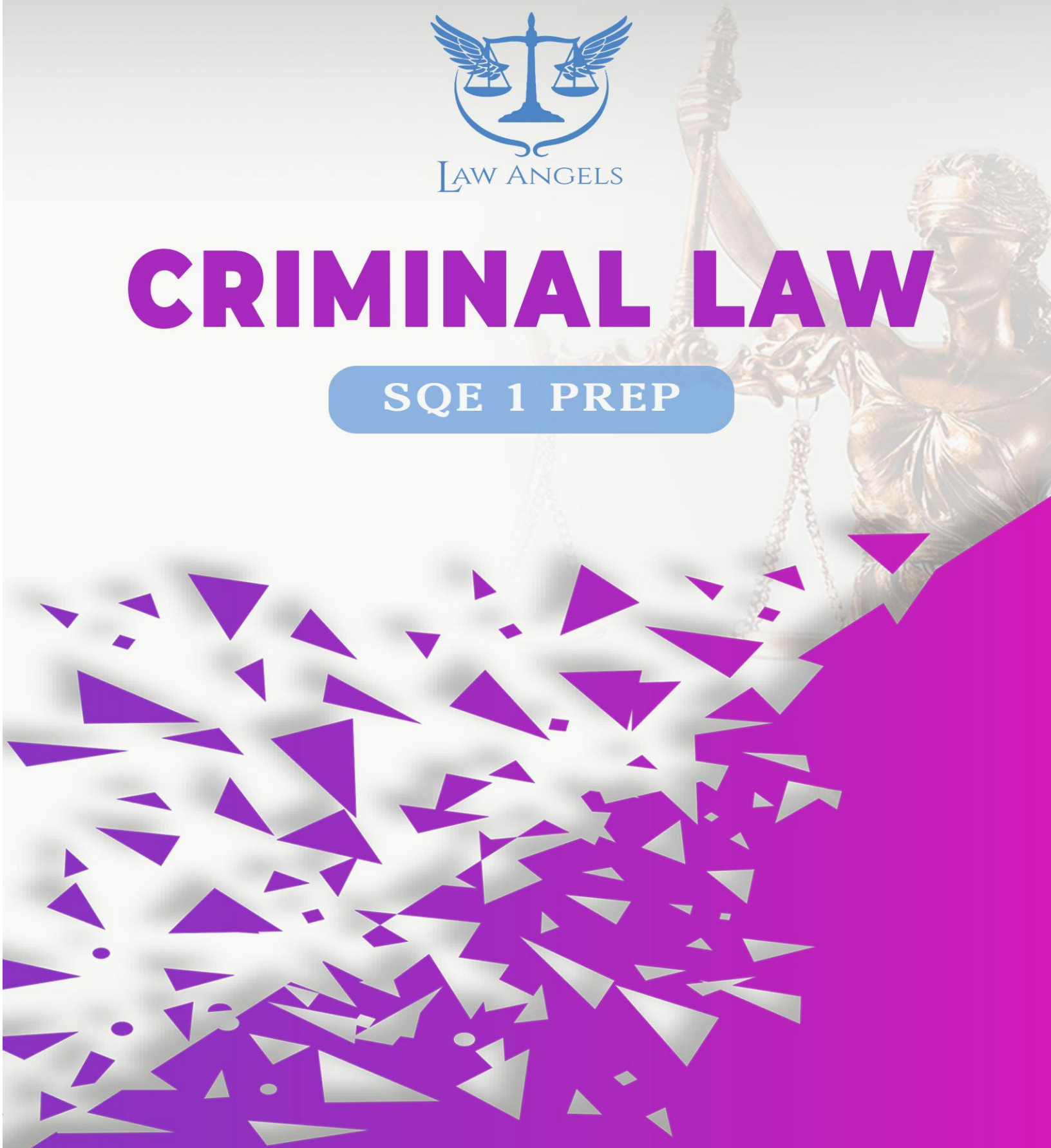
LAW ANGELS

CRIMINAL LAW

SQE 1 PREP



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CRIMINAL LAW

First Edition

April 07, 2024

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PREFACE

The study of criminal law is more than an academic exercise; it is an initiation into a system that holds the power to alter lives, define justice, and balance the fundamental relationship between the state and the individual. This book is designed to be your guide through this complex and consequential landscape.

Our approach is built on a simple belief: to excel in criminal law, you must not only know the rules but also understand the reasoning behind them. We have therefore structured this text to do more than just present the law. We deconstruct it. Each chapter breaks down offences and defences into their core components, illustrating how abstract principles operate in the messy reality of factual scenarios. You will find a consistent focus on the interplay between *actus reus* and *mens rea*, the nuances of causation, and the strategic role of defences the very skills examiners and clients will demand of you.

The SQE1 assessment requires a deep and application-based knowledge. This book is tailored to that challenge. We integrate pivotal cases and statutory provisions not as a list to be memorised, but as the essential building blocks of legal argument. Clear examples, flowcharts, and scenario-based analyses are woven throughout to transform your understanding from passive reception to active application.

Our goal is to equip you with a formidable and practical command of criminal law. Whether you aim to advocate in court, advise clients at the police station, or simply master the subject for your exams, the following pages will provide the clarity, depth, and analytical rigour you need to succeed.

Welcome to the study of criminal law. The journey is demanding, but the intellectual and professional rewards are unparalleled.

Law Angels

ACKNOWLEDGEMENTS

The development of this textbook was a significant endeavor, and we extend our sincere gratitude to the collective efforts that made this publication possible.

At Law Angels, we are fortunate to be supported by a dedicated team whose commitment to legal education and excellence is the cornerstone of our work. The collaborative spirit, legal expertise, and tireless effort of our entire organization were instrumental in shaping this text from concept to completion.

We also extend our appreciation to the broader legal community. The insightful feedback from our academic and practitioner reviewers greatly enhanced the accuracy and clarity of the material. Their contributions, offered in a spirit of scholarly collaboration, have been invaluable in ensuring this resource meets the rigorous demands of the SQE curriculum.

We are also thankful for the unwavering support from our personal networks, whose understanding provided the foundation that allowed this project to thrive.

It is our privilege at Law Angels to contribute to the education of future solicitors, and we hope this text serves as a reliable guide for the next generation of legal professionals.

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GLOSSARY OF KEY TERMS

A

Actus Reus: The external or physical element of a criminal offence, referring to the defendant's conduct, the surrounding circumstances, and any prohibited consequence. It is the "guilty act" that must be voluntary to give rise to liability.

Aggravated Burglary: A serious form of burglary under section 10 of the Theft Act 1968, committed when a burglar has with them a firearm, imitation firearm, weapon of offence, or explosive at the time of the burglary.

B

Burden of Proof: The obligation to prove the elements of an offence or defence in court. In criminal trials, the burden usually lies on the prosecution to prove guilt beyond reasonable doubt.

C

Causation: The link between a defendant's conduct and the prohibited consequence. It has two stages; factual causation ("but for" test) and legal causation (whether the act was a substantial and operating cause of the harm).

Coincidence of *Actus Reus* and *Mens Rea*: The principle that the guilty act and guilty mind must exist at the same time for criminal liability to arise, though courts apply it flexibly through doctrines such as continuing acts or single transactions.

Conduct Crimes: Offences that are complete once the prohibited conduct occurs, regardless of its result. Examples include perjury and dangerous driving.

Criminal Damage: An offence under the *Criminal Damage Act 1971* involving the destruction or damage of property belonging to another with intent or recklessness.

D

Dishonesty: The moral fault element in theft and fraud offences. It is determined by the test in *Ivey v Genting Casinos (2017)*; whether the defendant's conduct was dishonest by the standards of ordinary decent people, given the facts as the defendant believed them to be.

Duress: A defence where the defendant commits an offence due to threats of death or serious harm that overbear their will, provided the threats were immediate and the defendant had no safe means of escape.

E

Eggshell Skull Rule: The principle that a defendant must take their victim as they find them and cannot avoid liability because the victim had an unusual vulnerability that made the harm worse.

Evidential Burden: The responsibility of a defendant to produce enough evidence to raise a particular defence, after which the legal burden shifts back to the prosecution to disprove it beyond reasonable doubt.

F

Factual Causation: The first stage of causation, determined by the "but for" test, whether the consequence would have occurred but for the defendant's conduct.

G

Gross Negligence Manslaughter: A form of involuntary manslaughter where death results from a gross breach of a duty of care owed by the defendant to the victim.

I

Intent (Intention): The highest level of mens rea, referring to the defendant's aim or purpose. It may be direct (the result is desired) or oblique (the result is a virtually certain consequence known to the defendant).

Intervening Act (*Novus Actus Interveniens*): A new, independent event that breaks the chain of causation, relieving the defendant of liability if it becomes the main cause of the harm.

L

Legal Causation: The second stage of causation, requiring that the defendant's act was a substantial and operating cause of the harm, not too remote or interrupted by a new act.

M

Mens Rea: The internal or mental element of an offence, referring to the defendant's guilty mind or fault. Common forms include intention, recklessness, knowledge, and negligence.

Murder: The unlawful killing of a reasonable person in being under the Queen's peace, with malice aforethought, meaning intention to kill or cause grievous bodily harm.

O

Omissions: Failures to act that attract liability only when there is a legal duty to act, such as duties arising from contracts, relationships, voluntary assumptions of care, or creating a dangerous situation.

P

Perjury: The offence of knowingly giving false evidence under oath in a judicial proceeding. It is a conduct crime that does not require proof of resulting harm.

Principal Offender: The person who actually carries out the actus reus of the offence or causes it to be carried out through an innocent agent.

R

Recklessness: A state of mind where the defendant foresaw a risk of the prohibited consequence and went on to take that risk unreasonably. The modern test is subjective, established in *R v G and Another (2003)*.

Robbery: A theft accompanied by the use or threat of force immediately before or at the time of stealing and in order to do so, as defined in *section 8 of the Theft Act 1968*.

S

State of Affairs Crime: A rare category of offence where liability arises from simply being in a prohibited condition or situation, such as being drunk in charge of a vehicle.

Strict Liability: Offences where the prosecution need not prove mens rea for one or more elements, often found in regulatory or public welfare contexts, e.g., selling alcohol to minors.

T

Theft: Defined by *section 1 of the Theft Act 1968* as dishonestly appropriating property belonging to another with the intention of permanently depriving the other of it.

V

Voluntary Act: A conscious and controlled physical movement required for the actus reus of a crime; acts done reflexively, in sleep, or under automatism are involuntary and not criminal.

W

Woolmington Principle: The foundational rule from *Woolmington v DPP (1935)* that the prosecution bears the burden of proving guilt beyond reasonable doubt, forming the “golden thread” of English criminal law.

1

FOUNDATIONS OF CRIMINAL LIABILITY

Criminal law establishes the boundaries of acceptable societal behavior, using the threat of state punishment to enforce the social contract. The foundation of criminal liability in English law is built upon two pillars; the *actus reus* (the guilty act, or external element) and the *mens rea* (the guilty mind, or mental fault element), which must coincide for liability to arise. It also examines causation in result crimes, the role of strict liability and state-of-affairs offences, and the distinctions between conduct and result crimes. Finally, it considers the burden and standard of proof, reaffirming the presumption of innocence as the cornerstone of a fair criminal justice system.

1.1 Overview of Criminal Offences

Criminal law governs behaviour that society deems unacceptable and punishable by the state. An individual who commits a crime is considered to have broken the social contract and may face prosecution by the Crown Prosecution Service (CPS).

Criminal offences range from non-violent property crimes (like theft) to serious offences involving physical harm (such as murder). Every offence has specific legal ingredients that must be proven by the prosecution before a conviction can be secured.

Most crimes require:

- A wrongful act (known as the *actus reus*),
- A guilty mind (*mens rea*), and

- In some cases, the absence of a valid defence

These are the building blocks of criminal liability.

1.2 The Foundations of Criminal Liability: *Actus Reus* and *Mens Rea*

Criminal liability in English law is not founded on a single element but is typically constructed from two distinct, yet interconnected, components. These are known by the Latin terms *actus reus* (the guilty act) and *mens rea* (the guilty mind). The fundamental principle is that for a person to be convicted of a crime, the prosecution must generally prove, beyond a reasonable doubt, that both elements were present and existed at the same time. This dual requirement ensures that criminal punishment is reserved for those who have done something wrong (*actus reus*) with a blameworthy state of mind (*mens rea*).

1.2.1 Actus Reus: The External Element of an Offence

The *actus reus* encompasses all the external elements of an offence. It describes the physical act, the circumstances in which it occurred, and, for some crimes, the specific consequence that resulted. It answers the question: "What did the defendant do (or fail to do)?"

The act constituting the *actus reus* must be voluntary. An act performed while sleepwalking, during an epileptic seizure, or as a mere reflex is not considered voluntary and therefore cannot form the basis of criminal liability.

The *actus reus* can manifest in several forms:

1. **An Act of Commission (Positive Conduct)**

   This is the most common form, involving a positive, voluntary act that is prohibited by law.

   Examples:

   - The physical act of striking another person forms the *actus reus* of assault or battery.
   - The act of appropriating property belonging to another is the *actus reus* of theft.

2. An Omission (Failure to Act)

As a general rule, there is no criminal liability for a failure to act. However, an omission can constitute the *actus reus* where the defendant was under a legal duty to act. Such duties can arise from:

- A statutory duty imposed by legislation (e.g., the duty to file a tax return).
- A contractual duty e.g., a lifeguard who fails to attempt a rescue of a drowning swimmer.
- A duty arising from a relationship e.g., a parent's duty to provide food and care for their child.
- A duty assumed voluntarily e.g., a person who voluntarily begins caring for a sick or elderly relative and then abandons them.
- A duty arising from creating a dangerous situation: e.g., a person who accidentally starts a fire has a duty to take reasonable steps to extinguish it or call for help.

3. A State of Affairs

In rare statutory offences, the *actus reus* may simply be "being found" in a particular situation, regardless of how the defendant got there.

For example: the offence of "being found drunk in a public place."

4. A Consequence (Result Crimes)

For some crimes, the *actus reus* is not complete until a specific consequence occurs. The prosecution must prove that the defendant's conduct caused that consequence.

Example: For murder, the *actus reus* is "the unlawful killing of a human being." Therefore, the death of the victim is an essential part of the *actus reus*, and causation must be established between the defendant's act and the death.

1.2.2 Mens Rea: The Mental Element of an Offence

The *mens rea* refers to the fault element or the state of mind of the defendant at the time the *actus reus* was committed. It is concerned with moral blameworthiness and answers the question: "What was the defendant's state of mind?"

Different offences require different levels of *mens rea*. The most common types, in descending order of culpability, are:

1. Intention

This is the highest level of culpability, required for the most serious crimes like murder. Intention can be:

- **Direct intention**: The defendant's aim or purpose was to bring about the prohibited consequence. For example, D shoots V in the head, wanting V to die.
- **Oblique (or foreseen) intention**: The consequence was not the defendant's primary aim, but they foresaw it as a virtual certainty as a result of their actions. For example, D sets fire to a building to claim insurance money, knowing that a security guard is inside and that his death is a virtual certainty.

2. Recklessness

A defendant is reckless when they consciously take an unjustifiable risk. The modern test in English law is subjective, meaning the court must be satisfied that the defendant themself actually foresaw the risk of the prohibited consequence occurring but decided to take the risk anyway. For example, D throws a brick off a high bridge into a busy road below, foreseeing that it might hit a car but doing it regardless.

3. Knowledge and Belief

Some offences require proof that the defendant had knowledge of, or believed in, certain circumstances. This is common in "conduct crimes" rather than "result crimes." For example, the offence of handling stolen goods requires that the defendant knew or believed the goods were stolen at the time they received them.

4. Negligence

While primarily a concept in civil law, negligence can form the *mens rea* for some criminal offences, most notably gross negligence manslaughter. Liability arises when the defendant's conduct falls so far below the standard of a reasonable person that it is

characterised as "gross" and amounts to a criminal breach of duty. For example: A doctor prescribes a clearly dangerous and incorrect dose of medication due to a gross failure to check the patient's records.

1.2.3 The Coincidence of Actus Reus and Mens Rea

The principle of contemporaneity requires that the *actus reus* and *mens rea* must coincide; that is, the defendant must have the required mental state at the time they perform the guilty act.

However, the courts have developed doctrines to apply this principle flexibly in complex situations:

- **Continuing act doctrine**: Where the *actus reus* is a single act that continues over a period of time, the *mens rea* can be formed at any point during that continuing act.
- **Single transaction theory**: The court may treat a sequence of acts as one single transaction. If the *mens rea* exists at any point during this transaction, the requirement of coincidence is satisfied.

Example:

A defendant, D, initially assaults V without the intent to kill (*actus reus* without the *mens rea* for murder). D then realises V is unconscious and vulnerable. At this point, D forms the intention to kill (*mens rea*) and, in fulfilment of that intention, fails to call for help (an *omission* constituting a continuing *actus reus*).

Application: The *mens rea* (intention to kill) coincides with the continuing *actus reus* (the failure to act under a duty). Therefore, D can be liable for murder.

1.3 Causation: Factual and Legal

In criminal law, causation is a critical component of result crimes offences where a specific outcome, such as death or injury, must be proven. Examples include murder, manslaughter, and criminal damage**.** To establish criminal liability in these cases, the prosecution must

prove that the defendant's actions or omissions caused the prohibited consequence. This involves satisfying both:

- Factual causation; did the defendant actually cause the result?
- Legal causation; should the defendant be held legally responsible for the result?

Both types of causation must be established to prove the actus reus.

1.3.1 Factual Causation: The "But For" Test

Factual causation, which establishes a direct link between an action and a consequence, is primarily assessed using the fundamental "but for" test. This test poses a straightforward question: would the harm have occurred but for the defendant's conduct? If the answer is no, then factual causation is legally satisfied. For example, consider a scenario where one person stabs another during a fight, and the victim subsequently dies from that specific stab wound. In this case, but for the defendant's act of stabbing, the victim would not have died at that time and in that manner; therefore, factual causation is clearly established as a necessary first step in determining legal liability.

However, factual causation is not established if the defendant's action was not a necessary precondition for the outcome. A key counterexample illustrates this: if a person poisons their mother's drink intending to kill her, but she dies of a sudden heart attack before the poison can take effect, the "but for" test is not met. The death would have occurred from the heart attack anyway, irrespective of the poisoning. This demonstrates the crucial point that for factual causation to exist, the defendant's conduct must be a necessary precondition; if the outcome would have occurred regardless of their actions, there is no factual causation.

1.3.2 Legal Causation: Establishing Liability

Once factual causation is established via the "but for" test, the court must next determine legal causation. This principle asks whether, as a matter of legal policy, the defendant should be held responsible for the consequences of their actions. It is not enough that the defendant's act was a factual cause; it must also be a legally significant cause of the harm. The courts employ several key principles to make this determination.

1. The Substantial and Operating Cause

The defendant's conduct need not be the sole or even the main cause of the harm. However, it must be more than a minimal or trivial contribution; it must be a "substantial and operating cause" of the result.

For instance, if Liam and Ethan both assault Oliver, and Oliver later dies from a specific head wound inflicted by Liam, Liam can be held liable for the death. Even if Ethan's punches also contributed to the situation, Liam's act was a substantial and operating cause of the fatal outcome.

2. Foreseeability of the Victim's Reaction

A defendant is generally liable for harm resulting from a victim's foreseeable reaction to their unlawful conduct. If the victim acts in a way that is a natural and predictable consequence of the defendant's actions, the chain of causation remains intact.

For example, if Sophia is being assaulted by Jacob in a moving car, and she jumps out to escape, causing injury, Jacob can be liable as her reaction was foreseeable. Conversely, if Noah makes a mild threat towards Emma, and Emma, in a highly unusual and disproportionate response, immediately jumps off a cliff, a court may find this reaction so unforeseeable that it breaks the chain of causation.

3. Intervening Acts (*Novus Actus Interveniens*)

An intervening act is a new, independent event that occurs after the defendant's initial wrongful act and may become the dominant cause of the harm, thereby breaking the "chain of causation." The key question is whether the intervening act was so independent and potent that it overshadows the defendant's conduct.

For example, if Chloe stabs Benjamin, and at the hospital, a doctor, Dr. Evans, makes a minor error in stitching the wound which leads to an infection, Chloe remains liable. However, if Dr. Evans commits an act of "gross negligence"; for instance, accidentally amputating the wrong limb while treating the stab wound, this may be considered a new intervening act that absolves Chloe of liability for the amputation.

1.3.3 The Eggshell Skull Rule

A fundamental principle is that a defendant must "take their victim as they find them." A defendant cannot escape liability because the victim had a pre-existing vulnerability that made the injuries more severe.

For example, if Ava shoves Lucas during an argument, unaware that Lucas has a rare medical condition that makes his bones extremely fragile, and Lucas suffers a fatal fall, Ava is fully liable for his death. Similarly, if Mia negligently causes a car accident that gives Isabella a minor cut, and Isabella bleeds to death because she had a pre-existing, unknown haemophilia condition, Mia is liable for the death. The defendant's liability is not limited to the harm a reasonable person would have suffered.

Summary of Causation

Type	Key Question	Example
Factual Causation	Would the result have occurred "but for" the defendant's act?	If yes, no liability. If no, factual causation is satisfied.
Legal Causation	Is the defendant's act a substantial, operating cause without being broken by an intervening event?	Consider foreseeability, new acts, and victim reactions.
Eggshell Rule	Did a unique vulnerability make the result worse?	Defendant still liable, even if harm was exaggerated.

1.4 Strict Liability Offences

Some criminal offences do not require the prosecution to prove mens rea, or a guilty mind, for at least one element of the crime. These are known as strict liability offences and are typically applied to regulatory matters, such as food safety standards, environmental protection rules, and certain driving offences. The rationale is to promote public welfare by

enforcing a high standard of care. For example, a pub landlord could be held liable for selling alcohol to a minor even if they genuinely believed the customer was of legal age and had checked a convincing but fake ID. Similarly, a factory owner could be found guilty of a strict liability pollution offence if their plant discharges toxic chemicals into a river, regardless of whether they were aware of the malfunction that caused it.

The courts will typically impose strict liability only where certain conditions are met: there is a significant public interest in promoting safety and welfare, the offence is relatively minor and does not carry the stigma of a traditional crime, and the statute creating the offence clearly omits any words suggesting a mental element such as "knowingly" or "intentionally". A leading case in this area is ***Lim Chin Aik v The Queen*** [1963] 1 All ER 223, where the Privy Council overturned a conviction because the statute did not clearly indicate strict liability and imposing it would be unjust.

However, in ***Gammon (Hong Kong) Ltd v Attorney General of Hong Kong*** [1984] 2 All ER 503, the court reaffirmed that there is a strong presumption in favour of *mens rea*, but it can be displaced for social regulations where strict liability is necessary to protect the public and ensure compliance.

1.5 Types of Offences

Crimes can be categorised, based on their structure, into the following.

1.5.1 Conduct Crimes

Conduct crimes are defined by the defendant's actions alone. The focus is entirely on the performance of a prohibited act, and the prosecution does not need to prove that the act resulted in any specific consequence. The criminality lies in the deed itself, irrespective of its outcome. This category often includes offences that protect the integrity of official processes or public order, where the very act is considered so dangerous or corrosive that it must be prohibited absolutely.

A classic example of a conduct crime is perjury. The offence is committed when a witness wilfully makes a false statement while under oath in a judicial proceeding. The Crown does

not need to prove that the lie affected the trial's outcome; the act of lying under oath is the complete offence. Another key example is dangerous driving. The offence is made out by the manner of driving itself, which falls far below what would be expected of a competent and careful driver. As established in ***R v Collins*** [1997] RTR 439, it is irrelevant that no accident occurred or that no other road users were endangered; the criminal conduct is the dangerous driving itself.

1.5.2 Result Crimes

Result crimes require the prosecution to prove not only that the defendant acted (the actus reus), but that their action caused a specific, prohibited consequence. This necessitates a two-stage analysis: establishing factual causation (using the "but for" test) and then legal causation (determining if the defendant's act was a significant operating cause of the result). Most of the well-known serious offences fall into this category, as the law seeks to punish the causing of harm.

The most serious result crime is murder. The actus reus of murder is the "unlawful killing of a reasonable person in being under the Queen's Peace." This means the prosecution must prove that the defendant's conduct caused the death of the victim. Similarly, criminal damage under the *Criminal Damage Act 1971 is* a result crime because it requires proof that property was actually destroyed or damaged. A key case illustrating the importance of causation in result crimes is ***R v White*** [1910] 2 KB 124, where the defendant put cyanide in his mother's drink intending to kill her, but she died of a heart attack before drinking it. He was not guilty of murder because his act did not cause her death; he was instead convicted of attempted murder.

