CRACKNELL'S LAW STUDENTS' COMPANION

CRIMINAL LAW

Third edition

T. Gore
..Maundy

Cracknell's Law Students' Companion

CRIMINAL LAW

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"The lifeblood of the law is not logic but commonsense".

Lord Reid, *Haughton* v. *Smith*, House of Lords 1973

PREFACE

This edition has enabled us to include sixty-six new cases and to delete cases of lesser relevance. Sixty-one of the new cases are appellate judgments, several of them dealing with the interpretation of the Theft Act 1968. Statute Law relating to crime has changed little since 1973.

The wide ranging and complex nature of the Criminal Law is admirably treated in several textbooks but it is hoped these summaries of important cases will supply students with assistance in their study of the subject. They may also be valuable during the revision period before examinations, when time is usually of the essence. Where it is possible, however, students should read the law reports and if these summaries encourage them to do so the authors will feel rewarded. The law reports provide a rich fare of reasoning power, style and measured views.

We wish to express our thanks to the publishers and to Miss V. Jennings for their assistance in preparing this new edition.

T.G.

October, 1976 C.L.M.

CONTENTS

CASES

Abbot v. R. (1976), 3 All E.R. 140 (Privy Council) **[1]**

The issue before the Privy Council was whether the defence of duress was available in law to a person charged with murder as a principal in the first degree. The appellant was a member of a commune which occupied a house in Trinidad, presided over by a man called Malik who was subsequently convicted of murder. On the directions of Malik the appellant, with others, brutally killed a young woman who was the mistress of a member of the commune. The appellant took an active and prominent part in this actual deed although he had pleaded for her life to Malik. He had told Malik that he wanted to go home and live with his mother but Malik insisted on his joining the commune. He stated at his trial "We were under very strong influence of Michael [Malik]". *Held*, by a majority, that the defence of duress was not in law available to a person charged with murder as a principal in the first degree. The appeal would be dismissed. LORD SALMON said that prior to this case it had never been argued in England or in any other part of the Commonwealth that duress is a defence to a charge of murder by a principal in the first degree. Their Lordships declined to extend the decision reached in *Lynch* v. *Director of Public Prosecutions in Northern Ireland* where duress was accepted as a complete defence to anyone charged with murder as a principal in the second degree. To accept that defence in this case might well have had far-reaching and disastrous consequences for public safety to say nothing of its important social, ethical and maybe political implications. In a dissenting judgment, LORD WILBERFORCE and LORD EDMUND-DAVIES said that the evidence as to duress was of such a nature that the interests of justice demanded that a new trial be ordered in order that the evidence should be given consideration. "To hold that a principal in the first degree in murder is never in any circumstances to be entitled to plead duress whereas a principal in the second degree may, is to import the possibility of grave injustice into the common law. Such a conclusion should not be arrived at unless supported by compelling authority or by the demands of public policy shown to operate differently in the two cases. There are no authorities compelling this Board so to hold, nor are there reasons of public policy present in this case which are lacking in the case of principals in the second degree."

A.-G. for Northern Ireland v. Gallagher, [1963] A.C. 349 (House of Lords) **[2]**

The respondent was convicted of the murder of his wife. There was no doubt he killed her. The defence was insanity or alternatively that he was so drunk when he killed her as to be incapable of having any intent to kill her. The respondent appealed to the Court of Criminal Appeal in Northern Ireland on the ground of misdirection of the jury by the trial judge. The Court directed a verdict of acquittal. The Attorney-General for Northern Ireland was granted leave under the provisions of the Administration of Justice Act 1960, to appeal to the House of Lords on a point of law of general public importance. The point of law was whether a person in a psychopathic condition which is quiescent may become insane (within the meaning of the rules in *M'Naghten's Case*) as the result of the voluntary consumption by him of intoxicating liquor, if the effect of that intoxicating liquor is to bring about an explosive outburst in the course of a mental disease although the disease was not itself caused by intoxicating liquor. *Held*, the conviction of murder should be restored. The accused was a psychopath but he

was not insane when he made up his mind, as he did before drinking whisky, to kill his wife. The drunkenness was equally no defence to the charge. LORD GODDARD took the view that neither self-imposed intoxication nor aggressive psychopathy of itself amounts to insanity, while LORD TUCKER stated that a man can produce in himself a disease of the mind by the excessive consumption of alcohol, but this was not such a case. "A psychopath who goes out intending to kill, knowing it is wrong, and does kill, cannot escape the consequences by making himself drunk before doing it" (*per* LORD DENNING, M.R.). See also *Bratty* v. *A.-G. for Northern Ireland; Director of Public Prosecutions* v. *Beard.*

