N.B. This is a Working Paper circulated for comment and criticism only. It does not represent the final views of the Law Commission

THE LAW COMMISSION

PUBLISHED WORKING PAPER

NO: 23

Second Programme - Item XVIII (2) (a)

CRIMINAL LAW

Malicious Damage

14 April, 1969

The Law Commission will be grateful if comments can be sent in by 10 October, 1969. All correspondence should be addressed to:-

Lionel Alexander,
Law Commission,
Lacon House,
Theobalds Road,
London, W.C.1.

(Tel: 01-405-8700, Ext: 237)

THE LAW COMMISSION

Second Programme, Subject XVIII, Item (2)(a)

MALICIOUS DAMAGE

PUBLISHED WORKING PAPER No. 23

TABLE OF CONTENTS

THE LAW COMMISSION

Second Programme, Subject XVIII, Item (2)(a)

MALICIOUS DAMAGE

PUBLISHED WORKING PAPER No.23

I INTRODUCTION

1. Under Subject XVIII of our second programme of law reform we envisage the codification of the criminal law. As part of that project, we are examining a number of specific offences as well as the general principles of the criminal law.(1) Certain other offences are being considered by the Criminal Law Revision Committee. The present subject, and the subject of offences against the person, which is to be examined by the Criminal Law Revision Committee, are the most important that have not been comprehensively overhauled since 1861.

2. The existing law of malicious damage is not quite so complex nor so bedevilled by legal niceties as was the law of larceny before the passing of the Theft Act 1968. It is nevertheless beyond controversy that many of the unsatisfactory aspects of the old law of larceny which led to its reform are present in relation to malicious damage.

3. One of the reasons which prompted the Criminal Law Revision Committee to recommend the re-statement in modern terms of the law of theft was based on -

> "... the present widely different penalties depending on various factors - the kind of property involved, the relation between the offender and the owner, the method by which or the place where the offence is committed, whether it is a first or subsequent offence and so on. The present different maximum

---

(1) See Second Programme of Law Reform, Law Com. No.14. The other offences are forgery, perjury, bigamy and offences against the marriage laws.

> penalties date from times when maximum sentences were passed much more commonly than they are now and when Parliament was less willing to trust to the discretion of the courts in sentencing. The policy of drawing distinctions of detail for the purpose of punishment is to a large extent the cause of the multiplicity of offences and the great complications under the present law."(2)

The Committee also observed in passing:-

> "... in our opinion the offences and penalties under the Malicious Damage Act, which are extremely complicated, require revision in any event." (3)

4. Those aspects of the present law of malicious damage that seem to us obvious targets for reform are:-

(a) A great multiplicity of offences

(b) Overlapping both within the Act of 1861 and with other enactments

(c) A variety of penalties

(d) A complicated mental element, characterised by the use of technical words.

Most of these features are common to much of the 1861 legislation, but, in relation to malicious damage, there are other problems with which a modern review ought to deal and which we have attempted to expose in this Paper.

5. The Malicious Damage Act 1861 has been amended from time to time.(4) It is here referred to in its amended form as "the principal Act".

6. Before embarking on a detailed examination of the problems, we think it worth while to point to the available statistics to see how prevalent these offences of malicious damage are and how the courts deal with offenders. The following figures, which are taken from the annual Criminal

---

(2) Eighth Report, 1966 (Cmnd.2977), paragraph 10.

(3) ibid, paragraph 57(ii).

(4) Statute Law Revision (No.2) Act 1893; Criminal Justice Administration Act 1914; Criminal Justice Act 1948; Malicious Damage Act 1964; Criminal Law Act 1967.

Statistics,[5] indicate that these offences occupy the time of the criminal courts to a modest if important degree (compared, for example, with stealing and kindred offences), and that, in general, the offences are not now severely dealt with.

Number of persons found guilty (all courts)			
Year	All offences[6]	Offences of malicious damage including arson (7)	Stealing and breaking and entering
1964	1,327,649	17,791	161,752
1965	1,368,048	18,397	173,261
1966	1,445,948	17,668	184,299
1967	1,579,653	17,297	189,567

Thus offences of malicious damage are about 1.3% of the total, while stealing offences are, on average, 12.5% of the total.

7. Of the offences of malicious damage which result in convictions, the vast majority are tried by magistrates, as the following table shows.

Malicious damage including arson				
Convictions				
Assizes and Quarter Sessions			Magistrates' Courts	
Year	Malicious damage	Arson	Malicious damage	Arson
1964	87	218	17,486	225
1965	113	223	18,061	225
1966	122	217	17,329	251
1967	133	288	16,564	312

(5) Criminal Statistics, England and Wales, 1964(Cmnd.2815), 1965 (Cmnd.3037), 1966 (Cmnd.3332) and 1967 (Cmnd.3689).

(6) Including traffic offences. In 1967, over 1 million of these were dealt with in magistrates' courts.

(7) Prosecutions for offences of malicious damage under legislation other than the principal Act are not included in these figures. Examples of such legislation are listed in footnote 13 below.

8. The disposal statistics for the 300 to 400 offences of malicious damage, including arson, which are dealt with annually on indictment are as follows:-

		1964	1965	1966	1967
Discharges	Absolute	2	1	-	2
	Conditional	16	21	14	17
Mental Health Act 1959 Orders		43	43	24	35
Probation		62	65	71	84
Fine		20	50	37	50
Detention Centre		30	19	16	17
Borstal Training		39	30	39	40
Imprisonment		87	105	134	172
Corrective Training		1	-	-	-
Preventive Detention		-	1	-	-

Of the sentences of imprisonment:-

in 1964 - 18 were for more than 3 years and of these 2 were for more than 7 years;

in 1965 - 20 were for more than 3 years and of these 4 (including 1 P.D.) were for more than 7 years;

in 1966 - 28 were for more than 3 years and of these 3 were for more than 7 years;

in 1967 - 54 were for more than 3 years and of these 10 were for more than 7 years.

These statistics must be looked at in the light of no less than 25 provisions in the principal Act under which the maximum sentence of imprisonment is 14 years or more.

9. Two points of interest emerge from the statistics relating to young offenders. The first point is that malicious damage offences are very prevalent among the youngest age group of all - the 10 to 14-year olds - as well as among other juveniles.

Malicious damage including arson				
Persons under 21 convicted by magistrates				
Year	(All ages)	10 to 14	14 to 17	17 to 21
1964	17,711	2,662	3,780	4,479
1965	18,286	2,809	3,547	4,751
1966	17,580	2,637	3,119	4,663
1967	16,876	2,338	2,861	4,550

The second point is that more than half of those convicted of the most serious offence, arson, are under 21.

Persons convicted of arson				
	On indictment		By magistrates	
Year	Over 21	Under 21	Over 21	Under 21
1964	121	97	None	225
1965	130	93	None	225
1966	128	89	None	251
1967	178	110	None	312

10. While we approach the task of drawing conclusions from these statistics with caution, we think that the following observations would seem to be justified:-

(i) Cases which are dealt with severely by the courts are comparatively rare. This would seem to suggest that high maximum sentences should be laid down only for specially serious cases. We consider below (paragraphs 18 and 66) which those cases should be.

(ii) The brunt of the work is borne by magistrates' courts. The work of those courts should, it seems to us, be made easier in two ways:-

(a) by simplifying the offences, and

(b) by rationalizing the basis of jurisdiction of magistrates' courts.

II CLASSIFICATION OF OFFENCES

A. Existing categories

11. The principal Act, as well as other existing legislation in this field, contains a variety of methods of classification. Many of these classifications owe their origin to accidents of history.(8) Offences of malicious damage are to be found in a number of statutes. There exists much overlapping of offences, both within the framework of malicious damage, and with other offences. The overlap between ss. 7 and 8 of the principal Act (the latter now repealed by the Criminal Law Act 1967) is an example of the first category.(9) The more important examples of overlapping provisions in other legislation are summarised in Appendix A.

12. The principal Act in the main distinguishes between damage by fire and other methods; between classes of person causing damage; and between the different types of property damaged. Thus ss. 1 to 7 deal with injuries by fire to buildings and their contents; ss. 42 and 45-47 deal with setting fire to and otherwise damaging ships; ss. 9 and 10 deal with injuries by explosives; injuries to buildings by rioters or tenants are dealt with in ss. 11 and 13. As to types of property, the various classes are: buildings (ss. 1 to 13); goods in process of manufacture and machinery (ss. 14 and 15); corn, trees and vegetable products (ss. 16 to 24); fences (s.25); mines (ss. 26, 28 and 29); sea and river banks and works on rivers and canals (ss. 30 and 31); ponds (s.32);

---

(8) An example of such an accident is to be found in an Act "for the better and more effectual Protection of Stocking Frames ...", (1788) 28 Geo.3, c.55. The Preamble to this Act begins "Whereas the Frames for making of Framework - Knitted Pieces, Stockings, and other Articles ... are very valuable and expensive Machines..." The Act is discussed in Radzinowicz, History of the Criminal Law, Vol.1., pp. 479 to 481. Compare s.14 of the principal Act.

(9) See paragraph 13 below.

bridges, viaducts and toll-bars (ss. 33 and 34); railway engines or carriages and telegraphs (ss. 35 to 38); works of art (s.39); cattle etc. (ss. 40 and 41); ships (ss. 42 and 45 to 47); wrecks and sea-marks and wrecked goods (ss. 48 and 49). In addition, the Act creates the offence of sending letters threatening to destroy houses, buildings or ships (s.50). Maliciously causing any other injury not otherwise provided for is also an offence (s.51).

