

Question 1.

In the law, a criminal offence is formed of two elements - a guilty act, referred to as *actus reus*, and *mens rea* – a criminal intention (ICLR, 2020). One of the reasons for which a person could be unaware of their actions or committed them unintentionally is their lack of reason, understanding or control during their actions. As a result, *mens rea* may not be proven and so called “defence of insanity” may be one of defences used in a trial. However, insanity pleas that succeed are relatively rare – around 30 cases per year (Ministry of Justice, 2012). Undoubtedly, defences of insanity have been historically a subject of controversies and is still a topic for discussion. There are uncertainties if the current law for “defence of insanity” is good enough, or it requires to be reviewed and reformed.

Insanity defences were already known in medieval times, but were generally used as a mitigating circumstance, not as a reason to conclude a person not guilty of a crime (FindLaw, 2019). However, it changed in XIX century. The first well-known case in England (Laver, 2018) where a defendant was acquitted on base of insanity was a case R v McNaghten (1843). M’Naghten attempted to assassinate the Prime Minister but failed to do so, instead killing his secretary (Casebriefs, n.d.). He was accused of a murder, but the court has acquitted him as M’Naghten was deemed *insane*. That high-profile case and its conclusion caused a lot of controversy and public discussion. To clearly define when a defence of insanity can be applied, new law named M’Naghten Rules (1843) was created (United Kingdom House of Lords Decisions, 1843). It presumed that everyone tried is considered sane unless proven otherwise. Therefore, to use a defence of insanity, the following must be found – that the charged person reasoning was defected, and it was caused by a *disease of a mind*, and while committing their actions they did not understand the nature of a crime and why it was wrong (Rix, 2018).

The burden of proving insanity of an accused person lies on a defence and requires proving it on balance of probabilities (Law Commission, 2013).

Relevant medical evidence should be required for a successful defence of insanity. In case R v Clarke, (1972), the defendant was charged with a theft of several items from a shop but was claiming that she had no intention to do so (Claire de Than, 2013). The medical witness specified that she suffered from depression and a possibility of absent-mindedness during the act. In another case - R v Quick (1973) – a charge nurse was accused of occasioning bodily harm to a patient. He was being treated for diabetes and sugar imbalance could have caused aggressive behaviour, which was confirmed by a doctor (Royal Courts of Justice, 1973). Another case, where it was claimed by the defence that loss of control caused by diabetes was R v Hennessy (1989). The defendant was charged with car theft and was claiming no recollection of it (Royal Courts of Justice, 1989).

Insanity and automatism may appear similar, but they are distinct in a law. Automatism applies when a person is considered to have lost control of their body at the time of committing an offence (Law Commission, 2013). To be used as a defence, the loss of control cannot be a result of a voluntary action, such as alcohol intake (Laver, 2018). If defence provides evidence for automatism, the prosecution has the burden of disproving it (Law Commission, 2012). Insanity is lack of understanding and reasoning while committing an offense, while automatism is a full loss of control of body and actions.

It is argued that using a word ‘insanity’ can appear insulting (Law Commission, 2013). It does not correspond to the medical meaning of this word. It is also apparent that the number of successful pleas of insanity are relatively low and it may be due to the reason that accused people do not want to use this plea as they would be seen as “insane” by the society and be placed in mental institutions.

For insanity defences, *defect of reason* is considered, and it can be defined as an impairment of reasoning at the time of committing an offence (Law Commission, 2013). However, it does not apply in every case. For instance, a temporary loss of concentration is not sufficient to be defined as a defect or reason.

The M’Naghten Rules require “disease of mind” to apply. This term is not limited to a mental illness, but any illness or a disease that impacts a correct functioning of a mind (Law Commission, 2013). An example of an illness of a mind is psychosis. Other possible diseases of a mind, that do not strictly apply to a brain are – epilepsy or diabetes (Law Commission, 2013). The term disease of mind may often appear to relate just to mental illnesses, which can be ambiguous for medical witnesses.

Diminished responsibility is considered under section 2 of Homicide Act (1957) when a person suffers from a medical condition that explains committed acts and was due to either not understanding of the law, inability to reason or possess self-control (Parliament of the United Kingdom, 1957). A person charged with killing would not be convicted of murder if a plea of insanity or automatism is successful.

Law Commission Draft Criminal Code (The Law Commission, 1989) suggested that the definitions and terminology, such as “insanity” and “disease of the mind” should be replaced by more appropriate terms.

In summary, the current laws for insanity and automatism ensure rightfully ensure that the accused without the criminal intention cannot be found guilty. However, the terminology used in the current law may deter defendants from using the defence based on their mental state at the time of committing an act. Furthermore, it needs to be ensured that acquitted people based on it are given sufficient care and attention to ensure they would not commit the same offence again.

