

Offences Against the Person: Voluntary Manslaughter

Diminished Responsibility

By the end of this unit you will be able to:

- Define the key elements of the partial defence of diminished responsibility.
- Understand the states of mind which may be governed by this partial defence.

You will also be able to evaluate

- The current law on diminished responsibility and possible recommendations for reform from the Law Commission
- How the current law has affected the concept of diminished responsibility.

Homework

During this unit, you will be set the following. In completing homework, you will be expected to do your own research and supplement your own notes. This is essential to show understanding.

1. Read the case report of *R v Dietschmann (2005)* and complete the questions enclosed
2. Revise Murder and Voluntary Manslaughter for DRAG test in one week..

End Of Unit Assessment

Further to the homework above, you will sit a DRAG test on murder and voluntary manslaughter. Remember, you will have the choice to answer 10 out of thirty questions, reflecting your understanding and knowledge of the subject. You will also plan and complete the following section B problem question in **class time:**

Bob and Sue have been married for 20 years. They have a son, Nigel. Bob has become a bully, hitting Sue when he thinks that she has burnt the dinner and shouting abuse. Sue has become an alcoholic as a result, drinking vodka to get rid of the pain.

Sue, worried that Bob will think she has burnt it, drinks half a bottle of whiskey and decides to try and stop him talking. She takes a glass and smashes it, putting the shards into the pie for tonight's dinner. Nigel is sick of his father and wants to get rid of him so that he can go to drama school. He decides to put rat poison in his beer.

Bob sits down and, choking on the pie, reaches for his beer. After two gulps, he is still gagging and Sue, terrified, calls the paramedics.

Harry the paramedic arrives and manages to get Bob into the ambulance, dropping him and causing an aneurysm. Bob is put on life support and after four and a half years, Dr Simon decides that the machine should be turned off.

Discuss Sue and Nigel's liability for the death of Bob.

Recap:

What Is Voluntary Manslaughter?

Homicide Act 1957 and Coroners and Justice Act 2009

This created three 'partial' defences to murder

Diminished
Responsibility

Provocation

Survivor of a suicide pact

- What do we mean by a partial defence?
- Can you be charged with the crime of voluntary manslaughter?
- Why is it 'voluntary'?
- What effect does the finding have on sentencing?
- Which crime(s) do they apply to?
- What element(s) of the offence of murder are present in each type?
- Which one was 'new' in 1957 and where did we get it from?
- Which one is no longer in existence at all, and what is it now called?

Why was the 1957 Act even brought in?

They were introduced because of the death penalty. It was considered unfair that both a hit man and a battered wife could both be hung. After the abolition of the death penalty under the Murder (Abolition of the Death Penalty) Act 1965*, these defences remained on the statute book because conviction of murder now carried _____.

They are called 'voluntary' to distinguish them from involuntary – where a person kills another without meaning to cause death or serious injury.

* Actually, this act suspended the death penalty for five years, then it was (accidentally!) banned. Once the Human Rights Act 1998 came into force, the death penalty for all remaining crimes was also withdrawn.

Diminished Responsibility

Old Law

Where a person kills or is party to a killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.

s.2 Homicide Act 1957

New Law

“(1) A person (“D”) who kills or is a party to the killing of another is not to be convicted of murder if D was suffering from an abnormality of mental functioning which:

- (a) arose from a recognised medical condition,
- (b) substantially impaired D’s ability to do one or more of the things mentioned in subsection (1A),
- (c) provides an explanation for D’s acts and omissions in doing or being a party to the killing.

(1A) Those things are:

- (a) to understand the nature of D’s conduct;
- (b) to form a rational judgment;
- (c) to exercise self-control.

(1B) For the purposes of subsection (1)(c), 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.”.

... as amended by s.52 Coroners and Justice Act

Student Task

The old and the new law are above (you might have worked that out!). The new law does not get rid of the older one, as with loss of control, but amends it instead. To start with we’re going to see how observant you are!

