

Answers to problem solving questions

Outline Answer

Issues: Murder, criminal damage, unfitness to plead, insanity, automatism, intoxication. (Burglary will not be discussed. D had a key and may therefore not have been trespassing.)

Offences: Murder – define AR/MR.

Criminal damage – define AR/MR.

Classify them as either basic or specific intent offences (relevant to intoxication:

See 8.3.4).

Defences: You should be able to identify each defence, explain the legal tests and burden of proof and apply all relevant defences. Go through each, one at a time. At the end, assess the relative advantages/disadvantages of each. Conclude which is the most likely to succeed and which would be most advisable or beneficial to D.

Fitness to plead: (See 8.1.1) Is D able to understand and participate in the proceedings (M)? He appears to be delusional but that should not automatically exclude him from the right to challenge the case and put his defence. The procedure is governed by s4 Insanity & Unfitness to Plead Act 1964. The trial should proceed no further. Arguments will be put before a judge sitting alone who determines, on the basis of evidence of two medical practitioners, whether or not D is suffering from a disability. If so, a trial of the facts takes place and D will be either acquitted or sentenced.

Defences to murder at trial:

1. **Insanity/Automatism: (See: 8.1.2)** A plea of involuntary action.

Define both: insanity (*M'Naghten, Kemp/Bratty*) (8.1.3); automatism (*Bratty/Sullivan*) (8.2.2).

Is the cause of D's unconscious involuntary killing internal or external (*Quick/Sullivan*)? Evidence of both can be seen:

- **Internal (Insanity) (8.1.3):** delusion re God (*schizophrenia*)
sleepwalking (*Burgess*) but some Canadian
authorities hold that this need not be internally caused;
fits/epilepsy (*Sullivan*)
depression (*Hennessy*)
- **External (Automatism) (8.2):** Post-traumatic stress due to armed active service: an extraordinary event as in *Re T*?
Head injuries (*L. Denning in Bratty*) (8.1.3)
Relationship break-down (*unlikely, not extraordinary: Hennessy*)
Alcohol/medication/valium – but this could lead to the argument that automatism is self-induced (8.2.5) in which case it will only be a defence to a crime of specific intent (i.e.: murder) if intention is lacking (*Bailey*) but not to a crime of basic intent (i.e.: manslaughter) (*Quick*) for D will have been reckless unless he did not know that drinking alcohol whilst taking medication was

medically inadvisable (*Hardie*) (8.3.7).

You would need to explain the tests of each defence by reference to underlying legal principles and authorities and all other differences between insanity and automatism such as the burden of proof, verdict, etc. Given that the courts will be concerned to protect the public from an offender with a propensity to violence, especially given his underlying schizophrenic condition, they would probably classify the cause of D's involuntariness as internal and therefore insanity. The court should not order compulsory indefinite detention in a mental hospital unless this can be justified under mental health legislation in compliance with Article 5, preferring instead either supervision or other forms of medical treatment.

If, on the other hand, D is found to have acted as an automaton due to external causes, he will be entitled to an unconditional acquittal. If the automatism is found to be self-induced, either due to voluntary intoxication or due to knowledge that this has happened before, he may still have a defence to murder (specific intent) as long as MR was lacking. The fact that he might have been reckless in taking the intoxicants will be insufficient to convict because murder requires intention (*Quick, Bailey*). The element of alcohol/medication may defeat the defence completely.

Automatism would clearly offer him the best chance of an acquittal but given the combination of serious internal incapacitating conditions, he is most likely to be found insane. He may not wish to plead insanity but the prosecution or judge may raise it. Intoxication is an alternative defence.

2. Intoxication: If taking alcohol is concurrent with all the other factors, it is more likely to be viewed as a case of intoxication (*Strip* (1979)). The question is whether it is voluntary (likely) or involuntary because of the combination of alcohol, medication and underlying medical condition (less likely).

Crucial question: did D have MR at the time of committing the AR of murder?

- If yes - guilty.
- If no, the outcome will depend on whether the offence is one of basic/specific intent and the type of intoxication:
- Murder = specific intent
- **Voluntary intoxication: *Majewski* (See 8.3.3 & 8.3.4)**
Majewski will provide a partial defence to reduce murder to manslaughter. But a drunken mistake that he was under attack from V will defeat the defence completely (*O'Grady, O'Connor, Hatton*) (8.3.8).
- **Involuntary: (See 8.3.6)** (alcohol plus unforeseen side effects of medication), D might have a complete defence. Dangerous drugs: an overdose of Valium is not generally known to produce aggression (*Bailey, Hardie*) (8.3.7). Even if D was *reckless* (i.e.: knew of the risk of aggression) this could not supply the necessary *intent* for a crime of specific intent. Therefore, provided D lacked intention, involuntary intoxication would provide a complete defence (*Kingston*).

3. Diminished responsibility. [Refer to chapter 6 for details. In an exam, you would also be expected to discuss whether D was suffering from an abnormality of mental functioning and whether his mental impairment for the killing was substantially impaired].

Defence to Criminal Damage:

Definition: AR/MR (*basic intent*) (Chapter 3)

1. **Insanity:** This plea might appear to be disproportional to the gravity of the offence for which only a minor sentence would be ordered. If successful for the reasons above it would confirm that a hospital detention order was justified in the first place. The offence was probably not immediately due to D's illness, except for the fact that he might not have been in V's flat at all had he not been ill.

2. **Automatism:** The cause of D's involuntary act appears to be external (sneezing) and he should be entitled to an acquittal on the basis of automatism (*Bratty*).

3. **Intoxication:** D appears to have no MR. With basic intent crimes, voluntary intoxication is no defence and D would be guilty (*Majewski*). Involuntary intoxication: provided MR was absent, D should have a complete defence (*Kingston*).

Automatism appears to be the most appropriate defence here.