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1

Voluntary Manslaughter

Presentation by
Dr Peter Jepson

You need to think and analyse
while using these slides

PRECIS NOTES WILL BE CHECKED

Voluntary Manslaughter

2

- 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

3

- The **special defences** contained in sections 2, 3, & 4, of the Homicide Act 1957.
- (s.2) Diminished Responsibility (as amended)
- (s.3 repealed) See replacement in s54 Coroners & Justice Act 2009
- (s.4) 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

4

S.2(1) Homicide Act 1957 (as amended):

There must be an **abnormality of mental functioning** – from **(a) a recognised medical condition. (b) This must substantially impair D's ability to do one or more of 3 things.**

- 1. to understand the nature of D's conduct
- 2. to form a rational judgement
- 3. to exercise self-control and
- **(c) provides an explanation to D's acts and omission in doing or being a party to the killing. Use as essay sub-headings**

●What does the following mean? 5

(a) Abnormality of mental functioning ... Is Byrne still applicable?

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

Likely Test: D's mental functioning was so different from that of ordinary beings that a reasonable man would term it abnormal.

(b) a recognised medical condition. **6**

Are the following .. recognised medical conditions?

- **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.

In Law firms research ... **7**

- 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

What must be substantially impaired? **8**

The jury will decide this after listening to the evidence of doctors: Sanders 1991 - Campbell 1997

- (c) **This must substantially impair D's ability to do one or more of 3 things.**
- 1. to understand the nature of D's conduct
 - 2. to form a rational judgement
 - 3. to exercise self-control.

9

- Provides an explanation of D's conduct.
- S2(1b) of Homicide Act 1957.
- '... an abnormality of mental functioning provides an explanation for D's conduct if it causes or is a significant contributory factor in causing D to carry out that conduct.'
- This can be important where D is intoxicated at the time of the killing.

Intoxication ...

10

What about the abnormality of mental functioning

- Will evidence of intoxication caused by drinking or drug-taking be acceptable?
- There are 2 distinct situations to consider ...

Intorxication ...

11

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

We will now consider each of these ...

D was intoxicated and was also suffering some unrelated 'abnormality of mind/mental functioning'. **12**

- 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/mental functioning'. **13**

- 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; See cases of Dietschmann 2002 – Hendy (2006) and Robson (2006).

D was suffering an 'abnormality caused by intoxication' **14**

- 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? – See also the case of Wood (2008).

Medical evidence ...

15

- 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
- **Re-draw: Figure 7.1 on page 79 of 'OCR Criminal Law for A2'.**

Possible Reform of Diminished Responsibility

16

- 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.**

Self-test Questions

17

- Do the Self-test Questions on page 80 of 'OCR Criminal Law for A2' [Third edition].
- Produce a Mindmap from the 'Key Facts' on page 81.
- In Law firms, undertake the Activity on page 82

Provocation ...

18

Provocation existed at common law before the law in this area was modified by s.3 Homicide Act 1957 (now ceases to have effect – s56(2a) CJA 2009).

- **This area has now been replaced by s54 and 55 of the Coroners & Justice Act 2009.**

**Before you continue –
Print, then read and précis ‘Loss
of Control’ by Carol Withey**

<http://www.criminallawandjustice.co.uk/index.php?/Analysis/loss-of-control.html>

‘Loss of Control’ is now under s54 of the Criminal Justice Act 2009.

19

New Partial Defence - Loss of Control - s54(1) ...

20

- (a) Acts or omissions in killing resulted from loss of self-control.
- (b) loss of control had a qualifying trigger
- (c) A person of D’s sex and age, with a normal degree of tolerance and self-restraint, and in the circumstances of D, would have reacted in the same/similar way.

Use as essay sub-headings

Evidence of loss of control ... **21**

The judge must decide if there is enough evidence and the Jury must assume that the defence is satisfied unless the Crown proves **beyond all reasonable doubt otherwise.**

Revenge does not apply (s54.4) and neither does sexual infidelity (s55.6b).

Qualifying trigger s55(4)... **22**

- Fear of serious violence from V against D or another identifiable person.
- S55(4) Thing or things 'done or said' (or both) – restricted to
 - (a) **Of an extremely grave character**
 - (b) **Caused D to have a justifiable sense of being seriously wronged.**

Evidence of provocation/loss of control ... Still applicable? **23**

Old cases (pre-2009) no longer binding law – but they are useful for comparison purposes ...

- Doughty 1986 – Crying baby
- 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 actions ...

24

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

- This may even include cases where D himself has started the trouble; Johnson 1989 – But not if done so as to provide an excuse to use violence s55(6a).

Loss of self-control ...

25

- Revenge: Why is the notion of revenge inconsistent with the defence of provocation/loss of control?

- Note: s54(4) - requires that the defendant did not act in a “considered desire for revenge”.

A cooling-off period?

26

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

- See Duffy 1949 - Thornton 1992 and Ahluwalia 1992 – **Do these cases still apply in light of reform?**

A cooling-off period?

27

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

'Sudden' has now been removed. Would the case of Baillie (1995) be applicable?

s54(1c) Would a person of D's sex and age have acted in a similar way? – Objective Test – standard of self-control ...

26

- The jury must be satisfied that a "A person of D's sex and age, with a normal degree of tolerance and self-restraint, and in the circumstances of D, would have reacted in the same/similar way."

Would a person of D's age and sex have acted in similar way?

27

- This new test is similar too the leading case of DPP v Camplin 1978
- Privy Council in A-G for Jersey v Holley [2005] - Essentially - the age and sex of the D can be attributed.

28

Which characteristics? Is this the same as circumstances in s.54?

- 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

29

Temporary and self-Induced characteristics ...

- 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.
- See also the cases of Gregson (2006) and Hill (2008).

30

Reform of the Law ...

- Read and précis pages 87/88 of 'OCR 'Criminal Law for A2' [3rd edition] with an emphasis on reform and possible remaining problems.

The survivor of a suicide pact ...

31

- **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

Things to do ...

32

- (1) Undertake the Self-test Questions on page 88 of 'OCR Criminal Law for A2' (3rd edit).
- (2) Produce a Mindmap of Key Facts.
- (3) In Law firms undertake the activity on page 89.
- (4) Plan and then write an answer to the 50 minute exam question.
