

XR LEGAL STRATEGY DOCUMENTS

LS4: EXAMPLE SKELETON ARGUMENT

“When the house is on fire the normal rules don’t apply: it’s not a crime to break a window to save those inside.”

The example skeleton argument (below) is designed to help you explain to the court why your actions should not be treated as criminal. It refers to well established legal principles that recognise a defence to criminal charge when people break the law in an emergency to avoid a greater harm. You can adapt the argument to reflect your personal views on the climate emergency and your reasons for taking action.

Given the volume of compelling evidence of a climate emergency, convincing the court you genuinely believe the situation is urgent ought not to be the most difficult part of it. Rather the court may question you particularly on how and why you believed your actions were going to contribute to solving the emergency. In response, it’s a good idea to emphasise the collective impact of non-violent direct action, and the evidence that this is raising public and media awareness - the precondition to the urgent and radical change that’s required.

Please note, this skeleton does not address:

- Arguments that your prosecution is not in the public interest and / or discriminatory
- Arguments that the prosecution has failed to prove an elements of the offence you’ve been charged with
- Arguments relating to any specific statutory defence that may apply.

Instead it focuses on the heart of XR’s position: the climate and wider ecological emergency; the government’s failure to address it; and why NVDA is a necessary and proportionate response to those circumstances (see also [LS1: Legal Strategy - Overview](#)).

Switzerland: Court clears climate activists over Credit Suisse tennis stunt (January 2020)

Extinction Rebellion protester cleared of criminal damage after arguing her home was under threat from climate change (1 November 2019)

French court releases two climate activists who took down portraits of Macron (17 September 2019)

Extinction Rebellion founder cleared over King’s College protest (9 May 2019)

Washington Court of Appeals Upholds Right to Present Necessity Defense in Climate Case (7 April 2019)

"[T]here are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that "an unjust law is no law at all.

Now, what is the difference between the two? How does one determine whether a law is just or unjust? A just law is a man made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust."

Martin Luther King, Letter from Birmingham Jail

IN THE [***] MAGISTRATES COURT**

BETWEEN

REGINA

Prosecutor

-and-

[JASMINE BLOGGS]

Defendant

SKELETON ARGUMENT

A. Introduction

My name is [JASMINE BLOGGS]. I am [**-years old]. [Maybe include some more information here about your background and experience?]

I am not a lawyer, I have chosen not to be legally represented, and I may not be able to explain my defence in technical terms. But what I would like to emphasise is this. I decided to take action not because of my political beliefs or opinions. I decided to take action because of what leading scientists are telling us about the extreme urgency of the threat from climate change, and the likelihood that without an urgent change of course,

humanity will have passed the point of no return in just 11 years. The consequences are likely to be devastating not just for me, my family and others close to me, but for everyone, in this country and around the world.

In those circumstances, it is not just that I felt I was bound to take action. I believe that to stand by and do nothing, while our common home is on fire, would be profoundly and morally wrong. When the house is on fire the normal rules don't apply: it's not a crime to break a window to save those inside.

B. Legal framework

B.1 Case-law

I have had support from a lawyer in preparing the legal part of my submission. I have been referred to the case of *R v Jones* 2006 [UKHL] 2016, which concerned a defence, under the Criminal Law Act 1967, section 3 of taking action to prevent a crime. In that case protestors against the invasion of Iraq had argued that the war was illegal and therefore that it was a defence to take action to prevent it. The defence was rejected by the court primarily on the grounds that it was not for the court to determine whether the invasion of Iraq was illegal.

I would like to be clear that the case that I am running is not the same as that rejected by the court in *Jones*. I am not asking this court to determine whether the government or anyone else is committing a crime or acting illegally.

My defence is based on long-established principles of common law that it is not a crime to take reasonable and proportionate action to prevent the occurrence of a far greater harm. I will refer the court to the relevant common law principles.

