Model Answers to Potential Exam Questions

Chapter 7

1) Evaluate the defence of duress of threats.

To use the defence of duress by threats, the defendant is admitting that he committed the *actus reus* of an offence and that he had the required *mens rea* when carrying out the offence. However, he is arguing that he was threatened into committing the crime. In *Lynch v DPP of Northern Ireland* (1975) Lord Morris said:

“*It is proper that any rational system of law should take fully into account the standards of honest and reasonable men. For the law to understand not only how the timid but also the stalwart may in a moment of crisis behave is not to make the law weak but to make it just.***”

This threat must include immediate serious injury or death to himself or others in *Hudson and Taylor* (1971). A threat to damage or destroy property is insufficient as held in *M'Growther* (1746). Threats to expose a secret sexual orientation are also insufficient as held in *Singh* (1974) and the defence of duress draws a clear line between threats to property and threats to the person, as held in *Lynch* (1975). However, a threat of death or serious injury does not need to be the only reason why the defendant committed the offence, as held in *Valderrama-Vega* (1985) and *Baker and Wilkins* (1996). Threats towards the defendant’s wife and children have been accepted by the courts, for example in *Ortiz* (1986). A passenger in a car can be threatened as held in *Conway* (1988) and a spouse may threaten to harm herself as was seen in *Martin* (1989). In *Wright* (2000) Kennedy LJ said:

“*It was both unnecessary and undesirable for the trial judge to trouble the jury with the question of [the victim’s] proximity. Some other person, for whose safety D would reasonably regard himself as responsible [will suffice as well as immediate family].***”

It is commendable that family members can count for consideration by the jury when applying this defence.

The threat made towards the defendant must be “operative” when the offence is committed. This means that it is “active” at the time of the *actus reus* of the offence. In *Hudson and Taylor* (1971) it was established that the threatened injury need not follow instantly but perhaps after an interval. A threat may be “imminent” but not necessarily “immediate”, as held in *Abdul-Hussain* (1999), but the threat must follow immediately or almost immediately as in *Hasan* (2005). If an opportunity to escape presents itself, the defendant must do so. If he does not, his defence of duress may fail. A failure to raise the alarm and wreck the whole enterprise may see the defence of duress withdrawn as held in *Gill* (1963). In *Pommell* (1995) Kennedy LJ held:
“in some cases a delay, especially if unexplained, may be such as to make it clear that any duress must have ceased to operate, in which case the judge would be entitled to conclude that the defence was not open.”

It is not necessary to seek police protection if this is not possible at the material time, as confirmed by Hudson and Taylor (1971). This case also established that a jury must decide whether an opportunity to escape presented itself, and in deciding this, the jury should have regard to: the defendant’s age; the defendant’s circumstances; and any risks to the defendant.

It is not unheard of for a defendant to expose himself to a dangerous situation where he may find himself threatened. Criminal organizations, gangs or drug rings all carry the risk of violent threats. If a defendant voluntarily chooses to join a dangerous activity, he will not be able to argue duress when he is threatened. In Fitzpatrick (1977) the trial judge stated that:

“If a man chooses to expose himself and still more if he chooses to submit himself to illegal compulsion, duress may not operate even in mitigation of punishment.”

In Sharp (1987) Lord Lane CJ supported this by saying:

“where a person has voluntarily, and with knowledge of its nature, joined a criminal organisation or gang which he knew might bring pressure on him to commit an offence and was an active member when he was put under such pressure, he cannot avail himself of the defence.”

The law was updated by Hasan (2005) when Lord Bingham said:

“The defence of duress is excluded when as a result of the accused’s voluntary association with others engaged in criminal activity he foresaw or ought reasonably to have foreseen the risk of being subjected to any compulsion by threats of violence.”

It follows that if a defendant chooses to mix with “very bad company” then he should foresee the risk of being threatened. In Ali (2008) Dyson J said:

“The core question is whether D voluntarily put himself in the position in which he foresaw or ought reasonably to have foreseen the risk of being subjected to any compulsion by threats of violence.”

