

Think box 8.1

Was Hennessy's driving offence violent or likely to recur as required by Bratty?

Answer guidance

Yes and no. The court considered that the conditions from which Hennessy suffered could not be considered to be external factors. These factors, taken together, constituted a state of mind which was prone to recur even though, taken separately they were not likely to result in violence.

Think box 8.2

If Burgess did not represent a continuing danger, why was it necessary to label him insane? Was this decision made on 'legal principle' or for reasons of 'public protection'? If D murders his father (V) whilst sleepwalking, having been provoked by V during the evening and having drunk an excessive amount of alcohol, should the cause of involuntary action be regarded as internal or external?

Answer guidance

One of the problems of a straight internal/external distinction is that many cases of involuntary action are caused by combinations of both. There is no clear answer to this although in *R v Lowe* (2005) March, Manchester Crown Court on similar facts D was found to be insane.

Think box 8.3

D commits a sexual assault on V whilst sleepwalking. He later claims to remember nothing about it. He suffers from anxiety due to a job-loss as well as relationship breakdown. Does he have a defence?

Answer guidance

Burgess: sleepwalking is due to an internal disease of the mind and therefore insanity. But Canadian and more recent English cases have allowed defences of automatism to result in acquittals.

The ordinary stresses and strains of life would be classified as an internal cause of involuntary action (Rabey) but extraordinary stresses due to an external cause would count as automatism (Re T). Could the car accident be an external cause and therefore automatism? Re T involved PTSD as a result of a very recent rape.

Think box 8.4

Would D succeed under the nature/quality limb of the insanity test?

1. D is under the delusion that God has told him to kill all prostitutes because they are evil. He kills six such young women.
2. D kills his daughter under the delusion that he is acting under divine authority which is superior to the law of the land.
3. D pulls out her daughter's teeth believing them to be possessed by the devil.
4. D is paranoid and believes that all shop-keepers are spying on him. He kills a butcher (V) believing that his life is under threat when he sees V chopping meat.
5. D believes he is cutting down a tree whereas he is chopping a neighbour to pieces.

Answer guidance

1. No. He knows he is killing people.
2. No. He knows he is killing a person.
3. No. She knows what she is doing for the purposes of malicious GBH.
4. No. D knows what he is doing.
5. Yes. He does not know what he is doing.

Think box 8.5

If the cognitive test for insanity had been one of moral wrongness, or ordinary standards of wrongness, do you think Windle's appeal would have been allowed? If Windle were to be charged with murder on the same facts today, what defence would you advise him to use?

Answer guidance

Diminished responsibility.

Think box 8.6

Look at the examples in Thinking point 8.4 above. Which of those might succeed under the alternative wrongness test?

For example, do they know whether: they are committing a legal wrong? (as strictly required by the law) OR Their actions would be justified by the delusion

(as seems to be the test in practice)?

Answer guidance

All but (a) could satisfy this test. They would all think their actions justified by their delusion. They would therefore pass this part of the test and in practice the defence might succeed.

Think box 8.7

On Monday, Diane, a diabetic, takes her insulin injection but is so busy at work that she has no time to eat properly. She becomes confused and throws her telephone at a work colleague when he asks her the time, injuring him.
On Tuesday, Diane is late for work and forgets to take her insulin. During the day, she becomes confused and throws her telephone at another work colleague when he asks her the time, injuring him. What defence/s does Diane have?

Answer guidance

Offence: Assault/battery/actual bodily harm. Defences:

Monday: Hypoglycaemia – external factor – insulin – automatism- acquittal unless D was at fault (i.e.: reckless) in taking a risk of aggressive behaviour by deliberately failing to eat, in which case: automatism would be self- induced (Quick) and no defence.

Tuesday: Hyperglycaemia – internal factor – disease of the mind (Hennessey) – insanity – a hospital/supervision order or possibly an absolute discharge.

Think box 8.8

D, a diabetic, fails to eat after taking insulin. Whilst disorientated, he commits a serious assault upon V1 as a result of which V1 is permanently disabled. He then punches V2 in the face, bruising him mildly. Does D have a defence?

Answer guidance

S18 = a crime of specific intent for which intention is required to be proved.

Assault/battery = a crime of basic intent (MR: intention or recklessness).

Automatism: D will have a complete defence to s18 if he lacks intention whether automatism is self-induced or not. He will have no defence to assault/battery if automatism is self-induced provided he has been reckless in failing to eat. If he was not aware of the risks of not eating, he will have a complete defence.

The cause of involuntary action falling short of automatism would be treated by the court as intoxication if caused by alcohol or dangerous drugs which insulin is not. Intoxication would provide a partial defence to a crime of specific intent and result in conviction of a lesser basic intent crime.

Think box 8.9

Will intoxication provide a defence?

Look at the scenarios below. What offence has D committed? Is it a crime of basic or specific intent? Will intoxication provide a defence?

After drinking eight double vodkas and six pints of beer, D does the following whilst blind drunk. Assume there is reasonable doubt as to MR:

In throwing beer over V, she accidentally lets go of the glass which hits V in the face and causes him to lose an eye;

- She picks up a chair and deliberately hits the barman over the head with it, causing his skull to fracture from which he later dies;
- She helps herself to £50 from the cash-till;
- She sets fire to the pub intending to injure the occupants.

Answer guidance

S18 OAPA 1861 (specific) will be reduced to s20 (basic).

Murder (specific) will be reduced to manslaughter (basic).

There is no basic intent equivalent to burglary/theft (specific). She will probably be acquitted.

Intentional criminal damage (specific) will be reduced to reckless criminal damage (basic).

