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Offensive weapons

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Legislation regulating the possession and use of firearms and offensive weapons is of major importance in the prevention of offences against the person. In earlier editions of this book[1] an account was given of the principal offences under the Firearms Act 1968 and other legislation. This is omitted from the present edition and the reader is referred to *Blackstone's Criminal Practice* (2021) Part B12 and *Archbold* (2021) Ch 24.[2] Consideration is, however, given here to important offences of general interest relating to offensive weapons and bladed articles.

34.1 The Prevention of Crime Act 1953

The Prevention of Crime Act 1953 is, according to its long title, 'An Act to prohibit the carrying of offensive weapons in public places, without lawful authority or reasonable excuse.'

[1] See the 6th edn, at pp 416–22.

[2] The Violent Crime Reduction Act 2006 introduced further offences in relation to imitation firearms, minding a weapon for a person, etc. The legislation has recently been further amended by Part 6 of the Policing and Crime Act 2017.

The Act provides:

1.—(1) Any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any public place any offensive weapon shall be guilty of an offence, and shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [the statutory maximum], or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding four years or a fine, or both.

(2) Where any person is convicted of an offence under subsection (1) of this section the court may make an order for the forfeiture or disposal of any weapon in respect of which the offence was committed.

34.1.1 Offensive weapons

'Offensive weapon' is defined by s 1(4), as amended by the Public Order Act 1986, to mean 'any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him or by some other person'.

It will be noted that this definition is narrower than that of 'weapon of offence' in s 10(1)(b) of the Theft Act 1968. It does not include, as the Theft Act does, articles made, adapted or intended for *incapacitating* a person.[3]

According to the Court of Appeal in *Simpson*,[4] there are three categories of offensive weapon.

(1) Articles *made* for causing injury would include a rifle or bayonet, a revolver, a cosh, a truncheon,[5] a knuckle-duster,[6] a dagger, swordstick[7] or flick knife.[8] It has been held that the fact that rice flails are *used* as weapons is sufficient evidence that they are *made* for that purpose[9] but this seems doubtful. Whether an article is 'made for' causing injury requires the jury to consider whether it is of a kind which is, generally speaking, made for such use.[10] Whether an article falls in this category is a matter of fact, for the jury to determine,[11] although judicial notice has been taken of the fact that flick-knives and butterfly knives are offensive per se.[12] The judge is entitled

3 See p 1062. Ormerod and Williams, *Smith's Law of Theft*, Ch 9.

4 [1983] 1 WLR 1494. See also *Samuels* [2016] EWCA Crim 1876.

5 *Houghton v Chief Constable of Greater Manchester* (1986) 84 Cr App R 319.

6 '. . . bludgeons, properly so-called, clubs and anything that is not in common use for any other purpose but a weapon are clearly offensive weapons within the meaning of the legislature' (the Smuggling Acts): (1784) 1 Leach 342 n (a). In *DPP v Christof* [2015] EWHC 4096 (Admin), the Divisional Court held that a leather belt which, when disassembled, was found to incorporate a detachable buckle in the form of a knuckleduster, was an offensive weapon.

7 *Butler* [1988] Crim LR 695.

8 An offensive weapon per se because judicially noticed as such: *Simpson* [1983] 1 WLR 1494; cf *Gibson v Wales* [1983] 1 All ER 869, [1983] Crim LR 113 and commentary; and *DPP v Hynde* [1998] Crim LR 72 (butterfly knife). In *Vasili* [2011] EWCA Crim 615, the Court of Appeal rejected the submission that an article that was both a flick-knife and a lighter was not 'made . . . for causing injury to the person'. It was just as much an offensive weapon and potentially dangerous if the lighter function was not present.

9 *Copus v DPP* [1989] Crim LR 577 and commentary. It was conceded at the trial in *Malnik* [1989] Crim LR 451 that a rice flail was an offensive weapon.

10 *Warne* [1997] 7 Arch News 2. A petrol bomb is an offensive weapon per se: *Akhtar* [2015] EWCA Crim 176.

11 *Dhindsa* [2005] EWCA Crim 1198.

12 *Garry v CPS* [2019] EWHC 636 (Admin). See also the Criminal Justice Act 1988 (Offensive Weapons) Order 1988, SI 1988/2019, as amended by SI 2002/1668.

to direct the jury that this element of the offence is established, but never to direct a conviction per se.[13]

(2) Articles *adapted* for causing injury would include razor blades inserted in a potato or a bottle broken for the purpose, a chair leg studded with nails, a pair of 'sand gloves'[14] and so on. Whether an article is adapted to cause injury is a question of fact for the jury or magistrates.[15] 'Adapted' probably means altered so as to become suitable.[16] It has been held that unscrewing a pool cue so that the butt end could be used for violence might amount to adapting it, but this seems to be taking things too far.[17] It is not certain whether the intention of the adaptor is relevant.[18] Is an *accidentally* broken milk bottle 'adapted for use for causing injury to the person'? It is submitted that it is not and that if the article was not adapted with intent, it can only be an offensive weapon in the third category.