A.-G. for State of South Australia v. Brown, [1960] 1 All E.R. 734 **[3]**
(Privy Council)

Brown, a station hand at Pine Valley, South Australia, shot and killed the station manager. Neither the manager nor anyone else at the station had any argument with him and he had no reason to bear malice against anyone. In his defence Brown pleaded insanity and said that at the time when he fired the shot he knew what he was doing but was suffering from an uncontrollable impulse and could not help himself. He was convicted and after a series of appeals the case came before the Judicial Committee of the Privy Council. *Held,* the conviction would be affirmed on the ground that uncontrollable impulse is not a defence in English law and is not a symptom from which a jury, without further evidence, may infer insanity within the M'Naghten Rules. But see the Homicide Act 1957, s.2 **[391]**.

Attorney General's Reference (No. 1 of 1975), **[4]**
[1975] 2 All E.R. 684 (Court of Appeal, Criminal Division)

This was a reference to the Court of Appeal made by the Attorney General under s.36 of the Road Traffic Act 1972 to obtain a ruling on the question, "whether an accused who surreptitiously laced a friend's drinks with double measures of spirits when he knew that his friend would shortly be driving his car home, and in consequence his friend drove with an excess quantity of alcohol in his body and was convicted of the offence under the Road Traffic Act 1972, s. 6 (1) **[507]** is entitled to a ruling of no case to answer on being later charged as an aider and abettor, counsellor and procurer, on the ground that there was no shared intention between the two, that the accused did not by accompanying him or otherwise positively encourage the friend to drive, or on any other ground. *Held,* the question would be answered in the negative as where a person performs some act which results in another person unwittingly committing an offence which is an absolute offence, the first person may be said to have procured the commission of the offence by the other, within s. 8 of the Accessories and Abettors Act, 1861, even though there was no communication between them before the offence was committed. "We think that there was a case to answer and that the trial judge should have directed the jury that an offence is committed if it is shown beyond reasonable doubt that the accused knew that his friend was going to drive, and also knew that the ordinary and natural result of the additional alcohol added to the friend's drinks would be to bring him above the recognised limit of 80 milligrammes per 100 millilitres of blood" (*per* LORD WIDGERY, C.J.).

Allen v. Whitehead, [1930] 1 K.B. 211 (Divisional Court) **[5]**

Whitehead, the occupier and licensee of a refreshment house, was prosecuted for knowingly suffering prostitutes to meet together and remain therein. The premises were open day and night but it was not managed by him and, in fact, he only visited it once or twice a week. Over a period of seven days a number of women known by the manager to be prostitutes visited the premises between the hours of 8.00 p.m. and 4.00 a.m. Whitehead had previously been warned by the police not to harbour prostitutes on the premises and he had given instructions

to the manager that prostitutes were not to be allowed to congregate there; in addition, he displayed a notice forbidding them to enter the premises after midnight. Whitehead was acquitted and the prosecution appealed to the Divisional Court. *Held,* by delegating his duty to a manager the knowledge of the manager would be imputed to him and the case would be remitted to the justices with directions to convict. See also *Linnett* v. *Metropolitan Police Commissioner.*

Andrews v. Director of Public Prosecutions, [1937] 2 All E.R. 552 (House of Lords) **[6]**

The appellant drove a motor van at a fast speed, overtook a car and, while well over on the off-side of the road, collided with a pedestrian and caused his death. He was convicted of manslaughter and appealed on the ground that the judge had misdirected the jury in telling them that a person was guilty of manslaughter if he caused death in the performance of an unlawful act, in this case dangerous driving. *Held,* despite this misdirection the appeal would be dismissed as taking the summing-up as a whole the true question had been left to the jury and, on the evidence, their verdict was inevitable, as the offence is committed where the driving is done recklessly. "The principle to be observed is that cases of manslaughter in driving motor cars are but instances of a general rule applicable to all charges of homicide by negligence. Simple lack of care such as will constitute civil liability is not enough. For purposes of the criminal law there are degrees of negligence, and a very big degree of negligence is required to be proved before the manslaughter is established . . . the statutory offence of dangerous driving may be committed, though the negligence is not of such a degree as would amount to manslaughter if death ensued" (*per* LORD ATKIN). See also *R.* v. *Bateman.*

