Voluntary Manslaughter: Student Notes

A person charged with murder will be convicted of manslaughter rather than murder if he satisfies the requirements of either Diminished Responsibility or Loss of Control. These are known as partial defences as they are available only on a charge of murder.

(A) Diminished Responsibility

Section 2 Homicide Act 1957 and Section 52 Coroners and Justice Act 2009

Section 52 of the Coroners and Justice Act 2009 substitutes for section 2 of the Homicide Act 1957.

Section 52 states:

"(1) A person ("D") who kills or is a party to the killing of another is not to be convicted of murder if D was suffering from an abnormality of mental functioning which:

(a) arose from a recognised medical condition,
(b) substantially impaired D's ability to do one or more of the things mentioned in subsection (1A),
(c) provides an explanation for D’s acts and omissions in doing or being a party to the killing.

(1A) Those things are:

(a) to understand the nature of D's conduct;
(b) to form a rational judgment;
(c) to exercise self-control.

(1B) For the purposes of subsection (1)(c), an abnormality of mental functioning provides an explanation for D’s conduct if it causes, or is a significant contributory factor in causing, D to carry out that conduct."

The Key Features of Diminished Responsibility under S52

Section 52 provides a new definition of the partial defence of diminished responsibility. This requires that:

- D suffers from "an abnormality of mental functioning"
- arising from a "recognised medical condition",
- It also requires that the abnormality substantially impaired the defendant’s ability to do one (or more) of three specified things.
- Finally, the abnormality of mental functioning should be at least a significant contributory factor in causing the defendant's conduct.
1. “An Abnormality of Mental Functioning”

Under the new law, D must suffer from an “abnormality of mental functioning”. An old case might give some indication as to what this means.

**R v Byrne (1960) CA**

A sexual psychopath strangled a young woman at a hostel and then mutilated her body. At his trial, he argued that from an early age he had suffered from perverted violent desires, making it impossible for him to resist the urge to kill his victim. Nevertheless, the judge had refused to allow the jury to consider diminished responsibility. He was convicted of murder. His appeal against conviction was allowed: the defence of diminished responsibility should have been put to the jury. In his judgment, Lord Parker CJ explained the meaning of the phrase “abnormality of mind”:

> “Abnormality of mind means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal.”

It is likely that the courts will adopt and adapt this explanation when considering the meaning of “abnormality of mental functioning”. Therefore, mental functioning will be probably regarded as abnormal where it is so different from that of ordinary human beings that the reasonable man would regard it as abnormal.

**Summary**

An abnormality of mental functioning is a condition that is so different from that of an ordinary man that the reasonable man will regard it as abnormal.

2. “Arising from a Recognised Medical Condition”

In S52(1)(a) the new law simply states that the abnormality of mental functioning must arise from “a recognised medical condition”. No examples are provided. However, previous case law suggests that this would include conditions such as mental deficiency (**Speake 1957**), pre-menstrual tension (**Smith 1982**), chronic depression (**Gittens 1984**), and battered woman syndrome (**Ahluwalia 1993**). Presumably this would also include such conditions as bipolar disorder, paranoid depression, schizophrenia, obsessive compulsive disorder and post-traumatic stress disorder. Medical evidence will be needed in support of the claim. However, it is the jury that has to be satisfied that D’s abnormality arose from a recognised medical condition.

**Summary**

A jury will consider medical evidence to decide whether the abnormality of mental functioning arose from a recognised medical condition.
3. The Substantial Impairment of Mental Responsibility

Under **S52(1)(b)** the abnormality of mental functioning must have substantially impaired D’s ability to do one or more of the three things listed in **S53(1A)**. These are the ability:

- (a) to understand the nature of his conduct;
- (b) to form a rational judgment;
- (c) to exercise self-control.

Again, previous case law may be helpful here.

**R v Egan (1992) CA**
The CA was asked to decide the meaning of “substantial” impairment. It declared that the word meant “more than some trivial degree of impairment which does not make any appreciable difference to a person’s ability to control himself, but it means less than total impairment”.

**R v Campbell (1997) CA**
The defendant had attacked a female hitchhiker, tried to strangle her, and then bludgeoned her to death with a hockey stick. He argued that he was suffering from diminished responsibility resulting from his epilepsy. Medical evidence was provided to support his claim that his abnormality of mind was so significant as to seriously reduce his responsibility for his action.

**Summary**

D’s ability to do one of the three things listed in S52 (1A) must be “substantially” impaired. The impairment must therefore be appreciable or significant, but not necessarily total.

4. Provides an Explanation for D’s Acts and Omissions

Under **S52(1)(c)** the abnormality of mental functioning must provide an explanation for D’s acts and omissions. Under **S52(1B)** such an explanation is provided if the abnormality causes, or was at least a significant contributory factor in causing, the defendant to carry out the conduct. This is a question of causation: there must be a significant link between the abnormality of mental functioning and the conduct resulting in the victim’s death. This can be complicated by the presence of intoxication.

