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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 Lawton LJ in *R v Quick* [1973] QB 910.

[The consultant] said that on 12 or more occasions Quick had been admitted to hospital either unconscious or semi-conscious due to hypoglycaemia, which is a condition brought about when there is more insulin in the bloodstream than the amount of sugar there can cope with. When this imbalance occurs, the insulin has much the same effect as an excess of alcohol in the human body. At the onset of the imbalance the higher functions of the mind are affected. As the effects of the imbalance become more marked, more and more mental functions are upset; and unless an antidote is given (and a lump of sugar is an effective one) the sufferer can relapse into coma. In the later stages of mental impairment a sufferer may become aggressive and violent without being able to control himself or without knowing at the time what he was doing or having any recollection afterwards of what he had done.

....

The question remains, however, whether a mental condition arising from hypoglycaemia does amount to a disease of the mind.

....

A malfunctioning of the mind of transitory effect caused by the application to the body of some external factor such as violence, drugs, including anaesthetics, alcohol and hypnotic influences cannot fairly be said to be due to disease. Such malfunctioning, unlike that caused by a defect of reason from disease of the mind, will not always relieve an accused from criminal responsibility. A self-induced incapacity will not excuse ….

....

In this case Quick's alleged mental condition, if it ever existed, was not caused by his diabetes but by his use of the insulin prescribed by his doctor. Such malfunctioning of his mind as there was, was caused by an external factor and not by a bodily disorder in the nature of a disease which disturbed the working of his mind. It follows in our judgment that Quick was entitled to have his defence of automatism left to the jury ….

SOURCE 2

Extract adapted from *Criminal Law*. 10th Edition. Michael Jefferson. Pearson Education Ltd. 2011. Pp 374-377.

In the defence of insanity … the accused was insane at the time of the offence but is fit to plead at the time of the trial. It is not often raised today. For example, there were two successful pleas in 1974, three in 1978, three in 1981, none in 1988, one in 1990, two in 1991, three in 1992 and 11 in 1996 …. It is suggested that many more people are legally insane than these figures suggest.

....

In practice, therefore, insanity is not important in terms of numbers, but it bulks large in lawyerly writing because of the need to distinguish insanity (where the outcome may be that the accused is sent to a secure hospital) and automatism (where the outcome is a complete acquittal).

....

The definition of insanity is not laid down by statute but has to be gathered from the cases. The law was laid down in 1843 and according to the House of Lords in *Sullivan* [1984] AC 156 it is not necessary to go further back. Lord Diplock in that case said that the law on insanity was 'to protect society against recurrence of the dangerous conduct'. He argued that the purpose of the test for insanity was to identify the dangerous. Unfortunately he did not explain why on that test epileptics were dangerous but some diabetics not. The result in *Sullivan* is not affected by the 1991 Act.

....

[I]t must be remembered that the definition of insanity … is a legal, not a medical one, as was shown by *Sullivan*, above, and confirmed by the Court of Appeal in *Hennessy* [1989] 1 WLR 287.

....

The principle governing insanity was laid down in *M'Naghten's* case (1843) [1843–60] All ER Rep 229 …. The case came to the House of Lords, who asked a series of questions to the judges of England. The main response was delivered by Tindal CJ, who seems to have striven to state the law so that an accused would not be blamed for what he had done through lack of intelligence or reasoning power or the ability to foresee consequences where punishment would deter neither the accused nor others.

From the viewpoint of precedent it must be remembered that [the *M'Naghten* Rules] were not spoken in a 'live' case; however, the words, while not *ratio*, have come to be accepted as stating the law. Moreover, as Tindal CJ said himself, one should not make 'minute application' of the quoted words, but those words have been treated as if they appeared in a statute …. Despite [this] it should be said that when all the judges of England state that the law is so-and-so … their opinion is entitled to respect even if it is not authoritative for the purposes of the doctrine of precedent. The argument from precedent is not overwhelming because the *M'Naghten* Rules have been applied in cases of the highest authority. Despite the criticism that the Rules should not be read like a statute, the words have been used as if they were ….

SOURCE 3

Extract adapted from the judgment of Lord Lane CJ in *R v Burgess* [1991] 2 QB 92.

The appellant … had attacked [the victim] by hitting her on the head first with a bottle when she was asleep, then with a video recorder and finally grasping her round the throat ….

His case was that he lacked the *mens rea* necessary to make him guilty of the offence, because he was "sleep walking" when he attacked [the victim]. He was, it was alleged, suffering from "non-insane" automatism ....

....

Where the defence of automatism is raised by a defendant, two questions fall to be decided by the judge before the defence can be left to the jury. The first is whether a proper evidential foundation for the defence of automatism has been laid. The second is whether the evidence shows the case to be one of insane automatism, that is to say, a case which falls within the *M'Naghten* Rules, or one of non-insane automatism.

....

The appellant plainly suffered from a defect of reason from some sort of failure … of the mind causing him to act as he did without conscious motivation. His mind was to some extent controlling his actions which were purposive rather than the result simply of muscular spasm, but without his being consciously aware of what he was doing. Can it be said that that "failure" was a *disease* of the mind rather than a defect or failure of the mind not due to disease? That is the distinction, by no means always easy to draw, upon which this case depends ….

....

[I]f there is a danger of recurrence that may be an added reason for categorising the condition as a disease of the mind. On the other hand, the absence of the danger of recurrence is not a reason for saying that it cannot be a disease of the mind. … There have been several occasions when during the course of judgments in the Court of Appeal and the House of Lords observations have been made, *obiter*, about the criminal responsibility of sleep walkers, where sleep walking has been used as a self-evident illustration of non-insane automatism. For example in the speech of Lord Denning [in *Bratty*] ….

....

