Topic 2 – Criminal Responsibility - Criminal Defences

MENTAL IMPAIRMENT

- **For exam, look at MR first and then AR, then if they did it potentially in astate of automatism, point at onus of proof, not stricly a defence, goe sot ssue of whether guilty act was done at all, go on to look at entaliapirent which is a strictly a defence then goonto look at another defence**
- In Victoria, the legal test for the mental impairment defence is outlined in s 20(1) of the CMIA.
  S 20 Crimes (Mental Impairment and Unfitness to be Tried) Act 1997
  (1) The defence of mental impairment is established for a person charged with an offence if, **at the time** of engaging in conduct constituting the offence, the person **was suffering from a mental impairment** that had the effect that—
    (a) he or she did not know the **nature and quality** of the conduct; or
    (b) he or she **did not know that the conduct was wrong** (that is, he or she could not reason with a moderate degree of sense and composure about whether the conduct, as perceived by reasonable people, was wrong)
  (2) If the defence of mental impairment is established, the person must be found not guilty because of mental impairment
- **Trial of James Hadfield (1800) 27 St Tr 1282**
  Facts
    - H attempted to kill King George III by shooting him
    - At his trial, it appeared that H had acted under a delusion, possibly brought on by an injury to the brain sustained while a soldier that he was to be the saviour of the world and that this was to be accomplished by his being executed after commission of a spectacular crime

  Issues
  Decision
    - Jury found H not guilty stating that H was under the influence of insanity when he committed the act
- **Re M'Naghten's Case (1843) 10 Cl & Fin 200**
  Facts
    - M shot and killed V who was secretary to Sir Robert Peel the then PM of England
    - At his trial for murder it appeared that M suffered from the delusion that he was being followed and persecuted be his enemies
    - M also believed that these persecutors were 'the Tories' and he made several unsuccessful attempts to air his grievances but without result
    - Ultimately he seems to have decided that the only way he could end what he perceived as persecution was by killing Peel, who was the leader of the Tory Party, and it seems he killed V in mistake
    - At his trial, various lay witnesses testified to his delusions and five eminent doctors of the day also gave evidence in support of the view that he was insane

  Issues
  Decision
    - The jury found him not guilty on the ground of insanity and M was ordered to be detained
    - **Jurors should be instructed that every man is presumed sane and to possess a sufficient degree of reason to be responsible for his crimes. Therefore, in order to establish an insanity defense, it must be clearly proven that at the time of the act,**

(1) the accused was under such a defect of reason from disease of the mind that he (2 did not know the nature and quality of the act he was committing; OR if he did know, he did not know what he was doing was wrong

- **R v Porter (1933) 55 CLR 182**

  Facts
  - Defendant charged with murder of infant son
  - Defendant was separated from wife and on drugs
  - Wife refused to associate with defendant or child
  - Defendant declared he would poison child and himself so defendant locked self in house and poisoned child
  - Defence pleaded temporary insanity

  Issues
  - Whether defendant not guilty of murder on ground of insanity

  Decision – **Dixon J**
  - The defendant was not guilty on ground of insanity at the time of commission of the act charged because the jury was of the opinion that at the moment of administering poison to the child, the defendant had a mental disorder or diseased intelligence that disabled him from considering with composure and reason what he was doing and its wrongness
  - 'In a case where a man intentionally destroys life he may have so little capacity for understanding the nature of life and the destruction of life that to him it is no more than breaking a twig or destroying an inanimate object. In such a case he would not know the physical nature of what he was doing.'
  - 'the second head ocvers the class where it is supposedthat he knew that he was killing and knew why he was killing, but that he was quite incaable of appreciating the wrongness of the act'. What is meant by wrong is wrong having regard to the everyday standards of reasonable people
  - **Knowledge that the conduct was wrong –** 'the main question is whether the accused was disabled from knowing that it was a wrong act to commit in the sense that ordinary reasonable people understand right and wrong and that he was disabled from considering with some degree of composure and reason what he was doing and its wrongness.'
- **Willgoss v R (1960) 105 CLR 295**

  Facts
  - Evidence indicated appellant a psychopath and defence of insanity raised
  - Expert gave opinion appellant able to intellectual assess behaviour but unable emotionally appreciate consequences of actions

  Issues
  - Could a defendant successfully plead the defence of insanity in the case of murder because they do not know what they were doing was wrong on a purely emotional level?

