

**Video transcript**  
**Video Tutorial (m): Denials of liability (chp 13)**

Hi! In this video we will discuss denial of liability. This is something that we deal within Chapter 13 of the textbook. So these are rules relating to intoxication to automatism and to some extent insanity.

Now, we split these issues that we call denials of liability: we split them from the chapter on the defences which is Chapter 14. Now first of all it's important to realize why we've done that. Because a lot of the time they are analysed together and you'll often see what we describe as denials of liability referred to by courts and academics as defences.

Now essentially the logic very basically is: a defence as we use the word in its technical form is where the defendant has committed an offence i.e. they've complete the actus reus and mens rea of an offence so therefore the offence is complete and they then choose to appeal to a separate set of rules in order to exculpate themselves, in order find the way out of liability. So you might say for example, yes, I killed the victim. I committed murder, or yes, I beat him up, I committed an offence against the person but I only did so in order to save my own life because he was attacking me with a knife. Therefore applying it to a defence or appealing even to the offence of self-defence. Now in contrast, the rules of denial of liability are precisely the opposite they don't accept that you commit an offence and appeal to a set pre-set of rules but rather their way of articulating your denial about the offence itself. So just as the defendant might say: I didn't commit a bank robbery because I was out of the country, therefore I deny that I completed actus reus, I deny that I have the mens rea. Equally, the defendant is extremely intoxicated they are using their intoxication to explain a lack of offending. They're saying I didn't intend to kill, for example, I was so drunk I wasn't able to intent to kill. I didn't foresee the risk of damage because I was so drunk or I was hallucinating with drugs such that I didn't foresee the risk of damage to somebody else's property. So in this way, denials of liability are exactly that. They're not defences in the sense of a separate set of rules used to exculpate but rather they're a set of rules that are designed around explaining why a defendant potentially has not committed an offence in the first place.

Now, with having identified that sort of difference that we using within the textbook it's next important to think about couple ways in which and denials of offence are important. The first one is as I've said is basically they provide a language in in order to explain a particular denial of offending. So, in the example I gave with intoxication the defendant is saying: I'm not liable for the offence, I lacked mens rea because I was so drunk or I was taking drugs or whatever it might be. In terms of automatism our defendant is saying I didn't commit the offence because I wasn't acting voluntarily, my conduct was involuntary in therefore I was incapable of committing an offence. And in relation to insanity as a denial of offending our defendant is saying I have a defective reason caused by disease of the mind which is caused me not to understand the nature quality of my actions, i.e. I didn't understand what I was doing I lacked mens rea and therefore I lack liability. So in

this way, denials of liability are a really useful way of, shorthand basically, of explaining a lack of offending but also when we are looking if the rules apply and don't apply, they're a very useful way of analysing what we mean by requiring voluntary conduct for crime. The rules of automatism in particular are very interesting to identify how much control we need of our bodies in order to say that we have acted voluntarily and therefore we are able of committing a crime as opposed to we acted involuntarily and therefore no crime is committed.

Now that's the first way as I say these rules are important but there is also a second way and that's the fact that far from being defences, actually these rules can be used to inculcate the defendant. They can be used to build liability where otherwise liability might have been lacking. This is most obvious in relation to the intoxication rules. So basically the intoxication rules as we described them in the textbook as they apply in case law, apply when the defendant says: I lacked mens rea because I was very drunk because I was intoxicated by some other drug. And what the legal rules say is: even though you lack mens rea, even though we recognise a lack of mens rea on that basis - if your crime was a basic intend offence if the drug you took was dangerous and you took it voluntarily we are going to use your prior fault, we are going to use that blameworthy choice to become intoxicated and we are going to use it to replace or substitute for lack of mens rea in order to construct liability where otherwise there would be none.

Now this use of prior fault in this way is very novel and it's novel to these denials of liability it can also happen although more rarely in relation to automatism where again, I'm explaining my lack of offending by saying: I wasn't in control of my body - but if we can look back to a prior blameworthy choice and where I knew, I foresaw that I would come in an automatic state and there was a risk of harm being caused then again we can use that prior fault to construct liability. And similarly for insanity, not so much in terms of reconstructing liability but where the insanity rules apply, the defendant is acquitted but it's a qualifying acquittal. You are not guilty by reason of insanity and there can be compulsory detention as one of the potential disposal orders.

So, in relation to each of these rules, intoxication, automatism, and insanity they are shorthands for denying offending but they are also roots to actually recreate liability or to lead to a qualified acquittal in relation to insanity. Now just as a final thought here there's a couple of things to remember. The first one is that these rules are not defences they are denials of offending as opposed to accepting an offence that has been committed and then appealing to a separate set of rules. Another reason why that is important, this is the second point is that these rules these denials liability can also be relevant when you're applying defences. So for example if you're applying the defence of self-defence but our defendant was intoxicated at the time, the fact of their intoxication will also be relevant to your analysis of defence just as it was relevant to the analysis of the offence. So keeping the separation of the two types can be useful and helpful when applying the law.

Thanks!