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**SALLY RAMAGE**

**Copehale, Coppenhall,  
Stafford, United Kingdom**

**Tel 01785-244725**

**01785-228281**

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*Contents: 'Domestic Violence' written by Sally Ramage*

*'Butterworths Stone Justices' Manual 2008' publication  
review by Sally Ramage;*

# Domestic violence

By

**Sally Ramage**

## Introduction

One reason for the increase in legal awareness of domestic violence is that there are now many research reports that evidence the link between violence and mental illness. The stigma encountered by individuals with psychiatric disorders lowers their self-esteem, contributes to disrupted family relationships, and adversely affects their ability to socialize, obtain housing, and become employed (Wahl, 1999). This association of mental illness with violence is apparently increasing. Violence includes murder and manslaughter, the principal offences under the English statute of Offences against the Person Act 1861. Other examples of domestic violence are of violence against children other than sexual offences and kidnapping. Multiple studies have demonstrated that individuals with psychiatric disorders who are being inadequately treated, or not treated at all, are more likely to be violent than the general population (Yesavage, 1982; Taylor, 1985; Smith, 1989; Bartels et al., 1991; Link et al., 1992; Modestin and Ammann, 1996; Kasper et al., 1997; Swanson et al., 1997; Swartz et al., 1998; Taylor et al., 1998; Arango et al., 1999).

## Legislation

In 2004 the UK government passed the Domestic Violence, Crime and Victims Act. This compares poorly with the United States where domestic violence laws were passed by way of the 1963 Illinois Code of Criminal Procedure (Hearsay) 725 ILCS 5/115-10.2; the Illinois Domestic Violence Act of 1986; the New Jersey Definition of Domestic Violence, NJSA 2C:25-19; and the United States federal law passed in 1994, Violence against Women Act 42 USC 10418, for instance.

Newer legislation that addresses domestic violence in the UK includes the Safeguarding Vulnerable Groups Act 2006 which goes some way in complying with the European Convention on the exercise of Children's Rights 1996, Article 4 of which obliges Member States parties to take all appropriate legislative and other measures for the implementation of the rights recognized in the Convention. This 1996 Convention deals with the whole range of family

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proceedings affecting children and taking place before a judicial authority

### **Court cases**

In the UK today, domestic violence has begun to be taken seriously and although in many cases of domestic violence, the complainant withdraws their complaint, the prosecution continues if the Crown Prosecution Service ('CPS') decides that it should. Most cases of domestic violence appear only in the Magistrates Courts where 'the bench' of three magistrates decide the case, giving reasons for those decisions, albeit based on a text-book answer. If the case is strongly defended and goes to the Crown Court, it is decided by a jury, and no reasons are given for their decision. However, in cases involving children where there had been allegations of domestic violence, a fact-finding hearing has to be conducted. That exercise cannot be curtailed. (See the case of *Re Z: children* [2009] EWCA Civ represent good practice and precedent). The Family Court has issued practice directions on the matter.

The judge had to conduct a fact-finding hearing and it was only if, at the conclusion of that hearing, he found as a fact that the children were in no way at risk or that for some other reason contact should take place that he could make an order for contact. He had to hear all the evidence. There was no equivalent of "no case to answer" in cases involving children and he could not simply say that he had heard one side and not thought much of it. While the judge was the ultimate arbiter of fact, the hearing had to be fair, and the judge had to give the parties the opportunity to make submissions. Moreover, he was not to prejudge the issue where an officer from the public body, the Children and Family Court Advisory Support Service. ('CAFCASS') was involved and had given provisional views pending the outcome of the fact-finding hearing. The judge must hear all the evidence. In cases involving children everything has to be done in court and had to be on the record. There should not be private discussions between the judge and counsel.

As a result of the case of *R (on the application of MM v Lewisham London Borough Council* [2009] EWHC 416 (Admin), assessments of whether a child was a child in need within the meaning of the Children Act 1989 s.17 were not to be dealt with summarily and without proper inquiry. The order sought from the court must be exactly what was needed according to the authorities, as in the case of *Re T: a child* [2009] EWCA Civ 121.