  Decision- **High Court per Dixon CJ, McTiernan, Fullagar, Menzies and Windeyer JJ**
  - **NO**
  - **Psychopathy does not fall within the scope of the M'Naghten formulation**
  - **Nature and quality of the conduct –** the High Court stated that nature and quality of the act refers to the physical character of the act, in this case, a capacity to know or understand the significance of the act of killing
- **Attorney-General (South Australia) v Brown [1960] AC 432**

  Facts
  - Respondent shot and killed sleeping victim in head
  - Respondent admitted shooting but held no responsibility for actions

- Respondent's defence was insanity on basis of schizoid personality
- Uncontrollable impulse formed no part of defence at trial
- Trial judge stated defence of uncontrollable impulse was unknown to law, however, directed jury to convict if uncontrollable impulse was true explanation of respondent's act

Issues

Decision – **Privy Council**

- No misdirection as no evidence tendered to support inference that uncontrollable impulse may be symptomatic of legal insanity
- There is no presumption of law that **uncontrollable impulse** is a symptom of legal insanity, nor is it the duty of a judge at the trial of a charge of murder to instruct the jury that uncontrollable impulse may afford a strong ground for the inference that the prisoner was labouring under such a defect of reason from disease of mind as not to know that what he was doing was wrong; but, if there is evidence that irresistible impulse is a symptom of the particular disease from which the prisoner is said to be suffering, the judge should deal with that evidence as with other relevant evidence in the case

BURDEN OF PROOF

- The legal burden of prood on the issue of insanity is placed on the **accused**
- There is a **presumption of sanity** – every man is to be presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes until the contrary be proved to satisfication
- Thus the accused bears the burden of proving that he or she was mentally impaired **at the time of the offence**
- The standard of proof is on the balance of probabilities – thus jury has to be satisifed on the balance of probabilities
- **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 s 21 –** a person is presumed not to have been suffering from a mental impairment until the contrary is proved

CONTRAST WITH AUTOMATISM

- Insanity is the only common law defence that imposes a legal (as opposed to evidentiary) burden on the accused – cf automatism where the defence need only raise sufficent evidence of automatism and need not prove it to a legal standard. The prosecution bears the burden of disproving automastim BRD
- If an accused raised both mental impairment and automatism, different directions regarding burdens will be required
- **R v Falconer (1990) 171 CLR 30**

  Facts
  - F suffered 30 years of abuse at the hands of her husband (the deceased)
  - After another night of sexual abuse, the Defendant killed her husband
  - According to the Defendant, there was a complete blank in her memory, until she woke up with a gun next to her, the deceased dead
  - During the trial, evidence of psychiatrists to support sane automatism was disallowed by the judge

  Issues

  Decision – **High Court per Mason CJ, Brennan, Deane, Dawson, Toohey, Gaudron & McHugh JJ**
  - **Toohey J**

- A person will not be criminally responsible for an act or omission which occurred independently of the will (committed in a 'dissociative state'). This can often be caused by an external psychological factor (a 'psychological blow').
- There is a distinction between actions of a sound mind affected by an external psychological blow as opposed to those of an unsound mind (i.e. affected by a 'disease of the mind')
- Actions of an **unsound mind** are still voluntary acts and are governed by the rules of the insanity defence and result in a special verdict
- Actions of a **sound mind** affected by an external psychological blow are **not voluntary acts**. Since there is no voluntariness, they will result in an outright acquittal
- The prosecution needs to prove voluntariness. If voluntariness cannot be proved, there is an outright acquittal. If voluntariness is proven, it is still open to argue that the actions were due to insanity (insane automatism - actions of a unsound mind)
- In this case, the evidence of the psychiatrists was relevant even to the defence of sane automatism - because the Defendant sought to argue that due to an external psychological factor, she was acting in a dissociative state (as opposed to suffering from a mental illness)
- "To answer this problem, the law must postulate a standard of mental strength which, in the face of a given level of psychological trauma, is capable of protecting the mind from malfunction to the extent prescribed in the respective definitions of insanity. That standard must be the standard of the ordinary person: if the mind's strength is below that standard, the mind is infirm; if it is of or above that standard, the mind is sound or sane" (p.30)
- For the 'defence' of automatism to succeed the automatism must be (1) **transient**; (2) **caused by trauma**, whether physical or psychological trauma, which the mind of an ordinary person would be likely not to have withstood; and (3) **not likely to recur (she can't go into this state with other people because then it is unsafe for the community)** (p.30). Theoretically there is an evidential onus only on the accused, so that once the accused raises sufficient evidence of automatism for a reasonable jury to find that it exist, the prosecution must then disprove it beyond reasonable doubt. However, the court says, "in practice an accused does not raise non-insane automatism by raising automatism based merely on mental malfunction. Prima facie, mental malfunction is the consequence of mental infirmity and, until it be proved that a particular instance of mental malfunction satisfies the exempting qualifications, mental malfunction must be treated as a consequence of mental infirmity" **So she is presumed to be mentally impaired until she proves automatism**
- On the facts, the court found that evidence of automatism should have been allowed to go before the jury. The issue would be "whether an ordinary woman of Mrs Falconer's age and circumstances, who had been subjected to the history of violence which she alleged, who had recently discovered that her husband had sexually assaulted their daughters, who knew that criminal charges had been laid against her husband... would have entered into a state of dissociation as a result of the incidents which occurred on the day of the shooting"
- **Whether an ordinary person would be able to withstand the stress Mrs F did or whether an ordinary person would also snap and enter into one of these automatic states**