In [*R v Martin* \[1989\] R.T.R. 63](#), the appellant had driven whilst disqualified from driving. He claimed he did so because his wife threatened to commit suicide if he did not drive their son to work. His wife had attempted suicide on previous occasions and the son was late for work and she feared he would lose his job if her husband did not get him to work. The appellant pleaded guilty to driving whilst disqualified following a ruling by the trial judge that a defence was not available to him. He appealed the ruling to the Court of Appeal, which accepted his appeal, explaining the defence of "duress of circumstances" as follows:

(1) "[W]as the accused, or may he have been, impelled to act as he did because as a result of what he reasonably believed to be the situation he had good cause to fear that otherwise death or serious injury would result"

- (2) “[I]f so, would a sober person of reasonable firmness, sharing the characteristics of the accused, have responded to that situation by acting as the accused acted?”

It is reasonable to believe that death and serious injury is going to occur from the climate emergency, and on an unprecedented scale, because that is what the scientists are telling us. It would be unreasonable to ignore its warnings.

Lord Goff in *In re F*¹, a House of Lords case from 1990, concerning the sterilisation of a woman who was unable to give her consent to the procedure, referred to a principle going back at least to the 1666, Fire of London:

*"That there exists in the common law a principle of necessity which may justify action which would otherwise be unlawful is not in doubt. But historically the principle has been seen to be restricted to two groups of cases, which have been called cases of public necessity and cases of private necessity. The former occurred when a man interfered with another man's property in the public interest – for example ... the destruction of another man's house to prevent the spread of catastrophic fire, as indeed occurred in the Great Fire of London in 1666 ..."*²

The court will have read about the endless succession of climate disasters, devastating wildfires from Europe to California, and even this summer in the Arctic Circle³. It is not just one person's home that is on fire, it is our common home, and we have no other.

In the case of *Re A* (conjoined twins)⁴, the Court set out the key principles to be applied to a defence that the lesser of two evils was being avoided, where one of two conjoined twins would lose their life following a separation procedure:

"There are sound reasons for holding that the existence of an emergency in the normal sense of the word is not an essential prerequisite

There are also sound reasons for holding that the threat which constitutes the harm to be avoided does not have to be equated with "unjust aggression" ...

According to Sir James Stephen, there are three necessary requirements for the application of the doctrine of necessity:

(i) the act is needed to avoid inevitable and irreparable evil;

¹ [1990] 2 AC 1]

² Ibid. para. 74A-C

³ "Sweden battles wildfires from Arctic Circle to Baltic Sea", BBC, 18 July 2018, <https://www.bbc.co.uk/news/world-europe-44871789>

⁴ [2001] 2 WLR 480

(ii) no more should be done than is reasonably necessary for the purpose to be achieved;

(iii) the evil inflicted must not be disproportionate to the evil avoided.

*... I consider that all three of these requirements are satisfied in this case.*⁵

Taking action to prevent mass loss of life from climate change, in accordance with the best available science, meets all three of these tests.

I rely upon this established line of precedent, which remains current law.

B.2 The European Convention on Human Rights and The Human Rights Act 1998

I also wish to invoke my civil and political rights which are protected by the European Convention on Human Rights ("ECHR"), which is implemented into national law by the Human Rights Act 1998.

Specifically I wish to invoke my right to freedom of thought, conscience and religion, which is protected by ECHR, Article 9.

My beliefs are informed by the horrors of 20th Century Fascism, and the conviction that when terrible harm is threatened, it is not good enough to do nothing. To be a bystander is to be complicit. My conscience compels me to take action in the face of the appalling human suffering that is threatened by anthropogenic climate change and the wider ecological crisis.

I also wish to invoke my rights to freedom of expression and to freedom of assembly under Articles 10 and 11 of the ECHR respectively.

B.3 Published guidance of the Crown Prosecution Service

On 28 January 2019, the Crown Prosecution Service published guidance on the prosecution of protest offences, making it clear that a defence exists in these circumstances:

"Prosecutors must apply the principles of the European Convention on Human Rights (the Convention), in accordance with the Human Rights Act 1998, at each stage of a case. It is a defence to prove the conduct was reasonable and in accordance with the freedom of expression and other freedoms. If these freedoms are engaged, a justification for interference with them (by prosecuting)

⁵ See the conclusion of the lead judgement of Lord Justice Brooke

must be established. A prosecution may only proceed if it is necessary and proportionate.”⁶ (emphasis added)

More generally the guidance provides factors on when a prosecution for protest offences is in the public interest. The key factor is whether the protest is violent or threatening to others:

“Criminal law in respect of public order offences is intended to penalise the use of violence and/or intimidation by individuals or groups.”

