

Unit 3: Applying the Law

A1 Murder

Mens rea, which translates to "guilty mind" in Latin, describes the criminal's state of mind at the moment of the crime. This involves having the intent to commit a crime or knowing that they will. For instance, if someone intentionally shoots and kills someone, they have the necessary mens rea for murder. Mens rea can be used to prove criminal responsibility at several levels.

Actus reus is a legal term used in criminal law to describe the physical act or conduct that constitutes a crime. It refers to the external or observable elements of a crime, such as an action, omission, or possession of an illegal substance.

A2 Voluntary manslaughter

Voluntary manslaughter is committed when one person unlawfully kills another in circumstances which one of the partial defences reducing a murder charge apply. A partial defence differs from a complete defence (such as self-defence) in that the crime committed bears all the ingredients of murder but provides some extenuating circumstance which reduces the culpability of the perpetrator.

For a defence of **diminished responsibility** to be accepted it must be proven the perpetrator had reduced mental capacity when committing the crime which means they cannot be held responsible for the act of murder.

A3 Involuntary manslaughter

Involuntary manslaughter is defined as an individual who has committed an unlawful killing without an intention to cause grievous bodily harm or kill the victim, causing the death by recklessness or gross negligence instead.

If a person owes a duty of care to another individual and is negligent to a severe enough degree to cause the death of the victim, they may be liable for involuntary manslaughter by **gross negligence**.

B1 Corporate manslaughter

Corporate manslaughter is a criminal offence in English law, being an act of homicide committed by a company or organisation. In general, in English criminal law, a juristic person is in the same position as a natural person, and may be convicted for committing many offences.

C1 Theft: Section 1–6 of the Theft Act 1968

A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and "thief" and "steal" shall be construed accordingly. It is immaterial whether the appropriation is made with a view to gain, or is made for the thief's own benefit.

C2 Robbery: Section 8 of the Theft Act 1968

Section 8(1) TA 1968 defines robbery as follows: "A person is guilty of robbery if the person steals, and immediately before or at the time of doing so, and in order to do so, they use force on any person or puts or seeks to put any person in fear of being then and there subjected to force."

C3 Burglary: Section 9 of the Theft Act 1968

Having entered any building or part of a building as a trespasser he steals or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.

C4 Fraud by false representation: Section 2 of the Fraud Act 2006

The defendant: made a false representation dishonestly knowing that the representation was or might be untrue or misleading with intent to make a gain for himself or another, to cause loss to another or to expose another to risk of loss. The offence is entirely focused on the conduct of the defendant.

C5 Criminal damage: Section 1 of the Criminal Damage Act 1971

Section 1(1) of the Criminal Damage Act 1971 creates an offence of destroying or damaging any property belonging to another person, whether intentionally or recklessly, without lawful excuse. This offence attracts a penalty of a term of imprisonment not exceeding ten years

D1 Duress

Duress by Threats

There is a two-part test which needs to be passed in order to rely on this defence. The test seeks to address the balance between the seriousness of the threat and the seriousness of the resulting criminal behaviour. R v Graham (1982) put into place the two-part test, but restrictions have been put into place by the more recent case of R v Hasan (2005).

Key Cases

R v Graham (1982) – the defendant was a homosexual man living with his wife and his lover, King, who had violent tendencies. Threatened by King, the defendant strangled his wife with electrical flex. The defence of duress failed because the court did not believe any threat existed.

R v Hasan (2005) – here the defendant had associations with a drug dealer. The dealer told the defendant to burgle a house and steal money. If he did not comply, the dealer told the defendant that his family would be harmed. He could not rely on the defence because he voluntarily associated himself with these criminal “gangs”.

Duress of Circumstances

The rules here are similar to that of duress by threats, but rather than pressure being put on the defendant by another person, the circumstances are such that death or personal injury will ensue if a crime is not committed. The majority of cases in this category are associated with road traffic offences, whereby someone is forced to drive in an illegal manner because of the circumstances. The test is the same as that of duress by threats; in so much as there is an objective and subjective test which have to be passed.

CASE: R v Willer (1986) – here the defendant was charged with reckless driving, but claimed he was forced to drive in such a fashion because he was being chased by a gang of around 30 members. When the gang surrounded the car, he was forced to drive on the pavement in a pedestrian area. It was clear that Willer was being threatened: there was no possibility of him avoiding the threat and anyone in his position would have reacted in the same way.

CASE: R v Conway (1989) – Conway was in a car with a passenger who had earlier been in a car in which someone had been shot. On this occasion, the car was being approached by two men, who unknown to the defendant and his passenger were plain clothed police officers. Fearing that they were going to attack the car, the defendant drove off in a reckless manner. Once again, the defence of duress of circumstances was allowed, because from an objective viewpoint, the defendant acted reasonably to avoid a threat of death or serious personal injury. It is not only road traffic offences which have been held to amount to duress of circumstances; indeed, in R v Pommell (1985) the court ruled that the defence was available to all offences except of murder, manslaughter and treason.

D2 Intoxication

Intoxication defence is a legal argument contesting a defendant's liability for an offence, due to their state of mind being impaired from intoxication, making them unable to form the required mens rea. Intoxication can result from the consumption of alcohol, drugs, or other intoxicating substances. C.

D3 Self-defence

Self-defence is a defence permitting reasonable force to be used to defend one's self or another. So for example, if you are in a situation where you're being attacked, it is acceptable to defend yourself in a reasonable manner, using reasonable force to prevent the attacker from causing you further harm or injuries.

D4 Insanity and automatism

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.

E1 Stop and search

The powers under section 60 of the Criminal Justice and Public Order Act 1994, which must be authorised by a senior police officer, are used to prevent serious violence and the widespread carrying of weapons.

E2 Arrest

An arrest is the police's power to detain someone in order to investigate or prevent a crime.

E3 Detention, interviews, searches and samples

Detention is the act where a police officer or law enforcement official deprives a person of their liberty for a temporary period following a legal process. The police have the power to arrest anyone suspected of certain kinds of criminal acts. They will then normally interview that suspect under caution.