

Loss of Self-Control (LSC)

Critically evaluate the partial defence of loss of self-control and consider whether further reforms are required (25)

1. Which Act and section sets out this special defence? **S54 of the Coroners and Justice Act 2009**
2. What offence must the D have committed in order to raise this partial defence? **Murder - D must have lost self-control, there must be a qualifying trigger, a person of the same sex and age would have reacted in the same way as D in the same circumstances**
3. If LSC is successfully proven what is the outcome? **If it successfully proven, then the D will be guilty of manslaughter instead of murder. This allows the judge's discretion in sentencing**

4. Procedure:

In order to raise LSC there must be sufficient evidence of it. a) Who decides this and in which section is this set out? **judge decides sufficient evidence, Jury makes decision if it's been proven– a partial loss will not be sufficient s54(5,6). The jury is entitled to draw upon their life experiences when considering the evidence to decide if this requirement is satisfied**

b) Who must prove it and what is the standard of proof? **Prosecution must prove that they lost self-control when doing the act/s which caused death. Standard of proof must be beyond reasonable doubt**

c) In Dawes what did the Court of Appeal state and why were the appeals dismissed? **D came home, saw his wife and V asleep with legs entwined. D stabbed V. D convicted of murder. He appealed. CoA upheld conviction and said that D couldn't rely on sexual infidelity as a qualifying trigger nor could he rely on fear of violence where he induced the violence. CoA also pointed out that where D has the normal capacity of self-restraint and tolerance then, unless the circumstances were extremely grave, any normal irritation or even serious anger will not come within 'loss of control' for the Act's purposes.**

5. Key elements:

- a) Briefly define murder. Unlawful killing of a human under the Queen's peace with malice of aforethought and if death occurs after 3 years then the approval of the Attorney General is required
- b) What are the 3 key elements of s.54 (1)?
 - 1) D's acts and omissions in doing or being a party to the killing resulted from D's loss of self-control
 - 2) the loss of self-control had a qualifying trigger, and
 - 3) a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or similar way to the D

6. LSC:

- a) There must be an LSC, but it does not have to be sudden. What section states this? Does sudden mean immediate? S54(2) of 2009 act sets out that loss of self-control does not have to be sudden. There is no statutory or judicial interpretation as to the meaning of LSC however it could mean that D lost ability to maintain their action in accordance with considered judgement or that the D lost their normal powers of reasoning or D behaviour was atypical/out of character
- b) Explain the term slow burn in relation to battered women who kill their abusive partners. Will they be able to raise LSC?
- c) Does LSC include both total and a partial loss?
- d) In R v Jewell how was LSC interpreted? Was D successful? D shot V and fled. He was arrested in his car which had weapons. At his trial he told the jury that when he got out of his car outside of V's house, he did it because he LSC and couldn't control his actions. He couldn't think straight. The judge considered that there was insufficient evidence of D having LSC and this decision was supported by CoA
- e) Which case stated 'any normal irritation or even serious anger will not come within LSC? R v Dawes
- f) If D acts out of revenge will the defence be available? What is the relevant section? No

7) Qualifying Triggers

- a) Set out both the triggers and relevant sections
 - 1) D's fear of serious violence from V against D or another identified person s55(3)

2) a thing or things done or said (or both) which

A) constituted circumstances of an extremely grave character, and B) caused D to have a justifiable sense of being seriously wronged s55(4) b) Do both have to be proven? Alternatively, the qualifying trigger can be a combination of these two matters s55(5)

c) Trigger 1 – subjective test

i) In R v Ward did D have to fear violence against him-self? Does D have to be the subject of the attack to raise LSC? D, his brother and V became friends. Spent most of day + night getting drunk + taking drugs. Next morning, V waited outside for a taxi but as it was cold, he tried to go back inside. There was shoving and V headbutted D's brother. D came to his brother's aid and hit V with pickaxe handle causing severe injuries from which he later died. D pleaded guilty to manslaughter on the grounds of LSC. D didn't fear serious violence to himself but s55(3) applied as he feared that V would use serious violence to his brother ii) Was R v Lodge 2014 successful in proving this trigger? D also pleaded LSC on basis that he LSC and killed V after he attacked him with a baseball bat. However, under s55(6)(a) where D has incited the violence, D cannot rely on the qualifying trigger of fear of violence.

d) Trigger 2 – objective test

i) This can be things done and/or said but under s.55 (4) also requires 2 further elements. Set both out.