If, however, a defendant joins a non-violent gang and finds himself threatened with violence unexpectedly, he may be able to use duress as a defence to his crime. This was confirmed in Shepherd (1987), where Mustill LJ said:

“The logic which appears to underlie the law of duress would suggest that if trouble did unexpectedly materialise and if it put the defendant into a dilemma in which a reasonable man might have chosen to act as he did, the concession to human frailty should not be denied to him.”
It is a supportive of the law to allow unexpected threats of violence to fall in the defendant’s favour.

If the ordinary man would have been able to resist the threat, it is very unlikely that the defendant will be able to rely on duress as a defence. A two-part test has been developed as a result of *Graham* (1982):

- **Test (1):** Was the defendant impelled to act as he did because, as a result of what the duressor had said or done, he had good cause to fear death or serious injury? (The answer to this should be “yes.”) A physical attack made three months after the crime took place may still be put to the jury as evidence, as held in *Nethercott* (2001). The threat does not need to be real for the defendant to act upon it, as confirmed in *Cairns* (1999); the defendant’s honest belief in the existence of the threat is what matters, as seen in *Safi* (2003). The defendant’s honest belief must be reasonable as held in *Hasan* (2005) and the defendant’s honest belief must give him “good cause” to fear death or serious injury.

- **Test (2):** If so, have the prosecution made the jury sure that a sober person of reasonable firmness, sharing the same characteristics, would not have responded? (The answer to this should be “no.”) If the reasonable man would have resisted, the defence of duress is unavailable.

A defendant’s “grossly elevated neurotic state” cannot be attributed to the reasonable man as held in *Hegarty* (1994). For example, vulnerability will not be attributed to the reasonable man as held in *Horne* (1994), but age, sex, pregnancy, physical disability and recognised psychiatric conditions can be attributed to the reasonable man — *Bowen* (1996).

It has long been established that duress is not a defence to murder. In *Dudley and Stephens* (1884) it was held that killing a member of a group would not necessarily guarantee their survival. The defendants were sentenced to hang but this was commuted to six months in prison. This rule of law was confirmed in *Howe and Bannister* (1987). Even if the defendant is very young (e.g. a young teenager) the courts have still not been convinced that duress should apply to murder. This is despite the fact that a young teenager is probably very susceptible to threats from his father. In *Wilson* (2007), Lord Phillips CJ confirmed:

“Our criminal law holds that a 13-year-old boy is responsible for his actions and the rule that duress provides no defence to a charge of murder applies however susceptible D may be to the duress.”

In *Gotts* (1991) it was confirmed that duress is also not available for charges of attempted murder. Lord Jauncey in *Gotts* could:
“see no justification in logic, morality or law in affording to an attempted murderer the defence which is withheld from a murderer.”

This decision allows for consistency in the criminal law.

2) Describe the criteria applicable to a mistake of fact in law.

If a defendant mistakes the facts before him, it is unlikely that he had the required mens rea. The mistake of fact must, of course, be honestly made, and this was established in DPP v Morgan (1976) when Lord Hailsham said:

“Either the prosecution proves that [D] had the requisite intent, or it does not. In the latter, it fails. Since honest belief clearly negates intent, the reasonableness or otherwise of that belief can only be evidence that the belief/intent was held.”

The judgment in Morgan states two things:

(1) the mistake of fact must be honestly made; and
(2) the reasonableness of the mistake is used only as evidence.

The judgment held of Morgan was applied to indecent assault in Kimber (1983), but Morgan’s application to rape has been overruled by the Sexual Offences Act 2003. However, Morgan remains applicable to the rest of criminal law, including incidents of mistaken self-defence. In Williams (1987) Lord Lane CJ said:

“The question is, does it make any difference if the mistake of [D] was an unreasonable mistake? If the belief was in fact held, its unreasonableness, so far as guilt or innocence is concerned, is neither here nor there. It is irrelevant.”

