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**School of Law**

**Assessment Cover Sheet and Academic Integrity Statement**

**Module: LAW4012M**

**Title: Criminal Law and The Criminal Justice System 2**

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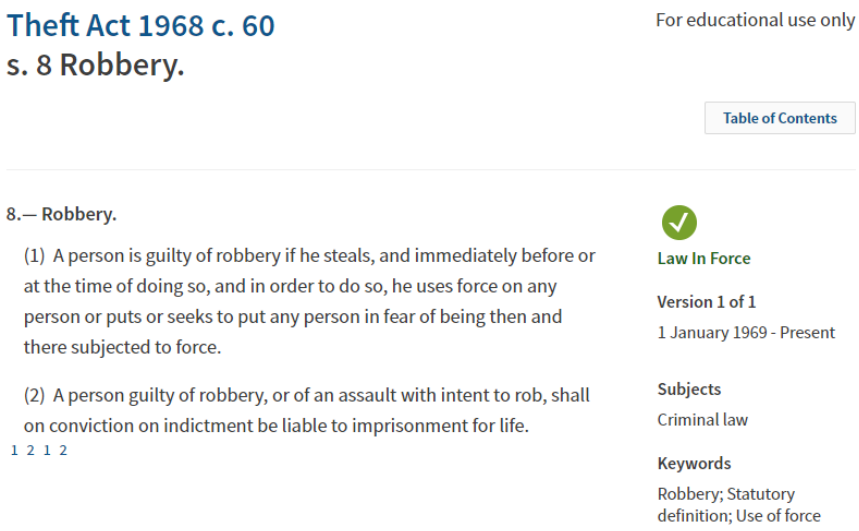
## Section 1



Theft Act 1968 c. 60
s. 8 Robbery.

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8.— Robbery.

(1) A person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.

(2) A person guilty of robbery, or of an assault with intent to rob, shall on conviction on indictment be liable to imprisonment for life.

1 2 1 2

Law In Force

Version 1 of 1

1 January 1969 - Present

Subjects

Criminal law

Keywords

Robbery; Statutory definition; Use of force

1.) [1]

2.) Andy will be tried in the Crown Court as he is likely faced with the charge of robbery due to his theft of Willow's car and his threatening statement, which is an example of something that "seeks to put any person in fear of being then and there subjected to force"[2]. Robbery is an offence which is triable only on indictment, thus it can only be tried in the Crown Court[3].

[1] Westlaw UK, 'Theft Act 1968 c. 60' (*Theft Act 1968 c. 60,* 15 April 2024) <https://uk.westlaw.com/Document/I60709470E42311DAA7CF8F68F6EE57AB/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=8382f326716f459cb5d0ca99949d4bae&contextData=(sc.DocLink)&comp=wluk> accessed 15 April 2024

[2] Ibid

[3] David Ormerod and David Perry, Blackstone's Criminal Practice 2024 (34th edn, OUP 2024).

**3.)**

**Robbery**

Andy has taken Willow's car from a petrol station. Willow attempts to stop Andy, to which he threatens her and prompts her to retreat. Has Andy committed the offence of Robbery?

To determine whether Andy has indeed performed the act of robbery, it is a must to first compare his actions to the definition of the crime found in the Theft Act 1968, section 8:

> "A person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force." [4]

**Theft**

Initially, when determining whether an offence is a robbery, there must be the preceding offence of theft. As such, it must first be established as to whether Andy performed such an offence[5]. The definition of theft is found in the Theft Act 1968, section 1, and is defined as

> "A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it"[6]

For one to be guilty of theft, the presence of elements found in the definition is required. Only once these elements are satisfied will a person be found guilty, thus, to begin it must be determined as to whether Andy initially acted 'dishonestly' (mens rea – guilty mind).

[4] Theft Act 1968, s. 8
[5] *Guy* (1991) 93 Cr App R 108
[6] Theft Act 1968, s. 1

**‘Dishonestly’**

What is not regarded as ‘dishonestly’ is defined under the Theft Act 1968, under section 2, as any taking which occurs under the “belief that he has in law the right to deprive the other of it” or that they would have the “other’s consent if the other knew of the appropriation and the circumstances of it” or such that “he appropriates the property in the belief that the person to whom the property belongs to cannot be discovered by taking reasonable steps.”[7]

To determine whether Andy has acted dishonestly, we must determine whether there is any notion that Andy believed he was entitled to such property, Willow’s car, in accordance with the rule defined in statute. When evaluating the case, it is clear that Andy has entered the car without the consent of Willow, with the latter “telling Andy to stop” and thus nullifying any excuse that consent may have been given. With Andy’s unwillingness to exit the car, and his threatening behaviour towards the owner exemplifying this, it is clear that he has no belief in the right to deprive Willow of the car. Furthermore, Willow is present in this scenario, nullifying the potential, yet baffling, excuse that may arise such that the “person to whom the property belongs to cannot be discovered by taking reasonable steps”.

It is clear that Andy’s mens rea constituted of a dishonest nature. Under none of the rules from statute could Andy be seen as honest in his taking of Willow’s car. With the element of ‘dishonestly’ established, whether an ‘appropriation’ has occurred is the next step in determining Andy’s guilt regarding theft.

[7] Theft Act 1968, s. 2

**‘Appropriation’**

The definition of ‘appropriation’ is defined in the Theft Act 1968, section 3, as the idea that: “Any assumption by a person of the rights of an owner amounts to an appropriation”.