Atwal v. Massey, [1971] 3 All E.R. 881 (Divisional Court) **[7]**

This was an appeal by way of case stated by justices who had convicted Atwal of handling stolen goods contrary to s. 22 of the Theft Act 1968 **[456]**. A stolen electric kettle was left by the roadside by the thief for collection by the appellant, who had paid him £1.50 for it. The justices had held that the appellant, from the circumstances under which he had collected the kettle, ought to have known that it had been stolen. *Held,* in order to establish an offence under s. 22 it was not sufficient to show that the goods had been received in circumstances which would have put a reasonable man on enquiry; the question was a subjective one: was the appellant aware of the theft or did he believe the goods to be stolen or did he, suspecting the goods to be stolen, deliberately shut his eyes to the circumstances? The justices had applied the wrong test and the conviction would be quashed.

Barker v. Levinson, [1950] 2 All E.R. 825 (Divisional Court) **[8]**

The respondent was the agent of the owners of a block of flats and had authority to let the flats. He authorised one Purkis, whom he employed as a rent collector, to let one of the flats to a Mrs. Smith if he, Purkis, was satisfied that she would be a satisfactory tenant. Purkis required and received from Mrs. Smith a premium of £100 as a condition of granting her the tenancy and the respondent was charged with requiring, through his agent, Purkis, a premium from Mrs. Smith contrary to the Landlord and Tenant (Rent Control) Act 1949. It was not proved that the respondent authorised Purkis to require the premium or that he knew that Purkis had required or accepted it. *Held,* the information against the respondent had been rightly dismissed as there was nothing in the facts found to show that what Purkis did was within the general scope of his authority. "The authority which Purkis had was of a very limited character, and, therefore, this case does not fall within that line of cases which indicates that the principle is that the master is vicariously responsible if the servant commits an offence in the general scope of his employment" (*per* BYRNE, J.). But see *Allen* v. *Whitehead.*

Bedder v. Director of Public Prosecutions, [1954] 2 All E.R. 801 **[9]**
(House of Lords)

The appellant, a youth of eighteen years, was convicted of the murder of a prostitute. The appellant was sexually impotent and, after he had attempted in vain to have intercourse with the prostitute, she jeered at him and, as he attempted to stop her getting away, slapped him and kicked him "in the privates", whereupon the appellant stabbed her with his knife. It was argued that there had been such provocation by the dead woman as to reduce the crime from murder to manslaughter. *Held,* the appeal would be dismissed. The question for the jury was whether, on the facts as they found them from the evidence, the provocation was, in fact, enough to lead a reasonable person to do what the accused did: there was no authority for the proposition that the reasonable man should be invested with the peculiar physical qualities of the accused, in this case the characteristic of impotence. See also *R.* v. *McCarthy* and s. 3, Homicide Act 1957 **[392]**.

Bratty v. A.-G. for Northern Ireland, [1963] A.C. 386 (House of Lords) **[10]**

The appellant was convicted of the murder by strangulation of an eighteen-year-old girl and his appeal was dismissed by the Court of Criminal Appeal of Northern Ireland. The defences raised at the trial were: (1) the accused was in a state of automatism; (2) his mental condition was so impaired that he was incapable of forming an intent to kill; and (3) he was insane. *Held,* (1) there were in law two types of automatism, namely insane and non-insane automatism, and a judge was only under a duty to leave the issue of automatism of either type to the jury where the defence had laid a proper foundation for so doing by adducing positive evidence in respect of it, which was a question of law for the judge to decide; (2) where, as here, the only cause alleged for the "unconscious act" in question was the same as that which formed the basis of the defence of insanity, *i.e.,* a defect of reason caused by disease of the mind, namely psychomotor epilepsy, and that cause was rejected by the jury in considering the defence of insanity there could be no room for the alternative defence of automatism, either insane or non-insane, and the trial judge was right in not leaving that defence to the jury; (3) the appellant must be deemed to have been a sane and responsible person at the time of the killing, and since there were no grounds for the view that he lacked intent to kill, there was no issue of manslaughter to be left to the jury. LORD DENNING, in his judgment stated that no act is punishable if it is done involuntarily. But the category of involuntary acts is very limited, so limited that until recently there was hardly any reference in the English books to the so-called defence of automatism. The decision of the Court of Criminal Appeal in Northern Ireland was affirmed. See also *A.-G. for Northern Ireland* v. *Gallagher.*

