

Annex D.3

Card, Cross & Jones

Criminal Law

RICHARD CARD & JILL MOLLOY

22nd Edition

ICC Library - Bibliothèque CPI



3 2004 00015055 1

KFORD



online
resource
centre



CARD, CROSS & JONES

CRIMINAL LAW

Twenty-second Edition

RICHARD CARD LLB, LLM, HON LLD, FRSA

Emeritus Professor of Law, De Montfort University, Leicester

JILL MOLLOY, LLB

of the Inner Temple, Barrister

Senior Lecturer in Law, Birmingham City University

OXFORD
UNIVERSITY PRESS

4

Mens rea

OVERVIEW

The term '*mens rea*' refers to the state of mind expressly or impliedly required by the definition of the offence charged. Typical instances are intention, recklessness and knowledge. These are explained in this chapter, as is negligence.

The chapter also explains the relevance to criminal liability of the defendant's motive, ignorance or mistake of law, or ignorance of morals. It concludes with a brief explanation of the factors aiding proof of the defendant's state of mind.

Mens rea

4.1 Despite occasional judicial utterances to the contrary,¹ it is clear from the application of *mens rea* in the courts that *mens rea* has nothing necessarily to do with notions of an evil mind, moral fault or knowledge of the wrongfulness of the conduct. The fact that the defendant (D) was not morally at fault is not in itself a defence,² nor is the fact that D was ignorant that his conduct constituted an offence,³ nor generally is the fact that D did not consider his conduct to be immoral or know that it was regarded as immoral by the bulk of society.⁴ Moreover, it is generally irrelevant to liability whether D acted with a 'good' or 'bad' motive.⁵

4.2 The expression '*mens rea*' refers to the state of mind expressly or impliedly required⁶ by the definition of the offence charged. This varies from offence to offence, but typical instances are intention, recklessness and knowledge. In the course of our examination of typical states of mind it will be necessary to refer to negligence, although it can hardly be said to be a state of mind because it is concerned with whether a reasonable person would have realised the risk in question.

4.3 In modern times, the courts have indicated a preference for judging a defendant on the basis of what he intended or knew and so on, rather than on the basis of what

¹ See, eg, *Sherras v de Rutzen* [1895] 1 QB 918 at 921, per Wright J; *Sweet v Parsley* [1970] AC 132 at 152, per Lord Morris.

² *Yip Chiu-cheung v R* [1995] 1 AC 111, especially at 117–118; *Kingston* [1995] 2 AC 355 at 364–366, per Lord Mustill; *Dodman* [1998] 2 Cr App R 338, C-MAC (as to this court, see para 3.28, n 91).

³ Para 4.78. ⁴ Para 4.89. ⁵ Para 4.75.

⁶ There is a rebuttable presumption that in the absence of an express requirement of *mens rea* in the definition of a statutory offence it is rebuttably presumed that *mens rea* is required: see paras 5.14–5.41.

Caldwell was overruled in 2003 by the House of Lords in *G*,⁷⁷ where the House of Lords held that 'reckless' in the Criminal Damage Act 1971, s 1 should be assessed in the subjective sense referred to in para 4.33, as it had been before *Caldwell*. In *G*, the defendants, two boys aged 11 and 12, had started a fire which spread to some commercial buildings, causing about £1m worth of damage. It was accepted that neither boy appreciated that there was any risk of the fire spreading in the way it did. The boys were charged with arson, ie causing damage by fire, to the commercial buildings, 'being reckless whether such property would be damaged', contrary to the Criminal Damage Act 1971, s 1(1) and (3).

The trial judge directed the jury in terms of *Caldwell* recklessness, telling them that, in the alternative to awareness that there was some risk of building damage involved, the boys would be guilty if they had not thought about the possibility of that risk and that risk would have been obvious to a reasonable bystander. He also directed the jury that the reasonable bystander was 'an adult . . . [N]o allowance is made by the law for the youth of these boys or their lack of maturity or their inability . . . to assess what was going on'. The boys were convicted. The Court of Appeal, bound by *Caldwell*, dismissed their appeals. They appealed to the House of Lords.

