

**Millie and Carl join an on-line dating agency. They chat, meet after two weeks and marry six weeks later. On their wedding night Carl gets drunk and hits Millie. Carl apologises. Carl is often romantic but gets violent when he has been drinking. On their wedding anniversary Carl and Millie drink a bottle of wine. Carl calls Millie “a useless bitch” and smashes the empty bottle over her head. Eventually Millie goes to the doctor and he puts her on anti-depressants. A month later, Carl punches Millie again and goes to bed. After an hour, Millie hears Carl snoring and she stabs him with a kitchen knife, killing him immediately.**

**Advise Millie whether can avoid liability for murder by using the defence of diminished responsibility (25)**

Millie may be able to raise the partial defence of diminished responsibility. Successfully proving this will reduce her charge from murder to voluntary manslaughter and sentencing will be up to discretionary life imprisonment.

Diminished responsibility (DR) is defined in s.2 of the Homicide Act 1957 as amended by s.52 of the CJA 2009. Millie will have the burden of proving this defence (reverse onus) but the jury only need to be satisfied that it exists on a balance of probabilities, which does not breach Article 6 of the ECHR. Millie needs to be advised that the prosecution can raise insanity in response.

In order for Millie to have any chance of succeeding medical evidence is crucial as stated in Brennan. Here D provided uncontradicted medical evidence, which the jury ignored and convicted D of murder. On appeal this was reduced to voluntary manslaughter. Millie will need two medical experts to support her defence and as she has already been to see her GP, who has prescribed anti-depressants so it should be straightforward to obtain a second expert. There are four elements, which must be proved. The first element, which needs to be satisfied, is the abnormality of mental functioning as set out in s.2(1)). Lord Parker LCJ in Byrne described this as “a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal”. In Byrne D was a sexual psychopath who murdered and mutilated V. Here Millie is suffering from battered woman syndrome and depression, which an ordinary person would consider abnormal. So, this seems to satisfy abnormality of mental functioning.

The second element that needs to be satisfied is the recognised medical condition as set out in s2(1)(a). In Hobson the courts recognised battered women syndrome as a psychological condition caused by enduring years of domestic violence. Clearly Millie is suffering from this condition as she suffered from physical and mental abuse from Carl as he often hits her and verbally abuses her. BWS was also accepted on appeal in R v Ahluwalia. In addition, depression has been accepted by the courts in Seers where D killed his wife while suffering from chronic depression. Millie has been prescribed medication for depression and therefore this would be sufficiently serious to amount to a recognised medical condition. Clearly Millie does not need to be born with these conditions nor do they have to be permanent. It must be noted that although Millie was not drinking at the time of the killing but had done so previously this is not Alcohol

Dependency Syndrome but voluntary intoxication and therefore will be excluded according to Rv Dowds.

The third element which Millie would need to prove is that the abnormality of mental functioning substantially impaired her ability to do one or more of the following: understand the nature of her conduct, form a rational judgment, or exercise self-control as referred to in s.2(1A) (a, b, c)). In Byrne Lord Parker stated whether the impairment was substantial was one of degree and for the jury to decide. In Lloyd it was stated this does not have to be total but nor does it mean trivial or minimal. This was confirmed by the supreme court in R v Golds. It seems that Millie's BWS did substantially impair her ability to form a rational judgment when she stabbed Carl and her depression impaired her ability to exercise self-control.

The final element, which Millie would need to satisfy, is that there is a causal connection between her abnormality of mental functioning which arose from her depression and battered wife syndrome. This must also provide an explanation for her killing Carl and must be a significant factor but does not have to be the only factor (s.2(1B)). It seems likely that Millie will be successful in proving this last element as there is a causal connection in her killing Carl and this is clearly an explanation for her actions.

In conclusion Millie will be successful in raising diminished responsibility.