Browning v. J. W. H. Watson (Rochester), Ltd., [1953] 2 All E.R. 775 **[11]**
(Divisional Court)

The United Services Club, Rainham, hired the respondents' coach to take members of the club to Gillingham football ground. Persons who were not club members travelled on the coach and, because of this, the respondents were charged with allowing a vehicle to be used without the appropriate road service licence. The respondents did not know that non-members were included in the party, but their servant did not inquire to take any precaution to see that only members were admitted. *Held,* the offence was proved. "The prohibitions in the [Road Traffic Act 1930] are absolute, and, while it is true that in *Reynolds* v. *G. H. Austin & Sons Ltd.* we refused to impose vicarious liability and a good deal of discussion took place about the doctrine of *mens rea,* in cases of absolute prohibition *mens rea* can be supplied by the simple doing of the forbidden act. We cannot say here that, if a coach proprietor lets a coach to a club for the conveyance of the members of the club and allows people who are not members

of the club to get into the coach, he is not liable. Of course, this was not a wilful violation, but it is clear that the respondents should have taken some precaution" (*per* LORD GODDARD, C.J.).

Chan Kau alias Chan Kai v. R., [1955] 1 All E.R. 266 (Privy Council) **[12]**

The appellant became involved in a fight between two rival gangs in Hong Kong in the course of which one Chan Fook was killed. According to the appellant's evidence he was inadvertently involved in the fight in the course of which he was attacked by Chan Fook who mistook him for a member of the attacking gang and in attempting to escape he struck Chan Fook the fatal blow. He was convicted of murder and appealed on the grounds that the defence of provocation had been wrongly withdrawn from the jury and that there had been a misdirection with regard to the defence of self-defence. *Held,* his appeal would be allowed as, having regard to all the circumstances of the case, there was a case with regard to provocation fit to be left to the jury. Although the rejection of the defence of self-defence did not amount to a miscarriage of justice it was affirmed that in cases where the evidence discloses a possible defence of self-defence the onus remains throughout on the prosecution to establish that the accused is guilty of the crime of murder and the onus is never on the accused to establish this defence any more than it is for him to establish provocation or any other defence apart from that of insanity and a few others. Since the decisions of the House of Lords in *Woolmington* v. *Public Prosecutions Director* and *Mancini* v. *Public Prosecutions Director,* it is clear that the rule with regard to the onus of proof in cases of murder and manslaughter is of general application and permits of no exceptions save only in the case of insanity and a few others.

Cundy v. LeCocq (1884), 13 Q.B.D. 207 (Divisional Court) **[13]**

The Licensing Act 1872, s. 13 (now the Licensing Act 1964, s. 172 (3)) made it an offence for a licensee to sell intoxicating liquor to a drunken person. Cundy, a licensee, sold liquor to a drunken person. He was not aware that the person was drunk. The defence argued that before a person can be criminally convicted there must be *mens rea. Held,* the prohibition was absolute and knowledge of the condition of the person served with liquor was not necessary to constitute the offence. "I am of the opinion that the words of the section amount to an absolute prohibition of the sale of liquor to a drunken person, and that the existence of a *bona fide* mistake as to the condition of the person served is not an answer to the charge . . . the object of this part of the Act is to prevent the sale of intoxicating liquor to drunken persons and it is perfectly natural to carry that out by throwing on the publican the responsibility of determining whether the person supplied comes within that category" (*per* STEPHEN, J.). But see *Sherras* v. *De Rutzen.*

