Chapter 2: Criminal Damage

Outline

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Aims of this Chapter

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

2. Understand the requirements for liability for criminal damage

2.1 Introduction

s1 Criminal Damage Act 1971 (CDA 1971) provides for two 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 (s1(3) does not constitute a separate offence, but merely refers to either of the above offences being committed by fire).

In all these cases, it is a defence that the destruction or damage was done with a lawful excuse. This excuse is more limited in relation to the aggravated offence.

Criminal damage is an offence of destroying or causing 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, if D intended, or was reckless to the fact that the destruction or damage endangered the lives of others, this would also 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

(AR and MR in brackets below refer to whether each element of the offence is part of the actus reus or the mens rea.)

D must:

- destroy or damage (AR);
- property (AR);
- belonging to another (AR);
- intending or being reckless as to the damage to or destruction of property belonging to another (MR).

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 down beer or adulterating food. Even “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.

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) [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 no longer 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 [1993]*)}, even though removal of the wheel itself would probably 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

For the purposes of criminal damage, property means property of a tangible nature – that is, anything that can be touched. It includes both real property (land) and personal property. Certain things are excluded, such as wild animals (not kept in captivity) and wild flowers (s10(1) CDA 1971).

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 other, lesser interests. Under s10(2) CDA 1971 property belongs 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 his own property. For example, if D deliberately scratches a car which he jointly owns with his girlfriend, he can be guilty of criminal damage to the car. However, the owner cannot be guilty of the basic offence if there is no person with any proprietary right or interest in the property other than the owner.

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 Chapter 1 for the meanings of intention and recklessness).

If the prosecution bases its case on intention, D will escape liability if they genuinely, albeit mistakenly, believed that they owned the property (because they 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 unaware of this. His conviction was quashed.

Where the prosecution bases its case on recklessness this will need to be assessed subjectively. Consequently, the issue will be whether D themself realised that the property might belong to another and, in spite of a risk that they might not own it, nevertheless destroyed or damaged it as if it were their own. It must also be proved that D intended or foresaw a risk that damage might occur.

The meaning of recklessness as to damage was considered in Seray-Wurie [2012]. The court confirmed that the prosecution must prove that D either intended, or was reckless, about the damage he caused. The prosecution did
not have to prove that D knew, or was reckless about whether what he did, in law, actually amounted to damage. As a result, when D wrote with a black marker pen on parking signs, he clearly intended to do what he did to the signs. The prosecution did not also need to prove that D knew or realised that writing on a sign with a marker pen might, in law, amount to criminal damage.

**Self-assessment Questions**

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

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

2.3 The aggravated offence

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 their 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).

Steer was 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 was extinguished quickly. There was no fire. D was originally convicted of aggravated criminal damage, being reckless as to whether life was endangered contrary to s1(2) CDA 1971. It was held that D’s intention to endanger life (or recklessness about whether life would be endangered) must stem from the actual damage to property that D causes. In this case, that was the broken window. Clearly, D did not intend to endanger V’s life by means of breaking the window. D should have been charged with basic criminal damage under s1(1) CDA 1971.