Examination Questions and Answers

Question 1

Alice was an alcoholic and suffered from depression. She was chopping wood in the back garden one day when her partner, Burt, came home and told her that he had just been to the pub and had had sex with Mandy. Alice was frightened of Burt because he beat her whenever he was drunk but on this occasion she rushed at him with the chopper and hit him on the head twenty times. Burt fell to the ground and died instantly. Alice then went in search of Mandy. She found her in the pub and shouted, "I will teach you a lesson you'll never forget." Mandy replied, "I'm not afraid of you, you frigid moron. You are a pathetic old drunkard." Alice pulled a hammer from her pocket and hit Mandy on the head twice. Alice died from a fractured skull.

Discuss. How would your answer differ if neither Burt nor Mandy had been killed but were, instead, severely injured?

- *Murder – no issues as to either AR or MR (direct intent).*
- *Partial defences:*

1. *Loss of Control – both tests need to be identified and explained in respect of both victims.*

a. *Subjective test: Loss of self-control appears satisfied regarding Burt but it is doubtful now that, without more than a pure confession of infidelity, this alone will satisfy the qualifying trigger (Clinton). Mandy is taunted in the pub to which she immediately responds. However, she is pre-armed and this invites the question of whether the killing is planned and vengeful.*

b. *Objective test: She may lack ordinary self-restraint and tolerance. Would her characteristics of alcoholism and depression (possibly BWS) be relevant to either case? Statute follows Holley: no, unless relevant to the gravity of provocation. BWS is probably not excluded. But all characteristics may be considered relevant to the test of circumstances. Therefore, age, sex and BWS may well be admissible in the case of Burt possibly extending to A's alcoholism in the case of Mandy.*

2. *Diminished Responsibility*
   Amended tests need to be identified and explained. Provided there was psychiatric proof on a balance of probabilities of a recognized medical condition consisting of depression/BWS, possibly exacerbated by alcohol dependency syndrome, the defence might apply. Discussion of recent cases regarding the latter (Byrne, Ahluwalia, Dietschmann, Steward, Dowds). This will then need to substantially impair D's ability in one of the three specified ways and cause/contribute to the killing.

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- *If neither Burt nor Mandy had been killed, there would appear to be no defences.*

Question 2

Fahim and Aisha were husband and wife. Aisha had been injured in a car accident as a child and had suffered head injuries following which she developed an aggressive and moody personality. There were frequent fights between Fahim and Aisha and she had been prescribed medication for her nerves. One day, Aisha learned that Fahim was having an affair with Lucy. On confronting him, Fahim threatened that he would run Aisha over with the car if she did not stop moaning. After Fahim had gone to sleep that night, Aisha poured paraffin over his body and set fire to him. Fahim died the following morning.

Discuss.

- *Murder – no issues as to either AR or MR (direct intent).*
- *Partial defences:*
    - *Loss of Control:*
      Subjective test: there is evidence of loss of self-control due to a qualifying trigger in the form of the threat and domestic violence – cumulative provocation. Sexual infidelity is no longer relevant per se unless accompanied by additional provocative acts (Clinton).
      The need for immediacy has now gone but is the killing in premeditated revenge?
    - *Objective test: Aisha is not a person of ordinary self-restraint or tolerance. Would aggression, moodiness, and possibly BWS be admissible as relevant characteristics? Not unless relevant to the gravity of provocation, with the exception of BWS (Holley). But all may be relevant to 'circumstances.' Discussion of latest developments.*

2. *Diminished responsibility: Provided there was psychiatric proof on a balance of probabilities of a recognized medical condition related to mood swings/BWS the defence might apply. The evidence must prove that A's ability has been substantially impaired in one of the three specified ways and that any abnormality of mental functioning caused/contributed to the killing.*

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Question 3

Amy suffers from a rare disease for which she takes regular medication. She is blind in one eye and wears strong glasses. Over the years she has become profoundly depressed. Several months ago Amy began a relationship with David, a violent man whom she now fears. One day on the street, a youth named Roger makes a disparaging remark about her disability and shouts that David only goes out with her for sex. Amy stabs him through the heart ten times with a pair of scissors from her handbag. That night at home she pours paraffin over David whilst he is sleeping. Both David and Roger die the next morning.

Discuss.

- Murder of R & D: loss of control/diminished responsibility.
- Issues: Loss of control – Subjective test: the main issue relates to whether the killing of David is premeditated and in revenge. Objective test: the main issue relates to the relevance of her physical and mental characteristics in relation to the objective test requirement of ordinary tolerance and self-control.
- Diminished Responsibility – She clearly suffers from a recognized medical condition which appears to substantially impair her ability to exercise self-control and which must be at least a cause of the killing.

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