

Critically evaluate the principles governing the law on Intoxication

Intoxication covers the effects of alcohol, drugs or solvents. It is not actually a defence but it does provide a defence in some circumstances if the defendant does not have the required mens rea of the offence. A drunken man can take actions whilst influenced by drugs or drink that he would not have taken if he had been sober, but he cannot raise the defence of intoxication, if he has the capability of forming the required mens rea of the offence. If the defendant had the intention before becoming drunk he will be charged with the offence he committed whilst being drunk. Intoxication is an aggravating factor rather than a mitigating factor of an offence. The law recognises that alcohol or drugs may impair a defendant's power of perception, so he cannot foresee or measure the consequences which may arise from his actions which he would be able to foresee if he was sober, therefore he cannot be plead a defence that he did not have the ability to judge between right and wrong or that he did something whilst being drunk which he would not ever do had he been sober.

There are two categories of intoxication, the first of which is ~~voluntary intoxication~~ *voluntary intoxication*, this is where the defendant chooses or knowingly takes a substance knowing it will cause him to become intoxicated, this depends on what mens rea is required for the offence the defendant is charged with. The defendant is not liable if taking a substance for medical reasons or taking a non dangerous drug such as a sedative. Voluntary intoxication is divided into two types: offences committed such as murder, criminal damage with intent to endanger lives, Sec 18, 24 of Offences Against the Person Act 1861(OAPA) and Sec 1, 8, 9 of The Theft Act 1968 are offences which require the mens rea of intention, these offences are known as ~~specific intent crimes~~ *specific intent crimes* as the mens rea goes beyond the actus reus. If the defendant does not have the mens rea of the offence he has a defence for specific intent, the defence is complete or partial if it can be proven he lacked mens rea through intoxication. *R v Lipman* (1969) the defendant and a girl had voluntarily consumed a quantity of LSD at the defendant's flat. In the course of hallucinating, that he was descending to the centre of the earth and being attacked by snakes, which was the effect of the LSD. He lashed out at the girl in attempt to fight off the snakes, the girl suffered two blows to the head which caused her brain haemorrhage but she eventually dies of asphyxia which was caused by the defendant cramming 8 inches of bed sheet into her mouth. At trial defendant said he had no knowledge of what he was doing and had no

intention to harm her. His defence of intoxication was rejected and he was convicted of manslaughter as no specific intent is required for manslaughter and self induced intoxication is not considered a defence. In circumstances where the defendant did have the required mens rea of the offence despite being drunk, he is then guilty of the offence. A drunken intent is still considered to be an intent. An example of this is 'Dutch Courage' intoxication, this is where a person deliberately gets drunk to get 'Dutch Courage' to commit a crime. This was raised in the case of *A-G for the People v Gallagher* (1963), the defendant decided to kill his wife. He bought a knife and a bottle of whisky which he drank to give himself 'Dutch Courage'. After becoming drunk he killed his wife with the knife. He claimed that he was too drunk to know what he was doing and his intoxication had brought on a psychopathic state so at the time he murdered his wife he was insane. The House of Lords held that as he had intended to kill his wife even before becoming drunk the intent has still been formed. Defendant's in these types of cases are blamed to the same extent a person who intentionally commits a crime.

The second type of intention in voluntary intoxication is *basic intent* crimes such as common law assault/battery, manslaughter, rape, 'reckless' criminal damage and Sec 47, 20, 23 of the OAPA (1861). Recklessness is sufficient for basic intent crimes to prove the defendant had the mens rea and he does not have to foresee any consequences. Voluntary intoxication is no defence for basic intent crimes, this was exercised in the case *DPP v Majewski (1977)*, defendant had been taking a combination of barbiturates, speed and alcohol for 36 hours. He got into a fight in a pub and he assaulted the manager and a customer. When the police arrived he also assaulted him. He was charged with three offences of Actual Bodily Harm and three offences of assaulting the police officers when they were trying to carry out their duty. The defendant pleaded his defence that he did not know what he was doing and therefore he did not have the required mens rea. The jury were directed that self induced intoxication as a defence was not available to his basic intent crimes. The judge had concluded that drunkenness can only be used as a defence if the defendant was so drunk that he was incapable of forming specific intent for the offences. In crimes of basic intent the defendant is at fault for being reckless in becoming so drunk. The *Majewski* case is a major case in intoxication and the major rules are developed from it. This was similar to the outcome of the case in *Lipman* as although the defendant lacked the mens rea he was still not allowed to use the defence because the judiciary took the view that it is the defendant's fault for

recklessly, voluntarily consuming alcohol. The opposite occurred in the case of *R v M* (1985), the drug involved in this case is valium that has a sedative effect. The defendant lived with his girlfriend who had insisted he leave after breakdown of their relationship. He became very upset and took several tablets of valium that were legally prescribed for his girlfriend to calm himself down. Whilst he was under the influence of the drug he had started a fire in the bedroom of the flat. He was charged with causing criminal damage being reckless as to whether life would be endangered. His conviction was quashed when defendant appealed that he did not expect the tranquillisers to have that effect on him. In this case the jury should have considered whether or not the defendant had been reckless in taking valium, in sense that he had been aware of the risks from taking valium. But the defendant could not have known that him consuming the valium would cause him to commit aggravated criminal damage.

