

W201 The Individual and the State

Study notes on the general defences of insanity automatism and infancy

Insanity

“...this quagmire of law seldom entered nowadays save by those in desperate need of some kind of defence...”

Lawton LJ in **R v Quick** 1973 C A.

Until recently few people pleaded insanity voluntarily as the consequences could be more serious than being convicted!

If insanity was made out then following a special verdict of ‘not guilty by reason of insanity’ the judge was required to make an order for detention in a hospital specified by the Secretary of State (eg Broadmoor) possibly indefinitely. Even an accused given a life sentence for murder at least had the prospect of eventual release.

Unusually the trial judge and the prosecution are expected to raise the question of insanity if it appears appropriate in a criminal trial.

If an accused was mentally disturbed at the time of an alleged offence the defence would normally raise this in the context of:

- absence of mens rea
- automatism (absence of voluntary action)

The advantage of these two defences is that once raised they have to be negated by the prosecution beyond reasonable doubt and if successful they lead to acquittal. Alternatively on a murder charge diminished responsibility would be relied on in preference to insanity because although only a partial defence resulting in a manslaughter conviction the judge would not have to impose a sentence of committal to a mental hospital for an indeterminate period.

Effectively insanity has operated as a restriction on these three defences because once the defence raise the issue of the accused’s mental state at all either the prosecution may call evidence to prove insanity or the judge may rule that the defence of insanity has been raised on the evidence and withdraw the other defences from the jury!

In the case of murder an accused who is found insane must be sentenced to an indeterminate hospital order. In the case of other offences the accused’s position was improved in 1991 by an amendment to the Criminal Procedure (Insanity) Act 1964 which now allows a judge to choose one of the following orders where an accused is insane:

- a hospital order (with or without restriction as to time)
- a guardianship order
- a supervision order with a condition of psychiatric treatment
- an absolute discharge.

As a result insanity may be used more as a defence in the future although the problem remains

for an accused facing a murder charge.

Warning

In old cases (before 1883) the form of the special verdict was 'guilty but insane'. Today the wording is 'not guilty by reason of insanity' but the effect is the same.

The definition

This is set out in rules arising from **M'Naghten's Case** 1843:

"every man is to be presumed sane...until the contrary be proved...to establish a defence on the ground of insanity ...it must be clearly proved that...at the time of the committing of the act...the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or... that he did not know he was doing what was wrong.'

1. "Every man is to be presumed sane... until the contrary be proved"

If the prosecution seeks to prove insanity it must be beyond reasonable doubt - if the defence seek to prove insanity it will be on a balance of probabilities.

2. "At the time of committing the act"

The test is applied at the time of the alleged offence.

If an accused is insane at the time of trial this raises a separate issue of fitness to plead. If found unfit to plead the judge has power to impose a hospital order (in the case of murder it must be indefinitely).

3. "A defect of reason"

The principle here is that criminal responsibility is visited on the rational only.

Confusion short of defect of reason does not qualify as insanity.

R v Clarke 1972 C A (depressed shoplifter in supermarket called medical evidence of depression - judge ruled this was insanity - C A said this may be a disease of the mind but confusion caused by depression was not a defect of reason).

This decision benefited the accused who was therefore not guilty (absence of mens rea) and not punished. A finding of insanity would have meant a hospital order.

4. "From disease of the mind"

What constitutes a "disease of the mind" is a legal question and judges refuse to let doctors

decide this for them.

It need only be temporary and in existence for the short time of the alleged offence.

The expression “from disease of the mind” is included to distinguish defect of reason produced by ‘brutish stupidity without rational power’ ie an untrained and stupid mind is not an insane one per Devlin J in **R v Kemp** 1957 Assizes.

It may originate from a physical disease:

R v Kemp 1957 Assizes (hardening of the arteries)

R v Sullivan 1984 Lords (epilepsy)

it must originate **internally**

R v Hennessy 1989 C A (diabetes uncorrected by insulin)

R v Burgess 1991 C A (sleepwalking)

and **not** something external

eg a blow on the head other violence drink or drugs

R v Quick 1973 C A (injection of insulin)

5. “As not to know the nature and quality of the act he was doing”

This means the physical nature of the act- ie the accused must not know what he was doing.

6. “Or...that he did not know he was doing what was wrong”

This is an alternative. If the accused did know what he was doing then he must not know it was against the law.

R v Windle 1952 CCA (gave wife fatal overdose of aspirin and said “he supposed he would hang for it”). Windle clearly believed he had broken the law.

In **R v Johnson** 2007 C A the court refused to extend the defence to cover an accused who believed an act to be legally wrong but not morally wrong.

Automatism

(sometimes called non insane automatism)

If raised this has to be shown not to apply by the prosecution beyond reasonable doubt.

It is a complete defence and results in acquittal and no punishment.

Definition

It simply means that the accused's conduct lacks the basic requirement of being voluntary. There must be a total (not partial) destruction of voluntary control.

The best definition is from Lord Denning in **Bratty v Attorney General for Northern Ireland** 1963 Lords (Bratty strangled a girl - he said "a sort of blackness came over me". He argued absence of mens rea automatism and insanity. The judge withdrew the first two and the jury rejected insanity. On appeal the Lords held that if it was an involuntary act on the evidence it resulted from a disease of the mind thus making it insanity so the judge was correct to withdraw automatism and absence of mens rea.)

"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...the category of involuntary acts is very limited".

Automatism must be caused by an external factor eg an injection of insulin **R v Quick** 1973 C A.

Other examples are:

1. Reflex action on being startled by a loud noise.
2. Being stung by a swarm of bees when driving.
3. A blow on the head.

And not an internal factor eg diabetes uncorrected by insulin **R v Hennessy** 1989 C A when insanity may be appropriate.

If it qualifies as insanity (a defect of reason from disease of the mind originating internally) then the judge will rule that the defence to go to the jury is insanity not automatism.

If it is caused by self induced intoxication it is not available for crimes of basic intent but is available for crimes of specific intent **R v Bailey** 1983 C A.

Infancy

The age of criminal responsibility is 10.

At that age a child is subject to the full force of the criminal law although children are dealt with differently in terms of courts they appear before (usually Youth Courts up to 18th birthday) and sentence.

Children under 10 who commit crime fall to be dealt with if at all in local authority care proceedings.

Until 1998 the prosecution also had to prove that a child between 10 and 14 was aware that what he had done was 'seriously wrong'. In other words children below 14 were presumed to be incapable of offending (doli incapax) but the prosecution could rebut this presumption by calling

evidence to show they understood their actions were 'seriously wrong'. The rule evolved in the middle ages to stop young children from being hung for their crimes!

The government abolished the rule as they claimed it was archaic illogical and unfair. In practice it was an irritant to the police and prosecution who either found it difficult to obtain evidence of mischievous discretion or forgot to do so.

Looking at the matter from a European perspective England has the lowest age of criminal responsibility and the doctrine had the practical effect of keeping some children in the less clearcut cases out of the criminal justice system. The position today therefore is that in a criminal court prior to sentence no allowance is made in law for the stage of development of a child as young as 10.