When Andy takes Willow’s car and begins to drive away without her, it is clear that he has assumed the rights of an owner in his belief that he can leave with the vehicle and thus do so with it as he wishes. Furthermore, as Willow attempts to stop Andy, to which he threatens her, there is a clear catalyst to this idea as Andy believes he has the right to take the vehicle even as the owner asks him to stop, although appropriation can happen with or without the consent or authority of the owner[8].

What Andy has done would likely constitute an appropriation. He has ultimately left with the vehicle to do as he so pleases and thus has most likely assumed the rights of an owner. With the question of ‘appropriation’ completed, it must now be found as to whether Andy’s appropriation was situated around something which could be defined as ‘property’.

[8] *Lawrence v Metropolitan Police Commissioner* [1972] AC 626; *Morris* [1984] AC 320; *Gomez* [1993] AC 442; *Hinks* [2001] 2 AC 24

**‘Property’**

Whether something can be defined as ‘property’ relates to whether it matches with the definition in the Theft Act 1968, section 4: ““Property” includes money and all other property, real or personal, including things in action and other intangible property.”

When examining the events which occurred surrounding Andy’s potential theft, it is clear that the vehicle upon which was taken could constitute an object which is real and personal to Willow. As mentioned in Blackstone Criminal Practise 2024, “personal property includes tangible personal property, which might also be described as ‘thing (or choses) in possession.”[9] Willow’s vehicle is very much tangible and thus is highly likely to be personal property.

With the vehicle established as ‘property’ for the purposes of theft, due to it likely being ‘personal property’, it must be established as to whether it was truly ‘belonging to another’.

[9] David Ormerod and David Perry, Blackstone’s Criminal Practice 2024 (34th edn, OUP 2024).

**‘Belonging to Another’**

The Theft Act 1968, section 5, defines ‘belonging to another’ as the idea that any “property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest”

It is clear from the definition found in statute that the vehicle does indeed ‘belong to another’ through clear possession by Willow. The case events detail that the car is possessed by Willow, with her attempts to stop Andy cementing the idea that she has a “proprietary right or interest” in the vehicle and does not wish for it to be stolen as such.

With it being very clear that the vehicle belongs to Willow through her interest and right in its ownership, it is clear it ‘belongs to another’ when Andy takes it. It must now be finally established, with actus reus (guilty act) likely present, as to whether Andy has an ‘intention to permanently deprive’ Willow of the vehicle (mens rea).

**‘Intention to Permanently Deprive’**

The Theft Act 1968, section 6, has an extensive definition as to what constitutes an ‘intention to permanently deprive’:

> “A person appropriating property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if his intention is to treat the thing as his own to dispose of regardless of the other’s rights”

When analysing Andy’s actions and intentions, it is very clear that he does not appear to consider returning the vehicle to Willow in the short term. He has stated: “You’d better get out of the way”, indicating that he has no intent to comply with Willow’s requests for her vehicle back. As such, even in such a short-term manner, he has “treat the thing as his own to dispose of” by driving away with the vehicle. If Andy has the intention to return the vehicle, however unlikely that may be, he will still have had the intention to permanently deprive according to statute.

With Andy most likely having a ‘dishonest’ nature and ‘intention to permanently deprive’, he has completed all mens rea elements for the offence of theft. With both actus reus and mens rea satisfied for the crime, Andy has likely committed theft. It must then be finally established as to whether this theft evolved into a robbery through the idea of force.

**‘Force’**

From the previously iterated definition of robbery (found in the Theft Act 1968, section 8), alongside the proven factor of theft as required[10], Andy must also "immediately before or at the time of doing so, and in order to do so, use force on any person or puts or seeks to put any person in fear of being then and there subjected to force."[11]

To determine whether Andy has used or "put any person in fear" of force being used, it is important to determine what 'force' entails. Force is an 'ordinary' word that juries understand[12] and is defined by the Cambridge Dictionary as "physical, especially violent, strength or power"[13]. Furthermore, any threat to "put any person in fear" can suffice such that the victim apprehends being subjected to force at that present time[14]. With such factors paid to mind, it is quite clear that Andy's threat to Willow during the theft, where the appropriation of such is continuing with Andy in the vehicle and thus as is the theft[15], that she had "better get out of the way" or he would run her over constituted enough to put her in fear of force being used; Willow had moved out of the way and thus presented fear of Andy's potential proceeding actions.

Andy has committed the offence of theft initially, with both actus reus and mens rea present as previously mentioned. However, with the threat of force also present, robbery has likely occurred; Willow felt a true fear of force which prompted her to move. Ultimately, it is highly likely that Andy would be convicted of robbery.

[10] *Guy* (1991) 93 Cr App R 108
[11] Theft Act 1968, s. 8
[12] *Dawson* (1976) 64 Cr App R 170
[13] Cambridge Dictionary, *'Force'* (Cambridge Dictionary, 1 May 2024) <https://dictionary.cambridge.org/dictionary/english/force> accessed 1 May 2024
[14] *R v DPP* [2007] EWHC 739
[15] *Hale* (1979) 68 Cr App R 415

4.)

The Sentencing Council provide guidelines on sentence severity in most scenarios. In the case of Andy, it is vital to determine what sentence he would receive such that he was convicted of robbery.

