

### Think box 14.1

In the examples below, has D entered a building as a trespasser?

1. D inserts a long hook on the end of a pole through the window of a warehouse to drag out some expensive oriental carpets.
2. D points a gun through a window to shoot someone inside.
3. D puts a robot through the window of a building so that it may unlock a door and admit D into the building.

### Answer guidance

1. Yes, this would amount to entry and burglary.
2. This example would also amount to entry and burglary.
3. Probably not burglary but it would be an attempt; the robot is being used to gain entry and not to commit an ulterior offence.

### Thinking point 14.2

Is there a trespass in the following cases?

1. D is carried against her will into X's house and left there. She steals a necklace and escapes via an open window.
2. D mistakenly enters a neighbour's house through an open door one night after a furious row with his girlfriend. On turning to leave, he sees a huge box of chocolates by the front door. He takes it and leaves, intending to give it to his girlfriend the next time he sees her.
3. D gains entry into an 85-year-old person's home by fraudulently representing himself as a gas-meter reader. He then steals her purse and seriously assaults her.
4. An 18-year-old daughter living in her parents' home invites her boyfriend to her room for sex. On his way out, he steals her father's mobile phone.

### Answer guidance

1. D is carried against her will into X's house and left there. She steals a necklace and escapes via an open window.  
(No – trespass must be voluntary. Therefore, D does not commit burglary.)

2. D mistakenly enters a neighbour's house through an open door one night after a furious row with his girlfriend. On turning to leave, he sees a huge box of chocolates by the front door. He takes it and leaves, intending to give it to his girlfriend the next time he sees her.

(The AR of burglary requires: entry/as a trespasser/of a building or part. Whether he has trespassed depends on there being voluntary action and either knowledge or recklessness as to belief in the right to enter. A mistake would negate the necessary MR for the purposes of trespass and potential s9(1)(a) burglary, for he would lack MR either for trespass or the intention for the ulterior offence at the time of entry. Query whether he has liability under s9(1)(b): he must later realize his mistake and know he is in the wrong house. The MR of trespass will be satisfied. By stealing the chocolates, he commits s9(1)(b) burglary. If he was unaware of the fact that he had no right to be there, he will lack MR for the offence.)

3. D gains entry into an 85-year old person's home by fraudulently representing himself as a gas-meter reader. He then steals her purse and seriously assaults her.

(Entry may have been with consent but as it was obtained by a deception D has intentionally trespassed and commits burglary by virtue of his intention to commit the ulterior offences of theft and GBH.)

4. An 18 year-old daughter living in her parents' home invites her boyfriend to her room for sex. On his way out, he steals her father's mobile phone.

(Boyfriend would realize that his permission to enter does not extend to theft. He has exceeded his permission to enter (Jones & Smith). This would be either s9(1)(a) burglary if he intended to steal when entering or s9(1)(b) if the intention arises later at which point he becomes a trespasser.)

### Thinking point 14.3

Has D entered any building or part?

1. D breaks into a derelict house and takes away a fire-place.
2. D goes to the local swimming pool and walks down a corridor passing a notice stating that access to the public is denied. He steals an employee's leather coat from a rack on the wall.
3. D enters a supermarket and hides behind a pallet of vegetables. When the supermarket closes, he emerges, steals £100 from a petty cash box and leaves through an open window.

### Answer guidance

1. D breaks into a derelict house and takes away a fire-place.

(If the house is genuinely derelict and abandoned then it is not in occupation. If awaiting development, that would be different.)

2. D goes to the local swimming pool and walks down a corridor passing a notice stating that access to the public is denied. He steals an employee's leather coat from a rack on the wall.

(Has s/he entered a building or part as a trespasser? Probably the notice would be sufficient to denote that there was entry as a trespasser to a part of a building. The theft in that part amounts to burglary.)

3. D enters a supermarket and hides behind a pallet of vegetables. When the supermarket closes, he emerges, steals £100 from a petty cash box and leaves through an open window.

(Unless the principle of Jones & Smith applies (above) D did not initially enter the shop as a trespasser. Could he be trespassing by being on the premises when he was not supposed to be? On a common sense basis the answer is probably yes. Thus s/he commits burglary.)