My protest was peaceful. I believe this prosecution is inconsistent with the Crown Prosecution Service’s own guidance on when it is in the public interest to prosecute someone for acting peacefully and in accordance with their conscience.

B.4 Direct precedent

In 2008, 6 climate change activists were acquitted of causing criminal damage to a coal-fired power station on the basis that their actions were a reasonable response to the threat from climate change⁷.

Since 2008 the threat from climate change has become yet more urgent and serious, while the Government response has weakened. If the actions of activists were necessary and reasonable in 2008, they are even more so in 2019.

C. My belief that we are in a state of emergency and the basis for that belief

It is my understanding that in the course of this century, without an urgent and radical change of course, it is likely that civilisation will collapse and that a mass extinction will occur.

That may sound “apocalyptic”, but it is an understanding supported by the best available science. The point was made in an article for The Times, who spoke to the London School of Economics regarding the basis for Extinction Rebellion actions:

“Academics said although [Extinction Rebellion’s] claims about climate change sounded apocalyptic they were broadly scientifically correct. “It is important to make more noise about climate risks,” said Professor Sam Fankhauser, director of the Grantham Research Institute on Climate Change at the London School of

⁶ CPS guidance, *Offences during Protest, Demonstrations or Campaigns*, <https://www.cps.gov.uk/legal-guidance/offences-during-protest-demonstrations-or-campaigns>

⁷ “Not guilty: the Greenpeace activists who used climate change as a legal defence”, The Guardian, 11 September 2008, Exhibit 12
<https://www.theguardian.com/environment/2008/sep/11/activists.kingsnorthclimatecamp>

Economics. “We need to do something radical. So calls to ‘tell the truth’ are welcome.”⁸

I will set out relevant excerpts from the science in a separate witness statement. For the purposes of this skeleton argument, I refer mainly to the statements of a number of public figures and the government’s own evidence.

In 2013, Lord Stern, whose 2007 Review informed the development of the Climate Change Act 2008, gave a presentation to the World Economic Forum in Davos, in which he stated:

“Looking back, I underestimated the risks. The planet and the atmosphere seem to be absorbing less carbon than we expected, and emissions are rising pretty strongly. Some of the effects are coming through more quickly than we thought ...

This is potentially so dangerous that we have to act strongly. Do we want to play Russian roulette with two bullets or one? These risks for many people are existential.”⁹

In June 2015, the UK Government made the following intervention at the UN Security Council Debate on Climate Change:

“As an island state, we too face risks. Risks of losing land to the sea, and more frequent – and more dangerous – flooding. However our first national climate change risk assessment, two years ago, found that it could be the indirect, international impacts of climate change that present the greatest risks. We may see food price spikes, large-scale migration, and even state failure ...

That is why we must approach climate change in the same way we approach any other grave threat to our international security – with urgency, effectiveness and determination.”

In 2017 more than 15,000 scientists from around the world signed an open letter to humanity:

⁸ The Times, 25 November, 2018, Exhibit 1:

<https://www.thetimes.co.uk/edition/news/meet-dr-demo-the-activist-behind-the-road-block-radicals-nzd6ds-p5k>

⁹ Lord Stern: ‘I got it wrong on climate change – it’s far, far worse’, The Guardian, 26.1.2013, Exhibit 2
<https://www.theguardian.com/environment/2013/jan/27/nicholas-stern-climate-change-davos>

“To prevent widespread misery ... humanity must practice a more environmentally sustainable alternative to business as usual ... Soon it will be too late to shift course away from our failing trajectory, and time is running out.”¹⁰

In October 2018, the Intergovernmental Panel on Climate Change (the IPCC) published a report spelling out the catastrophic consequences for humanity of crossing the 1.5°C warming limit. They advised that without urgent and radical action that threshold was likely to be crossed by 2030 - in just 11 years time.¹¹

In December 2018, Sir David Attenborough told the United Nations:

“Right now we are facing a manmade disaster of global scale, our greatest threat in thousands of years: climate change ... If we don’t take action, the collapse of our civilisations and the extinction of much of the natural world is on the horizon ... The world’s people have spoken. Time is running out. They want you, the decision-makers, to act now. Leaders of the world, you must lead.”¹²

