

Chapter 11

Ivy places a leaf over part of a nude statue in her local park. At her trial she produces a petition which suggests that nearly 80 per cent of the inhabitants in her town think that the statue is now improved. Has she committed criminal damage? (Do not forget to consider the mens rea issues as well as the question of whether or not there is damage.)

There is surprisingly little case law on the meaning of damage. It appears that acts which only affect the property in a minimal way will not be damage. So if the fig leaf can simply be lifted off without difficulty this may indicate that it is no damage. There is no real guidance in the courts on whose point of view one takes to determine if there is damage. One key argument here may be that Ivy did not take a risk that she was damaging the property. However, the mens rea for criminal damage is recklessness and although she may have intended to add the fig leaf she may not have intended to damage the statue.