In addition to the cases of dangerous *driving*, it should be noted that successful prosecutions have been brought on the basis of the *state of the vehicle and the state of the driver*. Thus in *R* v *Skelton* [1995] Crim LR 635 the defendant was a lorry driver who drove his lorry on a motorway after receiving a warning from another driver that the air pressure gauges were low. While on the motorway the pressure problem activated the handbrake which is an effect of such a problem and another lorry driver was killed when he ran into the back of the defendant's lorry. Although the crash was not immediate but some 10 minutes after the defendant's lorry stopped blocking the lane the Court of Appeal ruled that the chain of causation had not been broken and the defendant was rightly convicted. In *R* v *Marison* [1996] Crim LR 909 a diabetic was successfully charged with causing death by dangerous driving. He had suffered periods of unconsciousness in the previous six months. As regards this prosecution, he went into an unconscious state and veered on to the wrong side of the road hitting an oncoming vehicle and killing its driver. He was convicted of causing death by dangerous driving.

Section 3A of the Road Traffic Act 1988 contains an offence of causing death by careless driving *under the influence of drink or drugs*. It creates an objective test of negligence that requires merely that the defendant's driving has fallen below the reasonable standard of care and that drink or drugs were involved.

Violent offences which are not fatal

Under this heading we must consider the following crimes.

Assault and battery

It has already been pointed out in Chapter 21 on the law of specific torts that assault is a threat to apply force immediately to the person of the victim and a battery is the actual application of that force. This distinction also exists in the criminal law. Assault and battery are summary offences under s 39 of the Criminal Justice Act 1988.

Assault

The *actus reus* of assault consists of an act which gives the victim reasonable cause to believe that there will be an immediate infliction of violence. Assault requires basic intent and so actual intention or *Cunningham* recklessness is enough.

Battery

The *actus reus* consists in the actual application of force however slight to another without that other's consent. As we have seen, a battery can consist of an omission (see *Fagan* v *Metropolitan Police Commissioner* (1968) in Chapter 21).

The *mens rea* is a basic intent and so once again actual intention or *Cunningham* recklessness will suffice.

Defences

The following defences are available.

Chastisement

Chastisement of children, which is the main scenario, is considered in Chapter 21 (trespass to the person).

Self-defence

This is also called the 'private defence'. Where an attack which is, e.g., of a violent or indecent nature, is made against a person who is put in fear of his life or the safety of his person, then that person is entitled to protect himself and repel the attack but must not use more force than is necessary or reasonable in the circumstances. If the defence is accepted, it is a complete and not a partial defence because it negates the unlawful nature of the assault carried out in self-defence – in fact, there is no *actus reus* and *mens rea* (see further Chapter 25).

Statutory offences against the person

Assault and battery are common-law offences, but the more serious offences against the person are contained in the Offences Against the Person Act 1861 as follows.

Assault occasioning actual bodily harm

Under s 47 of the Offences Against the Person Act 1861 it is an offence punishable with imprisonment for a term not exceeding five years for a person to assault another thereby 'occasioning actual bodily harm'. Actual bodily harm merely means that the victim has suffered some injury. Bruising or abrasions are enough. Psychiatric injury can amount to actual bodily harm as where, e.g., this results from harassment of a woman by obscene phone calls, but there must be properly-qualified expert evidence before it can be left to the jury, since it must be something more than mere emotion such as fear, distress or panic (see Court of Appeal decision in *R* v *Chan-Fook* [1994] 2 All ER 552).

The mental state of the defendant is set out in the judgment of the House of Lords in *Parmenter* (see p 907).

The Queen's Bench Divisional Court has concluded that the lopping of hair without consent can constitute an offence under s 47 (see *DPP* v *Smith (Michael Ross)* [2006] 2 All ER 16 (Chapter 21)).

DPP v *K*, 1990 – Acid in the hand washer (**540**)

Malicious wounding

Section 20 of the Offences Against the Person Act 1861 provides as follows:

> Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any person either with or without any weapon or instrument shall be guilty of an offence and being convicted thereof shall be liable to imprisonment for five years.

