

UR-CASS, SCHOOL OF LAW

Psychology and Law (5 credits)

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Objectives of the course

- To introduce students on the intervention of psychology and law in the legal processes
- To introduce students to the broad area of legal psychology & to give them an appreciation of the application of psychological principles and methods to the legal system.

Expected outcome

- At the end of this course, students are expected to have known;
 - a) why psychology and Law in the law curriculum
 - b) when it should intervene in legal processes

Mode of evaluation

- Attendance and participation is mandatory and could earn one a mark
- Students will write papers and present them orally in class
- They will sit for a final exam

Introduction

- **What is psychology?**

Psychology studies people on: how they think, act, react and interact. Psychology is concerned with all aspects of behaviour and the thoughts, feelings and motivation underlying such behaviour.

Psychology is a discipline that is firstly concerned with the normal functioning of the mind and has explored areas such as learning, remembering and the normal psychological development of children.

Psychology and Law

- Legal psychology involves empirical, psychological research of the law, legal institutions, and people who come into contact with the legal system. Legal psychologists typically take basic social and cognitive theories and principles and apply them to issues in the legal system such as eyewitness memory, jury decision-making, investigations, and interviewing.
- The term "legal psychology" has only recently come into usage, primarily as a way to differentiate the experimental focus of legal psychology from the clinically-oriented forensic psychology.

(...)

- Forensic Psychology is the application of psychological knowledge to the justice/judicial system. It is also intersection between psychology and the criminal justice system. It involves understanding criminal law in the relevant jurisdictions in order to be able to interact appropriately with judges, attorneys and other legal professions.

(...)

An important aspect of forensic psychology is the ability to testify in court, reformulating psychological findings into the legal language of the courtroom, providing information to legal personnel in a way that can be understood.

Together, legal psychology and forensic psychology form the field more generally recognized as "*psychology and law*".

Crucial changes in the criminal justice system over the centuries have gradually increased the need for psychological expertise within the system.

(...)

- Psychology and the law are both inherently concerned with the analysis, explanation, prediction and, sometimes, the alteration of human behaviour.

Some areas of intervention

- **Criminal profiling** (Five behavioural characteristics that can be gleaned from the crime scene include: the amount of planning that went into the crime, the degree of control used by the offender, the escalation of emotion at the scene, the risk level of both the offender and victim, and the appearance of the crime scene (disorganized versus organized)).
- Interviews (suspects, victims/witnesses)
- Lie detection
- Assessment of competencies (criminal and civil)
- Evaluation of trauma for the determination of damages,
- Determination of child custody (BIC)
- etc.

Part 1: Investigative Procedures

Chap 1: Telling and detecting lies

- Some Characteristics of Deception
- Nonverbal Behaviour and Deception
- Verbal Behaviour and Deception: Criteria-Based Content Analysis
- Physiological Reactions and Deception: The Polygraph
- Detecting Lies
- Difficulties and Pitfalls for Lie Detectors

Deception

- **Deception** is defined as ‘ ‘a successful or unsuccessful deliberate attempt, without forewarning, to create in another a belief which the communicator considers to be untrue’ ’

Characteristics of lies

- An intentional act
- Not informing others in advance about their intention to lie
- A lie is defined solely from the perspective of the deceiver (to lie knowing the truth and telling otherwise)
- People sometimes fool themselves; a process called self-deception (this is not called lying because it has to involve at least 2 people)