1.5.3 State of Affairs Crimes

State of affairs crimes, also known as situational offences, are unique in that liability is based on the defendant being found in a prohibited situation or condition, rather than on a specific voluntary act. The prosecution must simply prove that the forbidden state of affairs existed, and that the defendant was responsible for it. These offences are relatively rare and often controversial, as they can criminalise a situation without a demonstrable act.

An example is the offence of "being drunk in charge of a motor vehicle" contrary to the *Road Traffic Act 1988*. The offence is complete if the prosecution can prove the defendant was drunk and in charge of a vehicle on a road or other public place. There is no need to prove the defendant was driving or even intended to drive. A leading case is ***Winzar v Chief Constable of Kent***, The Times, 28 March 1983, where the defendant was taken to a hospital and later removed by police. He was arrested for being "found drunk on a highway" after being seen on the road outside the hospital. The court held that the offence was simply being in the situation of drunkenness on a highway, regardless of how he came to be there. This demonstrates the absolute nature of this offence category, which prioritises public safety over individual fault.

1.6 The Burden and Standard of Proof

The foundation of a fair criminal justice system lies in its rules of evidence, specifically, who must prove the case and how certain the decision-maker must be. These principles of the burden and standard of proof are designed to protect individuals from the immense power of the state. They uphold the cardinal principle that a person is presumed innocent until proven guilty, ensuring that convictions are based on solid evidence rather than mere suspicion.

1.6.1 The Burden of Proof: The Prosecution's Responsibility

The "burden of proof," also known as the "legal burden," refers to the obligation to prove the facts of the case. In English criminal law, this burden rests almost entirely on the prosecution. This means the Crown Prosecution Service (CPS) must prove all elements of the offence against the defendant. This includes demonstrating that the defendant committed the actus reus (the guilty act), did so with the required mens rea (the guilty mind), and that no valid defence applies. The defendant is not required to prove their innocence; instead, the prosecution must actively prove their guilt. This principle was famously articulated in the case of ***Woolmington v DPP*** [1935] AC 462, where the House of Lords established that it is the prosecution's duty to "prove the prisoner's guilt" from the beginning to the end of the trial. *Lord Sankey's* famous "golden thread" speech emphasised that throughout the web of the English criminal law, one golden thread is always to be seen: that it is the duty of the prosecution to prove the prisoner's guilt.

There are, however, very limited exceptions to this rule, typically created by Parliament through statute for specific reasons of public policy. A key example is the defence of diminished responsibility to a murder charge, as set out in the *Homicide Act 1957 (as amended)*. If a defendant wishes to rely on this defence, which would reduce a murder conviction to manslaughter, they bear the legal burden of proving it. Another example can be found in certain statutory offences where the defence of insanity is raised. In these rare instances, the defendant must satisfy the court that the defence applies.

1.6.2 The Standard of Proof: The Level of Certainty Required

While the "burden of proof" identifies who must prove the case, the "standard of proof" defines how much they must prove it. The required level of certainty differs dramatically depending on who bears the burden.

For the prosecution, the standard is the highest known to law: "beyond reasonable doubt." This does not mean beyond all doubt, which is an impossible standard, but that the court or jury must be sure of the defendant's guilt. If, after hearing all the evidence, there remains a reasonable doubt, a doubt for which a reason can be given, the defendant must be acquitted. This high threshold reflects the serious consequences of a criminal conviction and the societal value that it is better for ten guilty people to go free than for one innocent person to be wrongly imprisoned.

In contrast, when the defence bears a legal burden, as in the diminished responsibility example, the standard is lower: "on the balance of probabilities." This simply means that the fact in question is more likely than not to be true. In numerical terms, this would be just over 50% certainty. For instance, in proving diminished responsibility, the defendant must convince the jury that it is more likely than not that they were suffering from an abnormality of mental functioning at the time of the killing.

1.6.3 The Crucial Distinction: Evidential vs. Legal Burden

A critical nuance in this area is the difference between a legal burden and an evidential burden. An evidential burden is not a burden of proof, but a burden to raise an issue. It is the obligation

to present sufficient evidence to make a certain fact a live issue in the trial. This is best illustrated with the common law defence of self-defence.

Illustration

A defendant, Deborah, is charged with assault after punching someone. She claims she acted in self-defence after being threatened.

Evidential Burden (on Deborah): Deborah has an evidential burden to raise the issue of self-defence. She must point to some evidence whether from her own testimony, a witness, or CCTV footage that suggests she was acting to defend herself. She does not need to prove it; she only needs to make it a credible issue for the court to consider.

Legal Burden (shifts back to the Prosecution): Once Deborah has satisfied this evidential burden, the legal burden shifts back to the prosecution. The prosecution must then disprove self-defence beyond reasonable doubt. They must prove either that Deborah did not genuinely believe she was in danger, or that her belief was unreasonable, or that the force she used was excessive.

If, after hearing all the evidence, the jury is left in any reasonable doubt as to whether Deborah was acting in self-defence, they must return a verdict of not guilty. This process ensures that while a defendant must provide a factual basis for their defence, the ultimate responsibility to negate that defence remains with the state, preserving the core principle of presumed innocence.

1.7 Conclusion

This chapter has established the foundational principles of criminal liability. The core components of *actus reus* and *mens rea* form the essential framework for most offences, requiring their coincidence for culpability. For result crimes, this framework is underpinned by the robust rules of factual and legal causation, ensuring a defendant's actions are fairly linked to the harm caused. While strict liability offences and state of affairs crimes represent significant exceptions to the requirement of *mens rea*, they are confined to specific regulatory contexts. Ultimately, the entire structure is governed by the cardinal rule that the prosecution

bears the burden of proving every element of the offence beyond reasonable doubt, thereby safeguarding the presumption of innocence that is central to a just criminal justice system.

2

PROPERTY AND THEFT OFFENCES

Property offences under English law are primarily codified in the *Theft Act 1968*, which consolidated and rationalised a complex body of common law into a single statutory framework. This Act provides the definitions for key crimes against property, including theft, robbery, and burglary. While these offences share common themes of interfering with another's proprietary rights, they are distinguished by their specific elements, particularly the methods used, the contexts in which they occur, and the degree of force or intrusion involved. A thorough understanding begins with the foundational offence of theft.

2.1 Theft

2.1.1 Definition and Framework

Theft is defined under *s.1* of the *Theft Act 1968* as the act of a person who "dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it." This seemingly simple definition is deceptively complex, comprising five distinct elements that the prosecution must prove beyond a reasonable doubt.

The offence is conduct-based, requiring the simultaneous presence of the physical act (*actus reus*) and the guilty mind (*mens rea*). The *actus reus* consists of the appropriation of property belonging to another, while the *mens rea* consists of dishonesty and the intention to permanently deprive.

2.1.2 The Elements of Theft

1. Appropriation

Appropriation is the act of assuming the rights of an owner. *Section 3(1)* of the *Theft Act 1968* defines it broadly as "any assumption by a person of the rights of an owner." Crucially, a defendant need not assume all the rights of ownership; the assumption of any single right, such as selling, using, destroying, or disposing of the property, is sufficient.

The breadth of appropriation is illustrated by several key decisions. In ***R v Morris*** [1983] 3 WLR 697**,** the defendant switched price labels on items in a supermarket. The House of Lords held that this act alone constituted an assumption of a right of the owner, the right to determine the price and was therefore an appropriation. Furthermore, the consent of the owner does not necessarily prevent an act from being an appropriation. In ***R v Gomez*** [1993] 3 WLR 1067, the defendant, an assistant, persuaded his manager to accept stolen cheques as payment for goods. Despite the manager's consent, the transaction was deemed an appropriation because it was dishonest. This principle was extended in ***R v Hinks*** [2000] 3 WLR 1590, where the House of Lords held that even the receipt of a valid gift could amount to appropriation if it was acquired dishonestly.

2. Property

Section 4 of the *Theft Act 1968* provides a wide definition of property, stating it includes "money and all other property, real or personal, including things in action and other intangible property." This encompasses tangible items like cars and jewellery, as well as intangible rights such as bank credits (a thing in action) and, in modern applications, digital assets like cryptocurrency (***AA v Persons Unknown***, [2019] EWHC 3556 (Comm)).

However, certain exceptions exist. For instance, wild mushrooms, flowers, fruit, and wild animals are not considered property for the purposes of the Act unless they have been reduced into possession by being collected for commercial purposes or are kept in captivity.

3. Belonging to Another

For theft to occur, the appropriated property must belong to another person. *Section 5(1)* clarifies that property "belongs to any person having possession or control of it, or having in it any proprietary right or interest." This means legal ownership is not required; the offence protects anyone with a superior right to possession at the time of the appropriation. A borrower, a bailee, or someone simply entrusted with an item can be considered a person to whom it "belongs."

This principle is demonstrated in ***R v Turner (No.2)*** [1971] 1 W.L.R. 901. The defendant took his own car from a garage without paying for the repair work that had been done. Although he was the legal owner, the garage had lawful possession and control of the car at that time. Consequently, the car was deemed to "belong to another" for the purposes of the Theft Act. *Section 5(3)* further extends this concept to property received under an obligation, such as money given for a specific purpose, which the recipient is legally bound to use in a particular way.

4. Dishonesty

Dishonesty is the central moral component of theft. While *s.2* of the Act provides three specific situations where a defendant's conduct is *not* deemed dishonest (such as a belief in a legal right to the property, a belief the owner would have consented, or if the property is taken from an untraceable owner after reasonable efforts), it does not provide a positive definition.

The modern test for dishonesty, established by the Supreme Court in ***Ivey v Genting Casinos*** [2017] UKSC 67, provides a structured two-stage process for a jury to determine criminal dishonesty. The first stage, a subjective inquiry into the defendant's actual state of mind, is known as the subjective test. Here, the jury must ascertain, as a matter of fact, what the defendant truly knew, believed, or intended regarding the factual circumstances of their actions. This step requires an examination of the defendant's personal understanding and motivations, setting aside any assessment of morality at this point.

Once the defendant's subjective knowledge and beliefs have been established, the jury proceeds to the second stage, the objective test, which applies an objective standard. The

jury is instructed to consider whether, in light of the facts as the defendant believed them to be, their conduct was dishonest according to the standards of ordinary decent people. This critical step anchors the definition of dishonesty in a communal ethical benchmark, ensuring that the verdict reflects societal norms rather than the personal moral compass of the accused.

This formulation in ***Ivey v Genting Casinos*** [2017] UKSC 67 expressly removed the second, subjective limb of the previous test from ***R v Ghosh*** [1982] 3 WLR 110. Under the discarded ***Ghosh*** test, it was necessary for the prosecution to prove not only that the conduct was objectively dishonest, but also that the defendant themselves realised that ordinary people would deem it dishonest. By eliminating this requirement, the *Ivey* test prevents defendants from escaping a dishonesty conviction by claiming they did not share or recognize society's standards, thereby strengthening the objective nature of the legal definition.

5. Intention to Permanently Deprive

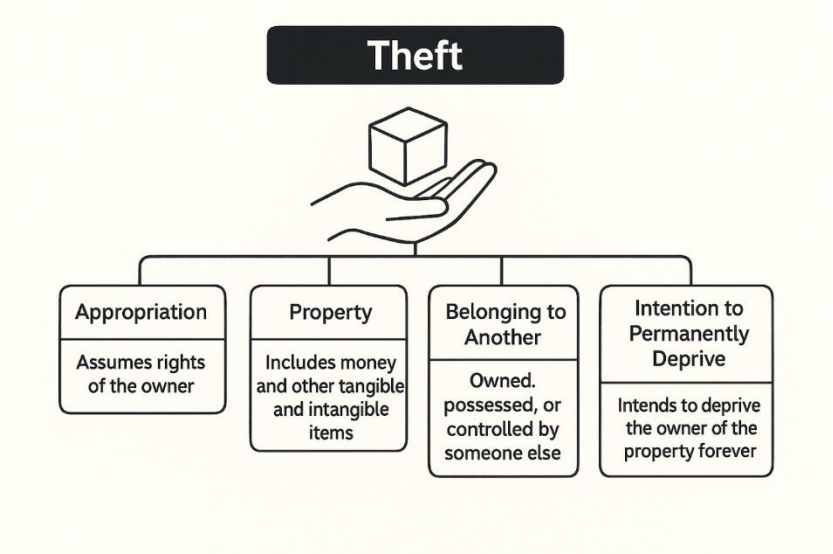
The final element requires the prosecution to prove that the defendant appropriated the property with the intention of permanently depriving the other of it. *Section 6(1)* elaborates that a person is treated as having this intention if they "treat the thing as their own to dispose of regardless of the other's rights."

It is the intention at the moment of appropriation that is crucial, not whether the owner is ultimately permanently deprived. Borrowing may therefore constitute theft if it is equivalent to an outright taking, for instance, if the item is returned only after its value or usefulness has been exhausted.

In ***R v Velumyl*** [1989] Crim LR 299, a company manager took cash from the office safe, intending to repay it with other money a few days later. The court held that because he intended to return different banknotes, not the exact same ones, he had intended to treat the company's specific property as his own to dispose of, thus fulfilling the requirement.

Similarly, in ***DPP v Lavender*** [1994] Crim LR 297, a defendant who took doors from one council property and used them to replace doors in another council flat was found to have the necessary intention, as he was treating the doors as his own to dispose of

regardless of the council's rights. This flexible, context-dependent approach is designed to prevent loopholes concerning temporary takings that effectively amount to permanent deprivation.



2.2 Robbery

2.2.1 Definition and Nature of the Offence

Robbery is defined under *s.8(1)* of the *Theft Act 1968* as a composite offence that occurs when a person "steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force."

This statutory formulation establishes robbery as an aggravated form of theft, where the act of stealing is accompanied by the use or threat of force. As an offence that violates both a person's property and their physical integrity, it is treated with the utmost severity by the courts and carries a maximum penalty of life imprisonment. It is an indictable-only offence, meaning it must be tried in the Crown Court.

2.2.2 The Elements of Robbery

The prosecution must prove three core components beyond a reasonable doubt: a completed theft, the use or threat of force, and a direct causal link between the two.

1. The Completion of Theft

The foundation of a robbery charge is a completed theft under *s.1* of the *Theft Act 1968*. This requires the prosecution to establish all five elements of theft: appropriation, property, belonging to another, dishonesty, and the intention to permanently deprive. If any one of these elements is absent, the charge of robbery must fail, as there is no underlying theft to aggravate.

The principle that a claim of right can negate robbery by negating theft is classically illustrated by ***R v Robinson*** [1977] Crim LR 173. The defendant, who used force to recover money he believed was owed to him, was acquitted of robbery. The Court of Appeal held that because he genuinely believed he had a legal right to the money, he lacked the dishonesty required for theft. Consequently, with no underlying theft, the charge of robbery could not stand.

2. The Use or Threat of Force

This is the defining element that elevates theft to robbery. The force, or the threat of force, must be directed against a person and must be used for the purpose of executing the theft. The statute sets a low threshold for what constitutes "force," and even minimal physical contact can suffice if it is used to overcome resistance or facilitate the theft.

The application of minimal force was deemed sufficient in ***R v Dawson and James*** [1976] 64 Cr App R 170. The Court of Appeal upheld a robbery conviction where one defendant nudged the victim, causing him to lose balance, while an accomplice picked his pocket. The court concluded that the term "force" should be given its ordinary meaning and that any degree of physical interference could qualify.

Furthermore, the force need not be applied directly to the victim's body. In ***R v Clouden*** [1987] Crim LR 56, the defendant wrenched a shopping basket from a woman's hand. The Court of Appeal held that this act constituted the use of force on a person, rejecting the argument that it was merely force applied to the property itself.

3. The Temporal and Causal Link: "At the Time" and "In Order To"

The force or threat must be employed "immediately before or at the time of" the theft and "in order to" steal. This creates a dual requirement of both temporal proximity and a specific purpose.

- **Temporal Link**

The phrase "at the time of" has been interpreted flexibly. The courts view appropriation not always as a single, instantaneous act, but as a continuing course of conduct. This was established in the seminal case of ***R v Hale*** [1979] 68 Cr App R 415.

The defendants stole jewellery from a house and then tied up the occupant before leaving. The Court of Appeal upheld the robbery conviction, ruling that the appropriation was still ongoing at the moment the force was applied, as the thieves had not assumed complete and unchallenged control of the property.

- **Causal Link**

The force must be used with the intention of enabling the theft. It is not enough that force occurs during a theft; it must be deployed for the purpose of carrying it out. For instance, if a shoplifter uses force only when apprehended while trying to escape, the question of whether the appropriation was still continuing (as in ***Hale***) will be central to determining if the force was used "in order to" steal.

2.2.3 Mens Rea for Robbery

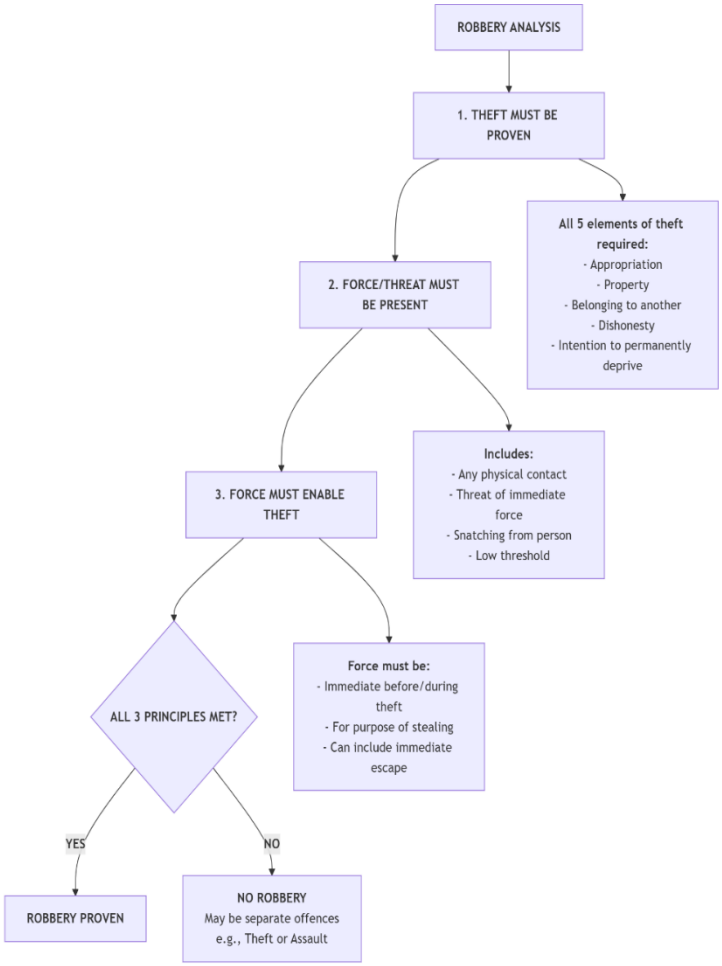
The mental element, or *mens rea*, for the offence of robbery is a composite state of mind, requiring the prosecution to prove two distinct intentions that must coexist at the moment the force is used or threatened. The foundational component is the full mental element for theft, as defined in the *Theft Act 1968*. This means the defendant must have acted dishonestly and must have intended to permanently deprive the victim of their property. Without this core intention to steal, any use of force would constitute a different offence, such as assault, but not robbery.

Further upon the *mens rea* for theft is a second, specific intention regarding the use of force. The defendant must intend to use force on any person, or to put or seek to put any person in fear of being then and there subjected to force. This force or threat of force must be employed for a specific purpose; to enable the theft to occur. This can include using force to carry out the appropriation, to overcome resistance, or to facilitate escape with the stolen property immediately after the act of theft.

The necessity for these two intentions to be present simultaneously is the defining feature of the offence. For a conviction of robbery, it is not sufficient that a theft and the use of force merely happen in the same sequence of events; the force must be the mechanism by which the theft is accomplished. If the intention to permanently deprive only arises after the force has been used; for instance, if a defendant assaults a person and then spontaneously decides to take their wallet, the requisite mental element for robbery is not met, and the crimes would be treated as separate offences.

2.2.4 Sentencing

As an indictable-only offence, robbery is reserved for the Crown Court and carries a maximum sentence of life imprisonment. Sentencing is guided by the Sentencing Council's definitive guidelines, which categorise offences based on their seriousness. Key factors that influence the sentence include the degree of planning, the level and duration of violence used, whether a weapon was brandished or used, the vulnerability of the victim, and the psychological harm inflicted. The sentence will reflect a balance between the gravity of the offence and any mitigating circumstances.


ROBBERY ANALYSIS
1. THEFT MUST BE PROVEN
All 5 elements of theft required:
- Appropriation
- Property
- Belonging to another
- Dishonesty
- Intention to permanently deprive
2. FORCE/THREAT MUST BE PRESENT
Includes:
- Any physical contact
- Threat of immediate force
- Snatching from person
- Low threshold
3. FORCE MUST ENABLE THEFT
Force must be:
- Immediate before/during theft
- For purpose of stealing
- Can include immediate escape
ALL 3 PRINCIPLES MET?
YES
NO
ROBBERY PROVEN
NO ROBBERY
May be separate offences e.g., Theft or Assault

2.3 Burglary

2.3.1 Definition and Nature of the Offence

Burglary, governed by *s.9* of the *Theft Act 1968*, is a serious offence that protects two distinct interests: the security and sanctity of property, and the safety of the individuals within. It criminalises the violation of private space by penalising not just unauthorised entry, but the criminal intent or actions that accompany it. The Act creates two separate pathways to a burglary conviction, each with its own specific requirements regarding the timing and nature of the defendant's intent.

2.3.2 The Two Forms of Burglary

The statutory framework differentiates between burglary based on the defendant's intent at the moment of entry and burglary based on actions taken after the entry has occurred.

1. ***Section 9(1)(a)* Burglary**

   This form of the offence is complete upon entry. A person is guilty if they enter any building or part of a building as a trespasser with the intent to commit one of three specified ulterior offences:

   - To steal anything in the building;
   - To inflict grievous bodily harm upon any person therein; or
   - To commit unlawful damage to the building or anything within it.

   For a conviction under this subsection, the prosecution must prove that the defendant possessed the specific intent for one of these offences at the very moment of the unlawful entry. It is not necessary for the intended theft, grievous bodily harm, or damage to be actually carried out.

2. ***Section 9(1)(b)* Burglary**

   This form of the offence focuses on the defendant's conduct after the entry has taken place. A person is guilty if, having entered a building or part of a building as a trespasser, they then go on to:

- Steal or attempt to steal; or
- Inflict or attempt to inflict grievous bodily harm on any person.

For this subsection, the defendant's mental state at the time of entry is irrelevant, provided they entered as a trespasser. The offence is complete upon the commission or attempted commission of theft or grievous bodily harm after the trespass has begun.

2.3.3 Key Legal Elements of Burglary

To secure a conviction for either form of burglary, the prosecution must establish several core elements beyond a reasonable doubt.

1. **Entry**

The act of "entry" is given a broad interpretation by the courts. It is not necessary for the defendant's entire body to cross the threshold; a partial or effective entry is sufficient. The key question is whether the defendant has gained effective access to the structure.

The principle of effective entry is demonstrated in ***R v Brown*** [1985] Crim LR 212. In that case, the defendant had his foot through the sash of a shop window when he was apprehended. The court held that this partial insertion of his body into the building was sufficient to constitute an "effective entry," thereby establishing that even the slightest intrusion can satisfy the physical element of burglary.

2. **Building or Part of a Building**

The offence must occur in a "building," which includes dwellings, commercial premises, and permanent structures. Crucially, the law also protects defined areas within a building. A person can commit burglary by entering a specific part of a building from which they are excluded, even if they lawfully entered another part.