(3) Articles which are neither made nor adapted for causing injury, but are *carried for that purpose*. The prosecution must prove D had that specific intention when carrying the weapon in a public place.[19] It is not sufficient that D is reckless as to whether the article will be used in that way. Whether D carried the article with the necessary purpose is a question of fact.[20] Articles which have been held to be carried with such intent include a cricket bat,[21] a sheath-knife,[22] a shotgun,[23] a razor,[24] a sandbag,[25] a pick-axe handle,[26] a stone[27] and a drum of pepper.[28] *Any* article is capable of being an offensive weapon; but if it is of such a nature that it is unlikely to cause injury when brought into contact with the person, then the onus of proving the necessary intent will be very heavy. The use to which it was put may be evidence of the intent but no more than that.

Articles adapted or intended by the carrier to injure himself

It was held by the Crown Court in *Bryan v Mott*[29] that a bottle broken for the purpose of committing suicide is 'adapted' for causing injury to the person. In *Fleming*,[30] on the other hand, the judge ruled that a large domestic carving knife carried by D to injure himself was not 'intended' for causing injury to the person: though the Act does not say 'another person', that is what it means. The view of the judge in *Fleming* is to be preferred. The question is whether the thing is 'an offensive weapon' and since 'offensive' implies an attack on *another* the injury which the adaptor or carrier must contemplate must be injury to another.

13 *Wang* [2005] UKHL 9; *Dhindsa* [2005] EWCA Crim 1198.

14 ie gloves into which iron powder is inserted to give weight and protect the knuckles: [2007] EWCA Crim 3312.

15 *Williamson* (1978) 67 Cr App R 35.

16 cf *Davison v Birmingham Industrial Co-operative Society* (1920) 90 LJKB 206; *Flower Freight Co Ltd v Hammond* [1963] 1 QB 275; and *Herrmann v Metropolitan Leather Co Ltd* [1942] Ch 248; *Maddox v Storer* [1963] 1 QB 451; *Formosa* (1990) 92 Cr App R 11, [1990] Crim LR 868.

17 *Sills v DPP* [2006] EWHC 3383 (Admin); the case is better seen as one of purposive carrying.

18 *Maddox v Storer* [1963] 1 QB 451.

19 *Petrie* [1961] 1 All ER 466; *Tucker* [2016] EWCA Crim 593.

20 *Williamson* (1977) 67 Cr App R 35. See also *Dhindsa* [2005] EWCA Crim 1198 (ring with name of appellant across several fingers wrongly treated by judge as a weapon when matter should have been left to jury).

21 *Tucker* [2016] EWCA Crim 593.

22 *Woodward v Koessler* [1958] 3 All ER 557.

23 *Gipson* [1956] Crim LR 281; *Hodgson* [1954] Crim LR 379.

24 *Petrie* [1961] 1 All ER 466; *Gibson v Wales* [1983] 1 All ER 869.

25 ibid.

26 *Cugullere* [1961] 2 All ER 343.

27 *Harrison v Thornton* (1966) 68 Cr App R 28.

28 120 JP 250.

29 (1975) 62 Cr App R 71. The point was not decided by the Divisional Court.

30 [1989] Crim LR 71 (Judge Fricker QC).

The cases may, however, be distinguishable if 'adapt' does not imply any intention on the part of the adaptor. Breaking the milk bottle in fact makes it more suitable for injuring others, even if the adaptor intends injury only to himself. But such a distinction does not seem justified in principle.

Burdens of proof

In the case of articles 'made or adapted', the prosecution have to prove no more than possession in a public place.[31] D will then be convicted unless he can prove, on a balance of probability, that he had lawful authority or reasonable excuse.[32] But if the article falls into the third category the onus is on the prosecution to show that it was carried with intent to injure.[33] The prosecution must satisfy the jury that the article is either offensive per se (made or adapted) or, if it is not, that D had it with him with intent. If some of the jury think it is the one, and some the other, the case, it is submitted, is not made out.[34]

The requisite intention

The question in *Woodward v Koessler*[35] was whether D intends to 'cause injury to the person' if he intends merely to frighten or intimidate by displaying a knife rather than by making physical contact. It is now established that he does not. If there is no intention to cause physical injury, the offence is only committed if there is an intention to cause injury by shock, a psychiatric injury—and only in very exceptional circumstances could evidence of such an intention be found.[36] Recklessness as to use will not be sufficient mens rea for the offence.[37] A conditional intention to use the article is sufficient but it must be an intention to use the article in the future. If D sets out from Berkshire intending, if the occasion arises, to use a domestic knife for causing injury in Cornwall, the knife is an offensive weapon so long as it is carried in a public place and the intention continues. Once D believes that there is no possibility of the knife being used for causing injury—because, for example, his purpose has been accomplished—it ceases to be an offensive weapon.[38] It may, therefore, be no offence to carry the knife—whether or not it had been used—from Cornwall back to Berkshire.

