

### ***Duty arising from a special relationship:***

- Care or control of children – Section 1 of the Children and Young Persons Act 1933 – This makes it an offence for a parent or any other person over the age of 16 years who has responsibility for a child under the age of 16 years to wilfully neglect the child
- Assumption of Care for Another – The Children and Young Persons Act 1933 does not extend beyond those of the age of 16 years and therefore no direct obligation is placed on a parent to care for an independent 18-year-old child ([R v Shepherd](#) (1862) 9 Cox CC 123). However, two important judgments highlight the approach that is taken in respect of where care is assumed over an individual who is over the age of 16.

***Duty Arising out of a Danger of One's Own Making:*** [R v Miller](#) [1983] 2 AC 161 - Where a person creates a dangerous situation, they may be placed under an obligation to take reasonable steps to remove the danger and therefore, may be criminally liable if they do not do so.

In [R v Evans](#) [2009] EWCA Crim 650, it was held that the approach in *Miller* could be taken a stage further where it was held that an individual could be liable in gross negligence manslaughter when they unlawfully supply a victim with a dangerous drug and then fail to obtain help for the victim when it becomes clear that the victim has fallen ill as a result of taking the drug.

***Statutory Duty:*** Section 170 of the Road Traffic Act 1988, for example.

***Medical Treatment:*** In ordinary circumstances, as was set out above, doctors are required to act in order to provide their patients with proper medical treatment. This requirement is removed where a patient with the required level of capacity specifically refuses treatment. In certain limited circumstances, the court will allow doctors to remove medical treatment where it is considered to be in the patient's best interests, such as in [Airedale National Health Service Trust v Bland](#) [1993] AC 789.

***Offences where Omission Never Gives Rise to Liability:*** Offences that specifically require a positive act can clearly not be committed by omission, for example, assault or theft.

### **Exceptions**

- The actus reus must be voluntary by the defendant
- Automatism (covered in chapter 10)

### **Causation**

In order for a defendant to be found liable for an offence, it is necessary that the defendant's actions cause the harm. Causation falls into two categories: factual and legal – both must be satisfied.

#### ***Factual Causation***

The relevant test to apply is the 'but for' test. The question that is asked is whether 'but for' the defendant's actions, the harm to the victim would have occurred – In [R v White](#) [1901] 2

KB 124, the defendant laced the victim's drink with cyanide, the mother did not drink much of the drink, and died coincidentally that night, therefore, the defendant was not the factual cause of death.

*Multiple causes:* A defendant may be guilty of causing something to happen if his conduct was not the only cause of it, even if his conduct alone was not sufficient to cause the harm to occur ([R v Warburton](#) [2006] EWCA Crim 627). e.

## **Legal Causation**

Legal causation has the effect of limiting this potentially broad liability, as factual causation is very easy to prove. There are three specific elements that must be satisfied for legal causation

- The cause was substantial (more than slight or trifling – [R v Kimsey](#) [1996] Crim LR 35
- Defendant must be blameworthy to some extent – [R v Dalloway](#) (1847) 2 Cox CC 273
- Defendant's actions must be operating on the victim at the time that liability arises – [R v Pagett](#) (1983) 76 CR App R 279

## ***Novus Actus Interveniens***

These elements may not be present and the defendant may avoid liability even if found to have factually caused the victim's harm in two circumstances. These can be categorised as:

- some act of another person that intervenes between the defendant's conduct and the end result;
- or some event which occurs between the defendant's conduct and the end result.

These circumstances are often described collectively as a *novus actus interveniens*.

*Act of a third party:* Only if the act of a third party renders the defendant's actions non-operable on the victim will this break the chain of causation

Where both parties' actions can be considered collectively to result in the harm suffered by the victim, both potential defendants are considered to have caused the harm. It does not matter that one defendant's actions are the main cause of the harm and one defendant's are not. All that is necessary, is that the defendant can be considered to have contributed significantly to the harm ([R v Pagett](#) (1983) 76 Cr App R 279).

Causation will not be broken unless the actions of the third party are free, deliberate and informed - [R v Pagett](#),

## ***Acts of God***

An act of God is defined as a freak natural phenomenon, so unpredictable that it ought to excuse the defendant of all liability ([Southern Water Authority v Pegrum](#) [1989] Crim LR

442). Such an act must be completely unpredictable. Such an act will break the chain of causation.

## 2.2.1 Mens Rea – Introduction

Welcome to the second topic in this module guide – Mens Rea! ‘*Mens rea*’ can be loosely translated as ‘guilty mind’, and it is a vital component when attempting to assess the criminal liability of an individual.

The concept of mens rea was developed when judges began to realise that an act alone could not in fact create criminal liability, unless accompanied with a defendant’s guilty state of mind.

Today, in addition to meeting all of the actus reus elements of an offence, a defendant must be shown to have also have a guilty mind at the same time that they commit the actus reus of an offence.

For the vast majority of offences, the mens rea will be satisfied if the defendant can be shown to have intended their actions or can be considered to have been reckless as to whether a consequence would occur or circumstances would exist, following their conduct. However, in certain circumstances a defendant will satisfy mens rea if they are considered to have acted negligently and, for certain offences, known as offences of strict liability, no mens rea at all is required. Upon committing the actus reus the defendant will be found guilty.