**Summary**

D’s abnormality of mental functioning must cause or contribute to his conduct.
5. Diminished Responsibility and Intoxication

The presence of intoxication can present problems for a jury when considering diminished responsibility. There are two situations that may arise.

The first situation arises where D is suffering simultaneously from an abnormality of mental functioning and intoxication. According to existing case law, the jury should disregard the intoxication and decide whether the abnormality of mental functioning by itself substantially impaired D’s ability.

In Egan (1992) D was intoxicated and suffering from a mental abnormality at the time of beating an elderly woman to death. The CA declared that the jury should disregard the effect of the intoxication and merely consider whether the abnormality of mind was such that it amounted to diminished responsibility. In Dietschmann (2003) HL, Lord Hutton gave the following model direction:

“…has D satisfied you that, despite the drink, his mental abnormality substantially impaired his mental responsibility for his fatal acts, or has he failed to satisfy you of that?”

Only minor alterations of wording would be needed to make this direction relevant to the new defence of diminished responsibility.

The second situation arises where D’s long-term alcohol/drug abuse has led to a recognised medical condition (such as alcohol or drug dependence syndrome) which causes an abnormality of mental functioning. The most recent case to discuss this point is R v Wood (2008) CA. Wood was a chronic alcoholic who had killed a male homosexual with a meat cleaver and hammer while drunk. The CA allowed his appeal against conviction for murder by reason of diminished responsibility.

Giving the judgment of the court, Sir Igor Judge explained that the jury must first consider whether the defendant’s syndrome was of such an extent and nature that it constituted an abnormality of mind induced by illness or disease. If they decided it was, they must then consider whether the defendant’s mental responsibility at the time was substantially impaired by the syndrome.

Applying this judgment to the new law under the Coroners and Justice Act, the questions the jury would have to consider would be:

(a) was the (alcohol dependency) syndrome such that it caused D to suffer from an abnormality of mental functioning? If so:
(b) did this abnormality of mental functioning substantially impair D’s ability to understand the nature of his conduct, to form a rational judgment, or to exercise self-control?

When considering question (b), the jury might consider questions such as whether D’s craving for alcohol was or was not irresistible, and whether his consumption of alcohol in the period leading up to the killing was voluntary or not. These questions will help the jury to decide “whether the defendant’s mental responsibility for his actions when killing the deceased was substantially impaired as a result of the alcohol consumed under the baneful influence of the syndrome.”
Summary

Where D is suffering simultaneously from DR and intoxication, the jury should consider the DR and disregard the intoxication (Dietschmann). Where the alcohol dependency is a recognised medical condition, then the jury should ask whether it led to an abnormality of mental functioning which caused or significantly contributed to D’s inability to understand the nature of his conduct etc. (Wood)?

(B) Loss of Control Sections 54-55 Coroners and Justice Act 2009
Section 54 of the Coroners and Justice Act replaces common law defence of provocation and the statutory defence under Section 3 of the Homicide Act 1957. Subsection 54(1) states:

Where a person (“P”) kills or is a party to the killing of another (“V”), P is not to be convicted of murder if

(a) P’s acts and omissions in doing or being a party to the killing resulted from P’s loss of self-control,
(b) the loss of self-control had a qualifying trigger,
(c) a person of P’s sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of P, might have reacted in the same or in a similar way to P.

The Key Features of Loss of Control (Provocation) under S54
There are three key elements to this defence:

• D must kill as a result of loss of self-control;
• This loss of self-control must have been caused by a recognised “qualifying trigger”;
• A person with normal self-control might have reacted in a similar way in D’s situation.

1. The Loss of Self-control

S54(2) states that the loss of self-control does not need to be sudden. In other words there may be a time delay between the qualifying trigger and the reaction of the defendant in killing the victim. However, there must still be a loss of self-control. Therefore the longer the delay, the less likely is the judge to leave the defence to the jury, or the jury to believe that the killing resulted from a loss of self-control.

The case of Ibrams and Gregory (1981) CA illustrates this point. The defendants and a young woman had been terrorised by the victim. They devised a plan which involved the woman enticing the deceased to her bed, whereupon the defendants would burst into the room and attack him. They carried out this plan four days later, but killed their victim. At their trial the judge withdrew the defence from the jury the defence of provocation. They were convicted of murder, so appealed. The appeal was turned down: their attack had not been a sudden loss of self-control, but had been planned over many days.
Such delay and evidence of planning would still operate against the defendant. Furthermore, it would be evidence of a considered desire for revenge. S54(4) specifically invalidates the defence where the killing is motivated by such a desire. Baillie would be a relevant case to consider under the previous law. Baillie discovered that his sons had been supplied with drugs and threatened with violence by a drug dealer. He took his sawn-off shotgun and cut-throat razor, and drove round to the estate where the dealer lived. On the way he was delayed by a minor road accident. After an argument at the house of the dealer, he fired his gun and killed the man. The judge told the jury to ignore the possible provocation caused by the original threats: too much time had lapsed. The Court of Appeal overturned his subsequent conviction for murder and ordered a re-trial: the jury should have been allowed to consider whether the defendant was still suffering from a loss of self-control.