Types of lies

- outright lies
- exaggeration
- subtle lies

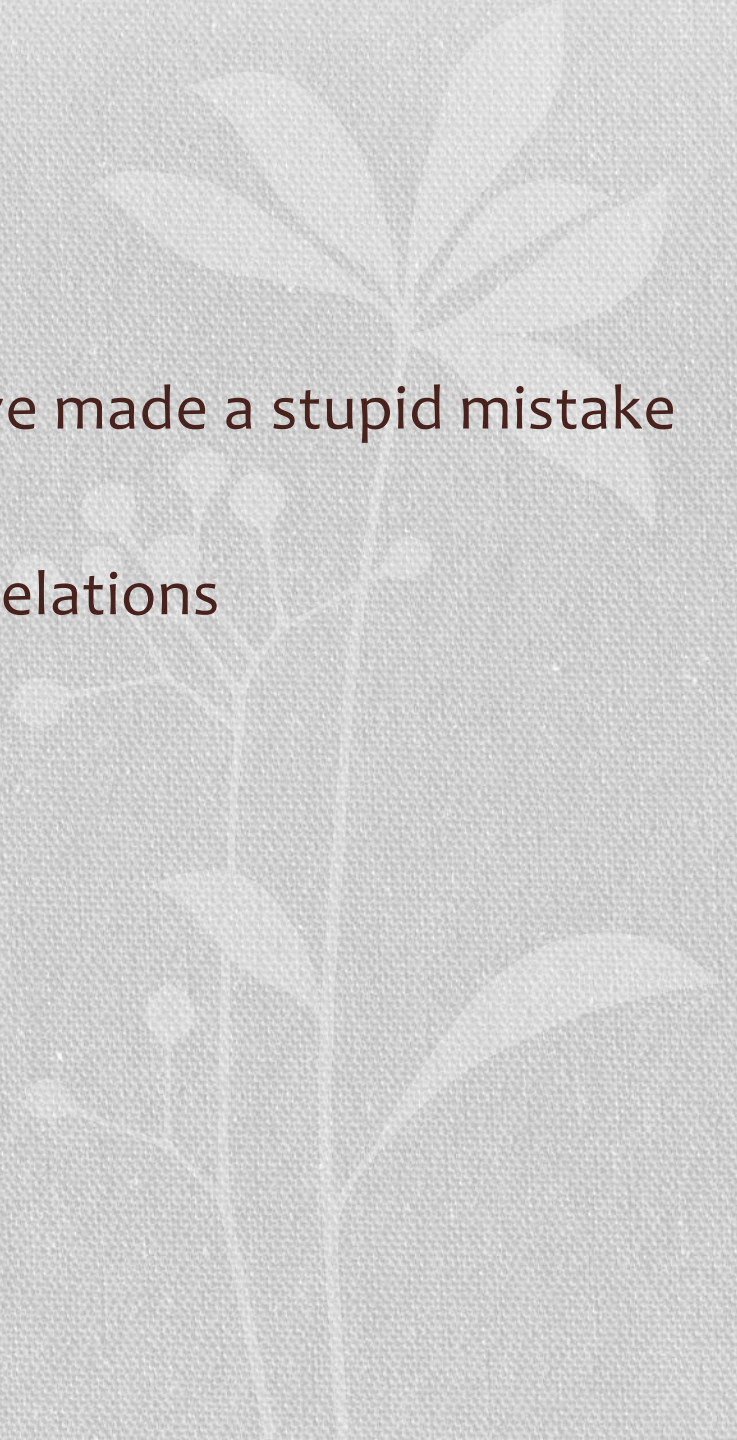


Reasons for lying

- People lie in order to obtain personal advantage
- To avoid punishment
- To protect the other
- To make positive impression on others
- To protect themselves from embarrassment or disapproval

(...)

- People do not wish to admit they have made a stupid mistake
- To make others appear better
- People may lie for the sake of social relations



Non-verbal behaviour and deception;

- **Emotions;** (telling a lie might evoke emotion like guilty, fear or excitement)
- Guilt, fear and excitement may (independently) influence a liar's behaviour. Guilt might result in gaze aversion because the liar does not feel able to look the deceived person straight in the eye while telling a lie.

(...)

- Fear and excitement might result in signs of arousal, such as an increase in limb movement, movement of arms, hands, fingers, legs and feet, an increase in speech fillers (pauses in speech filled with “‘ah’”, “‘um’”, “‘er’” and so on), speech errors (word and/or sentence repetition, sentence change, sentence incompletions, slips of the tongue and so on), facial emotional expressions (expressions of fear, anger, disgust, etc.) or a higher pitched voice.

(...)

- **Content complexity:** Sometimes lying can be difficult, as liars have to think of believable answers, avoid contradicting themselves, tell a lie that is consistent with everything which the observer knows or might find out, and avoid making slips of the tongue.
- Moreover, liars have to remember what they have said, so that they can be consistent when asked to repeat their story
- It is easy to examine the impact of content complexity on movements and gaze aversion.

(...)

- **Attempted behavioural control;** Liars may worry that several cues will give their lies away; therefore, they will try to suppress such signs and might engage in ‘ ‘impression management’ ’ in order to avoid getting caught.

(...)

- Most people lie less frequently than they tell the truth. This makes lying a special event which merits special attention. Making an honest and convincing impression is not easy though. When people try to do this, they sometimes tend to over control themselves, resulting in behaviour that looks rehearsed and rigid.

Verbal behaviour and deception

- The same three theoretical processes which are suggested to be responsible for nonverbal cues to deception (emotion, cognitive load and attempted behavioural control) are thought to underpin these verbal cues as well. Regarding emotion, truth tellers sometimes tell their stories in an unstructured manner (unstructured production), especially when they are upset.