The second category of intoxication is *involuntary intoxication*, this covers situations where the defendant did not know they were consuming an intoxicating substance e.g. where a drink has been 'laced' with alcohol. A defendant will escape liability if the effect of intoxication is that the defendant did not have the mens rea required for the offence. If a defendant knew he was drinking alcohol but had underestimated the amount consumed or the effect it would have on him, cannot claim that his intoxication was involuntary. This was shown in the case *R v Allen* (1988), the defendant had consumed home made wine and did not know it was extremely strong. He then committed sexual offences. He stated he did not realise what he was doing as he was so drunk. He appealed and the Court of Appeal held it did not amount to involuntary intoxication and he was charged as though he had been voluntarily intoxicated.

If the defendant had the required mens rea of the offence and the only effect of the alcohol was to make the defendant more prone to engage in the forbidden conduct, in these circumstances involuntary intoxication cannot be used as a defence. This arose in the case of *R v Kingston* (1994), the defendant had paedophilic homosexual tendencies, and he was blackmailed by two business associates who had arranged for another man, Penn, to photograph and audio tape Kingston in a compromising situation with a boy. Penn lured a 15 year old boy by lacing his drink to his flat, the boy fell asleep and Penn invited Kingston to abuse him. Kingston had also been drugged and had molested the boy with no memory of the incident

himself. Both defendants were convicted with indecent assault, Kingston defended himself stating Penn had also laced his drink as he had seen the boy lying on the bed but could not remember any thing else and he had woken in his own home the next morning. The judge in this case directed the jury to acquit Kingston, only if they felt he was so affected by the drugs that he did not intend to indecently assault the boy, but if they felt that despite being intoxicated he still intended to indecently assault the boy he would be found guilty of the offence as a drugged intent is still considered to be an intent. The drug had allowed his desires to be released and did not create them. Kingston was convicted of the offence. If Kingston had not had the required mens rea he would not have guilty of the offence.

The question that arises concerning voluntary and involuntary intoxication is that should the law be the same on them? The law needs to be able to distinguish between these two types as innocent people could be liable, as there are circumstances in which a person has been involuntarily intoxicated. Involuntary intoxication needs no specific intent or basic intent which shows that no mens rea is needed for these types of crimes. But even though a defendant did not have the required mens rea it is argued that their act still needs punishing otherwise a lot of defendant would be pleading involuntary intoxication. A lot of solid proof is needed to show they had been involuntarily intoxicated which is difficult to show and believe.

Problems arise concerning specific and basic intent crimes. Specific intent crimes is where the mens rea goes beyond the actus reus but it is not easy to find the other intents of the defendant. Basic intent crimes is where the mens rea does not go beyond the actus reus, they both correspond. But for these types of crime a defendant will be given a lesser sentence even though he intended the consequences.

The outcome to the case of Kingston could be considered unfair as he pleaded a defence that he had been involuntarily intoxicated as his drink had been laced. It could have been argued that because Penn had laced his drink he had caused him to carry out the indecent assault. But in law a loss of self control due to the acts of a third party cannot be used as a defence. But if he Kingston had been so intoxicated that he could not form the intent then he has a defence.

Since the case of *Beard* the view had been taken that self induced intoxication even if it produced a condition similar to automatism cannot excuse crimes of basic intent. It had been stated by Lord Elwyn Jones that if a defendant takes a substance which causes him to be unable to reason and use his conscience then it is wrong to hold him responsible for his actions he does while intoxicated. This would show evidence for basic intent crimes. But this is illogical as it means that drunkenness can negative a specific intent crime but not a basic intent crime.

The Law Commission is critical of the outcome decided by the House of Lords in *DPP v Majewski (1977)*, as they stated the examination of intoxicated defendant's who deserve being blamed and punishment should be the issue of if they had the required mens rea or not. But in cases the law ensures that the juries do not take into account the defendant's voluntary intoxication when they consider the fault of basic intent crimes. This makes it very difficult and nearly impossible for juries to assess whether or not the defendant had the required mens rea as they are directed to ignore evidence related to his drunken state.

The Law Commission made a valuable recommendation of abolishing the Majewski rules and replaces it with a new special offence of causing harm whilst being deliberately intoxicated. This could be used as a charge alone or as an alternative to an existing offence, but it cannot be used in cases of involuntary intoxication. It is not easy to abolish the Majewski rules as in some cases it does function well and bring justice. The rules should be codified to avoid problems though.