

Amendments to AQA A2 Law

ISBN: 978-0-7487-9866-7

- **Page xvii:** Under section C, the following acts were added:
Coroners and Justice Act 2009, 9, 10-13, 14, 65, 66
Criminal Justice and Immigration Act 2008, 56
- **Page 2:** Under *Omissions* end of paragraph second bullet point removed:
'some other such duty undertaken voluntarily, such as looking after a child or an elderly relative'
- **Page 7:** Spelling error corrected ('Maloney' changed to 'Moloney') and date of Nedrick corrected from '1989' to '1986'
- **Page 8:** Fourth line, spelling of 'Matthew and Alleye' changed to 'Matthews and Alleye'
- **Page 9:** Title top of the page 'Voluntary manslaughter: Provocation' amended to 'Voluntary manslaughter: Loss of control'
- Under *In this topic you will learn how to:*
 - 'Provocation' amended to 'Loss of control' (second and fourth bullet points)
 - Fifth bullet point deleted: 'explain cases that illustrate circumstances that can amount to loss of control'
- Fifth paragraph (first paragraph below bullet points) amended to read:

'The partial defence of provocation has now been abolished by the Coroners and Justice Act 2009, and has been replaced by the partial defence of 'loss of control'. The same act retains diminished responsibility, but gives it a different, more modern definition. These two specific defences to murder are called 'partial' because they do not result in a complete acquittal. The result of successfully pleading one of these defences is that the defendant is found guilty of manslaughter, and not murder.'

- **Page 10:** amended to:

The Coroners and Justice Act 2009 – Loss of control

Section 56 of the Coroners and Justice Act 2009 abolished provocation as defined in section 3 of the Homicide Act 1957, (above), and Sections 54 and 55 introduced the new defence of **loss of control**. Section 54 sets out the circumstances in which the new partial defence to murder applies. Section 55 defines more fully the 'qualifying triggers', as described below.

In what circumstances does the new defence apply?

1. The defendant must at the time of the offence have lost self-control resulting in his killing a person in one of **three types of situations**. These are called '**qualifying triggers**' in the Act. They are as follows:

- where the defendant fears serious violence;
- when certain things have been said or done which amount to circumstances of an extremely grave character, and cause the defendant to have a justifiable sense of being seriously wronged;
- when a combination of the first two situations applies.

With reference to these three 'qualifying triggers', it is important to note the following points.

Fear of serious violence

- (i) As with the complete defence of self-defence, (see Chapter 4), the test is a subjective one. A defendant

does not have to prove that his or her fear was reasonable, but the jury has to be convinced that it was genuine.

- (ii) The fear of serious violence has to be in respect of the defendant himself, or some other identifiable

person. It is not enough that the defendant has a general fear that serious violence might be directed towards someone the defendant does not know.

Things done or said (or both):

- (i) The things done or said must amount to circumstances of an extremely grave character, and cause the defendant to have a justifiable sense of having been seriously wronged.

(ii) Whether the defendant's sense of being seriously wronged is justifiable is an objective question for the jury to decide. The jury has to conclude that the defendant was indeed seriously wronged.

(iii) Things done or said which amount to sexual infidelity are to be disregarded. If a person kills another because he or she has been unfaithful, (or is believed to have been), the partial defence of loss of control cannot be claimed. Only the fact of sexual infidelity is to be disregarded. The thing done or said might still potentially amount to a 'qualifying trigger' if, (ignoring the sexual infidelity), there are other circumstances of an extremely grave character which cause the defendant to have a justifiable sense of having been seriously wronged.

- **Page 11:** amended to:

Fear of serious violence AND things done or said

It is possible that a defendant might not have acted as he did as a result of fear of serious violence alone, or of things done or said alone. A combination of both factors however might have caused him to have acted in the way he did, and thus allow the partial defence of loss of control.

Factors to be considered for the defence to succeed

Characteristics

A jury must take into account the fact that a person with certain characteristics may have acted in the same or similar way to the defendant. Such characteristics are

- (i) they were of the same age and sex as the defendant, (see *Camplin*, below);
- (ii) they had an ordinary level of tolerance and self-restraint; and
- (iii) they were in the same circumstances as the defendant.

With reference to (iii) above, it is important to note that any circumstances are possible except those which affect the defendant's capacity for tolerance and self-restraint. A defendant's acknowledged short temper, for example, may not be taken into account by a jury for these purposes. A history of violent abuse may on the other hand be taken into account, together with consideration of characteristics (i) and (ii).

