

Law3MDC Exam Notes

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LECTURE 1 - Mental incapacity/states and criminal law

- Subject overview and administration
- Mental incapacity/states and criminal law

STRUCTURE OF COURSE

Phase 1: Introduction and overview – week 1 plus pre-corded mini-lectures available on LMS (under week 10 tab)

Phase 2: *Crimes (Mental Impairment and Unfitness to be Tried Act) 1997* – weeks 2-4

Phase 3: Other defences and partial defences relating to an accused's mental state – weeks 5-9

Phase 4: Vulnerability, sentencing and dangerousness – weeks 11-12

Pre-trial stage: Contact with police (not covered in this course)

- Police might decide to exercise discretion not to charge the person
- Questioning of suspects – right to support person. Very important for lawyers to carefully scrutinise the record of interview to check for compliance with all procedural rights.
- Charge – are all the elements made out?
- People with mental health issues may be more likely to attract police attention (Burdekin report, 1993)
- People with mental health issues and/or cognitive impairments may be vulnerable in police interviews, are more likely to plead guilty and are more likely to falsely confess to crimes

Trial stage: matters governed by *CMIA* (phase 2)

- **Mental Health Court Liaison Service (MHCLS) and ARC list in Magistrate Court (not covered in this course)**
 - *Divergent options for Magistrate because its costly and criminal record has a stigma*
- **Unfitness to stand trial – investigations determined by a specially convened jury (week 2)**
 - Special hearing to determine whether people found permanently unfit to stand trial are guilty, not guilty, or not guilty by reason of mental impairment.
 - Channelled into the forensic mental health/disability system if found guilty or not guilty by reason of mental illness – placed under 'supervision orders' (week 4).
 - *Also called unfitness to plead*
- **Defence of mental impairment – deriving from the *M'Naghten Rules* (week 3)**
 - Not guilty by reason of mental impairment.