The word 'unlawfully' indicates that acts of genuine self-defence are excluded. As regards the *actus reus*, there are two possibilities, i.e. (*a*) wounding and (*b*) inflicting grievous bodily harm. Wounding is fairly straightforward and requires a breaking of the skin, though a graze

would be enough. Grievous bodily harm must be some serious harm and where only slight harm is inflicted a prosecution under s 47 would be more appropriate.

As regards inflicting grievous bodily harm, while one normally thinks of the application of force to the person of the victim the concept does not necessarily require an assault.

R v *Martin*, 1881 – Inflicting grievous bodily harm: no assault (**541**)

As regards the *mens rea*, this is set out in the judgment of the House of Lords in *Parmenter* (below).

R v *Parmenter*, 1991 – Injury to a child (**542**)

Sexually transmitted diseases and ss 20 and 47

The growth of sexually transmitted diseases including HIV in society may well lead to an alteration in the criminal law landscape and in civil claims. The Victorian legal contribution to this problem was unhelpful to persons who had been infected with disease following sexual intercourse with a person who knowingly had the disease but did not inform the other person who consented to sexual intercourse without the relevant knowledge. The doctrine of informed consent that has been brought into civil cases has now it would appear been introduced into the criminal law of offences against the person. The Victorian case is *R* v *Clarence* (1888) 22 QBD 23. Clarence knew he had gonorrhoea. He had consensual intercourse with his unknowing wife. She contracted the disease and Clarence was prosecuted under ss 20 and 47 of the Offences Against the Person Act 1861. He was convicted at his trial because the jury did not believe that his wife who did not know about his condition had truly consented. His conviction was quashed by the appeal court. The wife had consented to sexual intercourse and that was enough.

More recently in *R* v *Dica (Mohammed)* (2003) (unreported) D was convicted of causing grievous bodily harm to two women he infected with HIV. He knew he was HIV-positive and appreciated the risk of unprotected sex. The women consented to unprotected sexual intercourse but said that they would not have done so if they had known of D's infection. The jury at the Inner London Crown Court seems to have bypassed *Clarence* and accepted that there may be a *biological offence* under ss 47 or 20 of the 1861 Act. This would seem to cover a person who knows he or she is infected or possibly is reckless regarding whether or not there is an infection that has caused the actual or grievous bodily harm of the disease.

Dica appealed against his conviction (see *R* v *Dica* [2004] QB 1257) and that appeal succeeded because the trial judge withdrew from the jury the issue of whether the female complainants in the case consented to sexual intercourse *knowing of his condition*, as he alleged they did. He was granted a re-trial where the issue of consent was turned down. It is a general rule of law that, unless the activity is lawful, the consent of the victim does not provide a defence to grievous bodily harm and the trial judge felt bound by this. Dica was convicted at his re-trial. He again appealed against this conviction but his appeal to the Court of Appeal failed and he was refused permission to appeal to the Lords (see *R* v *Dica* (2005) *The Times*, 7 September). While the case impacts mainly on sexual behaviour, it could affect the liability of practitioners in the medical and dental professions. Certainly it is a new development for these old statutory provisions.

Causing grievous bodily harm

Section 18 of the Offences Against the Person Act 1861 provides as follows:

> Whosoever shall unlawfully and maliciously by any means whatsoever wound or cause grievous bodily harm to any person with intent . . . to do some grievous bodily harm to any person or with intent to resist or prevent the lawful apprehension or detainer of any person shall be guilty of an offence and being convicted thereof shall be liable to imprisonment for life.

The expressions 'wounding' and 'grievous bodily harm' (GBH) carry the same meanings as they do for the purposes of s 20. The expression 'cause grievous bodily harm' is used in s 18 whereas the expression 'inflict grievous bodily harm' is used in s 20. It might have been assumed that s 18 applied to cases of grievous bodily harm caused by any means, whereas the expression 'inflict' in s 20 meant that it had to be as the result of an assault. However, since it seems that a s 20 offence can be committed without an assault the distinction between s 20 and s 18 is not really clear. The judgment of the House of Lords in *R* v *Mandair* [1994] 2 All ER 715 considered the two sections. D was tried under s 18 for 'causing grievous bodily harm with intent'. Counsel and the judge agreed that the jury could convict on the lesser charge of 'inflicting grievous bodily harm'. The judge in referring to the s 20 offence in his direction to the jury said it consisted of 'causing' GBH. The jury acquitted the defendant on the s 18 charge but convicted him on the s 20 count of 'causing' GBH. The Court of Appeal quashed the conviction on the ground that the defendant had been convicted of an offence not known to law.