### **Recent developments**

The whole world has reported on Britain's child abuses, many of which are domestic violence offences resulting in deaths and serious injuries, the most recent about 'Baby Peter' who died of horrendous injuries. On November 11, 2008, Baby Peter's mother, her boyfriend and a lodger were convicted at the Old Bailey Court, of causing or allowing his death. His mother's boyfriend began to begin abuse him when he was barely nine months old and this man continued to abuse the baby for nine months until the child finally died in his bloodstained cot. Section 5 of the Domestic Violence, Crime and Victims Act ('DVCVA') 2004. The DVCVA made provision

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about homicide; made common assault an arrestable offence; made provision about the execution of warrants and the enforcement of orders imposed on conviction; and made provision about the recovery of compensation from offenders.. The DVCVA, section 5, created the criminal offence of causing or allowing the death of a child or vulnerable adult. This offence is committed where a child or vulnerable adult dies as a result of an unlawful act of a person who was a member of the same household as the deceased and who had frequent contact with him or her. The defendant must either have caused the death, or should have been aware that the deceased was at significant risk of serious harm and failed to take reasonable steps to prevent that harm. This offence was introduced to resolve the problem that arose when it cannot be shown which member of the household caused the death and all members of the household will be liable for such a death. It is noted that the term ‘*significant risk*’ in this offence, has been defined to be one of ‘*serious physical harm*’ but sadly, the term ‘*serious physical harm*’ is not defined and so what must be shown is that the defendant failed to take such steps as could reasonably be expected to be taken to protect the victim from the risk. The section 5 offence carries a maximum sentence, on indictment and conviction, of 14 years imprisonment, an unlimited fine, or both. Lobbying for this new law was mainly done by the National Society for the Protection of Cruelty to Children (‘NSPCC’), whose 2003 report, “*Which of you did it?*” revealed that each week, two or three infants in the United Kingdom suffer serious injury or death when in the care of adults who ought to have been protecting them. This report followed the NSPCC 1999 report which alleged that its findings were that around one million children in Britain were impoverished, injured and abused. This section 5 offence was used to prosecute the case of *R v Uzma Khan, Nazia Naureen and Majid Hussain* [2009] EWCA Crim 2, in which the murder of Sabia Rani by her husband, was found and it was also found that his family, which was also her family, utterly failed to protect her in the face of repeated violence.

A similar case to Baby Peter’s was the case of *R v Abid ikram and Sumaira Parveen* [2008] EWCA Crim 586, in which the two defendants had been charged with counts of murder and causing or allowing the death of a 16-month-old child contrary to the Domestic Violence, Crime and Victims Act 2004 s.5. A post mortem found the toddler to have numerous bruises and abrasions as well as a broken leg and a laceration behind the knee. Baby Talha had been placed in foster care after his father left him alone at home in March 2006, but was allowed to return to Ikram in June of that year. Within two months the baby was dead.

Returning to the case of Baby Peter, it is noted that both his mother and her boyfriend were themselves children in the care system and the boyfriend especially was of a low IQ and known to the authorities for animal cruelty. The baby’s maternal grandmother was also known to the authorities for drugs and alcohol abuse. A total of twenty two injuries were inflicted on the baby who died.

### **Conclusion**

Most of the court procedures, orders and injunctions available are aimed at keeping a violent partner out of the family home. None can help a child or vulnerable adult when the partner is wanted in the home. Locking the door with the offender firmly inside the bosom of the family is

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of no help to helpless victims. Durham's linking of deprivation with violence 'cuts no ice' in a developed society where poverty is relative. Such violent behaviour appears to be a complex subject beyond the realms of risk assessment and risk management. Children who suffer domestic abuse appear to be victims of an abdication of duty, substance misuse, selfish adults and even post-partum puerperal psychosis. Since the majority of the social workers in the United Kingdom are unqualified, this does not bode well and is perhaps one of the main reasons why domestic abuse is often allowed to escalate, the system being bereft of expertise.

## **BUTTERWORTHS STONE JUSTICES' MANUAL 2008, reviewed by Sally Ramage**

Edited by A.P. Carr, A.J. Turner with contributions by K. Starmer and I. Seeley ISBN 978-1-4057-2891-1 September 2008

*Butterworths Stone's Justices' Manual* is relied upon each year by thousands of professionals to provide reliable and current coverage of the legislative changes affecting magistrates' courts. With the accompanying CD-ROM, Stone's provides comprehensive coverage of all existing, new and amended legislation affecting the magistrates' courts and hundreds of new cases that set precedents or clarify particular principles of law. It contains the following chapters:- introduction; gambling; criminal law; game practice and procedure; human rights; evidence; immigration; sentencing; industry and commerce; road traffic; youth courts; malicious communications; family law; mental health; civil rights; offender management; consumer protection; outraging public decency; extradition; vagrancy; and firearms.

This review will begin by testing Stones on a few topics, namely

- (i) Age of criminal responsibility;
- (ii) Arrest;
  
- (iii) Bribes;
- (iv) Child law Examination of this random sample of topics will illustrate the importance of Stones, its accuracy, and the relevant case-law it contains.