13. Section 7 of the principal Act (setting fire to goods in buildings) provides an interesting example of the defects of piecemeal legislation and of elaborate classification. The offence created is not "maliciously setting fire to any goods in any building", but setting fire to goods in "such circumstances that if the building were thereby set fire to he would be guilty of an offence under any of the preceding sections".(10) Those preceding sections deal with various forms of arson. Thus the offence is subject to the restriction that the defendant's mental state must relate to the building rather than the goods.(11) It is not easy to see how, if the offender intends to damage the building, the offence created by s.7 differs from the offence of attempting to set fire to a building (previously s.8 of the principal Act, now at common law).(12)

B. Related enactments (As to overlaps, see Appendix A)

14. (1) Under the Dockyards Protection Act 1772, it is a capital offence to set fire to or otherwise to destroy naval vessels etc.

(2) Under s.2 of the Explosive Substances Act 1883, it is an offence unlawfully and maliciously to cause an explosion likely to endanger life or property. Under s.3, it is an offence to attempt to cause an explosion, or to make or keep explosives with intent to endanger life or property.

---

(10) The words underlined were substituted by s.10(1) and 2nd Schedule, paragraph 7, Criminal Law Act 1967.

(11) R. v. Batstone (1864) 10 Cox C.C.20; R. v. Child (1871) L.R. 1 C.C.R. 307; R. v. Harris (1882) 15 Cox C.C.75.

(12) S.8 was repealed by the Criminal Law Act 1967.

(3) A number of special enactments deal directly or indirectly with damage within the special purview of the enactments in question.[13] There are also numerous examples of bye-laws and local Acts dealing with particular instances of malicious damage.

(4) By s.9(1) of the Theft Act 1968, "A person is guilty of burglary if

> (a) he enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection (2) below..."

Amongst the offences listed in s.9(2) is the doing of

> "unlawful damage to the building or anything therein."

(cf. ss. 3 and 9 of the principal Act). Schedule 1 of the Theft Act deals with taking or killing or attempting to take or kill deer in enclosed land, and with taking or destroying or attempting to take or destroy any fish in water which is private property.[14] (cf. s.41 of the principal Act).

(5) Piracy[15] Section 4 of the Tokyo Convention Act 1967 defines piracy by reference to Article 15 of the Geneva Convention on the High Seas signed on 29th April, 1958, which

---

(13) See e.g. Railway Regulation Act 1840, s.13; Railway Regulation Act 1842, s.17; Railway Clauses Consolidation Act 1845, ss. 105, 144, 152; Railways Act 1921, s.50; British Transport Commission Act 1949, s.56; Lighting & Watching Act 1833, s.55; Gas Act 1948, Schedule 3, paragraph 29; Electric Lighting Act 1882, s.22; Electric Lighting (Clauses) Act 1899, Schedule, paragraphs 16, 17; Water Act 1945, Schedule 3, paragraphs 60 to 73; Post Office Act 1953, s.60; Firearms Act 1968, s.16. This list is not exhaustive.

(14) See Criminal Law Revision Committee, Eighth Report, 1966 (Cmnd.2977) paragraphs 49 to 55.

(15) There exist also various other forms of statutory piracy, which we are considering in the context of the territorial extent of the criminal law (see the Law Commission's Published Working Paper No.17, Subject 3.)

reads as follows:-

Article 15

"Piracy consists of any of the following acts:

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any state;

(2) Any act of voluntary participation in the operation of a ship or an aircraft with knowledge of facts making it a pirate ship or aircraft;

(3) Any act of inciting or of intentionally facilitating an act described in sub-paragraph (1) or sub-paragraph (2) of this Article."

Article 16 provides that acts of piracy committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

(Compare ss. 42, 45 and 46 of the principal Act).

Because of its international character, we do not in this Paper consider piracy in relation to malicious damage, and we make no recommendations about it.

C. A simplified classification

15. A variety of approaches could be made to the problem of classifying offences of malicious damage. One could select, for example, a classification based upon the agency by which the damage is caused, or one related to the nature of the things to be protected, or one determined by a personal relationship between the offender and the property damaged or one concerned with the circumstances or results of the offence. All these different bases are represented in the principal Act with the common disadvantage of multiplicity of penalties and restrictions on jurisdiction.

16. We take the view that the present system of classification which we have mentioned is overdue for simplification. Indeed, it was this consideration which, among others, led to the inclusion of this topic in our second programme of law reform. In the view we take, we are supported by comparative experience. Modern foreign Codes find it unnecessary to formulate complicated provisions in relation to offences of this kind. Some classification (based on the nature of the property damaged and the method used for inflicting damage) is to be found in the New Zealand Crimes Act 1961,(16) but the Norwegian Penal Code(17) contains a simple, comprehensive offence, while the Swedish Penal Code(18) is simpler still. The American Law Institute's draft Model Penal Code has an offence of "causing catastrophe", which has no direct counterpart in English law. We discuss this offence in paragraphs 27 and 28 below.

17. The essence of offences of malicious damage should, we think, be, intentional or reckless(19) destruction of or damage to tangible property (in the widest sense) of another. Distinctions based on the means of damage or destruction employed, such as fire or explosion, or the nature of the property or its situation should be regarded (if at all) as relevant to aggravation.(20)

18. The classification that we propose leans towards simplicity, and goes further in that direction than the New Zealand Crimes Act. It may be compared with the scheme of the Theft Act, which is summarised in Appendix B. We propose to reduce the number of basic offences to two, of which the second will be more serious than the first and will carry higher maximum penalties. They are:-

---

(16) Ss. 294 to 305, under the heading "Criminal Damage". See Appendix C. Another example of an intermediate position is to be found in the New York State Penal Law (1965), ss. 145 to 150.

(17) 1902 to 1961. See ss. 291 to 294, "Vandalism".

(18) 1965. See Chapter 12, ss. 1, 2 and 4. See Appendix C, where these sections are reproduced, as well as Chapter 13.

(19) See Section III "The Mental Element", below.

(20) cf. s.10 of the Theft Act 1968 (aggravated burglary). The general scheme of the Act is summarised in Appendix B.

(1) Destruction of or damage to the property of another

(2) Destruction of or damage to the property of another where the offender intends to cause personal injury or is reckless in that regard.

Certain special cases need, we think, special treatment, viz:

damage (including damage to the offender's own property) with a dishonest intent;

subsidiary matters, e.g., threatening to commit offences, and

possessing materials for committing offences.

The proposed offences are set out in more detail in the Provisional Proposals at the end of this Paper. The above short summary is no more than an indication of how we think that offences of malicious damage should be classified. The proposals cannot be understood fully without reference to other parts of the Paper, including those parts in which we deal with the mental element and with the concept that "a man may do what he likes with his own property".

19. The fact that we have divided offences of malicious damage into two main categories ((1) and (2) above) gives effect to the view that we have provisionally formed that the policy of the criminal law is to select certain offences as attracting exceptionally high maximum penalties, by reason of the fact that those offences are accompanied by aggravating factors. There are examples of this approach in the Theft Act 1968, e.g., in sections 7 to 10 (theft, robbery, burglary and aggravated burglary). The last three of these may be said to be theft accompanied by aggravating circumstances. We listed the choice of possible aggravating factors in paragraph 15 above. In relation to malicious damage, we have given consideration to three possible tests, namely, the means employed, the value of the property, and the potential consequences. We have provisionally selected the third of these. The test of means employed raises, we think, difficulties of definition. The most obvious agents which might cause serious damage are fire and explosives. But human ingenuity does not stand still, and we do not think that to single out fire and explosives would be sufficiently comprehensive. The

American Law Institute's draft Model Penal Code recognizes this difficulty, and has made the attempt to be comprehensive. Art.220.2(1), which is the relevant provision, is reproduced in paragraph 27 below. It will be seen that comprehensiveness has been achieved, but only by combining with a list of harmful agents the additional test of potential consequences. As to the test of value, it has obvious disadvantages consequent upon the changing value of money. In addition, we doubt whether a valuation of the property damaged is necessarily co-extensive with the real seriousness of the offence. A man may, for example, set fire to a nearly valueless tree, knowing that there is a risk that a whole forest may be destroyed. On the other hand, a man may destroy two paintings, one valueless and the other priceless, thinking them both to be of little value. The Theft Act 1968 has finally discarded tests of value in spite of their long association with the law of larceny.

20. The test of potential consequences has, we think, the merit that it singles out the especially blameworthy offender, whether the foreseen consequences of his actions occur or not. Two different categories of relevant potential consequences might be used, namely, exceptionally serious damage to property and danger to personal safety. If, in the course of damaging property, an offender foresees the risk of wider damage to the same or other property, and, even more, if he intends such damage to occur, it seems on principle right that he should be subjected to a higher maximum penalty than the offender who foresees limited damage. Nevertheless, we do not propose the creation of such an offence. There are two main reasons for this. The first reason is that we have been unable to devise a satisfactory test to distinguish serious damage. We have considered, and rejected, such tests as a distinction between real and personal property. The artificiality of such a test may be illustrated by contrasting the case of one who destroys a chicken-coop (which may be real property) with another who destroys a priceless work of art. Even if a comparison be made between a serious case in each of these categories, the distinction is, in our view, no more valid. For example, a man who destroys every painting in the National Gallery seems to us no less deserving of punishment than a man

who destroys the gallery itself. It would be possible to distinguish the more serious offence by using words such as "widespread damage" or "exceptionally serious damage". We have, however, concluded that such words are too imprecise to justify their adoption.

21. We doubt whether the difficulties that we have just discussed could be overcome even by careful drafting, but there is a second reason for not adopting the distinction based on wider damage to property that, coupled with those difficulties, we find persuasive. It is that, in an area as crowded as England and Wales, the probability is that an offender, in committing a serious offence of damage to property, will run the risk of endangering personal safety. Thus, if an offender sets fire to or blows up a building, or a collection of art treasures, it will almost certainly be the fact that persons frequent the building or have access to the collection. When the premises are closed, there will be night-watchmen and guards. These are matters of such common knowledge that the offender will be bound to be aware of them. Again, an offender who damages sluice gates or the like will be aware that any risk of flooding which his actions create will be accompanied by a risk of personal injury consequent upon the flooding. Accordingly, we conclude that the right way to distinguish a more serious offence is to make it depend on the intentional or reckless creation of a risk to personal safety during the course of an offence of damaging property. Robbery, which is theft accompanied by the use of force,[21] and which attracts a maximum sentence of imprisonment for life, is an example of analogous treatment. Our proposed offence attracts the same penalty.

