

Chapter 13: Denials of an offence

Problem Questions

Below is an example of a problem question and a worked answer. The answer is written in bullet-point form, highlighting how the structure for answering problem questions (discussed in the 'eye on assessment' section of every chapter) can be applied in this area. Remember that when you write your essays, you should use full prose (i.e., not bullet-points).

Paula has had a bad year, and decides to distract herself by experimenting with drugs.

On Monday, Paula takes a number of valium tablets (a sedative drug) in order to relax. Paula has had a bad reaction to valium in the past, but was advised by her doctor that it is unlikely to reoccur. Unfortunately, Paula has another bad reaction to the valium, which causes her to lose control and injure one of her close friends Barry.

On Tuesday, Paula takes a tab of LSD (a hallucinogenic drug). In her detached state, Paula believes that she is fighting terrorists determined to kill her and her family. In fact, Paula attacks and kills her neighbour Chris.

On Wednesday, Paula drinks a large quantity of alcohol. Losing her inhibitions, Paula decides to take revenge on one of her enemies (Jane). Paula goes to Jane's house and throws a stone through the window.

Discuss Paula's potential liability.

Introduction: Your introduction should make clear to your reader that you understand the main issues raised in the question. In this case the intoxication rules. You should also explain how you are going to structure your answer (eg, chronologically).

Step 1: The first potential criminal event arises where Paula (P) injures Barry (B).

Step 2: The most likely offence is a non-fatal offence against the person, the particular offence depending upon the degree of harm caused.

Step 3:

- Whatever degree of harm was caused by P, it seems that she lacks mens rea required for liability (i.e., she was not in control of her conduct). Therefore, she does not commit an offence unless her liability can be constructed with prior fault.
 - As the drug (valium) is non-dangerous, the intoxication rules will not reconstruct liability unless she was subjectively reckless as to becoming aggressive. Rather, the applicable rules will come from automatism. The question then becomes whether P's automatic state was caused by her prior fault?
 - This is unlikely on the facts, as P was acting in line with her doctor's advice.

Step 4: There are no applicable defences, and so they need not be discussed.

Step 5: It is unlikely that P will be liable for any offence as she lacked mens rea.

Step 1: The second potential criminal event arises where P kills Chris (C).

Step 2: The most likely offence will be murder.

Step 3: It is clear that P causes C's death, and that she intends to do so. Thus, the offence elements are satisfied.

Step 4: P is likely to raise the defence of self-defence on the basis that she honestly believed that she was acting to protect her life. Honest mistakes of this kind will not undermine the defence. However, it has been held that P cannot rely on an intoxicated mistake, and so she will not be able to rely on her hallucination. The defence will therefore fail.

Step 5: P is likely to be liable for murder.

Step 1: The final criminal event arises where P throws a stone through Jane's (J's) window.

Step 2: The most likely offence is criminal damage (section 1 of the Criminal Damage Act 1971).

Step 3: P clearly completes the actus reus. She also intends to commit the offence. P's intoxication is therefore irrelevant.

Step 4: There are no applicable defences, and so they need not be discussed.

Step 5: P is likely to be liable for criminal damage.

Conclusion: Your conclusion should briefly summarise where you have found/have not found liability. You may also comment briefly on the merits or otherwise of the law you have been applying.

Essay Questions

There are several areas of interest for essay-type questions in relation to denials of offending. For example, the fairness of using these rules to replace a lack of mens rea (e.g., intoxication and recklessness), Law Commission recommendations, the increasingly narrow definition of automatism, and so on.

Below is an example of an essay-type question, and a bullet-point plan for a possible answer. This is for illustration purposes only. When writing an essay of this kind yourself, there will usually be alternative ways you could structure your answer, alternative points of discussion that could be raised, and you would certainly be expected to write in full prose (ie, not in bullet-point form). The most important point to take from these plans is how they focus on identifying and discussing the debate within the question, not simply listing information about the relevant topic.

Is becoming voluntarily intoxicated equivalent in terms of moral blameworthiness to subjective recklessness? If not, what would/should this mean for the future of the intoxication rules in criminal law?

Introduction:

- This question involves two distinct parts, and both must be considered. This should be highlighted from the start, within your introduction.
- You should also explain to your reader how you are going to structure your essay.

Body of the essay:

- You need to explain (either here or in the introduction) what the question is talking about in terms of blameworthiness equivalence. It is basically the fact that the intoxication rules will (in general) replace a lack of recklessness (basic intent offence) but not a lack of intention (specific intent offence). Indeed, this approach has been authorised and formalised within the Law Commission's 2009 recommendations.
- Your first question is whether this equivalence is fair? This could lead to the consideration of:
 - The difference between the subjective foresight of a risk, and the objective foresight (at best) assumed within the intoxication rules;
 - The inconsistent application of this rule within the current law, and within the Law Commission's recommendations (e.g., intoxication can replace a lack of *intentional* movement);
 - This can be balanced, however, against the common intuition that drunkenness should not excuse (even where it leads to a lack of mens rea).
- The second question then asks you to assess the implications of the first. This may include:
 - Where you believe there is equivalence you may generally favour the current law and the Law Commission's proposals, although you might criticise the inconsistent application of the rule.
 - Where you do not believe there is equivalence you will be critical of the current law and the Law Commission's approach. From here you should

consider whether we want intoxication rules at all, and if (for example) the law would be better served by a specific intoxication offence.

Conclusion:

- Your conclusion should summarise your discussion and highlight, in general terms, where you think the law in this area should be reformed (if you believe it should be).