

Voluntary Manslaughter

'The developments in the defence of diminished responsibility by the Coroners and Justice Act 2009 now mean further reforms are unnecessary.' Discuss the extent to which this statement is accurate. (25)

1. In a trial a defendant is not charged with voluntary manslaughter. What offence must the D have committed? **Murder**
2. What are the 2 partial defences that can be raised and specify any relevant Acts and sections.
diminished responsibility set out in the s2 Homicide Act 1957 as amended by s52 and loss of control set out in s54 the Coroners and Justice Act 2009
3. If the partial defence is raised what is the sentence? **Voluntary manslaughter. The judge can give an appropriate sentence e.g. for a D suffering mental problem this could be a hospital order or guardianship order for a D acting under loss of control this could be a short term of imprisonment. Up to life imprisonment. Judges have discretion**

Criminal Law



Diminished Responsibility (DR)

4. Why was DR as a defence created? **because before 1957, if a person with mental problems killed, then their only defence as insanity. The test for insanity is very narrow and many defendants who clearly suffer from a mental illness do not always come within it. Therefore, the defence of diminished responsibility was created.**
5. What are the 4 key elements of DR? **A person who kills or is a party to the killing of another is not to be convicted of murder if he was suffering from a) an abnormality of mental functioning which b) arose from a recognised medical condition. c) substantially impaired D's ability to: understand the nature of his conduct, form a rational judgement, exercise self-control and d) provides an explanation for D's acts and omissions in doing or being a party to the killing**

6. Procedure

- a) Who bears the burden of proving DR and what is the standard of proof? **The burden of proving the defence is on the defendant, but the defendant need only prove it on the balance of probabilities—because the mental health issue is on the defendant. Only he can prove it as it is personal to him**
- b) Is this fair? Which Article of the Human Rights Act does this potentially breach? Do the courts agree? **Article 6. Courts don't agree**
- c) If DR is raised what can the prosecution raise in response ? **insanity**
- d) What are the possible sentences if DR is successful? **Short term imprisonments or hospital orders**
- e) In order to prove DR medical evidence is crucial. Explain by reference to R v Brennan 2014. **There must be medical experts to give evidence of the mental medical condition that the defendant is suffering from but it is up to the jury to decide if they believe the evidence. Jury must base their conclusion on the medical evidence. If there's medical evidence the jury cannot refuse because the defendant can then appeal e.g. in Brennan there was medical evidence from a psychiatrist she testified for Brennan and that his disorder was a significant cause of his actions. Despite the evidence the jury decided to find him guilty and convicted of him of murder. They should've found him guilty of voluntary manslaughter. In CoA it was quashed and substituted for a voluntary manslaughter**

How to prove DR

7a) Explain how the new term abnormality of mental functioning is defined by referring to Lord Parker in R v Byrne.

"means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal" The appellant murdered a young girl staying in a YWCA hostel. He then mutilated her body. He did so as he was suffering from irresistible impulses which he was unable to control.

b) The abnormality does not have to be permanent and a person does not have to be born with it. Does it include developmental immaturity? How does this impact on children? **Doesn't have to be permanent. Can be temporary. You also don't have to be born with it as mental disorders can develop later in life. It doesn't include development immaturity because it thought that conditions such as learning disabilities and autism spectrum disorders were recognised as medical conditions. This means that children as young as 10 may be convicted of murder when they are developmentally immature**

8) The next key element is a recognised medical condition, which is not defined in the Act but covers both psychological and physical conditions

Please insert the correct medical condition to the following cases:

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|--------------------------------|----------------------------|--------------------------|
| 1. Epilepsy | 2. Paranoia | 3. Adjustment disorder |
| 4. Alcohol dependency syndrome | | 5. Asperger's Syndrome |
| 6. Depression | 7. Battered Woman Syndrome | |
| 8. Psychopathy | 9. Post-natal depression | 10. premenstrual tension |

Case-relates to loss of self-control	Recognised Medical Condition
R v Jama 2004	Asperger's syndrome
R v Dietschmann 2003	Adjustment disorder
R v Wood 2008	Alcohol dependency syndrome
R v Campbell 1997	Epilepsy
R v Hobson 1998	Battered woman syndrome
R v Seers 1984	Chronic Depression
R v Byrne 1960	Psychopathy
R v Simcox 1964	Paranoia
R v English 1981	Pre-menstrual tension
R v Reynolds 1988	Post-natal depression

Medical evidence is crucial and need evidence from 2 doctors

9) The third key element is substantial impairment.