## 3. Fatal Offences

### 3.1.1 Murder – Introduction

Welcome to the first lesson of the third topic in this module guide – Fatal Offences; Murder. The offence of murder is the most culpable form of homicide, and occurs where any ‘reasonable creature *in rerum natura*’ unlawfully kills any person under the Queen’s piece with malice aforethought. It is likely to feature on exam papers, and will require a discussion of the content in module 2 on actus reus and mens rea. It also overlaps with the offence of manslaughter, in sharing a common actus reus.

At the completion of the section, you should be comfortable with being able to define and identify the actus reus and mens rea of the offence of murder. You should have an understanding of the ‘partial defences’ that allow the defendant to escape liability for murder, but renders them liable under voluntary manslaughter.

This section begins by giving a comprehensive explanation of the various components of the offence of murder. It then explores the three partial defences: Diminished responsibility; loss of control; and killing subject to a suicide pact.

## 3.1.2 Murder Lecture

### **Definition of Murder**

The definition of murder, although adapted to be relevant in a modern context, remains as that set out by Sir Edward Coke. Murder occurs, therefore, where a person unlawfully kills any reasonable creature *in rerum natura* under the Queen's peace with malice aforethought (*Coke's Institutes*, 3 Co Inst 47).

The *actus reus* of murder therefore requires the unlawful killing of any reasonable creature *in rerum natura* under the Queen's peace. The *mens rea*, malice aforethought.

### ***Unlawful Killing***

Killing means causing death and the approach in establishing the existence of this element is the same as that discussed in relation to causation. The killing will be unlawful unless there is some justification for it, such as self-defence.

In [\*Airedale NHS Trust v Bland\*](#) [1993] AC 789, it was held that there is a distinction between withdrawing treatment that may sustain life in the patient's best interest and actively administering a drug that might bring about the patient's death. The latter would be murder, the former would not.

It used to be the case that where death occurred beyond a year and a day following the acts of the defendant, no conviction for murder could be brought. This was abolished by the provisions of the Law Reform (Year and a Day Rule) Act 1996 for all acts committed after 17<sup>th</sup> June 1996.

### ***Malice Aforethought***

Malice aforethought means an intention to kill or cause grievous bodily harm. On the basis of the proper definition, the term malice aforethought is misleading because it suggests elements of both ill will against a victim and some degree of premeditation; neither are required.

Because murder is an offence of specific intent, virtual certainty for intention is extremely relevant. A jury is likely to be asked to consider whether intention can be found. An intention to cause really serious harm is required (grievous bodily harm is given the same meaning as under section 20 of the Offences Against the Person Act 1861). It is not necessary for the harm foreseen or intended by the defendant to be harm that may endanger life.

It is not necessary for a defendant to intend to kill the particular victim; the doctrine of transferred malice applies to murder. Furthermore, where a defendant does not intend the death of any particular victim, but simply intends to kill a random group of individuals, will be liable under what is known as general malice and will satisfy the *mens rea* for murder.

### ***The Mandatory Life Sentence***

The mandatory sentence for murder is life imprisonment (Murder (Abolition of the Death Penalty) Act 1965, s 1(1)). Whilst this reflects the fact that murder is a very serious offence, it

should be noted that numerous judgments have suggested that the sentence should be more open to judicial discretion.

### **Partial Defences to Murder**

There are three specific defences that apply only to murder: loss of control (which now replaces the common law defence of provocation); diminished responsibility; and killing in pursuance of a suicide pact. Although these are termed defences, they are not defences in an absolute sense, in that they only provide a partial defence to murder and will make the defendant liable in voluntary manslaughter.

It is important to be aware that for cases prior to 4<sup>th</sup> October 2010 a different regime existed in respect of loss of control and diminished responsibility. The discussion here will deal only with the law post 4<sup>th</sup> October 2010.

#### ***Diminished Responsibility***

Section 2 of the Homicide Act 1957 provides that four elements must be made out by the defendant if they wish to demonstrate diminished responsibility:

1. The defendant must be suffering from an abnormality of mental functioning;
2. The abnormality must arise from a recognised medical condition;
3. The abnormality must substantially impair the defendant's ability to understand the nature of their conduct, form a rational judgment or exercise self-control;
4. The abnormality will provide an explanation for the defendant's conduct if it is a substantial contributory factor.

#### ***Killing Subject to a Suicide Pact***

Section 4 of the Homicide Act 1957 provides that a person will not be guilty of murder if they are able to demonstrate that they killed another, or caused another to be killed in pursuance of, a suicide pact. A suicide pact is defined by section 4(3) as an agreement between 2 or more people that the result of their actions should be the death of all of them.

## **3.2.1 Manslaughter – Introduction**

Welcome to the second lesson of the third topic in this module guide – Manslaughter! Not all fatal offences against the person are regarded as equally culpable. A partial defence may apply, or there may not be the requisite mens rea necessary to mean that the homicide constitutes murder. The offences of voluntary and involuntary manslaughter act to cover these situations.

At the end of this section, you should be comfortable in defining the different types and applying the various rules of causation related to manslaughter. The section begins by defining the umbrella offence of manslaughter before delineating between voluntary and involuntary manslaughter. The discussion goes deeper with regard to the second, explaining how the offence is split into Unlawful and Dangerous Act Manslaughter and Gross

Negligence Manslaughter. The various elements of these offences are discussed at length before the chapter concludes with a discussion of the charging and sentencing of manslaughter.

