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Silence in this Lecture

Please turn off your mobile
PRECIS NOTES WILL BE CHECKED
Raise your hand if you have a question

**No Food or Drink in this
Classroom**
Please place any litter in the bin.

1

Insanity

- Should someone who is insane and kills – while she is completely unaware of her actions – be branded as a criminal?

**Should they go to prison or
hospital?**

**Did Dr Shipman display all the
characteristics of a sane person?**

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Insanity

- Governed by **Criminal Procedure (Insanity and Unfitness to Plead) Act 1991**

This permits a wide range of disposals to be made when D is found to have committed the crime, but also found to be insane.

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Insanity

- **If the crime is murder** – treatment and hospital order without limitation of time **MUST** be imposed.
- **In other cases** – court can impose a hospital order (time limited), guardianship order, supervision and treatment order or an absolute discharge.

**See Samurai sword story of Eden
Strang**

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Insanity before the trial

- If a person is in custody and obviously insane – the Home Secretary has power to detain him immediately in a mental hospital – so long as two doctor's confirm his state of mind

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Unfit to plead

- If D cannot appreciate the significance of the trial due to his mental or physical state he may be found unfit to plead.

'Royal Committee on Capital Punishment' recommended D should have the benefit of a full trial where possible.

In **Podola [1960]** even though D could not remember anything about the crime (due to amnesia) the trial proceeded because – in all other respects – D was sane.

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Procedure at trial

- Q of unfitness to plead can be made by defence, prosecution or the judge.
- He may be unable to appreciate the plea or to instruct his defence.

If Judge considers this has merit a special jury is empanelled to hear evidence from two doctors (one approved by the Home Secretary as having special expertise) and decide upon the matter.

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Procedure at trial

- Amendments to the Criminal Procedure (Insanity) Act 1964 now provide that the jury must also decide whether – on the available evidence – D actually committed the offence.

If Jury decide that D did not commit the offence – he is free to go.

Defence could also make the prosecution put its case before claiming unfitness to plead.

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Procedure at trial

- In **Antoine [2000]** a special jury decided D was unfit to plead because of insanity. Another jury was then called to determine whether D had done the Murder he was charged with. His lawyers then sought to claim 'Diminished Responsibility' as a defence under **s.2 Homicide Act 1957**.

Antoine [2001]
continued on next
slide...

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Procedure at trial – Antoine

- What do you think happened?

Case reached H of L who held that Diminished Responsibility could not be brought up since it is only available as a limited defence to murder.

In a case of unfitness to plead, the first jury had decided that a trial for murder cannot go ahead. If second jury determines D did the act – there is no conviction.

Antoine [2001] continued
on next slide...

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Procedure at trial – Antoine

The H of L also concluded that **when deciding if a D had committed the *actus reus*** the defences of mistake, accident, self-defence or involuntariness could be brought up.

Would these latter comments of the House of Lords be binding or persuasive in a similar case?

Differentiation:
Read the Antoine case
note from the H of L

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Insanity at the time the crime was committed

This is a completely different issue. The defence, prosecution or, on rare occasions, the Judge can claim that D was insane at the time he committed the illegal act in question.

The **M’Naghten Rules [1843]** apply and if D is determined to be insane **s2 of the Trial of Lunatics Act [1883]** applies and D is found not guilty by reason of Insanity.

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Insane at time of offence – hospitalisation

- If D is held to be insane an order - as discussed earlier - will be given. **Read - ‘Deal with Jesus’ led to bomber’s hate campaign – page 201 of the ‘Criminal Law’ textbook by Diana Roe.**

If the crime is murder, Judge is required to commit to a mental hospital at the discretion of the Home Secretary

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M’Naghten Rules

- M’Naghten tried to kill the then PM – Sir Robert Peel, but instead shot and killed the PM’s secretary. M’Naghten was found not guilty on the grounds he was insane.

This caused an outcry. So **the H of L consulted with all the judges and**, from the responses to a series of questions, **produced the M’Naghten Rules ...**

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M’Naghten Rules

- A person is presumed sane and responsible for his crimes unless it can be proved that, at the time of the offence.

He was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong.

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M’Naghten Rules

- The burden of proof on the defendant, who must prove his own insanity on the balance of probability.

Three stages in proving the defence of insanity.

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Three stages in proving the defence of insanity.

