

## **Criminal Law – Practice Question and Answer**

**Session:** Select Criminal Defences

**Topic:** Extreme Intoxication and General Intent Crimes

**Sub-Topic:** Extreme Intoxication akin to Automatism

**Recommended time:** 1 hour 45 minutes (including reading time)

**Score:** 60 Marks

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### **NON-MENTAL DISORDER AUTOMATISM – EXTREME INTOXICATION**

You are an articling student with Honorable Justice Stefan of the Ontario Superior Court. Arguments have just been heard in *R. v. Samson*. The facts of the case are as follows:

On the last Christmas Eve, Samson went partying with his friends at their Hamilton, Ontario home. The party lasted till late into the night with plenty to drink. Samson had quite a substantial quantity of alcoholic drinks that evening. At around midnight, Samson donned the Santa Claus costume and playfully chased his friends around the house for about 15 minutes. At some point during the party, Samson's friends discovered that he was missing, and they made efforts to locate him.

While searching, Samson's friends heard a commotion in the neighbourhood. There were stories of a man dressed in Santa's costume who had broken into a home and attacked one Mrs. Sarah, a widow living alone, sexually molesting her. She had been stabbed multiple times with a broken bottle before the assailant jumped through the window and escaped. The neighbours had called the police. While all were waiting, Samson's friends heard a loud yell from a building about three blocks away. They ran towards the direction of the sound and found Samson in a pool of his own blood, with a broken left foot. His utterances were incoherent and he resisted every effort to get him to his feet, saying he was fine. He appeared somewhat dazed, dirty and reeked of vomit but answered in the negative when the police arrived and asked if he had a weapon on him. He looked confused about the costume he wore, his broken leg and the environment where he was. When asked

by the paramedics, he provided his correct name, age and address. The police and ambulances then took both Samson and Mrs. Sarah to the hospital.

Samson was charged with aggravated sexual assault under s. 273(1) of the Criminal Code, among others. At his trial, Samson pleaded the defence of extreme intoxication akin to automatism to the aggravated sexual assault charge, relying on the decision in *R. v. Daviault*. Samson stated that he was extremely intoxicated on the night in question to the point that he had no recollection of any of the events that transpired. He did remember that he was at a party in his friend's house and had consumed quite a number of bottles of beer but didn't remember how he got to the hospital with a broken limb. His friends also gave evidence that Samson had no previous record of violence but he had taken a large quantity of alcohol on that day.

The Crown raised an objection that s. 33.1 of the Criminal Code prevented Samson from making this defence of self-induced extreme intoxication. But Samson had urged the court to declare s. 33.1 unconstitutional on the grounds that he may be convicted for aggravated sexual assault, an offence of general intent, based on conduct that occurred while he lacked the requisite *actus reus and the guilty mind (mens rea)* required to justify conviction and punishment. Samson argued that convicting him would mean that he was not being held to account for the conduct undertaken as free agent but is called to answer for the general intent crime that he could not have voluntarily or wilfully committed. And that to deprive him of his liberty for an involuntary conduct committed while he was in a state akin to automatism violates the principles of fundamental justice and negates Canada's system of criminal justice that is based on personal responsibility for one's actions. Otherwise, he would end up being punished for the choice to ingest an intoxicant undertaken when neither the risk of automatism nor the risk of harm was necessarily foreseeable.

In support of his contention, Samson also called an expert witness, Mr. Barnes, a toxicologist, who testified generally about the effects of alcohol on memory. According to him, as the level of alcohol increases, memory decreases. As alcohol levels decline, memory can return, but if an individual is under the influence of a higher level of alcohol, the memory might never return. Mr. Barnes however, admitted, during cross examination that he did not examine Samson physically but had only provided assumptions of a general nature.

**Question:**

The Honorable Justice Stefan asked you this question: is there an air of reality to Samson's defence of extreme intoxication akin to automatism?

Prepare a memo highlighting the chances of Samson's success, with particular reference to the jurisprudence recently enunciated in *R. v. Brown*. (You **DO NOT** need to consider the constitutionality or otherwise of s. 33.1).

### Notes

*This question deals with the defence of extreme self-induced intoxication akin to automatism. An accused person may plead this defence that he was so intoxicated that he lost control of himself and did not form the requisite mens rea for the offence charged.*

*However, if you encounter this type of question, the first thing you must check is the nature of the offence. The defence of extreme intoxication is only available for general intent crimes like assault. It is not available for specific intent offences like murder. S. 33.1(3) provides that the defence applies only in assault or any other interference with the bodily integrity of another person. So, if the alleged crime does not fall within this definition, the defence cannot be raised.*

*Secondly, the court has laid down the principles that apply before this defence can be invoked. The three principles are contained in the answer below.*

*Thirdly, please note that the court has also specified that the defence of self-induced extreme intoxication only succeed in rare circumstances. There are very high standards set before this defence can succeed and the evidentiary burden is on the defence. These are also specified in the answer.*

*The sample answer has employed the use of the decision of the Supreme Court of Canada (SCC) in the recently decided case of *R. v. Brown*. Please take note of the distinctions made in that case about simple intoxication and extreme intoxication akin to automatism as well as the nature of the intoxicant, so that, when you are faced with this kind of question, ensure that you apply all the principles and standards before you conclude whether the defence will succeed or not.*