[The doctor in this case] accepted that there is a liability to recurrence of sleep walking. He could not go so far as to say that there is no liability of recurrence of serious violence but he agreed with the other medical witnesses that there is no recorded case of violence of this sort recurring.

....

It seems to us that on this evidence the judge was right to conclude that this was an abnormality or disorder, albeit transitory, due to an internal factor, whether functional or organic, which had manifested itself in violence. It was a disorder or abnormality which might recur, though the possibility of it recurring in the form of serious violence was unlikely. Therefore since this was a legal problem to be decided on legal principles, it seems to us that on those principles the answer was as the judge found it to be.

SOURCE 4

Extract adapted from *Criminal Law*. 5th Edition. Tony Storey and Alan Lidbury. Willan Publishing. 2009. Pp 253-254.

The special verdict

If D [the defendant] is found to have been insane then the jury should return a verdict of 'not guilty by reason of insanity' (s.1, Criminal Procedure (Insanity) Act 1964), otherwise referred to as the *special verdict*. Until quite recently this verdict obliged the judge to order D to be detained indefinitely in a mental hospital. In many cases the dual prospect of being labelled 'insane' and indefinite detention in a special hospital such as Broadmoor discouraged defendants from putting their mental health in issue. In some cases it led to guilty pleas to offences of which defendants were probably innocent, and relying on the judge's discretion as to sentence (*Quick; Sullivan; Hennessy*). The prevailing attitude prior to 1991 was that the special verdict was the 'psychiatric equivalent of a life sentence' …. This was, clearly, an extremely unsatisfactory state of affairs that required reform.

....

The 1991 reforms

The position described above was modified by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991. The Act made a number of changes but, most significantly, substituted a new s.5 into the Criminal Procedure (Insanity) Act 1964. The new section allowed the judge considerable discretion with regard to disposal on a special verdict being returned. That section has since been replaced by another version of s.5 following the enactment of the Domestic Violence, Crime and Victims Act 2004. Now, following a special verdict, the judge may make either:

- a Hospital Order, with or without restrictions;
- a Supervision Order; or
- absolute Discharge. This is particularly useful where the offence is trivial and/or the offender does not require treatment.

....

Nevertheless, neither the 1991 Act nor the 2004 Act tackle the definition of insanity, and so the stigma of being labelled 'insane' remains.

SOURCE 5

Extract adapted from the judgment of Lord Denning in *Bratty v Attorney-General for Northern Ireland* [1963] AC 386 HL.

My Lords, [it had been] said that "when dealing with a murder case the Crown must prove (a) death as the result of a voluntary act of the accused and (b) malice of the accused." The requirement that it should be a voluntary act is essential, not only in a murder case, but also in every criminal case. No act is punishable if it is done involuntarily: and an involuntary act in this context – some people nowadays prefer to speak of it as "automatism" – means an act which is done by the muscles without any control by the mind, such as a spasm, a reflex action or a convulsion; or an act done by a person who is not conscious of what he is doing, such as an act done whilst suffering from concussion or whilst sleep-walking.

....

[I]t is apparent that the category of involuntary acts is very limited. So limited, indeed, that until recently there was hardly any reference in the English books to this so-called defence of automatism.

....

It is to be noticed that in … *Kemp's case* [1957] 1 QB 399] the defence raised only automatism, not insanity. In the present case the defence raised both automatism and insanity. And herein lies the difficulty because of the burden of proof. If the accused says he did not know what he was doing, then, so far as the defence of automatism is concerned, the Crown must prove that the act was a voluntary act ... But so far as the defence of insanity is concerned, the defence must prove that the act was an involuntary act due to disease of the mind, see *M'Naughten's* case ….

SOURCE 6

Extract adapted from *Criminal Law*. 4th Edition. Alan Reed and Ben Fitzpatrick. Sweet and Maxwell. 2009. Pp 21-22.

The trial judge will have to decide whether and on what basis to leave the issue of automatism to the jury. Unless the defendant has established some evidence that he was acting in a totally automatic state, there is no issue to be left to the jury. In *Bratty v Attorney-General for Northern Ireland* Lord Denning said that it will rarely be enough for the accused to give evidence on oath that he suffered a blackout. Medical evidence will generally be required. Once the judge is satisfied that there is evidence of automatism, he must decide whether it is non-insane or insane automatism. … If he rules that the automatism was caused by an external factor such as a blow on the head, he must direct the jury that it is for the prosecution to prove beyond reasonable doubt that the accused voluntarily brought about the *actus reus* and that he did not do so automatically. This is a very hard burden for the prosecution to discharge and is why the courts have ruled that the accused must provide substantial evidence of non-insane automatism before the prosecution needs to rebut it.

....

This approach to automatism is not without its problems. In the first place … it leads to unreal distinctions being drawn. A diabetic defendant who pleads automatism on the basis of a blackout may find he has pleaded insane automatism. …[However if] he takes too much insulin or fails to eat enough he will suffer a hypoglycaemic blackout which will be held to have been caused by the external element, insulin. In this situation he is a non-insane automaton. *Burgess* was held to be insane since his sleepwalking had been caused by internal bodily activity which had produced an abnormal sleep pattern. Had he managed to find an expert prepared to testify that it was much more likely that a cheese sandwich had caused the sleepwalking episode, he would have been totally acquitted.

Where the accused is acquitted on the basis of non-insane automatism he is entitled to a full acquittal. In *R v T*, T was charged with robbery and causing actual bodily harm . … [T]he dissociative state arising from being raped which resulted in post-traumatic stress was held to be due to an external cause … and the defendant was treated as not acting consciously. However, even if you can ignore the fact that despite the stress disorder it was highly unlikely that the loss of self-control was total, how long will it be before the effect of the rape will cease to be an external cause and become an internal one?