(...)

- Deceptive accounts are sometimes incoherent and inconsistent (logical structure), provided in a chronological time order (structured production) and include fewer details (quantity of detail) than truthful accounts.

(...)

- Liars try to construct a report which they believe will make a credible impression on others, and will leave out information which, in their view, will damage their image of being a sincere person.
- They tend to limit the details in their favour or give too much details, unnecessarily.
- They easily admit loss of memory or memory deficiency.

Physiological reactions and deception (the polygraph)

- Throughout history, it has been assumed that the act of lying is accompanied by physiological activity within the liar's body. E.g. *the Chinese used to force suspected liars to chew rice powder and then spit it out. If the resultant powder was dry, the person was judged to have been lying*

(...)

- The modern way of detecting physiological activity is the polygraph;

This is a scientific measuring device which can display, via ink pens onto charts, or via a computer's visual display unit, a direct and valid representation of various types of bodily activity

- The most commonly measured activities are sweating of the fingers, blood pressure and respiration

(...)

- In the typical use of polygraph, four sensors are attached to the subject. Pneumatic gauges are stretched around the person's chest and stomach in order to measure changes in the depth and rate of breathing. A blood-pressure cuff placed around the bicep measures changes in blood pressure, and metal electrodes attached to the fingers measure sweating.

(...)

- The polygraph measures physiological activity and can record changes in these activities associated with arousal. It is assumed that liars will be more aroused than truth tellers.
- While answering questions, the polygraph record the reactions some of the questions may include; (‘ ‘Have you ever tried to hurt someone to get revenge?’ ’ , or was it your own idea or it was someone who talked you into it) CQT, GKT.

Chap 1.2: Investigative techniques

How to make a suspect talk (Inbau et al.'s Nine-Steps Approach)

The Reid technique's nine steps of interrogation are:

Step 1 - Direct Confrontation. Lead the suspect to understand that the evidence has led the police to the individual as a suspect. Offer the person an early opportunity to explain why the offense took place.

(...)

Step 2 - Try to shift the blame away from the suspect to some other person or set of circumstances that prompted the suspect to commit the crime. That is, develop themes containing reasons that will justify or excuse the crime. Themes may be developed or changed to find one to which the accused is most responsive.

Step 3 - Try to discourage the suspect from denying his guilt. "If you've let him talk and say the words 'I did not do it' [...] the more difficult it is to get a confession."

(...)

Step 4 - At this point, the accused will often give a reason why he or she did not or could not commit the crime. Try to use this to move towards the confession.

Step 5 - Reinforce sincerity to ensure that the suspect is receptive.

Step 6 - The suspect will become quieter and listen. Move the theme discussion towards offering alternatives. If the suspect cries at this point, infer guilt.

(...)

Step 7 - Pose the “alternative question”, giving two choices for what happened; one more socially acceptable than the other. The suspect is expected to choose the easier option but whichever alternative the suspect chooses, guilt is admitted. There is always a third option which is to maintain that they did not commit the crime.

Step 8 - Lead the suspect to repeat the admission of guilt in front of witnesses and develop corroborating information to establish the validity of the confession.

(...)

Step 9 - Document the suspect's admission and have him or her prepare a recorded statement (audio, video or written).

Nine Concerns with the Nine-Step Model

1. Trickery and deceit (providing fictional evidence, creating a false sense of security, exaggerating the seriousness of the offence and so on) are unlawful in several countries, a fact which implies that evidence obtained via trickery and deceit will not be allowed in court. Apart from being illegal, trickery and deceit may be considered unethical too.
2. The nine-step approach of psychologically manipulating people via trickery and deceit may lead to false confessions. The problem with tricks and deceit is that they make both guilty and innocent suspects more willing to confess. There is no trick that makes only guilty suspects more willing to talk.

(...)

3. Pressing suspects to confess may result in the opposite effects to those intended by the police; that is, suspects who would normally confess may not confess at all if they feel they are being rushed or unfairly treated by the police.

4. When suspects feel that they have been induced to confess by unfair means, they retain strong feelings of resentment towards the police, even many years afterwards.

(...)

5. Bluffing is a poor interview technique: ‘ ‘suppose an interviewer lies and tells a burglar that his fingerprints have been found at the scene of crime. If that burglar had been wearing gloves, n he would know this statement is a lie and he will probably view anything the interviewer says from that moment on with either contempt, or at least with a high degree of skepticism’ ’

(...)