On 11 December 2018, Sadiq Khan, the Mayor of London, declared a climate emergency but complained of lack of government action and support:

“We are in the midst of a climate emergency which poses a threat to our health, our planet and our children and grandchildren’s future. City Hall is doing everything in our power to mitigate the risk in London but the stark reality is that we need urgent government action and funding.”¹³

As a direct result of the Extinction Rebellion protests the state of emergency has now been acknowledged by Parliament:

[“UK Parliament declares climate change emergency”](#) (BBC, 1 May 2019)

D. What is a reasonable response to this state of emergency?

¹⁰ “15,000 scientists give catastrophic warning about the fate of the world in new ‘letter to humanity’”, The Independent, 13 November 2017, Exhibit 3
<https://www.independent.co.uk/environment/letter-to-humanity-warning-climate-change-global-warming-scientists-union-concerned-a8052481.html>

¹¹ “Final call to save the world from ‘climate catastrophe’”, BBC, 8 October 2018, Exhibit 13
<https://www.bbc.co.uk/news/science-environment-45775309>

Original IPCC report is at: <https://www.ipcc.ch/sr15/chapter/summary-for-policy-makers/>

¹² “Sir David Attenborough tells UN climate change summit ‘collapse of civilisation is on the horizon’”, Evening Standard, 3 December 2018, Exhibit 4
<https://www.standard.co.uk/news/world/david-attenborough-says-collapse-of-civilisation-is-on-the-horizon-a4006976.html>

¹³ “London mayor unveils plan to tackle ‘climate emergency’”, The Guardian, 11 December 2018, Exhibit 5
<https://www.theguardian.com/uk-news/2018/dec/11/london-mayor-sadiq-khan-city-climate-emergency>

The first step to dealing with a crisis is to treat it as a crisis. Unfortunately central government, unlike local governments, is failing to take this first step.

Alongside the Mayor of London and the London Assembly, many local governments have now acknowledged and declared a climate emergency. On 28 January 2019, for example, Oxford City Council unanimously declared a state of emergency:

*"The climate crisis is an emergency that requires actions at all levels of government; local, regional and national ... We have a duty to ourselves, our residents and businesses and to the wider world to not only declare a Climate Emergency but to deliver real change. The hard work starts here."*¹⁴

In contrast, central Government is so weakened and distracted, that it makes no reference to the crisis at all. It makes no attempt to educate the public and, since it does not acknowledge the crisis, it does not even begin to develop a emergency plan.. Instead it promotes fracking, looks to expand aviation, and provides more subsidies for fossil fuels than any other EU country.

I have listened to what leading climate scientists say about the Government's response.

In September 2017, the Government's own former Chief Scientist, Sir David King, told the BBC why he was backing legal action against the government:

*"This is crazy. The government knows very well what needs to be done - but it isn't doing it."*¹⁵

In October 2018, the world's leading climate scientist, Professor James Hansen, who sounded the global alarm on climate change with his testimony to the US Congress in 1988, wrote to the UK Government to say :

*"So the UK joins Trump, ignores science... full throttle ahead with the worst fossil fuels. The science is crystal clear, we need to phase out fossil fuels starting with the most damaging, the 'unconventional' fossil fuels such as tar sands and 'fracking'."*¹⁶

As a concerned citizen, it is difficult to read such statements and believe that central government has the situation under control. To the contrary, the government appears to

¹⁴<https://climateemergencydeclaration.org/united-kingdom-oxford-city-council-unanimously-backs-climate-emergency-motion/>

¹⁵ "Climate change: Ministers should be 'sued' over targets", BBC, 27 September 2017, Exhibit 6
<https://www.bbc.co.uk/news/uk-41401656>

¹⁶ "Top climate scientist blasts UK's fracking plans as 'aping Trump'", The Guardian, 13 October 2018, Exhibit 7
<https://www.theguardian.com/environment/2018/oct/13/top-climate-scientist-james-hansen-attacks-uk-fracking-plans>

be burying its head in the quicksand of Brexit and to lack the capacity to deal with anything else.

Over many decades concerned citizens have tried a variety of awareness raising and campaigning techniques, from marching to letter writing. It has not been working and global emissions of carbon dioxide and greenhouse gases continue to rise.

