

## 6.4: End-of-Chapter Material

### 6.4.1 Summary

The federal government and every state except Montana, Utah, Kansas, and Idaho recognize the insanity defense. A not guilty by reason of insanity verdict is an acquittal for the offense. The policy supporting the insanity defense is the lack of deterrent effect when punishing the legally insane. Four insanity defenses are recognized in the United States: M’Naghten, irresistible impulse, substantial capacity, and Durham. The M’Naghten insanity defense is cognitive and excuses criminal conduct when the defendant is suffering from a mental defect or disease that prevents the defendant from knowing the nature or quality of conduct or from knowing that conduct is wrong. The irresistible impulse insanity defense adds a volitional component and excuses conduct the defendant cannot control because of a mental defect or disease. The substantial capacity test was created by the Model Penal Code and softens the requirements to substantial, rather than total, capacity to appreciate the criminality of conduct or to conform conduct to the law. The Durham insanity defense is recognized only in New Hampshire, and excuses conduct that is the product of or caused by a mental disease or defect. Jurisdictions vary as to the burden of proving insanity. All jurisdictions require the defendant to rebut a presumption that he or she is sane; some also require the defendant to persuade the trier of fact that he or she is legally insane to a preponderance of evidence or clear and convincing evidence (which is a higher standard than preponderance of evidence).

A minority of jurisdictions recognizes diminished capacity and the syndrome defense when the defendant cannot form the requisite criminal intent for the offense because of a mental impairment. The criminal defendant must also be mentally competent to stand trial, which means the defendant can understand the charges brought against him or her and can assist in any defense. Some jurisdictions recognize a guilty but mentally ill verdict, which does not exonerate the defendant, but provides for mental health treatment while incarcerated. Temporary insanity is also a defense in some jurisdictions and does not differ from the insanity defense except for the duration of the mental defect or disease.

The infancy defense excuses conduct when the defendant is too young to form criminal intent for the offense. The infancy defense is generally not available in juvenile adjudications, so it is rarely asserted because most youthful defendants are under the jurisdiction of juvenile courts. Juvenile courts can waive this jurisdiction and allow for an adult criminal prosecution under certain circumstances, considering the criteria of the nature of the offense, the sophistication it requires, the defendant’s prior criminal history, and the threat the defendant poses to public safety.

Other excuse defenses are intoxication, ignorance, and mistake. Voluntary intoxication is frowned on as a defense, but will occasionally excuse conduct if it negates certain high-level criminal intent requirements. Involuntary intoxication, which is intoxication achieved unknowingly, or under duress or fraud, is more likely to provide a defense if it affects the defendant’s capacity to form criminal intent. Ignorance of the law is not a defense because individuals are expected to know the laws of their jurisdiction. Mistake of law, which means the defendant does not know conduct is illegal, functions as a defense if the mistake is based on a judicial opinion or statute that is later overturned. Mistake of law is not a defense if the mistake is rooted in incorrect legal advice from an attorney. Mistake of fact is a defense if the facts as the defendant believes them to be negate the intent required for the offense.

Entrapment is also a defense in every jurisdiction. Most states and the federal government recognize the subjective entrapment defense, which focuses on the defendant’s predisposition, and does not excuse conduct if the defendant would have committed the crime without law enforcement pressure. In a subjective entrapment jurisdiction, the defendant’s criminal record is admissible to prove predisposition to commit the crime at issue. Objective entrapment is the Model Penal Code approach and excuses conduct if the pressure by law enforcement would induce a reasonable, law-abiding person to commit the crime. The defendant’s criminal record is not admissible to show predisposition in an objective entrapment jurisdiction because the focus is on law enforcement tactics, not the defendant’s nature.

### 6.4.2 YOU BE THE DEFENSE ATTORNEY

You are a well-known private defense attorney with a perfect record. Read the prompt, review the case, and then decide whether you would **accept** or **reject** it if you want to maintain your level of success. Check your answers using the answer key at the end of the chapter.

1. The defendant shot and killed a police officer and then escaped on foot. He was thereafter charged with first-degree murder. The defendant wants to claim that his diagnosed paranoid schizophrenia affected his ability to form the intent required for murder. In

your state (Arizona), the defendant cannot introduce this argument to negate intent; he can only plead insanity under an abbreviated version of M’Naghten, which requires proof that the defendant did not know his conduct was wrong because of a mental defect or disease. Will you accept or reject the case? Read *Clark v. Arizona*, 548 U.S. 735 (2006), which is available at this link: [http://scholar.google.com/scholar\\_case?case=5050526068124331217&q=Clark+v.+Arizona&hl=en&as\\_sdt=2,5&as\\_vis=1](http://scholar.google.com/scholar_case?case=5050526068124331217&q=Clark+v.+Arizona&hl=en&as_sdt=2,5&as_vis=1).