#### **Thinking point 14.4**

In which of the following does D have the MR for s9(1)(a) burglary?

D breaks into a dwelling house:

- to seek shelter for the night.
- to find food to eat.
- to rape any woman he finds there.
- with a view to stealing any credit card he might find and finds none.
- to make many long-distance telephone calls without paying.
- to spray paint the hallway.
- to take as much money as possible and to beat up the occupier if necessary.

#### **Answer guidance**

(The only exclusions from burglary would be intending to seek shelter, rape and making telephone calls.)

### Thinking point 14.5

1. Is the Clear test subjective or objective?
2. Do you consider that an ordinary person would be intimidated by the following demands for money:
  - Otherwise you will be killed?
  - Otherwise your daughter will be kidnapped?
  - Otherwise I shall slash your tyres?
  - Otherwise I shall tell your husband about your adulterous affair?
  - Otherwise I will go to the press about your criminal record?
3. D threatens V that if he does not pay him £1000 by the end of the week he will beat V up. V is part of a criminal gang and is not concerned. Has D blackmailed V?

### Answer guidance

1. Is the Clear test subjective or objective?  
(Objective).
  
2. Do you consider that an ordinary person would be intimidated by the following demands for money?  
Otherwise you will be killed?  
Otherwise your daughter will be kidnapped?  
Otherwise I shall slash your tyres?  
Otherwise I shall tell your husband about your adulterous affair?  
Otherwise I will go to the press about your criminal record?  
(It is all a question of fact in the circumstances. Menaces includes violence but is also wider as causing apprehension or influencing someone to give into the demand. Therefore, all could be included.)
  
3. D threatens V that if he does not pay him £1000 by the end of the week he will beat V up. V is part of a criminal gang and is not concerned. Has D blackmailed V?  
Since blackmail is committed as soon as the demand is made, and the test of menaces is objective, V's indifference is irrelevant.

### Thinking point 14.6

- Section 21(1)(a) states that a demand will not be unwarranted where D has a belief:
- a. that he has reasonable grounds for making the demand; AND
  - b. that the use of menaces is a proper means of reinforcing the demand.
- Does s21(1) impose a subjective or objective test?

### Answer guidance

Subjective.

### Think box 14.7

D threatens V, a local councillor, that unless V repays a £5000 debt D will go to a local newspaper with scandalous, but true, details of V's sexual past. In each case below, decide whether D is likely to be believed by a jury that:

**(a)** he has a belief in reasonable grounds for making the demand AND  
**(b)** that menaces are a proper means of reinforcing it.

- D is a solicitor with a good reputation;
- D is banker;
- D is unemployed and desperate for money;
- D has a low IQ.
- V was involved with D in his sexual past and feels abused.

You might wonder whether a demand that a debt be repaid amounts to an unwarranted threat. The case of Parkes below says that it can. In each case, it will be a question of fact for the jury.

### Answer guidance

There is no right answer. A demand may be warranted depending on D's own view of it. This may vary. Would an objective test be fairer?

### Think box 14.8

Consider whether the following examples are with a view to gain or intent to cause loss:

1. D, an employer, threatens V, an employee, that:

- a. she will lose her job unless she has sexual intercourse with him;
- b. she will lose her holiday pay unless she has sexual intercourse with him;
- c. she should have sexual intercourse with him.

2. D threatens V with harm unless he:

- a. repays £100 debt by the end of next week.
- b. returns his CD player in three days' time.

**Answer guidance**

- 1 a. S34(2)(a) (ii)
  - b. (ii)
  - c. (Not money or property.)
- 
2. a. (i)
  - b. (i).

**Think box 14.9**

Has D damaged property belonging to another?

1. D sprayed graffiti over the wall of the local town hall which cost £1000 to clean off.
2. In an argument, D threw a bucket of water on to the wooden floor of his neighbour's kitchen.

**Answer guidance**

1. Yes: *Roe v Kingerlee* [1986] Crim LR 735. Damage is a question of fact, ie: common sense. It need not be permanent.
2. Possibly - *Fiak* [2005] but in that case the police cell was rendered unusable for a period of time. It will be a question of fact. If the floor absorbs the water it will clearly be damaged.

