

LAWS1021 - Crime and the Criminal Process Exam Notes **(CHEAT SHEET)**

Public Disorder

Riot

s 93B of the SOA 1988 makes riot an offence. To make out this offence, the prosecution must prove BRD the following elements:

Actus Reus

1. 12 or more present together s 93B(1)
 - *Parkishar (2014)* held 'present together' given its ordinary meaning, not necessary to prove that alleged participants were in close proximity to each other
2. Use or threaten violence (doesn't have to be simultaneous)
 - s 93B(2) and *Colosimo (2005)* held there is no need to identify individual/specific acts
 - s 93A defined 'violence' as 'not restricted to causing or intending to cause injury'
3. Common purpose, inferred from conduct -
4. Cause a person of reasonable firmness to fear for their safety (doesn't need to be present s 93B(4))
 - Person of 'reasonable firmness' is an objective standard, defined as someone that is unduly nervous (*Davidson 1992*)

Mens Rea

1. Intends to use violence or is aware that their conduct may be violent s 93D(1)

Affray

s 93C of the SOA 1988 makes affray an offence. To make out this offence, the prosecution must prove BRD the following elements:

Actus Reus

1. Use or threatens the use of violence s 93C(1)
 - Threat cannot be made by the use of words alone s 93C(3)
 - *Colosimo 2005* held that struggling, having weapons and threatening the use of force their conduct are examples of affray
2. Cause a person of reasonable firmness to fear for their safety (doesn't need to be present s 92C(4))
 - *Davidson 1992*
 - If 2 or more are involved, conduct of them taken together that's considered s 93C(2)
 - *Colosimo 2005* held that is not necessary to identify and prove particular incidents

Mens Rea

1. Intends to use violence or is aware that their conduct may be violent s 93D(2)

Unlawful Assembly

s 545C of the Crimes Act makes knowingly joining or continuing in unlawful assembly is an offence. To make out this offence, the prosecution must prove BRD the following elements:

Actus Reus

1. Assembly of 5 or more persons s 545C(3)
2. Common objective
3. Intimidate or injure to compel any person to do what is not legally bound to do/abstain from legally entitled to do

Mens Rea

1. Knowingly joins in unlawful assembly s 545C(1)
2. Intent to intimidate or injure any person to do what is not legally bound to do/abstain from what they are legally entitled to do

Offensive language/conduct

s 4 of the SOA 1988 makes offensive conduct an offence.

s 4A of the SOA 1988 makes offensive language an offence

To make out this offence, to prosecution must prove BRD the following elements:

Actus Reus

1. Conduct/language - voluntarily said
2. Conduct/language is offensive
 - To determine what is offensive, the *Ball v McIntyre* definition of 'reasonable person' is a person that is tolerant and unduly sensitive is to be applied.
 - *Police v Butler* held that 'fuck' and words of that nature is improper but not unlawful as the reasonable person is not offended due to its common use.
 - *Coleman v Power* stated that in the cases of political statements, due to modern notions of free speech and freedom of communication, they cannot be found guilty.

3. Proximity

- Requires the conduct/language be said within view or near a public place or school (s 22)
- 'Public place' is defined in s 3 as a 'place' or 'part of premises'
- Camp confirmed that all that is required is general access regardless of whether access is unlawful.
- There doesn't need to be people present at the scene, whether there was is a matter for sentencing (*Stutsel v Reid*)

Mens Rea

1. Intent of language/conduct - Nadar J in *Pregelj* held that there must be intent to recklessly offend. Due to the absence of a mens rea element in s 4-4A, *Pfiefer* contended that the offence is strict liability unless the accused reasonably believed their conduct/language was not offensive. Thus the defence of HRMF might be applied.
2. Proximity - There must be intent to be offensive within a public place (Rice in *Pregelj*)

Conclusion: The likelihood of a successful conviction is high/low as the elements were/were to sufficiently satisfied.

Defence of 'Reasonable Excuse'

s 4(3) offers a defence of reasonable excuse to a charge of offensive behaviour.

s 4A(2) offers a defence of reasonable excuse to a charge of offensive language.

For the defence success, the accused must show there was a reasonable excuse for conducting themselves in that manner.

The accused must prove that the offensive behaviour/language was an 'immediate reaction' (*Connors v Craigie*) and a 'reflex action' (*Karpik v Zisis*)

Defence of 'HRMF' (originated in *Proudman v Dayman*)

What will be sufficient to constitute a mistake outlined in *State Rail Authority v Hunter District Water Board*

1. A positive belief that the act was permissible will constitute a mistake
2. The absence of a reason to believe that the facts were otherwise will not constitute a mistake
3. The failure to consider whether the facts were otherwise will not constitute a mistake.

