

MENTAL IMPAIRMENT

1. Meaning of mental impairment

D suffers from a mental impairment because it results from an underlying pathological infirmity, as opposed to being a reaction of a healthy mind to extraordinary external stimuli (*Falconer*)

2. Burden of proof

- D is presumed not to be suffering from a mental impairment unless the contrary is proven (s 21(1))
- Since D is raising the defence of mental impairment, D bears the onus of rebutting the presumption (s 21(3))
- Whether D is suffering from a mental impairment is a question of fact (s 21(2)(a)) to be determined by the jury on the balance of probabilities (s 21(2)(b))
- IF RELEVANT: Since D is charged with an indictable offence, and the prosecution and defence agree that there is evidence establishing mental impairment, the judge may hear the evidence and direct that a verdict of not guilty because of mental impairment be recorded (s 21(4)(a)) or direct that D be tried by jury (s 21(4)(b))

3. Apply the statute

- D would argue that the defence of mental impairment applies because, at the time of the conduct, D was affected by mental impairment to the effect that D did not know the nature or quality of their actions (Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 s 20(1)(a))
 - A person does not know the nature of their actions if they do not know the physical nature of the actions or what those actions amount to (*Porter*, per Dixon J)
- D would argue that the defence of mental impairment applies because, at the time of the conduct, D was affected by mental impairment to the effect that D did not know that the conduct was wrong (Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 s 20(1)(b))
 - The statute requires that D could not reason with moderate sense and composure that the conduct was wrong, as perceived by ordinary people
 - D must be 'incapable of taking into account the considerations which go to make right or wrong' (*Porter*, per Dixon J)
 - A mere intellectual apprehension of wrongness will defeat this limb of the defence (*Willgoss*)
 - If D is affected by an uncontrollable impulse, then this may be evidence that D did not know that their conduct was wrong (*A-G (SA) v Brown*, per Lord Tucker)

4. Conclude

Since D has made out mental impairment, the jury must find D not guilty because of mental impairment (s 20(2))

INTOXICATION

- Intoxication is intoxication from the influence of alcohol, drugs or other substance, and may be relevant to self-defence, duress and sudden or extraordinary emergency (CA s 322T(1)).
- Intoxication is not a defence of itself, but if the intoxication is to the extent that D has no capacity to act voluntarily or form intent, then P cannot prove AR or MR (*O'Connor*, per Barwick CJ)
- However, if D forms an intent while sober, then it cannot be said that D acted involuntarily if D becomes intoxicated without interruption and carries out the AR (*Gallagher*)
- If any part of a defence requires reasonable belief, then in determining whether that reasonable belief existed, regard must be had to the standard of a reasonable person who is not intoxicated (CA s 322T(2))
- The same applies for determining reasonable response (s 322T(3))
- If D's intoxication is not self-induced, then the relevant standard is that of a person who is intoxicated to the same extent as D (s 322T(4))
- Intoxication is self-induced unless it came about:
 - involuntarily (s 322T(5)(a)) or
 - because of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force (s 322T(5)(b)) or
 - from the use of a required prescription drug used in accordance with the directions of whoever prescribed it (s 322T(5)(c))
 - from the use of a medicinal cannabis product in accordance with a patient medicinal cannabis access authorisation (ca)
 - from the use of a drug for which no prescription is required (other than a medicinal cannabis product) and that was used for a purpose, and in accordance with the dosage level, recommended by the manufacturer (d)
- However, intoxication is self-induced in the circumstances referred to in subsection (5)(c), (ca) or (d) if the person using the drug knew, or had reason to believe, when the person took the drug that the drug would significantly impair the person's judgment or control