

Chapter 1

Introduction to criminal liability

Sample exam question (p. 6)

Clearly, Simon's action in setting fire to the house was the factual 'but for' cause of Tracey's death. However, the issue of legal causation is not so obvious. The law states that Simon's actions do not have to be the sole cause of Tracey's death, but they must have made a significant contribution to her death. No doubt, Simon's counsel would argue that Tracey's action in ignoring the advice of the fire service and trying to escape by climbing onto the roof was a new intervening act, which broke the causal chain that Simon had started. The facts suggest an 'escape case' situation. The law in such cases is that if the victim is trying to escape from a dangerous situation created by the defendant, there will only be a break in the causal chain if the victim 'does something so daft or so unexpected that no reasonable man could be expected to foresee it' — *R v Roberts* (1971). Here, the prosecution would be able to argue that climbing onto the roof of a burning building to try to escape, even against fire service advice, was reasonably foreseeable, especially since the fire service had not actually arrived at the burning house, and therefore Simon is likely to be held to be the legal cause of her death.

Chapter 2

Non-fatal offences

Sample exam question (pp. 12–13)

On the facts in the scenario, it would appear that Bob could be charged with common-law assault, which is defined as recklessly or intentionally causing the victim to apprehend the immediate infliction of unlawful personal violence. The word 'apprehend' merely means to be aware that something violent is about to happen. It does not require the victim to be afraid, nor does it matter whether the victim was not in danger, as in *Logdon v DPP* (1976). Here, it is clear that as Alan was 'convinced that Bob was coming to knock him off his stepladder', he was aware of impending violence. As for the need for 'immediate violence', this test also appears to be satisfied. The cases of *Ireland* (1998) and *Constanza* (1997) confirm that words or even silent phone calls can constitute the *actus reus* of assault. Here, Bob's shout and 'sudden veering across the street in Alan's direction' would indicate that the full *actus reus* of assault is met.

There could, however, be some difficulty in establishing the *mens rea* of either intention or recklessness. There is no evidence of intention on Bob's part from the statement that he had 'merely wanted to have a friendly chat'. This could also eliminate recklessness as to causing apprehension of unlawful violence, particularly since he was drunk.

Chapter 3

Murder and voluntary manslaughter

Questions (p. 29)

- 1 In *R v Byrne* (1957), 'abnormality of mind' was defined as:

...a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters and the ability to form a rational judgement whether an act is right or wrong, but also the ability to exercise will-power to control physical acts in accordance with that rational judgement.

- 2 Psychiatric conditions covered by 'inherent causes' include schizophrenia, psychosis and organic brain disorder. Severe shock, depression and 'battered woman syndrome' are also included.
- 3 In *R v Lloyd* (1967), it is explained that 'impairment of mental responsibility' need not be total but it must be 'more than trivial or minimal'.
- 4 In *R v Wood* (2008), the earlier decision in *R v Tandy* (1989) was widened. Judge LJ stated: 'the bar the defendant is required to surmount before diminished responsibility can be established in the context of chronic addiction to alcohol may have been set too high.' He continued by saying that this defence arising from alcohol consumption was a question for the jury, which had to determine whether or not the defendant's syndrome was of such an extent and nature that it constituted an abnormality of mind induced by illness or disease. If it was, this defence was available, subject to the jury then deciding whether the defendant's craving for alcohol was irresistible or not; but the fact that some drink was consumed voluntarily would not necessarily deprive the defendant of this defence.
- 5 In *R v Dietschmann* (2003), it was established that if the defendant had not been drunk, he probably would not have killed his victim. However, it was held that, despite that fact, the defence of diminished responsibility was still available provided the jury was satisfied that, notwithstanding the role of the alcohol, his abnormality of mind substantially impaired his mental responsibility for the killing.

Exercise (p. 34)

- 1 John's hot-headed temperament would be ignored in relation to both response and control characteristics. This was clearly stated in *DPP v Camplin* (1978) and reinforced in *Attorney General for Jersey v Holley* (2005). In *Camplin*, Lord Diplock stated that the defendant may not rely on 'his exceptional excitability or pugnacity or ill-temper'.