**Think box 14.10**

D drives to his friend's house to settle a dispute. He angrily swerves to a halt on the drive, colliding with his friend's pet dog. He runs over the dog, killing it. Has he damaged property belonging to another?

**Answer guidance**

Yes – animals, even wild animals which have been tamed or reduced into possession, are included in s10.

**Think box 14.11**

D agrees to sell his car to a friend (V). He gives him the keys and allows him to take the car on condition that V pays the price in the next few weeks. One week later, D demands the money. V promises to pay next month and refuses to return the car. D sees the car outside V's house one night. He immobilises it by removing the battery leads. Has D committed criminal damage?

### Answer guidance

S10(2)(a) permits the offence where D damages his/her own property which is in another's custody or control. The car is in the custody or control of V despite belonging to D. Recall the case of *Turner (No 2)* [1971] 55 Cr App R 336 under s5 TA 1968.

### Think box 14.12

Does D have a defence of lawful excuse in the following?

1. D is visiting the home of a wealthy friend. A fire breaks out in the lounge caused by a cigarette. D rips some heavy and very expensive curtains from their rails and throws them on the fire so as to dampen it down and prevent it from spreading. The curtains are damaged.
2. D is having a drink one night in a pub. A drunken stranger approaches and threatens to punch him on the nose. D hits him over the head with his stool, breaking it.
3. D scrawls anti-war graffiti on the pavement outside the Houses of Parliament in the belief that this is necessary for the protection of innocent lives and property in Iraq.

### Answer guidance

1. AR:
  - damage/destruction
  - property
  - belonging to another
  - without lawful excuse

The curtains are property (s10(1)) belonging to another (s10(2)) which have been damaged. D may have a lawful excuse of honest belief in the need to act so as to immediately protect property belonging to another (s5(2)(b)). S/he must honestly believe that the property was in immediate need of protection (subjective); and that the means of protection adopted were reasonable having regard to all the circumstances (objective). This would seem to be the case although it is a question of fact for the jury on the evidence of all the circumstances.

Alternatively, D might claim an honest belief that the owner would have consented to the damage under s5(2)(a) in order to avert a worse harm. There is no requirement of reasonableness.

2. D could plead self-defence: his belief in the need for force to repel an imminent attack must be honest although need not be reasonable. In addition, the force used must be reasonable on the facts as D believed them to be.

3. AR: Damage - If it will cost money to remove the graffiti, there has been damage, albeit temporary. Property belonging to another – this is satisfied. Lawful excuse – If it is D's belief is that his acts are necessary to protect property in Iraq, it will be held that this is not sufficiently immediate: Hill, Ashford & Smith, Ayliffe.

### Think box 14.13

Does D have the MR for criminal damage? Use this exercise to revise basic categories of MR.

D throws his wife's valued oriental vase across a room which smashes against the wall. His

state of mind is as follows:

- a. He wanted to smash the vase to annoy his wife.
- b. He did not want to destroy it but knew that it would certainly be damaged.
- c. He thought it would probably be damaged.
- d. He thought there was a small risk of damage.
- e. He did not care whether it was damaged or not.
- f. The risk of damage never entered his mind because he was drunk/too angry.
- g. The risk of damage never entered his mind because he suffered from an episodic mental illness.

### Answer guidance

- a. Direct intent
- b. Oblique intent
- c. Cunningham recklessness
- d. Cunningham recklessness
- e. Cunningham recklessness
- f. Cunningham recklessness after R v G
- g. No MR at all provided he was genuinely unaware/lacking in foresight of the risk of damage.

**Think box 14.14**

Have the following committed criminal damage being intentional or reckless as to endangerment of life?

1. A gang of people throw a hail of bricks through the window of a man and his family intending to frighten the occupiers. The family are unhurt.
2. Two teenagers drop a concrete block over a railway bridge on to a train for a joke. It smashes a window but no-one is hurt.
3. D throws bricks from his car at passing police cars. One smashes the windscreen and covers the driver with broken glass.

**Answer guidance**

No. Although damage was intentional or reckless, there was no intention or subjective recklessness to endanger life by 'the damage' which the various defendants caused.

3. Yes. D must have known that he risked the lives of the occupants of a moving car by throwing a brick through the windscreen. This is the case of *Warwick* [1995] 2 All ER 97.