Arson

22. Our provisional view is that the word "arson" need no longer be a legal term. We propose, in the first place, to abolish common law arson (see paragraph 24 below). This is consistent with the policy of eliminating common law offences, of which section 32 of the Theft Act 1968 is an example. Arson at common law is, strictly speaking, the only offence of this name known to English law. It is uncertain in its scope, but seems to be limited to

---

(21) Theft Act 1968, s.8.

burning houses, outhouses and barns.[22] The word "arson" is at present used in indictments to describe those offences in the principal Act which relate to causing damage by fire. This practice stems from the precedents in the First Schedule to the Indictments Act 1915, and in Archbold. These offences are by no means comprehensive. The categories of property are buildings (ss. 1 to 6); goods in buildings (s.7); crops, plantations and stacks (ss. 16 and 17); coal mines (s.26); ships (s.42). It would not be arson to set fire to a motor car in the open. It has been suggested to us that it would be wrong to abandon a concept which, in the eyes of the public, clearly distinguishes a particular kind of offender. It is said that it would be curious and colourless to describe burning down a house as "destroying property"; that arsonists are often highly recidivist, unbalanced and in need of mental treatment;[23] and that the courts would find it easier to pick out such persons if, in the record of previous convictions, such convictions were (as at present) readily identifiable as being related to offences committed by using fire. We explained, in paragraph 19 above, why we reject the use of fire as a valid test of aggravation. It follows that, if arson is to be retained as a separate offence, it will exist mainly for the purpose of identifying a specific type of offender. But we are not at present convinced that it is necessary to complicate the substantive law mainly to provide information regarding the disposal of offenders (such as pyromaniacs). The kind of information which procedures for informing the courts of relevant details of offenders' records are designed to provide may need to be changed from time to time in the light of further research.

Overlapping provisions

23. We recognize that, in the course of a law reform project related to a particular subject, it is not possible to achieve a completely logical system whereby all overlapping

---

(22) See Russell on Crime, 12th ed., pp. 1332 and 1333.

(23) W. Hurley and T.M. Monahan, "Arson: the criminal and the crime" (1969) 9 Brit. J. Crim. 4.

is eliminated.[24] Even when the criminal code is completed some overlapping may still be inevitable and indeed desirable. For example, under our proposed classification, a person may commit an offence by damaging (or attempting to damage) a building or anything in it. If the defendant enters the building as a trespasser with intent to carry out his purpose, he will, as the law now stands, be guilty of burglary, under s.9 of the Theft Act 1968. We do not propose that this overlap should be eliminated, even though this could easily be done by deleting the last eleven words in s.9(2).[25] Again, our proposed more serious offence (paragraph 66(b) below) overlaps with offences against the person.

24. Nevertheless, there is a wide field in which overlapping can, in our view, be reduced. Arson at common law should, we think, be abolished. We see no need to retain the offence created by the Dockyards Protection Act 1772, which is in essence no more than aggravated malicious damage. Those offences which are created by the legislation of which examples are given in footnote (13) above should disappear,[26] so far as they relate to deliberate or reckless damage. For this purpose, we distinguish negligent damage. As a general principle, we think that, whereas the proper place for prohibiting deliberate or reckless damage to any kind of property is the law of malicious damage, the prohibition of particular kinds of negligent conduct which causes or may cause damage in particular circumstances belongs to regulatory legislation, such as s.60 of the Post Office Act 1953, which creates a summary offence of doing (amongst other things) "anything likely to injure [a letter] box, [telephone] kiosk or ... its ... contents".

---

(24) In any case, s.33 of the Interpretation Act 1889, unless a contrary intention appears, prevents the same criminal act from being punished twice under different Acts or under an Act and at common law.

(25) "and of doing unlawful damage to the building or anything therein".

(26) As to offences created by local Acts and bye-laws, it may be appropriate to deal with them in the way that offences of drunkenness were dealt with in s.91 of the Criminal Justice Act 1967, which created an offence and gave power to repeal the local Acts by subordinate legislation.

25. Another matter which may properly be left to special enactments is the regulation of manufacture or possession of substances where such manufacture or possession is rendered unlawful without the necessity to prove any specific intent. The legislation concerning explosives serves as an example. Section 4 of the Explosive Substances Act 1883 prohibits the unlawful making or possession of explosives. There may be many unlawful objects for which explosives are made, and we recommend that s.4 be retained, as well as similar provisions in other enactments. On the other hand, ss. 2 and 3 of the same Act create offences which, to a certain extent, overlap offences of damage to property or attempts.(27) We think it desirable to eliminate this overlap.

26. So far as the Offences Against the Person Act 1861 is concerned, our proposed classification reduces considerably the area of overlapping. The Criminal Law Revision Committee will shortly examine that Act, and will no doubt achieve a simplification which will reduce the remaining overlapping provisions.

Causing a catastrophe

27. The American Law Institute's draft Model Penal Code creates three offences under this head:-(28)

(1) Causing catastrophe

(2) Risking catastrophe

(3) Failure to prevent catastrophe.

In each case, the mental element is intention or recklessness.

By Art.220.2(1):-

> "Causing Catastrophe. A person who causes a catastrophe by explosion, fire, flood, avalanche, collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance, or by any other means of causing potentially widespread injury or damage, commits a felony of the second degree if he does so purposely or knowingly, or a felony of the third degree if he does so recklessly."

---

(27) See paragraph 14(2) above.

(28) S.220.2

By Art.220.2(2):-

> "Risking Catastrophe. A person is guilty of a misdemeanor if he recklessly creates a risk of catastrophe in the employment of fire, explosives or other dangerous means listed in subsection (1)."

28. It has been suggested to us that the draft Model Penal Code's offences of causing and risking catastrophe might with advantage be adopted in English legislation. On the whole we are not in favour of taking this course. We do, however, propose the creation of a new offence, which we have summarised and numbered (2) in paragraph 18 above. This offence looks to intention to cause personal injury or recklessness in that regard in the course of damaging property. Given the proposed maximum term of imprisonment, we think that the courts would be able to deal adequately with cases where the potentially disastrous nature of the offence causes unusual public concern. Like the American Draft, our proposed offence singles out for special attention conduct which to the defendant's knowledge is exceptionally dangerous. The real points of difference between the draft Model Penal Code offences and our proposals are, first, that we have eliminated the need to consider the character of the means employed against the property damaged; and, secondly, that our approach more clearly emphasizes potential rather than actual consequences and thus accords with the widely accepted principle that, in general, criminality should depend on blameworthiness rather than on results.

Things capable of being damaged

29. As we have already mentioned, we propose, in the rationalized group of offences, to include any kind of tangible property. To this general rule there must, we think, be exceptions in the field of "products of the realty". We suggest for consideration that the scheme contained in s.4 of the Theft Act 1968 be adopted, discarding the "commercial" test, which seems to us not relevant to the subject of malicious damage.

Thus we suggest that:-

Damaging cultivated plants of all kinds should be an offence, whether the plant as a whole is damaged or merely its foliage, flowers or fruit.

Damaging only the foliage, flowers or fruit of wild plants should not be an offence of malicious damage, though it may be an offence under particular enactments protecting the countryside.(29)

Damaging wild plants, (except mushrooms)(30) where the plant itself is damaged, should be an offence.

Damaging wild animals in the wild state should not be an offence of malicious damage. Damage to such an animal should be dealt with under the enactments relating to poaching and to the protection of animals.(31)

Damaging wild animals which have been reduced into possession, should be an offence.(32)

Property of another

30. The present law is that, for the purposes of the law of malicious damage, a person may be convicted of damaging a tangible object if some other person has an interest in it.(33) We propose that this concept be retained. We appreciate that there may still be anomalies. For example, the vendor in a sale on credit has no right in the property sold other than the contractual right to recover the purchase price. His position is contrasted with that of the "vendor" in a hire-purchase transaction. The anomalies inherent in this distinction run right through the law.(34) An attempt to bring in to the law of

---

(29) e.g., by bye-laws made under National Parks and Access to the Countryside Act 1949, s.90.

(30) cf. Gardner v. Mansbridge (1887) 19 Q.B.D. 217. Damaging wild mushrooms held not to be an offence of malicious damage where there was no damage to the realty."Mushroom" includes any fungus. See Theft Act 1968, s.4(3).

(31) cf. Theft Act 1968, Schedule 1., for which see paragraph 14(5) above. See also the enactments listed in Stone's Justices' Manual, 100th edition, pp. 1234 to 1253.

(32) cf. Theft Act 1968, s.4(4).

(33) For the purposes of the Theft Act 1968, s.5(1), property is regarded as "belonging to any person having possession or control of it, or having in it any proprietary right or interest..."

(34) This field of the law is at present under review by the Interdepartmental Committee on Personal Credit under the chairmanship of Lord Crowther.

malicious damage the purchaser in a sale on credit who damages the goods so purchased would raise the problem of the outright purchaser who finances the purchase by means of a private loan.

III THE MENTAL ELEMENT

A. Introduction

31. It will be appreciated that, concurrently with the present review, the Working Party which is assisting the Law Commission in the task of Codification of the Criminal Law is engaged in formulating draft propositions on the mental element in crime, for the purpose of Part I of the Code. For the present purpose, we assume that the traditional elements of intention, knowledge and recklessness (in the sense of foresight and disregard of consequences or awareness and disregard of the likelihood of the existence of circumstances) will continue to be required for serious crime. Serious crime is here used in contrast with the area commonly described by the expression "regulatory offences" in which the test of culpability may be based on negligence (in the sense of failure to reach a reasonable standard of care), or the offence may be one of more or less strict liability.