The Sentencing Council divide guidelines relating to robbery into three sub-sections:

'Street and less sophisticated commercial' –

> "Street/less sophisticated commercial robbery refers to robberies committed in public places, including those committed in taxis or on public transport.",

'Professionally planned commercial' –

> "Professionally planned commercial robbery refers to robberies involving a significant degree of planning, sophistication or organisation",

and 'dwelling' – robbery within an inhabited building[16].

From the details of Andy's robbery, there is no evidence that there was any significant planning or organisation as he has picked a seemingly random vehicle to steal. Furthermore, there has been no theft within an inhabited building. This leaves a 'street and less sophisticated' robbery, whose description matches Andy's robbery in a public place. Thus, sentencing must be determined from this category of robbery.

Initially, culpability must be determined. There are three categories of culpability (A – High culpability, B – Medium culpability and C – Lesser culpability) which range in severity regarding the offender's actions and motivation. Andy has not used any form of "weapon to inflict violence" and has not used any "very significant force"[17]. Furthermore, there seems to be no motivation for discriminatory reasoning, such as race or religion. From this, Andy does not seem to have displayed a high level of culpability found in category A. From category B, Andy may be seen to have caused a threat due to a weapon. Protect UK states that there is such a thing as a "Vehicle as a Weapon (VAW)"[18] and with this in mind, it could be seen that

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[16] Sentencing Council, *'Robbery'* (Sentencing Council, 1 April 2016) <https://www.sentencingcouncil.org.uk/sentencing-and-the-council/about-sentencing-guidelines/about-published-guidelines/robbery/> accessed 1 May 2024

[17] Sentencing Council, *'Robbery – street and less sophisticated commercial'* (Sentencing Council, 1 April 2016) <https://www.sentencingcouncil.org.uk/offences/crown-court/item/robbery-street-and-less-sophisticated-commercial/> accessed 1 May 2024

[18] Protect UK, *'Terrorist use of Vehicle as a Weapon (VAW)'* (Protect UK, 21 July 2023) <https://www.protectuk.police.uk/threat-risk/threat-analysis/terrorist-use-vehicle-weapon-vaw> accessed 1 May 2024

Andy may have threatened to use a weapon and thus fall within medium culpability in category B.

With potential category B culpability presented by Andy, it is now important to consider the harm caused by his actions, determined from Category 1 to 3 (descending severity). Andy may have caused category 1 harm such that he has caused "serious physical and/or psychological harm"[19] to Willow. While no physical harm was presented, psychological harm could play a role if Willow develops PTSD or otherwise from the event; if this were not the case, Andy would likely receive the lowest category presented (category 3) as a result of the lack of physical harm.

With potential categories determined for both culpability and harm determined, sentencing can now be predicted. Using the table found on the Sentencing Council's guidelines, the starting point (minimum term such that no factors reducing seriousness, such as a mental disorder or lack of previous convictions) would likely be 5 years' custody such that Willow received severe psychological harm, otherwise 2 years' custody. From this point, aggravating factors such as (statutory) previous convictions or offences committed while on bail, or other factors such as planning or value of the theft, will be considered in determining an actual sentence from within a category range. If Willow has received harm as previously mentioned, Andy could receive a sentence between 4-8 years' custody (likely at the latter end due to the value of the vehicle) or otherwise a sentence between 1-4 years' custody.

A guilty plea could reduce a sentence by 1/3 if Andy wished to do so, although this is at the judge's discretion under section 73 of the Sentencing Act 2020[20].

5.) A potential defence raised by the Attendance Note is that of Duress - there appears to be an oppressive threat being made.

[19] Sentencing Council, *'Robbery – street and less sophisticated commercial'* (Sentencing Council, 1 April 2016) <https://www.sentencingcouncil.org.uk/offences/crown-court/item/robbery-street-and-less-sophisticated-commercial/> accessed 1 May 2024

[20] Sentencing Act 2020, s. 73

**Issue:**

6.) Andy Walker has been convicted of robbery and has claimed that Julia Bentham had threatened to shoot his mother such that he did not pay his debt to her by stealing a vehicle. Now that his mother has died, he feels he can mention this, as he previously did not at trial. With this appearing to be duress such that his recollection of events is correct, does Andy have the ability to claim this?

**Rule:**

There are two elements required to satisfy a defence of duress; the first of which being "Was the Defendant impelled to act because, as a result of what he reasonably believed the coercer had said or done, he had a good cause to fear death or serious injury?"[21]

**Application:**

With the assumption that Andy's detailing of events is accurate, it must be established as to whether he was impelled to act because of a fear of death or serious injury. When examining these events, there appears to be no risk of serious injury to himself, rather his mother at first glance. As told by Hasan [2005], a threat can be directed at immediate family and apply to duress[22], thus applicable to this scenario. However, the threat must be imminent[23] and provided no opportunity to have "sought protection"[24]; 48 hours could have been time for such from the police and thus such a decision would be at the jury's discretion (although the question as to fears that police protection would be ineffective can play a role in swaying a decision[25]). Should it be found that such a threat was "overbearing" and Andy's "will was overborne"[26], then due to Ms Bentham's lack of reputation for violence (which would nullify a duress defence due to voluntary association[27]) it could be seen that the first element of duress had been satisfied and that there was the reasonable (objective) belief that one was under duress (although this is to the jury's discretion);

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[21] *R v Graham,* 74 Cr App R. 235; CPS, *'Defences – Duress and Necessity'* (CPS, 19 October 2018) <https://www.cps.gov.uk/legal-guidance/defences-duress-and-necessity> accessed 2 May 2024
[22] *Hasan* [2005] UKHL 22
[23] *Abdul-Hussain* [1999] Crim LR 570
[24] *Lynch* [1975] AC 653
[25] *R v Hudson and Taylor* [1971] 2 QB 202
[26] *Lynch* [1975] AC 653
[27] *Hasan* [2005] 2 AC 467

it must now be verified as to whether the second element regarding 'firmness' is present.