6. Use of trickery and deceit may encourage the police to lie in other contexts as well.
7. In vulnerable individuals, oppressive police interviewing may result in post-traumatic stress disorder.
8. By asking in the confession phase (step 8) questions which can be answered by suspects in a few words, the police risk that the confession reflects more of what they believe has happened than what actually has happened.

(...)

9. Inbau et al. mention nonverbal cues of deception (postural shifts, grooming gestures and placing a hand over mouth and eyes) that are not identified as such in the literature on nonverbal indicators of deception.

1.3 Interviewing a suspect

How to let a suspect talk

CW: Discuss the process of interviewing a suspect and differentiate it from interrogating him or her. Which approach would you take and why?

Other ways of investigating suspect using strategic disclosure of evidence

- Evidence is collected at different phases of criminal investigations and consists of different forms.
- Interviewing/interrogating a suspect or a witness is part of evidence gathering.
- Interviewing a suspect can proceed in the absence of any other evidence (not a good idea).

Importance of disclosure of evidence

- It's a legal requirement
- It leads to confession
- It helps in the detection of lies



Forms of strategic disclosure of evidence

- Late disclosure, where a suspect is asked to account for what they know about the commission of the offence or a given set of circumstances (without knowledge of any existing evidence)
- Gradual disclosure, where evidence is presented in bits during the course of the interview

Psychological arguments for strategic disclosure of evidence

- An effective rule of lie detection
- initial withholding of evidence from suspects is favoured because early disclosure of evidence may disrupt rapport building (early disclosure kills trust and creates uncertainties).
- It may create fairer interviews (the suspect is given a chance to give his/her version of the story).

Legal arguments against strategic disclosure of evidence

- Withholding evidence from the suspects is not fair (violation of fair trial guarantees)
- It undermines any sound legal advice the accused may receive
- Non disclosure may lead the suspects to choose to remain silent (upon the advice from their lawyers)
- Causes avoidable delays (demands of information)

Confessions

Confession is admitting something someone has done or acknowledgment of guilt by a person accused of a crime.

Reasons for confession

Different researches have revealed some factors that may influence suspects to confess. Below are some of them;

(...)

- Strength of evidence
- Perceived seriousness of the crime
- The presence of a legal adviser
- The criminal history of the suspect.



False confessions

Reasons

This means admitting a crime you did not commit. False confessions may be due to;

- Police pressure & tricks
- Lengthy period of interrogation
- Absence of legal counsel
- Personal benefit
- Need to protect the other
- Failure to prove ones innocence

Types of false confession

- Voluntary false confession;
- coerced-compliant false confessions;
- coerced-internalised false confessions



How to Detect False Confessions

- The best way to distinguish between false and true confessions is to look for intimate knowledge and impossibilities

How to prevent false confession

- Both coerced-compliant and coerced-internalised confessions are the result of police pressure and police tricks during interviews. So, avoid it
- Audiotape and videotape all interviews
- Attorneys should be present
- Identify people likely to falsely confess
- Find additional corroborative evidence

Chap 1.4 Interviewing witnesses

Eye witness testimony/identification

Eyewitness testimony is an account of what someone believes has personally seen an occurrence in relation to the commission of the crime under investigations.

“were there any eyewitnesses” this is a frequently asked question to emphasis the importance of eyewitness testimony. However important, eyewitness raises major issues of;

- Accuracy
- Reliability

Factors affecting the accuracy of eyewitness testimony/identification

- Duration of the encounter (was it a brief encounter or?)
- Prior knowledge (did the witness know the suspect before the occurrence?)
- Distance
- Timing (day or night time)
- The lighting condition,

(...)

- Duration from occurrence to the questioning
- The stress the person might have experienced (was there use of weapon? Was it a violent crime?)
- Age, Health (how good is someone's vision)
- Personal bias and expectations.

Part 2 Determination of competencies

Chap 3. Criminal Competencies

3.1 Competence to stand trial

Competence to stand trial is a suspect's capacity to participate in his trial meaningfully. It focuses on the defendant's current mental state at the time of trial.

It is generally a low-level standard that requires merely that a defendant understands the proceedings against him.

Legal justification

- The accuracy of the proceedings demands the assistance of the defendant in acquiring the facts of the case.
- Due process depends on defendants' ability to exercise their rights, including the rights to choose and assist legal counsel, confront their accusers, and testify.
- The integrity and dignity of the process is undermined by the trial of an incompetent defendant, both in terms of inherent morality and outward appearance.
- Finally, the goal of punishment is not served by sentencing a defendant who fails to comprehend the sanction and reasons for imposing it.