The prosecution appealed to the House of Lords which held that it was open to a jury trying a charge of causing GBH with intent contrary to s 18 of the Offences Against the Person Act 1861 to convict of the lesser s 20 charge even where this had been expressed to be 'causing' (rather than 'inflicting') GBH contrary to s 20. 'Causing' GBH was wide enough to include 'inflicting' GBH.

Since a conviction under s 18 carries a maximum sentence of imprisonment for life, it is reserved for the more serious assaults. There are two forms of intent, as follows:

(*a*) an intent to do some grievous bodily harm; or
(*b*) an intent to resist or prevent a lawful detention or arrest.

In both cases the intent must be accompanied by an intention to cause really serious bodily harm as distinct from slight harm. Recklessness even of the *Cunningham* variety is not sufficient *mens rea*. The wounding must be deliberate and without justification and committed with intent; foresight is not enough. The test of intent is subjective.

R v *Belfon*, 1976 – Causing grievous bodily harm: recklessness not enough (**543**)

Statutory offences against the person and stalking: case law

Stalking, particularly of women, has become an increasing problem in our society and, although Parliament has responded in terms of remedial measures, there has been a significant response by the courts which has resulted from the development of the statutory offences discussed above into the field of psychological injury. As we have seen, a start had been made in *R* v *Chan-Fook* (1993) *The Times*, 19 November. This case was applied again in *R* v *Burstow* [1996] Crim LR 331, where it was held that a stalker could be convicted of the offence of unlawfully and maliciously inflicting grievous bodily harm contrary to s 20 of the Offences

Against the Person Act 1861, even though he had not applied physical violence directly or indirectly to the body of the victim. B had become obsessed with a woman who worked with him and after she ended the relationship he made telephone calls and sent letters and photographs and visited the victim's home; all of this had a profound psychological effect on her. There is no doubt that this decision of the Court of Appeal has made a major breakthrough in anti-stalking law.

In *R* v *Ireland* [1997] 1 All ER 112 the defendant made unwanted telephone calls to three women on a number of occasions and remained silent when the telephone was answered. He was convicted of an offence under s 47 of the 1861 Act and the Court of Appeal later dismissed his appeal holding that psychological injury could amount to actual bodily harm.

As regards the possibility of a prosecution for public nuisance, we have already noted the decision in *R* v *Johnson (Anthony Thomas)* (1996) (see Chapter 21).

In *R* v *Constanza* [1997] 2 Cr App Rep 492 the defendant wrote more than 800 letters to a 23-year-old computer operator and also engaged in many telephone calls and the daubing of paint. The Court of Appeal held that his conviction at Luton Crown Court was correct. The offence of causing actual bodily harm by psychological assault could be sustained and words alone were enough. Once again this is an important conviction.

Where a custodial sentence is to be imposed, the judge should take into account any report from a psychiatrist stating that the defendant will not if at liberty represent a continuing threat to the victim (see *R* v *Smith (Leonard)* [1998] 1 Cr App Rep (S) 138).

Before leaving the case law it is important to note that it is necessary to prove psychological injury resulting from the defendant's activities. Fear, distress or panic is not enough to found a criminal conviction.

Stalking and harassment: statute law

Two Acts of Parliament are relevant as follows.

Section 4A of the Public Order Act 1986

This creates the offence of intentional harassment. The penalty on conviction by magistrates is imprisonment for up to six months and/or a fine of up to £5,000.

It covers harassment on the grounds of race, sex, disability, age and sexual orientation.

The present conviction rate against stalkers under this Act is poor. Very few defendants have been convicted for intentional harassment under s 4A of the Act.

The Protection from Harassment Act 1997

This Act makes it an offence to pursue a course of conduct which the person pursuing it *knows or ought to know* amounts to the harassment of another. There is thus an element of objectivity in the offence, i.e. 'knows or ought to know'. The course of conduct must involve conduct on at least two occasions and conduct is defined as including speech, e.g. nuisance telephone calls. The penalty on conviction by magistrates is the same as that under the 1986 Act (see above).