- **Examples – sleep-walking, epilepsy, concussion**

SPECIAL HEARING

- Indeterminate detention for inndividuals found not guilty on the baiss of mental impariment is not respectful of the human rights of those mentally ill inviduals who are in the crminal jutsice system
- As a result, laws in some juridictions are amended to provide alternatives to indefinite detention
- The underlying rational of disposition rules is that an indiviual found not guilty by reason of mental illness should be subject to a regime that is the least restrictive of his or her freedom and autonomy as is consistent with the safety of the community
- In Victoria, a new system of disposition was introduced by the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**
    - **S 15** - A special hearing may be held under Pt 3 of the Act to determine whether the accused is not guilty of the offence, not guilty of the offence because of mental impairment or committed the offence charged or an offence available as an alternative
    - **S 17** – the following findings are available to the jury at a special hearing
        (1) Not guilty of the offence charged
        (2) Not guilty of the offence because of mental imapirment
        (3) The defendant committed the offence charged or an offence available as an alternative
    - **S 22** – the question of mental impairment may be raised during a trial by the defence, or, with the leave of the trial judge, by the prosecution
    - Where the accused is found not guilty because of mental impairment (at trial or special hearing), the court must impose one of two types of supervision orders
        (1) A custodial supervision order – court may commit a person to custody in an appropriate place or in a prison provided that a supervision order committing a person to prison may only be made if the court is satisfied that there is no practicable alternative in the circumstances **(s 26)**
        (2) A non-custodial supervision order – the court may release the person on conditions decided by the court and specified in the order **(s 26(2)(b))**

INTOXICATION - applicable to **all** offences

- Not a self-defence per se but depending on level of intoxication, it <u>may</u> affect:
    - The formation of AR
    - MR elements
        - Can subjective mindset be formed?
        - Can a belief actually be formed?
        - Did they have knowledge/awareness?
        - Intoxication cannot be used to negate MR if the MR requirement is negligence (as negligence is an objective test and the reasonable person is not intoxicated – could argue accused acted unreasonably whilst drunk)
- The relevance of an accused's state of intoxication at the time of omitting the offence may be twofold
    (1) First, in extreme cases it may mean that the accused's conduct was in involuntary – that is, the acts were committed in an automatistic state in which the accused's physical actions were not directed by his or her will
    (2) Intoxication may be relevant in showing that, although the accused's actions were performed voluntarily, the prosecution has not proved (BRD) that the accused had the mens rea required to constitute the particular crime charged

- **S 322T**
  (1) **"intoxication"** means intoxication because of the **influence of alcohol, a drug or any other substance**
  (2) If any part of a defence to an offence relies on **reasonable belief**, in determining whether that reasonable belief existed, regard must be had to the standard of a reasonable person who is **not intoxicated**.
  (3) If any part of a defence to an offence relies on **reasonable response**, in determining whether that response was reasonable, regard must be had to the standard of a reasonable person who is **not intoxicated.**
  (4) **If a person's intoxication is not self-induced**, in determining whether any part of a defence to an offence relying on reasonable belief or reasonable response exists, regard must be had to the standard of a **reasonable person intoxicated to the same extent as the person concerned.**
  (5) For the purposes of this section, intoxication is self-induced unless it came about—
    (a) involuntarily; or
    (b) because of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force; or
    (c) from the use of a drug for which a prescription is required and that was used in accordance with the directions of the person who prescribed it; or
    (d) from the use of a drug for which no prescription is required and that was used for a purpose, and in accordance with the dosage level, recommended by the manufacturer.
  (6) Despite subsection (5), intoxication is self-induced in the circumstances referred to in subsection (5)(c) 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
- **R v O'Connor (1980) 146 CLR 64**

  Facts
  - D stabbed a police officer V, who attempted to arrest him
  - D was under the influence of drugs and alcohol at the time of the attack and had no recollection of the events
  - Medical evidence suggested that the drugs and alcohol may have rendered D incapable of reasoning and of forming an intention to steal or to wound and may well have had a hallucinogenic effect

  Issues
  - Can evidence of self-induced intoxication be used to cast doubt on the voluntariness with which the act of unlawful wounding was done by D?