We are on the brink of disaster and it is my belief that the wave of peaceful, non-violent direct action that is rising in the UK and elsewhere, is now a reasonable, proportionate and necessary response to the emergency situation we find ourselves in.

E. Causality - How are my actions helping to avert tragedy?

In the words of James Baldwin, the late civil rights activist:

“Not everything that is faced can be changed; but nothing can be changed until it is faced.”

The intention of peaceful, non-violent direct action is to ensure that the government and the public faces up to the crisis that the scientists tell us needs to be addressed as a matter of urgency.

The overwhelming evidence is that it is already working. Civil disobedience and school strikes are rapidly changing the public, media and government discourse.

On 15 February 2019, thousands of children around the UK staged a “school strike”, blocking roads around Parliament Square and elsewhere.

The strikes were welcomed even by the Government’s own Energy Minister, Claire Perry MP:

*“I’m incredibly proud of young people who feel strongly that we need to take action.”*¹⁷

The Headteacher’s Union back the strikes¹⁸, as did the The Times Newspaper¹⁹ in its Editorial. The Mayor of Sheffield stated:

¹⁷ <https://twitter.com/claireperrympp/status/1096350278142644224>

¹⁸ <https://uk.news.yahoo.com/headteachers-back-pupil-strike-see-170048579.html>, Exhibit 8

¹⁹ “The Times view on pupils going on strike to protest against climate change: The Young Ones - Schoolchildren are right to take time off lessons to get involved politically”, The Times, 16 February, 2019, Exhibit 9
<https://www.thetimes.co.uk/article/the-times-view-on-pupils-going-on-strike-to-protest-against-climate-change-the-young-ones-jg6zwqwz3>

"If any of your teachers threaten you with some sort of action or give you any hassle for going on strike. Let me know & I'll have a word, even if I have to come into your school!"²⁰

Already, the evidence is that the campaign of non-violent civil disobedience, modelled on Martin Luther King's civil rights movement, is working where other forms of protest have failed. The necessity of the campaign, and the fact that it is succeeding is raising the alarm, are now widely acknowledged, as reflected in the following articles in the mainstream media:

[*"Only rebellion will prevent an ecological apocalypse"*](#) (George Monbiot, *The Guardian*, 15 April, 2019)

[*"Extinction Rebellion protests have WORKED as MPs succumb to calls for change"*](#) (*Daily Express*, 25 April, 2019)

[*"Jeremy Corbyn forces MPs to vote on declaring climate emergency after Extinction Rebellion protests over political inaction"*](#) (*The Daily Mail*, 28 April, 2019)

[*"Extinction Rebellion's tactics are working. It has pierced the bubble of denial"*](#) (*Guardian*, 10 June 2019)

As already mentioned above, in direct response to the Extinction Rebellion protests, Parliament has now acknowledged the existence of a state of emergency:

[*"UK Parliament declares climate change emergency"*](#) (BBC, 1 May 2019)

On 9 May 2019, at Southwark Crown Court, 12 men and women, a cross-section of the public, found two XR activists not guilty of causing £7,000 worth of criminal damage. The activists admitted causing the damage but argued their actions were a proportionate response to the climate emergency. The public is on our side, because it's our common future.

F. Conclusion

²⁰ "Sheffield mayor will 'have a word' with any teachers who punish students for protesting climate change", *The Independent*, 16 February, 2019
https://www.independent.co.uk/news/uk/home-news/sheffield-mayor-magid-magid-climate-change-protest-strike-school-pupils-teachers-a8781621.html?amp&_twitter_impression=true&fbclid=IwAR3Up1hUh_A1PCyTNz4JP5gi1sxAO_endiolhGYAz7itwxeeSkXH2drO0qg

I accept the scientific evidence that we are on the brink of catastrophe. I do not wish to bury my head in the sand. I do not wish to wait until it's too late. If the court considers me a criminal for taking action then so be it. My conscience tells me it would be criminal to do nothing.

When I consider the unimaginable suffering that will occur without an urgent and radical change of course, I cannot stand by any longer.

Thank you for listening to me.

[YOUR NAME]

[YOUR SIGNATURE]

[DATE]