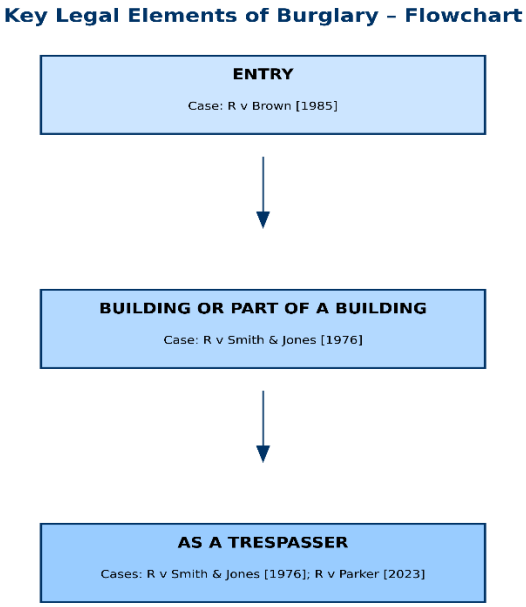
The principle that a person can be a trespasser in a specific part of a building they have lawfully entered was affirmed in the case of ***R v Smith and Jones*** [1976] 1 WLR 672. In that case, the two defendants, who were the sons of the householder, entered their father's house with a key to steal a television set. The Court of Appeal held that while they were not trespassers in the general building, they became trespassers in the "part of the building"

constituted by their father's private study, from which they had implicitly been excluded. This demonstrates that burglary can occur when an individual exceeds the scope of their permission to be in a particular area.

3. As a Trespasser

This is a critical element that turns a simple entry into a criminal one. A person is a trespasser if they enter without permission or if they exceed the permission that was granted. The requisite *mens rea* for this element is that the defendant knew they were entering without permission, or was subjectively reckless as to whether they had permission.

The principle that a person can become a trespasser by exceeding their permission was established in ***R v Smith and Jones*** [1976] 1 WLR 672, where the defendant, who had a general permission to enter his father's house, was held to be a trespasser when he entered with the intent to steal television sets. The court ruled that the criminal intent placed him outside the scope of any implied permission. This principle was further reinforced in ***R v Parker*** [2023] EWCA Crim 61, where the Court of Appeal confirmed that an individual who enters a commercial premises during opening hours for the sole purpose of committing theft enters as a trespasser from the outset, as their fraudulent intention vitiates any apparent consent from the proprietor.



2.3.4 Mens Rea (The Mental Element)

The mental state required varies by subsection:

- For *s.9(1)(a)*, the prosecution must prove the defendant intended to enter as a trespasser *and* had the ulterior intent to commit theft, GBH, or criminal damage at the time of entry.
- For *s.9(1)(b)*, the prosecution must prove the defendant intended to enter as a trespasser *and* subsequently committed or attempted to commit theft or GBH with the necessary intent for those offences.

It is important to note the difference in the *mens rea* for *s.9(1)(a)* and *s.9(1)(b)*.

2.3.5 Mode of Trial and Sentencing

Burglary is an either-way offence. However, cases involving a "dwelling", a person's home are treated with particular severity due to the profound violation of personal security and the potential for trauma to the occupants. If the burglary of a dwelling involves violence or the threat of violence, it will almost certainly be tried in the Crown Court.

The maximum sentences reflect the gravity of the offence:

- Burglary of a dwelling attracts 14 years' imprisonment.
- Burglary of a non-dwelling (e.g., a shop or office) attracts 10 years' imprisonment.

Sentencing follows definitive guidelines, with sentences varying significantly based on aggravating factors such as the use of weapons, the degree of planning, the vulnerability of the victims, and the value of property stolen or damaged.

2.4 Aggravated Burglary; *s.10 Theft Act 1968*

2.4.1 Definition and Nature of the Offence

Aggravated burglary represents a significantly more serious form of burglary, distinguished by the presence of weapons or dangerous items during the commission of the offence. Codified under *s.10* of the *Theft Act 1968*, this offence acknowledges the substantially heightened risk

and psychological terror inflicted upon victims when a burglary is committed by an armed perpetrator. The law responds to this increased danger with a substantially more severe maximum penalty.

Section 10(1) of the *Theft Act 1968* defines the offence as follows: "A person is guilty of aggravated burglary if he commits any burglary and at the time has with him any firearm or imitation firearm, any weapon of offence, or any explosive." This definition establishes two fundamental components that the prosecution must prove:

1. The commission of a complete burglary under either *s.9(1)(a)* or *s.9(1)(b)* of the *Theft Act 1968*.
2. The possession of a specified weapon or dangerous item at the time the burglary was committed.

2.4.2 Elements of Aggravated Burglary

1. Commission of a Burglary (Precondition)

The offence of aggravated burglary is contingent upon a foundational burglary having been committed. The prosecution must first prove all the essential elements of burglary under *s.9*, including an unlawful entry into a building or part of a building as a trespasser, with the requisite intent or subsequent commission of a specified offence. If the underlying burglary charge fails, the charge of aggravated burglary automatically fails with it.

2. “At the Time” of the Burglary

The defendant must be in possession of the prohibited item during the commission of the burglary. The courts have interpreted the phrase "at the time" flexibly, recognising that a burglary is not always an instantaneous act. For a *s.9(1)(a)* burglary, this means possession at the moment of entry. For a *s.9(1)(b)* burglary, it means possession while inside the building and committing or attempting to commit theft or grievous bodily harm.

The principle that the burglary is a continuing act was affirmed in ***R v Stones*** [2022] EWCA Crim 224. The court upheld an aggravated burglary conviction where the defendant, who had entered a dwelling unarmed, subsequently obtained a knife from the kitchen and

used it to threaten the occupants. The act of burglary was held to be ongoing at the time he was in possession of the weapon.

3. "Has With Him" a Weapon

This requires the defendant to be in knowing possession of the item, meaning it is either on their person or within their immediate control, readily available for use. It is not sufficient for a weapon to be merely present elsewhere on the premises if the defendant does not have direct access to it or control over it.

4. Nature of the Weapon

The statute specifies four categories of prohibited items, each with a distinct definition:

- **Weapon of offence**: This is defined in *s.10(1)(b)* as "any article made or adapted for use for causing injury, or intended by the person for such use." This is a broad category that includes not only items designed as weapons, such as knives and knuckledusters, but also any object that the defendant intends to use to cause injury. A screwdriver, for instance, is a tool, but it becomes a weapon of offence if the defendant possesses it with the intent to use it as a weapon.
- **Firearm**: This covers any lethal barrelled weapon capable of discharging a shot, bullet, or other projectile.
- **Imitation firearm**: This includes any item which has the appearance of a firearm, whether or not it is capable of discharging a projectile. The key is its capacity to instil fear by mimicking a real weapon.
- **Explosive**: This includes any article manufactured or adapted to cause an explosion.

The requirement for a physical object was clarified in ***R v Morrissey*** [2021] EWCA Crim 1478. The Court of Appeal confirmed that a person who uses their fist to simulate a gun in their pocket does not "have with him" an imitation firearm. The statute requires a tangible article, not a part of the body used to create an impression.

2.4.3 Mens Rea (Mental Element)

The mental element for aggravated burglary has two layers. The prosecution must prove:

1. The defendant possessed the *mens rea* for the underlying burglary, that is, intention to trespass and the relevant ulterior intent, and
2. The defendant had knowledge that they were in possession of the weapon or prohibited item. Accidental possession, such as being unaware that a knife is in one's pocket, would not satisfy this requirement. There is no need to prove an intention to use the weapon; its knowing possession during the burglary is sufficient to complete the offence.

2.4.4 Mode of Trial and Sentencing

Aggravated burglary is an indictable-only offence, meaning it must be tried in the Crown Court. It carries a maximum penalty of life imprisonment, reflecting the extreme gravity with which the law views this violation of a person's home and safety. Sentencing follows structured guidelines, with the final sentence heavily influenced by factors such as:

- The nature of the weapon and whether it was actually used or brandished.
- The degree of planning and the level of violence or intimidation employed.
- The vulnerability of the victims and the psychological impact of the offence.
- Whether the burglary targeted a dwelling, particularly at night when occupants are most likely to be present.

2.5 Conclusion

In essence, the *Theft Act 1968* establishes a hierarchy of property offences; theft as the base offence, robbery as theft with force, burglary as trespass with criminal intent, and aggravated burglary as burglary committed while armed. Each offence combines the actus reus of unlawful taking or entry with the *mens rea* of dishonesty and intent. Through cases like ***Ivey v Genting Casinos*** and ***R v Hinks***, the courts have refined concepts such as dishonesty, appropriation, and trespass to ensure fairness and consistency. Together, these offences safeguard both property and personal security, reflecting the law’s commitment to deterring dishonesty and protecting the sanctity of ownership and habitation.

3

CRIMINAL DAMAGE

Criminal damage law, governed by the *Criminal Damage Act 1971*, protects property and human life from intentional or reckless harm. It ranges from simple damage to aggravated offences and arson, where danger to life or use of fire increases severity. Each offence combines the actus reus of damaging property with the *mens rea* of intent or recklessness. This chapter outlines these offences and key defences such as lawful excuse, necessity, and duress, showing how the law balances public protection with fairness.

3.1 Simple Criminal Damage

The offence under *s.1(1)* of the *Criminal Damage Act 1971* is constructed from three core elements, which the prosecution must prove beyond a reasonable doubt. A failure to establish any one of these elements will result in the offence not being made out. These elements are: (1) the destruction or damage of property; (2) that the property belonged to another; and (3) that the defendant acted with the requisite intention or recklessness.

3.1.1 The Act of Destruction or Damage

The *actus reus* of the offence begins with the requirement that the defendant caused the "destruction or damage" of property. This concept is not exhaustively defined by the statute and has therefore been shaped by judicial interpretation to encompass a wide range of impairments.

1. Physical Harm and Impairment of Value/Usefulness

At its most straightforward, "damage" involves tangible, physical harm, such as Liam shattering a window or Sophie slashing car tyres. However, the courts have extended the meaning beyond permanent physical injury. It includes any alteration to the physical state of the property that imposes a need for cleaning, repair, or replacement, thereby incurring cost or expenditure of labour.

For example, if Chloe glues a poster to a wall, requiring effort and solvents to remove it without harming the surface, this temporary impairment of usefulness can constitute damage. Similarly, if Ben pours a pint of beer over a computer keyboard, rendering it temporarily inoperable until professionally cleaned, this is sufficient. The key question is whether the interference has rendered the property less valuable or useful, even if only for a time.

2. The Requirement for Tangible Harm

It is generally accepted that the damage must be tangible and physical. Mere intellectual or data-related interference, without physical consequence, may not fall within the scope of the basic offence. For instance, if David, a disgruntled employee, simply hides a valuable item, making it difficult to find, this likely does not amount to criminal damage as the item itself is unharmed. The harm must be to the property's physical integrity or condition.

3.1.2 Property Belonging to Another

This element defines the protected legal relationship and is crucial for distinguishing criminal damage from the legitimate disposal of one's own assets. *Section 5* of the *Criminal Damage Act 1971* provides a comprehensive definition of "belonging to another," which is broader than simple ownership.

1. Proprietary Rights and Interests

Property is treated as belonging to any person who has a legal right or interest in it. This means a person can be convicted of damaging their own property if another party holds a

superior or concurrent proprietary claim. Consider a car that Maya is purchasing through a hire-purchase agreement. Although she uses the car daily, the finance company retains legal ownership until the final payment is made. If Maya intentionally wrecks the car, she commits an offence because, in law, it "belongs to" the finance company.

2. Custody or Control

The definition also extends to anyone who has possession or control of the property, regardless of ownership. For example, if Jack lends his laptop to his friend, Emma, and a third party, Ryan, damages it while it is in Emma's possession, the property can be said to "belong to" Emma for the purpose of the offence, as she had custody and control of it at the time. Similarly, a tenant has a legal interest in their rental property, and a landlord who unlawfully damages the tenant's possessions within it could be guilty of an offence.

3.1.3 The Mental Element: Intention or Recklessness

The *mens rea* for criminal damage is a dual-faceted mental state. The prosecution must prove that the defendant either intended to destroy or damage the property, or was reckless as to whether such damage would occur.

1. Intention (Direct and Oblique)

Intention refers to the defendant's aim or purpose. This is the most straightforward form of *mens rea*. Direct intent is present where causing damage was the defendant's primary objective. For instance, Liam throws a stone at a window with the specific goal of breaking it. Oblique intent may be found where the damage was a virtually certain consequence of the defendant's actions, and they appreciated that it was such a consequence, even if it was not their primary goal.

2. Recklessness (The Subjective Test)

The modern test for recklessness in criminal damage is purely subjective, as established by the House of Lords in ***R v G and Another*** [2003] UKHL 50. This requires the prosecution to prove two things about the defendant's state of mind at the time of the act:

- That the defendant themselves foresaw a risk that the property would be destroyed or damaged.
- That, in the circumstances known to them, it was unreasonable to take that risk.

For example, if Zara decides to light a bonfire very close to her neighbour's garden shed, she may not *intend* for the shed to catch fire. However, if she sees the wind blowing embers towards the shed and recognises a real possibility that it might ignite, but continues regardless, she is reckless. It is her conscious awareness of the risk that is critical, not whether a hypothetical "reasonable person" would have seen it. This subjective approach ensures that liability is based on the defendant's own culpability.

3.2 Aggravated Criminal Damage

3.2.1 Definition and Nature

Aggravated criminal damage represents a more serious statutory offence than basic criminal damage, distinguished by the element of danger to human life. While the basic offence under *s.1(1)* of the *Criminal Damage Act 1971* protects property rights, the aggravated form under *s.1(2)* protects a more fundamental value: the safety and life of individuals. This offence is structured as a crime of specific intent, requiring the prosecution to prove a more complex mental state on the part of the defendant.

Section 1(2) of the *Criminal Damage Act 1971* provides the statutory foundation for the offence:

"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."

This definition establishes two distinct layers of *mens rea* that must coexist, making it an offence of specific or ulterior intent.

3.2.2 The Elements of the Offence

The offence can be broken down into two primary components, each with its own physical and mental elements. The prosecution must prove both components beyond a reasonable doubt.

1. The Underlying Act of Criminal Damage

The first component requires proof of the foundational acts of destroying or damaging property, coupled with the corresponding mental state.

- ***Actus Reus**:* The defendant must destroy or damage property. A critical distinction from the basic offence is that the property can belong to anyone, including the defendant themselves. This reflects the fact that the primary wrong being punished is not the interference with another's property rights, but the creation of a danger to life. For example, if Daniel sets fire to his own shed to make a fraudulent insurance claim, he commits no basic criminal damage against himself. However, if he does so while knowing that the fire could easily spread to his neighbour's house, he may be liable for aggravated criminal damage.
- ***Mens Rea**:* The defendant must have either intended to destroy or damage the property, or been reckless as to whether it would be destroyed or damaged. The test for recklessness here is the same subjective test established in ***R v G and Another*** [2003] UKHL 50 for the basic offence.

The prosecution must prove that the defendant themselves foresaw a risk of the property being damaged and, in the circumstances known to them, it was unreasonable to take that risk. For instance, if Katie discharges a fire extinguisher in a server room as a prank, foreseeing that the chemical residue might damage the sensitive equipment, she satisfies this first limb of *mens rea*.

2. The Aggravating Element: Endangerment of Life

The second component is the aggravating factor that elevates the offence to a more serious category. It focuses on the potential consequences of the damage, rather than the damage itself.

- ***Actus Reus**:* The destruction or damage must, as a matter of objective fact, create a situation that is capable of endangering life. It is not necessary for any life to actually be endangered; the prosecution need only show that the circumstances created by the defendant's actions possessed this potential. For example, if Ryan severs a gas main in the street, the escaping gas creates an objective danger of explosion or poisoning that is capable of endangering life, regardless of whether anyone was actually in the vicinity at that moment.
- ***Mens Rea**:* This is the crucial element that defines the offence. The defendant must have acted with the specific intention to endanger the life of another by the destruction or damage, or have been reckless as to whether life would be endangered. The recklessness here is also subjective.

The prosecution must prove that the defendant, at the time of the act, foresaw a risk that life might be endangered by their actions. It is not enough that a reasonable person would have foreseen the risk; the defendant must have actually foreseen it. For example, if Sophie, in a fit of rage, sets fire to a pile of rubbish in the basement of a block of flats, she may argue she only intended to damage the rubbish.

However, if the evidence shows she was aware that the smoke could quickly fill the stairwells and flats, trapping residents, she would be reckless as to the endangerment of life. The key authority is ***R v Webster*** [1995] 2 All ER 168, which confirmed that the defendant's intention or recklessness must relate to the endangerment of life by the destruction or damage. The danger to life must be a direct consequence of the property being damaged, not merely of the defendant's actions in general.

The application of these principles is effectively demonstrated in the case of ***R v Caldwell*** [1982] AC 341 (though later overruled in part on the test for recklessness, its facts remain a classic illustration of the offence). The defendant, in a dispute with his employer, set fire to a

hotel. He was convicted of aggravated criminal damage because the fire he started endangered the lives of the guests sleeping in the hotel.

The court found that he intended to damage the property (the hotel) and was, at the very least, reckless as to whether the lives of the guests would be endangered by his actions. This case highlights that the offence is complete the moment the damage is caused with the requisite dual mental state; it is not a result-based crime requiring proof that a life was actually put in peril, but rather a conduct-based crime focused on the defendant's dangerous intentions and the circumstances they create.

In summary, aggravated criminal damage is a serious indictable offence that criminalises acts of property damage where the perpetrator's mental state extends beyond the property itself to encompass a conscious disregard for human life. The combination of damaging property and possessing an intention or recklessness towards the endangerment of life marks this out as an offence of significant gravity within the criminal law.

3.3 Arson

While the *Criminal Damage Act 1971* provides the statutory framework for most property damage offences, arson holds a unique position as a common law offence that is charged by reference to the statute. Its inherent seriousness stems from the unpredictable and destructive nature of fire, which poses a significant risk to life, limb, and other property beyond the intended target.

3.3.1. Arson at Common Law

Arson is a common law offence, meaning its definition has been developed through judicial decisions rather than a specific statute. It is formally defined as "the malicious and wilful setting fire to the property of another." For practical purposes, it is charged as criminal damage where the destruction or damage is caused by fire, pursuant to *s.1(3)* of the *Criminal Damage Act 1971*, which states: "An offence committed under this section by destroying or damaging property by fire shall be charged as arson."

3.3.2 Elements of Arson

The prosecution must prove the following elements beyond a reasonable doubt:

1. The Act of Setting Fire to Property (*Actus Reus*)

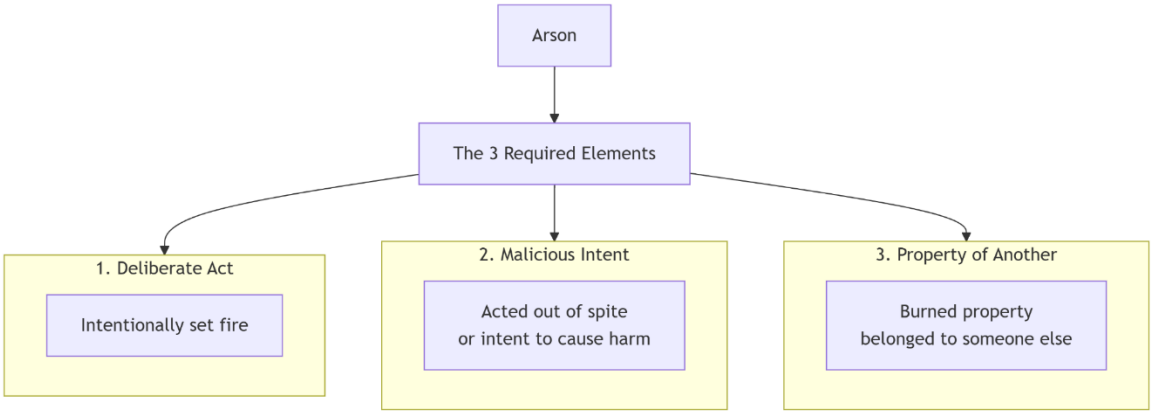
There must be a positive act that causes property to be destroyed or damaged by fire. The damage need not be extensive; even minor scorching or blackening can suffice if it impairs the value or usefulness of the property.

For example, if Liam, in an act of vengeance, soaks the curtains of his business partner's office in accelerant and ignites them, causing them to be badly charred before the fire is extinguished, the *actus reus* of arson is made out. The property must, in line with the principles of basic criminal damage, belong to another person.

2. Malicious and Wilful Intent (*Mens Rea*)

The defendant must have acted both "wilfully" and "maliciously." Wilfully means the act was deliberate and intentional, not accidental, while maliciously, in this context, aligns with the statutory *mens rea* under the *Criminal Damage Act 1971*. It requires that the defendant either intended to cause damage by fire or was reckless as to whether such damage would occur. The test for recklessness is subjective, as established in ***R v G and Another*** [2003] UKHL 50.

In ***R v Peters*** [2005] EWCA Crim 605, the defendant, during a dispute with a neighbour, threw a lit rag soaked in flammable liquid into the neighbour's garden shed. The defendant admitted he wanted to "scare" the neighbour but claimed he did not intend for the shed to burn down. The Court of Appeal upheld his conviction for arson. The court found that even if his primary intention was to intimidate, he was subjectively aware that his actions created an obvious and unjustifiable risk of the shed catching fire, thus satisfying the requirement for recklessness and, consequently, malice.



3.4 Aggravated Arson

Aggravated arson is the most serious form of property damage offence. It is not a separate common law offence but is charged under *s.1(2)* of the *Criminal Damage Act 1971*, applying specifically where the damage is caused by fire. The structure of the offence is identical to aggravated criminal damage, with the added element that fire is the method of destruction.

3.4.1. Elements of Aggravated Arson

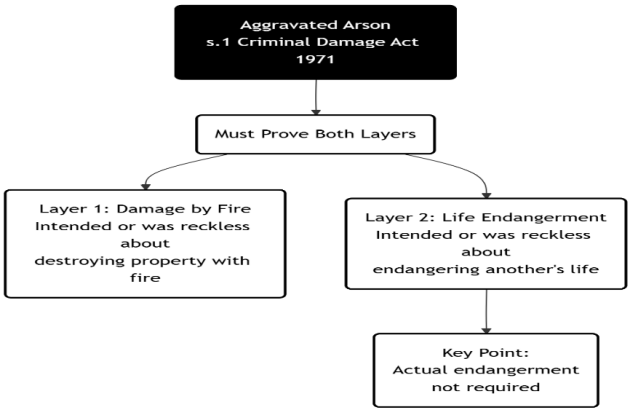
The prosecution must prove the dual-layered *mens rea*:

1. **Intention or recklessness as to damage by fire**: The defendant must have intended to destroy or damage property by fire, or been reckless as to such damage occurring. This is the first limb of the mental element.

2. **Intention or recklessness as to endangering life**: The defendant must have intended by the fire to endanger the life of another, or have been reckless as to whether life would be thereby endangered. This is a question of the defendant's subjective state of mind. It is not necessary for anyone's life to actually be in danger; the offence is complete if the defendant thought that life might be endangered, even if, objectively, it was not.

A leading authority is ***R v Dudley*** [1989] Crim LR 57. The defendant, in a dispute with his landlord, set fire to the curtains in the hallway of his rented house in the middle of the

night. The house was a multi-occupancy building, and other tenants were asleep in their rooms. The court found that by starting a fire in a communal area of a occupied dwelling at night, the defendant was not only reckless as to damaging the property but was also manifestly reckless as to whether the lives of the other residents would be endangered by the rapid spread of smoke and flames. His conviction for aggravated arson was upheld, highlighting that the method (fire) and the context (an occupied home) are critical factors in establishing the requisite recklessness for life endangerment.



3.5 Defences and Lawful Excuse in Criminal Damage

A crucial aspect of the *Criminal Damage Act 1971* is the provision of specific defences, most notably the statutory concept of "lawful excuse." A defendant may avoid liability if they can raise sufficient evidence to support a defence, upon which the prosecution must then prove beyond a reasonable doubt that the defence does not apply.

3.5.1 Statutory Lawful Excuse

Section 5 of the *Criminal Damage Act 1971* outlines the circumstances that constitute a "lawful excuse." The most significant is found in *s.5(2)(b),* which provides a defence where

the defendant held a genuine belief that the person entitled to consent to the damage would have consented if they had known of the circumstances.

Furthermore, *s.5(3)* provides a defence where the defendant destroyed or damaged property to protect property belonging to themselves or another, provided they believed: (i) that the property was in immediate need of protection; and (ii) that the means of protection adopted were reasonable in the circumstances.

Examples of Lawful Excuse

- **Consent**: If a film director, Becca, obtains permission from a property owner to smash a window for a movie scene, the actors involved would have a lawful excuse. The important factor is a honest belief in consent, even if that belief is mistaken, provided the mistake was honest and not reckless.
- **Protection of property**: If Mr. Joseph sees a leaking water pipe from his neighbour's vacant flat about to flood and damage his own property downstairs, and he breaks down the neighbour's door to access and repair the pipe, he may have a lawful excuse. He genuinely believes both properties are in immediate need of protection and that breaking the door is a reasonable means of achieving that protection.

