# Answer guidance

## Question:

D is a soldier just returned from war where he was on active service. His unit was involved in a serious armed confrontation three months ago in which D sustained head injuries. Since then, he has had nightmares, depression and frequent seizures for which he takes medication. D’s relationship with V has just ended because V could no longer tolerate D’s mood swings. One night after drinking alcohol and taking a double dose of Valium, D gets out of bed whilst in a dream and drives to V’s flat where he lets himself in with a key. D sees V in bed. Thinking she is about to attack him, he smothers her with a pillow, killing her. On his way out, D comes to his senses but as he is about to leave, he sneezes violently and knocks a valuable vase on to the floor, breaking it. He then drives to the nearest police station, giving himself up. At his trial he informs his barrister that aliens from space inserted a micro-chip into his ear last year so that God could give him orders as to when to kill V.

Does D have any defence/s to the crimes in this scenario?

## Key issues:

Identify the offences and potential defences:

* Murder
* Criminal damage
* Automatism
* Intoxication – is the intoxication voluntary or involuntary? Specific and basic intent
* Diminished responsibility
* Unfitness to plead
* Insanity

## Key law

You will find the relevant law here:

* Common law definition of murder – Chapter 4, section 4.1.1
* Criminal Damage - Chapter 11, section 11.4
* Fitness to Plead section 6.1.1
* Insanity - section 6.1.1; *Kemp*, *Burgess*, *Sullivan* on disease of the mind
* Automatism – the external and internal divide and the distinction from insanity (section 6.4)
* Voluntary intoxication – *Majewski* – the distinction between basic and specific intent (section 6.3)
* Involuntary intoxication, section 6.3.3 (*Kingston*)

## Hints:

* Identify each defence, explain the legal tests and burden of proof. Go through each, one at a time. At the end, assess the relative advantages/disadvantages of each. Conclude which is the most likely to succeed and which would be most advisable or beneficial to D. Given that the courts will be concerned to protect the public from an offender with a propensity to violence, especially given his underlying schizophrenic condition, they would probably classify the cause of D’s involuntariness as internal and therefore insanity.
* Remember that even though there is evidence of delusion this does not always mean that D is unfit to plead and challenge his case.
* Don’t forget that if the automatism is self-induced this may prevent an automatism defence. Explain the differences between the two defences including verdict etc.
* Voluntary intoxication may be more appropriate than automatism when there is a combination of medical condition and voluntary ingestion.
* Remember to distinguish between the two offences – and explain specific and basic intent.