Offences of carrying, not using

After some hesitation, the courts have construed the Act in the light of its long title. It is aimed at the *carrying* of offensive weapons *in public places*. It is not aimed at the actual *use* of the weapon, which can invariably be adequately dealt with under some other offence. Possession of a weapon does not necessarily lead to an offence against the person, but that does not mean that possession offences are not justified.[39] It has been suggested that there are a growing number of possession-type offences which are acquiring a greater significance in the criminal law.[40] They are often easy to detect and prove and can carry substantial sentences.[41]

[31] *Davis v Alexander* (1970) 54 Cr App R 398.

[32] See *L v DPP* [2003] QB 137.

[33] *Petrie* [1961] 1 All ER 466; *Leer* [1982] Crim LR 310.

[34] *Flynn* (1985) 82 Cr App R 319, [1986] Crim LR 239 and commentary.

[35] [1958] 3 All ER 557.

[36] *Edmonds* [1963] 2 QB 142; *Rapier* (1979) 70 Cr App R 17; *Snooks* [1997] Crim LR 230. See more recently *Ali* [2012] EWCA Crim 934 in which it was conceded by the Crown that the judge's summing up was defective as it invited the jury to convict on the basis that D had used the weapon in question only to frighten.

[37] See *Byrne* [2003] EWCA Crim 3253, [2004] Crim LR 582 and commentary.

[38] *Allamby* [1974] 3 All ER 126. Cf *Ellames* [1974] 3 All ER 130.

[39] See on this D Husak, 'The Nature and Justifiability of Non-Consummate Offences' (1995) 37 Ariz LR 151.

[40] See eg the offences under the Terrorism Acts and see C Walker, *Blackstone's Guide to the Anti-Terrorism Legislation* (3rd edn, 2014) Ch 6. For an interesting account of possession offences, see MD Drubber, 'The Possession Paradigm' in Duff and Green, *Defining Crimes*, 91.

[41] The CPS has published its policy on prosecuting those who carry weapons: www.cps.gov.uk/legal-guidance/offensive-weapons-knives-bladed-and-pointed-articles.

In *Jura*,[42] D was holding an air rifle at a shooting gallery when, on being suddenly provoked, he shot and wounded a woman. It was held that he had a reasonable excuse for *carrying* the rifle though not, of course, for using it in that way. But he had committed one offence, not two. It was as if a gamekeeper at a shooting party were suddenly to lose his temper and shoot at someone. The position is therefore that if D is lawfully in possession of the article, whether it be an offensive weapon per se or not, his decision unlawfully to use, and immediate use of it, does not amount to an offence under the Act. In *Dayle*,[43] D took a car jack from the boot of his car and threw it at V in the course of a fight. In *Ohlson v Hylton*,[44] D, a carpenter, took a hammer from his tool bag in the course of a fight and struck V. In neither case was D guilty of an offence under the Act. It seems that if D is not in possession of the article until an occasion for its use arises and he then takes it up for immediate use, he commits no offence under the Act.[45] The law was so stated in *Ohlson v Hylton*:[46]

> To support a conviction under the Act the prosecution must show that the defendant was carrying or otherwise equipped with the weapon, and had the intent to use it offensively before any occasion for its actual use had arisen.[47]

In *Szewczyk*,[48] the Court of Appeal commented that the statement in *Ohlson v Hylton* and that in *Jura* demonstrated the clear intention of the courts:

> to apply a reading of the statute with a view to simple, straightforward charging; with a view to clarity—a clarity separating the charging of an offensive weapon *being carried* apart from assault, and the *assault itself*.[49]

This interpretation avoids the formidable difficulty which would otherwise arise where D picks up an article in the course of a fight, allegedly for self-defence. The onus of proving that this was an unreasonable step for the purposes of self-defence is on the Crown but, if it was capable of being an offence under the Act, it would be for D to prove he had a reasonable excuse.

Duration of offence

An 'occasion' has a beginning and it must also have an end.[50] If D picks up a glass to defend himself in the course of a pub brawl he does not commit an offence under the Act; but suppose, when the fight is over, he declines to put the glass down and insists on carrying it home through two miles of streets? Probably the 'occasion' has come to an end, and the question is whether D has a reasonable excuse to carry the article.