3.5.2 Common Law and Other Defences

In addition to the statutory "lawful excuse," several general defences in criminal law can apply to charges of criminal damage.

1. **Necessity**: This defence arises where the defendant commits a lesser evil (damage to property) to prevent a greater evil (such as death or serious injury). The threat must be imminent and the response proportionate. For example, if Elena uses a crowbar to pry open the door of a crashed car to free a trapped passenger, the defence of necessity may be available. The courts have historically been very restrictive in allowing this defence.

2. **Duress**: This defence applies where the defendant was compelled to damage property due to threats of death or serious personal violence from another person. The threat must be immediate and directed at the defendant or a close relative, and the defendant

must have had no safe avenue of escape. For instance, if Ben is forced at gunpoint to smash a shop window to facilitate a robbery, he may plead duress.

3. **Intoxication**: The role of intoxication is complex. Voluntary intoxication is generally not a defence to a crime of basic or reckless intent like criminal damage, as the defendant is deemed to have brought the state of incapacity upon themselves.

However, where a specific intent is required, such as in aggravated criminal damage or arson (where the prosecution must prove an *intention* to endanger life), evidence of severe intoxication may be relevant in showing that the defendant lacked that specific intent. Involuntary intoxication, where the defendant was unaware they were consuming an intoxicating substance (e.g., a spiked drink), can negate *mens rea* for all forms of the offence, as it may prevent the formation of any intention or awareness of risk.

3.6 Conclusion

The law on criminal damage is structured like a staircase, with the punishment increasing based on the seriousness of the crime. The first step is basic criminal damage, which makes it illegal to harm another person's property. The next steps are the much more serious offences of aggravated criminal damage and arson. These laws focus on situations where someone's actions not only damage property but also put human life at risk. This tiered approach ensures that the punishment fits the crime.

Importantly, the law is also designed to be fair and practical. It includes important defences, such as having a 'lawful excuse.' This means that a person will not be found guilty if they damaged property for a good reason, such as to rescue someone from danger or to prevent a greater harm. This flexibility shows that the law can distinguish between malicious vandalism and necessary action. By setting clear rules while also allowing for justifiable exceptions, the criminal law effectively protects both community safety and the rights of the individual.

4

NON-FATAL OFFENCES AGAINST THE PERSON

Non-fatal offences against the person form a central part of criminal law, addressing situations where unlawful force or the threat of force is used without resulting in death. Governed primarily by the *Offences Against the Person Act 1861* (OAPA), these offences are structured to reflect increasing levels of harm and corresponding culpability. Despite its age, the Act remains the key legislative framework, ensuring that the law can respond proportionately to a wide range of harmful conduct.

This chapter examines the hierarchy of non-fatal offences, beginning with common assault (assault and battery), which covers the intentional or reckless causing of apprehension or application of unlawful force. It then considers more serious offences, including assault occasioning actual bodily harm (*s.47*), malicious wounding or infliction of grievous bodily harm (*s.20*), and wounding or causing grievous bodily harm with intent (*s.18*). For each, we will analyse the actus reus and mens rea, supported by leading case law that has shaped their interpretation and application.

4.1 Assault

Common assault represents the foundational tier of offences against the person within the criminal law of England and Wales. It is a term that encompasses two distinct common law offences: assault (often termed "technical assault") and battery. Although frequently charged together and colloquially treated as a single concept, they possess separate legal elements.

Both are summary-only offences, triable exclusively in the Magistrates' Court, and carry a maximum penalty of six months' imprisonment. Their primary legal significance lies in protecting the fundamental rights to bodily integrity and personal autonomy, which is the right to be free from the threat or application of unlawful force.

An assault is committed when a person intentionally or recklessly causes another to apprehend the immediate application of unlawful force. It is important to note that an assault is a crime of threat or apprehension; the completion of the offence does not require any physical contact whatsoever.

4.1.1 Actus Reus of Assault

The *actus reus* consists of any act or words that cause the victim to reasonably believe that unlawful force is about to be applied to their person imminently. The focus is squarely on the victim's perception and the creation of a justified apprehension.

Apprehension of Immediate Force

The victim must fear that force is "immediate" or "imminent." A threat of future violence, such as "I will get you tomorrow," does not constitute an assault, as it lacks the requisite immediacy. The courts have interpreted "immediacy" in a practical, rather than an absolute, sense. For instance, in ***R v Ireland*** [1998] AC 147, a series of silent phone calls made by the defendant to three women caused them to suffer psychological harm.

The House of Lords held that this could amount to an assault. *Lord Steyn* reasoned that the caller was "lying in wait," and the immediacy of the threat was established by the caller's presence at the other end of the line, instilling a fear of what might happen next. This principle was extended in ***R v Constanza*** [1997] 2 Cr App R 492, where letters and other acts of harassment created a fear of immediate violence at the time the victim read them, given the stalker's known proximity.

The Role of Words

Words alone can amount to an assault, and equally, words can negate an assault. The classic illustration is from the old case of ***Tuberville v Savage*** [1669] 1 Mod Rep 3, where the

defendant placed his hand on his sword and said, "If it were not assize-time, I would not take such language from you." The words were held to negate the threatening gesture, as they clarified that he would not act violently at that moment. Conversely, a silent, threatening gesture, such as Liam raising a clenched fist and moving aggressively towards Sophie from a short distance, can clearly found an assault.

4.1.2 Mens Rea of Assault

The mental element for assault requires that the defendant acted either intentionally or recklessly in causing the victim to apprehend immediate unlawful force.

- **Intention**: This is established if the defendant's purpose was to make the victim fear immediate violence.
- **Recklessness**: This is satisfied if the defendant was subjectively aware of the risk that their conduct might cause the victim to apprehend such force, and they unjustifiably took that risk. The test for recklessness, following ***R v G and Another*** [2003] UKHL 50, is subjective. For example, if Ben, as a prank, points a realistic-looking replica gun at a stranger in a dark alley, he may not intend to cause fear, but he is subjectively reckless if he is aware that the victim is likely to believe it is real and fear for their safety.

4.3 Battery: The Application of Unlawful Force

Battery is a common law offence that constitutes the actual infliction of unlawful force upon another person. It serves as the fundamental legal protection for an individual's bodily integrity, giving effect to the principle that every person's body is inviolate. As the Court of Appeal articulated in ***Collins v Wilcock*** [1984] 1 WLR 1172, "Any touching of another person, however slight, may amount to a battery." This offence is complete upon the slightest non-consensual physical contact, without any requirement for injury or even discomfort to be proven.

4.3.1 The Actus Reus of Battery

The physical element of battery consists of the application of unlawful force to the person of another. This definition, while simple in principle, has been refined through extensive judicial consideration to establish its precise boundaries.

1. **The Nature of "Force" or "Touch"**

   The concept of 'force' in battery is interpreted broadly and is not limited to violent contact. The essential element is the intentional physical interference with another's body, not the degree of force used.

2. **Direct and Indirect Application**

   The force may be applied directly or indirectly. A punch, a push, or a spit are clear examples of direct force. However, battery can also be committed indirectly. For instance, if Thomas sets a tripwire that causes Abigail to fall, he has committed a battery. Similarly, if Sam releases a dog that then jumps on Sarah, this constitutes an indirect application of force for which Omar is responsible.

3. **The Absence of Harm**

There is no requirement for the prosecution to prove that the contact caused pain, injury, or any harmful consequence. The wrongful nature of the act lies in the infringement of personal autonomy, not in its result. A non-consensual tap on the shoulder, the cutting of a person's hair without permission, or the removal of an item they are holding, such as a book or a cane, can all amount to a battery.

4. **The Requirement of "Unlawful" Force**

The force must be "unlawful," meaning it occurs without lawful justification. The most common justifications are consent, self-defence, and the prevention of crime. The line between lawful and unlawful touching is often contextual.

Implied Consent and Everyday Life

The courts recognise an implied licence for physical contact that is an inevitable and acceptable part of social existence. In ***Collins v Wilcock*** [1984] 1 WLR 1172, the judgment clarified that "touching a person for the purpose of engaging his attention" is generally acceptable, but physical restraint goes beyond this licence. Everyday jostling in a crowd, accidental bumps, or touching to attract someone's attention in a noisy room fall within this sphere of implied consent and do not constitute a battery.

Hostile Intent

While early authorities suggested the contact needed to be "hostile," the modern position, as established in ***R v Brown*** [1994] 1 AC 212 and affirmed in ***R v Ireland*** [1998] AC 147, is that hostility is not a separate legal ingredient. *Lord Justice Goff* in ***Collins v Wilcock*** stated that "it is not necessary to prove hostility to establish a battery." The fundamental question is whether the contact was unlawful, not whether it was motivated by personal animosity.

4.3.2 The Mens Rea of Battery

The mental element for battery is that the defendant must have intended to apply unlawful force to another, or have been reckless as to whether such force was applied.

1. **Intention**

   The defendant acts with intention where it was their purpose or aim to make physical contact with the victim. For example, if Daniel deliberately shoves a colleague, Emma, during an argument, he clearly possesses the requisite intention for battery.

2. **Recklessness**

   A defendant is reckless if they are subjectively aware of a risk that their actions will result in the application of unlawful force, and, in the circumstances known to them, it is unjustifiable to take that risk. The test, following the House of Lords' decision in ***R v G and Another*** [2003] UKHL 50, is firmly subjective. It focuses on the defendant's own state of mind.

Scenario: Jenna, as a practical joke, swings her backpack behind her without looking, aware that her friend Ryan is walking close behind her. The backpack strikes Ryan. Even if Jenna did not intend to hit Ryan, she was subjectively reckless because she foresaw the risk that her action might result in physical contact and she took that risk unjustifiably. This satisfies the *mens rea* for battery.

3. Distinction from Assault

It is critical to distinguish battery from assault (technical assault). While assault is concerned with causing the *apprehension* of immediate unlawful force, battery involves its actual *application*. A victim can be battered without being assaulted (e.g., struck from behind without warning), and assaulted without being battered (e.g., threatened with a fist that is never thrown). However, in many situations, an assault immediately precedes and culminates in a battery.

Battery operates as the law's primary mechanism for safeguarding bodily autonomy. Its broad interpretation, which criminalises any non-consensual physical contact regardless of its consequences, underscores the high value the legal system places on the inviolability of the person. The combination of a low threshold for the *actus reus* with a requirement for intentional or reckless conduct ensures that the offence captures culpable wrongdoing without criminalising truly accidental or socially acceptable interactions.

4.4 Assault Occasioning Actual Bodily Harm

Section 47 of the *Offences Against the Person Act 1861* creates the offence of "assault occasioning actual bodily harm." This is a seminal provision in English criminal law, acting as a crucial bridge between the basic interference with autonomy punished by common assault and the more serious harms addressed by *ss.18 and 20*. It is an offence that is "triable either way," meaning it can be heard in either the Magistrates' Court or the Crown Court, with a maximum penalty of five years' imprisonment.

4.4.1 The Nature of the *Section 47* Offence

The offence is a combination of two separate crimes joined together. It does not create a new, standalone crime but rather attaches a more serious consequence to the foundational offences of assault or battery. The statutory language, "whosoever shall be convicted upon an indictment of any assault occasioning actual bodily harm shall be liable...", establishes a two-stage structure for liability:

1. The commission of an assault (which includes a battery for this purpose).
2. The causation of "actual bodily harm" by that assault.

A critical legal principle governing this offence is that the *mens rea* required is solely that for the underlying assault or battery. The prosecution does not need to prove that the defendant intended or was reckless as to causing the actual bodily harm itself. This principle, often termed the "rule in ***R v Roberts***," ensures that a defendant takes their victim as they find them, being liable for all the consequences that flow from their unlawful conduct.

4.4.2 *Actus Reus* of Section 47

The prosecution must prove three interconnected elements of the *actus reus*:

1. **An Underlying Assault or Battery**

   There must be a complete common law assault or battery as previously defined. This is the trigger for liability. If the application or apprehension of force is lawful (for example, a justified act of self-defence), then no offence under *s.47* can be committed, regardless of the harm that ensues.

2. **The Occurrence of "Actual Bodily Harm"**

   The term “actual bodily harm” is not defined in the statute and has acquired its meaning through judicial interpretation. The classic definition comes from ***R v Donovan*** [1934] 2 KB 498, where it was stated that "bodily harm" needs to be more than "transient or trifling." This encompasses any hurt or injury that interferes with the health or comfort of the victim.

- **Physical injury**: This category includes a wide range of minor but significant injuries such as bruises, cuts, abrasions, and swelling. For instance, in ***R v Miller*** [1954] 2 QB 282, bruising and swelling sustained during a struggle were held to be sufficient for ABH. Minor fractures, such as a broken nose or a hairline fracture of a finger, also typically fall within this category.

- **Psychiatric injury**: The definition of "bodily harm" has been extended to include recognised psychiatric illnesses. In the landmark case of ***R v Chan-Fook*** [1994] 1 WLR 689, the Court of Appeal held that "bodily harm" includes "injury to all parts of the body, including the victim's mind." However, the court drew a distinction: the injury must amount to a clinically recognised condition, such as an anxiety disorder, post-traumatic stress disorder, or depressive illness. Mere emotions like fear, distress, panic, or anger are insufficient, no matter how intense.

- **Interference with personal autonomy**: The courts have also recognised that harm can consist of an infringement of personal integrity that does not necessarily cause physical pain or psychiatric illness. In ***DPP v Smith*** [2006] EWHC 94 (Admin), the defendant cut off a substantial part of the victim's ponytail without consent. The court held that this constituted actual bodily harm, as it was "an injurious impairment of the victim's sensory functions" (specifically, the feeling of having her hair cut against her will) and a significant intrusion into her personal autonomy.

3. Causation

The prosecution must prove that the assault occasioned (caused) the actual bodily harm. This involves establishing both factual and legal causation.

- **Factual causation**: This is determined by the "but for" test: but for the defendant's assault, would the harm have occurred?

- **Legal causation**: The assault must be a more than minimal cause of the harm. The defendant will generally be held responsible for the harm even if it was more severe than anticipated because of a pre-existing vulnerability of the victim (the "eggshell

skull" rule). An intervening act will only break the chain of causation if it is so daft or unexpected as to be independent of the defendant's actions.

4.4.3 Mens Rea of Section 47

As established in ***R v Savage*** [1992] 1 AC 699 and ***R v Parmenter*** [1992] 1 AC 699, the *mens rea* for a *s.47* offence is only the *mens rea* for the underlying assault or battery. The defendant must have intended or been subjectively reckless as to the application of unlawful force or the causing of apprehension of such force. There is no requirement for the prosecution to prove that the defendant intended or foresaw the risk of actual bodily harm.

In ***R v Roberts*** [1972] 56 Cr App R 95, the defendant made unwanted advances towards a woman in his car. Fearing for her virtue, she jumped from the moving vehicle and was injured. The court held that if the defendant's assault (the unwanted touching) caused the victim to take a reasonable escape attempt, then the chain of causation was not broken. Roberts was guilty under *s.47* because he intended the assault (the battery), and that assault occasioned the actual bodily harm, even though he never intended or foresaw that she would jump from the car.

4.4.4 Defences

The defences available for a *s.47* charge are those that would negate the underlying assault or battery.

1. **Consent**: Consent is a valid defence only in certain socially sanctioned contexts, such as properly conducted sports, reasonable surgical intervention, or horseplay (***R v Jones*** [1987] Crim LR 123). However, consent cannot generally be relied upon for the intentional or reckless infliction of actual bodily harm outside of these specific exceptions (***R v Brown*** [1994] 1 AC 212).
2. **Self-Defence/Prevention of Crime**: The defendant must have held an honest belief that the use of force was necessary, and the force used must have been reasonable in the circumstances as they believed them to be.

3. **Duress**: While theoretically available, the courts are highly reluctant to allow the defence of duress for violent offences against the person, as society expects individuals to submit to threats rather than inflict harm on an innocent third party.

4.4.5 Sentencing for Assault Occasioning Actual Bodily Harm

A conviction for an offence under *s.47* of the *Offences Against the Person Act 1861* is a serious matter, reflecting the law's condemnation of conduct. The sentencing process for this offence is guided by structured principles to ensure consistency, proportionality, and transparency in judicial decision-making.

Jurisdiction and Maximum Penalty

Section 47 is an offence "triable either way." This means it can be tried summarily in the Magistrates' Court, or on indictment in the Crown Court.

The maximum penalty available upon conviction on indictment is five years' imprisonment. The decision on where the case will be heard depends on the perceived seriousness of the offence and the sentencing powers of the Magistrates' Court, which are generally limited to six months' imprisonment for a single offence. For cases involving higher culpability or more significant harm, the case will be sent to the Crown Court, which has the full range of sentencing powers at its disposal.

When sentencing for a *s.47* offence, the court will refer to the Sentencing Council's definitive guidelines. Key considerations include:

- **Culpability**: This is assessed by factors such as the use of a weapon, a sustained attack, group action, or targeting a vulnerable victim.
- **Harm**: The sentence will reflect the severity of the injury caused, considering the degree and permanence of the harm, whether medical treatment was required, and any psychological impact.
- **Aggravating and mitigating factors**: Aggravating factors include previous convictions, hostility based on race or religion, and an offence committed while on bail.

Mitigating factors can include a genuine guilty plea, evidence of remorse, and provocation.

4.5 Grievous Bodily Harm

Section 20 of the *Offences Against the Person Act 1861* creates the serious indictable offence of unlawfully and maliciously wounding or inflicting grievous bodily harm. This provision addresses the infliction of the most serious category of non-fatal injury, short of those committed with the specific intent required under *s.18*. The offence is triable either way, carrying a maximum penalty of five years' imprisonment, and serves as a crucial instrument for punishing conduct that causes life-altering physical or psychological damage.

4.5.1 Statutory Framework and Distinction from *Section 18*

The statutory provision states: "Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of an offence..."

The key distinction between *s.20* and the more serious *s.18* lies in the mental element (*mens rea*). While *s.18* requires a specific intent to cause grievous bodily harm or to resist arrest, *s.20* operates on a lower threshold of culpability, requiring only that the defendant acted "maliciously." This distinction reflects Parliament's intention to criminalise severely harmful outcomes resulting from reckless or intentionally harmful behaviour, even where the defendant did not specifically intend the gravity of the injury that actually occurred.

4.5.2 *Actus Reus* of Section 20

The *actus reus* requires the prosecution to prove that the defendant either wounded another person or inflicted grievous bodily harm upon them.

1. **Wounding**

   A "wound" for the purposes of *s.20* requires a break in the continuity of the whole skin, meaning both the outer layer (epidermis) and the inner layer (dermis) must be severed. This is a technical, histological definition. Consequently, internal injuries, such as a

ruptured spleen or internal bleeding, no matter how serious, do not constitute a wound in law, as the skin surface remains intact. Similarly, a rupture of internal blood vessels, such as a hyphema (bleeding in the eye) caused by a blow, was held not to be a wound in ***R v Eisenhower*** [1984] QB 331, as it did not involve a break in the skin.

2. Inflicting Grievous Bodily Harm

The term "grievous bodily harm" has been judicially defined as "really serious harm" (***DPP v Smith*** [1961] AC 290). This is a question of fact for the jury to determine, guided by the judge. The concept encompasses:

- **Serious physical injury**: This includes, but is not limited to, broken bones (particularly complex fractures), injuries requiring extensive surgery, significant and permanent disfigurement, injuries resulting in permanent disability or loss of sensory function, and serious transmission of disease.
- **Psychiatric injury**: The House of Lords in ***R v Burstow*** [1998] AC 147 confirmed that grievous bodily harm is not restricted to physical harm. A severe, clinically recognised psychiatric illness, such as a major depressive disorder or severe post-traumatic stress disorder, can amount to grievous bodily harm. The illness must be more than mere distress, anxiety, or fear; it must be a medically diagnosable condition of comparable gravity to really serious physical harm.

The verb "inflict" has been the subject of significant judicial interpretation. Historically, it was thought to require a direct or indirect application of force. However, the decision in ***R v Burstow*** [1998] AC 147 harmonised the meaning of "inflict" with the broader term "cause" found in *s.18*. It is now established that grievous bodily harm can be "inflicted" without any direct physical violence, for example, through a campaign of harassment and stalking that causes a severe depressive illness.

4.5.3 Mens Rea of *Section 20*

The mental element for a *s.20* offence is that the defendant acted "maliciously." This is a legal term of art that does not imply spite or ill-will, but rather a specific state of mind regarding the consequences of one's actions.

As defined in ***R v Cunningham*** [1957] 2 QB 396 and affirmed in ***R v Savage*** [1992] 1 AC 699, "maliciously" means that the defendant either intended to cause some bodily harm to the victim; or was subjectively reckless as to whether some bodily harm would be caused.

This is a critical and often misunderstood aspect of the law. The prosecution does not need to prove that the defendant intended or foresaw grievous bodily harm. It is sufficient that they intended or foresaw the risk of *some* harm, however minor. If that minor intended or foreseen harm results, unforeseeably, in really serious injury, the defendant is liable for the full consequence under *s.20*.

In ***R v Parmenter*** [1992] 1 AC 699, the defendant, a young father, injured his baby by playing with him in a rough manner. He admitted that he knew he might cause the baby some minor discomfort or harm, but he had not foreseen the risk of the serious injuries that in fact occurred. The House of Lords held that this subjective foresight of some harm was sufficient for the *mens rea* of *s.20*. His conviction was upheld, illustrating the principle that a defendant must take their victim as they find them, including the unforeseen severity of the injury.

4.5.4 Causation

The principles of factual and legal causation apply. The defendant's act must be both the factual cause ("but for" the defendant's act, would the harm have occurred?) and the legal cause (a significant and operative cause) of the wounding or grievous bodily harm. The "eggshell skull" rule applies. If the victim has a pre-existing vulnerability that makes the harm more severe than it would be for a normal person, the defendant is liable for the full extent of the injury.

4.5.5 Contemporary Applications

The flexibility of *s.20* has allowed it to address modern forms of harm.

- **Biological grievous bodily harm**: In ***R v Dica*** [2004] EWCA Crim 1103, the Court of Appeal held that a person who, knowing they are HIV positive, has unprotected sexual intercourse without disclosing their status, and who consequently infects their partner, can be guilty of inflicting grievous bodily harm under *s.20*. The transmission of a potentially life-threatening disease constitutes "really serious harm."

- **Psychological grievous bodily harm**: As established in ***R v Burstow*** [1998] AC 147, a sustained campaign of stalking and harassment that causes a victim to develop a severe depressive illness amounting to a recognised psychiatric condition can constitute the infliction of grievous bodily harm.

4.5.6 Sentencing Considerations

As an either-way offence with a five-year maximum (5 years), sentencing courts consider a range of factors to assess the offender's culpability and the harm caused.

- **High culpability**: Use of a weapon, premeditation, targeting a vulnerable victim, leading a group attack, or an offence motivated by discrimination.
- **Greater harm**: Injuries which are particularly grave, such as those resulting in permanent disability, permanent visible disfigurement, or a profound and lasting psychological injury.
- **Mitigating factors**: These may include a spontaneous act, genuine remorse, a timely guilty plea, or evidence of previous good character.

In summary, *s.20 OAPA 1861* is a pivotal offence that criminalises the causation of really serious harm through intentional or reckless conduct. Its expansive interpretation by the courts ensures it remains relevant in addressing both traditional violence and contemporary harms, from psychological torture to the transmission of serious disease.

4.6 Wounding or Causing Grievous Bodily Harm with Intent

Section 18 of the *Offences Against the Person Act 1861* constitutes the most serious non-fatal offence in English criminal law. It is an offence of specific intent, reserved for conduct where the perpetrator's purpose, or one of their purposes, is to cause the most severe level of harm short of death. Its gravity is reflected in its status as an indictable-only offence, carrying a maximum penalty of life imprisonment. The offence serves to punish not only the infliction of catastrophic injury but, primarily, the malevolent state of mind that seeks to bring it about.

4.6.1 Statutory Provision and Conceptual Foundation

The statute provides: "Whosoever shall unlawfully and maliciously by any means whatsoever wound or cause any grievous bodily harm to any person… with intent to do some grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of an offence."

