

'The current law of intoxication is indefensible as theory and produces indefensible results. We should abolish it completely and rely on the jury to determine what the accused's mental state was at the time of the actus reus.'

In this essay I am going to tackle the question of whether the current law of intoxication is indefensible as theory and produces indefensible results. Intoxication is defined as 'the impairment of awareness, understanding or control by an "intoxicant"'.¹ An intoxicant covers alcohol, drugs or any other substance which can, when taken into your body, impair awareness, control or understanding.

Intoxication does not provide a defence as such, but it is relevant to the question of whether the defendant had the required mens rea for the offence or not. This is because the defendant's state of intoxication may mean that he does not have the required mens rea for the offence, and therefore he may not be guilty. Whether the defendant is guilty or not depends on whether the crime he committed was one of basic intent or one of specific intent, and whether his intoxication was voluntary or involuntary.

Intoxication has gradually developed as a defence as the law has become more interested in the mental element of crime. The defence of intoxication is recognized in most common law jurisdictions nowadays, but, some legislators find it difficult to accept and define the parameters of such a defence. Generally it is understood that the defence includes both alcohol and other drugs which can cause people to do unpredictable things, therefore, it is right to consider both these types of intoxication as equal for this defence, as the relevant consideration is whether the defendant had the relevant mens rea for the crime.

As mentioned before the defence of intoxication depends on two grounds. The first being whether the crime was of specific or basic intent. These two types of intent were distinguished in the case of *Beard*². In the case of *Majewski*³, Lord Simon of Glaisdale held:

"A specific intent requires something more than contemplation of the prohibited act and foresight of its probable consequences. The mens rea in a crime of specific intent requires proof of a purposive element."

...therefore specific intent can be summed up as where the defendant actually intends to damage property or commit the crime, where as basic intent is where the defendant damages the property recklessly.

The second ground is whether the intoxication was voluntary or involuntary. In the case of involuntary intoxication, where the defendant did not know that he was taking an intoxicating substance or it was the result of taking medication under a medical prescription, it has long been established that there will be a defence as to any criminal charge. This is demonstrated in the case of *Kingston*⁴. In this case the defendant was charged with the indecent assault of a 15 year old boy, the defendant said that he had been drugged by the co-defendant, and that if he hadn't of been intoxicated he would not have acted in this way. At first he was convicted, but the Court of Appeal quashed the conviction on the grounds that:

"if there is evidence capable of giving rise to the defence of involuntary intoxication, the jury should be left to consider whether the accused's intent to commit the criminal act was induced by involuntary intoxication and thereby negated."

¹ definition derived from the Law Commission 218 (the Offences against the Person Report).

² DPP v Beard [1920] AC 479

³ DPP v Majewski [1976] 2 All ER 142

⁴ [1995] 2 AC 355

Involuntary intoxication can even be regarded as a defence for crimes of basic intent as well as specific intent, as 'it is unethical to convict a man of a crime requiring a guilty state of mind when,..., he lacked it.'⁵

It is obvious that the defendant must be sufficiently intoxicated so as to be lacking his full mental awareness, as if the defendant is still of sound mind, and although the intoxication is involuntary, they would still know what they were doing and would be capable of controlling their actions, and therefore the defence of intoxication would not arise.

In the case of involuntary intoxication where the defendant is sufficiently intoxicated, the current law that the defence would arise should not be abolished, as it is not right that a person should be convicted of a crime where a guilty state of mind is required, where he does not have it.

Where intoxication is voluntary it should not be used as a defence for crime. In general it cannot be used as a defence, but where it does arise it creates some unique problems for criminal law. For instance, a person should not be convicted of an offence requiring mens rea if they did not have the intent for the crime, but on the other hand, it is argued that where a person lacks that state of mind because of intoxication that they voluntarily brought on themselves, they should not be able to use it as a defence. It is also argued that while a person is acquitted of an offence, he or she should still be convicted on the basis that the original act of intoxication, supplied the fault element of the offence in itself.