### **(i) Age of criminal responsibility - my knowledge**

Section 41 of the Criminal Procedure (Scotland) Act 1995 provides that it "shall be conclusively presumed that no child under the age of eight years can be guilty of any offence."

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The rule in section 41 uses the idea of age of criminal responsibility in the sense of the age below which a child is deemed to lack the capacity to commit a crime. By contrast, another meaning of age of criminal responsibility is the point at which the age of a suspect or offender has no relevance for his treatment or disposal as part of the criminal justice system, most typically the age at which an accused becomes subject to the full or adult system of prosecution and punishment. The 1995 Act also contains various rules, which use this second notion of age of criminal responsibility, most notably that in section 42(1) which provides (in part) that "no child under the age of 16 years shall be prosecuted for any offence except on the instructions of the Lord Advocate, or at his instance." It is clear from the *T v UK* and *V v UK* cases that the Convention will have an effect on the age of criminal responsibility primarily in the sense that the age determines the entry point into the full system of prosecution and punishment appropriate for adults. It is clear from the opinions of the judges, including those who dissented on the submission in relation to article 3, that the Court was using the concept of age of criminal responsibility not in the sense of *mens rea* but as concerned with the appropriate methods of dealing with children who commit crimes.

**Age of criminal responsibility – Stones Justices Manual 2008**

“Criminal Law Act 1977, s 1A, as inserted by the Criminal Justice (Terrorism and Conspiracy) Act 1998, s 5.] As regards the criminal offence of conspiracy, person shall not by virtue of section 1 above be guilty of conspiracy to commit any offence or offences if the only other person or persons with whom he agrees are (both initially and at all times during the currency of the agreement) persons of any one or more of the following descriptions, that is to say-

- (a) his spouse or civil partner;
  - (b) a person under the age of criminal responsibility; and
  - (c) an intended victim of that offence or of each of those offences.
- (3) A person is under the age of criminal responsibility for the purposes of subsection (2) (b) above so long as it is conclusively presumed, by virtue of section 50 of the Children and Young Persons Act 1933, that he cannot be guilty of any offence.”

**(ii) Arrest - my knowledge**

Section 17(1) (c) (iii) of the Police and Criminal Evidence Act 1984 (PACE) provides a power of entry to arrest a person under section 4 of the Public Order Act 1986. However, it does not extend to the offence under section 4A of the Public Order Act 1986. This is because section 17 PACE was amended by the Public Order Act 1986 to accommodate the section 4 offence (the offence of fear, or provocation of violence) and by section 76 Public Order Act 1994 (power of entry to arrest a person for failure to comply with an interim possession order). It is to be noted that section 4A of the Public Order Act 1986 was created by section 15A of the Criminal Justice and Public Order Act 1994.

### **Arrest- Stones Justices' Manual 2008**

*“One of the most significant developments of 2007 was the commencement of the provisions of the Domestic Violence, Crime and Victims Act 2004 that make breach of a non-molestation order a criminal offence, provided that: the conduct in question has not already been punished as a contempt of court; the conduct occurred or after 1 July 2007; and the order was made on or after the above date or, if made earlier, no power or current power of arrest was or remains attached to it”* Stones also contains pages on arrest 1-221; under warrant 1-222 ; arrest without a warrant 1-223; and police detention 1-202 . A constable has powers to search a person on arrest at a police station or elsewhere. Reasonable force may be used 1-205 Powers of entry to premises, search and seizure. There are a total of 1,170 hits.

(iii) Bribes - my knowledge Common law; Public Bodies Corrupt Act 1889, s1; Prevention of Corruption Act 1906, s1.

### **Bribes – Stones' Justices Manual 2008**

‘Stones’ includes 4 sections on bribes:

- (a) any offence listed in Schedule 2 to the Proceeds of Crime Act 2002 (c 29) (lifestyle offences: England and Wales);
- (b) any offence listed in Schedule 4 to that Act (lifestyle offences: Scotland); (ba) any offence listed in Schedule 5 to that Act (lifestyle offences: Northern Ireland);
- (c) any offence under sections 15 to 18 of the Terrorism Act 2000 (c 11) (offences relating to fund-raising, money laundering etc);
- (d) any offence under section 170 of the Customs and Excise Management Act 1979 (c 2) (fraudulent evasion of duty) or section 72 of the Value Added Tax Act 1994 (c 23) (offences relating to VAT) which is a qualifying offence;
- (e) any offence under section 17 of the Theft Act 1968 (c 60) or section 17 of the Theft Act (Northern Ireland) 1969 (false accounting), or any offence at common law of cheating in relation to the public revenue, which is a qualifying offence;
- (f) any offence under section 1 of the Criminal Attempts Act 1981 (c 47) or Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983, or in Scotland at common law, of attempting to commit any offence in paragraph (c) or any offence in paragraph (d) or (e) which is a qualifying offence;
- (g) any offence under section 1 of the Criminal Law Act 1977 (c 45) or Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983, or in Scotland at common law, of conspiracy to commit any offence in paragraph (c) or any offence in paragraph (d) or (e) which is a qualifying offence.
- (h) in England and Wales-
  - (i) any common law offence of bribery;
  - (ii) any offence under section 1 of the Public Bodies Corrupt Practices Act 1889 (c 69)

