



MAJ. LAW

S O L I C I T O R S

Drink Driving Defences

M.A.J. Law are a market leading motoring defence practice. Our team of specialist solicitors have spent years fine-tuning unique case strategies and complex defence frameworks on a case-by-case basis. This booklet is not a complete list of drink driving defences but will outline the most common.

We do not intend to spill our trade secrets in this booklet. If you would like to know what defences apply to your case, please get in touch.

Identification

Defence available for;

- ✓ Drink Driving
- ✓ Failing to provide
- ✓ Drug Driving
- ✓ Drunk in charge
- ✓ Driving whilst unfit through drink or drugs

Identification is a crucial element of any criminal offence. The court must be certain that the accused is the individual who committed the offence. Identification must be proven beyond all reasonable doubt.

If the police witnessed you driving the vehicle, identification is unlikely to be contested by the defence. However, if you were not in the vehicle when the police arrived, even if you had previously driven the car, identification is likely to be 'in issue'. There is nothing stopping the defence from 'putting the prosecution to proof' on this element of the offence.

Circumstantial evidence of identification

Circumstantial evidence that usually exists;

- ✓ The vehicle was warm
- ✓ You were stood near or beside the vehicle
- ✓ The vehicle belongs to you
- ✓ You did not give an explanation as to why you were at that location

- ✓ A witness claims to have seen you driving the vehicle
- ✓ You made a roadside admission to an officer or witness

Circumstantial evidence is unlikely to be sufficient to prove, beyond doubt, that you had driven the vehicle.

Case example - R v. JW.

M.A.J. Law successfully defended an individual charged with drink driving following a vehicle collision with a number of parked cars. The driver of the vehicle had left the scene. Our client was located near to the collision. The police presented scientific evidence of our client's DNA on the driver's airbag.

In this case there was both forensic evidence (DNA) and circumstantial evidence (location of the defendant) that linked our client to the vehicle. However, the CPS failed to prove beyond doubt that our client had driven the vehicle at the time of the collision. On this basis, the prosecution case collapsed.

Procedure

Defence available for;

- ✓ Drink Driving
- ✓ Failing to provide
- ✓ Drug Driving
- ✓ Drunk in charge
- ✓ Driving whilst unfit through drink or drugs

You will know by know that if the police fail to adhere to statutory safeguards and mandatory procedures, the prosecution's case will fail. This is accepted by all parties.

We have discussed the MGDDA procedure on our dedicated [drink driving page](#).



When challenging procedure, we will need to obtain;

- CCTV of the custody checking-in procedure
- CCTV of the breath test procedure (if applicable)
- The relevant MGDD document/s
- Section 4 RTA Assessment Form (if charged with a Section 4 offence)
- Witness statements from the procedural officer

Case example - R. v CH.

In this case, the defendant (our client) was arrested after being found asleep in his vehicle. In the breath test room, the procedural officer explains what's going to happen and briefly how the machine works. Our client is then asked a number of questions relating to post driving consumption.

The officers begin to display some concern that the questions are taking too long to ask/answer and the machine might 'time-out' if the samples aren't collected soon.

At this point, our client is asked to stand-up and, upon request, provides two specimens of breath on the evidential device. At no point prior to this is the important legal warning provided.

After the two samples are provided the procedural officer realises her mistake and attempts to rectify this by repeating the whole procedure again, this time with the legal warning. You can see on the screen shots below that our client provides, in total, four separate specimens of breath.



Breath Specimen 1

01:34:22

Breath Specimen 2

01:37:31

Breath Specimen 3

01:46:09

Breath Specimen 4

01:49:20

The CPS dropped the case after we forced them to consider the CCTV.



Private Land

Defence available for;

- ✓ Drink Driving
- ✓ Drug Driving
- ✓ Drunk in charge
- ✓ Driving whilst unfit through drink or drugs

The offences listed above can only take place on a road or public place. If the 'incident' occurred on private property, the court cannot convict you.

The police will often claim that a location is public if the public have unrestricted access to it. This is not correct. The public may have open access to your driveway, but this will not make your driveway a public place.

In order for the CPS to prove, beyond doubt, that the location is public, they must show - firstly - that the public use that location as ordinary members of the public (and not a special class of people with a particular interest in that location) and - secondly - that they did this with the permission of the owner of the land (the proprietor).

Case example - R. v PG.