In specific intent crimes, if the defendant has voluntarily intoxicated himself and has the mens rea he is guilty⁶, where as if the defendant has no mens rea he is not guilty. In basic intent crimes, the act of becoming intoxicated is a reckless course of conduct in itself and therefore the defendant is guilty of the offence⁷.

We can see that the law is really concerned with the lack of requisite intent on the part of the defendant, and intoxication effects this. For example, in the case of *R v Lipman*⁸, the defendant, because of an hallucogen he had taken, did not form the necessary intent for murder, and was therefore convicted of manslaughter. Therefore, as it is clear that the issue as far as the courts are concerned is the one of requisite intent, why should the lack of intent produced by intoxication not be a complete defence in all cases, whether the intoxication is voluntary or involuntary?

This is what produces a major dilemma for criminal law. On the one hand there is the maxim of *actus non facit reum, nisi mens sit rea*⁹, which shows us that it would be wrong to abolish the current law of intoxication, as if you are completely intoxicated you cannot have a guilty mind, and therefore it would be immoral to convict you, but, on the other hand, there is the policy consideration that the law should not allow criminal acts which are a result of self-induced intoxication. Another point for consideration is the fact that intoxicants such as alcohol or drugs are significantly associated with crimes of violence, which is another reason why the current law of intoxication is indefensible. In the case of *R v O'Grady*¹⁰, the defendant and the victim were both drunk and they fell asleep. The defendant woke up to find the victim hitting him so he fought back with what he thought were a few blows and then went back to sleep. The victim died and the defendant was charged with murder but he claimed to have acted in self-defence. It was held that the defendant was not entitled to rely on self-defence, if, because of his self-induced intoxication, he had made a mistake as to the amount of force reasonable for his defence. Lord Lane CJ said in this case that no distinctions should be drawn between cases of specific intent and basic intent where there is a question of mistake.

⁵ Lord Edmund-Davies, *R v O'Grady* [1987] 3 All ER 420

⁶ *Northern Ireland v Gallagher* (1936)

⁷ *DPP v Majewski* [1976] 2 All ER 142

⁸ [1969] 3 All ER 410

⁹ An act does not of itself constitute guilt unless the mind is guilty.

¹⁰ [1987] 3 All ER 420

In some ways it would be better to abolish the current law of intoxication completely, as it is unfair to allow someone to get away with an offence just because they are under the influence of intoxicants. If someone commits a crime, whether they are intoxicated or not, it will give the same results, and therefore the punishment should be the same. On the other hand, if we rely solely on the jury to determine what the accused's mental state was at the time of the actus reus, we may find that people are convicted of crimes for which they never intended, and this would be highly unethical.

The House of Lords decision in *Beard* that...

“Evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with the other facts proved in order to determine whether or not he had that intent.”¹¹

...has been adopted in many common law jurisdictions, but there has been a lot of criticism over it, both in Britain and in other countries. Some jurisdictions have even turned down the *Beard/Majewski* approach.

The law in England is as indicated in *Beard* and *Majewski*, and in addition, in the case of *R v Caldwell*¹², it was held by the House of Lords that intoxication could not be a defence if the offence the defendant was being charged with was one for which recklessness could suffice as the mental element.

In conclusion, it is recommended that self-induced intoxication should never be held as a defence for any criminal charge. A person should be presumed to intend his actions whether or not he has voluntarily intoxicated himself. The only exception as far as intoxication is concerned should be where the defendant was involuntarily intoxicated, as it would then not be his fault in anyway whatsoever. It is therefore obvious that the current law of intoxication should not be completely abolished, only partially. It should be up to the jury to determine what the accused's mental state was at the time of the actus reus in cases of voluntary intoxication only, as this is where the defendant is at fault at least in his act of becoming intoxicated if not anything else, and therefore, whatever way you look at it, he has been reckless. We can therefore see that the current law of intoxication is indefensible as theory and produces indefensible results as far as voluntary intoxication is concerned.

¹¹ Lord Birkenhead LC, *Director of Public Prosecutions v Beard* [1990] AC 479

¹² [1981] 1 All ER 961