A civil tort is also created under which an order restraining harassment may be sought. Criminal courts are also given power to make an order preventing further harassment, breach of which will constitute a criminal offence.

The problem with the 1986 Act has been defining harassment, a word which everybody understands but nobody can define. The 1997 Act also avoids a definition stating only that references to harassment include alarming a person or causing them distress, and that conduct can include speech. However, the 1997 Act states that the test of whether

conduct amounts to harassment is that of the reasonable man, which should make the test more objective.

In connection with the requirement of harassing conduct on two occasions the following cases provide illustrations. In *Pratt* v *DPP* (2001) 165 JP 800 Pratt engaged in two incidents of offensive conduct towards his wife in their home. In one he threw water at her and in the second chased her threateningly around the house. The incidents were three months apart and different in detail. The High Court upheld P's conviction under the 1997 Act on his appeal from a magistrates' court, ruling that incidents of harassment did not need to exceed two incidents but the fewer and wider apart the incidents were the less likely it would be that harassment could be proved. In this case the second incident was sufficiently similar to the first to amount to a course of conduct but it was a borderline case. In *R* v *Hills* [2001] Crim LR 318 H & W lived together. H assaulted W on two occasions at their home. The first was in the nature of an indecent assault and the second was a fight. Between the incidents the pair appeared to have been reconciled at least for a while. The Court of Appeal quashed H's conviction. The incidents were too far apart and the claimed similarity of the events, i.e. pulling W's hair on both occasions was tenuous. The Court of Appeal pointed out that by charging harassment under the 1997 Act the prosecution had lost its case. It should have charged the incidents as two separate assaults since conviction on those charges could not have been challenged.

In two further cases the fact of harassment was not in question but the method was. In *R (a child)* v *DPP* [2001] 3 Current Law 127 the High Court held that a person can be harassed by threats to her dog. In *Kellett* v *DPP* [2001] All ER (D) 124 (Feb) the High Court held on judicial review that a person can be harassed by malicious telephone calls to her employer.

Sexual offences

We shall be concerned here only with the offences of rape and assault by penetration. There are, of course, other sexual offences, but because of the developments in both the *actus reus* and the *mens rea* of rape, it provides a further opportunity to consider in yet another context these ingredients of crime.

Rape

Section 1 of the Sexual Offences Act 2003 defines rape. It provides that a person (A) commits an offence if:

- he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis where;
- B does not consent to the penetration; and
- A does not reasonably believe that B consents.

Whether a belief is reasonable is to be determined having regard to all the circumstances including any steps A has taken to ascertain whether B consents.

Thus, where the defendant asserts an honest belief, the jury will have to assess all the surrounding circumstances of a case before deciding whether or not the belief was reasonable. So, for the first time, the common law defence of honest but mistaken belief appears in a statute but will not in itself entitle the defendant to an acquittal.

It remains unclear as to whether the personal characteristics of the defendant should be taken into account by the jury, e.g. mental impairment.

The situation is further complicated by rebuttable and irrebuttable presumptions that rape has been committed set out in ss 75 and 76. These are concerned with the victim's consent.

Section 75 presumptions

These can be *rebutted by evidence* to the contrary. They are:

- use of violence by the defendant or fear of the defendant's violence, either towards the victim or another person, e.g. the child of the victim;
- where the complainant was unlawfully detained;
- where the victim was asleep or otherwise unconscious at the time of the relevant act;
- where the victim's physical disability prevented communication to the defendant, whether or not there was consent;
- where the defendant or another person had administered or caused to be administered a substance enabling the victim to be stupified or overpowered at the time of the relevant act.

Section 76 presumptions

These are *conclusive* presumptions and cannot be rebutted. They are:

- where the defendent intentionally deceived the victim as to the nature or purpose of the relevant act;
- where the defendant impersonated someone personally known to the victim.

These presumptions will cover intercourse by deception and intercourse with a married woman by impersonating her husband. This can occur where, for example, the woman has gone to bed and the defendant has intercourse with her when she is in a drowsy state by pretending to be her husband just returned from work.

A husband can now be guilty of raping his wife and would commit rape by aiding or assisting others to rape her.

It will be noted that the s 1 offence can only be committed by a man and covers anal rape of women or men and oral sex with a woman or a man.