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(corruption in office);

(iii) the first two offences under section 1 of the Prevention of Corruption Act 1906 (c 34) (bribes obtained by or given to agents). Harbours, Docks and Piers Clauses Act 1847 (10 & 11 Vict c 47) 7-6183 The owner of every vessel or float of timber is liable for any damage done by such vessel, etc, or by any person employed about the same, to a harbour, dock or pier, or the quays or works connected therewith, and the master or person having charge of such vessel, etc, through whose wilful act or negligence such damage is done, is also liable therefor (s 74). Damage not exceeding £50 recoverable before two justices, who may cause vessel, etc, to be distrained and kept, and if damage and costs are not paid within seven days, to be sold (s 75). Owner may recover, before two justices, damage paid by him from person who actually did same (s 76).

Harbour master may remove unserviceable vessels and recover charges on summary complaint before a justice of the peace (s 57). Various offences include unjustified claims for exemption from harbour rates (s 28); master's failure to report arrival of vessel (s 35), to produce certificate of registry (s 36), to give proper account of cargo unshipped (s 38)-likewise the shipper (s 39)-to comply with harbour master's directions (s 53). Other offences involve bribes (s 55), dismantling (s 59), sails (s 60), hawsers (s 61), moorings (s 62), position near harbour entrance (s 63), harbour repairs (s 64), removal after discharge of cargo (s 66), fires, firearms, combustible and explosive matter (s 71), obstruction of harbour master (s 72), ballast (s 73). Failure to remove combustible matter from quays (s 69) carries an hourly penalty of £50. There is an additional daily penalty of £20 for offences under ss 53 and 63. All offences carry a maximum penalty not exceeding level 3 on the standard scale (British Transport Docks Act 1981, s 17 & Schedule 1, as amended by the Criminal Justice Act 1982, s 46). Electoral Administration Act 2006. According to Electoral Administration Act 2006, s 79, Schedule 1, amendments (8-8120), the term 'embracery' is an attempt by bribes, or any corrupt means, other than evidence and argument in open court, to influence or corrupt a jury. It is a misdemeanour indictable at common law, punishable by fine and imprisonment.

#### (iv) Child Law

To test Stones comprehensive child law, the following questions will be queries in Stones: What is a guardian *ad litem*? *The term is not defined but Stones tells us that Section 1(2) of the Children Act 1989 states: "2 Rule 10.21 states: "(1) Subject to rule 2.3 [of the FPR] nothing in these rules shall be construed as requiring any party to reveal the address of their private residence (or that of any child) save by order of the court".*

*3 Rule 4.23 states: "(1) Notwithstanding any rule of court to the contrary, no document, other than a record of an order, held by the court and relating to proceedings to which [Pt IV] applies shall be disclosed, other than to-(a) a party, (b) the legal representative of a party*

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*(c) the guardian ad litem, (d) the Legal Aid Board, or (e) a welfare officer, without the leave of the judge or the district judge”.*

*4 Rule 23 states: “(1) No document, other than a record of an order, held by the court and relating to relevant proceedings shall be disclosed, other than to-(a) a party, (b) the legal representative of a party, (c) the guardian ad litem, (d) the Legal Aid Board, or (e) a welfare officer, without leave of the justices’ clerk or the court”.*

### **When a child is considered an adult?**

Nothing here.

### **Can minors consent to medical treatment without parental permission?**

Nothing here.

### **Do minors have a legal right to an abortion?**

No matches found.

### **Are curfews legal?**

Section 1.13.2 details the law on curfew.

“A curfew requirement, usually associated with electronic monitoring, may be helpful in restricting an offender’s right to be out in public at the same time as, for example, schoolchildren. A curfew requirement is most likely to be effective when used in conjunction with a residence requirement requiring an offender to live in approved accommodation where behaviour and compliance can be monitored. Such a requirement can be for between 2 and 12 hours per day and last up to 6 months.”

Are students allowed to pray at a public school?

No matches found.