2. The defendant, an eleven-year-old boy, had sexual intercourse with a seven-year-old boy and was charged with two counts of first-degree rape of a child. Three experts questioned the defendant, and two concluded he lacked the capacity to form the intent for rape. This conclusion was based on the defendant’s response that the sexual contact was consensual and felt good. The defendant wants to present the *infancy* defense. Will you accept or reject the case? Read *State v. Ramer*, 86 P.3d 132 (2004), which is available at this link: [http://scholar.google.com/scholar\\_case?case=14834415223416879505&hl=en&as\\_sdt=2&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=14834415223416879505&hl=en&as_sdt=2&as_vis=1&oi=scholar).
3. The defendant, a diabetic, injected an abnormally large dose of insulin before his daughter’s birthday party. He and his estranged wife went to the store to buy party supplies. When they returned to the defendant’s vehicle, he hit her in the head with a hammer. She escaped the vehicle, and he caught up with her and ran her over. The defendant wants to claim *involuntary intoxication* as a defense to first-degree assault, domestic violence, and attempted first-degree murder. Will you accept or reject the case? Read *People v. Garcia*, 87 P.3d 159 (2003), which is available at this link: [www.lexisone.com/lx1/caselaw/freecaselaw?action=OCLGetCaseDetail&format=FULL&sourceID=bdidhf&searchTerm=ejjH.CGHa.aadj.eeNd&searchFlag=y&l1loc=FCLOW](http://www.lexisone.com/lx1/caselaw/freecaselaw?action=OCLGetCaseDetail&format=FULL&sourceID=bdidhf&searchTerm=ejjH.CGHa.aadj.eeNd&searchFlag=y&l1loc=FCLOW).
4. The defendant and a narcotics decoy have been acquainted for several years. The narcotics decoy set up a sale transaction between the defendant and a police officer, the defendant made the sale, and was thereafter charged with delivery of a controlled substance. The defendant claims that the decoy’s status as his friend, and numerous phone calls to set up the narcotics sale pressured him to commit the crime and he wants to claim entrapment. Your state (Texas) allows the defense of *objective entrapment*, focusing on law enforcement tactics. Will you accept or reject the case? Read *Sebesta v. State*, 783 S.W.2d 811 (1990), which is available at this link: [http://scholar.google.com/scholar\\_case?case=7939192026130608711&hl=en&as\\_sdt=2002&as\\_vis=1](http://scholar.google.com/scholar_case?case=7939192026130608711&hl=en&as_sdt=2002&as_vis=1).

### 6.4.3 Cases of Interest

- *U.S. v. Hinckley*, 493 F.Supp. 2d 65 (2007), discusses St. Elizabeth Hospital’s proposal for the conditional release of John W. Hinckley: <http://f1.findlaw.com/news.findlaw.com/wp/docs/hinckley/ushinckley121703opn.pdf>.
- *Graham v. Florida*, 130 S. Ct. 2011(2010), discusses sentencing a juvenile offender to life in prison: [http://scholar.google.com/scholar\\_case?case=6982366090819046045&q=Graham+v.+Florida&hl=en&as\\_sdt=2,5](http://scholar.google.com/scholar_case?case=6982366090819046045&q=Graham+v.+Florida&hl=en&as_sdt=2,5).
- *Legue v. State*, 688 N.E.2d 408 (1997), discusses voluntary intoxication: [http://scholar.google.com/scholar\\_case?case=15549524331562340362&hl=en&as\\_sdt=2&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=15549524331562340362&hl=en&as_sdt=2&as_vis=1&oi=scholar).
- *U.S. v. Albertini*, 830 F.2d 985 (1987), discusses mistake of law: [lawschool.courtroomview.com/acf\\_cases/8647-united-states-v-albertini](http://lawschool.courtroomview.com/acf_cases/8647-united-states-v-albertini).

### 6.4.4 Articles of Interest

- The insanity defense and recent US Supreme Court decisions: [www.law.indiana.edu/ilj/volumes/v81/no4/14\\_Grachek.pdf](http://www.law.indiana.edu/ilj/volumes/v81/no4/14_Grachek.pdf)
- The insanity defense for Jared Lee Loughner, the shooter of US Representative Gabrielle Giffords (D-AZ): [www.nwherald.com/2011/01/10/insanity-defense-difficult-for-loughner/a8b43du](http://www.nwherald.com/2011/01/10/insanity-defense-difficult-for-loughner/a8b43du)
- The ruling that Jared Lee Loughner is incompetent to stand trial for the shooting of Representative Giffords: [www.msnbc.msn.com/id/43165830/ns/us\\_news-crime\\_and\\_courts/t/ariz-shooting-spree-suspect-incompetent-trial](http://www.msnbc.msn.com/id/43165830/ns/us_news-crime_and_courts/t/ariz-shooting-spree-suspect-incompetent-trial)
- The defense of caffeine overdose: [www.aolnews.com/2010/09/20/caffeine-intoxication-insanity-as-legal-defense-strategy](http://www.aolnews.com/2010/09/20/caffeine-intoxication-insanity-as-legal-defense-strategy)
- Entrapment: [www.allbusiness.com/legal/laws/885814-1.html](http://www.allbusiness.com/legal/laws/885814-1.html)

### 6.4.5 Websites of Interest

- Insanity laws by state: <http://criminal.findlaw.com/crimes/more-criminal-topics/insanity-defense/the-insanity-defense-among-the-states.html>
- Information about entrapment: <http://www.wopular.com/newsracks/entrapment>

