= Insanity in English law =

Insanity in English law is a defence to criminal charges based on the idea that the defendant was unable to understand what he was doing , or , that he was unable to understand that what he was doing was wrong .

The defence comes in two forms ; where the defendant claims he was insane at the time of the crime , and where the defendant asserts he is insane at the time of trial . In the first situation , the defendant must show that he was either suffering from a disease which damaged the functioning of the mind and led to a defect of reason that prevented him from understanding what he was doing , or that he could not tell that what he was doing was wrong . In the second situation , the test is whether or not the defendant can differentiate between " guilty " and " not guilty " verdicts , instruct counsel and recognise the charges he is facing . If successful , he is likely to be detained under the Criminal Procedure (Insanity) Act 1964 , although judges have a wide discretion as to what to do .

Use of insanity as a concept dates from 1324 , and its criminal application was used until the late 16th century in an almost identical way . The defence , if successful , either allowed the defendant to return home or led to him being incarcerated until he was granted a royal pardon ; after 1542 , a defendant who became insane prior to the trial could not be tried for any crime , up to and including high treason . During the 18th century the test to determine insanity became extremely narrow , with defendants required to prove that they could not distinguish between good and evil and that they suffered from a mental disease which made them incapable of understanding the consequences of their actions . The current wording comes from the M 'Naghten Rules , based on the trial of Daniel M 'Naghten in 1843 .

The defence of insanity has been subject to intense criticism , particularly from the Butler Committee , which noted that the rules were " based on too limited a concept of the nature of mental disorder " , highlighting " the outmoded language of the M 'Naghten Rules which gives rise to problems of interpretation " and that the rules were " based on the now obsolete belief in the pre @-@ eminent role of reason in controlling social behaviour ... [the rules] are not therefore a satisfactory test of criminal responsibility " . The Committee proposed reform of the law in 1975 , followed by a draft bill from the Law Commission in 1989 ; so far , these have both been ignored by successive governments .

= = History = =

The idea of insanity in English law dates from 1324 , when the Statute de Praerogativa Regis allowed the King to take the lands of idiots and lunatics . The early law used various words , including " idiot " , " fool " and " sot " to refer to those who had been insane since birth , and " lunatic " for those who had later become insane , or were insane with some lucid intervals . In the criminal law , insanity was used as a defence in a roughly identical way from this point until the late 16th century ; if an insane person commits a crime , he was not punished in the same way that a sane felon who committed the same crime would be . This was for several reasons ; firstly , the cruel punishment usually meted out to felons to set an example would not have the same effect on the insane . Secondly , as felonies required a mens rea , an insane person could not be guilty because they did not have the capacity to hold a mens rea . Thirdly , the phrase furiosus solo fitrere punitur was used ; " a lunatic was punished by his madness alone " .

In many cases , the insane defendant was released and allowed to go home ; in some , he was held in prison until the King decided to grant him a pardon . A lunatic who became insane prior to the trial could not be executed , nor , after 1542 , trialled for felonies up to and including high treason . It was then established that somebody found not guilty due to insanity should be immediately released ; up until the beginning of the 19th century , this was almost all that could be done , although the Vagrancy Act 1714 allowed two Justices of the Peace to confine a dangerous lunatic . The test of insanity was extremely narrow ; defendants had to prove that they were incapable of distinguishing between good and evil , and , following the trial of John Firth in 1790 , that they suffered from a mental disease which made them incapable of " forming a judgment upon the

consequences of [their] actions " .

= = = Trial of James Hadfield = = =

On 15 May 1800 , James Hadfield attempted to assassinate George III ; he had come to believe that the second coming of Christ would be brought about by his own death , and therefore attempted to be judicially executed . Hadfield approached the King in the royal box at the Theatre Royal , Drury Lane , firing a pistol at him ; however , the King was bowing to the audience at the time , and the shot passed over his head . He was tried on 26 June 1800 at the Court of King 's Bench , and his counsel , Thomas Erskine , argued that although Hadfield 's planning of the attack meant that the normal defence of insanity would not have been sufficient , the true test of insanity is delusions and " frenzy or raving madness " , which Hadfield suffered from . Several medical experts testified that Hadfield 's injuries at the Battle of Tourcoing , where he was repeatedly struck in the head by a sabre , had caused insanity , and Lord Kenyon immediately sent the jury away to reach a decision . Their verdict was " not guilty ; he being under the influence of insanity at the time the act was committed " , the first time a jury had been asked to give a reason for their decision and the origins of the phrase " not guilty by reason of insanity " .

The result of the case was the Criminal Lunatics Act 1800 ; Parliament , concerned that similar criminals could be allowed to go free , provided that somebody found " not guilty by reason of insanity " should be remanded in custody until granted a royal pardon . The 1800 Act also put limits on what crimes a defence of insanity could be used for . Prior to the Act , it could be used in any case , but the new legislation limited the defence to indictable offences .