34.1.2 Lawful authority or reasonable excuse

It may be that the existence of lawful authority is a pure question of law, whereas whether there is a reasonable excuse is a question of fact, subject to the usual judicial control—that there must be sufficient evidence that a reasonable jury properly directed may safely reach that conclusion.[51]

[42] [1954] 1 QB 503.

[43] [1973] 3 All ER 1151. See also *Sundas* [2011] EWCA Crim 985.

[44] [1975] 2 All ER 490. See also *Police v Smith* [1974] 2 NZLR 32 (guest in restaurant using table knife offensively); *Humphreys* [1977] Crim LR 225 (penknife).

[45] A point seemingly overlooked in *Byrne* [2004] Crim LR 582.

[46] [1975] 2 All ER 490 at 496. The requirement that the intention to use the weapon has to be formed before the occasion of its use was reaffirmed in *Veasey* [1999] Crim LR 158 and *C v DPP* [2002] Crim LR 202 and commentaries.

[47] *Powell* [1963] Crim LR 511 and *Harrison v Thornton* [1966] Crim LR 388 therefore appear to be wrongly decided.

[48] [2020] 1 WLR 492.

[49] At [19] per Irwin LJ (emphasis added).

[50] cf *Giles* [1976] Crim LR 253 (Judge Jones).

[51] *Peacock* [1973] Crim LR 639; *Leer* [1982] Crim LR 310.

The term 'lawful authority' presents difficulties. Historically, before the 1953 Act, it was presumably generally lawful to be in possession of an offensive weapon in a public place—otherwise there would have been no necessity for the Act. Now it is generally unlawful. 'Lawful authority' suggests some legal exception to the general rule of the Act; yet none is provided for and the words themselves are certainly not self-explanatory. In *Bryan v Mott*, Lord Widgery CJ said[52] that 'lawful authority' refers to those 'people who from time to time carry an offensive weapon as a matter of duty—the soldier with his rifle and the police officer with his truncheon'. It seems that the 'duty' must be a public one—an employer cannot authorize his employees to carry offensive weapons simply by getting them to contract to do so.

Whether there is a reasonable excuse is said to depend on whether a reasonable person would think it excusable to carry the weapon,[53] and, in *Butler*,[54] D's argument that he had a reasonable excuse because he never considered whether the swordstick he was carrying was an article made or adapted for causing injury was left to the jury; but that may have been too generous. What did he suppose a swordstick was for, if not injuring people? A possible answer is that he thought it was made as a curio or 'collector's item'.

In the more recent case of *Garry v CPS*,[55] the question was whether a butterfly knife carried by a plumber was for a reasonable excuse (he claimed it was his preferred tool for cutting aluminium). The court concluded that the question depends on the facts of each case, and that the fact-finding tribunal enjoys a wide discretion.

> An innocent purpose for having an offensive weapon in a public place does not equate to a reasonable excuse, rather the court is entitled to consider necessity or immediate temporal connection between possession and purpose for which it is carried. . . .
>
> The starting point is *Bryan v Mott* [1975] 62 Cr App R 71 where the Lord Chief Justice said: 'In deciding whether a reasonable excuse is made out for the carrying of an offensive weapon in a public place the court should ask whether a reasonable man would accept that in the particular circumstances it was a proper occasion for carrying such a weapon.'[56]

Proof that the weapon was for use at work is not necessarily proof that there was a reasonable excuse for carrying it. In many instances, when a defendant proves use of the item for work, reasonableness of that use would not arise. That said, conclusive proof of a habit of using the weapon for work might prompt review of whether that use was reasonable as with 'the wedding planner [who] supplies a sword for cake-cutting, the chef [who] tenderises meat using knuckle dusters'.[57] Context is clearly important and the temporal connection between the time of carrying and the legitimate use to which it was claimed the article would be put will be relevant.

Generally, the courts have construed the provision strictly and exercised close control over magistrates and juries. It is not enough that D's intentions for use of the article were entirely lawful.[58] All of the circumstances must be considered, so, for example, it was a reasonable excuse for a male stripper to possess a truncheon as part of his uniform.[59]

A belief, however reasonable and honest, that an extendable baton (an offensive weapon) is an aerial or some other innocent article is not a reasonable excuse.[60] It is not necessarily a reasonable excuse that the weapon is carried only for self-defence. D must show that there