B. The mental element in the existing law

32. Most of the offences under the principal Act require the defendant to have acted "unlawfully and maliciously". There are, however, variants, viz:-

(a) Alternative words:

(i) Obstructing engines or carriages on railways by any unlawful act or by any wilful omission or neglect. (s.36).

(ii) Section 14 of the Criminal Justice Administration Act 1914 (as re-enacted by the Malicious Damage Act 1964) uses the formula "wilfully or maliciously". This expression is also found in section 1 of the Malicious Damage Act 1812 which deals with setting fire to factories and machinery.

(b) (i) A simple formulation of knowledge and intent: making or knowingly having instruments with intent therewith to commit or enable another to commit one of the offences under the principal Act (s.54).

(ii) Knowing their contents sending, delivering or uttering etc. letters threatening to burn or destroy specified forms of property (s.50).

(c) Additional words requiring an ulterior intent:

(i) Setting fire to buildings with intent to injure or defraud (s.3). As to s.7 see paragraph 13 above.

(ii) Using explosives with intent to destroy or damage property (s.10).

(iii) Damaging with intent to destroy or render useless textile machinery and goods and other machinery (ss. 14 and 15). (See also ss. 23, 24, 28, 29, 31, 33, 35, 45 and 46, where similar words are used).

33. The essential mental element in the existing malicious damage offences would seem to be:-

(a) In all cases intent to do the forbidden act or recklessness in relation to its foreseen consequences,(35) whatever type of variant in expression is used.(36) The principles laid down in R. v. Cunningham, which was a prosecution under s.23 of the Offences against the Person Act 1861, are relevant to the meaning of the word "maliciously" which appears throughout the principal Act, as the following passage from the judgment of the Court of Criminal Appeal shows:-

---

(35) Knowledge of or belief in circumstances may also be relevant, e.g., in possession of instruments for use in committing offences.

(36) R. v. Cunningham [1957] 2 Q.B. 396, and cases therein cited. The passage in the 16th edition of Kenny contained in our citation from this case is repeated in the current (19th) edition at p. 211.

> "We have also considered ... the following principle, which was propounded by the late Professor C.S.Kenny in the first edition of his Outlines of the Criminal Law published in 1902 and repeated at p. 186 of the 16th edition edited by Mr J.W. Cecil Turner and published in 1952: 'In any statutory definition of a crime, malice must be taken not in the old vague sense of wickedness in general but as requiring either (1) an actual intention to do the particular kind of harm that was done; or (2) recklessness as to whether such harm should occur or not (i.e. the accused has foreseen that the particular kind of harm might be done and yet has gone on to take the risk of it). It is neither limited to nor does it indeed require any ill will towards the person injured...' We think that this is an accurate statement of the law."

(b) It is of the essence of all malicious damage offences that they involve destruction or damage or risk of damage to property. Intent or recklessness is therefore related to these consequences. It follows that the use of words such as "intent to destroy or damage or render useless" adds nothing useful to a mental element introduced by fewer words, and has indeed the paradoxical effect of restricting it.

(c) Where, on the other hand persons destroy or damage their own property (usually with the object of defrauding an insurance company), the existing law is that an ulterior intent is necessary, and we would retain the necessity for such intent. We discuss the mental element in this class of case in paragraphs 36 to 40 below.

C. A simplified approach

34. We should like to achieve simplicity and clarity in relation to the mental element. In particular, we think that the use of technical words such as "maliciously" should be avoided, if only because such words give the impression that the mental element differs from that which

is imposed in other offences requiring traditional mens rea. R. v. Cunningham makes it clear that any such impression is false on the law as it stands. Furthermore, the word "maliciously" conveys the impression that some ill-will is necessary against the person whose property is damaged. It is presumably for this reason that s.58 of the principal Act specifically excludes the necessity for such ill-will. But Cunningham makes it clear that s.58 is unnecessary. On analysis, it will be seen that, in the principal Act:

(a) the mental element is, in general, intention or recklessness in relation to prescribed consequences;

(b) there are cases in which knowledge of circumstances is an ingredient in the offence;

(c) cases where offenders have an object for their intended conduct going beyond deliberate or reckless destruction or damage (e.g., to injure or defraud) receive special treatment.

Our provisional propositions, which are set out in paragraphs 66 and 67 below, are designed to adhere to this pattern.(37)

IV MISCELLANEOUS PROBLEMS

A. Introduction

35. The topics with which we deal in this section of the Paper are not easy to classify.

Damage to the defendant's own property is a problem in relation to which both definition and the mental element are relevant.

Claim of right as a defence belongs to the field of justification and excuse, but it also bears on jurisdiction, because of the rule that dispute of title ousts the jurisdiction of magistrates.

Ouster of jurisdiction is a problem that we discuss in Section V, below.

---

(37) But as to personal injury, see paragraph 37 below.

The position of spouses who damage each other's property also needs mention.

B. Damage to one's own property

36. The general rule in the law of malicious damage is that a man may do what he likes with his own property, provided that he does not injure the rights of others.(38) It is an offence to set fire to specified buildings (but not all buildings) with intent to injure or defraud, even if the buildings are in the defendant's possession (s.3); for tenants to injure fixtures in the houses they occupy (s.13); and to do anything prohibited by the principal Act, even if the defendant is in possession of the property injured (s.59). These types of cases, however, seem to be within the scope of the general principle.

37. We think it right that it should be an offence to damage one's own property, provided that the damage is done with an ulterior intent. By "ulterior intent", we do not mean intention to cause personal injury, (which, e.g., in s.3 of the principal Act, the present law does) because we think that in such cases the real offence is an offence against the person and the damage to the offender's own property is merely the means employed to effect it.

38. As to injury other than personal injury, two alternative concepts are possible. These alternatives are the expressions "dishonestly" or "with intent to defraud". The latter expression now seems to mean, at all events for the purposes of the law of forgery "with intent to infringe rights or obstruct duties".(39) The word "dishonestly" is used in the Theft Act 1968. It is not defined, but, in two places(40) it is limited by additional words "with a view to gain for himself or another or with intent to cause loss to another". (By s.34(2) "gain" and "loss" mean gain and loss in money or property). So limited, we think that its meaning is clear.

---

(38) See Breeme's Case (1780) 2 East P.C.1026, and the other cases cited at pp. 1026 to 1031.

(39) Welham v. D.P.P. [1961] A.C. 103. See also R. v. Sinclair [1968] 3 All E.R. 241. cf. R. v. Manners-Astley [1967] 3 All E.R. 899.

(40) Sections 17 and 20. See also s.21.

For the time being, therefore, we adopt the limited expression, so that the person who destroys or damages his own property will be guilty of an offence if he does so dishonestly for the purpose of making gain or causing loss to another in money or property.(41) We make, on this matter, two further observations. The first is that there may be examples of dishonest damage or destruction of one's own property for other objects (e.g., to defeat planning legislation). Such cases, which must be rare, we prefer, for the time being, to leave to be dealt with by the legislation in question, though it may be necessary at a later stage to reconsider this tentative conclusion. The second observation is that we intend to look again at words importing dishonesty as part of our codification project. It may be possible to arrive at a definition which will serve for all purposes, with or without the addition of other words where an ulterior intent is needed.

39. There is one decided case which is a true exception to the general rule. In R. v. Parry(42) the defendant had kicked and stabbed his own horse, and was convicted, under s.40 of the principal Act, of maliciously wounding it. The decision seems unsound in principle and the mischief could have been met by a prosecution under the legislation protecting animals.(43)

40. The general rule to which we have referred is not universally applied in other fields. In the planning field, in particular, a man may not destroy his preserved tree or his scheduled building. He may, however, destroy his own priceless work of art, and this may be thought to be deplorable. We do not, however, take the view that the law of malicious damage is the proper place to protect such articles. We have been unable to find a comparable provision in a modern Penal Code. In any event there is a strong financial disincentive to the prospective vandal, unlike the cases in the field of planning, where there may be an equally strong incentive to demolish a building or to fell a tree to make way for a more profitable development.

---

(41) cf. Theft Act 1968, s.34(2).

(42) (1900) 35 L.J. 456.

(43) Prevention of Cruelty to Animals Act 1849. See now Protection of Animals Act 1911.

C. Claim of right

41. The problem raised under this heading concerns the extent to which an honest belief in a right to do damage to the property of another is a defence, and the extent to which the defence is affected by the reasonableness of the claim and of the means employed to assert or protect it.

42. The defence of claim of right in its simplest form is to be found in the law of larceny (now theft) where the defence has always been enshrined in the relevant statute.(44) The law in relation to malicious damage is somewhat uncertain, but it seems clear that "claim of right" may afford a defence.

43. The authorities are, unfortunately, inconsistent. If a pattern is discernible, it is that the law in this field has become more severe in recent times. It would appear that a "claim of right" whether reasonable or not, is a defence where the defendant erroneously believes that he is dealing with his own property or right in property.(45) Where, on the other hand, damage is done to the property of another in the honest belief by the defendant that he had a right to do the damage in protection of his own interests, it seems not only that the claim of right must be honest but that the means employed for its protection must be reasonable in relation to the supposed right.(46) Gott v. Measures(47) goes further. The defendant had sporting rights in land, and shot a dog which was chasing "his" game. He was convicted under s.41 of the principal Act, because

> "... it cannot be said that the respondent could have reasonably believed that he was entitled to shoot the dog as being done in protection of his property, because that would be a reasonable belief in something which the law does not recognize." (48)

---

(44) See s.1(1) of the Larceny Act 1916 "... without a claim of right made in good faith"; now see s.2(1)(a) of the Theft Act 1968 "... in the belief that he has in law the right ..."; R. v. Bernhard [1938] 2 K.B. 264.