Morgan and Williams were confirmed by the self-defence case of Beckford (1988). The judgments in Morgan, Williams and Beckford together confirm two things:

(1) the mistake of fact must be honestly made; and
(2) the reasonableness of the mistake is used irrelevant.

3) Explain how self-defence can be used as a general defence in criminal law.

Self-defence is a full defence in criminal law to many crimes including murder, and a defendant may defend himself or another. Self-defence is a common law defence, but is has been clarified by section 3 of the Criminal Law Act 1967: “A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.”
Section 3 of the 1967 Act goes on to say that it replaces some of the common law rules and the courts have since used both statute and common law together, as was established in Cousins (1982). Any evidence of self-defence must still be left to a jury as held in DPP v Bailey (1995), but if the issue of self-defence is merely a “fanciful and speculative matter” then the judge will withdraw it from the jury, as was seen in Johnson (1994). Self-defence is commonly used as a defence against charges of murder and non-fatal offences (i.e. grievous bodily harm). It can also be raised as a defence to reckless driving as in Renouf (1986) and a defence to dangerous driving as in Symonds (1998).

When a defendant uses force in self-defence, there are certain criteria that have to be met. Any force used must be necessary from the defendant’s perspective, and it does not matter that the defendant was mistaken as to the necessity. There is no requirement that the defendant’s belief should be reasonable according to a reasonable man test either. In Rashford (2005) Dyson LJ said:

“it is common ground that a person only acts in self-defence if in all the circumstances he honestly believes that it is necessary for him to defend himself and if the amount of force that he uses is reasonable.”

A pre-emptive strike is surprisingly acceptable as was held in Beckford (1988), and issuing threats of violence to deter the attacker may constitute self-defence as was held in DPP v Bailey (1995) and Cousins (1982). A defendant does not have to express a reluctance to fight before defending himself as was held in Bird (1985), and a defendant may make preparations to defend himself as was held in Attorney-General’s Reference (No. 2 of 1983) (1984), where Lord Lane CJ said:

“D is not left in the paradoxical position of being able to justify acts carried out in self-defence but not acts immediately preparatory to it. A person may still arm himself for his own protection.”

A defendant may thus protect himself in the event that he anticipates violence.

Any force used must be “reasonable” from the defendant’s perspective. This is a subjective test — the jury must put themselves in the defendant’s position. It does not matter whether the force was reasonable or not, as long as the defendant’s belief was honest. In Shannon (1980) a conviction for murder was quashed when the trial judge failed to remind the jury to consider the defendant’s point of view. In Whyte (1987), Lord Lane CJ commented that it was “necessary and desirable” for the jury to consider the defendant’s point of view. The accepted doctrine comes from Palmer (1971), in which Lord Morris said:

“If a jury thought that in a moment of unexpected anguish a person attacked had only done what he honestly and instinctively thought was necessary that would be most potent evidence that only reasonable defensive action had been taken.”
If the honest mistake is caused by voluntary intoxication, the defence of self-defence will fail, as held in *O’Grady* (1987).

An exception to self-defence that will negate the defence is excessive force. A defendant can only use *reasonable* force when defending himself. According to *Clegg* (1995), if force is “*grossly excessive and disproportionate*” then it is excessive and the defence will fail because it will be withdrawn from the jury.

4) Evaluate the general defence of consent.

In criminal law, consent is a defence to many crimes. The defendant will typically argue that his victim consented to the harm that was inflicted. The burden of proving lack of consent rests with the prosecution as was established in *Donovan* (1934):

(1) the consent must be real (i.e. with full capacity and understanding);
(2) the victim must not be deceived;
(3) the consent must be fully informed (i.e. the victim knows all the facts); and
(4) consent is often implied by law (i.e. in sports, on public transport etc).