**Rule:**

To fully prove that a case of duress is present, there must be proof that a "sober person of reasonable firmness, sharing the Defendant's characteristics, would have responded in the same way"[28].

**Application:**

A "sober person of reasonable firmness" relates to an objective manner of examining the circumstances around Andy's claimed duress. Should a person, showing Andy's characteristics (although there appears to be no evidence of any debilitating features present), be present in the same situation and of a reasonable mindset, would they have done as he did? While under the jury's discretion, it is clear that Andy has felt extremely fearful for his mother's life, especially due to her limited mobility and this is likely to be the same in any reasonable person's mindset. Furthermore, when examining the initial case facts, it is clear that there was no particular planning as to Andy's robbery thus suggesting a panicked state (which any reasonable man may have such that a family member was in danger). While it is not for anyone other than the jury to say, it is highly likely that any "sober person of reasonable firmness, sharing the Defendant's characteristics, would have responded in the same way"[29].

**Conclusion:**

Conclusively, due to both elements of duress likely being present (while at the jury's discretion) it is very much likely that Andy will be acquitted of the offence of robbery. Should it truly be found that he has acted under an "overbearing"[30] pressure to save his mother, in a way that any "sober person of reasonable firmness"[31] would have done, then duress stands to save Andy himself from conviction. However, if the period under which he claims duress is extensive, or if no reasonable and sober

[28] *R v Graham* 74 Cr App R. 235; CPS, *'Defences – Duress and Necessity'* (CPS, 19 October 2018) <https://www.cps.gov.uk/legal-guidance/defences-duress-and-necessity> accessed 2 May 2024
[29] Ibid
[30] Ibid
[31] Ibid

person would have done the same, then the defence of such may be unavailable. As an indictable-only offence, held only in the Crown Court, it is as such up to the jury to decide the outcome for themselves[32].

7.) Andy would seek an appeal from the Court of Appeal (Criminal Division) from the Crown Court such that he wishes to challenge his conviction.

8.) When initially considering an appeal, the Court of Appeal applies an 'interests of justice test'. The test itself determines whether a conviction is classified as 'unsafe' (not reliable). As such, in order to determine whether such a conviction is 'unsafe', the Court has an "overriding power to admit fresh evidence where it is necessary… in the interests of justice."[33] Andy's fresh evidence, in the form of his account of duress, will likely be found to be in the interests of justice for the Court of Appeal to hear and thus prove significant to his case. Andy will have had to bring this information forward and serve a notice of appeal no more than 28 days after his conviction, although the Court of Appeal may extend this under the circumstances[34].

**Section 2**

9.) Cathy has committed Burglary in relation to Section 9 of the Theft Act 1968. She has entered a "building… as a trespasser and with intent to commit" the offence of "stealing anything in the building"[35].

10.) Derek has committed Burglary in relation to Section 9 of the Theft Act 1968. He has entered a "building… as a trespasser and with intent to commit" the offence of "stealing anything in the building" [36].

[32] David Ormerod and David Perry, Blackstone's Criminal Practice 2024 (34th edn, OUP 2024).
[33] LexisNexis, *'Appeal on fresh evidence in criminal cases'* (LexisNexis, 2024) <https://www.lexisnexis.co.uk/legal/guidance/appeal-on-fresh-evidence-in-criminal-cases> accessed 6 May 2024
[34] Criminal Appeal Act 1968, s. 18; Civil Procedure Rules 1998, 39.2
[35] Theft Act 1968, s. 9
[36] Ibid

**11.)**

**Issue:**

Bibal has driven Cathy and Derek to Vic's house where they plan to break into and steal his jewellery, with Bibal himself acting as the getaway driver. Bibal knows that Derek is carrying a knife and is willing to inflict grievous bodily harm on any who may attempt to stop them. Bibal regrets what they are doing and leaves a note to Derek saying as such, before driving away. Has Bibal committed the offence of burglary as such?

**Rule – Accessory to Burglary:**

A defendant will be found to have committed burglary if he is found to follow the definition found in the Theft Act 1968, section 9, wherein he has performed the process of entering "any building or part of a building as a trespasser" and then "he steals or attempts to steal anything in the building… or inflicts or attempts to inflict on any person therein any grievous bodily harm"[37].

While Bibal has not personally performed any of the acts above, the Accessories and Abettors Act 1861, section 8, mentions that "Whosoever shall aid, abet, counsel, or procure the commission of any indictable offence, whether the same be an offence at common law or by virtue of any Act passed or to be passed, shall be liable to be tried, indicted, and punished as a principal offender."[38] As a result, should Bibal have aided any form of an offence without giving "unequivocal notice upon the other party" that he wishes to withdraw and "that if he proceeds upon it, he does so without the further aid and assistance"[39], he shall be punished as though he were doing the act himself.

Thus, it is vital to first determine whether either of Bibal's companions (Derek or Cathy) has committed an offence in relation to the definition of burglary above by verifying all elements are present.