The provision of *s.18* creates two distinct pathways to liability, both requiring specific intent:

1. Wounding or causing grievous bodily harm with intent to do some grievous bodily harm.
2. Wounding or causing grievous bodily harm with intent to resist or prevent the lawful apprehension or detainer of any person.

The distinction from a *s.20* offence lies in this elevated *mens rea*. While *s.20* is satisfied by an intention to cause some harm, *s.18* demands proof of an intention to cause really serious harm.

4.6.2 *Actus Reus* of Section 18

The physical elements of the offence are, for practical purposes, identical to those under *s.20*. The prosecution must prove either a "wounding" or that the defendant "caused… grievous bodily harm."

- **Wounding**: This retains its technical definition, requiring a break in the continuity of the whole skin, encompassing both the epidermis and dermis. A deep laceration requiring stitches is a classic example, whereas a severe internal soft-tissue injury or a broken bone, without a break in the skin, is not a wound.
- **Causing grievous bodily harm**: The term "grievous bodily harm" means "really serious harm," as defined in ***DPP v Smith*** [1961] AC 290. This encompasses injuries of the utmost severity, such as injuries resulting in permanent disability, significant and permanent disfigurement, injuries requiring life-altering surgery, or the transmission of a life-changing disease.

As established in ***R v Burstow*** [1997] AC 355, a severe, clinically recognised psychiatric illness can also amount to grievous bodily harm. The use of the verb "cause" in *s.18*, as opposed to "inflict" in *s.20*, has historically been viewed as broader, though the distinction has narrowed significantly. "Cause" clearly includes both direct applications of force and indirect methods of producing harm.

4.6.3 *Mens Rea* of Section 18: The Requirement of Specific Intent

The defining feature of a *s.18* offence is the necessity for the prosecution to prove a specific, ulterior intent. This is a two-stage mental element: the defendant must have acted "maliciously" in the section 20 sense (intending or being reckless as to some harm) *and* must have possessed one of the specific intents listed in the statute.

1. **Intent to Cause Grievous Bodily Harm**

   This is the most common basis for a *s.18* charge. The prosecution must prove that the defendant acted with the purpose of causing really serious harm, or that they foresaw such harm as a virtually certain consequence of their actions.

- **Direct and oblique intent**: The modern test for intention in criminal law, derived from ***R v Woollin*** [1999] 1 AC 82, applies. A jury is entitled to find that a defendant intended grievous bodily harm if: (a) It was their direct purpose or aim (direct intent); or b) They foresaw grievous bodily harm as a virtual certainty as a result of their actions (oblique intent).

- **Distinction from foresight**: Mere foresight that grievous bodily harm was a likely or probable consequence is not enough for *s.18*. This was emphatically confirmed in ***R v Belfon*** [1976] 63 Cr App R 74, where the Court of Appeal quashed a *s.18* conviction because the trial judge had equated foresight of serious harm with intent. The defendant must be shown to have possessed the higher degree of culpability associated with aiming for, or being practically certain of, a really serious outcome.

In ***R v Morrison*** [2003] EWCA Crim 1722, the defendant attacked the victim with a broken bottle, inflicting severe and permanent facial scarring. The Court of Appeal upheld the *s.18* conviction, holding that the use of a weapon of this nature, directed at a vulnerable

part of the body like the face, provided compelling evidence from which a jury could infer a specific intent to cause really serious harm. The court distinguished this from a situation where a single punch might cause an unforeseen serious injury, which would typically fall under section 20.

2. Intent to Resist or Prevent Lawful Apprehension

A *s.18* offence is also committed if the defendant wounds or causes grievous bodily harm with the intent to resist or prevent the lawful arrest or detention of themselves or another. The focus here is on the intent to resist arrest; the harm caused is the mechanism for achieving that goal. For instance, if a suspect deliberately drives a car at a police officer to escape custody, causing the officer grievous bodily harm, they commit the offence even if their primary intent was to flee, not to injure.

4.6.4 Defences

The defences available for a *s.18* charge are notably constrained due to the offence's severity and its nature as a crime of specific intent.

- **Lack of specific intent**: The most common defence strategy is to concede the *actus reus* but argue that the defendant lacked the specific intent to cause grievous bodily harm or resist arrest. If successful, this typically results in a conviction for the lesser included offence under *s.20*. Evidence of intoxication, spontaneous and unpremeditated violence, or the circumstances of the attack can all be relevant to this argument.
- **Intoxication**: Voluntary intoxication can be relevant to a section 18 charge because it is a specific intent offence. Evidence of severe intoxication may support a defence that the defendant was incapable of forming the requisite intent to cause grievous bodily harm. If accepted, this would, again, lead to a conviction under section 20. The courts, however, apply this principle narrowly.
- **Self-defence**: This defence remains available. The defendant must have held a genuine, even if unreasonable, belief that the use of force was necessary (***R v Gladstone Williams*** [1987] 78 Cr App R 276). However, given the level of harm

inherent in a section 18 charge, the jury will scrutinise with extreme care whether the degree of force used was proportionate to the threat as the defendant perceived it.

- **Duress**: The defence of duress is not available for a *s.18* offence. The House of Lords in ***R v Hasan*** [2005] UKHL 22 firmly established that duress cannot be pleaded as a defence to a charge of attempting or committing murder, and by clear analogy, it is also excluded for this most serious non-fatal offence, which also carries a potential life sentence. The law demands that an individual should submit to the threat rather than intentionally inflict really serious harm on an innocent person.

4.6.5 Sentencing Considerations

Given the gravity of *s.18*, sentencing is severe. The Sentencing Council Guidelines provide for high starting points and a wide range of potential sentences.

- **High culpability**: Factors include significant premeditation, the use of a weapon, acting as part of a group, and targeting a vulnerable victim.
- **Greater harm**: Considerations include the extreme nature of the injury, lasting psychological trauma, and the particular vulnerability of the victim.
- **Aggravating factors**: Previous convictions for violence, offences committed while on bail, or demonstrating hostility based on the victim's characteristics will significantly increase the sentence.
- **Mitigation**: A timely guilty plea is the most powerful mitigating factor, potentially reducing the sentence by up to one-third. Evidence of genuine remorse, mental illness, or significant provocation may also be considered, though their weight will be limited by the seriousness of the offence.

4.7 Consent and Its Limits in Cases of Bodily Harm

The defence of consent operates on a fundamental principle of personal autonomy: an individual has the right to agree to what would otherwise be an unlawful application of force to their person. However, this right is not absolute.

The criminal law imposes significant limitations on the power to consent to bodily harm, drawing a line between acceptable and unacceptable infliction of injury based on public policy considerations. The central dilemma is balancing the right of an individual to live their life as they choose against the state's interest in preventing violence and maintaining public order.

4.7.1 The General Rule: Public Policy and the Decision in *R v Brown*

The leading authority on the limits of consent is the House of Lords decision in ***R v Brown*** [1994] 1 AC 212. The defendants had engaged in consensual sado-masochistic activities in private, which involved the intentional infliction of injuries amounting to actual bodily harm, and in some cases, grievous bodily harm, for sexual pleasure. The majority of the House of Lords held that consent was not a valid defence. *Lord Templeman*, giving the leading judgment, famously stated that "the violence of sado-masochistic encounters involves the indulgence of cruelty by sadists and the degradation of victims," and that such conduct was injurious to the participants and had a potential to corrupt public morality. The ruling established that, as a matter of public policy, an individual cannot legally consent to the infliction of actual bodily harm or greater harm, except in certain well-defined and socially accepted exceptions.

This principle was affirmed and its rationale clarified in ***R v Barnes*** [2004] EWCA Crim 3246, where Lord Woolf CJ stated that "it is not in the public interest that adults should cause each other actual bodily harm for no good reason." The question for the court in any case is whether the activity in question has a "good reason" recognised by law.

4.7.2 Recognised Exceptions to the Rule in *Brown*

The courts have consistently upheld consent as a defence in several specific social contexts where the infliction of harm is considered to serve a legitimate and valuable purpose.

1. **Properly Conducted Sports and Games**

   Participants in sporting events impliedly consent to a certain level of force and injury that is inherent in the normal play of the game. This includes the risk of accidental injuries and contacts that are within the rules and spirit of the sport.

However, this consent does not extend to actions that are deliberately violent, malicious, or well outside the accepted norms of the game. In ***R v Barnes*** [2004] EWCA Crim 3246, the Court of Appeal held that a late, high, and reckless tackle on a football pitch that broke an opponent's leg could found criminal liability. The test is objective: would a reasonable participant regard the act as a legitimate part of the sport?

2. Medical and Surgical Treatment

Valid consent is a complete defence to what would otherwise be a battery or a more serious offence during medical treatment. A competent adult patient has the absolute right to consent to or refuse treatment, even where the procedure involves significant bodily harm (e.g., amputation or open-heart surgery).

The defence is predicated on the therapeutic purpose of the intervention and the ethical framework governing the medical profession. Non-therapeutic procedures, such as certain forms of body modification, occupy a more ambiguous space and may fall foul of the public policy rule if they involve the infliction of actual bodily harm or grievous bodily harm.

3. Horseplay

The courts have recognised that consent can be implied in the context of rough, but good-natured, horseplay. In ***R v Jones*** [1987] Crim LR 123, schoolboys who threw other boys into the air, causing injury, had their convictions quashed.

The court found that the victims had willingly participated in the "rough and undisciplined" play, and the defendants had lacked any intention to cause injury. The line is crossed when the activity ceases to be consensual play and becomes an assault.

4.8 Conclusion

In summary, the law of non-fatal offences against the person establishes a clear and logical hierarchy that carefully matches the severity of the crime to the offender's level of culpability. This structure begins with common assault, which protects our basic bodily autonomy from any unwanted touch or threat, and progresses through *ss. 47 and 20* offences, where the focus

shifts to the actual harm caused, whether intended or not. The system culminates with the *s.18* offence, which is reserved for the most serious cases where the defendant specifically intended to cause grievous bodily harm. This graduated approach ensures that the criminal law can respond proportionately to everything from a minor push to a life-altering injury.

Ultimately, this legal framework strives to balance two important principles: the protection of individuals from harm and the respect for personal freedom. The rules on consent perfectly illustrate this tension; while you can consent to a tackle in rugby or necessary surgery, you cannot consent to being seriously injured for mere pleasure, as established in the pivotal case of ***R v Brown***. This reflects the law's role not just in settling disputes between individuals, but in upholding broader public policy and societal welfare. Understanding this structure from the elements of each offence to the limits of valid defences, provides a complete picture of how the law safeguards the fundamental right to live free from violence.

5

HOMICIDE OFFENCES

Homicide, defined as the unlawful killing of a human being, constitutes the most grave category of criminal offences within the legal system of England and Wales. This area of law is characterized by a nuanced hierarchy of criminal liability, designed to carefully distinguish between different levels of moral blameworthiness. The fundamental division lies between murder, which requires the highest level of criminal intent, and manslaughter, which is further categorized into voluntary and involuntary forms.

Voluntary manslaughter applies where mitigating circumstances, such as loss of control or diminished responsibility, reduce the culpability of what would otherwise be murder. Involuntary manslaughter, by contrast, encompasses situations where a death is caused by an unlawful or grossly negligent act, but without any intent to kill or cause serious harm.

This chapter will provide a comprehensive analysis of each category, examining their legal definitions, essential elements, and the pivotal case law that has shaped their modern interpretation. Furthermore, it will explore the complex moral and legal dilemmas that underpin the law of homicide, reflecting society's evolving understanding of justice, responsibility, and the value of human life.

5.1 Murder

5.1.1 Definition and Nature of the Offence

Murder is a common law offence, meaning its definition has been developed and refined through centuries of judicial precedent rather than by a specific statute. The classical

definition, articulated by *Sir Edward Coke* in the 17th century, remains the foundational statement of the law: "The unlawful killing of a reasonable creature in being under the Queen's peace with malice aforethought, express or implied."

While the language is archaic, this definition continues to provide the essential framework, encapsulating both the physical act (*actus reus*) and the mental element (*mens rea*) required for a conviction. Modern courts interpret and apply this definition, supplementing it with contemporary judicial authority and statutory interventions, particularly concerning the precise meaning of intention and the availability of defences. Murder is an indictable-only offence, meaning it must be tried before a judge and jury in the Crown Court, reflecting its utmost seriousness.

5.1.2 *Actus Reus* of Murder

The *actus reus* of murder requires the prosecution to prove three key elements beyond a reasonable doubt: an unlawful killing, of a human being, in circumstances of peace.

1. **Unlawful killing**: The killing must be without legal justification or excuse. This excludes killings carried out in lawful self-defence, where the force used is both necessary and proportionate, as established in ***R v Beckford*** [1988] AC 130. Similarly, killings by the state in the lawful execution of justice, or by soldiers in the course of lawful combat, are not considered unlawful for the purposes of murder.

2. **A reasonable creature in being**: This phrase refers to a living human being. The law requires that the victim was born alive and capable of independent existence; the killing of a foetus *in utero* does not constitute murder, though it may be charged as a separate offence. Furthermore, a person who has been declared legally brain-dead is no longer considered a "reasonable creature in being," as confirmed in ***R v Malcherek and Steel*** [1981] 1 WLR 690, where it was held that switching off life support for such a person does not break the chain of causation from the original injury.

3. **Under the Queen's Peace**: This element excludes acts of killing committed by lawful combatants during a time of war. All other unlawful killings within the jurisdiction of England and Wales are considered to be under the Queen's peace.

5.1.3 *Mens Rea* of Murder: Malice Aforethought

The mental element, or *mens rea*, for murder is known as "malice aforethought." This is a technical legal term that does not imply spite or premeditation in the everyday sense. Instead, it is satisfied by proving either of the following states of mind:

1. An intention to kill.
2. An intention to cause grievous bodily harm.

The principle that an intention to cause grievous bodily harm is sufficient for murder was firmly established in ***R v Cunningham*** [1982] AC 566, affirming that it is not necessary for the prosecution to prove an intent to kill. The courts assess intention subjectively, focusing on what was in the defendant's own mind. Two forms of intention are recognised:

- **Direct intention**: This is present where the defendant's purpose, aim, or objective was to bring about the victim's death or serious harm.
- **Oblique intention**: This arises where the defendant's primary purpose was something else, but they foresaw that death or serious harm was a virtually certain consequence of their actions. The leading case of ***R v Woollin*** [1999] 1 AC 82 clarified that a jury is not obliged to find intention in such circumstances, but they may do so if they are satisfied that the defendant foresaw the outcome as a virtual certainty.

5.1.4 Causation

For a murder conviction, the defendant's conduct must be both the factual and legal cause of the victim's death.

1. **Factual causation**: This is determined by the "but for" test: but for the defendant's actions, would the victim have died when they did? In ***R v White*** [1910] 2 KB 124, the defendant put cyanide in his mother's drink, but she died of a heart attack before the poison could take effect. He was not the factual cause of her death and was therefore convicted of attempted murder, not murder.
2. **Legal causation**: The defendant's act must be a substantial and operating cause of the death. The courts will consider whether any intervening act (*novus actus*

interveniens) was so significant as to break the chain of causation. In ***R v Cheshire*** [1991] 1 WLR 844, medical negligence in treating the victim's gunshot wound did not break the chain because the original wound remained a significant cause of death. For an intervening act to break the chain, it must be something so daft, unexpected, or extraordinary that it eclipses the defendant's contribution.

5.1.5 Sentencing for Murder

Murder is unique in carrying a mandatory life sentence. Upon conviction, the judge has no discretion and must impose a life sentence. However, the court must then set a minimum term that the offender must serve in prison before they can be considered for release by the Parole Board. This minimum term is determined according to guidelines set out in *Schedule 21* of the *Criminal Justice Act 2003*.

- Aggravating factors that lead to a higher minimum term include evidence of premeditation, the use of a firearm, the killing of a child or a police officer, or a murder motivated by race, religion, or sexual orientation.
- Mitigating factors that can reduce the minimum term include the offender's age, a lack of premeditation, or the presence of a mental disorder that fell short of a defence.
- In the most severe cases, such as serial killings or terrorism, a whole life order may be imposed, meaning the offender will never be released. It is important to note that a life sentence means the offender is subject to licence conditions for the rest of their life, even if released from prison.

5.2 Voluntary Manslaughter

5.2.1 Definition and Conceptual Foundation

Voluntary manslaughter occupies a unique and critical space within homicide law. It applies in circumstances where the defendant has undeniably committed the *actus reus* and *mens rea* of murder, that is, they have unlawfully killed another person with the intention to kill or cause grievous bodily harm. However, the law recognises that certain mitigating

circumstances can significantly reduce the defendant's moral blameworthiness, warranting a conviction for the less serious offence of manslaughter rather than murder.

This legal mechanism allows for a more nuanced and just outcome, acknowledging that not all intentional killings warrant the mandatory life sentence attached to murder. The two principal partial defences that can lead to a verdict of voluntary manslaughter are Loss of Control and Diminished Responsibility. Both are statutory defences, and the legal burden rests on the defence to prove their existence on the balance of probabilities, often relying on a combination of factual evidence and expert testimony.

5.2.2 Loss of Control

This statutory defence, introduced by the *Coroners and Justice Act 2009*, replaced the outdated common law defence of provocation. The reform aimed to address criticisms that the old law was too subjective, potentially legitimised male possessiveness and jealousy, and failed to adequately protect victims of long-term abuse who might not react with immediate violence.

Key Elements of the Defence

For the defence to succeed, the defendant must prove three core elements:

1. **A Loss of Self-Control**

   The defendant must have actually lost their self-control at the time of the killing. Crucially, and in a significant departure from the old law, this loss of control does not need to have been sudden. This change was specifically designed to accommodate situations like "slow-burn" reactions in cases of prolonged domestic abuse, where a final, triggering event may cause a loss of control that has built up over time, as recognised in ***R v Dawes*** [2013] EWCA Crim 322. However, the loss must be genuine; a calculated revenge attack will not qualify.

2. **A Qualifying Trigger**

   The loss of control must have been caused by a specific, legally recognised trigger. S*ection 55* of the Act defines these as:

- **Fear of serious violence**: The defendant feared serious violence from the victim against themselves or another identified person. For example, if David, after years of being bullied and assaulted by a neighbour, finally snaps and kills the neighbour during a physical confrontation that David genuinely believed would cause him serious harm, this trigger may be engaged.
- **Things said or done**: These must have constituted circumstances of an "extremely grave character" and caused the defendant to have a "justifiable sense of being seriously wronged." This is a high threshold. For instance, a campaign of severe and degrading harassment by a work colleague that pushes Sarah to a breaking point could potentially meet this standard. The trigger is assessed subjectively (did it affect *this* defendant?) and objectively (was it of an extremely grave character?).

3. The Objective Test

Even if the first two elements are proven, the defence will fail unless a person of the defendant's sex and age, with a normal degree of tolerance and self-restraint, and *in the defendant's circumstances*, might have reacted in the same or a similar way. This crucial objective safeguard ensures that the defence is not available for unreasonably violent responses to minor provocations. The phrase "in the defendant's circumstances" allows for relevant personal characteristics to be considered, such as a history of abuse, but excludes characteristics relevant only to the defendant's general capacity for self-control.

Statutory Exclusions

The Act explicitly excludes the defence in two key scenarios:

- **Revenge killings**: If the defendant acted in a considered desire for revenge, the defence is excluded (*s.54(4)*).
- **Sexual infidelity**: Sexual infidelity alone cannot constitute a qualifying trigger (*s.55(6)(c)*). However, as established in ***R v Clinton*** [2012] EWCA Crim 2, evidence of infidelity may be considered as part of a broader context of "things said or done" that gave the defendant a justifiable sense of being seriously wronged. For example, if a spouse not only reveals an affair but also taunts their partner with cruel and

humiliating details in a context of ongoing psychological abuse, the infidelity may form part of the overall qualifying trigger.

5.2.3 Diminished Responsibility

The defence of diminished responsibility provided for in *s.2* of the *Homicide Act 1957* acknowledges that individuals suffering from significant mental disorders may not be fully accountable for their actions, even if they technically fulfil the definition of murder. A successful plea results in a manslaughter verdict, granting the judge full sentencing discretion, which can include a hospital order, rather than the mandatory life sentence for murder.

Requirements of the Defence

The defence, as amended by the *Coroners and Justice Act 2009*, must establish four key requirements on the balance of probabilities:

1. **Abnormality of mental functioning**: The defendant was suffering from an "abnormality of mental functioning." This is a legal, not a medical, term but it must be grounded in medical evidence.
2. **Recognised medical condition**: The abnormality must arise from a "recognised medical condition." This broad category includes conditions such as severe depression, schizophrenia, post-traumatic stress disorder (PTSD), and autism spectrum disorders. This modernised formulation is more inclusive and medically coherent than the previous law.
3. **Substantial impairment**: The abnormality must have substantially impaired the defendant's ability to understand the nature of their conduct; to form a rational judgment; or to exercise self-control.
4. **Causal explanation**: The abnormality must provide an explanation for the defendant's acts or omissions in killing the victim. It must be a significant cause of the killing, not merely a trivial or background factor, as confirmed in ***R v Dietschmann*** [2003] UKHL 10.

Burden of Proof and Expert Evidence

The burden of proving diminished responsibility rests with the defence. This almost always necessitates the presentation of expert psychiatric or psychological evidence to diagnose the recognised medical condition and explain how it substantially impaired the defendant's mental responsibilities at the time of the offence.

The case of ***R v Golds*** [2016] UKSC 61 provided crucial clarification on the meaning of "substantial impairment." The Supreme Court held that "substantial" means "something of real importance or effect," signifying an impairment that is "more than trivial or minimal." It does not need to be total or overwhelming. This ruling guides juries in their task, ensuring they carefully evaluate the extent of the impairment based on the expert and factual evidence presented, without setting an impossibly high threshold for the defence to meet. For instance, if Michael, suffering from a severe depressive episode that distorts his perception of reality, kills a family member under the delusion that he is saving them from a terrible fate, his ability to form a rational judgment is substantially impaired, potentially satisfying the requirements for diminished responsibility.

5.3 Involuntary Manslaughter

5.3.1 Definition and Conceptual Foundation

Involuntary manslaughter encompasses unlawful killings where the defendant lacks the specific intent to kill or cause grievous bodily harm required for murder. This category of homicide addresses situations where a death is caused not by a deliberate attack, but by either a dangerous criminal act or by a catastrophic failure to meet a standard of care. It serves a vital function in the criminal justice system by holding individuals accountable for fatal consequences resulting from highly culpable behaviour, even in the absence of malicious intent. The law recognises that such conduct, while not murderous, demonstrates a serious disregard for the safety and lives of others that warrants criminal sanction. There are two principal forms of involuntary manslaughter: unlawful act manslaughter (also known as constructive manslaughter) and gross negligence manslaughter.

5.3.2 Unlawful Act Manslaughter (Constructive Manslaughter)

This form of manslaughter imposes liability where a death results from the defendant's commission of a criminal act, even if the defendant did not foresee, intend, or appreciate any risk of harm to the victim. It is termed "constructive" because the *mens rea* for the underlying offence is "constructed" into the *mens rea* for manslaughter.

Key Elements of the Offence

For a conviction, the prosecution must prove three core elements beyond a reasonable doubt:

1. **An Unlawful Criminal Act**

   The defendant must have committed a positive, deliberate act that constitutes a criminal offence. This act cannot be a mere omission or a civil wrong (tort). For instance, in ***R v Lamb*** [1967] 2 QB 981, the defendant pointed a revolver at his friend as a joke, not knowing it would fire. His act was unlawful, satisfying this element. The base offence can range from assault to criminal damage, provided it is not a minor regulatory infraction.

2. **An Objectively Dangerous Act**

   The unlawful act must be one that all sober and reasonable people would inevitably recognise as subjecting another to some risk of harm, albeit not serious harm. This is a purely objective test; the defendant's own perception of the risk is irrelevant. The threshold is low. For example, if Jake pushes Tom during an argument, a sober and reasonable person would recognise this carries a risk of some harm (e.g., a fall), even if Jake never intended for Tom to fall and hit his head.

3. **Causation**

   The unlawful act must be both the factual and legal cause of the victim's death. The normal principles of causation apply. An intervening act will only break the chain of causation if it is so extraordinary and unforeseeable as to eclipse the defendant's original act. In ***R v Pagett*** [1983] 76 Cr App R 279, the defendant used his pregnant girlfriend as a human shield and shot at police, who returned fire, killing the girl. The court held that Pagett's unlawful acts were a substantial cause of her death.