(45) R. v. Twose (1879) 14 Cox C.C. 327; commoner burning furze which she (erroneously) thought she had the right, as a commoner, to do.

(46) Compare R. v. Day (1844) 8 J.P. 186 with R. v. Clemens [1898] 1 Q.B. 556.

(47) [1948] 1 K.B. 234.

(48) Per Lord Goddard, C.J. at p. 239.

The decision has been much criticized,[49] but, in the light of the proposals made below, we feel that it is unnecessary for us to examine it in detail.

44. We take the view that an honest (though erroneous) belief by the defendant (a) that he had a right which he was entitled to protect and (b) that the means of protection used were proper in the circumstances should be a defence to a charge of malicious damage.[50] We use the word "right" in the same sense that it is used in the Theft Act 1968, to mean "right in law" and not merely "moral right". An act which is in fact unreasonable in all the circumstances (e.g., shooting a dog which is merely wandering over land) is, for the purposes of the criminal law, evidence that the defendant's beliefs were not honestly held. Even if, in such a case, the defendant had an "honest belief" and so is acquitted, we think that the matter will adequately be dealt with by the civil law.[51]

45. Our proposal on this topic (paragraph 70 below) is limited to the question of honest belief as a defence. The scope of general defences, such as self-defence and necessity (pulling down a neighbour's burning haystack or demolishing his burning house to prevent one's own taking fire may raise this problem), as well as the question of mistake of law as a general defence, must be left for discussion as part of the codification of General Principles.

D. Husband and wife

46. We do not think that any change in the law is called for, since the position is now regulated by s.30 of the Theft Act 1968 whereby a person may be convicted of any offence against the property of a spouse, subject to the restriction that proceedings may only be instituted by or with the consent of the Director of Public Prosecutions.

---

(49) See e.g., Russell on Crime, 12th ed. pp. 1381 to 1383.

(50) cf. Theft Act 1968, s.21, which in relation to blackmail, affords an analogous defence.

(51) See, for the present law on the example just given, Cresswell v. Sirl [1948] 1 K.B. 241. But see also The Law Commission, Civil Liability for Animals, Law Com. No.13.

V. JURISDICTION, OUSTER OF JURISDICTION, PENALTIES AND COMPENSATION

A. Existing Jurisdiction

Cases triable only at Assizes

47. Some 14 offences under the principal Act are triable only at Assizes. They vary from arson in its traditional sense (setting fire to a dwelling-house, any person being therein - s.2) to certain forms of railway vandalism - s.35. The special offence under the Dockyards Protection Act 1772, being capital, is also triable only at Assizes.

Cases triable at Assizes or Quarter Sessions

48. Most of the specific offences created by the principal Act are indictable offences which Quarter Sessions have jurisdiction to try.

Cases triable summarily

49. Almost any offence of malicious damage (provided that the damage does not exceed £100) may be tried summarily by virtue of s.14(1) of the Criminal Justice Administration Act 1914,[52] subject to the question of ouster, which we discuss below. There are, however, other ways in which cases of malicious damage may be tried by the magistrates. The following is a summary:-

(a) Summarily

Damaging trees to amount of 1s (s.22); destroying fruit or vegetables in garden (s.23); destroying etc. vegetable products not growing in garden etc. (s.24); destroying etc. fence or wall etc. (s.25); attempting to injure telegraphs (s.38); killing or maiming animals other than cattle (s.41); maliciously damaging any property where the damage does not exceed £5 (s.51, as limited by Criminal Justice Administration Act 1914 s.14(2), as amended).

(b) With the consent of the accused (Magistrates' Courts Act 1952, s.19 and Schedule 1)

Setting fire to crops of corn etc. (s.16);

---

(52) Now re-enacted in the Schedule to the Malicious Damage Act 1964. The subsection is set out in full in paragraph 52(b) below.

attempting to set fire to crops of corn or to stacks etc. (s.18); destroying trees etc. (ss. 20 and 21); maliciously damaging any real or personal property, (which is indictable only if, in the opinion of the magistrates, the damage exceeds £5 (s.51 as amended)).

(c) Summarily or on indictment, with different penalties

Injuries to telegraphs (s.37) (as amended by Magistrates' Courts Act 1952, s.131 and 5th Schedule and, as to penalty, by Criminal Justice Act 1967, 3rd Schedule).

B. Proposed basis of jurisdiction

50. If the general approach we have suggested is adopted, there will be very few separate offences, and there will be a substantial maximum penalty for cases tried on indictment, while, in the less serious cases, which will be tried summarily, the maximum sentence will be fixed by reference to the general powers of the magistrates. We think that all the proposed offences, except those which, by reason of aggravating circumstances, attract exceptionally high penalties, should be triable summarily, with the accused's consent, as is the case with the new Theft Act offences. This solution is in line with the principle which we should like to see generally adopted in relation to criminal offences, i.e., that the court of trial should be determined on the basis of three factors, namely

(i) the seriousness of the alleged offence

(ii) the complexity of the trial

(iii) the wishes of the parties

and not on the basis of technical jurisdictional provisions or the particular provision under which the charge is brought. It follows from the proposal that the offences should in general be triable on indictment or summarily with the accused's consent, that the accused will have a right to trial on indictment, however trivial the case. We do not, however, think that there is any real danger that the higher courts will be overburdened with such cases, having regard to the fact that the position will not be very different from the existing position, where most cases are

tried summarily even where the accused could insist on trial on indictment.

51. We also recommend that all offences of malicious damage should be triable at Quarter Sessions except the more serious offences (paragraph 73 below).

C. Ouster of Jurisdiction(53)

52. (a) At common law

It is an ancient rule of the common law that the jurisdiction of magistrates is ousted when a question of title to real property is involved.

> "Being an old maxim of law, which has been so generally applied for ages, we must assume that it is still intended to be applied by every Act relating to such matters, though not specifically mentioned." R. v. Cridland (54)

The Rule is subject to a number of qualifications, viz:-

(i) A statutory provision may be such as necessarily to exclude it.(55)

(ii) It is restricted to disputes about title to real property.

(iii) Although magistrates may not adjudicate upon title to land, it is nevertheless for them, in the first instance, to decide whether or not there is in fact a dispute as to title to land.

(iv) The defendant must do more than merely assert that there is such a dispute; he must show some evidence, and the magistrates have jurisdiction to determine whether the evidence supports the claim.(56)

(v) The application of the principle of

---

(53) See R.N. Gooderson "Claim of Right and Dispute of Title" [1966] C.L.J. 90, 216. The article contains an exhaustive review of the subject of ouster.

(54) (1857) 7 E. & B. 853, per Crompton J. at 871.

(55) See Duplex Settled Investment Trust v. Worthing Borough Council [1952] 1 All E.R. 545, per Parker J. at p.547 H.

(56) Reeve v. Stonham (1879) 43 J.P. 732.

common law ouster is not affected by the absence or existence of an honest belief by the defendant that he was justified in acting as he did.

(vi) To oust the jurisdiction there must be a claim to some interest recognised by law.(57)

(vii) Provided that the defendant sets up a genuine dispute as to title, the jurisdiction of the magistrates will be ousted, even though the defendant may in doing damage have exceeded what was reasonable in protecting the rights that he claims to have.

(viii) The right which the defendant sets up must be his own right or that of a person through whom he claims, and not a jus tertii.

(ix) Shortly summarised, the "ouster rule" at common law makes a clear distinction between "dispute of title to real property" and "claim of right". It is only where the former is in issue that the rule applies.

(b) Statutory ouster

S.14(1) of the Criminal Justice Administration Act 1914, as amended by and re-enacted in the Schedule to the Malicious Damage Act 1964 reads:-

> "If any person wilfully or maliciously commits any damage to any real or personal property whatsoever, either of a public or private nature, and the amount of the damage does not, in the opinion of the Court, exceed one hundred pounds, he shall be liable on summary conviction ... Provided that this provision shall not apply where the alleged offender acted under a fair and reasonable supposition that he had a right to do the act complained of."

53. The reported cases(58) appear to decide that the

---

(57) White v. Feast (1872) L.R. 7 Q.B. 353.

(58) Usher v. Luxmore (1889) 62 L.T. 110; Brooks v. Hamlyn (1899) 19 Cox C.C. 231; Croydon Rural District Council v. Crowley (1909) 22 Cox C.C. 22; White v. Feast, supra.

common law rule of ouster is replaced, by virtue of the proviso, by a statutory ouster, relating to chattels as well as to real property, on the ground of "fair and reasonable supposition ..." as opposed to common law ouster on the ground of "dispute of title". Where a defence of claim of right is raised in criminal proceedings, whether it takes the form of "fair and reasonable supposition" or not, one would, in the ordinary way, expect it to lead, if it succeeds, to an acquittal, or, if it fails, to a conviction. But in the field of malicious damage, the successful raising of the "fair and reasonable supposition" defence before magistrates can lead, and lead only, to committal for trial. We consider this state of affairs anomalous, and, in the following paragraphs, we endeavour to deal with it in the context of our proposals for the defence of "claim of right".

(c) Possible changes

54. On the view we take (see above, paragraph 44) a claim of right made in good faith (or, as the Theft Act puts it, honest belief) will be a defence. Thus, in any prosecution, the defendant is unlikely to have to rely on his title, but only on an honest claim. The reasons which, no doubt, led to the common law rule of ouster include the lack of capacity of a magistrates' court to investigate problems in the field of real property.(59) It has, however, not been suggested that magistrates cannot try questions of honest belief. The mischief lies, therefore, in the wording of s.14(1) of the Act of 1914, which has the effect of ousting the jurisdiction of magistrates to acquit in cases where prosecutions for malicious damage come before them for summary trial by virtue of that Act, and where they are satisfied that the state of affairs mentioned in the Act exists. In other words, they are precluded from acquitting in a class of case where all the prerequisites to an acquittal would appear to exist. Furthermore, the prohibition extends to questions of honest and reasonable belief in rights to chattels as well as to real property.