## 3.2.2 Manslaughter Lecture

### What is Manslaughter?

Both murder and manslaughter are fatal offences against the person, known as homicide offences, and carry the same *actus reus*.

The criminal offence of manslaughter is much broader than murder as it encompasses a range of different variations as to how it can be charged. The first distinction that needs to be made is whether the offence is voluntary manslaughter or involuntary manslaughter.

### **Voluntary Manslaughter**

The defendant in this instance must demonstrate both the *actus reus* and *mens rea* for the offence of murder, that is, he intended to kill someone and achieved that aim. However, the defendant successfully employs one of the three special partial defences to murder:

- Diminished responsibility;
- Loss of control or;
- Participation in a suicide pact.

These defences, when successfully argued, have the effect of reducing the charge down to voluntary manslaughter.

### **Involuntary Manslaughter**

The defendant unlawfully killed someone but they didn't mean to, or in legal terms, they lacked the required *mens rea* of 'malice aforethought', that is the intention to kill or commit really serious bodily harm.

There are many situations that could give rise to this outcome and in reflection of this the offence is further broken down into two more specific offences:

- **Unlawful and dangerous act manslaughter:**

This offence arises where a defendant has set out to commit a lesser criminal offence but in doing so causes the death of another person.

There are four elements that need to be satisfied in order to establish the *actus reus* of unlawful and dangerous act manslaughter.

(1) The defendant must carry out an act

(2) The act must be a criminal offence

(3) The act must be dangerous

(4) The act must cause the death of a human being

- **Gross Negligence Manslaughter:**

Negligence can be explained as the failure to take proper care of something.

Negligence became a legal concept following Lord Atkin's ruling in [\*Donoghue v Stevenson\* \[1932\]](#). We, as a society, owe a duty of reasonable care to people that can reasonably be foreseen to be effected by our actions. Where reasonable care is not given, this duty is breached and the person failing to take such care can be said to be negligent.

### **What is Manslaughter?**

Manslaughter is a common-law offence that is not set out in statute. It is an indictable only offence, meaning that it will be tried and sentenced at the Crown Court.

The maximum sentence for all manslaughter offences is life imprisonment. As discussed above, note the use of the word maximum, meaning up to life imprisonment demonstrating that it is less serious than the offence of murder which carries a mandatory life sentence.

## **4. Non-fatal Offences**

### **4.1.1 Assault, Battery and ABH – Introduction**

Welcome to the fourth topic in this module guide – Non-Fatal Offences Against the Person! Non-Fatal Offences Against the Person encompass a range of offences where a person is caused some harm, but the harm does not result in death. There is a gradient scale of offences based on the level of harm caused to the victim and the level of intent demonstrated by the defendant. Each of these offences has their own actus reus and mens rea and are accompanied by charging guidelines as to the type of injuries they encompass. All of these elements must be considered when looking at a possible offence.

An assault occurs where someone intentionally or recklessly causes another person to apprehend (or fear) immediate unlawful violence. A battery occurs where a person intentionally or recklessly applies unlawful force. In legal terms, crimes will often involve an element of both assault and battery and the two are charged together as a common assault. Assault Occasioning Actual Bodily Harm (ABH) occurs where a person commits any hurt calculated to interfere with the health or comfort of the victim; such hurt need not be permanent, but must be more than transient and trifling.

### **4.1.2 Assault, Battery and ABH Lecture**

## 1.0 Common Assault

Common Assault is a common law offence and is not set out under any statute but charged under s.39 Criminal Justice Act 1988. It is used to refer to the individual offences of both assault and battery.

In legal terms, crimes will often involve an element of both assault and battery and the two are charged together as a common assault. For the purposes of exams however you will need to understand the constituent elements of and differentiate between both assault and battery.

### 1.1 Assault

As eluded to above the word assault is used interchangeably to refer to crimes of assault and battery, which are properly known as a common assault. In the present context the word assault refers to what is properly known as a technical assault. These are assaults where no physical contact occurs.

#### 1.1.2 Actus Reus

The *actus reus* of assault is causing a person to apprehend the immediate application of unlawful force.

This can be broken down into two key parts:

- The defendant causes victim to apprehend the use of force against them, and;
- The victim apprehends that use of force will be immediate

##### (i) The defendant causes the victim to apprehend force.

The *actus reus* is established through the causing of the apprehension of force and there does not need to be any application of actual force on the victim.

##### (ii) The victim apprehends that use of force will be immediate

In most cases this is a simple point to establish, a defendant shakes his fist, the victim fears he will be hit in a matter of seconds. However, some cases have been met with contentious rulings in relation to this issue. There is not an exact definition of what 'immediate' has come to mean but the following case examples provide some insight.

#### 1.1.3 Mens Rea

The *mens rea* for assault is intending the victim to cause the apprehension of unlawful force or foreseeing that the victim *might* be caused such apprehension.

### 1.2 Battery



If an assault is understood to be an apprehension of force, a battery can be explained in simplistic terms as the actual *use* of unlawful force.

#### 1.2.1 Actus Reus

The *actus reus* of this offence is the application of unlawful force on another. This application is usually direct, thus the defendant himself physically applies the force to the victim's body. However, this does not need to be the case and force can also be applied indirectly.