Consent will not be real if the victim lacks capacity as held in *Howard* (1965). The victim must be able to understand the act consented to, as held in *Burrell v Harmer* (1967). The victim must also not be deceived or “tricked” into consenting. A victim can be “tricked” by being misinformed about the nature or quality of the act. In *Clarence* (1888), consent to sex was not invalid simply because an unknown disease was being transmitted, because if consent was invalid, the outcome would have been rape. In *Bolduc v Bird* (1967) a medical assistant turned out not to be qualified, but this did not alter the “nature and quality” of the act. In *Mobilio* (1991) a doctor was performing a medical examination for sexual gratification as opposed to medical reasons, but the “nature and quality” of the act remained the same. In *Richardson* (1998), it was applied to a dentist who was no longer qualified to practice. The idea of “nature and quality” was explored in detail in *Tabassum* (2000). The terms “nature” and “quality” can be distinguished from each other and the victim may be deceived as to only one of the terms. In *Tabassum* (2000) the defendant’s convictions for indecent assault were upheld because the women were consenting for medical purposes, meaning that they had been deceived as to the “quality” of the act.

A victim must have all the facts at hand before consenting. This makes the consent “fully informed”. An uninformed consent means that the victim is not aware of the details. In *Dica* (2004), it was held that a victim no longer consents to infected intercourse unless she is informed of the infection and consents thereafter. If she does not consent, this is the new offence of biological GBH. *Dica* (2004) was confirmed in *Konzani* (2005) which had very similar facts.

Consent may be *implied* by law (i.e. assumed) in some situations. The law also limits consent in certain situations. The rules of consent vary according to the type of harm and the circumstances. In *Brown* (1994) a “line of consent” was drawn between battery and actual bodily harm. It was also made clear when individuals can go too
far. Brown listed “lawful” exceptions to the rule, where consent is allowed despite a high risk of injury, and the list includes: sports, surgery, ritual circumcision, tattooing and ear-piercing. In sport, boxing and wrestling is lawful as long as they are played within the rules, but “prize fights” are conducted outside the rules and are unlawful as was held in Coney (1882). “Off the ball” incidents (e.g. unprovoked violence) are unlawful during sport as confirmed in Billinghurst (1978). Where an unlawful act occurs in sport, it shall be judged independently of the rules as an unlawful act in itself as held in Bradshaw (1878) and Moore (1898). In Barnes (2004), the Court of Appeal added that criminal prosecutions could only be brought in sport where conduct was sufficiently grave to be properly categorised as criminal. The jury would need to consider whether the conduct was obviously late and/or violent and not simply “an instinctive reaction, error or misjudgement”. The reason for this very high criminal threshold is that sport already has disciplinary procedures in place.

Consent is allowed as a defence to surgery as held in Corbett v Corbett (1971). If the surgery is done without just cause or excuse, it is always unlawful even if consented to as held in Bravery v Bravery (1954).

Community life allows for implied consent (i.e. in situations of horseplay). Schoolboys who throw each other in the air are not committing assault as held in Jones and others (1987). The other members of the horseplay must genuinely believe that their friend is consenting as held in Aitken and others (1992). An assault during sex will be prosecuted — despite consent — if the harm is intended to cause more than “transient or trifling” injury as held in Boyea (1992). Consent is, however, a defence to lawful intercourse and other lawful playful/sexual behaviour even if it unexpectedly and accidentally results in death — Slingsby (1995).

Consent is a valid defence for tattooing as established in Brown (1994). “Branding” a person’s body (i.e. burning initials onto them) is to be considered the same as tattooing even though it is technically an actual bodily harm as seen in Wilson (1997).

The lords are driven by issues of public interest when deciding extremely violent sexual gratification cases. In Attorney-General’s Reference (No. 6 of 1980) (1981) Lord Lane CJ said:

“It is not in the public interest that people should try to cause each other actual bodily harm for no good reason.”