---

(59) R.N. Gooderson, op.cit. at p. 227.

55. Because of the difficulties that we have mentioned, we recommend the repeal of the statutory rule. This would eliminate all difficulties so far as chattels are concerned, but would leave the possibility that the common law rule might apply where, as an incident to a defence of "claim of right" a dispute arose as to the title to real property. For example, a defendant might wish to demonstrate the honesty of his belief in his right by proving its correctness. It would seem to us wrong to treat such cases differently from other cases where title was not an issue and from cases concerning chattels. We propose that, so far as malicious damage is concerned, the jurisdiction of the magistrates should be saved notwithstanding that a dispute of title to real property arises as an issue in the case. This will not affect the common law rule outside the field of malicious damage.

D. Penalties

Capital offences

56. The offence created by the Dockyards Protection Act 1772 is still capital, as are some forms of piracy.(60) In regard to the first of these offences, it is interesting that the only example cited in Archbold dates from 1777.(61)

Imprisonment

57. Life imprisonment is the maximum sentence for offences under 15 sections of the principal Act,(62) including arson in many forms, damage by using explosives and riotous damage. Eight other sections carry a maximum sentence of 14 years' imprisonment.(63) These include destroying hopbinds (s.19) and killing or maiming cattle (s.40). In addition, some offences under the Explosive Substances Act 1883 and the Offences against the Person Act 1861, both of which overlap with the principal Act, carry similar heavy penalties.(64)

---

(60) Piracy Acts 1698, 1721, 1837. See in particular 1837 Act, ss. 2 and 3. See also paragraph 14(6) above.

(61) R. v. Hill (1777) 20 St. Tr. 1317. See Archbold, 36th ed., paragraph 2275.

(62) Ss. 1 to 5, 9, 11, 14, 17, 26, 30, 33, 35, 42 and 47.

(63) Ss. 6, 7, 10, 16, 19, 40, 45 and 49.

(64) Under s.3 of the 1883 Act the maximum is 20 years' imprisonment. As to the overlaps, see Appendix A.

58. As we have already suggested,[65] these maxima seem excessive in the light of the present disposal policy of the courts, though there is a case for retaining a high maximum for cases where the offence involves risk of danger to personal safety. Furthermore, the maxima throughout the principal Act vary widely and in an irrational manner. It is, for example, not obvious why destroying hopbinds should attract a maximum sentence of 14 years' imprisonment (s.19) while destroying works of art attracts a maximum of 6 months' imprisonment (s.39).[66] In paragraph 72 below, we propose a scale of maximum sentences of imprisonment for offences of malicious damage tried on indictment. We should like to emphasise that this scale must be regarded, at the stage of a Working Paper, as designed mainly to illustrate the way in which we think the offences should be graded, and in other respects as little more than a basis for discussion. It is, however, in line with the general approach adopted by the Criminal Law Revision Committee in its Eighth Report[67] which seems, in the broad sense, as valid in the present context as it is in the field of theft.

59. We need made no separate proposal about the penalty for the offence created by the Dockyards Protection Act 1772, because, under the general proposals we make, the Act would be repealed.

Fines

60. On trial on indictment, fines are not limited save to the extent that they must not be unreasonable. The following are the maxima for cases of malicious damage tried by magistrates:-

(1) For an indictable offence triable summarily with the accused's consent the maximum fine is £400 (with or without imprisonment not

---

(65) Paragraph 10 above.

(66) This latter offence may be thought to attract an inadequate maximum sentence when compared with the offence of removing articles from museums, etc. (s.11 of the Theft Act 1968) for which the maximum is 5 years' imprisonment. See Criminal Law Revision Committee, Eighth Report, 1966 Cmnd. 2977, paragraph 57(ii).

(67) 1966, Cmnd. 2977, paragraphs 10 to 12. See also Appendix B.

exceeding 6 months) (Magistrates' Courts Act 1952 s.19(6) as amended by Criminal Justice Act 1967 s.43(1)).

(2) For maliciously injuring or attempting to injure telegraphs etc. the maximum fine on summary conviction is £100. (Principal Act ss. 37 and 38 as amended by Criminal Justice Act 1967, 3rd Schedule).

(3) For maliciously committing damage to any real or personal property not exceeding £100 under the Criminal Justice Administration Act 1914, s.14(1) (as amended by the Malicious Damage Act 1964 s.1) the maximum fine on summary conviction is £100. (£20 if the damage is £5 or less).

(4) Under other sections of the principal Act which create summary offences, i.e., ss. 22, 23, 24, 25 and 41, the maximum fine varies from 20s to £20.

61. It seems to us that the available sanctions in this (as in other) fields should enable the court to impose a penalty on the basis of the gravity of the offence and other surrounding circumstances. These sanctions should not be circumscribed by limits having capricious application. Bearing in mind the recent review of penalties in the case of indictable offences triable summarily (paragraph 56(1) above) we propose that the maximum fine in this field should be uniformly £400. Our suggestion, in paragraph 74 below, that offences of malicious damage should be indictable offences triable summarily with the accused's consent by applying s.19 of the Magistrates' Courts Act 1952 (as amended) will automatically achieve this uniformity.

E. Compensation

62. The following special provisions relate to compensation in the field under review:-

(i) Under s.3 of the Malicious Damage Act 1812, persons injured by the wilful setting on fire of, or the demolishing or pulling down of, any erection, building or engine used

or employed in the carrying on or conduct of any trade or manufactory, may recover the value thereof or damages in the manner provided by the Riot Act 1714.[68]

(ii) Under s.13 of the principal Act, tenants maliciously injuring their houses are guilty of a misdemeanour. No compensation is provided by the Act, but under s.38 of the Metropolitan Police Courts Act 1839 power is given to order compensation for wilful damage by tenants of any house or lodging within the Metropolitan Police district, such compensation not to exceed £15.

(iii) A magistrates' court may award "reasonable compensation" after conviction under s.14 of the Criminal Justice Administration Act 1914 of an offence of malicious damage, where the amount of the damage does not exceed £100.

(iv) There are provisions for compensation under the Riot (Damages) Act 1886.

63. The Advisory Council on the Penal System, under the Chairmanship of Lord Justice Widgery, is considering the whole question of compensation and restitution in criminal proceedings. We content ourselves with expressing the hope that the existing provisions will be simplified.

VI. PROVISIONAL CONCLUSIONS

A. Introduction

Nomenclature

64. We propose to abandon the title "Malicious damage to Property". As we have already argued, the word "malicious" is technical, confusing and unhelpful. "Wilful or reckless" is better, as being accurate, but we think it unnecessary in the title of a group of offences to mention the mental element. The choice is largely a matter of taste, and various Codes adopt a variety of

---

(68) This Act has been repealed by the Criminal Law Act 1967, but so far as it is referred to in the Act of 1812, its procedure remains in force.

descriptions. The American Law Institute's Model Penal Code has "Arson, criminal mischief and other Property Destruction" (Art.220). This formulation hardly has the merit of simplicity. The Swedish Penal Code has "Crimes inflicting damage" (Chapter 12), but this might embrace what we call "offences against the person" (which Chapter 12 does not).

We suggest

OFFENCES OF DAMAGE TO PROPERTY

Basis of the Proposals

65. The provisional Proposals which follow are intended, after necessary consultations and any subsequent modifications, to form the basis for a draft Bill, which will create the new offences proposed below as well as containing a considerable Schedule of repeals. As our Second Programme envisages, we are adopting a "dualistic" approach to codification, and, while we are actively engaged in formulating propositions for Part I (the "General Part" of the Code),(69) we nevertheless hope that, from time to time, those specific offences which we and the Criminal Law Revision Committee are engaged in reviewing may form the subject of enactments in advance of codification. The present subject may be an early example of this kind of treatment.

B. Provisional Proposals

1. Substantive offences

66. We propose the following offences:-

(a) Destruction of or damage to the property(70) of another, or in which another has an interest.

(b) Destruction of or damage to the property of another where the offender intends to cause personal injury or is reckless in that regard.

---

(69) See Law Commission's Published Working Paper No.17.

(70) We suggest that this expression should mean any kind of tangible object, except for wild mushrooms and the flowers, fruit and foliage of wild plants, trees and shrubs, and except wild animals in their wild state. See paragraph 29 above, and cf. Theft Act 1968, s.4.

(c) Dishonest destruction of or damage to property, including the offender's own.

(d) Threatening to commit offences of damage to property.

(e) Making or being in possession of substances or articles capable of causing damage to property with intent to commit offences of damage to property.(71)

67. We are not in favour of creating a new offence of "causing a catastrophe" as has been done in s.220 of the American Law Institute's draft Model Penal Code.

2. The Mental Element

68. We propose that the new group of offences shall require traditional mens rea, in the sense of intention or recklessness in relation to prescribed consequences, and, where appropriate, knowledge or recklessness in relation to prescribed circumstances.(72)

69. In paragraph 38 above, we discussed the formulation of the necessary intent in relation to the third of our proposed offences (paragraph 66(c)). We concluded that the word "dishonest" should be qualified by adding words which would make it mean "for the purpose of making gain for himself or another or causing loss to another in money or property". Our argument was directed to cases of damage to the offender's own property. We think that there are circumstances in which an offender may damage the property of another for the purpose of furthering a fraud, and that the same considerations apply to such cases as apply to "own property" cases. Accordingly, the proposed offence is inclusively formulated.

3. Justification and excuse

70. An honest belief by the person charged that he acted under a claim of right and that the means employed

---

(71) cf. Theft Act 1968, s.25. Unlike this section our proposed offence extends to manufacture and possession at the offender's home. It seems to us that, in the context of damage to property, the mischief in relation to dangerous articles lies in the fact of possession rather than in the fact that they are carried about.