#### 1.2.2 Mens Rea

The *mens rea* for battery involves either intention or recklessness as to the application of force.

#### 1.3 Charging and Sentencing

Assault and battery are summary offence. S.39 of the Criminal Justice Act 1988 sets out that the maximum sentence is six months imprisonment and/or a fine.

#### Consent

Consent may operate as a defence to a charge of assault, battery or the causing of actual bodily harm.

## **4.2.1 Wounding and GBH – Introduction**

Welcome to the fourth topic in this module guide – Non-Fatal Offences Against the Person! Non-Fatal Offences Against the Person encompass a range of offences where a person is caused some harm, but the harm does not result in death. There is a gradient scale of offences based on the level of harm caused to the victim and the level of intent demonstrated by the defendant. Each of these offences has their own *actus reus* and *mens rea* and are accompanied by charging guidelines as to the type of injuries they encompass. All of these elements must be considered when looking at a possible offence.

Grievous Bodily Harm (GBH) and Wounding are the most serious of the non-fatal offences against the person, charged under s.18 and s.20 of the Offences Against the Persons Act 1861. It is the absolute maximum harm inflicted upon a person without it proving fatal.

## **4.2.2 Wounding and GBH Lecture**

Grievous bodily harm (GBH) and Wounding are the most serious of the non-fatal offences against the person.

#### 1.0 Type of Harm

To understand the charges under each section first the type of harm encompassed by these charges must be established.

## 1.1 Wounding

Defines wounding as the breaking of both layers of the external skin: the dermis and the epidermis.

This definition may seem surprising as it does not follow the usual understanding of wound which implies a more serious level of harm than a mere split in the skin, for which a pin prick could qualify.

## Unlawfully

Inflicting harm is *prima facie* unlawful, therefore this requirement is satisfied simply in absence of an available defence such as self-defence or valid consent.

## Wound

Applying the ***Eisenhower*** definition this element is satisfied if a break in the external skin arises from the defendant's conduct.

If this is evidenced, then the *actus reus* for the s.20 offence is satisfied and it is not necessary to prove the GBH element in addition for a charge to be available as this is an alternative element.

## Inflicting Grievous Bodily Harm

If there is no wound as per the Eisenhower definition, then this does not negate the *actus reus* of the offence. The alternative *actus reus* of inflicting grievous bodily harm should be considered.

# 5. Property Offences

## 5.1 Property Offences – Introduction

Welcome to the sixth topic in this module guide – Property Offences! Property Offences are a category of crime that include, amongst others, theft, burglary, robbery, handling stolen goods, making off without payment, criminal damage and arson. Perpetrators who commit property offences' primary purpose is to either unjustly enrich themselves or to acquire property or something else that would be of a benefit to them.

Property offences are divided into two categories: stolen property and destroyed property. Stolen property refers to offences such as theft and robbery, whereas destroyed property refers to offences such as arson and criminal damage. Property offences are often high in volume, with perpetrators targeting items such as cash, electronics and jewellery. These items are usually valuable and easy for a perpetrator to remove, conceal and re-sell.

## 5.2 Property Offences Lecture

## **1.0 Theft**

The offence is set out under the s.1 of the [Theft Act 1968](#).

### **1.1 Actus Reus**

- Appropriation;
- Of property;
- Belonging to another.

### **1.2 Mens Rea**

- Dishonesty
- With the intention to permanently deprive

### **1.3 Charging and Sentencing**

Theft is a triable either way offence, punishable by up to 7 years imprisonment.

## **2.0 Burglary**

### **2.1 Section 9(1)(a)**

A defendant commits burglary under this section if they enter a building, or any part of a building, as a trespasser, with intent to either:

- steal anything in the building; or
- inflict grievous bodily harm on any person in the building; or
- do unlawful damage

#### **2.1.1 Actus Reus**

- Enters;
- A building or part of a building;
- As a trespasser

#### **Enters**

It was considered that entry must be substantial and effective, however the evolution of case law suggests this is no longer necessary.

#### **A building or part of a building**

- Building

The Theft Act 1968 provides no statutory definition of building.

Section 9(4) does provide that an inhabited vehicles or vessels will be classed as a building.

- Part of a Building

Entering part of a building covers situations where there is permission to be in the building, but only certain areas.

#### As a trespasser

This carries the same definition as for civil law trespass.

If the owner provides permission to be in the building or part of it then no trespass will occur.

#### 2.1.2 Mens Rea

- Intent to steal, inflict grievous bodily harm or commit criminal damage.
- At the point of entry
- Knowing or being reckless as to trespassing.

#### 2.2.1 Actus Reus

- Entry
- Into a building or part of a building;
- As a trespasser;
- Attempt to, or indeed does, steal or inflict grievous bodily harm.

#### 2.2.2 Mens Rea

- Knowing or being reckless as to trespassing
- Holding the *mens rea* for either of the qualifying offences

#### Knowing or being reckless as to trespassing

This is applied in the same way as for the s.9(1)(a) offence.

#### Holding the *mens rea* for either of the qualifying offences

This will require establishing either:

- (i) A dishonest intention to permanently deprive another of property; or
- (ii) Intention to commit grievous bodily harm; or
- (iii) Recklessness as to whether grievous bodily harm is committed.

#### 2.3 Aggravated burglary

Section 10 provides when a person will be guilty of aggravated burglary.