Sexual gratification does not generally render the infliction of slight harm unlawful — for example, spanking in Donovan (1934), but it is not in the public interest that people should try to cause actual bodily harm to each other for no good reason as held in Brown (1994). This hugely important case established that consent was a valid defence to assault and battery but nothing beyond that, unless it was a qualified legal exception (e.g. sport). The Brown case therefore allows both assault and battery to be consented to in sexual situations as well as in general everyday life. Lord Templeman said:
“the violence of sado-masochistic encounters involves the indulgence of cruelty by sadists and the degradation of victims. Such violence is injurious to participants and unpredictably dangerous.”

The spread of disease was a particular concern for the Lords, although following Dica (2004) a fully informed individual can now consent to contracting HIV. Brown (1994) was also directly applied in Emmett (1999) to a heterosexual couple engaging in sado-masochistic activities. Most of the Lords in Brown were persuaded by issues of public morality as raised in the Wolfenden Report (1957), which stated that laws relating to homosexual behaviour were designed to:

“...preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are especially vulnerable because they are young, weak in body or mind, inexperienced, or in a state of dependence.”

This is in order to protect the vulnerable members of society and to prevent perpetrators from simply using consent as a defence to all harms.

5) 'The legal definition of insanity leads to a manifest injustice in law.' Discuss this statement with reference to legal authorities.

Insanity is a medical condition, but it has also been given a legal definition through case law, and it is the legal definition that is applied in law. The legal definition of insanity comes from a very old case — M’Naghten (1843), which reads as follows:

“To establish a defence on the ground of insanity it must be clearly proved that, at the time of the committing of the act, the party accused was labouring 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 it, that he did not know he was doing what was wrong.”

There is a presumption of sanity in law, and as a result of this presumption, it is for the defence to prove insanity, but only on a balance of probabilities.

A “defect of reason” means that a person must be deprived of his powers of reasoning, as held in Clarke (1972), but does not include momentary lapses of judgment, confusion or forgetfulness. A “disease of the mind” does not refer to brain functioning (i.e. medical issues) but to mental faculties (i.e. thought processes) as confirmed by Kemp (1957), in which Devlin J said:

“The law is not concerned with the brain but with the mind, in the sense that “mind” is ordinarily used, the mental faculties of reason, memory and understanding. The condition of the brain is irrelevant and so is the question whether the condition is curable or incurable, transitory or permanent.”
A “disease of the mind” must therefore come from internal factors, as held in *Quick* (1973). In this case, the defendant reacted violently to his diabetes treatment and this was held to be an external cause, not a “disease of the mind”. Lawton LJ stated in *Quick*:

“The fundamental concept is of a malfunctioning of the mind caused by disease. A malfunctioning of the mind caused by the application to the body of some external factor such as violence, drugs, including anaesthetics, alcohol and hypnotic influences cannot fairly be said to be due to disease.”

External factors, therefore, such as alcohol or drugs, do not qualify for the defence of insanity. Because insanity is only concerned with internal factors, this can include medical conditions such as diabetes. In *Hennessy* (1989) the defendant was diabetic and had forgotten to take his insulin, and whilst suffering from high blood sugar (hyperglycaemia) he committed several driving offences. His condition was caused by diabetes — an internal factor — and therefore the correct defence was held to be insanity. Similarly in *Sullivan* (1984), the defendant attacked his neighbour during a post-epileptic seizure and this was deemed to be an internal cause. The correct defence was insanity, as Lord Diplock confirmed in his judgment:

“it matters not whether the impairment is organic or functional, or permanent or transient. The purpose of the defence of insanity has been to protect society against recurrence of the dangerous conduct, particularly, as in this case, it is recurrent…”

Controversially in *Burgess* (1991), the defendant attacked his friend during a sleepwalking episode. This was an internal cause, and so the correct defence was insanity according to Lord Lane CJ: “sleepwalking is an abnormality or disorder, albeit transitory, due to an internal factor.” The three cases directly above illustrate that the defence of insanity is only interested in internal malfunctions that cause a defect of reason.

