

1. Diminished Responsibility

Page 262 Intoxication

According to the case of *Tandy*, an alcoholic D who killed would need to prove either brain damage or *involuntary* irresistible craving for alcohol. *Dietschmann* held that an underlying abnormality and alcohol, which might have been *voluntarily* taken, together can impair mental responsibility. It was argued by D on appeal in **Wood [2008] EWCA Crim 1305** that alcohol dependency syndrome consisting of a strong craving for drink which had not necessarily led to brain damage did not reflect voluntary alcohol consumption. It would depend on the strength of the craving and D's capacity and therefore D's conviction had been wrong. It was held that *Dietschmann* did not exclude from Diminished Responsibility the defendant with an abnormality who had voluntarily drunk alcohol although voluntary intoxication could never, on its own, amount to an abnormality. Therefore, although alcoholism leading to brain damage was more likely to amount to an abnormality of mind induced by disease or illness, alcoholism short of brain damage could also do so depending on the extent and nature of the illness. If it did, the jury then had to exclude any voluntary consumption of alcohol when considering whether there had been a substantial impairment of responsibility. This is clearly not a very easy or satisfactory task for a jury.

2. Provocation

Page 290/1: Reform

New government proposals for reform of the defence have been put out for public consultation (CP 19/08 28th July 2008). It is set out on the Ministry of Justice's website at: www.justice.gov.uk/docs/murder-manslaughter-infanticide-consultation.pdf

Partial defences

- To abolish the existing partial defence of *provocation* and replace it with new partial defences of:
 - killing in response to a fear of serious violence; and
 - (to apply only in exceptional circumstances) killing in response to words and conduct which caused the defendant to have a justifiable sense of being seriously wronged.
- To make clear that sexual infidelity on the part of the victim does not constitute grounds for reducing murder to manslaughter.
- To remove the existing common law requirement for loss of self-control in these circumstances to be "sudden".
- To provide that the "words and conduct" partial defence should not apply where the words and conduct were incited by the defendant for the purpose of providing an excuse to use violence.

- To provide that the “fear of serious violence” partial defence should succeed only where the victim is the source of the violence feared by the defendant and the threat is targeted at the defendant or specified others.
- To provide that neither partial defence should apply where criminal conduct on the part of the defendant is largely responsible for the situation in which he or she finds him or herself.
- To provide that these partial defences should apply only if a person of the defendant’s sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of the defendant, might have reacted in the same or in a similar way.
- To ensure that the judge should not be required to leave either of these defences to the jury unless there is evidence on which a reasonable jury, properly directed, could conclude that they might apply.
- To introduce a new partial defence of diminished responsibility based on the concept of a “recognised medical condition”, spelling out more clearly what aspects of a defendant’s functioning must be affected in order for the partial defence to succeed, and making clear that the abnormality should cause, or be a significant contributory factor in causing the defendant to kill.

Complicity

- To reform the law of complicity in homicide with a view to reforming the law of complicity more generally at a later stage, guided by the same principles.
- To create a new statutory offence of intentionally assisting and encouraging murder.
- To create a similar statutory murder offence in circumstances where the main perpetrator is guilty of manslaughter (because he or she lacks the state of mind for murder) and the secondary party assists or encourages him or her, intending him or her to kill or cause serious injury.
- To retain a lower threshold of secondary liability for murders which occur in the context of a joint criminal venture and to put this on a statutory footing.
- To replace the common law fundamental difference rule with a more flexible statutory rule based on whether the perpetrator’s act was within the scope of the joint criminal venture. This would be the case where the act did not go far beyond what was planned, agreed to or foreseen by the secondary party.