In ***R v Mitchell*** **[1983] QB 741**, The defendant started a fight in a post office queue, pushing one man who fell against an elderly woman, Mrs. Brown. Mrs. Brown fell, suffered a broken leg, and later died from a pulmonary embolism caused by the injury. Mitchell was convicted of unlawful act manslaughter. The court held that his unlawful assault on the first man was dangerous, and it caused Mrs. Brown's death, even though she was an unintended victim and the chain of events was somewhat unusual. This case demonstrates the doctrine's wide reach.

Limitations and Critical Evaluation

The doctrine of unlawful act manslaughter has been subject to criticism for its constructive nature. It can lead to convictions where the defendant's moral culpability is low, as they may have had no foresight of any harm. For instance, a young person who shoplifts and accidentally causes a fatal accident during their escape may face a manslaughter charge, despite the minor nature of the initial crime and the unforeseeability of the outcome. The exclusion of omissions and the requirement for a base criminal offence are key limitations that prevent the offence from being applied too broadly, but the objective test of dangerousness ensures it captures a wide range of socially dangerous conduct with fatal consequences.

5.3.3 Gross Negligence Manslaughter

This form of manslaughter applies where a person causes death through a catastrophic breach of a duty of care they owed to the victim. It is particularly relevant in professional contexts, such as medicine, employment, and driving, where individuals hold significant responsibility for the safety of others.

The Test for Gross Negligence Manslaughter

The leading authority is ***R v Adomako*** [1995] 1 AC 171, which established a four-stage test that the prosecution must prove:

1. **The Existence of a Duty of Care**

   The defendant must have owed a duty of care to the deceased. This is determined by applying the principles of the civil law of negligence. Such a duty can arise from various

relationships, including doctor-patient, employer-employee, or occupier-visitor. For example, a factory owner owes a duty to their employees to provide safe machinery.

2. A Breach of that Duty

The defendant must have breached the duty of care by failing to meet the standard of a reasonable person in their position. In a professional context, this means falling below the standard of a reasonably competent professional. For instance, a nurse who administers a clearly incorrect and potent drug without checking the prescription has breached their duty.

3. Causation of Death

The breach of duty must have caused the death. The prosecution must prove that, "but for" the defendant's breach, the victim would not have died, and that the breach was a substantial and operating cause of the death.

4. Gross Negligence

The breach must be so serious that it amounts to a "gross" breach of the duty. This is the crucial element that elevates civil negligence to a criminal offence. The conduct must demonstrate such a disregard for the life and safety of others as to be characterised as criminal. As stated in ***R v Misra and Srivastava*** [2004] EWCA Crim 2375, the negligence must be "so reprehensible" that it warrants criminal punishment.

In ***R v Rose*** [2017] EWCA Crim 1168, an optometrist failed to identify signs of a brain tumour during an eye test of a child, Vincent Barker. The child later died from the tumour. The optometrist was convicted of gross negligence manslaughter. The Court of Appeal upheld the conviction, finding that his failures were " exceptionally bad" and demonstrated a "flagrant" disregard for his patient's safety, thereby satisfying the test for gross negligence. This case highlights the application of the doctrine to professional roles where the public places significant trust.

5.4 Conclusion

In conclusion, the law of homicide establishes a clear system that matches punishment to the offender's level of blame. Murder represents the most serious category, requiring proof that the defendant intentionally killed someone or meant to cause them very serious harm. This offence carries a mandatory life sentence, reflecting society's strongest condemnation for taking another person's life with malicious intent. However, the law wisely recognizes that not all killings are equally blameworthy, which is why it developed the category of manslaughter to allow for more nuanced outcomes.

The distinction between voluntary and involuntary manslaughter further refines this system. Voluntary manslaughter applies when someone intentionally kills but does so under extreme circumstances, such as losing control after serious provocation or suffering from a recognized mental condition that substantially impairs their judgment. Involuntary manslaughter covers cases where death results from either dangerous criminal behaviour or extreme carelessness, even when there was no intention to kill. This careful grading of offences ensures that the criminal law can respond justly to the wide range of situations in which one person causes another's death, balancing accountability with fairness in our justice system.

6

PRINCIPAL AND SECONDARY OFFENDERS

In the popular imagination, a criminal is often the individual who physically commits the unlawful act; the one who fires the gun, takes the property, or delivers the fatal blow. However, the net of criminal liability in English law is cast much wider. It is a fundamental principle that justice must also hold accountable those who operate in the shadows: the planners, the encouragers, the helpers, and even those who take substantial steps towards a crime that is never completed.

This chapter explores the legal doctrines that address these facets of criminal participation. We will dissect the distinction between principal offenders and accomplices, and then move beyond completed crimes to examine liability for encouraging or assisting offences, even when the planned crime does not come to pass. A firm grasp of these concepts is indispensable for the SQE1, as it allows for the nuanced analysis of complex scenarios involving group criminality and thwarted intentions.

6.1 Parties to a Crime: Principals and Accomplices

When a crime is committed, English law categorises those involved into two primary roles: the principal offender and secondary parties (often termed accomplices). This distinction is crucial for understanding how liability is attributed to everyone involved in a criminal enterprise.

6.1.1 Principal Offenders

A principal offender is the person who performs the *actus reus* of the offence with the requisite *mens rea*. In simpler terms, they are the one whose actions, guided by a guilty mind, directly constitute the crime. For example, if Sarah deliberately strikes Thomas, she is the principal offender in a battery.

Joint Principals

It is common for individuals to act together. Where two or more people participate in a criminal act with a shared intention and coordinated action, they can be held liable as joint principals. Their individual roles may differ, but their collective purpose unites them in liability.

Example: Chloe and David plan to rob a convenience store. They enter together; Chloe threatens the shopkeeper with a fake gun to secure their compliance, while David empties the cash register. Both Chloe and David are joint principals to the robbery. Although their physical acts were different, they were acting in concert pursuant to a common plan to steal using force.

This concept was historically governed by the controversial doctrine of "joint enterprise," which could impose liability for unforeseen actions of a co-defendant. However, the landmark Supreme Court case of ***R v Jogee*** [2016] UKSC 8 fundamentally clarified the law.

The court held that for secondary liability (and by extension, joint principal liability where a common purpose is alleged), mere foresight that a co-defendant *might* commit an offence is not enough. Instead, there must be evidence of a shared intention; that is, the defendant must have intended to assist or encourage the principal in committing the crime.

6.1.2 Secondary Parties (Accomplices)

A secondary party is someone who does not physically commit the crime but contributes to its commission through assistance, encouragement, or facilitation. Their liability is derivative, meaning it flows from the crime committed by the principal. The law recognises four main forms of secondary participation:

1. Aiding

Aiding involves providing help, support, or assistance to the principal offender before or during the commission of the crime. The key element is that the aid must be tangible; it must make a material contribution to the ease with which the crime is committed. The assistance can be physical, such as supplying tools or weapons, or it can be practical, such as performing a role essential to the criminal plan.

Example

Consider a planned bank robbery. The individual who supplies the firearms, stolen cars, and blueprints for the bank's alarm system is clearly aiding the offence. Similarly, a person who acts as a getaway driver, waiting with the engine running to facilitate a swift escape, is providing direct and crucial assistance.

The case of ***R v. Giannetto*** [1997] 1 Cr App R 1 is a classic illustration. The defendant, Mr. Giannetto, was convicted as a secondary party to murder after he was found to have provided assistance by driving the principal offender to the victim's house and acting as a lookout. Although he did not strike the fatal blow, his intentional actions in support of the killer rendered him liable for the same offence. The court held that his presence and active assistance, knowing the criminal purpose, constituted aiding.

2. Abetting

Abetting refers to the act of encouraging, instigating, or inciting the principal offender at the very time the offence is being committed. Unlike counselling, which occurs beforehand, abetting is contemporaneous with the crime. This encouragement can be through words of affirmation, gestures (like a nod or a signal), or mere presence that is intended to bolster the principal's resolve, provided the presence is for the purpose of encouragement.

Example

Imagine a street fight where one person, Alex, is assaulting another. If Alex's friend, Ben, stands nearby shouting, "Hit him harder! He deserves it!", Ben is abetting the assault. His words are intended to encourage and sustain Alex's actions as they happen.

A pivotal case is ***R v. Clarkson*** [1971] 1 WLR 1402. Two soldiers heard a woman being raped in another room and entered to watch, doing nothing to stop it. While their mere presence alone was not sufficient for liability, the court directed that if their presence was intended to encourage the perpetrators by showing approval or moral support, they would be guilty of abetting. The case underscores that abetting requires a positive intention to encourage, which can be inferred from the circumstances.

3. Counselling

Counselling involves advising, recommending, persuading, or instructing another person to commit a crime. This form of secondary liability occurs prior to the commission of the offence. The counsellor sets the criminal plan in motion through their influence over the principal. It is not necessary for the counsellor to be present at the scene of the crime; their liability stems from their prior instigation.

Example

A senior member of a gang instructs a junior member to set fire to a rival's business to intimidate them. The senior member has counselled the crime of arson. Similarly, if a person provides detailed instructions on how to bypass a security system to commit a burglary, they are counselling that offence.

The leading authority is ***R v. Calhaem*** [1985] QB 808. The defendant, Mrs. Calhaem, persistently solicited a hired killer, Zajac, to murder a woman. Zajac did indeed kill the victim. Mrs. Calhaem was convicted of murder as a secondary party. The court held that her actions in procuring and counselling the murder made her liable, even though she was miles away when the crime occurred. Her words and payments were the catalyst for the offence.

4. Procuring

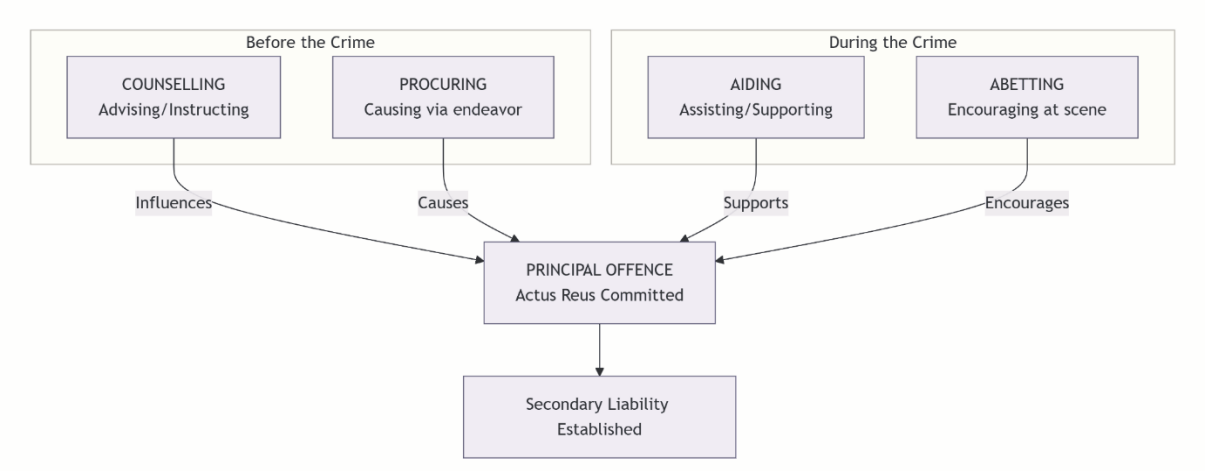
Procuring means to "produce by endeavour." It involves bringing about the commission of a crime by setting things in motion, often through deceit, manipulation, or arrangement. A unique feature of procuring is that it does not require a "meeting of

minds" or common intention with the principal offender. In fact, a classic case of procuring is when an innocent agent is tricked into performing the illegal act.

Example

An individual, wanting to destroy a competitor's warehouse, places a bomb inside a parcel and sends it via an unsuspecting courier service. The courier, having no knowledge of the bomb, delivers the parcel, which then explodes. The sender has procured the criminal damage. They have caused the crime to be committed through the innocent actions of the courier.

The case of ***Attorney General's Reference (No. 1 of 1975)*** [1975] QB 773 is definitive. The defendant laced his friend's drink with a large amount of alcohol without his knowledge and then encouraged him to drive home. The friend, now over the legal alcohol limit but unaware of it, was arrested for drink-driving. The defendant was convicted of procuring the offence of driving with excess alcohol. The court established that to procure means "to produce by endeavour," and the defendant had clearly set out to cause the offence to be committed by the principal, who was an innocent agent in the scheme.



Legal Requirements for Accomplice Liability

For someone to be convicted as an accomplice, two fundamental conditions must be satisfied:

1. **A crime must be committed by a principal**: There must be a complete offence with both *actus reus* and *mens rea*. It is important to note, however, that the principal offender does not necessarily have to be identified or convicted; it is enough that the evidence proves someone committed the crime.
2. **The accomplice must have the required *mens rea***: The secondary party must have: Intentionally aided, abetted, counselled, or procured the offence; and known or believed in the essential facts that constitute the offence. This does not require knowledge of every precise detail, but rather the core criminal purpose.

Example: Liam knows his friend, Michael, plans to burgle a specific house. Liam intentionally lends Michael a crowbar and drives him to the address, waiting nearby. Michael then breaks in and steals jewellery. Liam is liable as an aider and abettor to burglary. He intentionally assisted the crime and knew its essential nature.

6.2 The Problem of "Mere Presence"

A common point of confusion is whether simply being present at the scene of a crime makes one an accomplice. The clear legal rule is that mere presence is not sufficient. Liability is based on a positive act of assistance or encouragement, or an omission where a duty to act exists.

However, presence can be transformed into encouragement if it is designed to, or does in fact, embolden the principal offender. This is particularly true if the person present has a duty to prevent the crime (like a police officer) or has the authority to stop it and deliberately fails to do so.

Example: Tara is with her friend, Ben, when he gets into a heated argument and suddenly punches a stranger. Tara stands by silently and does nothing. If her presence was passive and not intended to encourage Ben, she is likely not an accomplice. However, if she had shouted "Go on, hit him!" or if her presence was part of a plan to provide back-up, her failure to intervene would constitute encouragement, making her liable.

6.3 Encouraging or Assisting an Offence

The law of accomplice liability requires that a principal offence is actually committed. But what about the person who provides a bomb-making manual to a would-be terrorist, who then changes their mind? Or the individual who sells a knife believing it will be used in a murder that never occurs? Traditional accomplice law would not catch these individuals, creating a dangerous gap.

The *Serious Crime Act 2007 (Part 2)* was introduced to fill this gap. It creates a set of inchoate (meaning "just begun" or "undeveloped") offences that criminalise dangerous conduct at an earlier, preparatory stage. The focus shifts from the result to the defendant's own conduct and mental state.

6.3.1 Key Offences under the *Serious Crime Act 2007*

The Act establishes three main offences, each targeting a different level of culpability.

1. ***Section 44*: Intentionally Encouraging or Assisting an Offence**

   This is the most direct offence. A person is guilty if:

   - They do an act that is capable of encouraging or assisting the commission of an offence; and
   - They intend to encourage or assist that offence.

The critical point is that the principal offence does not need to be committed. The crime is complete the moment the defendant performs the act with the requisite intent.

Example: Amelia, who holds a grudge against a local business, intentionally emails Ryan detailed instructions on how to disable the business's fire alarm and set the premises on fire. Ryan reads the email but gets cold feet and never acts. Under traditional accomplice law, Amelia would not be liable for arson, as no crime occurred. However, under *s.44* of the *Serious Crime Act 2007*, Amelia can be prosecuted for intentionally assisting an offence. Her criminal intent, manifested in her actions, is itself the crime.

2. *Section 45*: Encouraging or Assisting an Offence, Believing It Will Be Committed

This section casts a wider net. It applies where the defendant:

- Does an act capable of encouraging or assisting an offence; and
- Believes that the offence will be committed; *and*
- Believes that their act will encourage or assist its commission.

The key distinction from *s.44* is the mental element. Under *s.45*, the defendant does not need to intend for the crime to happen, but they must believe that it will happen and that they are playing a part in it.

Example: Chris works in a hardware store. His customer, Dylan, openly brags about his plan to attack his neighbour later that night. Dylan asks for the sharpest knife in the store. Chris, believing Dylan will use the knife in the assault, sells it to him. Even if Dylan later abandons his plan, Chris can be liable under *s.45*. He performed an act capable of assistance (selling the knife) and held the necessary belief about its use.

3. *Section 46*: Encouraging or Assisting Multiple Offences

This offence deals with situations of uncertainty, where the defendant's assistance could be used for one of several possible crimes. A person is guilty under *s.46* if:

- Their act is capable of encouraging or assisting one or more of a number of offences; and
- They believe that one or more of those offences will be committed (but they need not know which one); and
- They believe that their act will encourage or assist one or more of them.

Example: Ethan, a security expert, is paid to advise a criminal gang on how to bypass the alarm systems of a high-street bank. Ethan knows the gang could use this information to commit a burglary (theft), a robbery (theft with force), or criminal damage. Even though the precise offence is unclear, Ethan believes at least one serious offence will be committed and that his advice will assist it. He can be charged under *s.46*.

6.3.2 Defences under the *Serious Crime Act 2007*

The broad scope of these offences is balanced by specific statutory defences, most notably the defence of reasonableness found in *s.50*. A person is not guilty if they can prove that they acted reasonably in the circumstances as they believed them to be. What is "reasonable" will be a question of fact for the jury, considering the seriousness of the anticipated offence, the purpose of the defendant's act, and any authority or justification they had.

6.4 Conclusion

This chapter has demonstrated that criminal liability extends far beyond the person who physically commits an offence. The legal framework governing principals and secondary parties ensures that all participants in a criminal enterprise can be held accountable for their roles. The crucial distinction lies between principal offenders, who directly carry out the illegal act, and accomplices, who aid, abet, counsel or procure the offence. Through cases like ***R v Jogee***, the law has clarified that secondary liability requires genuine participation in the criminal purpose, not merely foresight of what others might do. This principle maintains fairness while ensuring justice reaches those who contribute to crime from the shadows.

Furthermore, the *Serious Crime Act 2007* addresses the vital need to prevent harm before it occurs. By creating offences for encouraging or assisting crime, even when no principal offence is committed, the law targets dangerous conduct at its earliest stages. This comprehensive approach, combining traditional accomplice liability with modern inchoate offences, provides a complete legal toolkit for dealing with group criminality and thwarted plans. Understanding these interconnected doctrines is essential for navigating the complex reality of how crimes are actually planned, committed, and prevented in modern society.

7

FRAUD AND DISHONESTY OFFENCES

Fraud and dishonesty offences represent a significant and evolving area of criminal law, designed to protect the economic interests of individuals, businesses, and the state. Deceptive practices undermine the trust that is essential for commercial and personal transactions to function effectively. Prior to the *Fraud Act 2006*, the law on fraud was a complex patchwork of common law and statutory offences, which often struggled to keep pace with modern technology and sophisticated criminal schemes. The *2006 Act* consolidated and simplified this area, creating a more coherent and adaptable framework.

This chapter will provide a comprehensive examination of the three main ways the Act criminalises fraudulent conduct: by false representation (*s.2*), by failing to disclose information (*s.3*), and by abuse of position (*s.4*). We will dissect the legal elements of each offence, explore key case law, and illustrate their application through practical examples. Understanding these offences is crucial for any student of criminal law, as they are among the most commonly prosecuted crimes in the modern era.

7.1 Fraud by False Representation

Fraud by false representation is the most direct and commonly encountered form of fraud. It criminalises the act of deceiving another person through a lie or misleading information, with a dishonest intention to gain or cause loss. The offence is set out in *s.2* of the *Fraud Act 2006*.

The section provides that a person is in breach of this section if he (a) dishonestly makes a false representation, and (b) intends, by making the representation

(i) to make a gain for himself or another, or
(ii) to cause loss to another or to expose another to a risk of loss.

To secure a conviction, the prosecution must prove three core elements beyond a reasonable doubt: 1) a False Representation, 2) Dishonesty, and 3) an Intent to Gain or Cause Loss.

7.1.1 Element 1: The False Representation

A "representation" is any communication of information, whether express or implied. It can be spoken, written, or conveyed through conduct. The representation is "false" if it is untrue or misleading, and the person making it knows that it is, or might be, untrue or misleading.

- **Express representation**: A clear and direct statement. For example, David tells a car insurer that his vehicle is garaged overnight, when in fact it is parked on the street, to secure a lower premium.
- **Implied representation**: This occurs through conduct. For example, when Chloe uses a stolen credit card to pay for goods, she is implicitly representing that she is the lawful owner of the card and has the authority to use it.
- **Representation as to fact or law**: The falsehood can relate to a fact (e.g., "this painting is a genuine Picasso"), a state of mind (e.g., "I intend to repay this loan"), or the law (e.g., "you are legally required to pay this fee").
- **Means of representation**: The Act is technology-neutral. The representation can be made via email, a website, text message, or even by configuring a machine. For instance, manipulating a chip and PIN terminal constitutes a representation to the banking system.

In ***R v Barnard*** [1837] 173 ER 342, the defendant entered a shop wearing the cap and gown of Oxford University, implying he was a student to obtain credit. His conduct was held to be a false representation.

7.1.2 Element 2: Dishonesty

The representation must be made dishonestly. The test for dishonesty, following the landmark case of ***Ivey v Genting Casinos*** [2017] UKSC 67, is a two-stage objective test:

1. What was the defendant's actual state of knowledge or belief as to the facts? This is a subjective question. The court must establish what the defendant genuinely knew or believed at the time of the act.
2. Given that state of knowledge or belief, was the defendant's conduct dishonest by the standards of ordinary decent people? This is an objective question. The jury applies the standards of the reasonable person, not the defendant's own personal standards.

This test replaced the more complex two-limb test from ***R v Ghosh*** [1982] 3 WLR 110, which required the jury to also find that the defendant realised their actions were dishonest by those reasonable standards. The ***Ivey*** test is now the definitive standard for dishonesty across all fraud offences.

Scenario: Imagine a salesperson, Ben, who is encouraged by his manager to use exaggerated claims about a product's capabilities. Ben knows the claims are untrue. Under the ***Ivey*** test, the jury would first determine that Ben knew the claims were false. They would then decide whether a reasonable person, knowing what Ben knew, would consider his actions dishonest. The manager's encouragement is irrelevant to this objective standard.

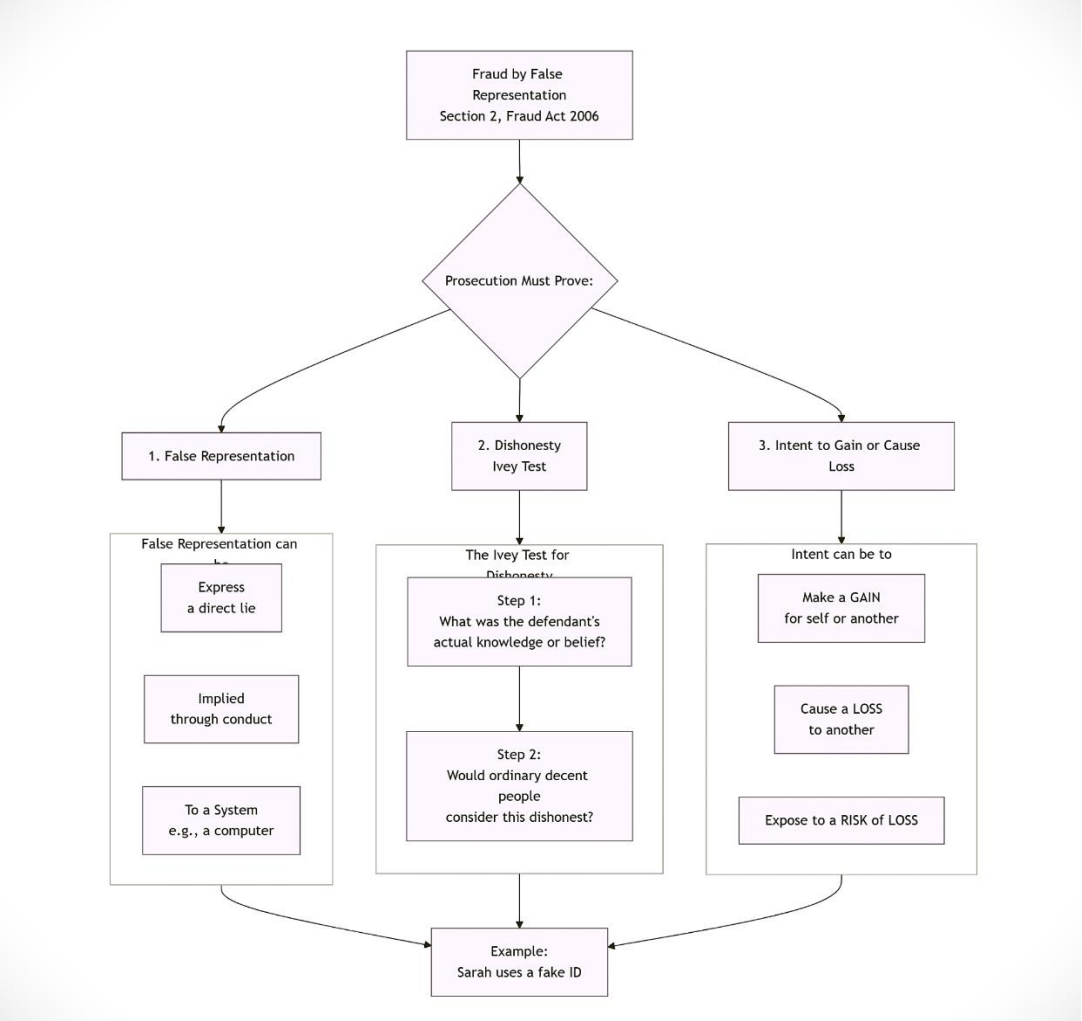
7.1.3 Element 3: Intent to Make a Gain or Cause a Loss

The defendant must have intended, by making the false representation, to achieve one of the outcomes listed in the statute. It is crucial to note that the prosecution does not need to prove that an actual gain or loss occurred, only that the defendant intended for it to happen.