52 (1975) 62 Cr App R 71 at 73.
53 *Bryan v Mott*, ibid.
54 [1988] Crim LR 695.
55 [2019] EWHC 636 (Admin).
56 At [16], [18] per Rafferty LJ.
57 At [17].
58 *Bryan v Mott*, n 52.
59 See *Frame v Kennedy* 2008 HCJAC 25 (K performed as 'Sergeant Eros').
60 *Densu* [1998] 1 Cr App R 400.

was 'an imminent[61] particular threat affecting the particular circumstances in which the weapon was carried'.[62] One who is under constant threat it is said, must resort to the police. He commits an offence if he regularly goes out armed for self-defence.[63] So, there was held to be no excuse for carrying around an iron bar, though D had reasonable cause to fear and did fear that he would be violently attacked and intended to use the bar for defence only.[64] It is not reasonable for an Edinburgh taxi driver to carry two feet of rubber hose with a piece of metal inserted at one end, though he does so for defence against violent passengers whom taxi drivers sometimes encounter at night.[65] It has been held that possession of a broken milk bottle (an article adapted for causing injury) is not excused by the fact that D intended to use it to commit suicide.[66] It is an offence for security guards at clubs to carry truncheons 'as a deterrent' and as 'part of the uniform'.[67]

Unlawful possession may become lawful if circumstances change so as to give rise to a reasonable excuse. When a person is attacked he may use anything that he can lay his hands on to defend himself, so long as he uses no more force than is reasonable in the circumstances. It may, then, be reasonable to use an offensive weapon that he is unlawfully carrying. When Butler[68] was viciously attacked, his use of the swordstick to defend himself was justified, so possession of it must have become lawful, but that could not undo the possession offence already committed.[69] The narrow interpretation of reasonable excuse may qualify the important principle that a person cannot be driven off the streets and compelled not to go to a public place where he might lawfully be because he will be confronted by people intending to attack him.[70] If he decides that he cannot go to that place unless armed with an offensive weapon, it seems that he must stay away. He commits an offence if he goes armed.[71] The effectiveness of the legislation in preventing the carrying of arms would be seriously impaired if anyone who reasonably feared that he might be attacked was allowed to carry a weapon.[72]

Where D had an explanation for possession of the weapon, for example by putting it in his work trousers and forgetting 'that he was wearing those trousers' and was found in possession in public, the defence of a reasonable excuse ought still to have been left to the jury.[73]

Forgetfulness alone is not a sufficiently good reason, but coupled with other factors may be and should be left to the jury.[74] In *Jolie*, the court offered two examples of facts on which there might be a valid good reason based on forgetfulness: a parent who, having bought a

61 But this word does not appear in the statute and should not be elevated to such: *McAuley* [2009] EWCA Crim 2130 decided under the 1988 Act, s 139.

62 *Evans v Hughes* [1972] 3 All ER 412 at 415; *Evans v Wright* [1964] Crim LR 466. The case was misapplied by the trial judge in *Archbold* [2007] EWCA Crim 2125, where D had phoned the police to report that V was attacking D's home and car and D had then gone in search of him with a knife. The trial judge's direction gave the jury no opportunity to apply a defence of reasonable excuse if D was facing imminent attack. See also *McAuley* [2009] EWCA Crim 2130 decided under the 1988 Act, s 139, emphasizing that the matter should be left to the jury.

63 For a comparative view, see D Lanham, 'Offensive Weapons and Self-Defence' [2005] Crim LR 85.

64 *Evans v Hughes*, n 62. See also *Bradley v Moss* [1974] Crim LR 430; *Pittard v Mahoney* [1977] Crim LR 169.

65 *Grieve v MacLeod* 1967 SLT 70.

66 *Bryan v Mott*, n 52. See also *Bown* [2003] EWCA Crim 1989, decided under the 1988 Act, s 139. See also *Miller* [2007] EWCA Crim 1891, possession of butterfly knife having confiscated from girlfriend with history of self-harm.

67 *Spanner* [1973] Crim LR 704.

68 See n 54.

69 Smith, *Justification and Excuse*, 117–23.

70 *Field* [1972] Crim LR 435.

71 *Malnik v DPP* [1989] Crim LR 451.

72 *Salih* [2007] EWCA Crim 2750. See *Deyemi* [2007] EWCA Crim 2060 and *Zahid* [2010] EWCA Crim 2158 on this approach with firearms.

73 *Bird* [2004] EWCA Crim 964.

