CRIMINAL DAMAGE
(Refer to Chapter 16 of Unlocking Criminal Law)

The problem
Jon is concerned that a tree\(^1\) growing in his neighbour Ritchie’s garden is dangerously rotten and that a strong wind could cause it to blow over, into Jon’s garden, which would almost certainly destroy Jon’s greenhouse.\(^2\) Jon has mentioned this to Ritchie, who replied that he didn’t particularly like the tree as it cast a shadow over his conservatory. Ritchie added that if it did blow over he “wouldn’t be sorry to see the back of it”\(^3\) but, as he didn’t think it actually was in danger of falling down, he was going to leave it alone.

One evening a few weeks later, Jon hears on the radio that a storm is heading towards his town.\(^4\) Jon knows that Ritchie is on holiday. He therefore takes an axe from his shed, goes into Ritchie’s garden and chops the tree down.\(^5\) Ritchie discovers what has happened when he gets home and contacts the police. Jon is charged with criminal damage.

Consider Jon’s liability.

\(^1\) Trees can be property for the purposes of criminal damage provided they are not ‘growing wild on any land’. As Ritchie’s tree is in his garden it is probably not ‘wild’

\(^2\) Jon may believe that his property is in need of protection from being destroyed or damaged (s.5(2)(b), CDA)

\(^3\) This may lead Jon to believe that Ritchie would consent to the tree being cut down (s.5(2)(a), CDA)

\(^4\) This strengthens Jon’s lawful excuse under (s.5(2)(b)) – his greenhouse is now in ‘immediate’ need of protection

\(^5\) This is intentional criminal damage
Considering Jon’s liability

Knowledge requirement
You need to
- Define criminal damage contrary to s.1(1) of the Criminal Damage Act 1971 (CDA). In actus reus terms damage means “injury, mischief or harm done to property” Samuel v Stubbs; impairment of value or usefulness Morphitis v Salmon. In mens rea terms D must have intent or be reckless (in the subjective sense) Stephenson, R v G
- Define ‘property’ in s.10 CDA. ‘Property’ means of a tangible nature, whether real or personal. A tree is ‘property’ unless it is ‘growing wild on any land’
- Identify the lawful excuse defence in s.5(2)(a) of the 1971 Act – D’s belief in consent
- Identify the lawful excuse defence in s.5(2)(b) of the 1971 Act – D’s belief that some other property was in immediate need of protection
- Explain that in s.5(2) D’s belief need only be honest as opposed to reasonable Denton
- Explain that in s.5(2)(b) D must believe that the other property was in immediate need of protection and this is interpreted quite strictly Hunt, Hill and Hall, Kelleher

Application requirement
Identify
- That Jon chopping down his neighbour’s tree in a residential garden is the actus reus of criminal damage, because the tree is property and harm has been done to it; its value or usefulness (as a tree) has been impaired
- That Jon clearly acted intentionally and so he has the mens rea
- That Jon may have believed that Ritchie had consented. If so this gives Jon a lawful excuse, as long as his belief was genuine
- That Jon may have believed that his own property (the greenhouse) was in immediate need of protection. Hearing of the storm approaching supports this belief

Discuss
- Whether Jon may have had a lawful excuse under s.5(2)(a). Although Ritchie’s comments suggest he is ambivalent towards the tree that is not the same as saying he definitely wants rid of it
- Whether Jon may have had a lawful excuse under s.5(2)(b). Although the weather forecast said that a storm was approaching, the weather is notoriously unpredictable. Is a weather forecast sufficient for Jon’s belief that his greenhouse was in immediate need of protection?