= = = The M 'Naghten Case = = =

On 20 January 1843 , Daniel M 'Naghten attempted to assassinate Robert Peel , Prime Minister of the United Kingdom . Approaching a man he believed to be Peel , M 'Naghten fired into his back , in fact killing Edward Drummond , Peel 's secretary . Immediately arrested , he was charged with murder and tried on 3 March 1843 at the Old Bailey . He was assisted in his defence by two solicitors , four barristers including Alexander Cockburn and nine medical experts , along with eight lay witnesses . Both sides agreed that M 'Naghten was insane ; the question was what constituted a valid legal defence of insanity . The judges decided that " every man is presumed to be sane , and to possess a sufficient degree of reason to be responsible for his crimes , until the contrary be proved to their satisfaction ; and that 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 what he was doing was wrong " , which was boiled down to " did the defendant know what he was doing , and if so , that what he was doing was wrong ? " . This established the M 'Naghten Rules , which remain the principal method of deciding insanity in English law .

= = = Trial of Lunatics Act 1883 = = =

The Trial of Lunatics Act 1883 was the next development in the law , allowing the jury to return a verdict that the defendant was guilty , but insane at the time , and should be kept in custody as a " criminal lunatic " . This Act was passed at the request of Queen Victoria , who , the target of frequent attacks by mentally ill individuals , demanded that the verdict be changed from " not guilty " so as to act as a deterrent to other lunatics ; the phrasing of " guilty of the act or omission charged , but insane so as not to be responsible , according to law , for his actions . " remained in use until the Criminal Procedure (Insanity) Act 1964 .

= = Current law = =

Under the current law there are two applications of the insanity defence ; where it is claimed that the defendant was insane at the time that he committed the crime , and where it is claimed that he was insane at the time of the trial and thus unable to effectively defend himself . The defence is most commonly used in the Crown Court , since it was previously believed that it required a jury ; in DPP v Harper [1997] , it was decided that the defence could also be applied in the Magistrates ' Court .

= = = Insanity at the time of the crime = = =

Where the defendant is alleged to have been insane at the time of committing the offence , this issue can be raised in one of three ways ; the defendant can claim he was insane , the defendant can raise a defence of Automatism where the judge decides it was instead insanity , or the defendant can raise a plea of diminished responsibility , where the judge or prosecution again show that insanity is more appropriate . Whatever the way in which a plea of insanity is reached , the same test is used each time , as laid out in the M 'Naghten Rules ; " 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 what he was doing was wrong " .
" Disease of the mind " is not a medical term ; it instead means that the defendant must show he was suffering from a disease which affected the functioning of the mind , which does not necessarily have to be a disease of the brain . This was confirmed in the case of R v Kemp [1957] 1 QB 399 , where the defendant 's arteriosclerosis led to him assaulting his wife while unconscious . It must then be shown that this disease of the mind led to a " defect of reason " ; that the defendant 's ability to reason was impaired by the disease . Alternately , the defendant can try to show that he did not know " the nature or quality of his act or that it was wrong " . The first requires proof that the defendant did not know what he was doing ; that he had no awareness of what he was happening , that he was unaware of the consequences of his act or that he knew what he was doing , but was deluded as to the circumstances ; for the latter , Jonathan Herring gives the example of a man who " thought he was killing a monstrous person when he was in fact killing a person " . When arguing that the defendant was " not knowing the act was wrong " , " wrong " is taken to mean " illegal " , as set out in R v Windle [1952] 2 QB 826 .

= = = Insanity at the time of the trial = = =

If a defendant at the time of trial claims he is insane , this hinges on whether or not he is able to understand the charge , the difference between " guilty " and " not guilty " and is able to instruct his lawyers . If he is unable to do these things , he can be found " unfit to plead " under Section 4 of the Criminal Procedure (Insanity) Act 1964 . In that situation , the judge has wide discretion as to what to do with the defendant , except in cases of murder , where he must be detained in hospital .

= = Criticism and attempted reform = =

The law in this area is often criticised because it sets a legal standard for insanity , not a medical one . In R v Quick and Paddison [1973] QB 910 , for example , the courts decided that an assault committed when the defendant was suffering from hypoglycemia due to the taking of insulin was not insane in nature , while in R v Hennsey [1989] 1 WLR 287 it was held that a crime committed while the defendant was suffering from hyperglycemia did constitute insanity . As a result , the existing law allows some diabetics to be acquitted while others are declared insane , something one academic describes as " absurd " . In R v Sullivan , a man was charged with grievous bodily harm under the Offences against the Person Act 1861 after assaulting his friend during an epileptic seizure . The House of Lords ruled that Sullivan was indeed insane , and that " it does not lie within the power of the courts to alter [the insanity test] " . Some critics have professed " unease " at the powers of the

courts to confine people found not guilty by reason of insanity in mental hospitals , arguing that discussion of mental health should be limited to the mens rea of the crime ; if the mental condition of the defendant voided the offence 's mens rea , he should be acquitted .

The Butler Committee 's report in 1975 submitted the law of insanity to intense criticism , saying that it is " based on too limited a concept of the nature of mental disorder " , noting " the outmoded language of the M 'Naghten Rules which gives rise to problems of interpretation " and that the rules were " based on the now obsolete belief in the pre @-@ eminent role of reason in controlling social behaviour ... [the rules] are not therefore a satisfactory test of criminal responsibility " . An additional criticism given is that the defence puts the burden of proof onto the defendant , while in all other cases the burden is on the prosecution . The Butler Committee proposed reform , which was repeatedly ignored by successive governments ; the Law Commission drafted a Criminal Code Bill in 1989 which altered the rules on insanity , but this was again ignored .