74 *Jolie* [2004] EWCA Crim 1543; *Tsap* [2008] EWCA Crim 2679; *Chahal v DPP* [2010] EWHC 439 (Admin).

kitchen knife, put it in the glove compartment of a car out of the reach of a child (reason 1), forgetting (reason 2) later to retrieve it. Similarly, in *Glidewell*,[75] a taxi driver discovered weapons left by a passenger (reason 1), and forgot to remove them because he was busy (reason 2). Each case depends on its own circumstances as to whether or not forgetfulness affords the defendant a defence.[76]

The imposition of a burden of proof on D can cause great difficulty where he is charged in a second count with another offence which imposes no such burden. In *Snooks and Sergeant*,[77] DD were also charged with possessing an explosive, contrary to s 64 of the OAPA. They relied on self-defence. For s 64, the onus was on the prosecution, under the 1953 Act the onus is on DD. The jury have a difficult task.

34.1.3 A 'public place'

Section 1(4) of the Prevention of Crime Act 1953 provides:

> 'public place' includes any highway and any other premises or place to which at the material time the public have or are permitted to have access whether on payment or otherwise.

This is very similar to the interpretation which has been placed upon s 192 of the Road Traffic Act 1988 and to the definition of public place, etc in other Acts. It should always be borne in mind that the same term may bear different meanings according to the context in which it is used and that whether a place is public is a question of fact.[78]

A public place could not include land adjoining that to which the public had access even if D could have inflicted harm from such land.[79] A householder impliedly invites persons having legitimate business to walk up his garden path to the door, but this does not render the garden a 'public place'. The class of persons invited to enter is too restricted for them to constitute 'the public'.[80] On the other hand, the communal landing of a block of flats has been held to be a public place on the ground that the public had access in fact, whether or not they were permitted to have it.[81] In the absence of a notice restricting entry, there was evidence on which justices could find that the unrestricted access of the public to a local authority housing estate extended to the stairways and landings of the flats.[82] The jury are, of course, entitled to draw reasonable inferences; so that where D produced an air pistol in a private dwelling-house which he was visiting, it was open to them to infer that he brought it to or took it away from the house through the public street.[83] Possession of an article (truncheon) in a car on a public road is possession in a public place.[84]

34.1.4 Possession and mens rea

There are two aspects of the mens rea to consider.

First, it must be proved that D 'has with him' the article. The prosecution must prove the minimum mental element which is necessary to constitute possession and, in addition, the 'closer contact' than mere possession which the phrase 'has with him' implies.[85] The question then is whether the offence is one of strict liability or whether any mens rea is required.

[75] (1999) 163 JP 557. [76] *Gregson* (1992) 96 Cr App R 240. [77] [1997] Crim LR 230.

[78] *Theodolou* [1963] Crim LR 573. [79] *Roberts* [2003] EWCA Crim 2753 (garden 1m wide).

[80] *Edwards and Roberts* (1978) 67 Cr App R 228 (a case under s 5 of the Public Order Act 1936).

[81] *Knox v Anderton* (1982) 76 Cr App R 156, [1983] Crim LR 114 and commentary. But a public place is not synonymous with a place from which the public are not excluded: *Harriott v DPP* [2005] EWHC 965 (Admin).

[82] See also *Hanrahan* [2004] All ER (D) 144 (Nov) (rehabilitation centre to which access gained through intercom system).

[83] *Mehmed* [1963] Crim LR 780. [84] *Ellis* [2010] EWCA Crim 163.

[85] *McCalla* (1988) 87 Cr App R 372 at 378.

In *Jolie*,[86] D was found in possession of a knife in a car he was driving and claimed that he had forgotten it was there, although he admitted putting it there as he had used it to start the broken ignition. Kennedy LJ suggested that in the earlier inconsistent case law in the cases of *Martindale*,[87] *McCalla*[88] and *Russell*[89] it had at least been clear that the article had remained under D's control. His lordship suggested that the jury should be directed that they may find possession if either D was aware of the presence of the weapon or he was responsible for putting it where it was mislaid.[90]

Secondly, as regards the relevant mens rea as to the offensiveness of the weapon, in *Densu*[91] counsel abandoned an argument before the Court of Appeal that the ruling of the trial judge was wrong insofar as it suggested that the proof that D 'has with him' is satisfied on proof that D knew that he had the weapon (a baton) with him but did not know that it was a weapon. The prevailing view is that liability is strict.

34.2 Other offensive weapons offences

34.2.1 Immediate risk of serious harm by unlawfully threatening with a weapon

Parliament has supplemented s 1 with s 1A of the 1953 Act, which provides:

> (1A) A person is guilty of an offence if that person—
> (a) has an offensive weapon with him or her in a public place,
> (b) unlawfully and intentionally threatens another person with the weapon, and
> (c) does so in such a way that there is an immediate risk of serious physical harm to that other person.
>
> (2) For the purposes of this section physical harm is serious if it amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861.

The offence is triable either way. On conviction on indictment, the maximum penalty is four years' imprisonment, a fine or both; on summary conviction, the maximum penalty is six months' imprisonment and/or an unlimited fine (s 1A(4)).