It is arguable that his action in killing his victim did not display a “considered” desire for revenge, and so he might still attract the defence.

Summary

D must be suffering a loss of control at the time of killing. This does not have to be sudden, but it excludes acting in a considered desire for revenge.

2. The Qualifying Triggers

Section 55 identifies three qualifying triggers:

S55(3): D's fear of serious violence from V against D or another identified person;
S55(4) thing(s) done and/or said which not only constituted circumstances of an extremely grave character but also caused D to have a justifiable sense of being seriously wronged;
S55(5) a combination of S55(3) and S55(4).

Explanation

S55(3) recognises loss of self-control triggered by fear of serious violence. Firstly, the test for this is subjective: D will need to show that he lost control because of a genuine fear of serious violence. It will not matter that this fear may have been unreasonable. Secondly, the fear must be of violence against D or against another identified person eg a family member. It cannot be fear of violence against people generally.

S55(4) provides details of the second qualifying trigger. The thing(s) done and/or said must amount to circumstances of an extremely grave character. They must also cause D to have a justifiable sense of being wronged. The word “justifiable” indicates that this is an objective test. In other words, when deciding whether D had a sense of being seriously wronged, the court will examine not merely what D thought, but also whether he had the right to think this way. (This is much more restrictive than under the previous law of provocation, where virtually anything said or done could amount to provocative conduct, even the crying of a baby, as in Doughty).

S55(5) recognises that on some occasions both qualifying triggers will be present.
Restrictions

Under S55(6) there are three important restrictions on the availability of these qualifying triggers.

Firstly, under S55(6)(a), D’s fear of serious violence is to be disregarded if D incited something to be done or said to provide him with the excuse to use violence. For example, supposing D deliberately swears abusively in order to make V react and threaten D with serious violence, and that V does then react violently. D’s subsequent fear of serious violence may be genuine, and it may cause him to lose self-control. However, it will not serve as a qualifying trigger as D swore at V purely in order to provide him with an excuse to use violence against V.

Secondly, S55(6)(b) makes the same point if D incited a thing to be done or said that caused in him a sense of being seriously wronged. If he incited this for the purpose of providing an excuse to use violence, then his sense of being seriously wronged will not qualify as a trigger.

Thirdly, under S55(6)(c), anything said or done in connection with sexual infidelity is to be disregarded. For example, if D finds his partner is having an affair with someone else, and then loses his temper and kills his partner, this defence is not available to him. This was one of the factors in the case of AG for Jersey v Holley (2005) PC. Holley and his girlfriend were alcoholics. She told him she had just had sex with another man. He picked up an axe, intending to leave the flat and chop wood. His girlfriend then said, “You haven’t got the guts”. He therefore hit her seven or eight times with the axe, killing her. Under S55(6)(c), her infidelity would be disregarded by the court when deciding whether Holley’s loss of self-control was caused by a qualifying trigger. However, her taunting his lack of courage would still be relevant.

Summary

The loss of control must have a qualifying trigger. This can be either a fear of serious violence, or extremely grave acts or words that caused D to have a justifiable sense of being seriously wronged. D cannot incite these triggers in order to provide an excuse to kill.

3. The Objective Test

Under S54(1) the court will ask whether a person of D’s own sex and age, with a normal degree of tolerance and self-restraint and in D’s circumstances, might have reacted in the same or in a similar way to D. This is an objective test which closely follows the decision of the Privy Council in AG for Jersey v Holley.

S54(3) explains that the reference to “circumstances” applies to all circumstances except those that affect D’s capacity for tolerance and self-restraint. What does this mean? It means that certain circumstances are relevant and can be considered. For example it would be relevant that D had been subjected to years of abuse, or had been threatened with serious violence. However, certain circumstances would not be relevant. For example, the fact that D has a short temper could not be taken into consideration, as it relates only to D’s capacity for tolerance and self-restraint.
This point can be illustrated in the case of **Mohammed (2005) CA**. Mohammed (D), a man with a reputation for being strict, violent and short-tempered, returned from attending a mosque to discover his daughter, Shahida, entertaining a young man in her bedroom. D locked her door, went to his bedroom to find a knife, and then returned. The young man escaped through the bedroom window. D followed his daughter downstairs and stabbed her to death. She had at least 19 stab wounds. D was convicted of murder. On his appeal, the CA had to decide whether his violent, bad-tempered disposition was relevant when considering how a reasonable man would have reacted in D’s situation. Lord Justice Scott Baker declared that D’s temperament:

“was not relevant to how the reasonable man would have reacted for the reasonable man is a fixed rather than a variable creature. The yardstick is a person of the age and sex of the appellant having and exercising ordinary powers of self-control.”

This judgment would be followed under the new law: D’s bad temper would be disregarded, as D would have to be judged according to the standard of a person with a normal degree of tolerance and self-restraint.

**Summary**

The court will consider whether a person of D’s own sex and age, with a normal degree of tolerance and self-restraint and in D’s circumstances, might have reacted in the same or in a similar way to D.