The point at which the weapon must be possessed for the purposes of the offence depends wholly on whether the charge is under s.9(1)(a) or s.9(1)(b).

### Charging and Sentencing

The s.9 offences are triable either way. In relation to the s.9 offences the maximum imprisonment is 10 years which rises to 14 years in the case of a dwelling property.

The s.10 offence is indictable only and carries a maximum sentence of life imprisonment.

## **3.0 Robbery**

Section 8 of the Theft Act 1968 provides when a person is guilty of robbery.

### 3.1 Actus Reus

- Steals, and;
- Immediately before or at the time of stealing and in order to steal;
- Uses or threatens force;
- Against any person

### Steals

This requires the offence of theft to be satisfied in accordance with the definition provided in s.1.

### Immediately before or at the time of stealing

The case law has adopted a flexible approach under this element.

### And in order to steal

According to the strict wording of the provision undue force applied at the time of the theft but not in order to effectuate it would fall outside the boundaries of robbery.

### Force or threat of force

The Act negates to provide a definition of force and the requisite level of force needed for the purposes robbery. Even very slight touching can qualify.

There is no requirement that the force needs to be applied directly to the person.

### 3.3 Mens Rea

The defendant must possess the *mens rea* for the qualifying offence of theft, that is a dishonest intention to permanently deprive another of property.

### 3.4 Charging and Sentencing

Robbery is an indictable only offence with a maximum sentence of life imprisonment.

#### **4.0 Handling Stolen Goods**

This offence is set out under s.22 of the Theft Act 1968.

##### **4.1 Actus Reus**

Stolen goods are those goods that have been the subject of a theft of any kind. They are defined in s.24(2).

A person completes the *actus reus* of handling stolen goods by undertaking any of the following acts:

- Receiving stolen goods, or;
- Arranging to receive them, or;
- Undertaking to keep, remove or dispose of the goods or realising those goods either for your own purposes or for the benefit of another; or
- Arranging or assisting with any of the above.

##### **4.2 Mens Rea**

- Dishonesty
- Knowing or believing goods to be stolen.

##### **Dishonesty**

This carries the common law definition of dishonest set out in *Ghosh*.

##### **Knowing or believing goods to be stolen**

This is a subjective element.

##### **4.3 Charging and Sentencing**

Handling stolen goods is a triable either way offence with a maximum sentence of 14 years.

#### **5.0 Making Off Without Payment**

This offence is set out under s.3 of the Theft Act 1978.

##### **5.1 Actus Reus**

- Making off on the spot when payment is required
- Without having paid as required for goods supplied or services done

##### **Making off on the spot when payment is required**

##### **Without having paid as required for goods supplied or services done.**

Includes failing to pay as required in return for the goods or services, and is satisfied at the point the defendant fails to provide the correct remuneration needed from him.

Goods and services that are illegal are excluded in s.3(3).

### 5.2 Mens Rea

- Dishonestly
- Knowing the payment is due; and,
- Intending to avoid the payment

### Dishonestly

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## **6.0 Criminal Damage and Arson**

The Criminal Damage Act 1971 sets out three offences of criminal damage.

### 6.1 Simple Criminal Damage

Defined under s.1(1) Criminal Damage Act 1971.

#### 7.1.1 Actus Reus

- Destroys or damages
- Property
- Belonging to another

#### 7.1.2 Mens rea

- Intention to damage property belonging to another, or;
- Being recklessness as to whether that property is damaged.

### Recklessness

The correct approach to this in relation to criminal damage is to apply the test set out by Lord Bingham.

### 7.2 Aggravated Criminal Damage

Defined under section 2 of the Criminal Damage Act 1971.

Aggravated criminal damage occurs where the offence of criminal damage has been completed, but there is an additional element present in that the destruction or damage results in an endangerment of life.

#### 7.2.1 Actus Reus

- Destroys or damages any property
- Endangers life

### 7.2.2 Mens Rea

- Intention or recklessness as to the destroying or damaging of property, and;
- Intention or recklessness as to the endangering of life.

### 7.3 Criminal Damage by Arson

Where the destruction or damage to property under either s.1(1) or s.1(2) Criminal Damage Act 1971 arises through fire, the defendant will also be liable under s.1(3) of criminal damage by arson.

## **6. Fraud**

### **6.1 Fraud - Introduction**

Welcome to the seventh topic in this module guide – Fraud! Fraud can generally be defined as criminal deception intended to result in financial or personal gain. Fraud encompasses a variety of crimes that include, but are not limited to, fraud by false representation, fraud by failing to disclose information, fraud by abuse of position and obtaining services dishonestly.

The law regarding fraud was reformed through the enactment of the Fraud Act 2006, which came into law on 15th January 2007. Prior to this, the fraud offences were set out in sections 15, 16 and 20 of the Theft Act 1968, and sections 1 and 2 of the Theft Act 1978. The decision for reform arose out of the Law Commission's Report on Fraud, published in 2002, which criticised the law at the time for being too broad and complicated. The report also stated that the law was out of date, in that it did not make any allowance for modern means of defrauding through technological advances.

## **6.2 Fraud Lecture**

### 1.0 Introduction and Background

The law regarding fraud was reformed through the enactment of the [Fraud Act 2006](#), which came into law in 2007.