In interpreting this offence, the courts will draw upon the definitions within s 1 of the 1953 Act.

34.2.2 Threatening with an offensive weapon in a private place

Section 52 of the Offensive Weapons Act 2019 creates an offence for a person, while in a private place, to unlawfully and intentionally threaten another person with an offensive weapon within the meaning of s 1 of the Prevention of Crime Act 1953, and there is an immediate risk of serious physical harm to the other person (s 52(2)).

On summary conviction, the maximum punishment is imprisonment for a term not exceeding six months, or to a fine or to both; or, on conviction on indictment, to imprisonment for a term not exceeding four years, to a fine or to both (s 52(6)).

[86] [2003] EWCA Crim 1543. [87] (1986) 84 Cr App R 31.
[88] See n 85. [89] (1984) 81 Cr App R 315.
[90] See also *Hilton* [2009] EWHC 2867 (Admin) on the importance of distinguishing whether D knew he had something with him and whether he had a good reason for possessing it (decided under s 139).
[91] [1998] 1 Cr App R 400.

34.2.3 Possession of an offensive weapon on school premises

It is an offence, contrary to s 139A(2) of the Criminal Justice Act 1988 (CJA 1988), for a person to have with him on school or further education premises an offensive weapon within the meaning of the Prevention of Crime Act 1953. It is a defence to prove 'good reason or lawful authority'. 'School premises' means land used for the purposes of a school excluding any land occupied solely as a dwelling by a person employed at the school; and 'school' has the meaning given by s 4 of the Education Act 1996. It is a defence to prove 'good reason or lawful authority'.

The offence is triable either way. On summary conviction, it is punishable with a term of imprisonment not exceeding six months and/or an unlimited fine and, on conviction on indictment, to a term of imprisonment not exceeding four years or a fine or both (CJA 1988, s 139A(5)(b)).

34.2.4 Threatening with an offensive weapon on school premises

By s 139AA of the CJA 1988:

(1) A person is guilty of an offence if that person—

(a) has an article to which this section applies with him or her . . . on school premises,

(b) unlawfully and intentionally threatens another person [('A')] with the article, and

(c) does so in such a way that there is an immediate risk of serious physical harm to that other person.

The offence under s 139AA of the CJA 1988 is triable either way. On conviction on indictment, the maximum penalty is four years' imprisonment and/or a fine; on summary conviction, the maximum penalty is six months' imprisonment and/or an unlimited fine (s 139AA(6)).

34.3 Articles with blades or points

The Prevention of Crime Act 1953 is supplemented by yet another offence, triable either way, under s 139 of the CJA 1988, punishable on summary conviction by six months' imprisonment and, on indictment, by four years' imprisonment.[92]

In short, the offence is to have in a public place an article which has a blade[93] or is sharply pointed except a folding pocket knife[94] with a cutting edge not exceeding three inches.[95] It is a matter of law for the judge to decide whether an article falls within this definition in s 139.[96]

Section 139 of the CJA 1988 provides:

(1) Subject to subsections (4) and (5) below, any person who has an article to which this section applies with him in a public place shall be guilty of an offence.

(2) Subject to subsection (3) below, this section applies to any article which has a blade or is sharply pointed except a folding pocket knife.

[92] Increased from two years by the Violent Crime Reduction Act 2006, s 42.

[93] This probably means a blade which has a cutting edge. A screwdriver, even if it may be properly described as having a blade, is not within the section: *Davis* [1998] Crim LR 564. However, in *Brooker v DPP* (2005) 169 JP 368, a butter knife with no cutting edge and no point was held to be a bladed article.

[94] Which means a knife which is 'readily and indeed immediately foldable at all times, simply by the folding process': *Fehmi v DPP* (1993) 96 Cr App R 235, so that a pocket knife which locks into position is not 'folding': *Deegan* [1998] 2 Cr App R 121. A cut-throat razor is not a pocket knife: *D* [2019] EWCA Crim 45.

[95] On the difficulties on proving length where the weapon is lost, see *Banton* [2009] EWCA Crim 240.

[96] *Davis* [1998] Crim LR 564.

(3) This section applies to a folding pocket knife if the cutting edge of its blade exceeds 3 inches.

(4) It shall be a defence for a person charged with an offence under this section to prove that he had good reason or lawful authority for having the article with him in a public place.

(5) Without prejudice to the generality of subsection (4) above, it shall be a defence for a person charged with an offence under this section to prove that he had the article with him—

(a) for use at work;

(b) for religious reasons; or

(c) as part of any national costume.

. . .

In this section, 'public place' includes any place to which at the material time the public have or are permitted access, whether on payment or otherwise.

