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## Intoxication

The abuse of alcohol by certain persons may bring them within the category of the insane. Short of the condition of insanity, drunkenness produces confusion of mind, varying in degree according to the amount of alcohol consumed. Hence the necessity of considering drunkenness in relation to criminal responsibility.

Prior to the amendments made by ordinance XII of 1935, the Criminal Code did not contain any general provisions with regards to intoxication. It had only contemplated drunkenness as a substantive offence.

Presumably prior to the aforesaid amendment, Judges, in certain cases, took into consideration the state of intoxication in fixing the punishment within the latitude laid down by law. As Mr. Justice Harding points out, "If it (drunkenness) produced frenzy or insanity" then, it could be pleaded under section 33, which exempts a person from punishment if at the time the act was committed, he was in a state of frenzy or madness.

*Article 34(1) reads: "save as provided in this article, intoxication shall not constitute a defence to any criminal charge"*

From this article it is clear that the code takes a negative stance towards intoxication. The article clearly states that if an offender is intoxicated whether under the influence of drugs or alcohol, he or she cannot raise intoxication as a defence, and is regarded as equally answerable in terms of law as if he had been sober at the time. The justification for this rigid stance is that the law cannot justify a wrong act by another wrong act. As Kenny says:

"The gross negligence which has caused the fatal collision is punishable not only in a sober driver but also in a drunken one. And, if a man, when excited by Liquor stabs the old friend whom he never quarrelled with when sober or steals the picture which never attracted him before, it is no defence to say that "it was the drink that did it"".

The criminal code does contemplate exceptions to the rule stated in article 34(1). Article 34(2) highlights the situations in which intoxication may be used as a defence. The aforesaid article reads:

Intoxication shall be a defence to any criminal charge if –

- (a) by reason thereof the person charged at the time of the act or omission complained of was incapable of understanding or volition and the state of intoxication was caused without his consent by the malicious or negligent act of another person; or
- (b) the person charged was by reason of the intoxication insane, temporarily or otherwise, at the time of such act or omission.

In this 34(2)(a), it is clearly stated that intoxication affords a complete defence, if two conditions are satisfied. Also, in virtue of article 34(3), all criminal responsibility is excluded, and the offender is discharged, provided that two conditions are satisfied. These two conditions are that the intoxication must be: 1. Involuntary or accidental 2. Complete The intoxication must be involuntary in the sense that it was caused without the subject's consent, and by a negligent or malicious act of another person. The intoxication must be complete in the sense that it rendered the accused person, at the time when he committed the act, incapable of understanding or volition.

Carrara himself commented on this condition. He said that intoxication can either be complete and thus it would negate any form of criminal responsibility, or it could be incomplete, meaning that the offender is left with enough mental faculties to be held responsible for his actions.

“la ubriachezza accidentale o e completa e distrugge ogni imputabilita, o e incompleta”

Paragraph (b) of article 34(2) speaks of a person becoming insane, temporary or otherwise, due to his intoxication. In such cases, the intoxication need not be involuntary. Even if voluntary, in such a scenario, the intoxication still furnishes a defence.

Under our legal system it is recognised that if intoxication is proven under 34(2b), one must prove insanity under section 33. The court in acquitting the accused will invoke the section of insanity.

Many other codes either do not admit exemptions from liability due to intoxication, when this is voluntary, even when it results in temporary insanity; or merely reduce the punishment. The reason for this is because in such cases, the insanity has originated in voluntary misconduct and should therefore still call for penal repression.

However, this argument is clearly fallacious. The fact that the intoxication was voluntary may be a reason for punishing the intoxication as an offence 'per se', but not a reason for punishing the offence committed under the influence of insanity resulting from such intoxication.

A case worthy of mention in this context is Burns' case. Burns was a homosexual alcoholic, who after taking drink and mandrax (a hypnotic drug) committed a violent sexual assault on a friend of his. A psychiatrist testified for him, stating that the defendant was not conscious of his acts at the time of the crime, as he was suffering from a disease of the mind, resulting from his alcohol consumption together with the mandrax. The court accepted that if successful their defence could result in an insanity verdict.

Intoxication which does not avail the defendant under the two exceptions already discussed, because it was not 'accidental' and did not result in insanity, may afford him another alternative. Section 34(4) states:

Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention specific or otherwise, in the absence of which he would not be guilty of the offence. It is common knowledge that all wilful crimes generally, and exceptionally certain contraventions, require the concurrence of a wrongful intent and some particular crimes require a specific intent. A generic or basic intent has been defined as merely intending to do an act which is known to be illegal. In some cases, specific intent is required. Thus, for example, if someone is driving recklessly and kills someone without intention, he cannot be accused of wilful homicide. Therefore, if you can prove that there was no specific intent to kill, the accused will be charged of grievous bodily harm leading to death.

The punishment of life imprisonment will thus be reduced to nine years. The essence of section 34(4) is that intoxication, which so obscures the mind as to render the person incapable of forming the requisite generic or specific intent, affords a defence in that it precludes the necessary mens rea. Also, the more complex the intent required by the definition of the offence, the more likely it is that intoxication can be successfully pleaded as a defence. It is easy to form a general intent, but it requires much more mental faculties to form a specific one. The court itself has to verify whether or not someone can be acquitted on the grounds that specific intent was absent due to intoxication.

In the above case of the absence of the necessary mens rea, intoxication excludes liability for the particular offence with which the defendant was charged. However, it does not necessarily exclude the defendant from all liability. Thus, a drunken man's inability to form a specific intent to kill or to put

the life of another person in manifest jeopardy, may afford him a defence to willful homicide. However, he may be found guilty of grievous bodily harm, which does not require a specific wrongful intent.

Moreover, intoxication may cause a mistake of fact, excluding wrongful intent. E.g., A drunken man fancies somebody else's umbrella as his own. Intoxication, it should always be remembered, is but a relative term: it does not lend itself easily to definition and, therefore, the standards by which the existence of the state of intoxication is gauged are very variable. Also, the physiological effects of alcohol differs according to the individual. Therefore, it is imperative, that when intoxication is pleaded as an excuse for a criminal offence the whole facts must be laid bare before the court.