The Fraud Act 2006 provides one general offence of fraud which can be committed in three different ways:

- (i) By false representation
- (ii) By failing to disclose information



(iii) By abuse of position.

The Act also created the key new offence of obtaining services dishonestly.

## 2.0 Fraud

Section 1 of the Fraud Act 2006 provides as follows:

*A person is guilty of fraud if he is in breach of any of the sections listed in subsection (2) (which provide for different ways of committing the offence).*

*(2) The sections are—*

*(a) section 2 (fraud by false representation),*

*(b) section 3 (fraud by failing to disclose information), and*

*(c) section 4 (fraud by abuse of position).*

These offences are all conduct offences and will be committed upon completion of the defendant's fraudulent conduct.

## Legal duty to disclose

It is impossible to list an exhaustive set of situations where this legal duty would arise, however in general it can be said to arise in the following situations:

- Under contract law
- Under certain statutory provisions for example those governing company prospectuses.
- During good faith transactions
- From the custom of particular trades
- Under the existence of a fiduciary relationship
- Between professionals and their clients
- When claiming social security

A duty arises strictly from the existence of the relationship.

## Failure to disclose the information

This is a situation in English law where the *actus reus* requires not a positive act, but instead an omission.

There is no requirement that the failure to disclose relates to relevant information that is material to the matter and further, there is no *de minimis* standard in place.

## 3.0 Obtaining Services Dishonestly

Section 11 of the Fraud Act 2006 provides for the offence of obtaining services dishonestly stating that:

*A person is guilty of an offence under this section if he obtains services for himself or another-*

*(a) by a dishonest act, and*

*(b) in breach of subsection (2).*

*(2) A person obtains services in breach of this subsection if—*

*(a) they are made available on the basis that payment has been, is being or will be made for or in respect of them,*

*(b) he obtains them without any payment having been made for or in respect of them or without payment having been made in full, and*

*(c) when he obtains them, he knows—*

*(i) that they are being made available on the basis described in paragraph (a), or*

*(ii) that they might be, but intends that payment will not be made, or will not be made in full.*

## **7. Sexual Offences**

### **7.1 Sexual Offences – Introduction**

Welcome to the fifth topic in this module guide – Sexual Offences! Sexual Offences encompasses a variety of crimes that include, but are not limited to, rape, assault by penetration, sexual assault, causing a person to engage in sexual activity without consent and sexual offences against children.

The majority of sexual offences are now enclosed within the Sexual Offences Act 2003, which was intended to be a large-scale revision of the law of sexual offences, most prominently, with regards to consent. The act also redefined and clarified a few terms as well as introducing new types of sexual offences. Furthermore, the act offers greater protection to individuals from offenders.

## **8. General Inchoate Offences**

### **8.1 General Inchoate Offences – Introduction**

Welcome to the eighth topic in this module guide – General Inchoate Offences! General Inchoate Offences refers to offences which are, in some sense, incomplete. Principal offences are designed to target ‘wrongs’ based on the defendant’s mens rea and, crucially, his manifestation of some harmful conduct. Inchoate offences, in contrast, will generally not require a significant physical harm to have come about in the form of harm to a person or property, but will target defendants who have made some progress towards a harmful end, intending that harm to come about.

The significant thing to note is that inchoate offences only operate in combination with a principal offence. Therefore, the defendant’s conduct may be inchoate, but it is also deserving of criminalisation.

## 8.2 General Inchoate Offences Lecture

### 1.0 Introduction

There are often instances where despite the intentions of a defendant, their desire to commit their intended crime is not sufficient to fulfil the requirements of the offence (the substantive offence). In these instances, where the substantive offence has not itself have been committed there may well be an offence of a different nature committed due to the actions or agreements of the defendant in preparing to commit the substantive offence. These offences are referred to as general inchoate offences, inchoate meaning incomplete!

### 2.0 Assisting or Encouraging an Offence

The Serious Crime Act 2007 sets out three offences relating to assisting or encouraging an offence:

- Section 44: Intentionally encouraging or assisting an offence
- Section 45: Encouraging or assisting an offence believing it will be committed
- Section 46: Encouraging or assisting offences believing one or more will be committed

### 3.0 Conspiracy

The offence of conspiracy is provided for both under statute and in the common law.

#### 3.1 Statutory Conspiracy

Section 1 of the Criminal Law Act 1977 provides that:

*if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either*

*(a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or*

*(b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible*

*he is guilty of conspiracy to commit the offence or offences in question*

Section 2 of the Act exempts from liability for the offence the following people:

- Married or civil partners
- People under the age of criminal responsibility
- An intended victim of one of the offences

Although there is no requirement for any action in preparation for the offence to be carried out past the agreement, in practice there will often be steps taken towards committing the offence past a mere discussion as without this it would be very difficult to prove the conspiracy in a court.

#### 4.0 Attempt

Section 1 of the Criminal Attempts Act 1981 provides:

*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.*

*(2) A person may be guilty of attempting to commit an offence to which this section applies even though the facts are such that the commission of the offence is impossible.*

*(3) In any case where—*

*(a) apart from this subsection a person's intention would not be regarded as having amounted to an intent to commit an offence; but*

*(b) if the facts of the case had been as he believed them to be, his intention would be so regarded,*

*then, for the purposes of subsection (1) above, he shall be regarded as having had an intent to commit that offence.*

Subsection (4) further provides that this only applies to indictable offences and lists exemptions to which the Act will not apply. It is not possible under the Act to be guilty of the attempt to commit:

- A summary offence
- Conspiracy
  - Aiding, abetting, counselling, procuring or suborning the commission of an offence
  - Assisting or accepting or agreeing to accept consideration for not disclosing evidence in relation to an arrestable offence.