In (***Camplin***) (1978), the defendant was a fifteen-year-old boy. He had been at the house of an older man, who forcibly abused him sexually, and then laughed at him. The defendant lost his self-control, seized a heavy pan and hit his abuser over the head, killing him. The House of Lords ruled that the term 'reasonable man' was not confined to the adult male, but 'a person having the power of self-

control to be expected of an ordinary person of the sex and age of the accused'. Furthermore, would the reasonable man, sharing the characteristics of the accused, be similarly provoked, and react to the provocation as the accused did?

Delay

The defendant's loss of control need not now be sudden. It is possible now for there to be a delay between the incident causing the loss of control and the killing. Such a delay may however be taken into account: (i) by the judge when deciding to leave the defence to the jury; (ii) by the jury when deciding if the killing resulted from loss of control. This is a significant departure from the previous law on provocation, where loss of self-control had to be 'sudden and temporary'. See Ahluwalia and Thornton, below.

In **(Ahluwalia) (1992)**, the defendant had been abused by her husband over many years. One night before he went to sleep, her husband threatened her with violence the next day. When he was asleep, she poured petrol over him and set him alight. She was convicted of murder. The Court of Appeal disallowed her appeal on the ground of provocation, holding that there was too long a delay. The court did however uphold her appeal on the grounds of diminished responsibility. (See the next topic).

In **(Thornton) (1996)**, the defendant faced a retrial for the murder of her husband. He had been a heavy drinker, and had consistently physically abused her. After one incident, she went to the kitchen to calm down. She looked for a weapon, took a carving knife and sharpened it. She then returned to the living room where she stabbed her husband to death. She was convicted of murder and her first appeal failed, the Court of Appeal

- **Page 12:** amended to:

holding that there had not been a sudden and temporary loss of selfcontrol. At her second appeal the court held that it was possible that a minor incident could act as the last straw and trigger a sudden final loss of control, following a long build-up of provocation. A retrial was ordered, at which in 1996, the jury acquitted her of murder.

Revenge

The defence is not available to a defendant who acts from motives of revenge. This is the case even where the defendant loses self-control as a result of one of the 'qualifying triggers'.

Incitement

Where a defendant deliberately incited one of the 'qualifying triggers' in order to provide an excuse for violence, the defence is not available. This might arise, for example where the defendant baits the victim with taunts in order to provoke him into doing something which might justify a fatal attack on him.

Burden of proof

Where the jury, being properly directed by the judge, feels that there is enough evidence to raise the issue of loss of control, it is up to the prosecution to disprove the defence beyond reasonable doubt.

Multiple defendants

If in a situation where more than one person is charged with murder, one defendant successfully pleads loss of control, it does not then necessarily follow that all the other defendants must also be convicted of manslaughter rather than murder.

When assessing the defence of loss of control, ask yourself the following questions.

- Was one of the 'qualifying triggers' present? If so, would it justify a loss of control?
- Would a person of the same age and sex as the defendant, with an ordinary level of tolerance and self-restraint, and in the same circumstances as the defendant have acted in the same way?

- Was there a delay between the incident causing the loss of control and the killing? How far is it relevant?
- Was the defendant motivated by revenge, a wish to provoke violence, or sexual jealousy?

Activities

Consider whether the defence of loss of control could be successful in the following situations:

1. Usha and Vikram are married. One day, Usha discovers that Vikram has recently raped her younger sister. In a fit of rage, Usha grabs a paperknife and stabs Vikram in the heart, killing him instantly.
 2. Wayne is a drunkard and a bully, and has been physically abusing his young wife Yvette for years. One night he comes home drunk from the pub, threatens Yvette with violence and then falls asleep on the sofa. Yvette puts on her coat and goes outside to calm down. She sees a building site further down the road. After searching for a while, she finds a pickaxe which she carries home. She attacks the sleeping Wayne with it and kills him.
- **Page 13:** amended to:
3. Zak has always had a short temper. One day a workmate criticises him for being slow. In a rage, Zak grabs him by the throat and strangles him.
 4. Consider the cases of *Camplin*, *Ahuwalia* and *Thornton* (above). How far do you think that they might have been decided differently today, in light of the Coroners and Justice Act 2009?

You should now be able to:

- explain the law relating to loss of control
- apply the law to given scenarios.