The Test

- (1) That he has mental capacity to appreciate his presence in relation to time, place and things;
- (2) That his elementary mental processes be such that he apprehends that he is in a Court of Justice, charged with a criminal offense;
- (3) That there is a Judge on the Bench;
- (4) A Prosecutor present who will try to convict him of a criminal charge;
- (5) That he has a lawyer who will undertake to defend him against that charge and with whom he's expected to cooperate in his own defence.

4.2 Insanity defence

- Insanity is a defence asserted by an accused in a criminal prosecution to avoid liability for the commission of a crime.
- it must be proved that the defendant was so impaired by a mental disease or defect at the time of the act that he or she did not know the nature or quality of the act, or, if the defendant did know the nature or quality of the act, he or she did not know that the act was wrongful.

Tests of insanity

- 1. Wild Beast
- 2. M'Naghten rule
- 3. Irresistible Impulse
- 4. Durham
- 5. American Legal Institute (ALI)



4.3 Diminished capacity

- Diminished capacity is a legal defense used in some criminal cases to argue that the defendant was less mentally capable than a normal person of having the required mental state for the offense.
- Diminished capacity does not amount to insanity, but is rather a condition that affects a defendant's ability to process information or to reason.

Chapter 5 Civil competencies

- Informed Consent
- Competence to contract
- Capacity to make a will



Chapter 5.1 Informed consent

- The doctrine of informed consent is an important concept requiring that in treatment a patient gives permission to a physician to carry out a procedure in the process of treatment or a person agrees freely to participate in a study. Informed consent in medical treatment is the requirement that physicians share decision-making with patients.

(...)

"The underlying basis for the doctrine of *informed consent* is a patient's right of self-determination, the right to intelligently decide whether to choose or decline a particular medical procedure.

"Every human being of adult years and sound mind has a right to determine what shall be done to or with his own body; and a surgeon who performs an operation without his patient's consent, commits an assault, for which he is liable in damages.

Elements of informed consent

- What makes a patient's authorization of a medical procedure valid? Valid informed consent incorporates five elements: voluntarism, capacity, disclosure, understanding, and decision
- *Voluntarism* requires that the patient be free from coercion and from unfair persuasions and inducements. Coercion could include inappropriate pressure or trying to influence the patient's decision.

(...)

- *Capacity* can be defined as the patient's ability to make health care decisions. All adults of full age are usually assumed capable of taking health care decisions. If contrary is proven, the person can't be deemed as capable and would not be expected to give informed consent.

(...)

- *Disclosure* involves providing the patient with the information needed to understand a procedure. Like; nature and purpose of the treatment, as well as its risks, potential benefits, and available alternatives. Use of simple explanations. Common complications, irrespective of severity, should be described, as should less frequent but potentially serious or irreversible risks.

Informed consent in research

The process of agreeing to take part in a study based on access to all relevant and easily digestible information about what participation means, in particular, in terms of harms and benefits.

(...)

Potential participants need to understand the following:

- The purpose of the research
- How long their participation will last
- Who is involved in the research
- The practicalities and procedures involved in participating

(...)

- That their participation is voluntary
- That they can withdraw from the study at any time, without giving any reason and without compromising their future treatment.
- The insurance indemnity arrangements for the conduct of the research where appropriate.

(...)

- Possible benefits and risks of participation and, when appropriate, the alternative therapies
- How data about them will be managed and used
- How long and where the data will be stored
- The purpose of the consent form
- What is expected of them if they agree to participate in the research
- How information will be provided to them throughout the research

Requirements for informed consent

- Consent should be given by someone with the mental ability to do so (capable of taking that decision)
- Provision of adequate information (sufficient information should be given to the participant to enable him or her to make the decision.
- Consent must be freely given by someone acting voluntarily (without undue pressure, influence or any form of motivation)

If any of these requirements is lacking, consent is invalidated.

