

Marine Unit



Protecting the
marine community

What constitutes Criminal Damage?

Section 1 of the Criminal Damage Act 1971 creates the offence of simple 'criminal damage'.

1(1) A person who without lawful excuse, destroys or damages any property, belonging to another, intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.

1(2) A person who without lawful excuse, destroys or damages any property, whether belonging to himself or another -

- (a) Intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and
- (b) intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered;

shall be guilty of an offence.

The important words are 'intending' and 'reckless', an accident would not constitute an offence.

Use of Force

Any person may use such force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large, (Section 3 (1) of the Criminal Law Act 1967).

Whether the force used was 'reasonable in the circumstances' will always be a question of fact for a court or jury to determine. Each case must be determined on its merits. In measuring the 'reasonableness' of the force, the gravity of the crime to be prevented or already performed by the suspected offender will always be a highly relevant consideration.

The Criminal Law Act permits you to use force to prevent crime but the degree of force used must be reasonable. Excessive force could constitute an assault.

The principal issues are -

- a. Was the use of force an act of revenge?
- b. Was the force used purely an impulsive act or in the course of retribution?
- c. Or, was the person using the force, acting in good faith, to achieve one of the objectives mentioned in section 3(1)?

If the individual's actions might fall within section 3(1) of the Criminal Law Act 1967, was the force used proportionate to the crime being prevented; in the sense that it was the minimum amount of force which was necessary to overcome the problem? Did the individual honestly believe that the use of force was necessary?

Trespass

Trespass on a boat is a difficult issue as we allow people onto our boats for many reasons. For example, to secure mooring lines if boats are rafting up or to get ashore when rafted together.

However ancient 'Mariners' Law' says to ask permission and to walk around the bow, not across a hatch or cockpit.

'Mariners Law' protocol also allows boats to use our moorings if not in use with the understanding that they move should we return.

Only to 'raft up' on one mooring if that mooring is designed for it, these will generally be well marked visitor moorings.

To consider the size of mooring against the size of boat, to avoid the risk of dragging the mooring.

We would expect and appreciate someone boarding our boat in an emergency such as to re-tie a mooring line should the vessel be in danger of coming adrift. Or to move the boat to a safe haven should it be found adrift. Or to tie up loose items that are in danger of damage for example a flapping sail.

However the issue is whether intentional or reckless damage occurs or theft is the motive, in which case the Criminal Damage Act applies as above or the Theft Act.

Trespass is a civil matter and the police are unable to prosecute trespassers. Force can be used to remove trespassers only if 'use of force' principles apply that is '...reasonable in the circumstances in the prevention of crime...'

If you find someone on your boat or in your 'members only' marina/club, politely ask if you may help him or her. If you suspect something suspicious remind them that it is private property and ask them to leave.



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