- **Page 14:** amended to:

The Homicide Act 1957 (as amended) The Coroners and Justice Act 2009 – Section 52

The defence of diminished responsibility was introduced by the Homicide Act 1957, section 2. The defence of insanity, (see Chapter 5), had existed before then, and still does. However the test for insanity is too narrow to include many of the mental problems which people can suffer from. The verdict when a person successfully pleads insanity is 'not guilty by reason of insanity'. In a trial for murder, the result of successfully pleading the defence of diminished responsibility, as with loss of control (above), is to change the verdict to one of manslaughter. This is still the case following the 2009 Act.

Section 52 of the Coroners and Justice Act 2009 replaces section 2(1) of the Homicide Act 1957 with new subsections (1) to (1B).

Abnormality of mental functioning

The 'abnormality of mind' as expressed in the 1957 Act is replaced by the words '**abnormality of mental functioning**' in the new Act. This abnormality of mental functioning must

- (a) arise from a recognised medical condition, (see below);
- (b) substantially impair the defendant's ability to do one or more of the following:

- (i) understand the nature of his conduct;
- (ii) form a rational judgement;
- (iii) exercise self-control.

The abnormality of mental functioning provides an explanation of the defendant's conduct if it causes, or is a **significant contributory factor** in causing, the defendant to act as he did.'

A defendant who puts forward this defence must prove it on the balance of probabilities.

Recognised medical conditions

Under the 1957 Homicide Act, 'abnormality of mind' has been held to cover many different kinds of medical condition, such as psychotic disorders (*Byrne (1960)*), clinical depression, and epilepsy. It can also be the result of post-natal depression, (*Reynolds (1988)*), pre-menstrual tension (*English (1981)*) and battered wife syndrome (*Ahluwalia (1992)*). The Coroners and Justice Act 2009 recognises that there are many different existing lists which classify accepted physical, psychiatric and psychological conditions. Foremost among these are the World Health Organisation's international classification of diseases, and the American Psychiatric Association's diagnostic and statistical manual of mental disorders. If a jury accepts that, at the time of the killing, a defendant was suffering from a condition included in one of these lists, then the test in (a), above, will be met.

There may well be new or emerging conditions which are recognised, but which are not on one of the accepted lists. In such a case, the defence can call an acknowledged specialist whose work has been validated. It will then be up to the jury, properly directed, to consider this evidence.

Byrne (1960) was an early case following the Homicide Act 1957 which examined the issue of 'abnormality of mind'. The defendant was a sexual psychopath, who strangled a young woman and then mutilated her body.

- **Page 15:** amended to:

At his trial he was found guilty of murder. On appeal however, the Court of Appeal substituted a conviction for murder for one of manslaughter.

The court said that

'Abnormality of mind...means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It seems to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgement as to whether an act is right or wrong, but also the ability to exercise will power to control physical acts in accordance with that rational judgement.'

Byrne was not able to resist the impulse to gratify his perverted desires, therefore the defence of diminished responsibility was available to him. (Though the verdict was changed to manslaughter, the court saw no reason to alter his sentence of life imprisonment).

Substantial impairment

The Homicide Act 1957 required that a person's mental responsibility must be substantially impaired, but did not specify in which way. The Coroners and Justice Act 2009 attempts to clarify this.

The abnormality of mental functioning has to be a **significant contributory factor** in causing the defendant to act as he did. It need not have been the only cause, the main cause, or the most important factor. It must however be more than merely trivial. There must be a causal connection between the abnormality and the killing in order for the defence to succeed.

The defence should not be able to succeed where the defendant's mental condition made no difference to his behaviour: that he would have killed regardless of his mental condition.

With regard to the above points, it is interesting to refer to the cases of *Gittens (1984)* and *Dietschmann (2003)*, below.

Intoxication

As was stated above, the abnormality of mental functioning must result from a 'recognised mental condition'. It does not include the abnormality of mental functioning which might come from being drunk or under the influence of drugs. To that extent, the effect of taking alcohol or drugs cannot in itself be pleaded in defence under Section 1.

(last two paragraphs on page 15 remain the same).

- **Page 56:** New paragraph added before *Conclusion*:

The question of proportionality arises in the 2008 Act. Section 76 (6) makes plain that the degree of force used by a person is not to be regarded as having been reasonable in the circumstances as he believed them to be if it was disproportionate in those circumstances. Guidance as to whether the degree of force used was reasonable in the circumstances of a case can now be found in the Criminal Justice and Immigration Act 2008 s76 (7) of which provides:

(a) that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and

(b) that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose.

- *Conclusion* amended to:

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.

- **Page 57:** *Examiner's Tip* added:

A question could be set in which candidates are required to deal with murder/voluntary manslaughter **and** with involuntary manslaughter.

