

Partial defences to murder



Diminished Responsibility
Infanticide
Loss of Control
Killing in pursuance of a suicide pact

Diminished Responsibility



Diminished Responsibility

- Defence of manslaughter on the grounds of diminished responsibility
 - Partial defence to murder
- Background
- Raised by defence
 - Balance of probabilities

Diminished Responsibility

- The defendant (D) was suffering from
 - an **abnormality of mental functioning** which arose from a **recognised medical condition**;
 - that substantially impaired his ability to do one or more of the following
 - **Understand the nature of his conduct**
 - **Form a rational judgement**
 - **Exercise self-control**; and
 - Provides an **explanation** for D's acts and omissions in relation to the killing

Abnormality of mental functioning

- *“A state of mind so different from that of ordinary human beings that a **reasonable man would term it abnormal**...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 judgment whether an act is right or wrong, but also the ability to exercise will power to control physical acts in accordance with that rational judgment.”*
– R v Byrne 1960

Recognised medical condition

- Intended to allow valid medical diagnoses linked to valid classificatory systems
 - Asperger's syndrome
 - Battered woman syndrome
 - Depression
 - PND & PMS
 - Schizophrenia
 - Epilepsy
 - Psychopathy

Substantially impaired his ability

- To understand the nature of his conduct; OR
 - To form a rational judgment; OR
 - To exercise self-control.
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- Substantial = ordinary meaning

Explanation for his act / omission in party to the killing

- The abnormality of mental functioning must be causative or a significant contributory act to the killing

Diminished Responsibility

- Raised by defence on balance of probabilities
- Decided by jury
- If successful, defendant is liable to manslaughter conviction
- Wider range of sentencing options available to judge

Infanticide

Infanticide

- S1 Infanticide Act 1938 (as amended by s57 CJA 2009)
 - Woman causes death of her child <12 months
 - At time of act or omission, the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of lactation
- Reduces charge of murder to manslaughter

Disturbance of balance of the mind

- No definition of this concept
- In case *Sainsbury* – “left the balance of your mind disturbed to as to prevent rational judgment and decision”

Case analysis

- Reviews of application of the infanticide law
 - Some women had fairly obvious mental disorders
 - Puerperal depressive illness
 - Puerperal psychosis
 - Up to 50% cases – no identifiable mental disorder
 - Distressed state
 - Shock

Infanticide in court

- Burden of proof on prosecution to disprove infanticide beyond reasonable doubt when raised as a defence
- Disposals
 - Discretion to sentencing for Judge
 - Imprisonment
 - Community orders
 - Hospital orders



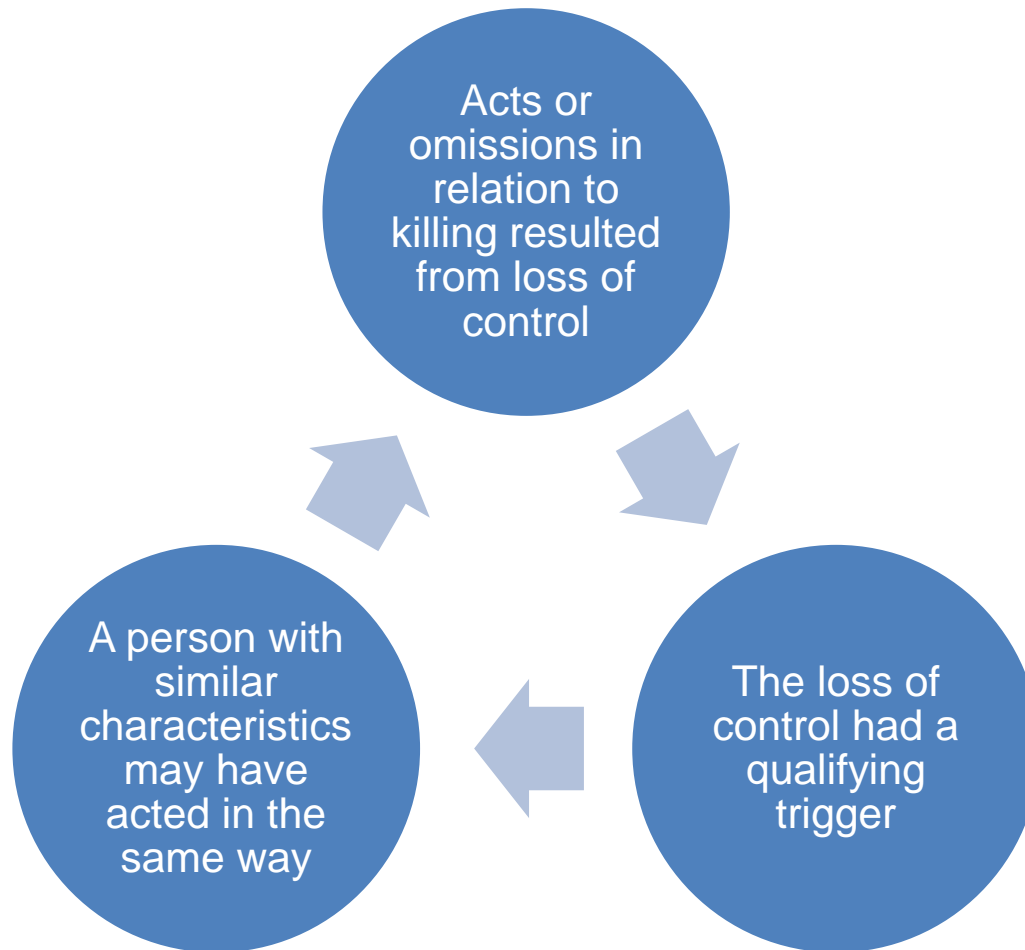
Loss Of Control / Provocation



Loss of Control

- Replaced common law defence of provocation
- Partial defence to murder
- Judge decides if there is enough evidence to raise the defence, then burden of proof is on prosecution to prove it is not satisfied
- All 3 criteria must be satisfied

Loss of Control



Psychiatric Evidence

- Psychiatrists may give evidence in relation to the person's 'woundability' in response to the qualifying triggers
 - E.g. depressive disorder may make someone more easily wounded by taunts

Killing in pursuance of a suicide pact

Suicide pact

- Defendant intended to kill themselves after killing another person, but was not successful in doing so
- Partial defence to murder
- Reduces offence to manslaughter
- Defendant bears the full burden of proof of demonstrating the existence of the pact

Partial Defences to Murder

Any Questions?

Thank you.