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A2 GCE LAW

G154/01/RM Criminal Law Special Study

PRE-RELEASE SPECIAL STUDY MATERIAL

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G154 CRIMINAL LAW

SPECIAL STUDY MATERIAL

SOURCE MATERIAL

SOURCE 1

Extract adapted from the judgment of Lord Denning in the *Attorney-General for Northern Ireland v Gallagher* [1961] 3 All ER 299.

My Lords, this case differs from all others in the books in that the respondent, whilst sane and sober, before he took to the drink, had already made up his mind to kill his wife. This seems to me to be far worse – and far more deserving of condemnation – than the case of a man who, before getting drunk, has no intention to kill, but afterwards in his cups, whilst drunk, kills another by an act which he would not dream of doing when sober. Yet, by the law of England, in this latter case his drunkenness is no defence even though it has distorted his reason and his will-power. So why should it be a defence in the present case? ... The answer to the question is, I think, that the case falls to be decided by the general principle of English law that, subject to very limited exceptions, drunkenness is no defence to a criminal charge nor is a defect of reason produced by drunkenness.

….

[I]f a man is charged with an offence in which a specific intention is essential (as in murder, though not in manslaughter), then evidence of drunkenness, which renders him incapable of forming that intent, is an answer; see *Beard's* case ([1920] All ER Rep at pp 28, 30…). This degree of drunkenness is reached when the man is rendered so stupid by drink that he does not know what he is doing … as where, at a christening, a drunken nurse put the baby behind a large fire, taking it for a log of wood … and where a drunken man thought his friend (lying in his bed) was a theatrical dummy placed there and stabbed him to death ... In each of those cases it would not be murder. But it would be manslaughter.

….

Does the present case come within the general principle or the exceptions to it? … The respondent was not incapable of forming an intent to kill. Quite the contrary. He knew full well what he was doing. He formed an intent to kill, he carried out his intention and he remembered afterwards what he had done. And the jury, properly directed on the point, have found as much, for they found him guilty of murder.

….

My Lords, I think the law on this point should take a clear stand. If a man, whilst sane and sober, forms an intention to kill and makes preparation for it, knowing it is a wrong thing to do, and then gets himself drunk so as to give himself Dutch courage to do the killing, and whilst drunk carries out his intention, he cannot rely on this self-induced drunkenness as a defence to a charge of murder, nor even as reducing it to manslaughter. He cannot say that he got himself into such a stupid state that he was incapable of an intent to kill.

SOURCE 2

Extract adapted from *Criminal Law*. 9th Edition. Catherine Elliott and Frances Quinn. Pearson Education Ltd. 2012. Pp 357-359.

In some respects it is quite misleading to describe intoxication as a defence, because intoxication can actually be a reason to impose criminal liability where, in the absence of intoxication, criminal liability would not have been imposed. Thus, the starting point is that if the defendant did actually have the *mens rea* of the crime, then intoxication cannot be a defence. This was made very clear by the House of Lords in *R v Kingston* (1994) [3 All ER 353], overturning an unexpected decision in the case by the Court of Appeal.

….

If defendants lack *mens rea*, criminal liability can still be imposed if they were intoxicated and would have had *mens rea* if they had been sober.

….

Even where intoxication means that the accused lacks the *mens rea* of a crime, in some circumstances they can still be found liable, forming an exception to the rule that both *mens rea* and *actus reus* are required. In determining whether a defence of intoxication applies the court must first establish that the defendant lacked *mens rea*, and then, secondly, the court looks at what type of offence the defendant has been charged with. In this respect, the courts distinguish between crimes of basic intent and crimes of specific intent; intoxication will usually be a defence to crimes of specific intent where the defendant lacked *mens rea*, but not usually to crimes of basic intent.

….

In deciding whether the defence of intoxication is available, we therefore need to know which crimes are classified by the courts as ones of basic intent and which of specific intent. This sounds straightforward, but unfortunately the courts have been far from clear about which crimes fall into which category, and why.

In *Majewski* the House of Lords attempted to explain the concepts but there now seem to be two possible approaches. The first is that if the offence can only be committed intentionally, it is a crime of specific intent, but if it can be committed with some other form of *mens rea* such as recklessness, it will be a crime of basic intent.

The second possible approach is slightly more complex. On this analysis specific intent offences are those where the required *mens rea* includes the purpose of the defendant's acts which may go beyond the *actus reus.*

….

For example, take the offence of criminal damage with intent to endanger life. The *mens rea* is intention or recklessness, so under the first test this should be an offence of basic intent. Yet the *mens rea* – intention or recklessness as to the damaging or destroying of property and as to endangering life – extends beyond the *actus reus*, damaging or destroying property, making this an offence of specific intent under the second test.

In the … recent Court of Appeal case on intoxication, *R v Heard* (2007) [EWCA Crim 125], the Court appeared to reject the first test in favour of the second.

….

In practice the only reliable method of classifying an offence seems to be to see how offences have been defined when cases have come before the courts. *35*

….