### **Do students have a constitutional right to “free speech” in the context of public schools?**

Stones section 8-17631J- Freedom of expression “(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made (“the respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied- court is satisfied that the applicant is likely to establish that publication should not be allowed.( New parameters are provided by arts 8 and 10 within which the court is to decide, in an action for breach of confidence, whether a person is entitled to have his privacy protected by a court or whether the restriction of freedom of expression which such protection involves cannot be

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justified, see *A v B plc* [2002] EWCA Civ 337, [2003] QB 195, [2002] 2 FCR 158, [2002] 1 FLR 1021 and the authorities considered therein).

(4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to-

(a) the extent to which-

(i) the material has, or is about to, become available to the public; or

(ii) it is, or would be, in the public interest for the material to be published;

(b) any relevant privacy code.

(5) In this section-“court” includes a tribunal; and “relief” includes any remedy or order (other than in criminal proceedings).

(a) that the applicant has taken all practicable steps to notify the respondent; or

(b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief is to be granted so as to restrain publication before trial unless the

### **Are juveniles entitled to any due process protections in juvenile delinquency hearings?**

#### **Stones -**

*Re L* (1990) 155 JP 273, [1991] Crim LR 633 (deportation of juvenile hearing behind locked doors in juvenile court not invalid).

Justices who have heard an application for legal aid, which included information as to the defendant’s previous findings of guilt<sup>4</sup>, or an application by the local authority for a secure accommodation order should not, if the defendant pleads not guilty, subsequently sit on the trial of the information. *R v Islington North Juvenile Court, ex p Daley* [1983] 1 AC 347, [1982] 2 All ER 974, 146 JP 363 (juvenile attaining 18 before mode of trial decision reached has right to elect trial by jury). The youth court should take into account any undisputed mitigation put forward on behalf of the accused (e.g. good character), but contentious mitigation should be ignored (*R (on the application of C and D) v Sheffield Youth Court* and *R (on the application of N) v Sheffield Youth Court*, supra). Stones-5-6 No report of any proceedings in a youth court should reveal the name, address or school, or include any particulars likely to lead to the identification of any child or young person concerned in those proceedings, i.e. a defendant or witness<sup>1</sup>. These provisions apply to an appeal from a youth court, including appeal by case stated. They also extend to proceedings to vary or revoke a supervision order before the magistrates’ court and proceedings on appeal therefrom.

### **How and why are children sent to adult criminal court?**

Nothing.

### **Comparative assessment of Justice Manuals**

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In intellectual property law, comparative advertising is governed exhaustively by Article 3a of the Misleading Advertising Directive (84/450), as amended by the Comparative Advertising Directive (97/55) (the "CAD"). In this regard the following table has concluded that Stones Justice Manual remains the best justice manual in the United Kingdom.

**Comparison of the UK three justice manuals-(score 10 maximum)**

	<b>Stones Justice Manual (LexisNexis)</b>	<b>Archbold (Thompson Reuters)</b>	<b>Jordans</b>
<b>Quantity of materials</b>	<b>9</b>	<b>5</b>	<b>5</b>
<b>Content</b>	<b>6</b>	<b>8</b>	<b>5</b>
<b>Format</b>	<b>7</b>	<b>7</b>	<b>9</b>
<b>Pleasing hardcopy</b>	<b>7</b>	<b>7</b>	<b>7</b>
<b>CD user ability</b>	<b>7</b>	<b>8</b>	<b>6</b>
<b>Disabled persons-ease of use</b>	<b>5</b>	<b>6</b>	<b>6</b>
<b>Cross Referencing</b>	<b>9</b>	<b>5</b>	<b>5</b>
<b>Comprehensive</b>	<b>7</b>	<b>7</b>	<b>5</b>
<b>Extra features</b>	<b>8</b>	<b>8</b>	<b>5</b>
<b>Intelligent layout</b>	<b>7</b>	<b>9</b>	<b>5</b>
<b>Total score</b>	<b>72</b>	<b>70</b>	<b>58</b>

Jordans' directs itself simply to the CPS charges and their prosecution and defences. Archbold reads like a book in hard copy and is intelligently set out in the CD format, with the added feature of legal definitions. Stones is the most comprehensive and thus the most bulky, and this is reflected in the CD layout. Each has a special feature and in the end, is a matter of 'horses for courses'.

### **Conclusion**

Stones Justice Manual remains the best and most comprehensive of all the Justice Manuals in the legal marketplace. As illustrated above, there is room for improvement and perhaps room for a dictionary of definitions as in Archbold. Its annotation of the statutes is its

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element of competitive advantage. Stones Justice Manual is most useful in its CD format, although it is very satisfying to have the volumes to leaf through and to consider and cogitate on.  
ENDS