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Question 2.

Dear Ali,

I am writing to you in response to your enquiry regarding your criminal case and offences you have been accused of. You asked me to provide you with advice about your criminal liability for the charges you are facing.

The offences you are accused of are indictable and therefore, your trial will take place at the Crown Court (Gov.uk, 2015). As a starting point, I would like to inform you that a person can be found guilty, when both *mens rea* and *actus reus* are proven (Schabas, 2012). It means that court will consider your motivation, state of mind, the act itself and other contributing factors.

Having analysed the current evidence, I believe that it is the most probable that you will be charged with two offences - manslaughter and a murder. Both terms refer to an action that results in a death of a person, but there is a significant difference between them in the law.

Manslaughter is a serious crime, but still less severe than a murder (BCL Solicitors LLP, 2020). It is an action that led to a death and was either voluntary or involuntary (BCL Solicitors LLP, 2020). Voluntary manslaughter is when killing a person was intentional, but it was a result of an emotional impulse, such as provocation or an illness and limited understanding of a crime (The Crown Prosecution Service, 2019). The second type of manslaughter is involuntary manslaughter, and it applies for causing a death without having an intention to do so.

From my analysis of the evidence, the incident in a bar, where you are accused of punching a doorman with a fatal result is probable to be viewed as an involuntary manslaughter. There are various categories of an involuntary manslaughter, and the most likely you will be charged with an unlawful act manslaughter (Sentencing Council, 2018). The minimum penalty of it is one year of custody, and a maximum penalty for a manslaughter is a life sentence Sentencing Act (2020) c.17 schedule 19. To determine the severity of a crime, harm and culpability are used as criteria. The harm factor is the highest, as it caused a death (Sentencing Council, n.d.). Therefore, only culpability will be used to determine what sentence you may be facing for the manslaughter. The range of culpability is between A and D, with A is the highest and D the lowest. The crime you are accused of appears to be in the C category – the death was a result of running away from a less serious crime, which was a fight in a bar. The sentence you may be facing is between 3 and 9 years in custody (Sentencing Council, n.d.). However, it will still need to be determined that you had no intention of killing a person. An important case of showing the importance of *mens rea* was *R v Woollin* (1999), where a person was convicted of a murder, but then the conviction was changed to a manslaughter, The defendant was accused of throwing a baby on a hard surface, as there was no certainty whether the accused one knew it would cause a death (House of Lords, 1999).

The second offence you are accused of appears to be a more serious crime and it is probable that the court will be considering murder charges. You are accused of causing a death of a person with signs of an intention. If you are found guilty of a murder, you will be given a life sentence in custody (The Crown Prosecution Service, n.d.). A life sentence does not automatically mean that you will spend rest of your life in prison, but you would need to spend the minimum term to be eligible for parole if you would be considered no longer a threat to the public. Murder is committed when you commit it being sane, without justification and with an intention to kill or inflict a grievous body harm (The Crown Prosecution Service, 2019). You should consider aggravating and mitigating factors. Aggravating

factors that will increase the minimum term to be served in a prison include planning the crime and premeditation, taking advantage of age or disability, cruelty, previous threats (Sentencing Council, Metropolitan Police, n.d.). Mitigating factors will contribute to decreasing the minimum term and those include an intent to harm and not to cause death, low premeditation, or being provoked. If you are of age 21 or over, the starting points for minimum terms are 15, 25, 30 years and a whole life order with no parole (Defence Barrister, n.d.). In the crime you are being charged with, you are accused of using a weapon with a blade, which was used to kill a person. It would mean that this crime would fall into a category with 25 years starting point. However, there have been cases that included using a sharp weapon to hurt a person with a fatal effect, where the defendant was charged with a manslaughter. For instance, *R v Blaue* (1975) shows that despite a stab wound, a victim could have survived if she had not refused a blood transfusion (Royal Courts of Justice, 1975). If it was the case that the victim was likely to live and died not receiving sufficient medical care when it was available, then this could have a chance to qualify as a voluntary manslaughter, which is a less serious crime than a murder.

When being sentenced for multiple offences, the court may decide whether the sentences should be concurrent or consecutive (Sentencing Council, 2012). Concurrent sentences are for crimes that are closely related to each other, while consecutive ones are unrelated. It is more likely that the court may decide to treat it as consecutive sentences, as you are accused of causing death in two separate incidents, meaning that the penalty will be added up.

Please let me know if you have any further questions. I am looking forward to hearing from you.

Yours faithfully,

Adelajda Bachleda

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