

Answers to Exam questions

Chapter 13

Question 1

Jacques and Saul celebrate the end of their exams by attending a party at a friend's house. After several pints of beer, Jacques has sexual intercourse with Belinda in one of the bedrooms, believing that she is consenting. In fact, she was not consenting. Jacques falls asleep on the bed. Belinda's friend, Tomas, goes to the bedroom to confront Jacques about having sex with Belinda. Whilst sleepwalking, Jacques strikes Tomas over the head with a lamp, causing him serious injury. Saul is on antibiotics which mean that he should not drink alcohol. He drinks orange juice all night, but he tells a friend that he feels "a bit funny". Suddenly, Saul throws his glass of orange juice at a window, breaking the window and the glass. A friend encourages him to sit down and gets him a brandy to "calm his nerves". However, after drinking the brandy, Saul strikes his friend, believing that he is fighting off demons.

Discuss which defences may be available to Jacques and Saul.

Bullets

- This question requires consideration of the defences which might be available to Jacques and Saul.
- Jacques will be charged with the rape of Belinda. Although, subjectively, Jacques believes that Belinda is consenting, under the Sexual Offences Act 2003, that belief must be reasonable. The key issue here is whether Jacques may rely upon evidence of voluntary intoxication to negate the mens rea of this offence. Discuss the rule in the leading authority on voluntary intoxication: *DPP v Majewski* (1977). You should consider the approach of the Court of Appeal to the terms "specific intent" and "basic intent" in respect of sexual assault: see *Heard* (2007). This authority suggests that sexual assault and rape are offences of basic intent such that evidence of voluntary intoxication could not be relied upon to negate the mens rea.
- Jacques will be charged with an offence of GBH (either s.20 or s.18, OAPA 1861) in respect of striking Tomas. As he does this act while sleepwalking, the only defence which may be available to him is insanity: *Burgess* (1991). Consider the *M'Naghten Rules* (1843). The burden of proof will be on Jacques (see *DPP v Woolmington* (1935)) to prove that he was insane: that he was suffering from a defect of reason which was caused by a disease of the mind, and that he did not know the nature and quality of his act, or that he did not know that what he was doing was wrong.

- Saul will be charged with criminal damage of the window and glass (s.1(1), CDA 1971). He might be able to rely on evidence of his involuntary intoxication due to the antibiotics. He will only be involuntarily intoxicated if he took the prescription drugs in accordance with his prescription. He would be able to rely on his involuntary intoxication to negate his mens rea for the criminal damage: *Hardie* (1985). However, if he has the mens rea for the offence, he will be guilty because a drugged intent is still an intent: *Kingston* (1995). If Saul was reckless in taking the drugs, he will have no defence: see *Hardie* (1985).
- Saul will be charged with at least a battery in respect of striking his friend. As he has voluntarily consumed alcohol here, the rules relating to voluntary intoxication apply under *DPP v Majewski*. There will be no defence to a basic intent crime such as battery. You could discuss the case of *Lipman* (1970) on self-induced automatism.

Question 2

The law relating to intoxication is in need of reform because it is confusing, illogical and is not founded upon principles of criminal law.

To what extent do you agree with this statement? Give reasons for your answer

Bullets

- This question asks you to discuss the criticisms of the law relating to the law on intoxication. Address the question in your introduction. Is the law here confusing and illogical? Does it violate any principles of criminal law?
- You should then explain the distinction between involuntary intoxication and voluntary intoxication. Refer briefly to how the law deals with evidence of involuntary intoxication.
- In respect of voluntary intoxication, you will need to discuss the rule in *DPP v Majewski* (Lord Elwyn-Jones) and the distinction drawn between “specific intent” and “basic intent” offences. You could make reference to the first use of “specific intent” by Lord Birkenhead in *DPP v Beard* (1920).
- Consider the recent Court of Appeal decision of *Heard* (2007) and the approach taken to the terms “specific intent” and “basic intent” in that case.

- Discuss the criticisms of the decision of the House of Lords in *DPP v Majewski*, including the argument that the decision was too heavily based on policy considerations to the extent that it compromised fundamental principles of criminal law. Consider whether the decision imposes a presumption of recklessness on a defendant who is voluntarily intoxicated.
- Consider the argument that the decision in *DPP v Majewski* violates the maxim “actus non facit reum nisi mens sit rea”.
- Does the decision violate s.8, Criminal Justice Act 1967?
- Is the principle of coincidence of actus reus and mens rea compromised by the decision?
- Was the decision too heavily based upon policy considerations?
- Consider whether there are any alternative approaches that the courts might take. You might also mention the recent recommendations made by the Law Commission in the report published in 2009 on “Intoxication and Criminal Liability” (Law Com. No. 314) and the Draft Criminal Law (Intoxication) Bill. The Commission stated that there was a lack of clarity in the law and the use of the terms “specific intent” and “basic intent”. The Commission recommended clarifying the terminology in order to make it more “comprehensible, logical and consistent”.
- You should conclude by addressing the question directly and giving your opinion.