Davey v. Lee, [1967] 2 All E.R. 423 (Divisional Court) **[14]**

The accused were prosecuted in the magistrates' court for an attempt to steal a quantity of metal. One evening a police officer heard a snipping and scrambling sound coming from the compound of the South Western Electricity Board and saw one Michael Rigler and another man at the edge of the compound. Shortly afterwards he saw a motor van that had been parked near the compound drive off and two men, one driving the van and the other running alongside it at the passenger's door. The van, in which there were Michael Rigler and the other accused, was later stopped by another police officer and a pair of wire cutters was found in the pocket of the driver's door. The police officer asked the accused to go to the police station and after the van had gone about ten yards a pair of bolt croppers was thrown into a hedge. Drums of copper, other stores, an office building and a dwelling house were inside the compound which was enclosed by barbed wire and insulated wire fencing as well as a chain link fence; all the fences were found to have been cut. The men were convicted and after an unsuccessful appeal

to quarter sessions they appealed to the Divisional Court, contending that the act of cutting through the fences was not sufficiently proximate to stealing metal to constitute an attempt and even if their actions did constitute an attempt it could not be held beyond reasonable doubt that it was an attempt to commit larceny of the metal as opposed to an attempt to commit some other offence, as the compound contained other stores. *Held*, the convictions would be affirmed on the ground that the act of cutting through the fences was sufficiently proximate to stealing the metal to constitute an attempt and it was to steal the metal that the accused had cut the fences. Their Lordships accepted the statement in *Archbold* "that the *actus reus* necessary to constitute an attempt is complete if the prisoner does an act which is a step towards the commission of the specific crime, which is immediately and not merely remotely connected with the commission of it, and the doing of which cannot reasonably be regarded as having any other purpose than the commission of the specific crime."

Director of Public Prosecutions v. Beard, [1920] A.C. 479 **[15]**
(House of Lords)

The appellant ravished a girl of thirteen years and when she struggled to escape from him he placed his hand upon her mouth and his thumb on her throat, thereby causing death by suffocation. The sole defence was a plea of drunkenness. He was convicted of murder and the Court of Criminal Appeal substituted a verdict of manslaughter upon the ground that the judge was wrong in applying to a case of drunkenness the test of insanity and that he ought to have directed the jury in accordance with the rule laid down in *R.* v. *Meade*, *i.e.*, they should have been told to acquit unless they were satisfied that the appellant was capable of knowing that what he was doing was dangerous. However, the House of Lords restored the conviction as Beard had not been so drunk as to be incapable of forming the intention to have sexual intercourse with the girl without her consent. LORD BIRKENHEAD, delivering the judgment of the court, stated that (*a*) evidence of drunkenness which rendered the accused incapable of forming the specific intent essential to constitute the crime ought to be taken into account with the other facts proved, in order to determine whether he had that intent; (*b*) the test of criminal responsibility is not the same in the case of drunkenness as in the case of insanity, and upon a plea of drunkenness where insanity is not pleaded, the jury should not be asked to consider whether, if the accused knew what he was doing, he knew also that he was doing wrong. (At the time this case was decided this was sufficient to constitute murder; see now s. 1 of the Homicide Act 1957 **[390]**.)

Director of Public Prosecutions v. Bhagwan [1970] 3 All E.R. 97 **[16]**
(House of Lords)

The appellant, a Commonwealth citizen to whom the provisions of the Commonwealth Immigrants Act 1962 applied, landed with others at a point on the English coast where there was no immigration officer, so that he was not examined in accordance with the provisions of the Act. He was charged with conspiracy to evade the control of immigration of Commonwealth citizens into the UK in order that he could enter the UK without submitting himself for examination. *Held*, the indictment disclosed no offence known to the law because (1) under the 1962 Act no duty was imposed on a Commonwealth citizen to present himself to an immigration officer for examination on his arrival in the UK; (2) it was not a criminal offence for any person, whether or not he acted in concert with others, to do acts which were neither prohibited by Parliament nor at common law and did not involve dishonesty or fraud or deception, merely because the object which Parliament hoped to achieve by the Act might thereby be thwarted.