- **Gain and loss**: These are defined in Section 5 of the Act. "Gain" includes gaining property, money, or other intangible benefits. "Loss" includes not getting what one might have acquired, as well as being deprived of what one already possesses.

- **For himself or another**: The intent can be to benefit the defendant or a third party. For example, if Sophie lies on a loan application to get money for her brother's business, she still intends to make a gain for "another."
- **Risk of loss**: It is sufficient if the defendant intended to expose another to a risk of loss, even if that loss was not certain. For instance, using a fake ID to obtain credit exposes the lender to a risk of financial loss.

Scenario: A surgeon named Dr. Evans submits invoices to a private healthcare provider for complex surgical procedures he never performed. He makes a false representation (the invoices), acts dishonestly (he knows he did not perform the work), and intends to make a gain (the payment for the fake procedures).



7.2 Fraud by Abuse of Position

Fraud by abuse of position criminalises the betrayal of trust within a relationship where one person is expected to safeguard the financial interests of another. Unlike fraud by false representation, this offence does not necessarily involve a positive act of deception; it can be committed by an omission or a failure to act. It targets the exploitation of a privileged position. *Section 4* of the *Fraud Act 2006* provides that a person is in breach of this section if he (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person, (b) dishonestly abuses that position, and (c) intends, by means of the abuse of that position

(i) to make a gain for himself or another, or
(ii) to cause loss to another or to expose another to a risk of loss.

7.2.1 Element 1: Occupation of a Position of Trust

The defendant must occupy a position where there is a legal, professional, or moral expectation that they will look after another's financial interests, or at the very least, not act against them. This is a broad concept and can arise in various contexts:

- **Fiduciary relationships**: The clearest examples, such as a director of a company, a trustee, or a solicitor acting for a client.
- **Employment**: An employee entrusted with company funds or sensitive financial data.
- **Care relationships**: A family member or professional carer who manages the finances of an elderly or vulnerable person.
- **Agency**: A financial advisor or an estate agent acting on behalf of a client.

The key is the expectation. This can be formalised in a contract or can be an informal understanding based on the nature of the relationship.

Example: Michael is appointed as the attorney for his elderly aunt under a Lasting Power of Attorney. He is legally in a position where he is expected to manage her assets for her benefit, not his own.

7.2.2 Element 2: Dishonest Abuse of That Position

The defendant must dishonestly abuse their position. "Abuse" is not defined in the Act and takes its ordinary meaning. It can include:

- **Positive acts**: Actively using one's authority for an unauthorized purpose. For example, a company director, Linda, approves a loan from company funds to her own private business venture without shareholder approval.
- **Omissions (failure to act)**: Failing to perform a duty that safeguards another's financial interests. For example, a security guard, Tom, who is paid to prevent theft, deliberately looks the other way while an accomplice steals stock, in exchange for a share of the proceeds.

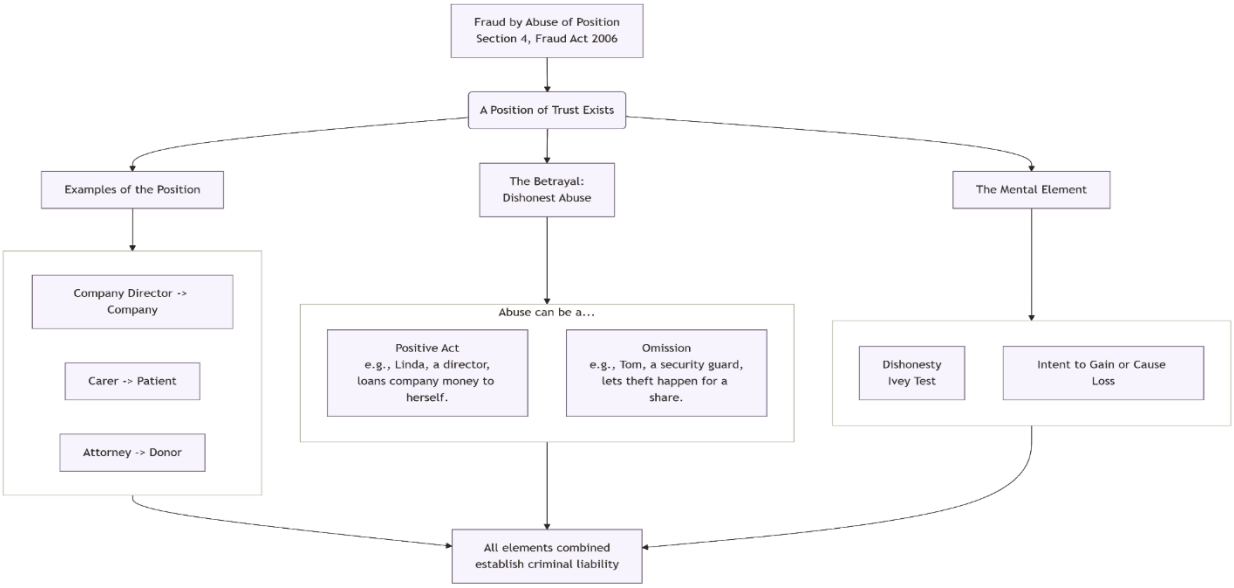
The test for dishonesty is the same two-stage *Ivey* test applied to fraud by false representation. The jury must ascertain the defendant's knowledge and then judge their conduct by the standards of ordinary decent people.

In ***R v Barton & Booth*** [2020] EWCA Crim 575, the defendant, a care home owner, cultivated relationships with wealthy, vulnerable residents and manipulated them into making large financial "gifts" to him and changing their wills in his favour. The Court of Appeal upheld his conviction for fraud by abuse of position, stating his actions were a gross betrayal of the trust placed in him.

7.2.3 Element 3: Intent to Make a Gain or Cause a Loss

As with *s.2*, the defendant must have intended to achieve a gain or cause a loss through the abuse of their position. The gain or loss can be for themselves or another.

Example: A payroll officer, James, who has access to the salary system, secretly adds a small, unauthorized "bonus" to his own monthly pay. He occupies a position of trust (managing payroll), abuses it dishonestly (altering his pay), and intends to make a gain (the extra money).



7.3 Fraud by Failure to Disclose Information

This offence targets dishonesty through silence. It criminalises the intentional withholding of information that a person is legally obliged to disclose, where the intention is to make a gain or cause a loss. It is an offence of omission, rather than commission. *Section 3* of the *Fraud Act 2006* provides that a person is in breach of this section if he (a) fails to disclose to another person information which he is under a legal duty to disclose, and (b) intends, by failing to disclose the information;

(i) to make a gain for himself or another, or
(ii) to cause loss to another or to expose another to a risk of loss.

7.3.1 Element 1: The Existence of a Legal Duty to Disclose

This is the cornerstone of the offence. The duty must be a legal duty to disclose information; a mere moral or social duty is insufficient. This legal duty can arise from several sources:

- **Statute**: Many Acts of Parliament impose specific disclosure duties. For example, the *Companies Act 2006* requires directors to disclose certain personal interests in company transactions.
- **Contract**: The terms of a contract may require disclosure. For instance, an insurance contract is *uberrimae fidei* (of the utmost good faith), requiring the applicant to disclose all material facts that would influence the insurer's decision.
- **Custom and practice**: In certain established commercial relationships, a duty to disclose may arise from the custom of that trade or industry.
- **Fiduciary relationship**: A person in a fiduciary position (e.g., a trustee) has a duty to disclose all relevant information to their beneficiary.

The prosecution must clearly identify the source of the legal duty.

Example: Robert is applying for life insurance. The application form asks, "Have you ever been diagnosed with heart disease?" Robert had a minor heart attack two years prior but leaves this question blank, believing it will lower his premium. He is under a contractual duty (due to the nature of insurance) to disclose this material fact.

7.3.2 Element 2: The Failure to Disclose

The actus reus of the offence is the simple failure to provide the information that one is legally obliged to provide. It is a pure omission.

7.3.3 Element 3: Dishonesty and Intent

The failure to disclose must be dishonest, applying the ***Ivey*** test. Furthermore, the defendant must have intended to make a gain or cause a loss by their silence.

- **Dishonesty**: The jury must ask: knowing that he was under a legal duty to disclose the information (e.g., his heart condition), would ordinary decent people consider Robert's failure to do so dishonest?

- **Intent**: Robert's intention is to gain a financial benefit (the insurance policy at a lower premium) and to cause a loss to the insurer (which is exposed to a much higher risk than it has priced in).

Scenario: A property developer, Ms. Davies, is selling a new-build house. She is aware of a significant structural defect in the foundations, a fact she is legally required to disclose in the property information form. She deliberately conceals this defect to ensure the sale goes through at the full price. Her failure to disclose is dishonest, and she intends to gain the full sale price while causing the buyer a significant future loss.

7.4 Practical Application

While the three offences are distinct, they share the same core mental elements: dishonesty (***Ivey*** test) and an intention to gain or cause loss. The primary difference lies in the actus reus.

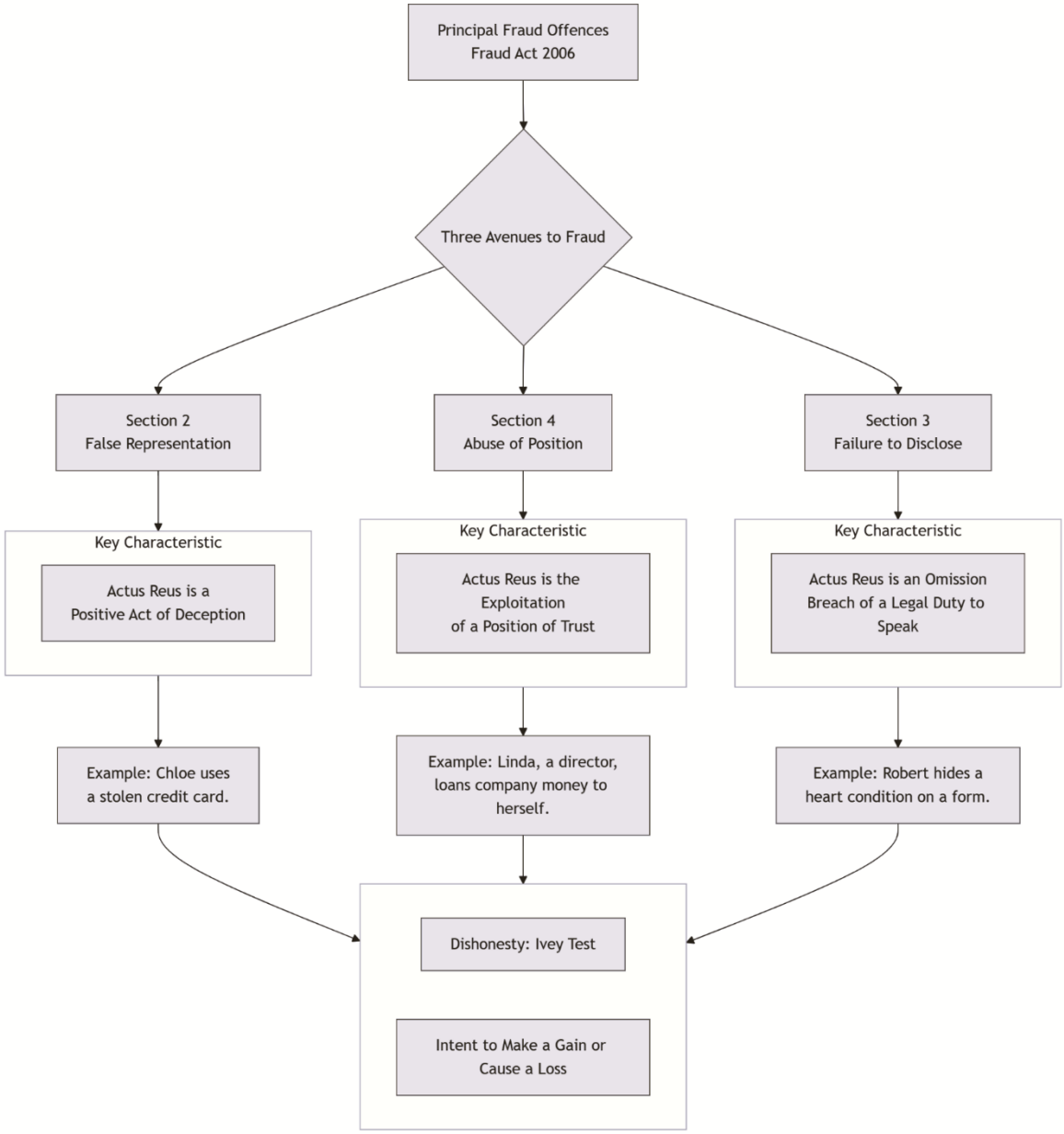
- *Section 2* (False Representation): Requires a positive act of deception.
- *Section 3* (Failure to Disclose): Requires an omission, predicated on a pre-existing legal duty.
- *Section 4* (Abuse of Position): Requires the exploitation of a position of trust, which can be achieved by either a positive act or an omission.

A single course of conduct can sometimes give rise to charges under more than one section. For example, a solicitor (Mr. Adams) who lies to a client (false representation) to hide the fact he is misusing their funds (abuse of position) could be charged under both *ss. 2 and 4*.

The Public Interest

These offences play a vital role in upholding integrity across all sectors of society. They protect vulnerable individuals from exploitation, ensure the smooth functioning of financial markets, and maintain public confidence in professional services. The flexibility of the *Fraud Act 2006* allows it to be effectively used against everything from low-level confidence tricks to complex corporate fraud and cybercrime.

COMPARATIVE ANALYSIS OF THE FRAUD OFFENCES



7.4 Conclusion

The *Fraud Act 2006* provides a modern and comprehensive framework for prosecuting fraudulent conduct. The Act simplifies the law on deception by defining clear categories of

fraudulent conduct; false representation (*s.2*), failure to disclose information (*s.3*), and abuse of position (*s.4*), all unified by the test for dishonesty; the two- stage objective test laid down in ***Ivey v Genting Casinos***. The Act focuses on the defendant's intent rather than the outcome, meaning that liability arises once there is a dishonest intention to gain or cause loss, even if no actual gain or loss occurs. Thus, the prosecution does not need to prove that an actual gain or loss occurred, only that the defendant intended it. This ensures that fraud is prosecuted effectively, reflecting both moral blameworthiness and the need to protect economic integrity.

8

GENERAL AND PARTIAL DEFENCES

Criminal liability is not determined solely by the presence of an *actus reus* and a *mens rea*. The law recognises that there are circumstances where, despite the presence of these elements, it would be unjust to hold an individual fully culpable for their actions. This is the realm of criminal defences. Defences can be broadly categorised into two types: general defences and partial defences.

General defences, such as self-defence, duress, and intoxication, can lead to a complete acquittal if successfully pleaded. They apply to a wide range of crimes and essentially justify or excuse the defendant's conduct. Partial defences, by contrast, are specific to the crime of murder. A successful partial defence does not lead to an acquittal but reduces the conviction from murder to manslaughter, thereby giving the judge discretion in sentencing and avoiding the mandatory life term. This chapter will explore these critical legal concepts, providing a framework for understanding when and how an individual may be exonerated or their culpability mitigated.

PART ONE: GENERAL DEFENCES

8.1 Intoxication

Intoxication is one of the most complex and frequently misunderstood areas of criminal law. The central question is: to what extent does being under the influence of alcohol or drugs

provide a defence? The answer hinges on a crucial distinction: whether the intoxication was voluntary or involuntary.

8.1.1 Voluntary Intoxication

Voluntary intoxication occurs when a person knowingly and willingly consumes an intoxicating substance, such as alcohol or recreational drugs. The general legal principle is that a person who chooses to become intoxicated cannot then use their self-induced state as a shield against criminal liability. The law holds individuals responsible for the consequences of their decision to become intoxicated.

Basic Intent vs. Specific Intent

The key to understanding voluntary intoxication lies in the distinction between crimes of basic and specific intent.

- **Crimes of basic intent**: These are offences where the *mens rea* can be satisfied by recklessness (e.g., assault, battery, criminal damage). Voluntary intoxication is not a defence to these crimes. The reasoning, established in ***R v Caldwell*** [1982] A.C. 341, is that the reckless act of becoming intoxicated itself supplies the necessary fault element.
- **Crimes of specific intent**: These are offences where the *mens rea* requires a specific, ulterior intention that goes beyond the act itself (e.g., murder, which requires an intention to kill or cause grievous bodily harm; theft, which requires an intention to permanently deprive). For these crimes, if the defendant was so intoxicated that they were incapable of forming that specific intent, they may be acquitted of the specific intent offence. However, they will often be convicted of a lesser, basic intent offence (e.g., manslaughter instead of murder).

In ***R v O'Connell*** [2018] EWCA Crim 1210, the defendant, Sean, had consumed a significant amount of alcohol and drugs at a party. During a paranoid episode, he believed his friend, David, was a demonic entity. He attacked David with a fire extinguisher, causing fatal injuries. Medical evidence suggested he was experiencing substance-induced psychosis. The Court of Appeal upheld his conviction for manslaughter. His voluntary intoxication negated the

specific intent required for murder. However, his reckless act of taking the substances provided the necessary *mens rea* for the unlawful act that caused death, leading to a conviction for manslaughter.

8.1.2 Involuntary Intoxication

Involuntary intoxication arises when a person becomes intoxicated without their knowledge or consent. This could be because their drink was "spiked," they were forced to consume a substance, or they experienced a severe, unexpected reaction to a prescribed medication. The law treats such defendants more leniently, as they lack the moral culpability of having chosen to impair their faculties.

Effect on *Mens Rea*

The core legal issue is whether the intoxication prevented the defendant from forming the *mens rea* required for the offence. If the involuntary intoxication meant the defendant did not have the necessary intent or recklessness, they must be acquitted. This defence can apply to any crime, whether of basic or specific intent.

The Burden of Proof

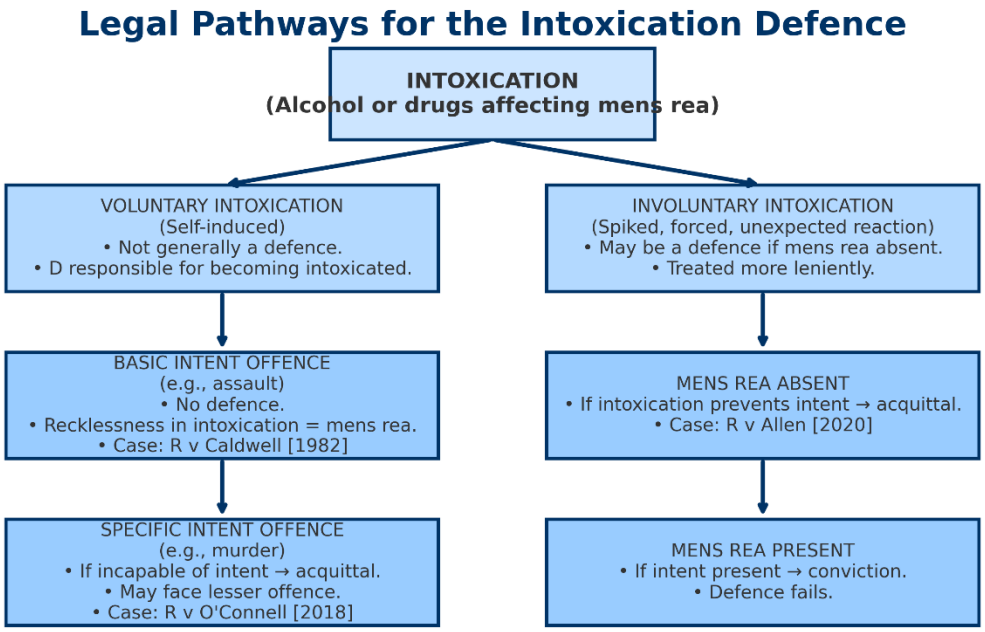
Once the defendant raises evidence suggesting involuntary intoxication, the legal burden rests on the prosecution to prove beyond a reasonable doubt that the defendant did indeed have the required *mens rea*.

Limitations

The defence is not a blanket immunity. It will fail if, despite the involuntary intoxication, the defendant still possessed the necessary mental state for the crime.

In ***R v Allen*** [2020] EWCA Crim 174, the defendant, Michael, was at a corporate event where his non-alcoholic drink was secretly laced with a strong spirit by colleagues. Unaware of this, he became severely intoxicated and, in a disoriented state, assaulted a security guard, believing the guard was attacking him. The trial judge accepted he was involuntarily intoxicated. The Court of Appeal quashed his conviction. They found that the level of intoxication was such that Michael lacked the basic intent required for assault. His honest but

mistaken belief in the need for self-defence, caused by the involuntary intoxication, meant the *mens rea* for the offence was not present.



8.2 Self-Defence and Defence of Others

The law recognises the fundamental right to protect oneself and others from unlawful violence. The defences of self-defence and defence of others, now largely codified by *s.76* of the *Criminal Justice and Immigration Act 2008*, can provide a complete justification for the use of force, leading to an acquittal.

8.2.1 Key Legal Principles

1. An Honestly Held Belief

The defendant must have honestly believed, whether reasonably or not, that it was necessary to use force to defend themselves or another. This is a subjective test. For example, if Sarah, a petite woman, honestly believes a much larger man who is shouting

threats is about to attack her, she can act on that belief even if, from an objective viewpoint, he was merely posturing.

2. The Threat must be Imminent

The defendant cannot use pre-emptive force long before a threat materialises, nor can they seek revenge after the fact. The defence applies to an immediate and ongoing threat.

3. Proportionate Force

The force used must be reasonable in the circumstances as the defendant believed them to be. The law does not expect a person under attack to weigh their response to a nicety. As *s.76(7)* states, the question is whether the degree of force used was "reasonable in the circumstances." However, grossly disproportionate force will cause the defence to fail.

In ***R v Martin*** [2002] QB 1, Tony Martin, a farmer, shot and killed a burglar who had broken into his isolated farmhouse. He argued he was acting in self-defence, fearing for his life. The prosecution contended that shooting an intruder who was fleeing was grossly disproportionate force. The Court of Appeal upheld his conviction for murder, reduced to manslaughter on grounds of diminished responsibility. The court emphasised that while a householder can use force, it must be reasonable. The use of a firearm against an unarmed and retreating intruder was deemed excessive.

The defence of others operates on identical principles. If a person, like a parent seeing their child being attacked, honestly and instinctively intervenes using reasonable force, they will be protected by this defence. The defender "steps into the shoes" of the person they are protecting and can use such force as would have been reasonable for that person to use in self-defence.

8.3 Duress

The defence of duress acknowledges that a person may commit a crime because they are coerced by threats of death or serious personal injury. It is a concession to human frailty, recognising that even a person of reasonable firmness may succumb to overwhelming pressure.

8.3.1 Elements of the Defence

To successfully plead duress, the defendant must prove:

1. **A Threat of Death or Serious Injury**: The threat must be directed against the defendant or their immediate family or someone for whom they would reasonably consider themselves responsible.