### 6.4.6 Statistics of Interest

- Juvenile crime in the United States: [bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2028](https://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2028)

### 6.4.7 Answers to Exercises

From [Section 6.1](#)

1. Jeffrey will not be successful in a jurisdiction that recognizes the **M’Naghten** insanity defense. Although Jeffrey has a mental defect or disease, schizophrenia, Jeffrey’s behavior in *hiding* the victims’ corpses indicates that he knows his behavior is **wrong**. Thus Jeffrey cannot produce evidence establishing the second element of M’Naghten.
2. The New Jersey Supreme Court reversed the defendant’s conviction, holding that the experts changed their opinion after being educated as to the *meaning* of mental defect or disease under M’Naghten. Thus the change by the experts was not fraudulent and the defendant was entitled to a retrial.
3. The Supreme Court of South Carolina upheld the convictions and the statute. The court held that the statute rationally accomplishes its goals, and guilty but mentally ill defendants receive *immediate* rather than *delayed* treatment, which complies with due process.

### 6.4.8 Answers to Exercises

From [Section 6.2](#)

1. It is unlikely that the judge will waive juvenile court jurisdiction in this case. Some of the criteria a judge will analyze when waiving jurisdiction are the nature of the offense, the sophistication it requires, the defendant’s criminal history, and the threat the defendant poses to public safety. This is Burt’s *first offense*, and it did not involve violence or require much sophistication. Thus the judge will probably allow Burt to be adjudicated in juvenile court.
2. The Court of Appeals of the State of New York upheld the defendant’s conviction and the trial court’s refusal to instruct the jury on intoxication. The court based its holding on the depraved mind murder statute, which requires **reckless** criminal intent, and the intoxication defense statute, which *disallows* evidence of intoxication as a defense to a reckless intent crime.
3. The Court of Appeals of Maryland upheld the trial court’s decision to disallow the mistake of age defense. The court based its holding on the plain meaning of the statutory rape statute, which is a **strict liability** offense.

### 6.4.9 Answers to Exercises

From [Section 6.3](#)

1. Allen’s criminal record for burglary is not admissible to prove his predisposition to commit the crime of purchasing contraband. The fact that Allen committed a burglary in the past does *not* indicate that he is *predisposed* to purchase contraband. Thus Allen’s criminal record for burglary is irrelevant and inadmissible, even though he is claiming entrapment in a jurisdiction that recognizes the **subjective entrapment** defense.
2. The US Court of Appeals for the Sixth Circuit affirmed the district court’s denial of the petition. The court held that the defendant did not have a *constitutional* right to assert entrapment and that the rejection of the defendant’s sentencing entrapment claim was appropriate, albeit unfortunate, under the circumstances.
3. The Court of Appeal of Florida reversed the defendant’s conviction under both theories of entrapment. The court based its holding on the defendant’s lack of *predisposition* to commit the crime and the government’s assurance that there would be no governmental interference, which was *false* under the circumstances.

### 6.4.10 Answers to Law and Ethics Question

1. Whether Mitchell is put on trial, or held indefinitely because of his mental incompetency, he is **incapacitated** and prevented from harming other victims. The difference is **retribution**. The federal judge permitted Mitchell to be put on trial, which resulted in a conviction providing retribution. Barzee’s sentencing also provided retribution. The state court judge allowed only for the **incapacitation** of Mitchell, which did not resolve the case for the Smart family or the general public. Whether or not retribution is ethical has been debated for centuries. However, retribution does restore public confidence in the judicial system, which can have a *positive deterrent* effect.

### 6.4.11 Answers to You Be the Defense Attorney

1. In this case, the US Supreme Court upheld Arizona's abbreviated M'Naghten statute, and also confirmed Arizona's constitutional right to *preclude* a defense based on the defendant's inability to form criminal intent because of a mental defect or disease. Thus you would not be able to strike down Arizona's insanity defense statute, and you could not introduce evidence that the defendant lacked the capacity to form criminal intent, so you should **reject** the case.
2. The Washington Supreme Court upheld the trial court's ruling that the defendant was incapable of forming the intent to commit rape of a child, reversing the appellate court. The court based its holding on the Washington infancy statute, which requires the prosecution to rebut a presumption of infancy for defendants under the age of twelve by clear and convincing evidence. Thus you would prevail on the infancy defense, and you should **accept** the case.
3. In this case, the trial court rejected the defendant's involuntary intoxication claim, and the defendant had to plead **not guilty by reason of insanity**. He was thereafter found guilty. On appeal, the Court of Appeals of Colorado *reversed*, holding that the defendant had the right to claim intoxication and present evidence of this claim to the trier of fact. Thus you would be able to assert intoxication as a defense, and should **accept** the case.
4. The Court of Appeals of Texas upheld the trial court's rejection of a motion to dismiss the charge based on *entrapment*. The court held that friendship and numerous phone calls are not enough to pressure an unwilling person to commit a crime. Thus you would lose on the entrapment defense and should **reject** the case.

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