It should also be noted that the ruling of the House of Lords in *DPP* v *Morgan* (1975) (see below), where a defendant believed that there was consent and that belief need not be based on reasonable grounds, is replaced by the requirements of the 2003 Act.

No degrees of penetration

It is not necessary to constitute the crime of rape that sexual intercourse should be completed by male ejaculation of semen. In fact, the slightest penetration by the penis of the vagina (or vulva), anus or mouth of another person will suffice.

R v *R*, 1991 – A husband can rape his wife (**544**)
R v *Williams*, 1923 – Intercourse by deception (**545**)
DPP v *Morgan*, 1975 – Rape: a subjective test (**546**)

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Assault by penetration

Section 2 of the Sexual Offences Act 2003 creates a new offence of assault by penetration. Previously this was a form of indecent assault.

Section 2 provides that a person (A) commits this offence if:

- he or she intentionally penetrates the vagina or anus of another person (B) with a part of his or her body or anything else;
- the penetration is sexual;

- B does not consent to the penetration; and
- A does not believe that B consents.

Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents. The ss 75 and 76 presumptions apply.

This offence can be committed by a man or woman and in fact penile penetration may be charged as assault under this section, so there is some duplication with the s 1 offence. However, this section is intended for penile penetration where the victim is not certain that the penis was used, as where the victim is blindfolded. Note also that the penetration must be sexual, which excludes intimate searching and medical procedures.

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AGE AND RESPONSIBILITY – GENERAL DEFENCES

In this chapter we shall consider the liability of minors in the criminal law, together with the general defences which are available in regard to all prosecutions for crime.

Liability of minors

For the purposes of criminal liability minors are divided into three classes as follows:

(a) Those under 10 years of age. It is presumed that minors under 10 years of age are incapable of any crime and the presumption is irrebuttable (Children and Young Persons Act 1963, s 16). Consequently, no evidence to the contrary will be accepted by a court so that children under 10 cannot be convicted of a criminal offence. Their actions may, however, result in a parenting order being made under the Crime and Disorder Act 1998.

(b) Those between 10 and 14 years of age. The presumption here was wholly dependent on the common law and is that the minor was incapable of forming a guilty intent, but this could be rebutted by proving 'mischievous discretion', i.e. knowledge that what was done was morally or seriously wrong.

This rebuttable presumption was abolished by s 34 of the Crime and Disorder Act 1998 *so that children aged 10 or over have full criminal responsibility*, though this is mitigated by a number of factors as follows:

- the general requirement that a defendant should, in a subjective sense, be aware of circumstances;
- the special provisions for dealing with youth crime; and
- the part played by the Crown in deciding whether or not to bring prosecutions.

The child's age may be a relevant factor in deciding on the reasonableness of his or her actions where such a factor is relevant.

(c) There is a special provision in relation to sexual offences. The Sexual Offences Act 1993 abolishes the previous presumption that a boy under the age of 14 is incapable of sexual intercourse. This means that it is now possible for rape cases to be brought against boys under the age of 14, since they are no longer presumed incapable of vaginal or anal penile intercourse. However, young boys can still seek the protection of the general rules relating to minors set out above.

Insanity

The leading case is *R* v *M'Naghten* (1843) 10 Cl & Fin 200. M'Naghten was charged with murder and acquitted on the grounds of insanity. The acquittal became the subject of debate in the House of Lords and it was decided to ask the opinion of the judges on the law governing insanity. The following rules arose.

(a) Every defendant is presumed to be sane until the contrary is proved.

(b) To establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of mind, as not to know the nature and quality of the acts he was doing; or, if he did know it, that he did not know he was doing what was wrong. It is a question of the party's knowledge of right and wrong in respect of the act with which he is charged.

The defence is required to show on a balance of probabilities that the defendant is insane. The right to raise the issue of insanity at a trial is generally a matter for the defence and not the prosecution. However, it was held in *R* v *Dickie* [1984] 3 All ER 173 that exceptionally the trial judge may raise it and leave the decision to the jury if the evidence suggests that the accused was insane. Furthermore, the prosecution can raise the matter if the defendant has pleaded diminished responsibility (see Chapter 24) and where he has brought in evidence of mental incapacity.