[37] Theft Act 1968, s. 9
[38] Accessories and Abettors Act 1861, s. 8
[39] *Becerra* (1975) 62 Cr App R 212 (CA)

**Rule – Building:**

When first determining whether burglary has occurred, it must first be determined as to whether a 'building' was entered. Byles J states that a building is defined as "a structure of considerable size and intended to be permanent or at least endure for a considerable period"[40]; it is very clear that Vic's house constitutes both of these requirements as it is intended to be inhabited for a considerable amount of time, with enough room to comfortably live. It must be thus determined as to whether Derek or Cathy 'entered' the building.

**Rule - Entry:**

For Derek or Cathy to have 'entered' the building, there must be "an effective and substantial entry"[41]; as told in *Collins* [1973], a person must deliberately have a part of their body in the building to constitute 'entry'. When Derek and Cathy climb into Vic's house through an open kitchen window, they have most certainly had a part of their body in the building deliberately, thus constituting the substantial entry required. It must next be determined as to whether Derek or Cathy entered 'as a Trespasser'[42].

**Rule – as a Trespasser**

In the case of *Jones (John)* [1976], the Court stated that a person entered 'as a Trespasser' such that "he enters premises of another knowing that he is entering in excess of the permission that has been given to him, or being reckless as to whether he is entering in excess of the permission that has been given to him to enter."[43] It is very clear from the facts that both Derek and Cathy have entered "in excess of… permission" as they are doing so for the purpose of theft, notwithstanding that there is no evidence of Vic's permission to enter. They very clearly know this, with Bibal acting as a lookout and thus showing that the party has clear knowledge of this lack of permission (mens rea). With Derek and Cathy acting as a 'trespasser', there must now be proof of intent as to the commission of an offence.

**Rule – Proof of Intent**

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[40] *Stevens v Gourley* (1859) CBNS 99
[41] *Collins* [1973] QB 100
[42] *Laing* [1995] Crim LR 395
[43] *Jones (John)* [1976] 3 All ER 54

There are three main intentions which may be shown to constitute proof of intent in relation to burglary; these intentions are an intent to steal, an intent to commit grievous bodily harm, and an intent to commit any unlawful damage[44]. When analysing the facts in this case, Derek and Cathy initially entered Vic's house intending to take Vic's jewellery, showing strong indicators that they have an intent to steal in relation to section 1 of the Theft Act 1968; they have an intention to permanently deprive Vic of his jewellery via a dishonest appropriation[45]. With this established, there is clear proof of intent when Derek and Cathy enter the building.

**Conclusion – Burglary (Derek & Cathy)**

With the elements of burglary established in regards to Derek and Cathy, with there being clear indication that they have entered "any building or part of a building as a trespasser" and then "attempted to steal anything [jewellery] in the building", it is becoming ever more likely that Bibal is an accomplice to the crime; it is thus vital to determine as such by examining whether Bibal's notice was enough to constitute that "unequivocal notice upon the other party" that he no longer offers his assistance.

**Rule:**

With Bibal offering his aid towards the offence of burglary[46] and being a cause in its commission, with himself knowing of the crime, its "essential matters"[47] and his "intent to assist"[48] Derek and Cathy with the burglary, have constituted what can be seen as an accessory to the offence by establishing both the actus reus (guilty act) and mens rea (guilty mind) respectively. To alleviate Bibal's complicity in the crime, it must be determined as to whether his withdrawal notice would be enough. For such a notice to be 'unequivocal', Bibal must communicate an intention to withdraw, and this must be sufficient. As told by Roskill LJ: "he would have to 'countermand'"[49], and revoke his aid entirely, rather than leave a note only.

**Application:**

[44] Theft Act 1968, s. 9(2)
[45] Theft Act 1968, s.1(1)
[46] Accessories and Abettors Act 1861, s. 8
[47] *Johnson v Youden* [1950] 1 KB 544
[48] *Jogee* [2016] UKSC 8
[49] *Becerra* (1975) 62 Cr App R 212

With Bibal leaving a note stating “This is a really bad idea. I’m going”, he has not effectively communicated his revocation to his companions. Derek and Cathy are still under the impression that they have his aid and have not been informed that they are “without the further aid and assistance”[50] of Bibal. As such, “unequivocal notice”[51] has likely been absent from Bibal and he should have told them in person to constitute such a notice. This is similar to the defendant’s notice of “There’s a bloke coming. Let’s go”[52] in *Becerra* (1975), wherein he had not fully withdrawn his assistance by countering what he had initially offered and thus left the principal offender with the assumption that he still obtained their aid.

**Conclusion:**

As a result of Bibal’s initial offer of aid as a lookout and getaway driver, with his intention to aid with the burglary initially, he has become an accessory to the crime. His notice would have gone unnoticed until Derek and Cathy left the building and thus the assumption of his aid was still active; as a result, Bibal had not given sufficient revocation of his aid. Bibal would likely be convicted of burglary, this would have not been the case such that he had verbally expressed the revocation of his aid.

[50] *Becerra* (1975) 62 Cr App R 212 (CA)
[51] Ibid
[52] Ibid

12.) With Bibal's actus reus and mens rea established as to being an accomplice to the murder of Vic by Derek, likely due to his knowing of Derek's willingness to cause grievous bodily harm and his intention to offer his aid regardless of such, he may attempt to use the defence that he withdrew his aid and was thus not complicit.