The article need not be inherently offensive, made or adapted for causing injury or intended by D for such use.[97] The offence under s 139 of the 1988 Act requires proof that D had a 'bladed article' with him in a public place, albeit for a short time. The fact that a blade might be used for other functions than as a weapon (eg a Swiss Army knife), does not mean that it is not prima facie a bladed article within s 139.[98] Otherwise, the constituents of the offence are similar to those required by the 1953 Act.

It is a defence for D to prove[99] that he had *good reason* or lawful authority for having the article with him.[100] In *Jolie*, the court regarded the words 'good reason' in the 1988 Act as intended to be narrower than 'reasonable excuse' in the 1953 Act. The court concluded that the words 'good reason' do not generally require a judicial gloss in directing the jury.[101]

Self-defence against an anticipated imminent attack may be a good reason.[102] In *Davis*,[103] the court thought that the section imposed 'a very significant limitation on the citizen's freedom. It should not be assumed that it has been achieved except by the use of clear words.' It is specifically provided that it is a defence for D to prove that he had the article with him for use at work,[104] religious reasons[105] or as part of national costume. It is necessary to prove that he had it with him for a specific reason *in public* on this occasion.[106]

[97] *Szewczyk* [2020] 1 WLR 492.

[98] *Giles* [2003] All ER (D) 68 (Feb). A grapefruit knife qualifies: *R (on the application of Windsor and Maidenhead RIBC) v East Berkshire Justices* [2010] EWHC 3020 (Admin).

[99] The Divisional Court in *L v DPP* [2003] QB 137 held that the reverse onus provision in s 139 did not breach the ECHR.

[100] The 'good reason' must relate to both D having the article and it being in a public place; see *Deegan* [1998] 2 Cr App R 121.

[101] See *Chahal v DPP* [2010] EWHC 439 (Admin); *Hilton* [2009] EWHC 2867 (Admin). In *Clancy* [2012] EWCA Crim 8, the Court of Appeal accepted that fear of attack would constitute a 'good reason' within the meaning of s 139(4). The court held that D's state of mind is not wholly irrelevant, but it is not determinative either. For criticism see [2012] Crim LR 549. See also *Smith v Shanks* 2014 SLT 626.

[102] *Emmanuel* [1998] Crim LR 347.

[103] [1998] Crim LR 564. Contrast the attitude of the court in *Deegan*, n 100.

[104] A question of fact for the jury: *Manning* [1998] Crim LR 198 (knife carried to do repairs to D's own car). This can include casual or part-time work: *Chahal v DPP* [2010] EWHC 439 (Admin).

[105] Which must be the dominant reason: *Wang* [2003] EWCA Crim 3228. D must show that the religion was the reason for his possession on this occasion, ie that he was to use it in some religious connection. The court acknowledged, *per curiam*, that Art 9 of the ECHR might require the State authorities to allow persons to carry bladed instruments in public in pursuit of their religious beliefs.

[106] *Giles*, n 98.

34.3.1 Having an article with a blade or point on school premises

It is an offence triable either way, contrary to s 139A(1) of the CJA 1988, for a person to have an article to which s 139 applies on school[107] premises. It is a defence to prove 'good reason or lawful authority'. The offence is triable either way. It is punishable, on summary conviction, with a term of imprisonment not exceeding six months and/or an unlimited fine and, on conviction on indictment, a term of imprisonment not exceeding four years[108] or a fine or both (s 139A(5)).

34.3.2 Threatening with a bladed article giving rise to immediate risk of serious harm

By virtue of s 139AA of the CJA 1988, an offence of threatening with a bladed article is created (which unlike that for offensive weapons in s 139AA is not limited to threatening on school premises).

A person is guilty of an offence if he (a) has an article to with him or her in a public place or on school premises; (b) unlawfully and intentionally threatens another person with the article; and (c) does so in such a way that there is an immediate risk of serious physical harm to that other person.[109] In the Crown Court it carries a mandatory minimum sentence of six months.

Section 52 of the Offensive Weapons Act 2019 creates an offence for a person, *while in a private place*, to unlawfully and intentionally threaten another person with an article to which s 139 of the CJA 1988 applies (or a corrosive substance) and there is an immediate risk of serious physical harm to the other person (s 52(2)).

On summary conviction, the maximum punishment is imprisonment for a term not exceeding six months, or to a fine or to both; or, on conviction on indictment, to imprisonment for a term not exceeding four years, to a fine or to both (s 52(6)).

107 The Offensive Weapons Act 2019, s 45 extends s 139A yet further to apply to further education premises.

108 Increased from two years by the Violent Crime Reduction Act 2006, s 42.

109 For sentencing, see the Sentencing Act 2020, s 312.