(72) See paragraph 31 above.

for protecting it were proper should be a defence.[73]

71. We make no proposals in relation to general defences (necessity, duress and the like) which affect offences of damage to property but which are available throughout the criminal law. These we shall deal with in Part I of the code.

4. Penalties[74]

72. (a) Imprisonment

We suggest the following maximum terms:-

(i) for the offence under paragraph 66(b) - life

(ii) for the offence under paragraph 66(c) - 10 years

(iii) for other offences - 7 years

(b) Fines

We propose that the maximum fine in a magistrates' court should be £400 for all offences of damage to property.

5. Jurisdiction

73. The offence under paragraph 66(b) should be triable only at Assizes.[75]

74. The other offences which we propose should be triable at Quarter Sessions or, with the consent of the accused, summarily. The simplest way to achieve this is to apply s.19 of the Magistrates' Courts Act 1952 to all the new offences except the offence under paragraph 66(b).[76] It will then be possible to eliminate the procedure for summary trial of offences of damage to property laid down in s.14(1) of the Criminal Justice Administration Act 1914 (as amended).

6. Ouster of jurisdiction

75. The proviso to s.14(1) of the Criminal Justice

---

(73) See paragraphs 41 to 45, above.

(74) See paragraphs 56 to 61, above.

(75) This view is subject to the conclusions of the Royal Commission on Assizes and Quarter Sessions.

(76) cf. Theft Act 1968, s.29(2).

Administration Act 1914[77] should be repealed.

76. The common law rule of ouster should be restricted by giving magistrates jurisdiction to try offences of damage to property notwithstanding that the issue of title to real property is raised.

7. Compensation

77. For the reasons given in paragraph 63 above, we have no proposals to make.

8. Miscellaneous matters

78. The principal Act deals with a number of miscellaneous matters, including arrest and search (ss. 55 and 61); Admiralty jurisdiction (s.72) and the imposition of fines.

(a) Arrest

There would seem no longer to be any need for special powers since, for "arrestable" offences, a code is now laid down in the Criminal Law Act 1967.

(b) Search

The need for powers to search for harmful articles seems analogous with the need for powers to search for the tools of theft offences. In relation to such offences, s.26 of the Theft Act 1968 seems to us to provide a suitable model for us to adopt.

(c) Admiralty jurisdiction

We are considering this under the subject-heading "Territorial Extent of the Criminal Law".[78]

(d) Fines

There is a general power, now contained in s.7(1) of the Criminal Law Act 1967, to impose a fine instead of imprisonment for any criminal offence, and there are similar powers to deal with offenders in other ways, such as placing them on probation. We see no need for retaining any special provision.

---

(77) For the text of this subsection, see paragraph 52(b) above.

(78) See Published Working Paper No.17, subject 3.

VII SOME IMPORTANT QUESTIONS

79. In addition to inviting comments generally on this Paper, we should like to end by drawing attention to a few special points, in the form of questions, on which answers would be particularly welcome. They are as follows:-

(1) Should the only aggravated offence of damage to property be the offence proposed in paragraph 66(b)? (paragraphs 19 to 21).

(2) Should arson be abolished as a distinct offence, notwithstanding its traditional nature and its value in helping to identify a particular kind of offender? (paragraph 22).

(3) In the offence proposed in paragraph 66(c), is our approach to the meaning of the word "dishonest" correct in that we have limited its meaning to intent to make gain or to cause loss in money or property? (paragraph 38).

(4) Is the scale of maximum terms of imprisonment tentatively suggested in paragraph 72(a) acceptable? (paragraph 58).

(5) Are our proposals about ouster of jurisdiction contained in paragraphs 75 and 76 satisfactory? (paragraphs 52 to 55).

(6) Is our approach to products of the realty which is set out in paragraph 29 as appropriate to offences of damage to property as it is to theft?

APPENDIX A

MALICIOUS DAMAGE TO PROPERTY
SUMMARY OF MAIN OVERLAPPING PROVISIONS

Principal Act	Other Law
S.2. Setting fire to a dwelling house, any person being therein. S.3. Setting fire to various kinds of building with intent to injure or defraud.	Arson at common law. Theft Act 1968, s.9. Burglary. Entering building as trespasser with intent (inter alia) to damage the building or anything therein by fire or explosion.
S.42. Setting fire to or casting away ships. S.46. Damaging ships other than by fire or explosion.	Dockyards Protection Act 1772 Setting on fire or otherwise destroying naval vessels etc.
S.9. Destroying or damaging buildings any person being therein or being endangered. S.10. Placing or throwing explosives into buildings with intent to damage or destroy. S.45. As s.10 - ships S.54. Making or having explosive with intent to commit a [felony] under the Act.	Theft Act 1968 s.9. See above Offences Against the Person Act 1861 Ss. 28 to 30. Using explosives with intent to cause personal injury. S.64. Similar to s.54 of the Principal Act. Explosive Substances Act 1883 S.2. Causing explosion likely to endanger life or cause serious injury to property. S.3. Attempting or conspiring to commit the offence in s.2. S.4. Making or having explosive under suspicious circumstances.
S.35. Placing wood etc. on railway with intent to obstruct or overthrow engine. S.36. Obstructing engines etc. on railways.	Offences Against the Person Act 1861 S.32. Placing wood etc. on railway with intent to endanger passengers. S.33. Casting stones etc. at railway carriages with intent to endanger the safety of any person therein. S.34. Doing or omitting to do anything so as to endanger railway passengers. British Transport Commission Act 1949 (c.XXIX) S.56. Stone throwing etc. on railway.
S.40. Killing, wounding or maiming cattle. S.41. Killing, wounding or maiming other animals.	Protection of Animals Act 1911 S.1. Beating etc; causing unnecessary suffering to animals. Theft Act 1968 1st Schedule. Taking or killing deer and fish.
Ss.37 & 38 Injuring and attempting to injure telegraphs and things connected with telegraphs.	Post Office Act 1953 S.60. Placing dangerous substances in or against post boxes, telephone booths etc.

APPENDIX B

Summary of Theft Act Classification

Sections	Offence		Imprisonment on Indictment - maximum
7	(a)	Theft	10 years
9	(b)	Burglary	14 years
10	(c)	Aggravated burglary	life
8	(d)	Robbery and assault with intent to rob	life

APPENDIX C

NEW ZEALAND CRIMES ACT 1961
SWEDISH PENAL CODE (1965)

NEW ZEALAND CRIMES ACT 1961

Criminal Damage

293. What constitutes criminal damage - (1) For the purposes of sections 294 to 305 of this Act, every one who causes any event by an act which he knew would probably cause it, being reckless whether that event happens or not, shall be deemed to have caused it wilfully.

(2) Nothing shall be an offence against any of the provisions of those sections unless it is done without lawful justification or excuse, and without colour of right.

(3) Where the act done results in the destruction of or any damage to anything in which the person charged has an interest, whether total or partial, the existence of that interest shall not prevent his act being a crime if it is done with intent to defraud or to cause loss to any other person. For the purposes of this subsection, where any property is subject to any mortgage or charge, each of the parties to the mortgage or charge shall be deemed to have a partial interest in that property.

Cf. 1908, No.32, s.328

294. Arson - Every one commits arson and is liable to imprisonment for a term not exceeding fourteen years who wilfully sets fire to, or damages by means of any explosive, -

(a) Any building, erection, or structure, or any ship or aircraft, or any well of any combustible substance, or any mine, or any bush, forest, or plantation; or

(b) Any property, whether he has an interest in it or not, if he knows or ought to know that danger to life is likely to ensue.

Cf. 1908, No.32, ss. 329, 331, 333(b); 1950, No.83, part Schedule

295. Attempted arson - Every one is liable to imprisonment for a term not exceeding ten years who attempts to commit arson, or who wilfully sets fire to, or damages by means of any explosive, any property, whether he has an interest in it or not, knowing that any property mentioned in paragraph (a) of section 294 of this Act is likely to catch fire or be damaged in consequence thereof.

Cf. 1908, No.32, s.330

296. Damage to other property by fire or explosive - Every one is liable to imprisonment for a term not exceeding seven years who wilfully sets fire to, or damages by means of any explosive, any property other than that mentioned in paragraph (a) of section 294 of this Act.

Cf. 1908, No.32, s.331

297. Attempt to damage property by fire or explosive - Every one is liable to imprisonment for a term not exceeding five years who attempts to commit any offence specified in section 296 of this Act, or who wilfully sets fire to or damages by means of any explosive his own property, knowing that any property other than that mentioned in paragraph (a) of section 294 of this Act is likely to catch fire or be damaged in consequence thereof.

Cf. 1908, No.32, s.332

298. Wilful damage - (1) Every one is liable to imprisonment for a term not exceeding fourteen years who wilfully destroys or damages -

(a) Any property, whether he has an interest in it or not, if he knows or ought to know that danger to life is likely to ensue; or

(b) Any road, railway, bridge, tunnel, or similar means of communication, or any aerodrome, wharf, quay, or jetty, if he knows or ought to know that it is thereby likely to be rendered dangerous, impassable, or un-usable; or

(c) Any power station or gas works, or any building, erection, or structure, or any equipment, line, cable, or pipe, used for or in connection with the production, transmission, or distribution of electricity or gas, if he knows or ought to know that the supply of electricity or gas is thereby likely to be affected.

(2) Every one is liable to imprisonment for a term not exceeding seven years who wilfully destroys or damages -

(a) Any stopbank, wall, dam, or sluice gate, or any spillway, canal, drain, or other waterway, or any pumping station or pumping equipment, or any other works, if the destruction or damage causes actual danger of flooding; or

(b) Any container, building, erection, or structure used for the storage of bulk supplies of gas or liquid fuel.

(3) Every one is liable to imprisonment for a term not exceeding seven years who wilfully destroys or damages any rare or irreplaceable book, manuscript, original painting, etching, engraving, print, or other work of art, or any rare or irreplaceable article kept for purposes of art or science.