- **Page 61:** First line amended to:
'This chapter aims to consider the areas of criminal law that you...'
- 2nd paragraph, 2nd sentence amended to:
'Nevertheless, statutes have to be interpreted in the light of the infinite range of human behaviour, and according to the ever-changing nature of society.'
- **Page 65:** First and second paragraphs under *Provocation* amended to:

Provocation

One of the main difficulties with the then defence of provocation was raised by the wording of the section in the Homicide Act which created it: '... the provocation was enough to make a reasonable man do as he did ...'

The question that had to be asked, could any man be described as 'reasonable' if he reacts to provocation to such an extent that he kills? Furthermore, there was no real consensus on what was meant by a 'reasonable man'. Certainly judges over the years found it a difficult concept to explain, and had not so far produced a convincing definition

- Fourth paragraph 1st sentence amended to:

Another objection to the law as it stood was that there seemed to be an almost endless range of conduct capable of provoking.

- Fourth paragraph 6th line should read:

In all kinds of situations it follows that often where a defendant alleges he was provoked, that provocation allowed a defence for anger.

- Fifth paragraph amended to:

These shortcomings were pointed out by the Law Commission in its 2003 consultation paper on the special defences to murder.

- Sixth paragraph amended to:

There was also a widespread feeling that it is a defence which favoured men, who are more likely to experience sudden loss of self-control. As is illustrated by cases such as *Ahluwalia* (1992) and *Thornton* (1992), women are more prone to the 'slow burn' syndrome. Although this state of affairs had to some extent been alleviated by using the defence of diminished responsibility, the problem remained.

- Seventh paragraph amended to:

The Coroners and Justice Act 2009 has gone some way to addressing these concerns. 'Loss of Control' replaces the concept of 'provocation', and thus the 'reasonable man' test is largely irrelevant. The definition of the 'qualifying triggers' and specification of the 'characteristics' in the 2009 Act should make it easier to determine the scope of the partial defence of loss of control. In addition, the abolition of the 'sudden and temporary' rule which applied to provocation addresses the problems in cases such as *Ahluwalia* and *Thornton*.

Diminished responsibility

The main problems with this defence as defined by the Homicide Act 1957 were that:

- The words of s2 of the Homicide Act were not clear as to what constitute the causes of abnormality of mind.
- Unlike other defences, the burden of proof is on the defendant. In the case of provocation, (now 'loss of control') the defence only has to raise the issue, and the prosecution has to disprove it. This is not the case with diminished responsibility, where the defendant has to show, on the balance of probabilities, that there were circumstances that would warrant that defence..

- **Page 66:** After first paragraph, amended to:

The Coroners and Justice Act 2009 retains the partial defence of Diminished Responsibility. It replaces Section 2(1) of the 1957 Homicide Act with new subsections (1) to (1B), and the term 'abnormality of mind' with 'abnormality of mental functioning'. The new Act makes it quite clear that 'recognised medical conditions' are to be found in accepted classificatory lists, thus making this area more specific. The aim of the Act is that the defence should not be able to succeed where the defendant's mental condition makes no difference to his behaviour, in that he would have killed regardless of it.

There is no change in the requirement that it is for the defence to prove, on the balance of probabilities, that the partial defence applies, not for the prosecution to disprove it.

The result of pleading this partial defence successfully will still be a conviction for manslaughter instead of murder.

(Rest of page remains the same)

- **Page 67:** Under 'You should now be able to:' first bullet point should read:
 - ☐ evaluate the law relating to murder, loss of control and diminished responsibility
- **Page 135:** **How to write an essay evaluating the law on discharge of contract** – entire section deleted

Text amended to:

You should now be able to:

- ☐ answer problem questions involving discharge of contract
- ☐ evaluate the law relating to discharge of contract
- ☐ describe proposals for reform of those areas.

- **Page 157:** '*Examiner's Tip*' added:
Misrepresentation may be incorporated into an examination question as appropriate but will **not** be the specific focus of any question.

- **Page 215:** Table 1 should be:

Table 1 *Specific and basic intent offences*

Basic Intent Crimes	Specific Intent Crimes
	Theft
	Burglary
	Blackmail
	Fraud under s2 Fraud Act 2006
	Fraud under s11 Fraud Act 2006
	Making off without payment
Criminal Damage under s1(1) Criminal Damage Act 1971	Criminal Damage under s1(2) Criminal Damage Act 1971

- **Page 403:** Index under L:
'Loss of Self -control' amended to 'Loss of Control 9-13'