Director of Public Prosecutions v. Doot, [1973] 1 All E.R. 940 **[17]**
(House of Lords)

The respondents, Doot and four others, all American citizens, were parties to an agreement made either in Belgium or Morocco to import cannabis resin into England with the view of re-exporting it to the United States. By s. 2 of the Dangerous Drugs Act 1965 it was unlawful to import cannabis resin into the United Kingdom without a licence and the respondents did not have a licence. The cannabis resin was concealed in three separate vans and shipped to England. Customs officers discovered cannabis in one of the vans when it arrived at Southampton. The other two vans were subsequently traced and the cannabis found in them. The respondents were convicted, *inter alia*, of conspiracy to import dangerous drugs into the United Kingdom but the conviction was quashed by the Court of Appeal which held that the agreement was the essence of the offence and the English courts had no jurisdiction to try the charge as it had been made abroad. The Crown appealed. *Held*, the appeal would be allowed and the conviction restored as (1) an agreement made outside the jurisdiction of the English courts to commit an unlawful act within the jurisdiction was a conspiracy which could be tried in England if the agreement was subsequently performed, wholly or in part, in England; (2) the crime of conspiracy is complete once the agreement has been made but the conspiratorial agreement remains in being until terminated by completion of its performance by abandonment and where acts are committed in England in performance of the agreement that will suffice to show the existence of a conspiracy within the jurisdiction triable by the English courts; (3) the conspiracy was committed in England.

Director of Public Prosecutions v. Majewski, [1976] 2 All E.R. 143 **[18]**
(House of Lords)

One evening a brawl broke out in a public house in Basildon between the appellant and another man. The landlord went to eject the other man and the appellant intervened to stop him. When the landlord next went to telephone for the police, the appellant butted him. Eventually the two men were ejected but fought their way back in again. During the struggle to get back the appellant cut the landlord's hand with a piece of glass and a customer sustained a grazed wrist and a cut finger. The appellant was finally overpowered and held on the floor until the police arrived. The police officer, who arrested the appellant, was kicked and abused by him and he also kicked and injured another officer whilst he was being driven to the police station. The next morning the appellant attacked a police inspector who went to his cell at the police station to see what he was doing. The appellant was charged with assault occasioning actual bodily harm and assault on a police officer in the execution of his duty. He said that for some time he had been taking a mixture of drugs and on that evening he had drunk a fair amount of alcohol whilst under the influence of the drugs. He claimed to have no recollection at all of what had happened in the public house or at the police station until he woke up there and found himself handcuffed. His conviction was confirmed by the Court of Appeal and he appealed to the House of Lords. *Held*, the appeal should be dismissed as, unless the offence was one that required proof of specific or ulterior intent, it was no defence to a criminal charge that, by reason of self-induced intoxication, the appellant did not intend to do the act alleged to constitute the offence. Section 8 of the Criminal Justice Act 1967 **[423]** was irrelevant since that section dealt only with matters of evidence and the rule that an accused could not excuse his conduct by relying on self-induced intoxication was a rule of substantial law. See also *A.-G. for Northern Ireland* v. *Gallagher*.

Director of Public Prosecutions v. Morgan, [1975] 2 All E.R. 347 **[19]**
(House of Lords)

Morgan, a senior N.C.O. in the Royal Air Force, invited McDonald, McLarty and Parker, who were also in the Royal Air Force but were strangers to him,

to have intercourse with his wife. He assured the three men that his wife would be willing but would probably simulate reluctance for her own pleasure. Morgan drove the three men to his home and awakened his wife who was asleep in a bedroom which she shared with her eleven year old son. The four men frog-marched Mrs. Morgan into another room where there was a double bed and McDonald, McLarty and Parker had intercourse with her; when they had finished and left the room Morgan had intercourse with her himself. While McDonald, McLarty and Parker were having intercourse with her Mrs. Morgan was screaming violently and shouting "Police", but was forcibly restrained—they covered her face, pinched her nose until she begged them to let her breathe, and held her arms and legs. The three men were convicted of rape and Morgan of aiding and abetting. The trial judge, in his summing-up, told the jury that the prosecution had to prove that the accused had intended to have intercourse with Mrs. Morgan without her consent and that if they had believed that she was a willing party they could not be found guilty provided their belief was a reasonable one. The convictions were affirmed by the Court of Appeal and the four men appealed to the House of Lords. *Held*, rape consisted in having sexual intercourse with a woman with intent to do so without her consent or with indifference as to whether or not she consented and cannot be committed if that essential *mens rea* is absent, and if an accused in fact believed that the woman had consented, whether or not that belief was based on reasonable grounds, he could not be found guilty of rape. The trial judge's summing-up was wrong but no reasonable jury could have failed to convict the appellants even if properly directed; there was no miscarriage of justice and the appeals should be dismissed and the proviso to s. 2 (1) of the Criminal Appeals Act 1968, applied.