1. **D must prove he is suffering a defect of reason.**
2. **The defect must be caused by a disease of the mind.**
3. **The defect has meant that D did not know what he was doing, or if he did, he did not know that his act was wrong**

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1. Defect of reason

- The courts have decided this means a complete loss of the power of reasoning, **NOT** mere confusion or absent mindedness

Students should make notes on the case of Clarke [1972] – what is the relevance and logic behind the case?

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2. Disease of the mind

- Judges make the decision as to what constitutes disease of the mind (not a medical decision).
- Over the years decided the term disease of the mind not merely confined to diseases of the brain, but any malfunctioning of the mind caused by an **INSIDE** source will be included.

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2. Disease of the mind

- In Kemp [1957] the C of A stated that the law:

Is not concerned with the brain but with the mind, in the sense that 'mind' is ordinarily used, the mental facilities of reason, memory and understanding.

It might come as a surprise to learn that epilepsy, diabetes and the effects of a brain tumour can also lead to a finding of insanity

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2. Disease of the mind

- In Bratty v Attn Gen for Nth Ireland [1963] **Lord Denning** affirmed that the question of insanity could be raised by the prosecution or defence.

Lord Denning also stated that conditions such as epilepsy and cerebral tumours could come under the definition of disease of the mind (this disapproving of Charlson [1955] where a contrary view existed).

This was confirmed by H of L in Sullivan [1984] – read and take notes.

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2. Disease of the mind

- **Difference between hyperglycaemia and hypoglycaemia**

If D alleges he only committed a crime because of disorientation and aggression arising from **diabetes** the courts take one of **two approaches**.

Hyperglycaemia - If D forgets to take his insulin and gets a high blood sugar level – resulting in a criminal act - this is seen as deriving from the diabetes and is **classed as a disease of the mind**.

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2. Disease of the mind or non-insane automatism?

- **Hypoglycaemia** - If D takes too much insulin - resulting in a too low blood sugar and a consequential criminal act - the courts take the view that this is due to an outside source (the insulin) which does not fall within the M'Naghten Rules.

This is classed as defence of non-insane automatism which – if successful – results in a full acquittal. **Read/Produce Case Notes: Hennessy [1989] and Quick [1973].**

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Disease of the mind - sleepwalking

- In **Burgess [1991]** the accused attacked his friend while she had fallen asleep watching TV.
- Burgess hit her over the head with a bottle and video recorder and tried to strangle her. When she cried out he came to his senses and voluntarily called for an ambulance.

Guilty or Innocent?

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2. Disease of the Mind - Sleepwalking

- At trial Burgess argued automatism and the judge argued it suggested insanity under **M'Naghten Rules**. **C of A upheld verdict – not guilty by reason of insanity.**

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3. M'Naghten Rules – not knowing what one is doing

- The Rules require that D is unaware of what he is doing, or if he does understand this, he fails to appreciate that he is doing something wrong.

Where do the cases of **Kemp [1957]**, **Burgess [1991]**, **Codere [1916]** and **Windle [1952]** fit into the rules?

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Non-insane automatism

- The essence of the defence is that D's actions are completely involuntary. Involuntary acts done after a blow to the head, or reflex actions like being attacked by a swarm of bees, were examples given in the case of **Hill v Baxter [1958]**

In **Bratty [1963]** Lord Denning stated the defence was limited to reflex actions, acts done in a spasm or acts while unconscious.

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Non-insane automatism

- In **T [1990]** it was accepted that post traumatic stress from a rape fell within the scope of automatism.
- **Lookup this case in a textbook – do you agree?**

In **Whoolley [1997]** sneezing was accepted as a defence to a charge of dangerous driving. D had lost control of his HGV and crashed into a car in front, which in turn hit another car etc etc.

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Limits on the defence of automatism

- In **Broome v Perkins [1987]** the defence of automatism not allowed to a person suffering from diabetes who still had some control over the vehicle. This was re-affirmed in **AG's Reference (No 2 of 1992) [1993]**.

Read and take notes on the case of **Bailey [1983]** - use a 'Criminal Law Cases and Materials' Book.

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In class ...

- Undertake the Activity –on page 176 and then 183 of ‘Criminal Law for A2’ by Jacqueline Martin.

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Reform of insanity

- Produce a detailed essay plan (or an essay) ...

‘The M’Naghten rules produce so many anomalies they are in urgent need of reform.’

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