  Decision
  - Conviction for murder replaced by a conviction for manslaughter on the ground that the judge failed to direct the jury that self-induced drunkenness could have the effect of preventing the defendant from forming the specific intent that is an element of the crime of murder
  - If the evidence of intoxication is capable of raising a doubt as to voluntariness or the existence of actual intent it is for the Crown to remove that doubt from their minds and to satisfy them beyond reasonable doubt that the accused voluntarily did the act with which he is charged and that he did so with the actual intent appropriate to the crime charged

- The mere fact that D is unable to remember the incident may not of itself be sufficient to prove a lack of AR/MR
- The formation before intoxication of the requisite intent and the deliberate induction of a state of intoxication for the performance of the act makes that act when done intoxicated both voluntary and with the requisite intent
- **Barwick CJ –**
    - Intoxication may be relevant to defending a criminal charge in two primary ways
        (1) Where it operates to 'divorce the will from the movements of the body so that they are truly involuntary'
        (2) Where intoxication is not to complete as to preclude the exercise of the will, but it nevertheless is sufficient to prevent the formation of the intent to do the physical act involved in the crime charge (constituting the mens reas of the crime charged)
    - Parliament should create specific offences to deal with blameworthy conduct in relation to intoxication, however, it is not for judges to do
    - An accused should not be convicted for acts not voluntarily done or mentalities not actually possessed by reasons of their inebriated state
    - **Proof of a state of intoxication, whether self-induced or not, so far from constituting itself a matter of defence or excuse, is at most merely part of the totality of the evidence which may raise a reasonable doubt as to the existence of essential elements of criminal responsibility. Such a doubt, if not removed by the Crown to the satisfaction of the tribunal of fact, will warrant an acquittal, not because the accused was intoxicated but because the charge will not have been proved beyond reasonable doubt**
    - Note, therefore, that drunkenness is not in itself an excuse. "A person may be intoxicated in the sense that his personality is changed, his will is warped, his disposition altered, or his self control weakened... His intoxication to this degree, though conducive to and perhaps explanatory of his actions, has not destroyed his will or precluded the formation of any relevant intent... if voluntary, his acts remain his; and he intends to perform them. So long as will and intent are related at least to the physical act involved in the crime charged... the fact that the state of intoxication has prevented the accused from knowing or appreciating the nature and quality of the act which he is doing will not be relevant to the determination of guilt or innocence"
- **Murphy J –**
    - the problem with the Majeswki approach is that it creates an exception to general principles of criminal responsibility whereby an intoxicated defendant will be liable for criminal offences despite an absence of criminal intent
    - it would invent a species of constructive crimes whereby the prosecution would need only establish intoxication and not mens rea itself
    - it is up to Parliament to create specific offences to respond to the policy issues arising from this
- **Aickin J –** excessive usage of alcohol and drugs is a serious social problem but if an act done when in such a condition is to be made criminal, it is for the legislature to do so
- **Mason J (dissenting) –** (1) an accused should not escape liability because they got themselves so intoxicated they could not act voluntarily or form the requisite mens rea

to commit a specific crime and (2) it is expected and necessary that persons will be punished for criminal acts; there would be an uproar if being intoxicated absolved accused persons' of liability
    - **Gibbs J (dissenting) –** recklessness in becoming intoxicated provides an ethical rather than a legal basis for attaching guilt to conduct committed under its influence
    - **Wilson J (dissenting)**
- **Attorney General for Northern Ireland v Gallagher [1963] AC 349**

  Facts
    - D was an aggressive psychopath and prone to violent outbursts particularly when he had taken alcohol
    - On his release from a mental hospital, he bought a bottle of whiskey and a knife
    - He intended to use the knife to kill his wife and brought the whiskey as he knew that this would make him aggressive to the extent that he would be able to kill
    - He drank the whiskey and killed his wife with the knife and a hammer
    - He argued that he could not form the intent to kill his wife because he was intoxicated

