

Answers to self-test questions

Chapter 13

1. What is the age of criminal responsibility?

It is currently 10 in England and Wales.

2. What are the elements of insanity? Cite an authority for this.

The *M'Naghten Rules* govern the defence of insanity. The defence must prove that on a balance of probabilities, the defendant was suffering from a defect of reason caused by a disease of the mind, such that the defendant did not know the nature and quality of the act, or that he did not know that what he was doing was wrong.

3. What is a “disease of the mind”? Cite an authority.

A “disease of the mind” must affect the “mind”, rather than the brain in the physical sense. The disease must affect the ordinary mental faculties of reason, memory and understanding (*Kemp* (1957)).

In *Hennessy* (1989), Lord Lane CJ stated that disease of the mind, “...does not mean any disease of the brain. It means a disease which affects the proper functioning of the mind.”

Various conditions have been held to amount to a disease of the mind, including schizophrenia, epilepsy, sleepwalking and hyperglycaemia (diabetes).

4. When may a defendant plead non-insane automatism?

In *Bratty v Attorney-General for Northern Ireland* (1963), Lord Denning defined automatism as “an act which is done by the muscles without any control by the mind, such as a spasm, a reflex action or a convulsion; or an act done by a person who is not conscious of what he is doing, such as an act done whilst suffering from concussion or whilst sleepwalking.”

Where the defendant is compelled or forced to perform the *actus reus* due to some external factor, his conduct is involuntary. Such a defendant will have the defence of automatism (non-insane automatism) open to him if:

- (i) the defendant is not in control of his actions, or
- (ii) he is unaware of what he is doing.

5. What defence is available to a defendant who commits an offence whilst in a hypoglycaemic state?

Non-insane automatism: *Quick and Paddison* (1973)

6. What defence is available to a sleepwalking defendant?

Insanity: *Burgess* (1991)

7. Explain the key differences between insanity and automatism.

Insanity requires proof of an internal factor (a disease of the mind), while automatism is dependent upon some external factor acting upon the defendant at the time of the *actus reus*.

Where insanity is raised, the defence bear the burden of proving (on a balance of probabilities) the elements of insanity. However, if automatism is raised, the defence bear the evidential burden in relation to the defence, but the legal burden remains with the prosecution. Hence, the prosecution must prove (beyond reasonable doubt) that the defendant was not acting due to automatism.

8. Is self-induced automatism a defence?

If the defendant's state of automatism is self-induced, the defence of automatism may not be available to him. If the automatism is caused by the voluntary consumption of drink or drugs, the rules relating to the defence of intoxication apply.

9. Explain the rule in *DPP v Majewski* (1977).

Voluntary intoxication is no defence to a basic intent offence. However, a defendant may use evidence of his voluntary intoxication at the time of the offence to negate *the mens rea* of a specific intent offence.

10. When is mistake a defence?

Mistake as to the law is generally no defence. However, mistake may provide a defence in three scenarios:

- (i) where the mistake relates to civil law and negates the *mens rea* of the offence,
- (ii) where it relates to a fact and negates the *mens rea* of the offence, and
- (iii) where the mistake relates to a defence element.