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Voluntary Manslaughter

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PRECIS NOTES WILL BE CHECKED

Voluntary Manslaughter

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- This crime is similar to murder, but here special circumstances exist which permit the less serious verdict of manslaughter to be brought in.
- Thus, the verdict of voluntary manslaughter will only arise from a charge of murder to which a *special and partial defence* has been pleaded.

Q - What is the significance to D of successfully pleading a special and partial defence?

Homicide Act 1957

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● The defences are contained in sections 2, 3 & 4 of the Homicide Act 1957.

● **The special defences are:**

- (s.2) Diminished Responsibility
- (s.3) Provocation
- (s.4) Survivor of a Suicide Pact

NOTE that these defences are only applicable to the crime of murder and that, if successful, they only reduce the charge from murder to manslaughter.

Diminished Responsibility

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S.2(1) Homicide Act 1957:

- There must be an abnormality of the mind, which
- Must arise from an inside source, and
- Must substantially affect D's mental responsibility for his actions.

The defence must establish all THREE elements (use as sub-headings in any essay) **before D can avoid a murder conviction.**

Abnormality of mind

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- D will have to prove his abnormality of mind on a balance of probabilities and generally he must be the one to raise the defence; s.2(2)

An 'abnormality of the mind' **6**

- This is the state of mind that a reasonable man would find abnormal; thus it is up to the jury to decide this.
- The term abnormality of mind '*includes a lack of ability to form a rational judgment or exercise the necessary will power to control one's acts*' - Byrne 1960
- This is much wider than insanity ...

Caused by an inside source **7**

- D's abnormality of mind must be caused by:
- • A condition of arrested or retarded development of mind; or
 - • Any inherent cause; or
 - • Induced by disease; or
 - • Induced by injury

Caused by an inside source **8**

- The abnormality does not have to be permanent, provided that it existed at the time of the killing and that it substantially diminished D's responsibility.

Any inherent/inside source **9**

- The word 'inherent' does not require that the condition be an inherited one. The following have all been accepted as inherent causes:

Break into small Law Firms to research and present the following cases ...

Induced by ... **10**

- **Induced by disease** - This covers mental, as well as physical, diseases; Sanderson 1993.
- **Induced by injury** - This would include physical blows to the head, e.g. that left D suffering brain damage.

Apart from physical violence, what else could cause an 'injury' within the meaning of s.2?

In Law firms research ... **11**

- • Psychopathy: Byrne 1960
- • Paranoia: Martin 2001
- • Epilepsy: Campbell 1997
- • Depression: Seers 1984; Gittens 1984
- • 'Battered Woman Syndrome' (since 1994): Aluwahlia 1992; Thornton (No 2) 1995; Hobson 1998

Which substantially affected D's mental responsibility 12

D's abnormality of the mind must be substantially greater than would have been experienced by an ordinary person.

- The impairment need not be total but must be more than trivial or minimal: Lloyd 1967
- The jury will decide this after listening to the evidence of doctors: Sanders 1991 - Campbell 1997

Intoxication ... 13

S.2 states that the abnormality of the mind must come from an 'inside source'.

- Thus, evidence of intoxication caused by drinking or drug-taking cannot be put forward for this defence unless the drinking/drug-taking has actually damaged the mind itself.

There are 2 distinct situations to consider ...

Intoxication ... 14

- (1) D killed whilst intoxicated *and* whilst suffering some unrelated 'abnormality of mind'.
- (2) D killed whilst suffering an 'abnormality of mind' *caused by* intoxication.

We will now consider each of these ...

D was intoxicated and was also suffering some unrelated 'abnormality of mind'. **15**

- A plea of DR may not be supported with evidence of intoxication.
- The jury should disregard the effect of the alcohol/drugs and consider whether D, had he been sober, would still be suffering from an abnormality of mind according to s.2. See Gittens 1985 - O'Connell 1997

D was intoxicated and was also suffering some unrelated 'abnormality of mind'. **16**

- The vital question is thus whether D's abnormality of mind was such '*that he would have been under diminished responsibility, drink or no drink*' : Egan 1992; Dietschmann 2002

D was suffering an 'abnormality of mind' caused by intoxication **17**

- If D's long-term alcohol/ drug abuse has actually damaged the mind itself, this may amount to an 'injury' within s.2 - Tandy 1989.

What was the ratio of the C of A in Tandy 1989?

Medical evidence ...

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- Note that medical evidence is crucial to the defence of DR. If there is strong medical evidence for the defence but the jury ignores it, the C of A may quash a murder conviction and substitute one of manslaughter: Matheson 1958.

Possible Reform of Diminished Responsibility

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- The Draft Criminal Code wishes to revise the wording of this defence to: “*such mental abnormality as would be substantial enough to reduce the charge of murder to manslaughter*”.