2. **Immediacy and Imminence**: The threat must be present and immediate, such that the defendant has no safe opportunity to escape or to contact the police. A threat of future violence is insufficient.

3. **The Reasonable Person Test**: The court must ask: would a sober person of reasonable firmness, sharing the characteristics of the defendant, have responded in the same way? This introduces an objective element to the defence.

4. **No Self-Induced Duress**: The defence is not available if the defendant voluntarily associated with a group of people known to be violent and involved in criminal activity, and foresaw or should have foreseen the risk of being subjected to compulsion.

Application and Limitations

The most significant limitation on the defence of duress is its general unavailability for murder and, in some cases, attempted murder.

In ***R v Wilson*** [2007] EWCA Crim 125, the defendant, a vulnerable man with learning difficulties, was threatened by a violent drug dealer that he would be seriously harmed if he did not participate in a robbery. Under this threat, he acted as a lookout during the crime. The Court of Appeal allowed his appeal against conviction. The court found that the trial judge had misdirected the jury on the objective element of the defence. It was held that the jury should consider whether a person of reasonable firmness, sharing the defendant's characteristics of vulnerability, might have also succumbed to the threats.

PART TWO: PARTIAL DEFENCES

Partial defences are unique to the crime of murder. A successful plea does not result in an acquittal but reduces the conviction to voluntary manslaughter. This is critically important as it removes the mandatory life sentence and gives the judge full discretion in sentencing.

8.4 Loss of Control

This defence, introduced by Sections 54 and 55 of the Coroners and Justice Act 2009, replaced the old common law defence of provocation. It is designed for situations where a defendant kills as a result of a genuine loss of self-control.

8.4.1 The Three-Stage Test

1. **The Loss of Self-Control**: The defendant must have actually lost their self-control at the time of the killing. This is a subjective question for the jury. Importantly, the loss of control does not have to be sudden; it can be the result of a "slow-burn" reaction to cumulative events, provided there was a final triggering event. However, actions taken in a considered desire for revenge will exclude the defence.

2. **A Qualifying Trigger**: The loss of control must have been caused by a recognised "qualifying trigger." There are two, and either or both can be used:

- **Fear of Serious Violence**: The defendant feared serious violence from the victim against themselves or another identified person.
- **Things Said or Done**: These must have constituted circumstances of an extremely grave character and have caused the defendant to have a justifiable sense of being seriously wronged.
- **Exclusion**: Significantly, sexual infidelity alone cannot constitute a qualifying trigger.

3. **The Objective Test**: Would a person of the defendant's sex and age, with a normal degree of tolerance and self-restraint and in the defendant's circumstances, have reacted in the same or a similar way? This ensures that the defence is only available where a normal person might also have lost control.

In ***R v Dawes*** [2013] EWCA Crim 322, the defendant, Harry, killed his wife after years of verbal abuse and controlling behaviour. The final trigger was a particularly humiliating outburst in front of their children. The judge initially refused to leave the defence to the jury, arguing there was no sudden loss of control. The Court of Appeal allowed the appeal and ordered a retrial. It held that the loss of control does not need to be "sudden" and that a "slow-burn" reaction to a justifiable sense of being seriously wronged can qualify, provided there is a final triggering event.

8.5 Diminished Responsibility

This partial defence, found in *s.2* of the *Homicide Act 1957* (as amended by the *Coroners and Justice Act 2009*), provides a crucial legal pathway for acknowledging that a defendant's mental capacity at the time of a killing was significantly compromised. It applies where the defendant's mental responsibility for the killing was "substantially impaired" by a recognised medical condition.

Unlike loss of control, which focuses on external triggers, diminished responsibility is concerned with the defendant's internal psychological state. A successful plea leads to a conviction for manslaughter rather than murder, recognising the reduced culpability of an individual whose ability to understand, judge, or control their actions was pathologically undermined.

8.5.1 Legal Requirements

The amended law sets out a four-stage test that must be satisfied, with the legal burden of proof resting on the defence, on the balance of probabilities.

1. **Abnormality of Mental Functioning**

   The defendant must have been suffering from an "abnormality of mental functioning" at the time of the killing. This is a legal term, not a purely medical one, though it must be grounded in medical evidence. It refers to a state of mind that is so different from that of an ordinary person that the reasonable person would term it abnormal. For instance, this

could encompass a distorted perception of reality, severely depressed mood, or an inability to process information rationally.

2. **Recognised Medical Condition**: The abnormality must arise from a "recognised medical condition." This statutory requirement ensures that the defence is based on a verifiable diagnosis rather than a vague claim of being "unwell." The scope is intentionally broad and can include:

- **Psychiatric conditions**: These include severe clinical depression, schizophrenia, bipolar disorder, or post-traumatic stress disorder (PTSD).
- **Neurodevelopmental conditions**: In some circumstances, conditions like autism spectrum disorder may be relevant, particularly if they affect the defendant's ability to understand social cues or form rational judgments in a highly charged situation.
- **Neurological conditions**: Brain injuries, tumours, or degenerative diseases like dementia can form the basis of the defence.
- **Personality disorders**: While more contentious, severe personality disorders can qualify if they cause an abnormality of mental functioning, though courts scrutinise such claims carefully.
- **Substance dependency syndrome:** Chronic addiction can be a recognised medical condition, but it must be distinguished from acute intoxication. The defence may be available where long-term abuse has caused permanent brain damage or an underlying psychiatric disorder, not merely when the defendant was under the influence at the time.

3. **Expert Psychiatric Evidence**

This is almost always required to establish the existence and nature of the recognised medical condition. Expert psychiatric evidence is to show that the defendant's abnormality of mental functioning from a recognised medical condition substantially impaired their judgment, understanding, or self-control under *s.2* of the *Homicide Act 1957* (as amended by the *Coroners and Justice Act 2009*). Psychiatrists diagnose the condition, explain its effect on the defendant's actions, and establish a causal link to the killing, distinguishing genuine disorders from factors like intoxication (***R v Dietschmann*** [2003] UKHL 10).

Although the jury decides the issue, expert opinion often determines the outcome, as seen in ***R v Brennan*** [2014] EWCA Crim 2387

4. Substantial Impairment

This is the core of the defence. The abnormality must have substantially impaired the defendant's ability in one or more of the following ways:

- **To understand the nature of their conduct**: For example, a mother suffering from a severe psychotic episode who drowns her baby believing she is saving it from demonic possession does not understand the true nature of her act as killing.
- **To form a rational judgment**: A person with paranoid schizophrenia who kills a stranger believing it is the only way to prevent an imminent, but delusional, global catastrophe is unable to form a rational judgment about their actions.
- **To exercise self-control**: An individual with severe recurrent depression who kills in an explosive outburst after a period of extreme emotional flatness and irritability may be found to have a substantially impaired capacity for self-control.

The word "substantial" means "more than trivial or minimal," but it does not have to be total. It is a question of degree for the jury to decide, guided by the expert testimony. The case of ***R v Golds*** [2016] UKSC 61 confirmed that "substantial" should be given its ordinary English meaning, and it is for the jury to determine whether the impairment was significant.

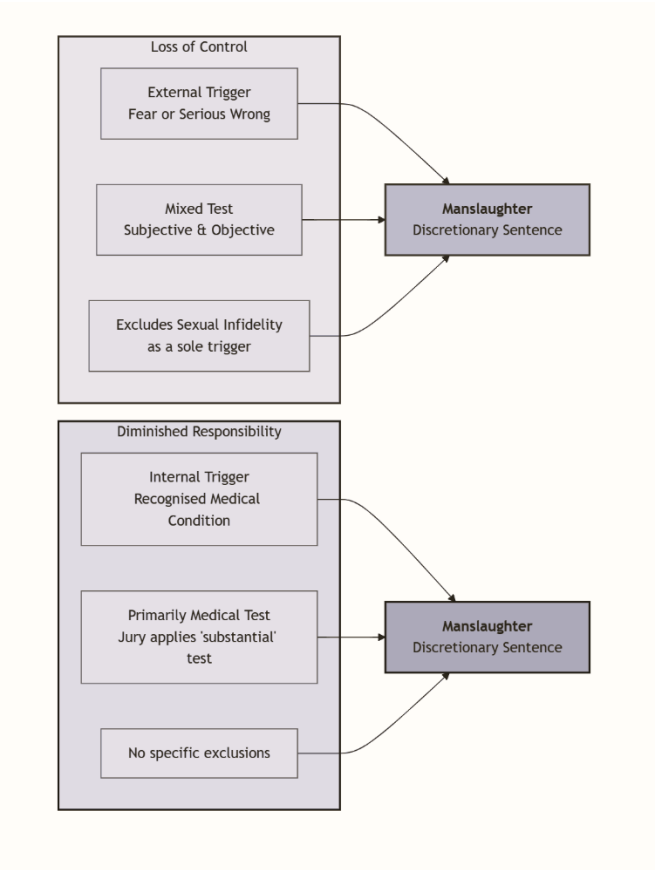
5. Causal Link

Finally, the abnormality must provide "an explanation for the defendant's acts and omissions in doing or being a party to the killing." This means there must be a logical and causal connection between the medical condition and the killing. The abnormality does not have to be the sole cause, but it must be a significant contributory factor. For instance, if a defendant with a brain injury that causes extreme impulsivity gets into a minor argument and reacts with fatal violence, the injury can be seen as explaining the disproportionate response.

In ***R v Brennan*** [2014] EWCA Crim 2387, the defendant, Mark, a former soldier, was diagnosed with severe PTSD following multiple traumatic tours of duty. During a seemingly minor street altercation, he killed a man. Psychiatric evidence presented at trial described how his PTSD could trigger a "dissociative state", a detachment from reality where he might instinctively re-live a combat scenario. In this state, his ability to form a rational judgment about the actual level of threat and to exercise control over his aggressive instincts was severely compromised. The Court of Appeal quashed the murder conviction and substituted a verdict of manslaughter on the grounds of diminished responsibility. The court was satisfied that the PTSD was a recognised medical condition that caused an abnormality of mental functioning, which substantially impaired his abilities and provided a direct explanation for his violent conduct. This case illustrates how a condition acquired through external trauma can fundamentally alter an individual's mental responsibility for their actions.

8.5.2 Distinction from Insanity

It is important to distinguish diminished responsibility from the insanity defence. Insanity, under the *M'Naghten Rules*, requires a defect of reason from a disease of the mind such that the defendant did not know the nature and quality of their act or that it was wrong. This is a very narrow test. Diminished responsibility is broader and more flexible; it applies where the defendant knew what they were doing and that it was wrong, but their mental functioning was nonetheless substantially impaired. It is, therefore, the more common plea in cases involving mental conditions that fall short of complete legal insanity.



8.6 Conclusion

The defences explored in this chapter are essential mechanisms through which the criminal justice system introduces nuance, humanity, and fairness. They acknowledge that context is everything. A person who kills in a split second to save their child's life is in a morally different position from a cold-blooded contract killer, just as a person who commits a crime because of a severe mental illness is less blameworthy than one who does so with full rational capacity.

General defences like self-defence and duress provide a complete justification or excuse, reflecting society's judgment that the defendant's conduct was, in the circumstances, not truly "criminal." Partial defences, while not excusing the killing, recognise that the defendant's culpability is significantly reduced, warranting a lesser label and a more flexible sentence.

Understanding these defences is fundamental to grasping the core principles of criminal law: that punishment should be reserved for those who are truly morally blameworthy, and that the law must be capable of responding to the immense complexity of human behaviour.

9

ATTEMPTED OFFENCES

Criminal law is often concerned with completed crimes, that is, the theft that succeeds, the assault that is carried out, the murder where a life is taken. However, the law also recognises that dangerous behaviour begins long before a crime is fully realised. To prevent harm and punish culpable intent, there exists a category of crimes known as inchoate offences (from the Latin word, *inchoare*, meaning 'to begin').

These are offences that are incomplete in some way; the substantive crime has not been finished, but the defendant's actions and intentions have crossed a legal threshold that warrants criminalisation.

This chapter focuses on the most common inchoate offence: attempt. Understanding attempt is crucial, as it marks the point where the law intervenes to stop a crime before it is completed, holding individuals accountable for what they have tried to do, not just for what they have succeeded in doing.

9.1 The offence of Attempt

An attempt occurs when a person, with the intention to commit a specific crime, takes a significant step towards its commission but, for some reason, fails to complete it. This failure could be due to external intervention (e.g., being caught by the police), a change in circumstances (e.g., the intended victim not arriving), or simply a mistake (e.g., using an ineffective weapon).

The modern law of attempt in England and Wales is governed by the *Criminal Attempts Act 1981*. *Section 1(1)* of this Act provides the statutory definition:

“If, with intent to commit an offence to which this section applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence.”

It is important to note that this law applies only to indictable offences (the more serious crimes tried in the Crown Court) and triable-either-way offences. It does not apply to summary-only offences, which are less serious and are dealt with exclusively in the Magistrates’ Court.

9.2 The Elements of Attempt

To secure a conviction for attempt, the prosecution must prove two essential elements beyond reasonable doubt: the *actus reus* (the guilty act) and the *mens rea* (the guilty mind). Both elements have distinct and demanding requirements.

9.2.1 The *Actus Reus*: An Act "More Than Merely Preparatory"

The central question for the *actus reus* of attempt is: at what point does planning and preparation cross the line into a criminal attempt? The Act states that the defendant’s act must be "more than merely preparatory." This means the person must have started to commit the crime itself, moving from the planning stage to the execution stage.

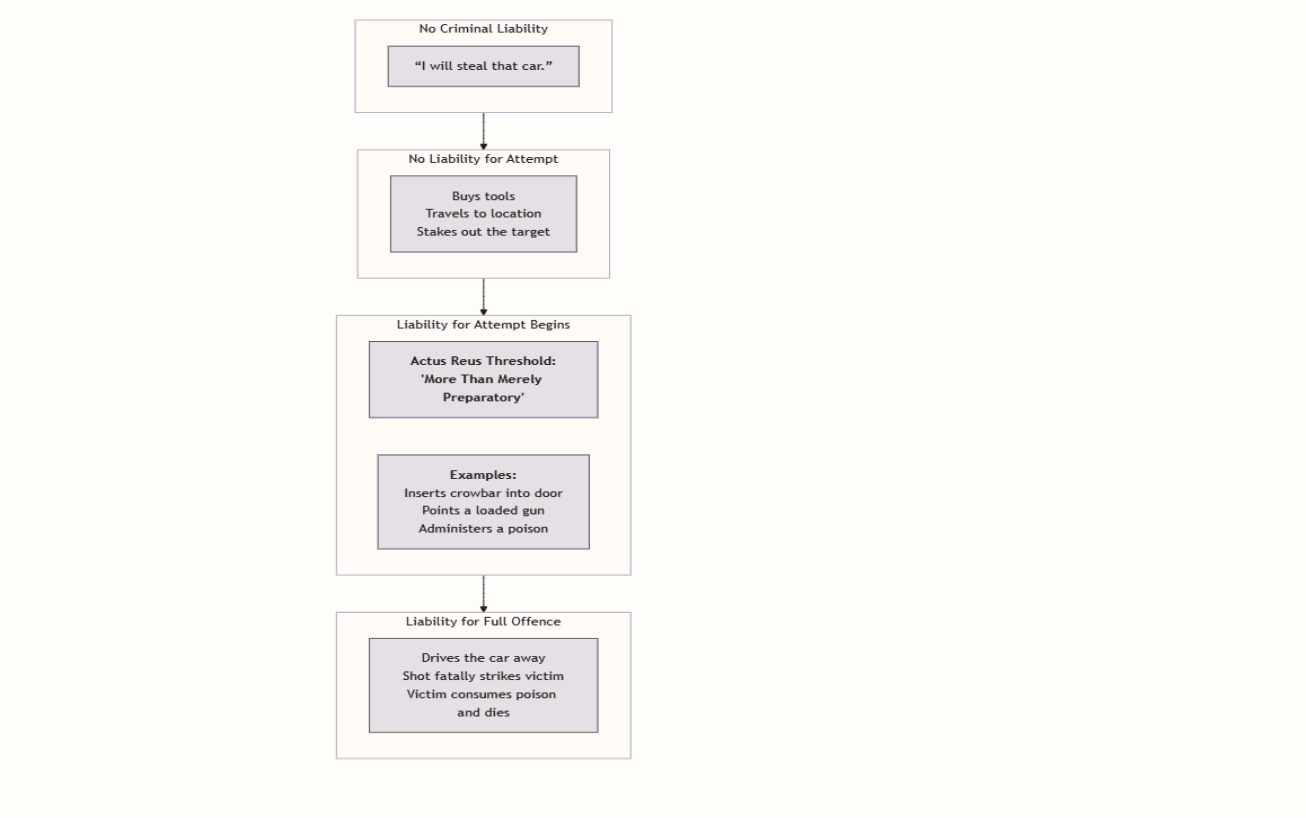
- **Mere preparation**: Actions such as buying tools, travelling to the scene of the intended crime, or gathering information are generally considered preparatory. They are steps taken in preparation for the crime, but the commission of the offence has not yet begun.
- **The execution stage**: Actions that are directly connected to the commission of the offence, and which form part of the actual execution of the plan, will satisfy the test.

Courts decide this on a case-by-case basis, but general principles have emerged from key cases:

In ***R v Gullefer*** [1990] 3 All ER 882, the defendant, David, had placed a bet on a greyhound race. Seeing his dog was losing, he jumped onto the track to halt the race, hoping it would be

declared void and his stake returned. The court held this was merely preparatory. David had not yet taken any steps to actually reclaim his money from the bookmaker; he was still setting the conditions for his eventual claim.

In ***R v Jones*** *[1990] 1 WLR 1057,* Kenneth, seeking revenge, arranged to meet his victim, Mark, while concealed in a car. When Mark arrived, Kenneth produced a sawn-off shotgun, pointed it at Mark's head at point-blank range, and pulled the trigger. The gun did not fire because the safety catch was on. This was held to be "more than merely preparatory." Kenneth had embarked on the actual execution of the murder; he had done the final act he intended to do before the crime was completed.



9.2.2 The *Mens Rea*: Intention to Commit the Full Offence

The mental element for attempt is strict and demanding. The prosecution must prove that the defendant had the full intention to commit the complete offence. This is a higher threshold than for many substantive crimes.

A key principle is that recklessness is not sufficient for attempt, even if the full offence can be committed recklessly.

Example in Theft

The offence of theft can be committed intentionally or recklessly. However, for attempted theft, the prosecution must prove an intention to permanently deprive the owner of their property. Simply being reckless as to whether property would be taken is not enough.

Conditional Intent

This is a common and important concept in attempt. A person can be guilty if they have a conditional intention. For instance, if Chloe breaks into a house intending to steal any valuables she finds, she has the necessary *mens rea* for attempted theft. The fact that the house was empty and there was nothing to steal is irrelevant to her intention at the time of the attempt.

In ***R v Whybrow*** [1951] 35 Cr App r 141, the defendant, Thomas, wired a bath to electrocute his wife. For the substantive offence of murder, the *mens rea* is an intention to kill or to cause grievous bodily harm. However, the court held that for attempted murder, the prosecution must prove an unqualified intention to kill. An intention merely to cause serious harm is insufficient. This underscores the high level of intent required for attempt.

9.3 Legal Impossibility

A fascinating and counter-intuitive aspect of attempt law is that a person can be guilty of attempting the impossible. The *Criminal Attempts Act 1981* explicitly addresses this. The key question is not whether the crime was actually possible, but whether the defendant believed they were committing a crime and acted upon that belief.

9.3.1 Types of Impossibility

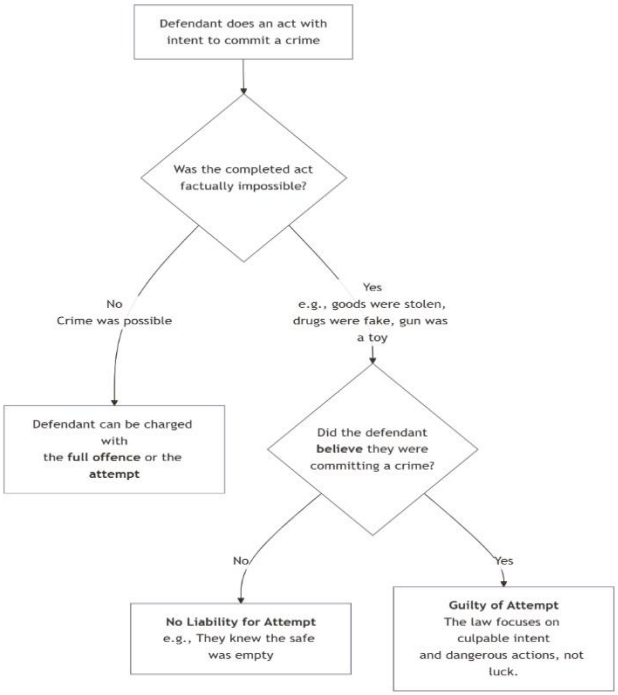
1. **Legal Impossibility**: This occurs where the completed act would not actually be a crime, even if everything went as the defendant planned. For example, if James takes his own umbrella from a stand, believing it is someone else's and intending to steal it,

he has not committed attempted theft. The act he intended to do (taking his own property) is not a crime. This is generally not an offence.

2. **Factual Impossibility**: This occurs where the defendant intends to commit a crime, but it is impossible due to facts or circumstances unknown to them. This is not a defence.

In ***R v Shivpuri*** [1986] 2 All ER 334*,* the defendant was caught with a package he believed to be illegal drugs. He was charged with attempting to be knowingly concerned in dealing prohibited drugs. Chemical analysis later revealed the substance was harmless snuff or similar vegetable matter. The House of Lords upheld his conviction. He had the *mens rea* (the intent to handle drugs) and had performed the *actus reus* (taking possession and steps to deal with the substance). The factual impossibility of the drugs being fake was no defence.

The following diagram helps to clarify how the law treats these scenarios:



9.4 Withdrawal and Abandonment

A common question is whether a person can avoid liability for attempt by changing their mind and withdrawing from the criminal enterprise. The legal position is clear but strict: once the *actus reus* of attempt is complete, that is, once the defendant has done an act that is "more than merely preparatory", voluntary abandonment is not a defence.

The law's rationale is that the crime of attempt has already been committed at the point the defendant takes the substantial step. A later change of heart does not erase the criminality that has already occurred. However, if a person abandons their plan *during the preparatory stage* (e.g., David turns back before reaching the racetrack, or Kenneth puts the shotgun away before Mark arrives), they will not have committed the *actus reus* of attempt and therefore face no liability for it.

The law of attempt criminalises conduct that comes dangerously close to completing a crime, based on the defendant's culpable intentions. It is a vital tool for law enforcement and a clear statement that the justice system takes aim at criminal purpose, not just criminal results.

Element	Requirement	Key Case/Legal Principle
Governing Law	*Criminal Attempts Act 1981*	Applies to indictable and triable-either-way offences.
Actus Reus	An act "more than merely preparatory" to the commission of the offence.	The defendant must have begun the execution of the crime (*Jones*). Mere preparation is not enough (*Gullefer*).
Mens Rea	The full intention to commit the complete offence.	Recklessness is not sufficient. For attempted murder, intent to kill must be proven (*Whybrow*). Conditional intent is sufficient.

Impossibility	Not a defence if the defendant believed they were committing a crime.	Factual impossibility is no defence (*Shivpuri*). Legal impossibility may be a defence.
Abandonment	No defence once the *actus reus* of attempt is complete.	Withdrawal during

9.5 Conclusion

In conclusion, the law of attempt ensures that individuals who take substantial steps toward committing a crime are held accountable, even if the offence is not completed. By criminalising conduct that goes beyond mere preparation, it focuses on culpable intention and proximity to harm, rather than waiting for damage to occur. This reflects the principle that the law condemns not only criminal outcomes but also dangerous intent and deliberate preparation for wrongdoing, reinforcing the preventive and moral purpose of criminal justice.

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- Modern Context: Examination of inchoate offences and secondary liability, ensuring you understand how the law tackles attempted crimes and group criminality in the modern world.
- Exam-Focused Approach: Structured frameworks, chapter summaries, and key case checklists designed to streamline your revision and build confidence in tackling SQE-style questions.

This book is more than a textbook, it is an active learning tool that empowers you to think like a solicitor. It is the essential resource for any candidate seeking not just to pass the SQE1, but to build a solid foundation for a future in criminal practice.

Law Angels, *Empowering Future Solicitors with Knowledge and Purpose.*