For Bibal to raise such a defence, he must "serve unequivocal notice upon the other party … that if he proceeds upon it, he does so without the further aid and assistance of those who withdraw"[53]. In its basic form, Bibal must give a notice that is sufficient and as told by Roskill LJ, it would have to 'countermand'[54] the offer of his aid. Bibal's note on the garden gate, something which would not be seen by the principal offenders until they left the building, would likely be insufficient; the note merely stated his departure and was not immediately presented to the offenders. Derek had killed Vic before he received the note and thus was under the assumption that Bibal's aid was still applicable. Bibal's failed revocation falls similar to the revocation attempt in *Becerra* (1975) of "There's a bloke coming. Let's go"[55], which was found to be equivocal.

Ultimately, had Bibal expressed in person that he was to withdraw his aid, the defence of withdrawal could have relieved his complicity in the murder; Bibal had failed to substantially provide such a notice, his note would have only been noticed after the act had occurred. As such, Bibal would be likely to fail in his defence and be convicted as an accomplice to the murder of Vic.

[53] *Becerra* (1975) 62 Cr App R 212 (CA)
[54] Ibid
[55] Ibid

**13.) Issue:**

While attempting to steal Vic's jewellery from his home, Derek has stabbed Vic intending to cause grievous bodily harm; Derek has been found to have committed murder. Cathy was helping Derek steal from Vic's house, is she an accomplice to murder?

**Rule:**

To determine whether Cathy is an accomplice to murder, it must be established as to what the actus reus and mens rea of such is. The actus reus of an accomplice to an offence is found within the Accessories and Abettors Act 1861, section 8, where it is said that an accomplice is one "whosoever shall aid, abet, counsel, or procure the commission of any indictable offence".

The mens rea of being an accomplice is not defined in statute, but rather found in the common law within the case of *National Coal Board v Gamble* [1959], where it is said that "aiding and abetting is a crime that requires proof of mens rea, that is to say, of intention to aid as well as of knowledge of the circumstances."[56].

**Application:**

With both rules for actus reus and mens rea established in regard to complicity, these must be applied to the facts surrounding Cathy's potential crime. Cathy and Derek have both entered Vic's house with the intention to steal his jewellery, however, Derek had done so with the intention to inflict grievous bodily harm such that anyone interrupts them. Derek ultimately kills Vic with such intention when he interrupts them thus committing murder (intention to cause GBH constitutes mens rea for murder[57]). However, while Derek has every intention to cause such significant damage to others, Cathy is told to not know of the knife he welds nor of his willingness to use violence; she has no knowledge of the circumstances upon which Derek may have intention to create. With a lack of "knowledge of the circumstances" and thus a lack of "intention to aid" Derek with GBH, albeit aiding with theft, she likely does not constitute the mens rea to be an accomplice to murder. Furthermore, while helping Derek with the theft itself, proving actus reus to that as such, she has shown no evidence of violence towards Vic and rather is "horrified" and "runs from the house",

[56] *National Coal Board v Gamble* [1959] 1 QB 11
[57] *Vickers* [1957] 2 QB 664 CA; *Cunningham* [1982] AC 566

thus negating actus reus as an accomplice to murder; Cathy has not aided or counselled Derek with his inevitable act, with no encouragement, assistance or intention to do so seen[58].

**Conclusion:**

With a lack of actus reus or mens rea for complicity in regard to murder, notwithstanding her complicity in the theft, Cathy is likely to be acquitted of such a charge. Had Cathy shown an intention to aid Derek in any GBH, and did so, then the opposite may be applicable.

[58] *R v Jogee* [2016] UKSC 8

**Section 3**

14. The case of R v G [2003][59] was decided in its final appeal within the House of Lords (the highest court in the UK at the time).
15. The issue to be solved within R v G [2003] was whether a defendant could be convicted of criminal damage through recklessness, as to the actual damage of the property, such that they gave no thought to any risk but due to personal characteristics (such as age) the risk would not have been present and obvious to them (subjective).
16.

> 32.. First, it is a salutary principle that conviction of serious crime should depend on proof not simply that the defendant caused (by act or omission) an injurious result to another but that his state of mind when so acting was culpable. This, after all, is the meaning of the familiar rule actus non facit reum nisi mens sit rea. The most obviously culpable state of mind is no doubt an intention to cause the injurious result, but knowing disregard of an appreciated and unacceptable risk of causing an injurious result or a deliberate closing of the mind to such risk would be readily accepted as culpable also. It is clearly blameworthy to take an obvious and significant risk of causing injury to another. But it is not clearly blameworthy to do something involving a risk of injury to another if (for reasons other than self-induced intoxication: *R v Majewski [1977] AC 443* ) one genuinely does not perceive the risk. Such a person may fairly be accused of stupidity or lack of imagination, but neither of those failings should expose him to conviction of serious crime or the risk of punishment.