1. Identify the key aspects of each defence

Old Law	New Law
1.	1.
2.	2.
3.	3.
	4.

2. Pick two of the changes, and using only your common sense (!) explain why the change occurred.

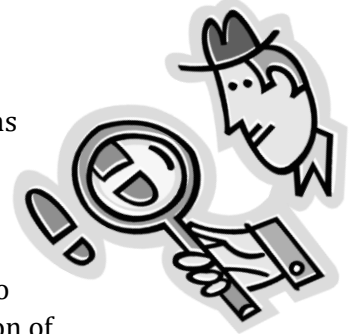
Change	Reason Why

Issues and Basics

1. Why do we need this partial defence. Aren't insanity and automatism enough!?

Short answer... **no!** Although it is only a _____ defence to murder, it seems to fill a large number of holes left by the general defence of **insanity** as well.

Any Proof? Well, under the old law, a larger number of DD who are choosing to argue diminished responsibility rather than prove themselves not guilty by reason of insanity. There must have been something that they preferred about it!



2. OK, so how do I prove it and to what level?



This has not changed! (The 2009 Act only changes s2(1) of the 1957 Act)

D generally raises the defence and must prove it **on balance of probabilities** (s.2(2)) He must use medical evidence from at least **two** experts.

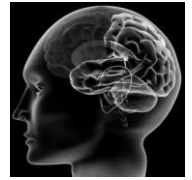
Although this is seen to impose a reverse burden of proof on D, and be unfair, as it seems to go against the principle of innocent until proven guilty, the courts have said that it **is** compatible with s.6(3) HRA 1998.

The question of whether D was suffering from diminished responsibility is a matter of **fact** and so left to the _____ to decide on the facts presented, (although the judge **can** refuse to accept the plea in court, even when both prosecution and defence agree to it *R v Sutcliffe (1981)*)

The judge **can** withdraw it from the jury if there is not evidence that a _____ jury could conclude that D's mental responsibility was substantially impaired.

AO2: Why might the judge chose to withdraw it from a jury? What other things could influence them to do this?

Abnormality of Mental Functioning



This emphasises the **process** of thinking, rather than a static condition, and is potentially much wider than the old law. It is also a little more medical in phrasing (although it is still not what a doctor or psychiatrist would use!)

So, then we have to ask what is meant by an 'abnormality', and the following case is KEY in telling us what it means. The new Act simply seems to confirm it.

R v Byrne (1960)

Facts:



Ratio:

Parker LJ:

"A state of mind so different from that of an ordinary human being that the reasonable man would term it abnormal"

The term is "wide enough to cover the mind's activities in **all** its aspects."

A02: As we will see later, when we consider element three, this may include the 'irresistible impulse'. Why do you think it may be unfair to include reference to this?

Element Two:









Caused by a 'recognised medical condition'




This, again, updates the law to make it more appropriate. The words used by the old act were antiquated and had absolutely no basis in psychiatric medicine. This new definition seems to cover a wide range of physical, psychiatric and psychological conditions.

They do **not** need to be permanent, but they must exist **at the time of the killing!**

What sort of things do you mean?

The following conditions were enough under the old law...

Condition?	Case?	Facts?	Ratio?
Psychopathy	 <i>R v Byrne (1960)</i>		
Paranoia	 <i>R v Martin (Tony) 2001</i>		
Epilepsy	<i>R v Campbell (1997)</i> 		
Depression	 <i>R v Seers (1984)</i>		
	<i>R v Gittens (1984)</i>		
Premenstrual tension	 <i>R v English (unreported) 1981</i>		
	<i>R v Smith 1982</i> 		
Postnatal Depression	<i>R v Reynolds (1988)</i> 		
PTSD	<i>R v Bradley (2007)</i> 		

Asperger's syndrome	<p><i>R v Reynolds 2004</i></p> 		
Battered Women's Syndrome	<p><i>R v Ahluwalia (1992)</i></p> 		
	<p><i>R v Thornton No.2 (1995)</i></p> 		

Any Problems?