Where a defendant is on trial for the charge of the full offence but it cannot be established on the facts that the offence was completed, then on indictment the court may still convict the defendant for the attempt.

## 9.1 Parties to Crime – Introduction

Welcome to the ninth topic in this module guide – Parties to Crime! Often more than one criminal defendant plays a role in the commission of a crime. Defendants who work together with a shared criminal purpose are seen to be acting with complicity. In instances where participation and criminal conduct varies among the defendants, the issue arises as to who is to be held responsible for which crime, and indeed to what degree they should be held responsible.

In law, the different roles that people can play in the commission of an offence can be broken down into; the principal offender (who is the main perpetrator of the offence), joint principals (who contribute to the *actus reus* by committing their own independent act), innocent agents (who are unknowingly utilised by the principal to carry out the *actus reus*) and secondary parties (who are more commonly described as accomplices or accessories to the crime).

## 9.2 Parties to Crime Lecture

### 1.0 Introduction

It is not always just the person that carries out the *actus reus* of the offence that has been involved. Other people can play a part in the crime alongside this person and they too can be liable for it in law, despite not committing the crime and getting their hands dirty themselves.

In law the different roles that people can play in the commission of an offence can be broken down as follows:

- The principal offender
- Joint principals
- Innocent agents
- Secondary parties

### 2.0 The Principal Offender

The principal offender is the person who carries out the *actus reus*, or in lay terms, the main perpetrator of the offence.

### 3.0 Joint Principals

A joint principal contributes to the *actus reus* by committing their own independent act.

### 4.0 Innocent Agents

It is possible that the principal offender will not carry out the *actus reus* of their chosen offence themselves, but instead utilise an innocent third party to carry out the *actus reus* instead. There are two distinct situations where this could arise.

1. Where the agent lacks the *mens rea* for the offence
2. Where the agent has a defence available to them

#### 4.1 Where the agent lacks the *mens rea* for the offence

It is possible to carry out the *actus reus* of a crime without holding the requisite *mens rea* and thus no offence will be committed. This can arise in the instance of innocent agents where they are tricked into carrying out the *actus reus*.

#### 4.2 Where the agent has a defence available to them

Where there is a defence available that negates the *actus reus* then this will negate their liability for the offence. In relation to innocent agents for example, if the agent is tricked by the principal offender then they may have the defence of mistake. Alternatively, where the innocent agent is below the criminal age of responsibility this too would negate the *actus reus*.

#### 5.0 Secondary Parties

Secondary parties are more commonly described as accomplices or accessories to the crime. They are people who help or encourage the principal offender without themselves physically carrying out the *actus reus*. The help must be provided before or during the commission of the offence.

There are separate charging provisions in relation to being a secondary party to an indictable offence and to being a secondary party to a summary offence.

#### Indictable offences

Section 8 of the Accessories and Abettors Act 1861 provides:

*Whosoever shall aid, abet, counsel, or procure the commission of any indictable offence, whether the same be an offence at common law or by virtue of any Act passed or to be passed, shall be liable to be tried, indicted, and punished as a principal offender.*

## **10. Denials & Defences**

### **10.1.1 Insanity, Automatism and Intoxication – Introduction**

Welcome to the tenth topic in this module guide – Defences! When a defendant is charged with a crime, there are several ways in which he possibly could go about attempting to exonerate himself of legal responsibility, reduce his liability or lessen his sentence. This can be done through arguing the facts of a case, arguing a case on a point of law, arguing mitigating circumstances or establishing a defence in his favour. In law, there exists many different types of defences, and one defence may fall under a multitude of categories.

This topic in this module focuses on three different defences: insanity, automatism and intoxication. These defences are all general and excusatory defences, so accordingly can be pleaded in relation to all crimes and apply where the accused could not have committed a criminal act due to an absence of criminal intent or mens rea.

## **10.1.1 Insanity, Automatism and Intoxication – Introduction**

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## **10.1.2 Insanity, Automatism and Intoxication Lecture**

### 1.0 Introduction

Where the defendant is charged with a crime there are several ways he can go about attempting to exonerate himself of legal responsibility, reduce his liability or lessen his sentence. This can be done through arguing the facts of a case, arguing a case on a point of law, arguing mitigating circumstances or establishing a defence in his favour. In law, there exist many different types of defences and one defence may fall under a multitude of the categories. These categories include:

- Complete
- Partial
- General
- Special
- Excusatory
- Justificatory

These notes focus on three different defences: Insane automatism, non-insane automatism and intoxication. These defences are all general, excusatory defences.

### 2.0 Automatism

As stated above, automatism is as a general defence that can be pleaded in relation to all crimes. There are two types of automatism: Insane automatism and non-insane automatism.

The distinction as to which defence applies comes from whether the cause of the defendant's behaviour was internal or external.

## 2.1 Insane Automatism

Note that this is a legal defence and is not reflective of any medical condition.

