

INTOXICATION

INTRODUCTION

A defendant can become intoxicated by voluntarily taking drink or drugs. Evidence of intoxication negating *mens rea* is a defence only to crimes requiring specific intent. But note that:

* A distinction has to be drawn between being drunk and being intoxicated. A drunken man may commit acts whilst under the influence of drink or drugs that he would never commit whilst sober, but he will not be able to raise the defence of intoxication if he is nevertheless, still capable of forming the necessary *mens rea* for the crime with which he is charged. It was stressed in *R v Sheehan and Moore* [1975] 1 WLR 739, that "a drunken intent is nevertheless an intent".

* An intoxicated defendant is one who is shown to have been incapable of forming the necessary *mens rea* due to the effect of drink or drugs. In *R v Stubbs* (1989) 88 Cr App R 53, it was stated that the intoxication needed to be "very extreme".

1. THE SPECIFIC INTENT/BASIC INTENT DICHOTOMY

On the basis of the House of Lords decision in *DPP v Majewski* [1977] AC 142, following the decision in *DPP v Beard* [1920] AC 479, self-induced intoxication can be raised as a defence to crimes of specific intent, but not to crimes of basic intent.

2. INTOXICATION BY DRUGS

If a person consciously and deliberately takes drugs not on medical prescription, but in order to escape from reality, to "go on a trip" or to become hallucinated, he cannot plead his self-induced disability as a defence to a basic intent crime. See:

R v Lipman [1970] 1 QB 152.

3. BURDEN OF PROOF

The burden rests on the defendant to provide some evidence of intoxication which can be put before the jury; the onus will then be on the prosecution to establish beyond all reasonable doubt, that despite such evidence, the defendant still had the necessary *mens rea*. In *R v Pordage* [1975] Crim LR 575, the court held that the key question to be asked was, taking into account the defendant's intoxicated state, did he form the necessary specific intent?

4. EFFECT

Self-induced intoxication will operate as a partial or complete defence to crimes of specific intent, if a defendant can show that he lacked the necessary specific intent due to drink or drugs:

(a) The effect of a defendant successfully relying on the defence will be to reduce his liability to the "lesser included" basic intent crime. For example, in the case of murder, the defendant's liability will be reduced to that of the "lesser included" basic intent crime of manslaughter. Similarly wounding with intent is reduced to malicious wounding, and s1(2) criminal damage to the s1(1) offence.

(b) Where there is no "lesser included" offence however, the defendant should be completely acquitted, as would be the case with theft, burglary with intent to steal, and obtaining property by deception.

5. SOPORIFIC EFFECT

People who voluntarily take alcohol or drugs should realise the possible consequences in terms of violent behaviour and uncontrollable actions. However, when the drug normally taken has a soporific effect, the usual rules regarding intoxication as a defence do not apply. The jury will be directed to consider whether the defendant was reckless in consuming the drugs. See:

R v Hardie [1985] 1 WLR 64.

6. "DUTCH COURAGE" INTOXICATION

Where a person deliberately gets himself intoxicated to give himself "Dutch Courage" to commit a crime, his intoxication will not be a defence even to crimes that can only be committed with a specific intention. He is to be "blamed" to the same extent as the person who intentionally commits a crime. See:

Attorney-General for N. Ireland v Gallagher [1963] AC 349.

7. INVOLUNTARY INTOXICATION

Involuntary intoxication is narrowly defined. A person who knew he was drinking alcohol could not claim that the resulting intoxication was involuntary because he underestimated the amount of alcohol he was consuming or the effect it would have on him. See:

R v Allen [1988] Crim LR 698.

Involuntary intoxication is confined to cases where the defendant did not know he was taking alcohol or an intoxicating drug at all, as where his food or drink is laced without his knowledge. In such cases, the House of Lords has held that involuntary intoxication is not in itself sufficient to negative the necessary mental element of an offence unless the intoxication is such that the defendant could not form any intent at all. See:

R v Kingston [1994] 3 All ER 353.

8. INTOXICATION AND SELF-DEFENCE

See Handout on Self-Defence.