Director of Public Prosecutions v. Newbury, Director of public Prosecutions v. Jones (1976), 2 All E.R. 365 **[20]**
(House of Lords)

The train travelling from Pontypridd to Cardiff was approaching a bridge which crossed the railway line. The guard was sitting next to the driver of the train in the front cab. The driver noticed the heads of three boys above the parapet of the bridge. He saw one of the boys push something off the parapet towards the oncoming train. This proved to be part of a paving stone. It came through the glass window of the cab and struck the guard who was killed. The boys were convicted of manslaughter. They appealed and the point of law certified to be of general public importance was "Can a defendant be properly convicted of manslaughter, when his mind is not affected by drink or drugs, if he did not foresee that his act might cause harm to another?". *Held*, an accused was guilty of manslaughter if it were proved that he had intentionally done an act which was unlawful and dangerous and that the act had inadvertently caused death. It was not necessary for the prosecution to prove that the act was unlawful or dangerous; the test was not whether the accused himself recognised it was dangerous but whether sober and reasonable people would recognise its danger. The appeals were dismissed.

Director of Public Prosecutions v. Ray, [1973] 3 All E.R. 131 **[21]**
(House of Lords)

The respondent, Ray, a University student, and three companions went to a restaurant in Gainsborough and ordered a meal to the value of 47p. When the order was given the respondent intended to pay for the meal. The meal was duly served and there were no complaints, but after it had been consumed they had a discussion and decided to leave without paying. The respondent waited until the waiter had gone out of the restaurant to the kitchen and then ran out of the restaurant without paying. He was convicted of obtaining a pecuniary advantage by deception, contrary to s. 16 (1) of the Theft Act 1968 **[450]**, but the conviction was quashed by the Divisional Court and the Crown appealed. *Held*,

the conviction would be restored as the respondent had practised a deception on the waiter by ostensibly continuing to represent to him that he intended to pay for the meal before leaving and by that deception he had obtained a pecuniary advantage for himself by evading his obligation to pay for the meal. "So far as the waiter was concerned the original implied representation made to him by the respondent must have been a continuing representation so long as he (the respondent) remained in the restaurant. There was nothing to alter the representation. Just as the waiter was led at the start to believe that he was dealing with a customer who by all that he did in the restaurant indicated his intention to pay in the ordinary way, so the waiter was led to believe that the state of affairs would continue" (*per* LORD MORRIS of Borth-y-Best).

Director of Public Prosecutions v. Rogers, [1953] 2 All E.R. 644 **[22]**
(Divisional Court)

The accused was charged in the magistrates' court with indecent assault upon a female under the age of sixteen years, contrary to s. 52 of the Offences against the Person Act 1861 (now s. 14 of the Sexual Offences Act 1956 **[365]**). He lived with his wife and daughter, aged eleven years, and on two occasions when he was alone with the daughter in the house he put his arm round her shoulders, led her upstairs, and persuaded her to masturbate him, which she did. He did not use any force or compulsion when persuading the child to carry out his wishes and although on the second occasion when she knew his intentions she did not wish to accompany him upstairs she did not resist but agreed of her own free will. He was acquitted and the prosecution appealed to the Divisional Court. *Held*, the acquittal would be upheld on the ground that there must be an assault before there can be an indecent assault and as he had done nothing that could amount to compulsion and had not acted in a hostile manner towards the child, whether by threats or gestures, there was no assault and the offence was not constituted. See now the Indecency with Children Act 1960, s. 1 **[401]**.