(4) Every one is liable to imprisonment for a term not exceeding five years who wilfully destroys or damages any property in any case not provided for elsewhere in this Act.

Cf. 1908, No.32, s.339; 1950, No.83, part Schedule; 1952, No.42, s.10

299. Wilful waste or diversion of water, gas, or electricity - Every one is liable to imprisonment for a term not exceeding five years who, wilfully and with intent to cause loss or harm to any other person, wastes or diverts, or causes to be wasted or diverted, any water, gas, or electricity, not being water, gas, or electricity that he has, or honestly believes he has, a legal right to use.

Cf. 1908, No.32, s.238A; 1952, No.42, s.4

300. Interfering with means of transport - (1) Every one is liable to imprisonment for a term not exceeding seven years who, with intent to cause danger to property, -

(a) Removes anything from or places anything on, in, over, or under any place, or any area of water, that is used for or in connection with the carriage of persons or of goods by land, water, or air; or

(b) Does anything to any property that is used for or in connection with the carriage of persons or of goods by land, water, or air; or

(c) Shoots or throws anything at, into, or upon any vehicle, ship, or aircraft; or

(d) Causes anything to come in contact with any vehicle, ship, or aircraft; or

(e) Does any other unlawful act, or wilfully omits to do any act which it is his duty to do, in respect of any such place, area of water, or property as aforesaid, or in respect of any vehicle, ship, or aircraft.

(2) Every one is liable to imprisonment for a term not exceeding five years who, intentionally and in a manner likely to cause danger to property, does any of the acts referred to in subsection (1) of this section.

Cf. 1908, No.32, ss. 333(a), 334; 1950, No.83, part Schedule

301. Wrecking - Every one is liable to imprisonment for a term not exceeding fourteen years who -

(a) Casts away or destroys any ship or aircraft, whether complete or unfinished; or

(b) Does any act tending to the immediate loss or destruction of any ship or aircraft in distress, whether or not he has an interest in the ship or aircraft; or

(c) Interferes with any marine or aeronautical mark, light, signal, or equipment used for the guidance or control of ships or aircraft, or exhibits or transmits any false mark, light, or signal, with intent to bring any ship or aircraft into danger, whether or not he has an interest in the ship or aircraft.

Cf. 1908, No.32, s.335; 1950, No.83, part Schedule

302. Attempting to wreck - Every one is liable to imprisonment for a term not exceeding ten years who attempts to cast away or destroy any ship or aircraft, whether complete or unfinished.

Cf. 1908, No.32, s.336; 1950, No.83, part Schedule

303. Interfering with signals, etc. - Every one is liable to imprisonment for a term not exceeding seven years who destroys, damages, alters, removes, or conceals, or attempts to destroy, damage, alter, remove, or conceal, any mark, light, signal, or equipment used for the guidance or control of ships or aircraft.

Cf. 1908 No.32, s.337; 1950, No.83, part Schedule

304. Interfering with mines - Every one is liable to imprisonment for a term not exceeding seven years who, with intent to damage a mine or obstruct the working thereof, -

(a) Causes water to run into the mine or any subterranean channel communicating therewith; or

(b) Damages any shaft or any passage of the mine; or

(c) Damages, with intent to render useless, any apparatus, building, bridge, or road belonging to the mine, whether the object damaged is complete or not; or

(d) Hinders the working of any such apparatus; or

(e) Damages or unfastens, with intent to render useless, any rope, chain, or tackle used in any mine, or upon any way or work connected therewith.

Cf. 1908, No.32, s.338

305. Providing explosive to commit crime - Every one is liable to imprisonment for a term not exceeding two years who knowingly has in his possession or makes any explosive substance, or any dangerous engine, instrument, or thing, with intent thereby to commit, or for the purpose of enabling any other person to commit, a crime.

Cf. 1908, No.32, s.340

SWEDISH PENAL CODE 1965 (translated by Thorsten Sellin and published by the Ministry of Justice, Stockholm)

Chapter 12

Of Crimes Inflicting Damage

Sec.1. A person, who destroys or damages real property or chattels to the detriment of another's right thereto, shall be sentenced for inflicting damage to pay a fine or to imprisonment for at most six months.

Sec.2. If, considering the minimal harm and other circumstances of the act, the crime mentioned in Section 1 is regarded as petty, a fine shall be imposed for trespass.

A person, who in forest or field unlawfully takes growing trees or grass or from growing trees takes twigs, branches, birch bark, bark, leaves, bast, acorns, nuts or resin, or takes fallen trees, stone, gravel, sod or similar things not prepared for use, shall be sentenced for trespass if the crime is regarded as petty considering the value of what is taken and other circumstances.

Sec.3. If the crime referred to in Section 1 is regarded as grave, imprisonment for at most four years shall be imposed for inflicting gross damage.

In judging the gravity of the crime, special attention shall be paid to whether the act had given rise to a substantial danger to some one's life or health or damage had been done to something of great cultural or economic importance or else is keenly felt.

Sec.4. If a person unlawfully takes his way across a building lot, a plantation or other land that can be damaged thereby, he shall be sentenced for taking unlawful path to pay a fine.

Sec.5. Attempt or preparation to inflict gross damage and failure to reveal such crime shall be punished as stated in Chapter 23.

Sec.6. Trespass or taking unlawful path may, if the crime only infringes the right of a private person, be subject to public prosecution only if, for special reasons, such prosecution is called for from a public point of view.

Chapter 13

Of Crimes Involving Public Danger

Sec.1. If a person starts a fire that imports danger to another's life or health or extensive destruction of another's property, he shall be sentenced for arson to imprisonment for at least two and at most eight years.

Sec.2. If the crime mentioned in Section 1 is considered grave, imprisonment for a fixed term of at least six and at most ten years, or for life, shall be imposed for grave arson.

In judging the gravity of the crime, special attention shall be paid to whether the fire was set in a thickly populated area, where it could easily spread, or had otherwise threatened danger to several persons or to property of special importance.

Sec.3. A person, who causes an explosion, inundation, landslide, shipwreck, airplane or train accident or other like calamity and thereby gives rise to a danger to another's life or health or of extensive destruction of another's property, shall be sentenced for devastation endangering the public to imprisonment for at least two and at most eight years.

If the crime is grave, imprisonment for a fixed term of at least six and at most ten years, or for life, shall be imposed.

Sec.4. If a person destroys or damages property of significant importance for the defense of the Realm, public subsistence, judicial or public administration, or the maintenance of public order and security in the Realm, or by some other action, not limited to the withholding of manpower or advocacy to that effect, seriously disturbs or interferes with the use of such property, he shall be sentenced for sabotage to imprisonment for at most four years. The same shall apply, if a person otherwise, by inflicting damage or by other action just mentioned, seriously disturbs or interferes with public traffic or the use of telegraph, telephone, radio or other like public service or some installation that supplies the public with water, light, heat, or power.

Sec.5. If a crime mentioned in Section 4 is considered grave, imprisonment for a fixed term of at least two and at most ten years, or for life, shall be imposed for gross sabotage.

In judging the gravity of the crime, special attention shall be paid to whether it produced danger to the security of the Realm, to the lives of several persons, or to property of special importance.

Sec.6. A person, who carelessly, by the careless handling of fire or explosive or otherwise, causes a fire or some calamity mentioned in Section 1, 2, or 3 or a danger of its occurring, or causes damage or interference referred to in Section 4, shall be sentenced for carelessness endangering the public to pay a fine or to imprisonment for at most six months.

If the crime is grave, imprisonment for at most two years shall be imposed.

Sec.7. If a person creates a general danger to peoples' life or health by poisoning or infecting food, water, or the like, or in other ways by spreading poison or such, or by transmitting or spreading serious disease, he shall be sentenced for spreading poison or contagion to imprisonment for at most six years.

If the crime is grave, imprisonment for a fixed term of at least four and at most ten years, or for life, shall be imposed. In judging the gravity of the crime, special attention shall be paid to whether it was committed with intent to harm another's life or health or whether it exposed many persons to danger.

Sec.8. If a person creates a general danger to animals or plants by means of poison or by transmitting or spreading virulent disease or by spreading pernicious animals or weeds or by other like means, he shall be sentenced for destruction to pay a fine or to imprisonment for at most two years.

If the crime is grave, imprisonment for at least six months and at most six years shall be imposed. In judging the gravity of the crime, special attention shall be paid to whether it was committed with intent to harm or whether property of substantial value was exposed to danger.

Sec.9. If a person acts as stated in Section 7 or 8 due to gross carelessness, he shall be sentenced for careless handling of poison or contagion to pay a fine or to imprisonment for at most two years.

Sec.10. If a person, without incurring liability to punishment in accord with preceding provisions of this Chapter, while handling fire, explosive or poison or in some other way creates a danger of fire or calamity referred to in Section 1, 2, or 3 or of general danger referred to in Section 7 or 8, and neglects, when having become aware of the danger, to do all that can be reasonably expected of him to avert it, he shall be sentenced for neglect to avert public danger to pay a fine or to imprisonment for at most one year.

Sec.11. If a person, who has become liable to punishment in accord with Section 1, 2, 3, 6, 7, 8, 9, or 10, has voluntarily averted the danger there mentioned before any considerable harm developed, he may be sentenced to a lesser punishment than that provided for the crime; however, no lesser punishment than imprisonment may be imposed, if the minimum sanction for the crime is otherwise imprisonment for two years or longer. If the danger was minor and the act is not punishable by more than a year's imprisonment, no punishment shall be imposed.

Sec.12. Attempt, preparation or conspiracy to commit arson, gross arson, devastation endangering the public, sabotage, gross sabotage, spreading poison or contagion, or destruction, as well as neglect to avert such a crime shall be punished as stated in Chapter 23.

8719.Dd6368.1M(P)4/69S(P&D)L