### 2.1.1 Criteria

The criteria for the defence was established in the case of *M'Naghten* (1843) 8 ER 718 and is referred to as the M'Naghten rules. These set out that for a successful plea of insanity the following must be established:

- The defendant laboured under a defect of reason;
- Arising from a disease of the mind;
- So that he did not know the nature and quality of his act, OR;
- He did know that what he was doing was wrong.

Once the prosecution have established the *actus reus* beyond all reasonable doubt, the onus is then on the defendant to establish that he fulfils the criteria of insanity. Section 1 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 requires the defendant in establishing the defence to adduce evidence from two or more registered medical practitioners.

### 2.1.2 Defect of Reason

This is a high standard to meet as the defendant must prove that he was deprived of his power to reason. A temporary distraction or absentmindedness will not suffice.

### 2.1.3 Disease of the Mind

The definition for what constitutes a disease of the mind is a legal definition confirmed in [R v Sullivan](#) [1984] AC 156, and not a medical one. A disease of the mind relates to a disease affecting the mental faculties of reason, memory and understanding, and cannot arise from an external cause.

### 2.1.4 Effect of Defect

There are two alternative elements that could be shown here for a plea to be successful. These are either or elements, although it may be possible to show both.

## 2.2 Non-Insane Automatism

Defined by Lord Denning in [Bratty v Attorney General for Northern Ireland](#) [1963] AC 386 as an act which is done by the muscles without any control by the mind or an act done by a person who is not conscious of what he is doing.

## 3.0 Intoxication



The term intoxication is restricted to referring only to intoxication by alcohol and dangerous drugs. Dangerous drugs were defined in *Hardie* as those which are known to give rise of unpredictable or aggressive actions by their consumer.

### 3.1 Dangerous Drugs

*Bailey* sets out that dangerous drugs will never include prescription medication, even where the medication is not prescribed to the defendant and, or is taken to excess. In these cases the correct defence is non-insane automatism.

### 3.2 Involuntary Intoxication

A defendant will be classed as involuntarily intoxicated where he is not aware he is consuming an intoxicant, for example, in cases of spiked drinks.

### 4.3 Voluntary Intoxication

Where the defendant is voluntarily intoxicated and is charged with a specific intent offence and his intoxication means he did not form the *mens rea* of the offence then he will be not guilty. This is not because he has successfully pleaded the defence of intoxication but only because he has not formed the *mens rea*. If however, a basic intent alternative offence is available he will be convicted of that offence, for example, murder to manslaughter.

### 4.4 Intoxicated Mistakes

If the defendant's intoxicated mistake relates to an element of a provision of an offence which is phrased to include mistakes then his mistake will afford him a defence. In other instances this will not afford the defendant a defence.

## **10.2 Duress & Necessity**

### **10.2.1 Duress and Necessity – Introduction**

Welcome to the tenth topic in this module guide – Defences! When a defendant is charged with a crime, there are several ways in which he possibly could go about attempting to exonerate himself of legal responsibility, reduce his liability or lessen his sentence. This can be done through arguing the facts of a case, arguing a case on a point of law, arguing mitigating circumstances or establishing a defence in his favour. In law, there exists many different types of defences, and one defence may fall under a multitude of categories.

This topic in this module focuses on two different defences: duress and necessity. The defence of duress applies where the perpetrator's choice was constrained as a result of threats to commit an otherwise criminal act, whereas necessity applies where the perpetrator has an inhibited choice due to exceptional circumstances. Duress and necessity are both excusatory defences, and as such, apply when the accused admits they committed a criminal act but that their actions can be justified, and therefore they should not be criminally culpable.

### **10.2.2 Duress and Necessity Lecture**

## 1.0 Duress

Duress applies as a defence where a person commits a crime as a response to a threat of death or serious injury either to themselves or another.

The defence of duress is a general defence but there are certain limitations on its use. In cases where the defence of duress is pleaded successfully it has the effect of absolving the defendant of liability. This is because whilst he clearly possesses the requisite *mens rea* for the offence, in carrying out the *actus reus* they are acting under compulsion and not through choice, thus it is not a voluntary act.

### 1.1 Types of Duress

In criminal law the defence of duress takes two different forms.

#### 1.1.1 Duress by Threat

The defence of duress by threat was set out in [\*A-G v Whelan\*](#) [1993] IEHC 1 as arising in circumstances where the defendant was ordered to commit an offence whilst subject to threats of immediate death or serious personal violence so great as to overbear the ordinary powers of human resistance.

#### 1.1.2 Duress by Circumstance

Duress of circumstances arises where it is not a person that provides a threat to the defendant but the nature of the situation. It might be that another person creates the threatening situation but unlike duress by threat there is no requirement that a person specifies to the defendant that a crime must be committed, so long as there is a sufficient link between the situation and the crime.

### 1.2 Elements of the Defence

The defence applies similarly in relation to both duress by threat and duress of circumstances and both are governed by the same criteria. Accordingly, most of the cases are authority for both forms of the defence.

### Immediacy

The requirement for immediacy is broad and does not require immediacy in the strict sense of the word.

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## 2.0 Necessity

### 2.1 Concept of Necessity

This defence arises where the defendant successfully argues that due to a greater evil, it was necessary to commit the offence that he carried out. He had a choice between committing a criminal offence or allowing himself or another to suffer. Self-defence is another example of necessity embodied in a more narrowly defined defence.