

Question 1

The current law concerning the defence of insanity is under Criminal Procedure (Insanity) Act 1964. It was an Act to amend the form of the special verdict required by section 2 of the Trial of Lunatics Act 1883. Section deals with acquittal on the grounds of insanity and appealing against a special verdict required by section 2 of the Trial of Lunatics Act 1883 and the procedure for determining whether an accused person is under a disability such as to constitute a bar to his being tried and convicted.

For a successful plea of insanity to be passed, the defendant has to clearly show and it 'must be clearly proved that at the time of committing the act the defendant was labouring under such a defect of reason, from disease of the mind, so as not to know the nature and quality of the act they were doing; or, if they did know it, that they did not know what they were doing was wrong.' It is otherwise assumed that every defendant is classed as sane unless proved otherwise. The defence is proved on a balance of probabilities. It is usually a matter for counsel for the defence to raise the issue of insanity.

Medical advice must be looked at to state some is insane. The Mental Health Act 2007 is often used to define mental health covering mental diseases and also considers such issues as a learning disability, A learning difficulty, Autism Spectrum Disorder, An acquired or traumatic brain injury and Dementia.

There are a very wide range of mental health conditions and developmental disorders which may affect the person in various ways and at different times. However, a mental health disorder or condition may be or may not be applicable to the offence in question. The prosecutor should look at to decide each case on its own facts and look at to what level and impact the condition has on the person and also the circumstances of the particular offences.

When looking at learning disorders such as autism, in the UK, it is classed as a disability. However, according to Autism Awareness, 'there is no evidence of an association between ASD and criminal offending. In fact, due to the rigid way many people with ASD keep to rules and regulations, they are usually more law abiding than the general population.' However, being socially naive, becoming aggressive and/or violent when experiencing changes and communication problems have led to autistic people becoming involved in the justice system. People, including the police, may not understand how to deal with an autistic person and mis-communication can lead to problems. In most cases, judges will class the autistic person unfit to proceed and may call upon guardianship or ward of court.

There are some problems with the Act that some people want to change. For example, Claydon, Lisa and

QUESTION 2

Dear Ali

I am writing to advise you of your potential crime liability for the offences committed.

You are accused of two counts of murder under the Homicide Act 1957. The deceased are Lee Smith 01/07/1996 and Colin Jones 06/06/1976. Lee Smith died after you punched him on 31/03/2021 at The Bar, Wind Street, Swansea and Colin Jones died on 01/04/2021 in the city centre of Swansea as a result of you stabbing him.

The law of murder is set out in common law. The legal definition of murder is 'the unlawful killing of a human being in the Queen's peace, with malice aforethought'.

'The actus reus of murder consists of the unlawful killing of a human being in the Queen's peace. The mens rea of murder is malice aforethought, which has been interpreted by the courts as meaning intention to kill or intention to cause GBH.'

In the case of Lee Smith, it is advisable that you plead not guilty of murder as the fact that the deceased has died (actus reus) is provable, your intention (mens rea) is not provable. If convicted of murder in this case, you would be liable to be sentenced to life imprisonment. Although you did punch Lee Smith and he died, it could be said that you did not intend to kill him but that the incident took place 'in the heat of the moment' and the accusation should, therefore, be voluntary manslaughter under Section 6 Criminal Law Act 1967 which states that, in the case of murder, a person found not guilty may be found guilty of manslaughter.

'Manslaughter is an unlawful killing that doesn't involve malice aforethought—intent to seriously harm or kill, or extreme, reckless disregard for life. The absence of malice aforethought means that manslaughter involves less moral blame than either first or second degree murder.'

With a conviction of voluntary manslaughter, a person can be sentenced up to life imprisonment but the judge may give other sentences, including a suspended sentence or a community sentence. If the offender pleads guilty, the judge will reduce the sentence by up to one third depending on how early the plea was made.

In the case of *R v Woollin* [1999] AC 82 House of Lords, shows that doubt over the intention (mens rea) can change the outcome of a case.

The appellant threw baby son on to a hard surface which caused a fractured skull and the baby died. The trial judge directed the jury that if they were satisfied the defendant "must have realised and appreciated when he threw that child that there was a substantial risk that he would cause serious injury to it, then it would be open to you to find that he intended to cause injury to the child and you should convict him of murder." The jury convicted of murder. The defendant appealed and the murder conviction was changed to a manslaughter conviction. There was doubt about the mens rea of murder.

It is advised that you plead guilty to voluntary manslaughter in this case.

However, in the case of Colin Jones, you had on your possession a knife. This comes under Possession of an article with blade/point in a public place, Criminal Justice Act 1988 (section 139(1)). If found guilty of this crime, you could be sentenced for up to four years in prison. There is no doubt that you were in possession of the knife as forensic evidence has proved it was the weapon with which you stabbed and killed Colin Jones, therefore, actus reus can be proved. It could be argued that the very fact that you were carrying an offensive weapon

Should you require further representation, please contact me.

<https://www.e-lawresources.co.uk/The-law-of-murder.php>

<https://www.nolo.com/legal-encyclopedia/homicide-murder-manslaughter-32637-2.html#:~:text=Manslaughter%20is%20an%20unlawful%20killing,first%20or%20second%20degree%20murder.>

<http://www.e-lawresources.co.uk/R-v-Woollin.php>

<https://publications.parliament.uk/pa/ld199798/ldjudgmt/jd971030/powell02.htm>