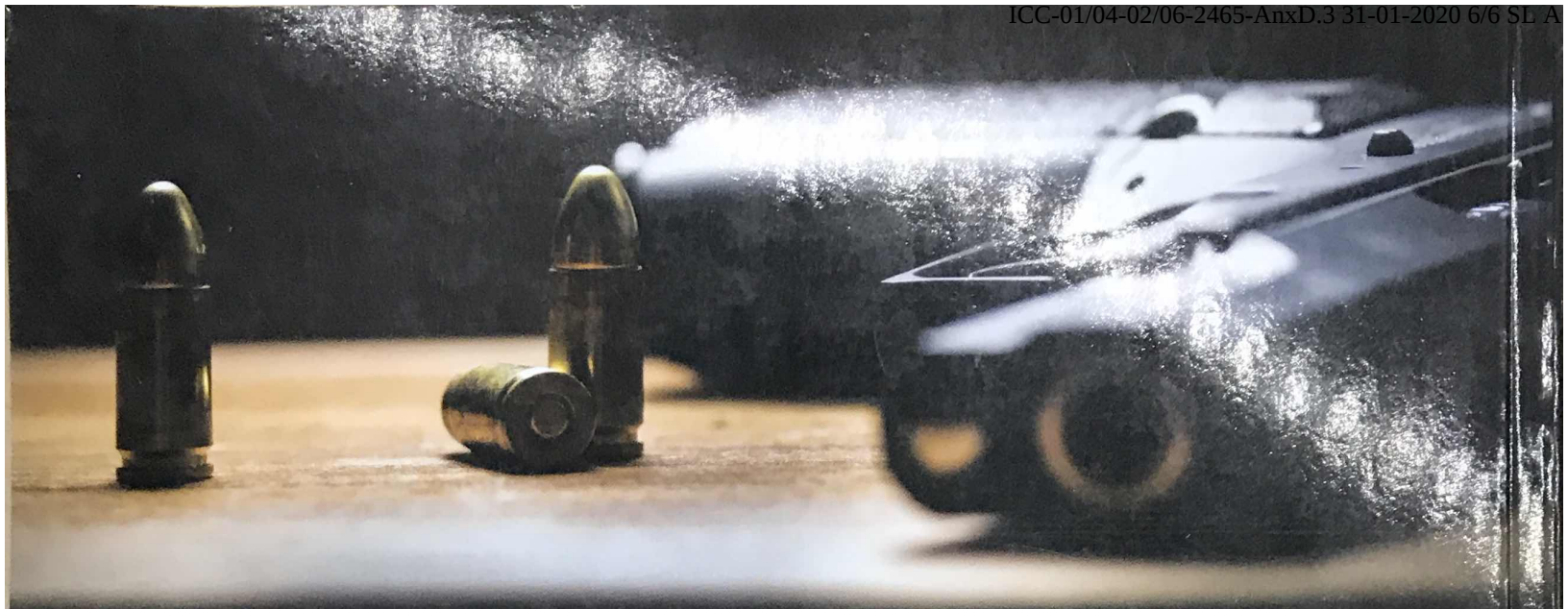
The House of Lords unanimously allowed the boys' appeals. It held that the House of Lords in *Caldwell* had misinterpreted the law for the following reasons. It was a principle of the criminal law that conviction of serious crime should depend on proof that D's conduct was accompanied by a culpable state of mind. It was not clearly culpable to be doing something involving a risk of injury to another if, for reasons other than self-induced intoxication, one did not perceive such a risk. Moreover, the facts of the case illustrated the unfairness which *Caldwell* could cause. The House of Lords also noted the criticism of *Caldwell*, which had been expressed by judges, practitioners and academics, that *Caldwell* recklessness involved a misinterpretation of Parliament's intention. In inserting 'reckless' in the Criminal Damage Act 1971, Parliament had been implementing a Law Commission report which made plain that 'reckless' in the statute was intended to refer to a requirement of foresight by D of a risk of damage.

4.36 Although it is, strictly, limited to the meaning of recklessness in the Criminal Damage Act 1971, there can be no doubt that the decision in *G* also applies to recklessness in the context of any other offence for which recklessness is sufficient *mens rea*. In *A-G's Reference (No 3 of 2003)*,⁷⁸ *G* was applied outside the Criminal Damage Act 1971 by the Court of Appeal who said that it laid down general principles, and more recently the Court of Appeal stated that, since *G*, 'recklessness' bears the meaning approved in that case.⁷⁹ It would, of course, be possible for a statute to give the term a different meaning in respect of a particular offence.

⁷⁷ [2003] UKHL 50. See Kimel 'Inadvertent Recklessness in the Criminal Law' (2004) 120 LQR 548.

⁷⁸ [2004] EWCA Crim 868 (common law offence of wilful misconduct in a public office).

⁷⁹ *Heard* [2007] EWCA Crim 125.



Card, Cross & Jones Criminal Law successfully combines breadth of coverage with readability to present a thorough and accessible overview of the substantive criminal law for those new to this subject. With over 65 years of history in the field, the text offers a trusted source of rigorous and dependable legal description and commentary, helping you to advance your understanding of key legal principles.

Overviews at the start of each chapter and key-point boxes throughout help you to navigate the book and understand the material.

- End-of-chapter questions help you to reflect on and apply what you have learned, testing your knowledge.
- Further reading references direct you to additional materials to further your understanding.

This twenty-second edition has been extensively updated to take account of all of the recent changes within the field of criminal law, including the landmark case of *Jogee* on participation.

For more details on new coverage in this edition see page vi.

Richard Card is Emeritus Professor of Law at De Montfort University, Leicester. He has written widely in a number of areas of law, particularly criminal law.

Jill Molloy is a Senior Lecturer in Law at Birmingham City University and a Barrister of the Inner Temple.



online resource centre

www.oxfordtextbooks.co.uk/orc/ccj22e/

The accompanying Online Resource Centre provides web links and detailed updates to help you keep pace with all of the latest legal developments.

Cover image: © Arda Savasciogullari / Shutterstock

OXFORD
UNIVERSITY PRESS

www.oup.com

ISBN 978-0-19-875309-4



9 780198 753094