The old law was quite vague so the courts could 'stretch' it to include people it shouldn't. The new law is much more focused and may not include these people.

Case Study: Could Mr Higginbotham have relied on the new law?

Mr Higginbotham killed his wife by slitting her throat. He thought that she would not be taken care of as they were being sent to different care homes. He was 100 years old.

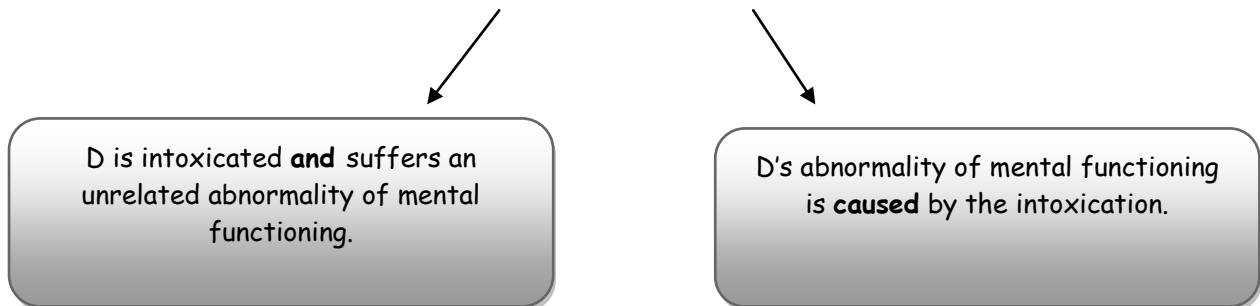
It may also not include those with lower intelligence, or any condition which is not clearly medically based.

The defendant will, of course, need to present medical evidence that they are suffering from the medical condition, and that it caused the abnormality of mental functionality which led them to kill.



A particular problem:
Alcohol (Intoxication)

There are two situations where alcohol may influence whether D can successfully plead diminished responsibility:



The question for the courts is whether D should be able to argue it in either or both of these situations. This is also influenced by _____.

Situation One: D is intoxicated and also suffers from an unrelated abnormality of mental functioning

These two cases caused a problem: which was right?

R v Gittens 1985

Facts:

Ratio:

“It is not correct for the judge to direct the jury that unless they are satisfied that if the defendant had not taken drink he would have killed, the defence of diminished responsibility must fail. Such a direction is incorrect because it fails to recognise that the abnormality of mind arising from a cause specified in the subsection and the effect of the drink may each play a part in impairing the defendant's mental responsibility for the killing.”

Or... put simply “despite the drink, was D sufficiently impaired?”

But:

R v Egan 1992

Facts:

Ratio:

Ignore the intoxication altogether. If sober, would he have been impaired?

If the jury think that it was the intoxication which tipped him over the edge... cannot use the partial defence.

Situation Two: D's abnormality of mental functioning is *caused* by the intoxication.

This means long term abuse (or alcohol dependency syndrome) which has actually damaged the mind – an injury, and therefore potentially a partial defence.

Egan makes it clear that this is a different situation entirely, so what is the approach of the courts?

R v Tandy 1989

Facts

Ratio

So, the Key Question then when assessing whether the defence could be open to an alcoholic was:



AO2 Thinking: Why might this be a 'too strict' approach to the law in this area?

The Court of Appeal seemed to agree that this was a little too strict and unfair...

R v Wood (2009)

Facts:

Ratio:

This case also approved the decision in *Dietschmann*

R v Stewart (2009)

Facts:

Ratio

AO2 Thinking: Do you agree? Is this a more balanced approach to the problem, or was the court right in *Tandy* to take a much stricter approach?