- How did Lord Parker in Byrne define substantial impairment? To cover the minds activity in all its aspects
- How did Justice Ashworth define substantial in R v Lloyd 1967? Held that substantial does not mean total, mental responsibility need not be totally impaired and substantial does not mean trivial or minimal. It is something in between and it is for the jury to decide if the D mental responsibility is impaired and, if so, whether is it substantially impaired
- Did the Supreme Court in R v Golds 2013 approve Lloyd? Evaluate this decision and does it give the jury too much or too little discretion. Supreme court agreed with the definition. Doesn't give the jury too much nor does it give too little discretion, it's just right

d) Describe the three ways that D is substantially impaired with examples. A person who kills or is a party of the killing of another is not to be convicted of murder if he was suffering from an abnormality or mental functioning which: a) arose from a recognised medical condition b) substantially impaired D's ability to understand the nature of his conduct, form a rational judgement or exercise self-control and c) provides an explanation for D's acts and omission in doing or being a party of the killing

10) The fourth key element is a new legal principle. a) What must exist between D's mental abnormality and the killing? A causal connection between medical condition and the effect of killing. It is an explanation as to why they have acted in this way

b) The Act refers to an explanation. How is this interpreted? There could be several reasons why they killed. If it is part of the explanation, it doesn't have to be the main reason. Must be at least one reason. It is generous to the defendant

11) DR and Intoxication

a) What did R v Dowds confirm? The appellant, a 49-year-old college lecturer, killed his partner in a frenzied knife attack whilst he was heavily intoxicated. Both he and his partner were habitual binge drinkers and there had been numerous violent exchanges between the couple, most of which had been initiated by her and most occurred whilst they were intoxicated. He reported her death to the police two days after the killing and claimed that he had no recollection of the events but accepted that he had killed her. He did not assert that he was alcohol dependant. He could exercise choice over when he drank and would not drink during the week. However, once he had started drinking, he was unable to stop. The trial judge ruled that his voluntary and temporary drunkenness was not capable of founding the defence of diminished responsibility. The appellant appealed. Held: Appeal dismissed. Voluntary acute intoxication, whether from alcohol or other substance, is not capable of founding diminished responsibility. Confirmed that intoxication on its own cannot be used as the basis of a defence of DR. The defence requires that the abnormality of mental functioning must be due to a recognised medical condition and intoxication does not fall under this.

b) In Dietschmann what was D's medical condition? According to Lord Hutton if D has taken drugs or alcohol what is the direction that juries must be given? Adjustment disorder – Lord Hutton said that if the jury decided that D would not have killed without taking the drinks or drugs, it was unlikely it would find that the abnormality on its own was sufficient to impair his responsibility

12) DR and Alcohol Dependency Syndrome (ADS)

- a) In R v Wood 2008 ADS was recognised. Briefly explain what the jury must determine. The judge directed the jury that if they found that the D had suffered brain damage from his long-term abuse of alcohol then the defence of DR was available to him but if they found that he had not suffered brain damage then they had to decide whether the drinking had been voluntary or not. If it was voluntary, then the D could not use the defence of DR

The appellant was an alcoholic who had been sleeping rough. He had befriended a group of alcoholics known as the breakfast club and had drunk heavily with them two days prior to the attack. After the second day of heavy drinking he was invited to spend the night at the deceased's house. During the night he awoke to find the deceased attempting to perform oral sex on him. He attacked him with a meat cleaver and lump hammer killing him.

- b) ADS has now been clarified by Lord Judge CJ in R v Stewart 2009. Briefly set out the 3 - stage test.

1. Was D suffering from an 'abnormality of mind'
1. If so, was D's abnormality caused by the ADS
2. If so, was D's mental responsibility substantially impaired?

Relevant issues to be considered may include

- A) the extent and seriousness of D's dependency
- B) the extent to which D's ability to control his drinking, or to choose whether to drink or not, was reduced
- C) whether D was capable of abstinence from alcohol, and if so, for how long
- D) whether D was choosing for a particular reason, e.g. birthday to get drunk or drink more than usual
- E) D's pattern of drinking preceding the killing
- F) D's ability, if any, to make decisions about ordinary day to day matters

What would be the 4th stage as a result of the 2009 Act?

Provides an explanation for the D's conduct

13. Reform and Evaluation.

a) Explain whether the 2009 Act achieved the changes recommended by the 2006 Law Commission Report. Yes, definition of DR has been modernised to consider changing medical knowledge and by using this phrase the definition is more flexible to allow future developments in medical knowledge. Definition also clearly sets out what aspects of the D mental functioning must be substantially impaired for the partial defence of diminished responsibility to succeed

b) Briefly explain the 2 areas of DR that are still problematic. (See your answers to Q 3 and 4)

Burden of proof is on the D and it shouldn't be. Most other defences, D only has to raise the issue and the prosecution has to disprove it. This should also apply to DR. Argued that putting burden of proof on D could be a breach of Article 6(2) of the European Convention on Human Rights which states that 'everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law' Development immaturity—LC in 2006 report also recommended that developmental immaturity in those under 18 should also be included in definition of DR as there is evidence to show that the frontal lobes of the brain that plays an important role in development, self - control and in controlling impulsive behaviour doesn't mature till the age of 14. The government took the view that there was no need to include this as it thought that conditions such as learning disabilities etc were recognised as medical conditions. However, 'development immaturity' isn't the same as a learning disability. This means children as young as 10 may be convicted of murder