

# Chapter 2: Criminal Damage

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## Aims of this Chapter

This chapter will enable you to achieve the following learning outcome from the ILEX syllabus:

- 2 Understand the requirements for liability for criminal damage

## 2.1 Introduction

**s1 Criminal Damage Act 1971 (CDA 1971)** provides for three criminal damage offences:

- the **basic** offence (**s1(1)**) – *intentionally or recklessly destroy[ing] or damag[ing] any property belonging to another;*
- the **aggravated** offence (**s1(2)**) – *intentionally or recklessly destroy[ing] or damag[ing] any property, whether belonging to [D] or another . . . 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;*
- **arson (s1(3))** – *destroying or damaging property by fire.*

In all these cases, it is a defence that the destruction or damage was done with a *lawful excuse*.

Criminal damage is an offence of destroying or causing lesser damage to any tangible property. Common acts of vandalism such as breaking windows, pulling down fences, spraying slogans on walls and scratching the paintwork on cars will all amount to the offence. Other, less deliberate forms of causing damage will also suffice. More serious examples of the offence would be the use of bombs and other incendiary devices and setting houses on fire while their occupants are asleep inside. In these examples, the destruction or damage is endangering the lives of others, which means that they constitute the aggravated offence. Since they also involve fire, they are also examples of arson.

Since many of the elements of the basic and aggravated offences are the same, it will be convenient to examine them in the context of the basic offence and then to consider how the aggravated offence differs from the basic offence.

## 2.2 The basic offence

D must:

- destroy or damage;
- property;

- belonging to another;
- intending or being reckless as to the damage or destruction of property belonging to another.

These four elements of the basic offence are discussed in **2.2.1–2.2.4**.

### 2.2.1 Destroy or damage

The notion of “destruction” of property causes little difficulty and need not be further discussed. Although the meaning of “damage” might also seem fairly straightforward, there is no statutory definition and no general, comprehensive, common-sense definition. It suggests some kind of physical impairment or deterioration, and the following considerations are important.

There will be damage where there is a permanent change in quality and/or value – for instance, watering of beer or adulteration of food. Strangely enough, “spiking” a person’s soft drink with alcohol could be criminal damage to the soft drink.

Damage does not have to be irreparable. In ***Hardman v Chief Constable of Avon and Somerset [1986]***, pavements were held to have been damaged by drawings in water-soluble paint. Clearly, then, spraying paint on buildings, cars and other objects can be damage, even if the paint is removable. (See ***Roe v Kingerlee [1986]*** where it was held that, although graffiti could be criminal damage, this was a matter of fact and degree.)

An indicator of damage may be that expenditure of time and/or money is required to restore the property to its original condition (***Hardman***). Conversely, where little effort and no expense is required, this will be an indicator against a finding of damage. So, in ***A (a Juvenile) v R [1978]***, spittle on a policeman’s raincoat was not damage because it could easily be wiped off (contrast, say, a stain on a dress requiring removal by dry-cleaning). Even so, in the Australian case of ***Samuels v Stubbs [1972]***, a “temporary functional derangement” of a policeman’s cap resulting from its being jumped on was considered to be damage.

Damage may result where there is impairment of **use**, even though there is no obvious physical damage or permanent loss of quality or value. Removing engine parts or parts of a structure so that the whole no longer functions or is available for use as intended may be damage even though no individual part is harmed in or by the removal (***Morphitis v Salmon [1990]*** – dismantling of scaffolding). Placing a wheelclamp on a car does not, however, damage it by preventing it from being used as a car (***Lloyd [1991]***, ***Blake v DPP [1994]***), even though removal of the wheel itself probably would be damage.

Common sense must be used when considering the issue. Scaffolding poles are thrown about during use and are subject to various kinds of minor damage such as scratches. Scratching a scaffolding pole, therefore, may not be damage (***Morphitis v Salmon***) – but cutting it in half certainly would be!

### 2.2.2 Property

Property is defined essentially as in the law of theft (so that it includes money and other tangible property, whether real or personal, and has the same limitations in relation to wild mushrooms, fruit and flowers, and wild creatures). There are, however, two differences.

- (1) Intangible property is not covered.
- (2) Land may be damaged without being “severed” (as would be required for theft by a person not in possession of the land). If D, who is not in possession of the house, smashes tiles on the roof, this is criminal damage but it is not theft.