Element Three:

Substantially Impair D's Acts or Omissions

Basics: This does **not** mean absolute impairment
 ... but it must be greater than that experienced by the ordinary person.
 ... and needs to be more than "trivial or minimal" cause

R v Lloyd (1967)

Facts:
 D strangled his wife. medical evidence was that he suffered from reactive recurrent depressions, and his mental responsibility was impaired by that abnormality to some extent, not to any substantial degree - it was not as low as minimal but, on the other hand, it was not substantial.

Ratio:
 The jury should use their commonsense, but if they need help, it means...

 'Less Than Total, More Than Trivial'

In addition, the new section 52 says that this impairment must take one of the following forms. These hadn't been clearly spelt out in the old law, but really this confirms the **Byrne** ratio!

Form	Means:	Any issues?
1. Understand the nature of their conduct		
2. The ability to form rational judgement		
3. The ability to exercise control		

Element Four:

The abnormality must prove an explanation for D's conduct

This means that it needs to be a '**significant causal factor**', however, psychiatrists say that this is very difficult to do in reality. After all, can you really clearly divide things up? Think back to the alcohol cases, and the difficulties that these have caused the courts.

This fourth element clearly explains why diminished responsibility acts as a mitigation to a charge of murder.

AO2: Stretch and Challenge

Is this type of voluntary manslaughter an excuse or a justification? Use at least two cases in your response.

Do you consider those who argue diminished responsibility more or less 'blameworthy' than those who wish to argue loss of control? Why? Use at least two cases in your response.

Other Possible Reforms?

Alternative One:

There have been a number of Law Commission reports into the area of homicide and its partial defences – let alone the mental condition defences of which DR is one.



2004: The recommendation seems to be that it is working, and certainly as long as we have the mandatory life sentence for murder, it should not be removed.

2006: The basis of this response became the Coroners and Justice Act 2009. However, there is one big exception:

Developmental Immaturity

The Law Commission argued that as children mature at different rates, it would be prejudicial to exclude this. This is because otherwise the man with the mental age of a 10 year old **would** have a defence, but the 10 year old themselves would not be able to argue it!

There is a (little) bit of science to support this! Your frontal lobes, which are responsible for self control, don't develop properly until they are 14.

Alternative Two:

The Draft Criminal Code would have preferred the definition "such mental abnormality as would be substantial enough to reduce the charge of murder to manslaughter."

It also stipulates that the burden of proof should really be moved from the defence to the prosecution. This means that if the defence raises evidence of diminished responsibility, then it would be up to the prosecution to disprove the existence of the condition. Clear huh?

It is also a little wider in definition, in that it would **not** require the abnormality to result from a specified cause. This seems to make it a little more favourable to the defence. In addition, the code also keeps intoxication entirely separate, which would take care of all of those cases, such as **Dietschmann** or **Tandy**.

Remember: the Code is not law. The recommendations are there, but have not been incorporated into law, and indeed the whole code is being re-examined!!!

Evaluation

The following are some of the criticisms and areas of discussion to bear in mind when looking at the defence of DR. There is space under each to add in your notes!!

1. It should be a mitigating factor in sentencing instead (the *Spencer/Lloyd Amendment*)
2. The new version brings the law into line with medical knowledge.
3. It is imposing an unfair burden of proof on the defence
4. It classes those in abusive relationships as “abnormal” in some way.
5. The new defence provides a much more strict approach to the interpretation of ‘abnormality of mental functioning’ and doesn’t allow the same flexibility as the old law. *R v Higginbotham (2004)*
6. It is almost impossible to separate intoxication and inherent causes.
7. The use of the defence can involve a range of overly complex and legal terminology which can be difficult for a jury to understand.
8. The Coroners and Justice Act 2009 is only a halfway effective reform. The government only included it because they wanted to reform provocation.

Extension.

Using the Law Commission’s website [www.lawcom.gov.uk] look up the *Partial Defences to Murder [Report No 209, 2004]* and *Murder Manslaughter and Infanticide [Report No. 304, 2006]*.

