

Lecture Title: DEFENCES

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Date: 23rd November 2022



Diploma in Law (Malta)



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INSANITY



Mental disorder creates many problems for the system of criminal justice other than that of determining who shall be relieved of criminal liability.

There is for example the problem posed by the defendant who is mentally incompetent to stand trial or to plead to a criminal charge.

Some procedures are rather inadequate to identify such persons with the result that in some instances, persons who are incompetent to stand trial are in fact tried and some times convicted and sentenced.



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The McNaghten Rules

(i) Every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crime until the contrary be proved to the satisfaction of the jury.

(ii) To establish a defence on the ground of insanity it must be clearly shown that, at the time of committing the act, the party accused was laboring 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 this, he did not know that what he was doing was wrong morally.



(iii) As to the knowledge of the wrongfulness of the act the Judges said, “if the accused was conscious that the act was one which he ought not to do and if that act was at the same time contrary to the law of the land, he is punishable.” The question then is not whether the accused is able to distinguish between right and wrong in general, but whether he was able to appreciate the wrongfulness of the particular act he was doing at that particular time.

(iv) Where a criminal act is committed by a man under some insane delusion as to the surrounding facts, which conceal to him the true nature of the act he is doing, he will be under the same degree of responsibility as if the acts have been as he imagined them to be. He may, for instance, kill under the imagination either that he is the executioner lawfully carrying out a judicial sentence, or, on the other hand, merely that the person killed had once cheated him at cards.



In the UK, The person must be acquitted either because he did not know the nature and quality of his act because of a disease of the mind or if he did know the nature and quality of the act, he must be acquitted, because, due to a disease of the mind, he did not know it was wrong.

The two limbs of the rule require separate consideration but the first question under each limb is whether the defendant is suffering “from a defect of reason from disease of the mind.”



Criticism of McNaghten Rules

The basic attack is that McNaghten applied literally and without distortion, fails to encompass all persons whom justice and good sense would dictate should be relieved of the criminal consequences of their acts.

(a) Many have argued that the McNaghten rule incorporates an over-intellectualized concept of mental disorder.

(b) The McNaghten rule is said to be defective in failing to give explicit recognition to volitional disorders, that is that deprive the person of control over his behavior.



(c) It is recognised by psychiatrists that a man may know the nature and quality of an act, may even know that it is wrong and yet perform it under an irresistible or uncontrollable impulse emanating from volitional disorders.

(d) McNaghten is said to be defective because it requires a total incapacity to evaluate the moral character of one's behavior. There is persuasive evidence that such total and absolute incapacity rarely exists even in seriously disturbed persons, including those not fit subjects for the peno-correctional process.



INSANITY UNDER MALTESE LAW



Under Maltese Law, insanity is dealt with under article 33 of the Criminal Code which merely states that:

33. Every person is exempt from criminal responsibility if at the time of the act or omission complained of, such person -
(a) was in a state of insanity; or
(b) was constrained thereto by an external force which he could not resist.

It will be observed at once that our law has not bound itself by any specific “a priori” test of responsibility in insanity.

Unlike Anglo-Saxon law, the Maltese law has refrained from any attempt to define the conditions under which a man can plead mental unsoundness as a defence for wrongdoing, wisely leaving each case to be decided in the light of its particular circumstances, usually with the assistance of medical experts



- Maltese law also takes volitional disorders into account. There must be 2 constituent elements of legal responsibility in the commission of every crime:
- (i) capacity of intellectual discrimination
- (ii) Freedom of will



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- Our law, therefore recognises insanity as an exemption from criminal responsibility not only when it deprives the victim of his power of distinguishing the physical and moral nature and quality of the act charged as an offence but also when it deprives him of his faculty of choice so as to exclude a free determination of his will in relation to that act.
- Insanity thus embraces all forms of disease of the mind, the word mind being used as a general name for the combined operations of intellect and volition



A person who is otherwise sane will not be excused from a crime because he has temporarily lost his reason not because of a disease of his mind but because of anger or jealousy.

Emotional impulses resulting from violent passion do not in themselves afford any defense



Semi-Responsibility

It is known that there is no clear cut line between sane and insane. Maltese Law does not include semi responsibility as it does not cater for partial insanity.

Partial insanity is a mental impairment which is not so complete as to render its victim wholly irresponsible for his criminal acts.

Punishment is not exempted but mitigated.

This rule has not been accepted in our law, notwithstanding that a proposal for the introduction in our code of this doctrine of limited responsibility was twice made in the council of government, first by Sir Adrian Dingli in 1850 and later by Sir Arturo Mercieca in 1909.



What Is the Importance of Intent and Foreseeability?

A guilty act alone does not amount to criminal liability, it must be coupled with a guilty mind, mens rea.