> 33.. Secondly, the present case shows, more clearly than any other reported case since *R v Caldwell* , that the model direction formulated by Lord Diplock (see paragraph 18 above) is capable of leading to obvious unfairness. As the excerpts quoted in paragraphs 6–7 reveal, the trial judge regretted the direction he (quite rightly) felt compelled to give, and it is evident that this direction offended the jury's sense of fairness. The sense of fairness of 12 representative citizens sitting as a jury (or of a smaller group of lay justices sitting as a bench of magistrates) is the bedrock on which the administration of criminal justice in this country is built. A law which runs counter to that sense must cause concern. Here, the appellants could have been charged under section 1(1) with recklessly damaging one or both of the wheelie-bins, and they would have had little defence. As it was, jury might have inferred that boys of the appellants' age would have appreciated the risk to the building of what they did, but it seems clear that such was not their conclusion (nor, it would appear, the judge's either). On that basis the jury thought it unfair to convict them. I share their sense of unease. It is neither moral nor just to convict a defendant (least of all a child) on the strength of what someone else would have apprehended if the defendant himself had no such apprehension. Nor, the defendant having been convicted, is the problem cured by imposition of a nominal penalty.

[59] *R v G and R* [2003] UKHL 50

34.. Thirdly, I do not think the criticism of *R v Caldwell* expressed by academics, judges and practitioners should be ignored. A decision is not, of course, to be overruled or departed from simply because it meets with disfavour in the learned journals. But a decision which attracts reasoned and outspoken criticism by the leading scholars of the day, respected as authorities in the field, must command attention. One need only cite (among many other examples) the observations of Professor John Smith ( *[1981] Crim LR 392* , 393–396) and Professor Glanville Williams ("Recklessness Redefined" *(1981) 40 CLJ 252* ). This criticism carries greater weight when voiced also by judges as authoritative as Lord Edmund-Davies and Lord Wilberforce in *R v Caldwell* itself, Robert Goff LJ in *Elliott v C [1983] 1 WLR 939* and Ackner LJ in *R v Stephen Malcolm R (1984) 79 Cr App R 334* . The reservations expressed by the trial judge in the present case are widely shared. The shopfloor response to *R v Caldwell* may be gauged from the editors' commentary, to be found in the 41st edition of Archbold (1982): paragraph 17–25, pages 1009–1010. The editors suggested that remedial legislation was urgently required.

35.. Fourthly, the majority's interpretation of "recklessly" in section 1 of the 1971 Act was, as already shown, a misinterpretation. If it were a misinterpretation that offended no principle and gave rise to no injustice there would be strong grounds for adhering to the misinterpretation and leaving Parliament to correct it if it chose. But this misinterpretation is offensive to principle and is apt to cause injustice. That being so, the need to correct the misinterpretation is compelling.[60]

[60] *R v G and R* [2003] UKHL 50

17.

In his judgment, Lord Bingham expresses the idea of actus reus non facit reum nisi mens sit rea, meaning that "an act is not necessarily a guilty act unless the accused has the necessary state of mind required for that offence"[61]; essentially an act ('actus reus') is not a guilty one such that mens rea ('guilty mind') is not present. He further explains that should one have the intention to perform a guilty act or know of an "appreciated"[62] risk and be reckless, then he would be culpable, however, such that one did not perceive a risk (due to personal characteristics which may inhibit such) then mens rea should not be found to be present (subjective).

Lord Bingham further goes on to express his dissatisfaction with the previous test for recklessness, created by Lord Diplock, and its ability to generate "obvious unfairness"[63]; he highlights that a "sense of fairness" of the jury is "the bedrock on which the administration of criminal justice in this country is built"[64] and that the prior test (told to "run counter to that sense") was neither "moral nor just" in its lack of consideration for personal circumstances (objective) and thus disrupted the ability of the court to rule under natural justice.

The prior test that Lord Bingham expresses such dissatisfaction for is mentioned in paragraph [23] as the test in *Elliot v C* [1983][65] and derived from *R v Caldwell* [1981][66]. The test took the idea of recklessness from an objective standpoint, focusing on whether there was an "obvious risk"[67] in the eyes of a reasonable man. As told by Markesinis & Deakin's Tort Law, the reasonable man is described as "that of the ordinary citizen"[68] and thus is to be regarded as having no degrading characteristics that could affect the perception of risk that any other "ordinary" person could. As such, in R v Caldwell, it was decided that any risk that would have been "obvious to a reasonably prudent person"[69] would be sufficient for proving one was reckless to such if one did not give thought to the possibility. Furthermore, it was determined that intelligence (or any other characteristic) did not constitute a defence to such, as this did not act in line with the reasonable man test.

Lord Bingham likely views this objective test, as used in Elliot v C, as unsatisfactory due to its ability to convict one who did not appreciate any risk while performing an act. This objective test appears to convict those who are inherently not guilty, due to an underlying

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[61] *R v G and R* [2003] UKHL 50
[62] Ibid
[63] Ibid
[64] Ibid
[65] *Elliot v C* [1983] 1 WLR 939
[66] *R v Caldwell* [1981] 1 All ER 961
[67] Ibid
[68] Simon Deakin and Zoe Adams, *Markesinis & Deakin's Tort* Law (8th edn, OUP 2019).
[69] Ibid

lack of mens rea, yet are ruled guilty due to a comparison with a potentially ambiguous ‘reasonable man’. The lack of ability to consider one’s characteristics is seen by Lord Bingham to be unjust and creates a “sense of unease”, especially such that the defendant is a child with an expected lack of understanding.

18. Lord Bingham expresses (in paragraph [35]) that the House of Lords had misinterpreted the definition of “recklessly” as seen in the Criminal Damage Act 1971[70]. He argues that while such a misinterpretation would usually be adhered to, with the potential for Parliament to correct it, the misinterpretation of “recklessly” led to injustice and was found to be “offensive to principle”; he argues that the “need to correct the misinterpretation” was thus “compelling”[71].