### 2.2.3 Belonging to another

In the basic offence, the property destroyed or damaged must *belong to another*. As in theft, property belongs not only to the owner but also to persons having lesser interests. **s10(2) CDA 1971** extends the notion to any person:

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

Because of this extended definition of “belonging to another”, an **owner** of property may be guilty of destroying or damaging it, much as the owner may **steal** his own property. If there is no person with any proprietary right or interest in the property other than the owner, the owner cannot be guilty of the basic offence.

### 2.2.4 Intention or recklessness

The *mens rea* is intention or recklessness both as to the destruction or damage and as to the fact that the property belongs to another. See the discussion of recklessness at **1.5.2(2)**.

If the Crown bases its case on intention, D will escape liability if he genuinely, albeit mistakenly, believed that he owned the property (because he would not then intend to damage or destroy *property belonging to another*). In **Smith [1974]** D removed wiring which he had himself installed in a flat when his tenancy came to an end. In law, the wiring had become the property of the landlord when installed, but D was genuinely mistaken about this. His conviction was quashed.

Following the decision of the House of Lords in **G and Another [2003]** (a case involving criminal damage; see **1.5.2(2)**), where the Crown bases its case on recklessness this will need to be assessed subjectively. Consequently, the issue will be whether D himself knew that there was doubt about the ownership of the property and, in spite of a risk that he might not own it, nevertheless destroyed or damaged it as if it were his own.



What test will be applied by a court when determining the concept of recklessness for an offence of criminal damage?

Does the concept of the “reasonable man” have any significance?

## 2.3 The aggravated offence

The aggravated offence is a hybrid property and personal injury offence, though it is not necessary to show that anyone was actually injured. The aggravated offence requires proof of intentional or reckless damage or destruction, as does the basic offence, but the aggravated offence differs from the basic offence in some significant ways.

(1) It can be committed where D damages or destroys his **own** property. This is because the aggravating feature is the intention or recklessness as to **endangering** life and this feature is present irrespective of who owns the property. Obviously, this also removes any requirement to prove *mens rea* in relation to ownership of the property.

(2) D must **intend or be reckless as to the endangering of life**. Note that there is no need for life to be endangered in fact: the issue is whether D intended life to be endangered or was reckless as to the endangering of life.

(3) D must intend or be reckless as to the endangering of life **by the criminal damage**. V is standing behind a window. D shoots at him and breaks the window but misses V. D intentionally damaged the window but he did not intend to endanger V's life **by breaking the window**. He intended to endanger it **by means of the bullet**. This is not the aggravated offence (these were the facts of *Steer [1987]* and the Court of Appeal had to quash D's conviction).

The case of *Steer [1987]* was recently applied in *Luke Wenton [2010]*, where D threw a brick through V's bedroom window and afterwards threw a canister of petrol through the broken window with a piece of paper that had been lit. It extinguished quickly. There was no fire. He was convicted of aggravated criminal damage being reckless as to whether life was endangered contrary to **s1(2) Criminal Damage Act 1972**. It was held that the danger to life must arise from the criminal damage, that is, the broken window, which it did not. This was one step away from *Steer* because there the same act caused the damage and created the risk. Here, two distinct and separate acts were involved. The prosecution argument that there was a continuing act was rejected. D was acquitted. The correct offence with which he should have been charged was arson under **s1(3)** of the Act.

In contrast, in *Webster [1995]*, D pushed a heavy coping-stone onto a train passing beneath a bridge. The stone partly broke through the roof, showering passengers with material. In this case, D was reckless as to the danger to life from the **roof material** (the very damage itself) and so was reckless as to endangering life by the criminal damage. Similarly, in *Warwick [1995]*, D was guilty because he was reckless as to the danger to life when he threw a brick from a car at the windscreen of a pursuing police car. Though the damage to the windscreen did not directly threaten life, the driver might have lost control of the police car on account of the damage to the windscreen and life would have been endangered.

(4) **s30 Crime and Disorder Act 1998 (CDA 1998)** created a racially aggravated or religiously aggravated version of the **s1 CDA 1971** offence.

This section provides that D is guilty of an offence if he commits an offence under **s1 CDA 1971** that is racially or religiously aggravated. Racial and religious aggravation are defined in **s28 CDA 1998** in the following way:

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