Intoxication – The Legal Viewpoint.

Intoxication by drink or by drugs - the criminal law makes no distinction - is no defence in itself, but has frequently to be considered either as leading to a lack of mens rea or as the cause of a mistake that may offer a defence. The law is unsympathetic towards those who injure others or their property while under the influence of drink or drugs taken voluntarily, and rightly so considering the very large number of crimes that are alcohol- or drug-related. A number of studies have shown that between half and two-thirds of the perpetrators of homicide, assault and rape had been drinking (and that a large proportion of these were seriously intoxicated) at or just before the time of the offence. Alcohol is associated with up to 70 per cent of homicides and serious assaults, and with 50 per cent of fights or assaults in the home.

Specific intent

Where an offence is one of specific intent, and D did not have that intent (whether because of intoxication or for any other reason), he is entitled to be acquitted. Offences of specific intent include murder, wounding with intent, theft, handling stolen goods, indecent assault where an indecent purpose must be proved, and all attempts. Note that the question is not whether D was capable of forming the necessary intent, but whether he did in fact form it.

DPP v Beard [1920] AC 479, HL

> A man D raped and killed a girl of 13, and was convicted of murder. The Court of Appeal substituted a verdict of manslaughter, but the House of Lords restored the murder conviction; D had not been so drunk as to be incapable of forming the necessary intention. [This decision is now regarded as mistaken.]

R v Lipman [1969] 3 All ER 410, CA

> D and his girlfriend V each took a quantity of LSD (a hallucinatory drug). During his "trip", D imagined he was being attacked by snakes at the centre of the earth and had to defend himself; in doing so, he actually killed V by cramming eight inches of sheet down her throat. He was acquitted of murder because the jury were not sure that he had the necessary intention, being intoxicated, but convicted of manslaughter.

If the defendant actually forms the necessary intent, the fact that he would not have done so but for the intoxication is irrelevant.

R v Kingston [1994] 3 All ER 353, HL

> A man D with homosexual paedophilic tendencies went to the flat of another man X. Unknown to D, X intended to lure D into a compromising situation in order to blackmail him, and drugged D's coffee. X then took D into a bedroom where there was a 15-year-old boy, also drugged. D performed various acts with the boy and was subsequently charged with indecent assault. Potts J directed the jury that D's intoxication was irrelevant, and that a drugged intent was still an intent, and the jury convicted. The Court of Appeal allowed D's appeal but the House of Lords restored the conviction. It is no answer, said Lord Mustill, for the defendant to say that he would not have done what he did had he been sober, provided always that whatever element of intent is required by the offence is proved to have been present.

Attorney-General for NI v Gallagher [1961] 3 All ER 299, HL

A man D had decided to kill his wife and drank a bottle of whisky to give him the "dutch courage" to do so. The House of Lords (reversing the Court of Appeal) said that as long as D had the mens rea of murder at the time of drinking the whisky, and did not positively discard it, he could properly be convicted.

Basic intent

Where the offence is one of basic intent, the fact that D was voluntarily intoxicated is taken as demonstrating that intent. Offences of basic intent include manslaughter, rape, malicious wounding and assault.

R v Lipman [1969] 3 All ER 410, CA

D and his girlfriend V each took a quantity of LSD (a hallucinatory drug). During his "trip", D imagined he was being attacked by snakes at the centre of the earth and had to defend himself; in doing so, he actually killed V by cramming eight inches of sheet down her throat. He was charged with murder and convicted of manslaughter. Upholding the conviction, the Court of Appeal said that since no specific intent is required for manslaughter, self-induced intoxication (whether by drink or drugs) affords no defence.

DPP v Majewski [1976] 2 All ER 142, HL

D took a mixture of drugs and alcohol and subsequently assaulted the landlord in a pub brawl. His conviction was upheld: D's intoxication was the result of his own voluntary reckless act, said the House of Lords, and the trial judge had rightly directed the jury that they were to ignore it in considering whether he had formed the necessary mens rea in a crime of basic intent. Lord Elwyn-Jones LC said that if a man of his own volition takes a substance which causes him to cast off the restraints of reason and conscience, no wrong is done to him by holding him answerable criminally for any injury he may do while in that condition. His conduct in reducing himself to that condition supplies the evidence of mens rea sufficient for crimes of basic intent. Lord Simon said one of the prime purposes of the criminal law is the protection from certain proscribed conduct, including unprovoked violence, of persons who are pursuing their lawful lives. To allow intoxication as a defence would leave the citizen legally unprotected from unprovoked violence where this was the consequence of drink or drugs having obliterated the capacity of the perpetrator to know what he was doing.

The *Caldwell* test is strictly applicable only to criminal damage, however, and voluntary intoxication does not automatically lead to a finding of subjective recklessness for other offences.

R v Richardson & Irwin [1999] 1 Cr App R 392, CA

During horseplay following an evening's drinking, two students DD lifted another over a balcony and dropped him about 12 feet to the ground, causing him serious injuries. At their trial for causing grievous bodily harm, the Recorder told the jury they should convict if a sober person in DD's position would have foreseen a risk of injury. Allowing DD's appeal against conviction, Clarke LJ said the question was not what another person would have foreseen but what DD would have foreseen had they been sober.

R v Hardie [1984] 3 All ER 848, CA

To calm himself following the breakdown of his extra-marital relationship, D took some valium tablets prescribed for his mistress, and (under the influence of the drug) started a fire

in the bedroom. At his trial for aggravated criminal damage; the judge said his self-induced intoxication could not provide a defence, and the jury convicted. Quashing D's conviction, the Court of Appeal said that unless it was known to D (or at least to the reasonable man) that the taking of valium would be likely to lead to aggression or to an inability to appreciate risks, then its taking would not necessarily be reckless and he would be entitled to rely on his intoxication insofar as it negated mens rea. A person who knowingly takes alcohol or drugs likely to make his behaviour aggressive or unpredictable is acting recklessly in so doing; one who takes sedatives or soporific drugs is generally not, though reckless driving is an obvious exception.

However, a person who knows he is taking drink or drugs cannot rely on the fact that they are stronger than he thought, nor can he rely on medical intoxication if he fails to follow the doctor's instructions.

R v Bailey [1983] 2 All ER 503, CA

A diabetic D attacked a man V with an iron bar, and was charged with both malicious wounding and wounding with intent. His defence was automatism caused by hypoglycaemia, brought on by failing to take sufficient food after taking his prescribed insulin. The trial judge directed the jury that self-induced automatism could not be a defence, and the jury convicted on both counts. The Court of Appeal upheld the conviction on the facts of the case, but said Lawton LJ's dictum was perhaps too broad. If a defendant does appreciate the risks associated with a failure to take food after insulin, the jury may decide that his disregard of such a risk is reckless, but it depends on the circumstances.

R v Allen [1988] Crim LR 698, CA

D was charged with buggery and indecent assault (these being crimes of basic intent), but claimed he was so drunk he had not known what he was doing. He had drunk a certain amount of wine without realising how strong it was, and his intoxication should therefore be regarded as involuntary. Upholding his conviction, the Court of Appeal said that where a defendant knows he is taking alcohol, the drinking does not become involuntary just because he does not know its exact nature or strength.

A drugged intent, even if the intoxication is involuntary, is still an intent.