In addition to a disease of the mind, the defendant must not understand the “nature and quality of the act”. This must be a result of his defect of reason — they must be connected. The defendant must also not realise that his act was “wrong” and this must be a result of his defect of reason too. “Wrong” means “legally wrong” as held in *M’Naghten* (1843) and *Windle* (1952). It does not include “morally wrong” as held in *Johnson* (2007). The High Court of Australia took an alternative view in *Stapleton* (1952), believing that the “morality” of the act was more important than its “legality”. This also happened in the Canadian case of *Chaulk* (1991).

Diabetics, epileptics and sleepwalkers have been judged as legally insane in UK law and such judgments may encourage negative feelings towards sufferers. The *M’Naghten* rules were rejected in the Canadian case of *Parks* (1992), in which sleepwalking was found to be a sleep disorder instead. The Law Commission’s Draft Criminal Code (1989) proposed to replace the term “insanity” with “mental disorder” as follows:
Clause 35(1): A mental disorder verdict shall be returned if the defendant is proved to have committed an offence but it is proved on the balance of probabilities that he was at the time suffering from severe mental illness or severe mental handicap.

The new phrase “severe mental illness” places an emphasis on medical diagnosis as opposed to a legal definition of a medical condition. Insanity is available as a defence to any crime. This was held in Horseferry Road Magistrates Court ex parte K (1996). However, insanity is not available to strict liability crimes (i.e. crimes with no mens rea) and this was established by DPP v H (1997). The question of whether insanity can be raised is decided by the judge after reading the evidence, as held in Dickie (1984). If the judge decides that there is evidence of insanity, he leaves it to the jury to apply, as seen in Walton (1978). Two registered medical practitioners must provide evidence that the defendant meets the legal definition of insanity. This rule is enshrined in s.1 Criminal Procedure (Insanity and Unfitness to Plead) Act 1991: A judge has discretion as to how to sentence a legally insane defendant under s.5 of the Criminal Procedure (Insanity) Act 1964: a hospital order (with or without a restriction order); a supervision order; or an order for his absolute discharge. These discretionary powers are useful for trivial offences where very little medical treatment is required, for example in Bromley (1992). A murder conviction still requires indefinite hospitalisation at a high security hospital (e.g. Broadmoor). [18 marks]

6) Explain the ways in which the law distinguishes between voluntary and involuntary intoxication and how this affects criminal liability.

The defence of intoxication is applicable to all crimes with a mens rea. However, there are strict limits to how it can be used. The method or source of intoxication does not matter — the courts do not distinguish between alcohol and illegal drugs. In Majewski (1977) Lord Simon said:

“the public could be legally unprotected from unprovoked violence where such violence was the consequence of drink or drugs having obliterated the capacity of the perpetrator to know what he was doing or what were its consequences.”

The rules of intoxication are as follows:

(1) it is a full defence if the defendant could not form the required intention;
(2) the act of getting drunk will, however, constitute a mens rea of recklessness (i.e. no defence); and (3) involuntary intoxication is not a defence if the required mens rea was formed.

When a defendant raises intoxication as a defence, the onus is on him to prove that his capacity to form a mens rea was non-existent as held in Sheehan (1975): “The mere fact that the defendant’s mind was affected by drink so that he acted in a way in which he would not have done had he been sober does not assist him at all, provided that the necessary intention was there. A drunken intent is nevertheless an intent.”
The defendant becomes voluntarily intoxicated when he chooses to consume an intoxicating substance with the knowledge that it will alter his ability to think clearly. The courts have viewed this as reckless behaviour and it will suffice as the *mens rea* of recklessness. In *Majewski* (1977) Lord Elwyn-Jones LC said:

“*His course of conduct in reducing himself by drugs and drink to that condition in my view supplies the evidence of mens rea, of guilty mind certainly sufficient for crimes of basic intent, It is a reckless course of conduct and recklessness is enough to constitute the necessary mens rea in assault cases.*”

The voluntary act of becoming intoxicated will therefore constitute the reckless behaviour required for the offence to be made out. In *Bratty* (1963) Lord Denning also said:

“If the drunken man is so drunk that he does not know what he is doing, he has a defence to any charge, such as murder or wounding with intent, in which a specific intent is essential, but he is still liable to be convicted of manslaughter or unlawful wounding for which no specific intent is necessary.”

