

INSANITY

INTRODUCTION

An accused may have committed a crime when actually insane. This issue is covered by the *M'Naghten Rules*, which although they deal with what they describe as insanity, it is insanity in the legal sense and not in the medical or psychological sense. The Rules were embodied in replies given by the judges of that day to certain abstract questions which were placed before them (*M'Naghten's Case* (1843) 10 C & F 200). The basic propositions of the law are to be found in the answers to Questions 2 and 3:

"... the jurors ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction;

and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know what he was doing was wrong."

The Rules lead to a special verdict of "not guilty by reason of insanity" and leave the defendant under the control of the court.

1. DISEASE OF THE MIND

Whether a particular condition amounts to a disease of the mind within the Rules is not a medical but a legal question to be decided in accordance with the ordinary rules of interpretation. It seems that any disease, which produces a malfunctioning of the mind, is a disease of the mind, and need not be a disease of the brain. It covers any internal disorder, which results in violence and is likely to recur.

"Disease of the mind" does not mean only a physical defect of the brain. See:

R v Kemp [1957] 1 QB 399.

Where a disease of the body affects the mind resulting in violence and is likely to recur, it will be classed as insanity, thus enabling the courts to order the detention of the defendant in society's interest. See:

Bratty [1963] AC 386.

The House of Lords reaffirmed this approach to the concept of disease of the mind in:

R v Sullivan [1984] AC 156.

Legal insanity can arise from internal physical defects which affect the mind. See:

R v Hennessy [1989] 1 WLR 287.

Sleep-walking had previously been thought to be an example of automatism rather than insanity (eg, Lord Denning in *Bratty*), but it is now clear that the courts will treat sleep-walking as an example of disease of the mind with internal causes unless there is clear evidence of an external causal factor. See:

R v Burgess [1991] 2 WLR 1206.

External factors which cause a person to act unconsciously will not amount to insanity but will instead give rise to the defence of automatism (as in *R v Quick* [1973]). See:

R v Bingham [1991] Crim LR 43.

2. DEFECT OF REASON

The disease of the mind must have given rise to a defect of reason which had one of two consequences: either (a) the defendant did not know the nature and quality of his act, or (b) he did not know his act was wrong. The phrase "defect of reason" seems to mean that the powers of reasoning must be impaired, not merely confusion or absentmindedness. See:

R v Clarke [1972] 1 All ER 219.

A) NATURE AND QUALITY OF THE ACT

This phrase refers to the physical nature and quality of the act. It covers the situation where the defendant does not know what he is physically doing. For example, in *Kemp* [1957] the defendant was unaware of his actions because of a "blackout". Illustrations given by leading writers are:

- * A kills B under the insane delusion that he is breaking a jar (Stephen), and
- * the madman who cut a woman's throat under the idea that he was cutting a loaf of bread (Kenny).

B) KNOWLEDGE THAT THE ACT WAS WRONG

If the defendant knew what he was doing then he will still be insane if he did not know that he was doing something legally wrong. See:

R v Windle [1952] 2 QB 826.

3. INSANE DELUSIONS

The judges were asked in *M'Naghten's Case* if a person could be excused if he committed an offence in consequence of an insane delusion. They replied that if he labours under such partial delusion only, and is not in other respects insane, "he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real".

This rule emphasises that delusions, which do not prevent the defendant from having *mens rea*, will afford no defence. A case often discussed is that of a man who is under the insane delusion that he is obeying a divine command. If the accused knows that his act is forbidden by law, it seems clear he is liable. For a different example see:

R v Bell [1984] Crim LR 685.

4. COURT PROCEDURE

A) BURDEN OF PROOF

The burden of proof is on the defendant. If a jury think it is more likely than not that he is insane within the meaning of the Rules, then he is entitled to a verdict in his favour. In other situations, the common law rule, based on Lord Denning's judgement in *Bratty* [1963], is that wherever the defendant puts his state of mind in issue during a trial, the prosecution can be permitted to adduce evidence of his insanity.

B) FUNCTION OF THE JURY

Section 1 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 provides that a jury shall not return a special verdict that "the accused is not guilty by reason of insanity" except on the written or oral evidence of two or more registered medical practitioners of whom at least one has special experience in the field of mental disorder.

The jury may still have to decide between conflicting medical evidence.

If there are facts or surrounding circumstances which, in the opinion of the court, justify the jury in coming to a conclusion different from that of experts, their verdict will be upheld.

C) DISPOSAL OF THE DEFENDANT

Until the reforms made by the 1991 Act the court had to order that any person found not guilty by reason of insanity had to be admitted to a special hospital specified by the Home Secretary where he might be detained without limitation of time, the power to discharge him being exercisable only with the Home Secretary's consent.

Today, a wider range of options is now generally available under s3 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991:

(1) Where the sentence for the offence to which the finding relates is fixed by law - in effect, murder - the court must make a hospital order restricting discharge without limitation of time.

(2) In any other case the court may make:

* a hospital order and an order restricting discharge either for a limited or unlimited period of time;

or in appropriate circumstances,

- * a guardianship order;
- * a supervision and treatment order; or
- * an order for absolute discharge.

Note: A hospital order is an order that the defendant be admitted to and detained in a hospital in order to receive treatment for a mental disorder. Such an order may be made upon proper medical evidence and only after a conviction for an imprisonable offence. (See ss37-43 Mental Health Act 1983.)