

Answers to Exam questions

Chapter 10

Question 1

Critically evaluate the extent to which the criminal law seeks to protect the well-being of individuals as well as property through the criminalisation of robbery, burglary, blackmail, and criminal damage.

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- This question requires consideration of the rationale behind the criminalisation of specified property offences. The most obvious rationale underlying the criminalisation of robbery, burglary, blackmail, and criminal damage is the protection of property. To what extent are these offences also offences against the person? They also require proof of elements which are designed to seek to protect the well-being of people. You should explore the elements of each of these offences.
- Robbery is governed by s.8, Theft Act 1968. It requires proof of each of the elements of theft and thus is clearly a property offence. However, it is an aggravated form of theft. Consider the additional elements required, most notably the use of force or the threat of force. The force must be applied or threatened to any person. Thus, force directed towards property is not sufficient. Consider *Dawson and James* (1977).
- Burglary is clearly a property offence as it requires proof that the defendant entered a building or part of a building as a trespasser (see ss.9(1)(a) and (b), Theft Act 1968). Burglary is traditionally considered by lay people as primarily as an offence against property and one which requires a theft to occur or an intention to steal. However, theft or an intention to steal is not always a requirement and burglary can be committed by entering a building as a trespasser with an intention to cause GBH (s.9(1)(a)), which clearly seeks to protect the physical well-being of a person, or an intention to do unlawful damage (s.9(1)(a)), which seeks to protect property.
- Under s.9(1)(b), burglary may be committed by entering a building or part of a building as a trespasser and stealing or attempting to do so (seeks to protect property) or by inflicting GBH or attempting to do so (seeks to protect the person).
- Aggravated burglary under s.10, Theft Act 1968 criminalises the carrying of a weapon, etc. during a burglary. Consider whether aggravated burglary seeks to protect the person.

- Consider the offence of blackmail under s.21, Theft Act 1968 and whether the requirement that the defendant make a demand with menaces seeks to protect the person in anyway. Consider the meaning of menaces according to *Thorne v Motor Trade Association* (1933), *Lawrence and Pomroy* (1971), *Clear* (1968) and *Garwood* (1987).
- The justification for criminalising criminal damage is clearly the protection of property. Explore the defence of lawful excuse under s.5(2). Consider also the offence of aggravated criminal damage under s.1(2) which requires an intention to endanger the life of a person or recklessness as to endangering life by the damage to property.

Question 2

Answer BOTH parts (a) and (b) below:

- (a) While walking along the canal bank after a day of fishing, Paul notices a canal barge with an open window. He feeds his fishing net through the window hoping to catch something worth stealing. As his efforts are unsuccessful, Paul decides to climb in through the window. He is spotted by the owner of the barge, Johnny, who shouts, "Stop, thief!" Paul grabs a laptop from a table in the barge and tries to leave. He knocks over a vase in his panic, breaking it. As he tries to leave, he is confronted by Johnny. Paul hits Johnny round the head with the laptop and flees.

AND

- (b) In protest against their use of animals in testing their products, Charlotte sends a letter to the Head Office of a cosmetics company threatening to burn down their premises unless they stop this practice. Receiving no reply from the company, Charlotte decides to set fire to the premises at Head Office. Late at night, when the employees have gone home, she approaches the building. She sees a light on in reception but notices that the desk is empty. Unbeknown to Charlotte, the night security guard is laying on a sofa in reception having a nap. She throws a petrol bomb towards the reception area which explodes and the building catches fire.

What offences, if any, have Paul and Charlotte committed?

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- Part (a) requires consideration of the criminal liability of Paul for a number of offences, such as burglary under s.9(1)(a) and s.9(1)(b), Theft Act 1968. He will also be guilty of theft, criminal damage, and robbery.

- You will need to consider whether when Paul inserts the fishing net through the window, this is sufficient to constitute “entry”. Consider also whether a canal barge constitutes a building – see s.9(4), TA 1968 – this applies to “inhabited vehicles and vessels”, so the barge is likely to be a building. Paul could be guilty of a s.9(1)(a) because if there is an entry of a building, it is certainly as a trespasser and with an intention to steal. A conditional intention is sufficient for burglary: *Attorney General’s Reference (Nos 1 and 2 of 1979)* (1980). Possibility of a s.9(1)(b) here too on the basis that he attempted to steal?
- When Paul climbs in through the window, there is an entry. Discuss cases such as *Collins* (1973), *Brown* (1985) and *Ryan* (1996). Once again, the barge is likely to be a building and Paul knows that he is trespassing. He enters with the intention of stealing, thus s.9(1)(a) is made out. He also actually steals when he picks up the laptop (this is the dishonesty appropriation and at this point the theft is complete). Thus he will be guilty of a s.9(1)(b) too.
- There may also be an offence of simple criminal damage at this stage when Paul knocks over the vase (s.1(1), Criminal Damage Act 1971). He certainly destroys or damages the vase, which is tangible property under s.10(1). The vase clearly belongs to Johnny. There is no lawful excuse here and although Paul may not have intended to do the damage, he may very well be reckless in this regard. Consider the subjective meaning of recklessness under *R v G and another* (2003).
- Finally, Paul commits robbery under s.8, TA 1968 when he leaves the barge as he steals the laptop and uses force when he strikes Johnny with the laptop (see *Dawson and James* (1977)). The force is used at the time of stealing and in order to do so, thus the offence is made out. Discuss whether this could render the burglary an aggravated burglary under s.10, TA 1968.
- Part (b) requires consideration of the criminal liability of Charlotte for a number of offences, such as, blackmail under s.21, TA 1968, criminal damage by fire under ss.1(1) and 1(3), CDA 1971, and aggravated criminal damage by fire under ss.1(2) and 1(3).
- Consider whether the elements of blackmail are satisfied. Has Charlotte made a demand with menaces? Discuss that meaning of a demand. A demand may be made in writing: *Collister and Warhurst* (1955). The threat here would be sufficient as a demand. Consider the meaning of menaces (*Thorne v MTA* (1937)) which is widely construed to cover more than just threats of violence. Is the demand unwarranted? Is it made with a view to gain or with intent to cause loss? She intends to ensure that the company stop using animals to test their products – the

prosecution would have to prove an intention to gain or cause loss, which may be difficult here.

- As she sets the building on fire, Charlotte will obviously be guilty of at least simple criminal damage by fire under ss.1(1) and 1(3), CDA 1971. Consider whether the aggravated offence will apply here. She does damage property belonging to another and she has no lawful excuse. It is also clear that Charlotte intended the damage. The prosecution will also have to prove that Charlotte intended or was reckless as to thereby endangering the life of the security guard. She may not have intended this, but as she saw the light on she may be reckless. However, you need to apply the subjective test of recklessness from *R v G and another* (2003).