In fact, voluntary intoxication will have to be absolutely extreme (to the point of being almost unconscious) for the defendant to not even form the “recklessness” element as held in *Stubbs* (1989). If the *mens rea* required is intention alone, then intoxication can provide a defence because recklessness might be easy to show but intention will be much harder to form when intoxicated. This was confirmed in *Majewski* (1977). Intoxication is therefore a defence to crimes requiring intent (i.e. “specific intent crimes”) but not to crimes where recklessness will suffice (“basic intent crimes”). The case of *Majewski* (1977) established this doctrine clearly. Public policy can also determine whether an offence is specific or basic intent, as held in *Heard* (2007). However, it is still not crystal clear within the whole of criminal law which crimes are basic intent, specific intent, or strict liability — *Carroll v DPP* (2009).

If a defendant intentionally becomes intoxicated in order to commit a crime, this is known as “Dutch courage” and he is deemed to have the intention to commit that crime. In *Attorney-General of Northern Ireland v Gallagher* (1963) Lord Denning said:

“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 this self-induced drunkenness as a defence to murder, not even as reducing it to manslaughter. 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.”

As a result of *Gallagher*, Dutch courage is not a defence to specific intent or basic intent crimes. This is because intention is present and recklessness is also present.
If a defendant is involuntarily intoxicated (i.e. drugged) but forms his own intention, then he has the required mens rea for a conviction. In Kingston (1995) the defendant committed indecent assault whilst intoxicated. Despite the intoxication being involuntary, the defendant formed the required intention all on his own, and that will suffice for a conviction. If a defendant becomes involuntarily intoxicated on harmless sleeping pills, evidence must still be provided to prove that he did not form his own mens rea — O’Connell (1997). Simply because an alcoholic drink has a stronger effect than expected does not mean that the defendant was “involuntarily” intoxicated as held in Allen (1988). However, if an alcoholic drink (e.g. beer) is secretly laced with a much stronger drug (i.e. LSD), the jury may decide that the intoxication was involuntary as confirmed in Eatch (1980).

When a defendant becomes intoxicated on prescription drugs (also referred to as “non-dangerous” drugs”), it is deemed to be involuntary intoxication, as confirmed by Majewski (1977). The distinction is as follows: if the defendant doesn’t know they will make him intoxicated, it is deemed to be involuntary intoxication. If, however, the defendant knows that they will have an intoxicating effect on him, he is voluntarily intoxicated. In Bailey (1983), the defendant took his insulin but forgot to eat, making him hypoglycaemic. He committed malicious wounding whilst in this state. A distinction was drawn between dangerous drugs and medically prescribed drugs. According to Burns (1974), taking morphine to calm a health complaint will be deemed to be involuntary intoxication as long as the defendant did not appreciate the effect it would have. Valium tablets — which are designed to calm a patient — will also be deemed to be involuntary intoxication if they cause completely unexpected effects as seen in Hardie (1985). Parker LJ said:

“There was no evidence that it was known to [D] or even generally known that the taking of valium in the quantity taken would be liable to render a person aggressive or incapable of appreciating risks. The drug is wholly different in kind from drugs which are liable to cause unpredictability or aggressiveness.”

If the defendant in Hardie had known of the effect of valium upon him, his act of taking the drug would have therefore been voluntary intoxication and it would have satisfied the mens rea of recklessness for criminal damage. If during an involuntary intoxication of non-dangerous or prescribed drugs, the defendant develops his own mens rea, his involuntary intoxication will be no defence as was seen in Kingston (1995).