  Issues

  Decision – House of Lords
    - **Intoxication deliberately induced as a means of performing an act results in the intent to do that act being formed prior to the eventuation of the intoxicated sate – the act is voluntary when its intention was formed before intoxication**
    - **Lord Denning** – 'The wickedness of his mind before he got drunk is enough to condemn him, coupled with the act which he intended to do and did do'
    - **Lord Denning** - "My Lords, I think the law on this point should take a clear stand. **If a man, whilst sane and sober, forms an intention to kill and makes preparation for it, knowing it is a wrong thing to do, then gets himself drunk so as to give himself Dutch courage to do the killing, and whilst drunk carries out his intention, he cannot rely on this self-induced drunkenness as a defence...** He cannot say that he got himself into such a stupid state that he was incapable of an intent to kill... The wickedness of his mind before he got drunk is enough to condemn him, coupled with the act which he intended to do and did do....I would agree, of course, that if before the killing he had discarded his intention to kill or reversed it - and then got drunk - it would be a different matter. But when he forms the intention to kill and without interruption proceeds to get drunk and carry out his intention, then his drunkenness is no defence" (382-3)

SUDDEN OR EXTRAORDINARY EMERGENCY - available for homicide and assault

- Complete defence = acquittal
- **Necessity** - arises where there is an impersonal source of compulsion – e.g. escaping from a burning car – D can argue that their actions fell under 'necessity' if they push V out to save them and they are injured.
- **It involves a claim by an accused that he or she was compelled to do what he or she did because of some extraordinary emergency**
- **s.322S** - necessity has been abolished at common law and is now replaced by statutory 'sudden or extraordinary emergency'
- **s.322R**

  (1) A person is not guilty of an offence in respect of conduct that is carried out in circumstances of sudden or extraordinary emergency.

  (2) This section applies if –

(a) the person **reasonably believes** that—
(i) circumstances of **sudden or extraordinary emergency exist**; and
(ii) the conduct is the **only reasonable way** to deal with the emergency; and
(b) the conduct is a **reasonable response** to the emergency.
(3) This section only applies in the case of **murder** if the person believes that the **emergency involves a risk of death or really serious injury**

- **R v Dudley and Stephens (1884) 14 QBD 273**

Facts
- Dudley and Stephens murdered a fellow seaman, V, in order to save their own lives from starvation due to a shipwreck
- Convicted of murder

Issues
- Was the killing of V, murder, considering the circumstance of the case?

Decision
- Killing an innocent life to save one's own does not justify murder even if it's under extreme necessity to hunger
- Necessity of hunger does not justify murder
- **It is not permissible to kill another to save yourself no matter how grave the emergency**

DURESS - available for homicide and assault

- Complete defence = acquittal
- **Duress** - arises where there is a compulsion from another person – e.g. D is threatened with injury to his child unless D steals from V
- **X must have nominated the crime D committed**
- **S 322Q -** Duress has been abolished at common law but now exists under statute
- **S 322O** of Crimes Act:

(1) A person is not guilty of an offence in respect of conduct carried out by the person under duress.
(2) A person carries out conduct under duress if—
(a) the person **reasonably believes** that—
(i) subject to subsection (3), a **threat of harm** has been made that will be carried out unless an offence is committed; and
(ii) carrying out the conduct is the only **reasonable** way that the threatened harm can be **avoided**; and
(b) the conduct is a **reasonable response** to the threat.
(3) A person does not carry out conduct under duress if the threat is made by or on behalf of a person with whom the person is voluntarily associating for the purpose of carrying out violent conduct.
(4) This section only applies in the case of **murder** if the person believes that the **threat is to inflict death or really serious injury.**

- **R v Runjanjic; R v Erica Kontinnen** (1991) 53 A Crim R 362

Facts
- R and K had a sexual relationship with a man named H which was marked by H's dominance and violence
- R and K and H jointly lured V to H's property and H detained V and severely beat her
- R and K were convicted on charges of false imprisonment and causing GBH with intent
- The defendants raised the defence of duress

    - The defence was trying to show that long-term battering had affected the ability of the defendants, Runjanjic and Kontinnen, to act freely; that they had been under duress

  Issues

  Decision

    - Appeal allowed
- **Superior orders**
    - What is the extent to which a member of the armed forces, charged with crime, can rely on the fact that the service person acted under the orders of someone whom he or she was bound to obey?
    - If the member obeys only lawful commands he or she will not infringe either the criminal or the military law
    - If the military command is unlawful, the soldier obeys it at peril – obedience will afford him noa answer at the criminal trial
    - It is surely unjust that the soldier is to be criminally liable in every case of obedience to an order in fact unlawful
    - At the same time even a disciplined person should not escape responsibility in every case by reliance on an unlawful command which he or she obeyed blindly
    - Defence of marital coercion still exists under **s 336 CA**
        - Does not apply to de facto relationships
        - Applies to a wife