

Lecture Title: DEFENCES

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Diploma in Law (Malta)



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INTOXICATION



The abuse of alcohol by certain persons may bring them within the category of the insane.

Drunkenness produces confusion of the mind, hence the necessity of considering drunkenness in relation to criminal responsibility.



- PRIOR to the amendments made by ordinance X11 of 1935 the Criminal Code did not condition any general provisions with regards to intoxication.
- Presumably, Judges in certain cases, took into consideration the state of intoxication in fixing the punishment within the latitude laid down by law.
- Mr Justice Harding :
- ‘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.’

Kenny:

‘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 quarreled 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 in article 34(1)
Whilst article 34(2) highlights the situations in which intoxication may be used as a defence.

Intoxication shall be a defence to any criminal charge if:

- a) By reason thereof the person charged at the time of the act or omissions 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 intoxication insane, temporarily or otherwise, at the time of such act or omission.



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) :

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.