Exceptions

- Unconscious patient (and in immediate need of emergency medical attention)
- Medical incompetence of a patient (compelling state interest)
- Minor patients
- compelling state interest
- Mature minor exception
- Emergency and immediacy

Standard

- The nature of the patient's condition
- The nature and effect of any proposed treatment
- The risks of both pursuing any proposed treatment and not pursuing any proposed treatment

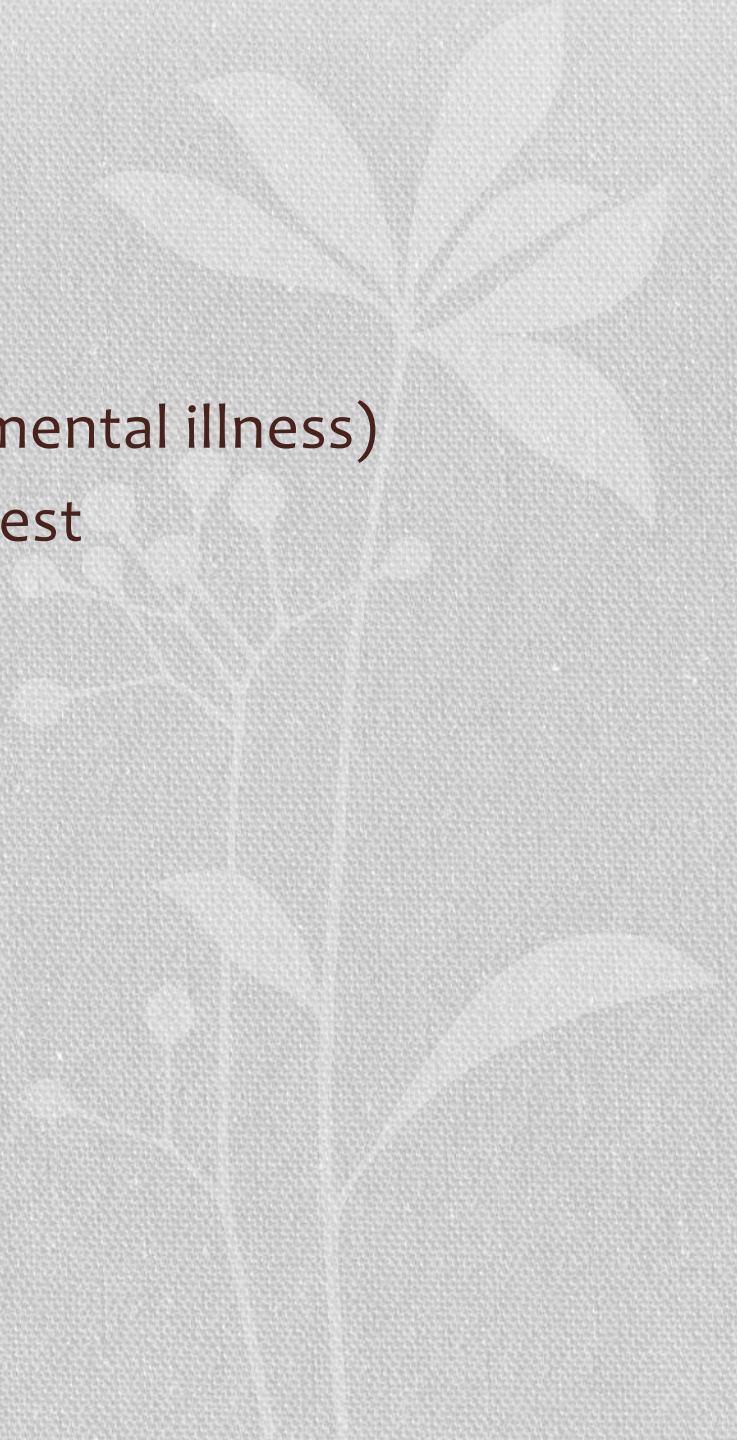
5.2 Competence to contract

Understanding test

- Person's ability to understand the nature and consequences of the act or the transaction in which he is engaged.
- Proof of mental weakness or insanity are not in themselves enough to show incompetency; rather the disorder must be shown to actually have destroyed the capacity to understand the questioned transaction

(...)

- Insanity delusion test (presence of mental illness)
- The ability to control one's actions test
- Void and voidable



5.3 Competence to make a will

A will is a document that outlines how one or more individuals wishes their worldly possessions to be distributed after their death.

- What constitutes testamentary capacity?
Banks v Goodfellow criteria
- Capable of understanding the act of making a will and its effects;

...

- Capable of understanding the nature and extent of their property relevant to the disposition;
- Capable of evaluating the claims of those who might be expected to benefit from his estate, and able to demonstrate an appreciation of the nature of any significant conflict and or complexity in the context of the testator's life situation;

...

- Capable of communicating a clear, consistent rationale for the distribution of their property, especially if there has been a significant departure from previously expressed wishes or prior Wills; and
- Free of a mental disorder, including delusions, that influences the distribution of the estate.”