In *DPP* v *H* [1997] 1 WLR 1406 it was held by a Queen's Bench Divisional Court that insanity can only be a defence where *mens rea* is required. Because driving with excess alcohol is an offence of strict liability the defence of insanity is not available on a prosecution for that offence.

If the defence of insanity is successful, the verdict is 'Not guilty by reason of insanity' as provided for by s 2(1) of the Trial of Lunatics Act 1883. The judge was then required to order the defendant to be detained in a special hospital, e.g. Broadmoor. This was often a worse form of sentence than might be given for a finding of guilty. For this reason persons who might have pleaded insanity did not do so, pleading guilty instead, and the defence became confined in practical terms to cases of murder. Now the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 inserts a new s 5 into the Criminal Procedure (Insanity) Act 1964, under which the court can make guardianship or supervision or treatment orders or an order for absolute discharge. However, in the case of murder, the court is still bound to make an admission order as before.

Before returning to the defence of insanity, it should be noted that the defendant's sanity or mental state is also relevant:

(a) When he is put up for trial. Although there may be no doubt that the accused was sane when he did the act with which he is charged, he may be too insane to stand trial or as it is usually put – 'unfit to plead'. If this is found to be so by the judge (not now the jury: s 22, Domestic Violence, Crime and Victims Act 2004), the court's options on a finding of unfitness to plead are:

- to make a hospital order under s 37 of the Mental Health Act 1983, which can also be accompanied by a restriction order under s 41 of the same Act;
- to make a supervision order;
- to order the defendant's absolute discharge.

If the court wishes the defendant to be detained in hospital, the appropriate order will be a hospital order.

The above options are inserted into the Criminal Procedure (Insanity) Act 1964 by the Domestic Violence, Crime and Victims Act 2004. The main differences under the new system are that the Secretary of State no longer has a role in deciding whether or not the defendant is admitted to hospital, and a court can no longer order the defendant's admission to a psychiatric hospital without medical evidence.

It is not possible to avoid the above orders where the defendant raised diminished responsibility as a defence but the judge found unfitness to plead (see *R* v *Antoine (Pierre Harrison)* [2000] 2 WLR 703).

A further example is provided by *R* v *Grant (Heather)* [2002] QB 1030. Heather Grant had been found unfit to stand trial for the murder of her boyfriend. She appealed against the finding of the jury (now the judge) that she had committed the act as charged. She said she should have been allowed to raise the defences of lack of intent (i.e. appropriate *mens rea*) and provocation. The Court of Appeal dismissed her appeal. It was clear from the Criminal Procedure (Insanity) Act 1964 (as amended) that the jury, in reaching conclusions as to unfitness to plead, was not required to consider the defendant's state of mind at the time of commission of the criminal act. Thus the defences of lack of intent and provocation could not be raised at a fitness to plead hearing (*R* v *Antoine* (2000) above applied).

(b) On conviction. Here the accused's mental condition is relevant to punishment. Under the Mental Health Act 1983, the court can make a variety of hospital and guardianship orders, though not in the case of murder.

(c) After sentence. If the accused is found to be suffering from mental disorder after receiving a sentence of imprisonment, he may be transferred to a mental hospital under the Mental Health Act 1983.

We can now look at the essential ingredients of the defence of insanity.

Disease of the mind

The judiciary has never been entirely swayed by the evidence of practitioners in this field of medicine. The matter is, the judiciary says, basically one of *responsibility for the act*. In other words, a person may be suffering from a defect of reason due to a disease of the mind and yet be *responsible*, in the view of the court, for what has been done or not according to the circumstances of the case. The test is thus legal not medical.

It may be for this reason that the courts have considered as part of the issue of responsibility a variety of mental states which do not truly come within the normal definition of insanity.

R v *Kemp*, 1956 – A sufferer from arteriosclerosis (**547**)
R v *Hennessy*, 1989 – A sufferer from diabetes (**548**)

Defect of reason

The disease of the mind must cause a defect of reason so that the defendant (*a*) did not know the nature and quality of his act or (*b*) did not know that what he was doing was wrong. This means essentially that to establish the *M'Naghten* defence the defendant must be deprived of reason. The defence does not, therefore, apply to those who have retained the powers of reasoning but who in a moment of forgetfulness, confusion or absent-mindedness have failed to use those powers properly or to the full.

R v *Clarke*, 1972 – A shoplifter (**549**)