    Lord Bingham further emphasises in his judgment that the objective nature of recklessness derived from *R v Caldwell*[72], which did not consider one’s apprehension of risk based upon characteristics, was made in error and misinterpretation of the initial definition regarding one acting “recklessly”. He describes the introduction of “reckless” via statute with the Criminal Damage Act 1971, wherein it is told that one is “reckless” if “knowing that there is a risk that an event may result from his conduct or that a circumstance may exist, he takes that risk” and that “it is unreasonable for him to take it having regard to the degree and nature of the risk which he knows to be present.”[73]

    The error made in *Caldwell* was found with Lord Diplock’s judgment, wherein he expressed that a person charged with criminal damage was reckless such that he “does an act which in fact creates an obvious risk that property will be destroyed or damaged”[74]. This objective definition, derived from the idea of “obvious” and its objective connotations, was further affirmed in *Elliot v C,* where Glidewell J stated that recklessness was underpinned by a risk which would have been “obvious to a reasonably prudent person”[75].

    Lord Bingham ultimately states that this objective modification to what was, at its root a subjectively natured definition for “reckless”, “would open the door to the difficult and contentious argument concerning the qualities and characteristics to be taken into account”[76] and that conclusively there was no information in the Act itself or in the “travaux préparatoires” for the Act which implied that an objective interpretation was intended by Parliament.

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[70] Criminal Damage Act 1971
[71] *R v G and R* [2003] UKHL 50.
[72] *R v Caldwell* [1982] AC 341
[73] CDA 1971
[74] *R v Caldwell* [1982] AC 341
[75] *Elliot v C (A Minor)* [1983] 2 All ER 1005
[76] *R v G and R* [2003] UKHL 50.

**Section 4**

19. An acquitted person's case may be referred to the Court of Appeal (Criminal Division) by the Attorney-General based upon a point of law upon which has been presented within said case[77], this is known as an Attorney-General's Reference. This does not change the outcome of the case itself, rather focusing on the question of law exclusively[78].
20. 'Jury equity' is the idea that a jury can return a verdict based upon their freedom of conscience and cannot be compelled by a judge to return a guilty verdict[79]. It is also described as a "perverse verdict"[80], contrary to the norm, by its critics.

21. In his journal, 'Jury equity- a changing climate?', J.R Spencer identifies two interpretations of jury equity: the "constitutional safeguard" view and the "embarrassing anomaly" view[81].

    To begin, the "constitutional safeguard" view of jury equity was highlighted by Spencer from the case of *Wang*[82], wherein the House of Lords aligned itself with such. Spencer describes this view as the idea that jury equity is necessary for "rendering ineffective laws now widely felt to be repugnant" and allowing "bad law" to be made ineffective by ruling directly against it. This idea of jury equity further is emphasised by Spencer as protecting civil liberties in the far past, such as defending free speech in cases criticising the monarch or church. However, he mentions that in the present time, the ability to do so is "limited" as tribunals that decide many civil liberty cases, such as employment-related issues, are decided without a jury. In essence, this model of jury equity is regarded as a shield against law, both old and new, regarded as outdated or ineffective in particular cases by a jury (a snippet taken as a representative of the population) and is a "palladium of our liberties" when considering a potential use of criminal law in a tyrannical way by the Government.

[77] Criminal Justice Act 1972, s. 36(1)
[78] Criminal Justice Act 1972, s. 36(7)
[79] *R v Wang* [2005] UKHL 9; J.R. Spencer *'Jury equity - a changing climate?'* (2023) 9 Archbold Review 8-12
[80] J.R. Spencer *'Jury equity - a changing climate?'* (2023) 9 Archbold Review 8-12
[81] Ibid
[82] *Wang* [2005] UKHL 9; [2005] 1 W.L.R. 661.

The “embarrassing anomaly” view of jury equity is seen in the Crown Court currently and is the idea that the ability of the jury to acquit based on their conscience, no matter the facts, is an anomaly of the jury system and is described by its critics as “attempting to prevent the course of justice”[83]. This is seen in everyday practice as jury equity is not explained to a jury; a jury thus must come to such an opposing view themselves. The idea is thus treated as something which is an anomaly which must occur naturally from deliberation by a jury and is not prompted by the court, in full opposition to whatever facts may prove one’s guilt. Such an “embarrassing” decision is seen in the case of *Owens*[84], where the jury acquitted a man of attempted murder as the victim had killed his son; the law is clear that the defendant is guilty of such a crime, yet the jury acquitted him in what is an “embarrassing anomaly” and perversion of what is the norm.

Despite his other criticisms, Spencer ultimately believes that the unlimited ability to acquit is beneficial for a jury and that its benefits outweigh its detriments. While he believes that it can hinder good and bad law, its role in “thwarting heavy-handed” prosecutions by the state is pivotal. He mentions that in the case of *Ponting*, where a civil servant had leaked information surrounding the Falklands War and broke the law regarding the Official Secrets Act 1911, Clive Ponting had been acquitted as the jury believed the state was oppressive in its charges against Ponting; they thought this acquittal to be valid in the name of public interest. This clearly emphasises the idea of jury equity as a “constitutional safeguard “and while Spencer does agree that its existence is “anomalous,” he believes that it is vital and must be “tolerated” with the rules of criminal procedure shifted to accommodate for this.

[83] *Warner* [2024] EWHC 918 (KB)
[84] *R v Owen* [2003] 1 S.C.R 779

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