1) they were of an 'extremely grave character' and

2) they caused D to have a justifiable sense of being seriously wronged ii) According to R v Hatter are these 2 elements subjective or objective? Was LSC proven? Mark Hatter developed a relationship with Dawn Blackhouse. She was younger than him. He was very generous to her and her children. He had never had children and she had promised to have her sterilisation reversed. The relationship later phased out and she started seeing another man although she never told the defendant it was over. He went to her house at midnight with a knife and climbed through an upstairs window. He claimed he had taken the knife to lift the carpets and had accidentally stabbed her in the chest and wrist when he spun around whilst holding the knife. He then stabbed himself in the chest, but he survived. The defendant claimed accident at trial but this was rejected by the jury the trial judge held that loss of control could not be put to the jury as there was no evidence that he had lost his control, the

circumstances were not of an extremely grave nature nor did he have a justifiable sense of being seriously wronged.
Judged objectively.

iii) Briefly explain the facts and reasoning of R v Zebedee 2012. Did D succeed? D lost control when his 94-year-old father who suffered from Alzheimer's and was doubly incontinent, repeatedly soiled himself. D killed his father. D put forward the defence of LSC, but he was convicted of murder. Neither of the two conditions were present in this case. He alleged that his extremely grave character was that his father soiled himself

iv) In R v Bowyer what essential ingredient was missing from the defence? The defendant, Barry Bowyer and the victim Gary Suller, were both having a relationship with Katie Whitbread, a prostitute. Suller was her pimp. The defendant was not aware she was a prostitute. They were both aware of the other's relationship. On the night of the killing, the defendant went to Suller's house to burgle him. Suller disturbed the burglary and a fight developed. Suller then revealed that Katie was a prostitute and taunted him that she was her best earner. The defendant lost his control and beat Suller and tied him up with an electricity cable. He was alive when he left him but was found dead the following afternoon. The defendant was addicted to heroin, diagnosed as bipolar and suffered social phobia, anxiety and depression. Held: The defendant had no justifiable sense of being wronged given that he was committing a burglary at the time of the offence.

v) Which section of the Act specifies that sexual infidelity cannot be a qualifying trigger? 2009 Act s55(6c). However, in R v Clinton 2012 did the Court of Appeal agree that it should be completely disregarded? D suffering from depression and took medication. His wife told him he was having an affair and taunted him about looking up suicide websites saying he hasn't got the courage to commit suicide. They argued and the following day D killed her. He was convicted of murder but appealed on the basis that the defence of LSC should have been left to the jury. The CoA agreed and quashed the conviction. he killed her because of sexual infidelity

vi) According to R v Dawes if sexual infidelity is the only qualifying trigger can LSC succeed? The CoA confirmed that sexual infidelity alone cannot amount to a qualifying trigger

8. The normal person test

a) Standard of self-control

i) What does s.54 (1)(c) state?

A person of D's sex and age, with a normal degree of tolerance and self restraint and in the circumstances of D, might have reacted in the same or similar way

ii) D's sex and age is considered but certain factors are excluded in a normal degree of tolerance and in a normal degree of self-restraint. From the following excluded factors which are tolerance, and which are self restraint: pugnacity-self restraint, racism- tolerance, bad temper- self restraint and homophobia – tolerance .