Our client - a student - collided with a bollard on a university campus. The public had direct access to the campus and would often use the 'through road' as a shortcut. Despite this, the CPS failed to prove that ordinary members of the public used that particular location with the permission of the proprietor.

The magistrates' found our client Not Guilty.

Reasonable excuse

Defence available for;

- ✓ Failing to provide a specimen of breath, blood or urine

Reasonable excuse is your reason and your excuse for failing to provide a specimen. More information regarding 'reasonable excuse' can be found on our dedicated [Failing to Provide a Specimen page](#).

The obligation falls on the defence to establish an 'evidential basis'. This can be done by obtaining favourable expert evidence. Once this threshold is achieved, the CPS must disprove our defence to the criminal standard - beyond all reasonable doubt. This can be particularly difficult, mostly because the CPS don't have the funds or resources to instruct its own independent expert.

Case example - R. v RP.

Mr P was a teacher with no previous convictions. It was alleged by the prosecution that he had failed, without reasonable excuse, to provide two specimens of breath for analysis, contrary to Section 7(3) Road Traffic Act 1988. The penalty for this offence is a mandatory disqualification and, in some circumstances, a prison sentence.

Mr P suffered from anxiety and depression. He found the police station to be a frightening experience. So much so that it triggered a panic attack. The CCTV was provided but did not appear to show Mr P panicking in anyway whatsoever. On this basis, any expert evidence would be unfavourable.

We then identified recent case law which allowed us to rely simply on a letter from his G.P confirming that, in adverse situations, he may suffer with a panic attack. Panic attacks can manifest themselves as shortness of breath, an increased heart rate etc...

This letter was presented to the magistrates with a detailed explanation of the relevant case law. The court found that the defence had satisfied the 'evidential basis'. The prosecution failed to disprove the defence beyond all reasonable doubt.

Post Driving Consumption (the hip flask defence)

Defence available for;

- ✓ Drink Driving
- ✓ Drunk in charge
- ✓ Drug Driving

It is a statutory defence if you consumed alcohol (or drugs) after driving the vehicle (or being in charge of it) but before the evidential test. The most common situation where this defence may arise is following a road traffic accident (where an individual may consume alcohol or drugs to calm their nerves).

It does not matter where the alcohol was consumed from or in what form.

The obligation falls on the defence to prove, on a balance of probabilities, that you would not have been over the prescribed limit at the time of the alleged offence. We must also show that the stated alcohol intake could account for the evidential breath reading provided. Once the defence have discharged this burden of proof, the CPS must then disprove it beyond all reasonable doubt.

Expert evidence will be crucial. M.A.J. Law work closely with a number of highly respected expert witnesses, toxicologists and forensic scientists. The expert producing the report will consider all the factors that will affect alcohol elimination and absorption (such as height, weight, age etc...). They will then conduct a "Back Calculation" to determine the levels of alcohol in your body at the time of driving had the 'post driving' alcohol not been consumed. This will usually be presented in a Section 9 Report (Criminal Justice Act 1967).

Post driving consumption is a very common defence and must be handled correctly. The courts are growing increasingly suspicious of those who claim to have consumed unbelievable amounts of alcohol after driving for no apparent reason. The success of this defence will often rest on the credibility of the individual relying on it.

Special Reasons



A 'special reason' is not a defence but does give the court discretion not to impose a disqualification. A guilty plea must be entered to the offence before a 'special reason' argument can be advanced.

- ✓ Driving in an emergency
- ✓ Short distance driven
- ✓ Spiked drinks
- ✓ Reflux

Take a look at our '[Special Reasons](#)' [page](#) for more information.

Worried about court?

You will probably be aware that we have a great deal of success in defending drink and drug driving cases. In fact, many of our cases are won before going to trial. This is because the CPS has an on-going duty to review cases. If, at any stage throughout the proceedings, the CPS feel as though there is no realistic prospect of a conviction, it cannot continue with the prosecution. Our aim when challenging drink and drug driving cases is to satisfy this test and persuade the CPS to throw your case out. M.A.J. Law have, on average, one drink driving case dropped every day.

Drink driving defences can be complex and confusing. Some defences may not apply to your circumstances. We would always advise speaking to a member of our team who can discuss your specific case in detail.

To discuss your options with a member of our team, please call

0151 422 8020

or request a call back by visiting our website