Think box 8.10

1. Do you agree that intoxication should be no excuse for criminal behaviour?
2. If D's actions were involuntary and he pleaded automatism, the fundamental principle that one should not be convicted in the absence of MR would apply. Should an intoxicated D whose actions were involuntary be treated differently?
3. In your opinion, should it make any difference whether the offence is committed under the influence of 20 pints of beer or a cocktail of barbiturates, LSD and amphetamines?

Answer guidance

No distinction in law is made between the social and anti-social alcohol/drug taker.

Think box 8.11

- Acquittal or conviction can therefore depend on as little as two pints of lager!
Compare the following:
1. D has just been made redundant. On her way home from work, she assaults V in response to being jostled. She claims she lacked MR and over-reacted inadvertently because she was tired, worried, depressed and did not think properly.
 - Is assault a crime of basic or specific intent?
 - What MR would the prosecution need to prove for an assault?
 - Would they succeed in proving MR here?
 2. On the same facts, suppose D gave evidence that in addition to her emotional state she had also just had a couple of pints of lager before committing the assault.
 - Under Majewski, would the prosecution need to prove MR?
 - Will D be convicted or acquitted?

Answer guidance

1. Basic.
 - Intention/subjective recklessness, i.e.: foresight of the risk of harm.
 - Probably not. D should be acquitted.
2. Not for a crime of basic intent.
 - Convicted.

Think box 8.12

1. Would Gallagher have had any other defence to murder?
2. D plans to kill a rival (V) at the end of the week but V goes away for a month. D, whilst in a drunken state, unexpectedly meets V on his return. He kills V with a single stab to the heart. He later claims that he was so drunk as to lack MR. Will D have a defence?

Answer guidance

1. Diminished responsibility under s2 Homicide Act 1957 as amended by s52 Coroners and Justice Act 2009 provided there was proof of a recognized medical condition and substantial impairment of responsibility leading to an abnormality of mental functioning which at least contributed to the killing, and that he would have killed despite the intoxication (Dietschmann [2003] 2 WLR 613).

2. Gallagher would only apply if D became drunk in order to give himself courage for the crime. If the crime was planned at an earlier stage but was committed later and spontaneously, the usual Majewski rules on intoxication would apply, ie: Is the crime one of specific intent? Did D have MR? If yes, he is guilty of murder. If not, murder will be reduced to manslaughter.

Think box 8.13

D suffers a migraine attack and experiences visual disturbances. She accidentally takes some of her husband's tranquillizers instead of pain killers and feels worse. She abuses and kicks a child who rings the door bell to ask if she can retrieve her football from D's garden. D is frequently troubled by this child whose football games D regards as anti-social behaviour. Does D have a defence to assault and battery?

Answer guidance

Assault and battery are both crimes of basic intent for which the MR is intention or recklessness. Assuming the intoxication to be involuntary, D will have a defence provided she lacked MR at the time of the offence. The crucial question is whether D has MR? If yes - the intoxication is irrelevant. It would appear that she does and thus there is no defence.

Think box 8.14

1. Would intoxication from the following be classified as voluntary or involuntary?
- a. Insulin and alcohol, D being diabetic and having taken no food
 - b. Magic mushrooms
 - c. Valium
 - d. Crack
 - e. Cannabis.

Answer guidance

Is it generally known that each drug is likely to lead to aggression?

- If yes: intoxication is voluntary.
- If no: intoxication is involuntary UNLESS D has been reckless, in which case it is no defence to a crime of basic intent.

Voluntary intoxication: b, d and presumably e are known dangerous drugs (e - depending on the medical link between cannabis and violence).

Involuntary intoxication: a (unless since Bailey the risk of aggression is now better known) and c (Hardie). Either might be considered voluntary if D actually knew of the risk of aggression.

Think box 8.15

D, who has drunk six vodkas, commits the following mistakes. Will she have a defence? In each case:

- Identify the offence
- Is there a statutory defence? – mistaken belief is relevant
- Is there a common law defence? – mistaken belief is irrelevant

1. D kills V thinking that V is pointing a gun at her whereas it is in fact a stick.
2. D breaks into a neighbour's house (V) to turn off a persistently ringing burglar alarm, believing that V would not mind. The alarm is ringing from a different house.
3. D jokingly trips V up, causing V to break his wrist.

Answer guidance

1. Murder (specific intent), self-defence, common law, drunken mistake is irrelevant. D is guilty (O'Grady, O'Connor, Hatton).

2. Criminal damage (basic intent), reasonable belief/lawful excuse under s5(2) Criminal Damage Act 1971, drunken mistake is relevant. D will be acquitted provided she honestly believes in V's consent which will form the basis for the belief (Jaggard v Dickinson).

3. Causing actual bodily harm contrary to s47 OAPA 1861 (basic intent), consent-horseplay, drunken mistake generally irrelevant and D should be guilty (O'Grady, O'Connor, Hatton, Fotheringham) but if Richardson & Irwin is followed, D's honest mistake will negate recklessness and she will be acquitted.)

Think box 8.16

1. Do you consider that a child of 10-14 automatically has the same understanding, knowledge, ability to reason or knowledge of wrongfulness as an adult?
2. At what age do you consider a child/young person should be exposed to the full consequences of criminal activity?
3. Are criminal sanctions the answer to youth offending?

Answer guidance

1. Obviously, one cannot generalize about the maturity of children. Some will be more adult-like than others.
2. This is a matter of opinion.
3. Some countries, such as the Scandinavian countries, are far slower to criminalize children. You might have different views. Some might argue that exposure to the system will teach an offending child a lesson. Others might argue that poverty, home-life and social environment are the cause of the problems and that criminalization will not bring about improvement in behaviour.