b) In the circumstances of D

i) **What does s.54 (3) state?** The circumstance of the D is a reference to 1 of the D circumstances other than those whose only relevance to D conduct is that they bear in D general capacity for tolerance or self restraint

ii) **What relevant circumstances of the D can be included?** Depression, epilepsy or any history of sexual abuse

iii) **Explain the case of R v Asmelash 2013 and what factor was excluded?** D murdered victim whilst intoxicated. Voluntary intoxication was excluded as the court said that if Parliament had meant that to be the position then it would have been clearly stated in the 2009 Act

iv) **When can ADS be a relevant circumstance?**

1) if a sober person in the D circumstances, with normal levels of tolerance and self-restraint, might've behaved in the same way as the D when confronted by the relevant qualifying trigger, then the D might still be able to use the defence of LSC even if they were intoxicated 2) if a D with a severe problem with alcohol or drugs was mercilessly taunted about the condition, so that it was qualifying the trigger, the alcohol or drug problem would then form part of the circumstances for consideration

c) The normal person must react in the same or similar way

i) **Which section refers to this requirement?**

ii) **When will the defence fail?** If the jury considers that the 'normal person' might have lost control but would not have reacted in the same way

9. Previous Law of Provocation

a) **Briefly set out the problems of provocation under the Homicide Act 1957.** It didn't have a complete definition which created problems as the law in previous cases had to be considered as well as the law in previous cases had to be considered as well as the test in the Homicide Act. Another problem was the wording of the test where jury had to decide whether D was provoked to LSC and whether provocation was enough to make a 'reasonable man' do as D did and the use of 'reasonable man' initially created problems as it was held that it meant reasonable adult.

b) **Briefly compare the old and new defence comparing whether the new law is always narrower than the old law.** Defences of LSC is wider than provocation. LSC does not have to be sudden, also, fear of serious violence is a matter which can be considered. Defences of LSC is narrower than the defence of provocation. In particular, sexual infidelity is no longer allowed as a qualifying trigger. Also, where the D is relying on things said and/or done, then they must be of an extremely grave character. This was not the situation in provocation and some of the cases where that defence was allowed would not come within the new defence of LSC. The things said and/or done must also cause D to have a justifiable sense of being seriously wronged.

10. Evaluation of current law

The Coroners and Justice Act 2009 is based on the Law Commission's Report Murder, Manslaughter and Infanticide 2006. However, the government did not follow all the LC's recommendations and therefore there are still problems with the current law.

Make brief notes on the 5 areas that are still problematic.

1. **Loss of self-control** under s52 of 2009 Act, LSC doesn't have to be sudden unlike the defence of provocation which required sudden and temporary loss of self-control. This requirement led to some D being unable to use the defence of provocation as their loss of control was not sudden. This was seen especially in battered women cases where the reaction to threats or abuse came a few hours later. In these cases,

the defence was not allowed as it wasn't sufficiently 'sudden'. Law commission in their 2006 report had proposed removing the LSC as it recognised women in abusive relationships may kill from a combination of 'anger, fear, frustration and a sense of desperation'. The government decided not to follow the proposal. The only concession given in the new law was that LSC need not be sudden. If a similar case came to court now it is possible that someone in the same situation would be able to use the defence

2. Sexual Infidelity this is no longer allowed as a qualifying trigger for the defence. Yet the defence of provocation was largely created for just such situations. If someone unexpectedly finds their partners having sex with another person, they are very likely to lose their self control. But if this leads to them killing their partner, they will not be able to use the defence of loss of self-control

3. Fear of serious violence s55(4) sets a very high threshold for the circumstances in which the defence is available where a person loses self-control in response to words or actions. The effect is to substantially narrow the potential availability of this defence in cases where a loss of control is attributable to things done or said compared to provocation. As a result, many cases where the D was able to use the former defence of provocation would not now come within loss

4. Excluded matters if a thing done or said amounts to a sexual infidelity, that fact is disregarded in deciding whether the qualifying triggers in s55(4) applies. The effect is that, if the D kills his wife or partner because they have been unfaithful, he will not be able to claim LSC.

5. Standard of self-control apart from sex and age, the jury cannot consider any circumstance of the D which might've made them have less self-control. A jury can consider any of the following:

A) any history of abuse towards the D by a partner

B) any addiction that the D may have

C) any illness or condition such as epilepsy

D) any external feature such as unemployment that may have caused the D to be depressed
The jury cannot consider matters such as if the D was bad tempered, or hot tempered as these conditions would affect a person's capacity from tolerance and self-restraint.