An example of the application of the rules on intoxication is *Lipman* (1970) [1 Q.B. 152] … . The Court of Appeal said that if a person deliberately takes alcohol or drugs in order to escape from reality – to 'go on a trip' – they cannot plead that self-induced disability as a defence to a criminal offence of basic intent. *40*

SOURCE 3

Extract adapted from the judgment of Lord Elwyn-Jones LC in *Director of Public Prosecutions v Majewski* [1977] AC 443.

Self-induced alcoholic intoxication has been a factor in crimes of violence, like assault, throughout the history of crime in this country. But voluntary drug taking with the potential and actual dangers to others it may cause has added a new dimension to the old problem with which the courts have had to deal in their endeavour to maintain order and to keep public and private violence under control. To achieve this is the prime purpose of the criminal law. I have said 'the courts', for most of the relevant law has been made by the judges. A good deal of the argument in the hearing of this appeal turned on that judicial history, for the crux of the case for the Crown was that, illogical as the outcome may be said to be, the judges have evolved for the purpose of protecting the community a substantive rule of law that, in crimes of basic intent as distinct from crimes of specific intent, self-induced intoxication provides no defence and is irrelevant to offences of basic intent, such as assault.

….

Mr Tucker's case for the appellant was that there was no such substantive rule of law and that if there was, it did violence to logic and ethics and to fundamental principles of the criminal law which had been evolved to determine when and where criminal responsibility should arise.

….

If a man consciously and deliberately takes alcohol and drugs not on medical prescription, but in order to escape from reality, to go "on a trip", to become hallucinated, whatever the description may be, and thereby disables himself from taking the care he might otherwise take and as a result by his subsequent actions causes injury to another – does our criminal law enable him to say that because he did not know what he was doing he lacked both intention and recklessness and accordingly is entitled to an acquittal?

Originally the common law would not and did not recognise self-induced intoxication as an excuse.

….

The authority which for the last half century has been relied upon in this context has been the speech of the Earl of Birkenhead L.C. in *Director of Public Prosecutions v Beard ([1920] AC at 494…)*:
"Under the law of England as it prevailed until early in the 19th century voluntary drunkenness was never an excuse for criminal misconduct; and indeed the classic authorities broadly assert that voluntary drunkenness must be considered rather an aggravation than a defence. This view was in terms based upon the principle that a man who by his own voluntary act debauches and destroys his will power shall be no better situated in regard to criminal acts than a sober man."

….

From this it seemed clear – and this is the interpretation which the judges have placed upon the decision during the ensuing half-century – that it is only in the limited class of cases requiring proof of specific intent that drunkenness can exculpate. Otherwise in no case can it exempt completely from criminal liability.

….

I do not for my part regard that general principle as either unethical or contrary to the principles of natural justice. If a man of his own volition takes a substance which causes him to cast off the restraints of reason and conscience, no wrong is done to him by holding him answerable criminally for any injury he may do while in that condition. His course of conduct in reducing himself by drugs and drink to that condition in my view supplies the evidence of *mens rea*, of guilty mind certainly sufficient for crimes of basic intent. It is a reckless course of conduct and recklessness is enough to constitute the necessary *mens rea* in assault cases … .

SOURCE 4

Extract adapted from *Criminal Law*. 5th Edition. Tony Storey and Alan Lidbury. Willan Publishing. 2009. P 224.

Intoxication is not a true defence, like duress: it is no excuse for D to say that they would not have acted as they did but for their intoxication. Instead, it is a means of putting doubt into the minds of the jury as to whether D formed the necessary *mens rea.* Alcohol and many other drugs – barbiturates, amphetamines (speed and 'E'), hallucinogens (LSD), tranquillisers – all have an influence on a person's perception, judgment and self-control, and their ability to foresee the consequences of their actions. In extreme cases, D may be so drunk that they are rendered an automaton.

Generally, if enough members of the jury form a reasonable doubt as to D's *mens rea* then they are required to acquit. This creates a dilemma for the law. Application of legal principle would mean that the more intoxicated D became, the better their chances of acquittal. Policy demands the opposite. The law has tried to achieve a compromise, but perhaps inevitably it is policy that has prevailed.

D's intoxication must be extreme in order to prevent them from foreseeing *any* of the consequences of their actions. Lord Simon in *DPP v Majewski*, however, was not convinced that matters should be left entirely to the jury. He thought that, without special rules for intoxicated defendants, the public would be 'legally unprotected from unprovoked violence where such violence was the consequence of drink or drugs having obliterated the capacity of the perpetrator to know what he was doing or what were its consequences'.

Of course the criminal law should seek to protect the public from violence. But surely the number of cases where D might escape conviction – if the matter were simply left to the jury – would be very few.