Director of Public Prosecutions v. Smith, [1961] A.C. 290 **[23]**
(House of Lords)

The respondent Smith was driving a car containing stolen property. He was told by a police constable to draw to the kerb but accelerated. The police constable clung to the side of the car but was shaken off, falling in front of another car and receiving fatal injuries. The respondent was convicted of capital murder but the Court of Criminal Appeal substituted a verdict of manslaughter. The Crown appealed to the House of Lords. The House of Lords allowed the appeal and the conviction of murder was restored. *Held*, the jury must be satisfied that the accused was unlawfully and voluntarily doing an act aimed at someone, and if it is immaterial what he in fact contemplated as the probable result of his action or whether he contemplated at all. Provided he was in law responsible and accountable for his actions, *i.e.*, capable of forming an intent, not insane nor suffering diminished responsibility, the sole question was whether the unlawful and voluntary act was of such a kind that grievous bodily harm was the natural and probable result. The test was whether the ordinary reasonable man woud have contemplated that the unlawful and voluntary act would lead to such a result. The distinction drawn between the case where serious harm was "likely" to result was not warranted. The true question in each case is whether there is a real probability of grievous bodily harm. The expression "grievous bodily harm" should bear its ordinary and natural meaning of "really serious" harm. See also the Criminal Justice Act 1967, s. 8 **[424]**.

Director of Public Prosecutions v. Turner, [1973] 3 All E.R. 124 **[24]**
(House of Lords)

The respondent, Turner, employed a man named Black and his brother to do some work in a house and at the end of the week he owed Black £24 in wages

and Black's brother £14. When Black went to collect the money the respondent told him that he did not have any ready cash and gave him a cheque for £38, the sum due as wages. When he gave the cheque to Black the respondent knew that it would be dishonoured. The cheque was dishonoured and the respondent was convicted of obtaining a pecuniary advantage by deception, contrary to s. 16 of the Theft Act 1968 **[450]**. The conviction was quashed by the Court of Appeal and the Crown appealed. *Held*, the conviction would be restored as by giving Black the cheque the respondent had deceived him by inducing him to believe, contrary to the fact known to the respondent, that it would be dishonoured and by that deception he had caused Black to accept the cheque, thereby evading his obligation to pay the wages in legal tender. "The creditor Black was deceived by the accused into thinking that he had been paid by a cheque which the accused knew was worthless when he gave wages then due to Black and his brother, and thereby gained a pecuniary advantage within the meaning of subsection (2) (a)" (*per* LORD MACDERMOTT). Normally everyone who accepts a cheque in payment takes it in discharge of the debt. But in law, unless anything is said to the contrary, the discharge is presumed to be subject to a resolutive condition that if the cheque is dishonoured the discharge is void *ab initio*; the condition operates retrospectively so that the debt revives in its original form (*per* LORD REID).

Director of Public Prosecutions v. Withers, [1974] 3 All E.R. 984 **[25]**
(House of Lords)

The appellants operated an investigation agency. Its activities included making reports for clients about the status and financial standing of third parties. They made enquiries of banks, building societies, government departments and local authorities from time to time over a period of four years. The enquiries were made by telephone and to obtain information which would not normally be given (*e.g.* bank accounts and criminal records) lies were constantly told. The appellants were charged on two counts with conspiracy to effect a public mischief by unlawfully obtaining private and confidential information by false representations that they were persons authorised to receive such information. The Court of Appeal dismissed their appeal but certified the following point of law of general public importance: "Whether the learned judge was right in law in stating that if the jury were sure that one of the appellants agreed with another appellant to do wilfully deceitful acts themselves or agreed to procure others to do such wilfully deceitful acts for them and that such wilfully deceitful acts would cause extreme injury to the general wellbeing of the community as a whole such persons who so agreed would be guilty of the offence of conspiring to effect a public mischief". The conclusions drawn from relevant cases caused the House of Lords to state that there is no separate and distinct class of criminal conspiracy called conspiracy to effect a public mischief. Where a charge of conspiracy to effect a public mischief has been preferred, the question to be considered is whether the object or means of the conspiracy are in substance of such a quality or kind as has already been recognised by the law as criminal. *Held*, the appeal should be allowed and both convictions quashed. "I hope that in future such a vague expression as 'public mischief' will not be included in criminal charges" (*per* VISCOUNT DILHORNE). See *R.* v. *Brailsford* and *McCulloch*, and *R.* v. *Newland*.

Edwards v. R., [1973] 1 All E.R. 152 (Privy Council) **[26]**

The appellant carried on an adulterous association with Dr. Coombe's wife and followed him from Australia, where they all lived, to Hong Kong for the purpose of blackmailing him. Dr. Coombe had kept a collection of indecent photographs and the appellant broke into his flat and stole one of the photographs