# Answer guidance

## Essay question:

The rules on intoxication as a negation of mens rea are arbitrary and in need of reform. Discuss.

## Key issues:

* Voluntary and involuntary intoxication
* Specific and basic intent - the rationale for distinguishing between different types of crime
* The effect of a successful claim that intoxication amounts to a denial of MR

## Key law

You will find relevant legal rules in:

* Chapter 6, section 6
* *DPP v Majewski* (section 6.3.2)
* *DPP v Heard* – definition of specific intent (section 6.3.4)
* Involuntary intoxication: *R v Kingston* (section 6.3.7)
* *Hardie* - unexpected effects of drugs (section 6.3.8)
* *Gallagher* – ‘Dutch’ courage (section 6.3.5)

## Key arguments

Arguments that the rules are satisfactory

* Discussion of the rationale – the courts’ role of public protection and in dealing with crimes committed under the influence of alcohol and drugs, including cost
* Fair that recklessness in deciding to drink/take drugs can amount to sufficient mens rea for a crime
* The rule in *Kingston* – a drunken intent is still an intent – supports the rule that mens rea must be established

Arguments that the rules are in need of reform:

* Unfairness to the defendant – mens rea should be fully established before convicting a person of a serious criminal offence
* Arbitrary distinction between crimes of specific and basic intent
* Rules are complex and difficult to apply
* *Majewski* ignores the general principles that the prosecution must prove MR and that AR and MR must coincide and attributes a general rather than a legal understanding of recklessness to the rules.

## Hints:

* Summarise the key law before considering the arguments
* Refer to the academic literature (see further reading) as well as the legal authorities (e.g. Law Commission recommendations for reform).
* Make sure that you are answering the question asked - not writing a general essay on intoxication. You should avoid description and instead focus on arguments which either agree or disagree with the statement in the question.