Possible Reform of Diminished Responsibility

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- Note that the burden of proof would be transferred from the defence to the prosecution, although evidence must be provided first. Also there would no longer any requirement that the mental abnormality stem from any specified cause.

To date, however, there are no immediate plans to put this change into effect.

Provocation ...

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Provocation existed at common law before the law in this area was modified by s.3 Homicide Act 1957.

- For this defence to be successful, THREE elements must be satisfied (establish sub-headings for each in any essay):

Provocation ...

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- (1) There has to be evidence that D was provoked
- (2) D must then have lost his self-control
- (3) The jury must be satisfied that a reasonable man might have acted in a similar way.

Evidence of Provocation ...

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Initially, the judge must decide if there is enough evidence of provocation to put before the jury.

- Under s.3, provocation simply has to be something 'done' or 'said' and may come from or be directed at third parties - Doughty 1986

Evidence of provocation ... 24

- Davies 1975: D was provoked by his wife's lover into shooting his wife.
- Pearson 1992: D was provoked by his father's abusive treatment of D's brother into killing the father with a sledgehammer.

Self-induced Provocation ... 25

To stop the possibility of a later appeal, D should usually be given the benefit of the doubt.

- This even includes cases where D himself has started the trouble; Johnson 1989

Self-induced Provocation ... 26

Note that the question whether D had lost his self-control at the time of the killing is one for the *jury*. The judge's task is simply whether there is *evidence* that D lost his self-control - Baile 1995

The failure to put the issue of possible provocation to the jury can be a 'material misdirection' - Cambridge 1994

D must have lost his self-control

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D must show that the provocation affected him so strongly that he then lost his self-control. This is a subjective test.

- See Lord Devlin's definition of provocation in Duffy 1949.

Loss of self-control ...

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The *Duffy test* was approved by the C of A in Ibrams and Gregory 1981.

- Revenge, rather than provocation, was said to be the reason for the crime in this case. Why is the notion of revenge inconsistent with the defence of provocation?

Why is the notion of revenge inconsistent with the defence of provocation?

A cooling-off period?

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D will have difficulty in successfully pleading provocation if s/he has waited some time before acting.

- See Duffy 1949 - Thornton 1992 and Ahluwalia 1992

A cooling-off period?

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Despite apparent unfairness, the courts in domestic violence cases have consistently upheld the *Duffy test*, which requires a 'sudden and temporary loss of self-control'.

Would a reasonable man have acted in a similar way?

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- The jury must be satisfied that a reasonable man might also have lost his self-control if subjected to the same provocation.
- At common law, this was a purely objective test; Bedder v DPP 1954

Would a reasonable man have acted in similar way?

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- This test was modified by the H of L in the leading case of DPP v Camplin 1978
- Thus, the question for the jury is now whether a reasonable man *with the same characteristics as the accused* would have acted in the same way.

Mental characteristics ... 33

- The question as to which 'characteristics' may be taken into account has caused confusion among both judges and juries.
- Initially, the C of A held that the jury should only take into account permanent characteristics and ones that actually relate to the provocation; Newell 1980

See next slide for a change ...

Which characteristics? 34

- However, this statement no longer represents the law. In a more liberal approach, the courts have allowed mental characteristics to be attributed to the reasonable man - see Ahluwalia 1992 - Dryden 1995 and Humphreys 1995

Temporary and self-Induced characteristics ... 35

- Generally, a transient state of mind, e.g. intoxication will not amount to a 'characteristic'. However, the H of L has indicated that the jury should look at the 'entire factual situation' when considering the gravity of the provocation - Morhall 1996

Temporary and self-Induced characteristics ...

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The H of L identified two different situations:

- Where D is taunted about an addiction he possesses and who then loses his self-control; and
- Where D loses his self-control more readily because of his intoxicated state.

The relevance of D's characteristics ...

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- The Privy Council held in Luc Thiet Thuan 1997 that while characteristics were admissible in assessing the *gravity of the provocation*, they were irrelevant when assessing the *power of self-control* to be expected.
- However, the H of L later confirmed that the objective test cannot be divided up in this way; Smith 2000.

Important new cases ...

- Read and take notes on the case of Smith, (Morgan James) [2000], Holley [2005], and Mohammed [2005].
- What is the current law on the characteristics needed for provocation?

The survivor of a suicide pact ...

- S.4(1) Homicide Act 1957: If 2+ people enter into a suicide pact and one of them survives, that survivor maybe charged with manslaughter, not murder.
- S.4 will not be of assistance to those who are asked to assist in another's suicide but do not intend to die themselves - Pretty v DPP 2001

Break into law firms ...

- Following *Smith*, what is the current state of the law as to which of D's characteristics are relevant (see D Roe - Criminal Law)?
- Why has the H of L decision in Smith [2000] been criticised? See the cases of Holley [2005] and Mohammed [2005].
