

Think box 7.1

Consider whether the following fall within the definition of section 2:

- a. A has been physically and mentally abused for several months by her husband B. She has become extremely depressed. One night she stabs and kills B.
- b. A hears voices which tell him to kill his neighbours. A does so.
- c. A becomes depressed when his girlfriend, B, leaves him for another man. After one week, A kills B.
- d. A suffers from a depressive condition causing him to become aggressive. He gets into an argument with B over some tools which he accuses B of having stolen. The argument becomes heated and A stabs and kills B.
- e. A's terminally ill wife has suffered great pain and discomfort for a prolonged period. A has become depressed and kills his wife by suffocation.

Answer guidance

- a. It all depends on the medical evidence. If there is evidence of a clinical condition such as extreme depression/anxiety/BWS then – yes.
- b. This person is clearly extremely ill, probably psychotic, and so yes.
- c. The condition has to be a serious abnormality and not just the ordinary lapse into depression that we might all be prone to from time to time. So – probably not.
- d. A depressive condition might be far more serious than the rather more mild depression in c. - so, yes, depending on the evidence.
- e. Probably here, again, depending on the severity of the condition.

Think box 7.2

1. Ahmed suspected that his wife, Sophia, was conducting an affair with his best friend, Brian. One day, he found them together and Sophia confessed to Ahmed that the child of their marriage was Brian's. Ahmed immediately strangled Brian to death.

How would the defence of provocation apply?

2. Anne and Bill lived together for eight months. Bill frequently punched and threatened her. One day, she told him she was going out. He said that she

could only go out with him and that if she tried to leave on her own she would get what was coming to her. The next evening, Anne stabbed Bill repeatedly with a knife as he lay sleeping in a drunken stupor on the settee. He died in hospital the next day.

1. What offence/s might Anne have committed?
2. Did Anne have the mens rea for the offence?
3. Does Anne have a defence?
4. What difficulties will Anne face in arguing any defence and how might she overcome them?

Answer guidance

(Ahmed would need to provide evidence (NB: not proof) that:

1. There was a specific provoking incident: the affair and confession of adultery;
 2. That he was provoked by the incident to lose self-control, ie: suffered uncontrollable outrage or boiled over (Richens [1994]).
 3. That the loss of self-control was sudden and temporary (Duffy [1949]).
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1. Murder/Involuntary manslaughter.
 2. Yes, on the facts there is nothing to suggest that she did not directly intend to kill or cause GBH.
 3. Provocation – his violence against her;
 4. The prosecution might argue that she murdered, directly intending to kill because:
 1. There has been a day's delay between the last act of violence against her and the fatal killing, thus the Duffy principle precludes the defence;
 2. Was she pre-armed? Without further evidence, it is conceivable that she planned to use the knife all along. There is no indication that she grabbed the nearest object as a weapon at the time of the killing.
 3. She killed through despair/anxiety not rage.

Think box 7.3

Consider whether the following characteristics are relevant to either self-control or the gravity of the provocation. Comment on their relevance in relation to the reasonable man test:

1. Dan has a hot-tempered and jealous disposition. When his girlfriend, Eileen, attempts to leave him one day, he strangles her.
2. Yolanda is 16 and kills an older man with whom she has a relationship because he wishes to force her into prostitution.
3. Nigel, an alcoholic, thinks all Asians are terrorists. Mohammed calls him a

racist pig. Nigel then throws a petrol bomb through Mohammed's window and Mohammed is killed in the fire.

4. Zohra has an attention-seeking personality and self-harms. She kills her boyfriend when he threatens her with a gang rape.

5. Delia is dyslexic and cannot read very well. Her boyfriend taunts her about it frequently. One night in desperation, Delia stabs him with a pair of scissors.

6. Look at the question on Anne and Bill at the end of the last section on the subjective test. Suppose that as a consequence of Bill's violence, Anne became anxiety ridden, nervous, depressed and suffered from insomnia. Are these relevant characteristics in provocation? What other defence might Anne plead?

Answer guidance

Anne will need to plead provocation and meet these arguments in order to reduce the offence to involuntary manslaughter:

1. That she was provoked to kill by Bill's physical and verbal violence.
2. That there was a loss of self-control.

The defence of provocation rests upon the need for a sudden and temporary loss of self-control, the Duffy immediacy principle. She will need to show that despite, or perhaps because of her anxiety, there was a final episode of loss of self-control. Thornton (No 2) and Humphries [1995] confirm that the history of provocation and mental conditions are relevant to the background in explaining the reaction to provocation.

Think box 7.4

1. Looking at the Bateman test, what is the standard of negligence against which the jury are asked to compare D's negligence?

Do you think this would help a jury to identify gross negligence?

2. The jury are asked if the negligence is so bad as to amount to a crime. Why could this be confusing?

3. How do you think the test could be improved?

Answer guidance

The need for the loss of self-control to be immediate is no longer so crucial. The case of Ahluwalia [1993] has qualified the Duffy principle so that delay between the last act of provocation and the killing need no longer be fatal to

the defence provided D reacted to the provocation with a loss of self-control within a limited time frame. The lapse of time might be too long here.

Think box 7.5

1. In what ways are subjective recklessness and gross negligence different?
2. In what way could it be useful to a jury to be told that a defendant who was reckless is more likely to be grossly negligent?

Answer guidance

The knife might or might not have been to hand. If it was not already to hand, this would be consistent with a sudden and temporary loss of self-control. If she had armed herself with it, it was for reasons of self-protection not intent to kill. In any event, the cases of Wells and Donachie could be relied upon where two defendants successfully pleaded provocation despite being pre-armed. This point raises the issue that battered women who kill may do so in self-defence or through fear of further violence. If successful, this would provide a complete defence. However, the defence of self-defence will not be available unless an attack is imminent.

Think box 7.6

- Are *Jones* and *Rowley* compatible?

Answer guidance

No.

Think box 7.7

Is there a parallel between asking a jury to decide whether D's negligence is gross and therefore a crime and asking a jury to decide whether a defendant was dishonest, intentional or reckless?

Answer guidance

The repeated stabbing is indicative of a loss of self-control.