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CASES ON INTOXICATION

1. THE SPECIFIC INTENT/BASIC INTENT DICHOTOMY

DPP v Majewski [1977] AC 142.

The defendant had been convicted of various counts alleging actual bodily harm, and assaults upon police officers. The offences had occurred after the defendant had consumed large quantities of alcohol and drugs. The trial judge had directed the jury that self-induced intoxication was not available as a defence to these basic intent crimes. The defendant was convicted and appealed unsuccessfully to the Court of Appeal and the House of Lords.

Lord Elwyn-Jones LC referred to the case of *Beard* in which Lord Birkenhead LC concluded that the cases he had considered establish that drunkenness can be a defence where the accused was at the time of the offence so drunk as to be incapable of forming the specific intent necessary for such crimes. Lord Elwyn-Jones LC then said that before and since *Beard's* case, judges had taken the view that self-induced intoxication, however gross and even if it produced a condition akin to automatism, cannot excuse crimes of basic intent. With crimes of basic intent, as his Lordship explained, the "fault" element is supplied by the defendant's recklessness in becoming intoxicated, this recklessness being substituted for the *mens rea* that the prosecution would otherwise have to prove.

2. INTOXICATION BY DRUGS

R v Lipman [1970] 1 QB 152.

The defendant, having voluntarily consumed LSD, had the illusion of descending to the centre of the earth and being attacked by snakes. In his attempt to fight off these reptiles he struck the victim (also a drug addict on an LSD "trip") two blows on the head causing injuries to her brain and crammed some eight inches of bedsheet into her mouth causing her to die of asphyxia. He claimed to have had no knowledge of what he was doing and no intention to harm her. His defence of intoxication was rejected at his trial and he was convicted of unlawful act manslaughter. His appeal to the Court of Appeal was dismissed. Widgery LJ said:

“For the purposes of criminal responsibility we see no reason to distinguish between the effect of drugs voluntarily taken and drunkenness voluntarily induced.”

5. SOPORIFIC EFFECT

R v Hardie [1985] 1 WLR 64.

The defendant had voluntarily consumed up to seven old valium tablets (a non-controlled drug having a sedative effect) for the purpose of calming his nerves. Whilst under the influence of the drug he had started a fire in the flat in which he had been living, but claimed to have been unable to remember anything after taking the tablets. The defendant was convicted of causing criminal damage being reckless as to whether life would be endangered, following the trial judge's

direction to the jury that self-induced intoxication was not available by way of defence to a basic intent crime. The defendant appealed.

The conviction was quashed on appeal on the grounds that he could not be expected to anticipate that tranquillisers would have that effect upon him. The Court of Appeal held that the trial judge should have distinguished valium, a sedative, from other types of drugs, such as alcohol, which were widely known to have socially unacceptable side effects. Whilst the voluntary consumption of dangerous drugs might be conclusive proof of recklessness, no such presumption was justified in the case of non-dangerous drugs. The jury should have been directed to consider whether the defendant had been reckless in consuming the valium, in the sense that he had been aware of the risks associated with its consumption, although not necessarily aware of the risk that he would actually commit aggravated criminal damage.

6. "DUTCH COURAGE" INTOXICATION

A-G for N. Ireland v Gallagher [1963] AC 349.

The defendant decided to kill his wife. He bought a knife and a bottle of whisky which he drank to give himself "Dutch Courage". Then he killed her with the knife. He subsequently claimed that he was so drunk that he did not know what he was doing, or possibly even that the drink had brought on a latent psychopathic state so that he was insane at the time of the killing. The House of Lords held that intoxication could not be a defence in either case as the intent had been clearly formed, albeit before the killing took place. Lord Denning stated:

"If a man, whilst sane and sober, forms an intention to kill and makes preparation for it, knowing it is a wrong thing to do, and then gets himself drunk so as to give himself Dutch courage to do the killing, and whilst drunk carries out his intention, he cannot rely on his self-induced drunkenness as a defence to a charge of murder, not even as reducing it to manslaughter. He cannot say that he got himself into such a stupid state that he was incapable of an intent to kill. So also when he is a psychopath, he cannot by drinking rely on his self-induced defect of reason as a defence of insanity. The wickedness of his mind before he got drunk is enough to condemn him, coupled with the act which he intended to do and did do."

7. INVOLUNTARY INTOXICATION

R v Allen [1988] Crim LR 698.

The defendant had drunk wine not knowing that it was extremely strong home-made wine. He then committed sexual offences, but claimed that he was so drunk that he did not know what he was doing. The Court of Appeal held that this did not amount to involuntary intoxication. He was thus treated as if he were voluntarily intoxicated.

R v Kingston [1994] 3 All ER 353.

The defendant, who had paedophiliac homosexual tendencies, was blackmailed by two former business associates who arranged for another man, Penn, to photograph and audio-tape him in a compromising situation with a boy. Kingston and Penn were charged

with indecent assault. Sedative drugs were found in Penn's flat when it was searched and the prosecution claimed that Penn had laced the boy's drink. Kingston's defence was that Penn had also laced his drink. His evidence was that he had seen the boy lying on the bed but had no recollection of any other events that night and had woken in his own home the next morning.

The trial judge directed the jury that they should acquit Kingston if they found that because he was so affected by drugs he did not intend or may not have intended to commit an indecent assault on the boy, but that if they were sure that despite the effect of any drugs he still intended to commit an indecent assault the case was proved because a drugged intent was still an intent. The defendant was convicted.

This direction was approved by the House of Lords. It was held that provided the intoxication was not such as to cause automatism or temporary insanity, involuntary intoxication or disinhibition was not a defence to a criminal charge if it was proved that the defendant had the necessary intent when the necessary act was done by him, notwithstanding that the intent arose out of circumstances for which he was not to blame. However, the offence was not made out if the defendant was so intoxicated that he could not form an intent.
According to Lord Mustill, the general nature of the present case was clear enough. In ordinary circumstances the defendant's paedophiliac tendencies would have been kept under control, even in the presence of the sleeping or unconscious boy on the bed. The ingestion of the drug (whatever it was) brought about a temporary change in the mentality or personality of the defendant which lowered his ability to resist temptation so far that his desires overrode his ability to control them. Thus the case was one of disinhibition. The drug was not alleged to have created the desire to which the defendant gave way, but rather to have enabled it to be released.

Note: The defence applies to all offences, except perhaps absolute offences, and it is a complete answer to a criminal charge.