- 2 Peter's alcoholism will be ignored — *R v Newell* (1980). However, the fact that he is a racist and the provocation was targeted at this characteristic means that, following *R v Morhall* (1996), 'repugnant' characteristic will have to be attributed to the reasonable man in terms of assessing the gravity of the provocation, but not, of course, in terms of the test of self-control.
- 3 Although Jane's taunt was not specifically directed against Mary's Down's Syndrome, the judge is likely to ask the jury to consider the effect of such a taunt on a reasonable person of Mary's age in terms of the gravity of the provocation.
- 4 In *Attorney General for Jersey v Holley* (2005), Lord Nicholls (referring back to *R v Morgan Smith*, 2000) specifically advised defendants suffering from a mental illness to plead diminished responsibility rather than provocation in a murder case. Nonetheless, it was made clear that if the provocation was directed against the defendant's mental condition, provocation would be available. The judge would have to direct the jury to consider the effect such provocation would have on the reasonable man with that mental condition in terms of the gravity of the provocation.

Questions (p. 35)

- 1 Under s.3 of the Homicide Act 1957, there must be evidence of provocation 'whether by things done or things said or by both together', and it is for the judge to rule on this. If there is any evidence of provocation, the defence must be decided by the jury.
- 2 In *R v Acott* (1997), there was some speculation that the frenzied nature of the killing suggested a loss of self-control, but as there was no evidence of provocation, the defence was not allowed to be placed before the jury. A similar decision was reached in *R v Miao* (2003) and *R v Serrano* (2006).
- 3 In *R v Humphreys* (1995), it was held that even relatively minor provocation can be considered to determine the issue of loss of self-control, where the cumulative effect could be considered in terms of the 'final straw' element of provocation which caused the victim to 'snap'.
- 4 *R v Morhall* (1996) considerably widened the 'reasonable man' test to include repugnant characteristics. Lord Goff in his judgement (House of Lords) went so far as to include a rapist or paedophile who had just been released from prison and had been subjected to provocation specifically directed at his criminal record. In such cases, the jury would have to be directed to consider the gravity of the provocation for such a person with that background. Such characteristics would have no bearing on the test of self-control.
- 5 In *DPP v Camplin* (1978), the 'reasonable man' was referred to as:

...a person having the power of self-control to be expected of an ordinary person of the sex and age of the accused, but in other respects sharing such of the accused's characteristics as they think would affect the gravity of the provocation to him.
- 6 It was decided in *R v Newell* (1980) that the defendant's intoxication cannot be taken into account when considering the 'reasonable man' test.

Sample exam question (p. 35)

As to possible defences which she may plead, there would appear to be two — provocation and intoxication.

Provocation is a partial defence to murder, which is defined by s.3 of the Homicide Act 1957. If successfully pleaded, it results in conviction of the lesser offence of voluntary manslaughter. The following require to be proved. First that there is evidence of provocation 'whether by actions or words spoken'. Here we have the throwing of the water by Victoria over Jenny and the insult of being called 'a spotty cow'. The provoking conduct must then cause the defendant to lose self-control, which, as stated in *R v Duffy* (1949), must be 'sudden and temporary', and must be immediate. Under the test of 'cumulative provocation' laid down in *R v Humphreys* (1995), the jury could be asked to consider both the earlier incident and the insult uttered, possibly as 'the final straw'.

The fact that Jenny immediately grabbed Victoria's arm and pushed her into the road could well be accepted as evidence of the required immediate loss of self-control, but this question would have to be decided by the jury, as would the second issue of 'the reasonable man' test. This objective test was clarified by the case of *DPP v Camplin* (1978), which specifically overruled *R v Bedder* (1954). By this test, certain permanent characteristics of the actual defendant are attributed to the 'reasonable person' as likely to 'affect the gravity of the provocation'. This decision was more recently confirmed in *Attorney General for Jersey v Holley* (2005). Such characteristics are the defendant's age, race and gender, although it is accepted that any permanent disfigurement of the defendant could also be included, provided that the focus of the provocation was that particular feature, as it was here. This would therefore appear to allow the judge in his direction to the jury to advise them to consider the effect on the gravity of the provocation for the 'reasonable person with a skin complaint'. The jury would then have to consider whether the reasonable woman would have reacted as the defendant actually did and would have killed Victoria. This question is for the jury to determine.

Before going on to consider the possible defence of intoxication, the effect on her plea of provocation of Jenny's intoxication must first be analysed. While a drunk person may in law be provoked and thus lose self-control, in the leading case of *R v Newell* (1980) the Court of Appeal made it clear that voluntary intoxication cannot be an 'attributable characteristic' and was merely a transitory state for which the defendant had been responsible. The effect of her drunkenness will not destroy her plea of provocation but it will certainly have the effect of weakening it.