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As well as protecting the public, the law must protect the rights of the individual, including D. However, this issue did not unduly trouble Lord Elwyn-Jones LC in *DPP v Majewski*. His attitude was that those who caused harm while intoxicated should not be allowed to go unpunished. He said, 'If a man of his own volition takes a substance which causes him to cast off the restraints of reason and conscience, no harm is done by holding him answerable criminally for any harm he may do while in that condition.'

SOURCE 5

Extract adapted from the judgment of Parker LJ in *R v Hardie* [1985] 1 WLR 64.

In the present instance the defence was that the valium was taken for the purpose of calming the nerves only, that it was old stock and that the appellant was told it would do him no harm. There was no evidence that it was known to the appellant or even generally known that the taking of valium in the quantity taken would be liable to render a person aggressive or incapable of appreciating risks to others or have other side effects such that its self-administration would itself have an element of recklessness. It is true that valium is a drug and it is true that it was taken deliberately and not taken on medical prescription, but the drug is, in our view, wholly different in kind from drugs which are liable to cause unpredictability or aggressiveness. It may well be that the taking of a sedative or soporific drug will, in certain circumstances, be no answer, for example in a case of reckless driving, but if the effect of a drug is merely soporific or sedative the taking of it, even in some excessive quantity, cannot in the ordinary way raise a *conclusive* presumption against the admission of proof of intoxication for the purpose of disproving *mens rea* in ordinary crimes, such as would be the case with alcoholic intoxication or incapacity or automatism resulting from the self-administration of dangerous drugs.

In the present case the jury should not, in our judgment, have been directed to disregard any incapacity which resulted or might have resulted from the taking of valium. They should have been directed that if they came to the conclusion that, as a result of the valium, the appellant was, at the time, unable to appreciate the risks to property and persons from his actions they should then consider whether the taking of the valium was itself reckless. We are unable to say what would have been the appropriate direction with regard to the elements of recklessness in this case for we have not seen all the relevant evidence, nor are we able to suggest a model direction, for circumstances will vary infinitely and model directions can sometimes lead to more rather than less confusion. It is sufficient to say that the direction that the effects of valium were necessarily irrelevant was wrong.

In *R v Bailey (John)* [1983] 1 W.L.R. 760 the court upheld the conviction notwithstanding the misdirection, being satisfied that there had been no miscarriage of justice and that the jury properly directed could not have failed to come to the same conclusion. That is not so in the present case. Properly directed the jury might well have come to the same conclusion. There was, for example, evidence that the valium really did not materially affect the appellant at all at the relevant time, but we are quite unable to say that they must have come to the same conclusion.

SOURCE 6

Extract adapted from *Criminal Law*. 4th Edition. Alan Reed and Ben Fitzpatrick. Sweet and Maxwell. 2009. Pp 215-217.

What is the position where the defendant is not responsible for his intoxicated state? A person may become involuntarily intoxicated in a variety of ways … . The main feature that such situations have in common is that the defendant is not to blame for his condition. Is it, therefore, right that the rules relating to voluntary intoxication laid down in *Majewski* should apply to such defendants?

The House of Lords had the opportunity to review the position in *Kingston*.

….

Lord Mustill examined the various ways in which the Court of Appeal had reached its decision. He said that it seems fairly clear that they had relied upon a supposed principle that "an accused person may be entitled to be acquitted if there is a possibility that, although his act was intentional, the intent itself arose out of circumstances for which he bears no blame". Lord Mustill said that however attractive such a principle might be, it did not represent the law. In the majority of criminal offences, proof of the necessary *mens rea* will also establish the necessary culpability of the accused. Nevertheless, once the prosecution have established that the accused brought about the *actus reus* of the crime with the required *mens rea*, they are entitled to a conviction even if there was no moral blame attaching to the defendant and society would not censure him for what he had done.

The second line of reasoning applied by the Court of Appeal appeared to be that there was a defence of involuntary intoxication which would provide a defence where the defendant has the necessary *mens rea* for the offence, but would not have committed the deed but for the involuntary intoxication. Lord Mustill concluded that there was no such authority, but that it was necessary to see involuntary intoxication in the light of intoxication as a whole.

….

"Thus once the involuntary nature of the intoxication is added, the two theories of *Majewski* fall away, and the position reverts to what it would have been if *Majewski* had not been decided, namely that the offence is not made out if the defendant is so intoxicated that he could not form an intent. Thus, where the intoxication is involuntary *Majewski* does not *subtract* the defence of absence of intent; but there is nothing in *Majewski* to suggest that where intent is proved involuntary intoxication adds a further defence."

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While it may be grudgingly admitted that there are reasons of public policy for severely restricting the defence of voluntary intoxication, the reasons do not apply to involuntary intoxication. It follows that the defendant should be able to rely on involuntary intoxication as evidence that he did not form the necessary *mens rea* of any crime of which he stands accused, whether it be a crime of basic or specific intent. But that is as far as it goes; it does not provide a new defence for the person who possesses the necessary *mens rea* even if this was entirely due to an involuntary consumption of alcohol or drugs. As we have said before; a drugged intent is still an intent.

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