

I. Introduction

The application of criminal justice upon those who commit offences contrary to law is usually regarded as being imposed only upon those who are considered to have the mental capacity which should allow them to understand the difference between right and wrong, or at least to be in a position to understand the law.¹ This is reflected in the fact that most criminal offences require the defendant to have fulfilled a certain state of mind (or *mens rea*) before committing the *actus reus* of the offence in question, be that intent to do the act or omission, or to be reckless as to the result (crimes of specific or basic intent).²

For this reason, the criminal laws of many different jurisdictions, including common-law jurisdictions such as that in Hong Kong, in England, and in Australia, allow for some defences to criminal liability to be raised by defendants to assert that their mental capacity was, at the time at which the *actus reus* of the offence was committed, impaired.³ One area which has caused significant difficulties over the years is whether intoxication should constitute one of these defences, and if so, whether this should apply only to cases of involuntary intoxication, or also voluntary intoxication.

This essay explores whether or not the criminal law on voluntary intoxication should be reformed in Hong Kong, and if so, why.

II. Defences of Mental Capacity

The criminal law in Hong Kong allows a number of defences to be raised by those who are accused of having committed a criminal offence.

An example is the defence of diminished responsibility, which is a partial defence to murder set out under section 3(1) of the Homicide Ordinance (Cap

¹ Guyora Binder, 'Foundations of the Legislative Panopticon: Bentham's Principles of Morals and Legislation' in Markus H. Dubber (ed), *Foundational Texts in Modern Criminal Law* (1st edn, OUP 2014) 137.

² *ibid.*

³ Philip Carlan et al., *An Introduction to Criminal Law* (1st edn, Jones & Bartlett 2011) 153.

339).⁴ The basis is that where a party is suffering from an abnormality of the mind, it is not just to hold them responsible for the offence of murder. The philosophical underpinning appears to be that the intention to kill is one which must be come to rationally, by a sound and capable mind, such as the seriousness of the offence and the impact which conviction might have upon the guilty party.

Another example is the defence of insanity in a murder case. The law in Hong Kong on insanity is based upon the English common-law's approach set out first in the case of *M'Naghten* (from which the so-called '*McNaghten*' rules stem)⁵, where it was held that a person suffering from a 'defect of reason, from disease of the mind' and who, as a result, did not 'know the nature and quality of the act he was doing, or, if he did know it, did not know that it was wrong' would be found criminally insane. Under the law of Hong Kong, such a state of affairs will lead to the defendant being returned a special verdict of 'not guilty by reason of insanity' pursuant to section 74 of the Criminal Procedure Ordinance (CPO) (Cap 221).⁶

Non-insane automatism too operates as a defence, and applies when a person commits the *actus reus* without voluntary control over their body, such as when their muscles are moved by a spasm.⁷

The strand which runs through all of these defences is that the law grants an allowance or defence for those who are not able to control the outcome of their actions, or who do not understand the nature of their actions. This in turn implies that criminal liability is indeed based on moral culpability, incurred as a result of a person being a capable individual, having agency and autonomy over their own person.

⁴ Homicide Ordinance (Cap 339), s 3(1).

⁵ *R v M'Naghten* (1843) 10 Cl & Fin 200.

⁶ Criminal Procedure Ordinance (Cap 221), s 74.

⁷ *Bratty v Attorney-General for Northern Ireland* [1963] AC 386.

III. The Law on Intoxication

Intoxication occurs when a party's mental or physical condition is interfered with by consumption of alcohol or drugs which alter the mental state of the person who has consumed them.⁸ It is important to note, as Jackson points out, that intoxication is not, and has never been regarded as a 'defence' *per se* to criminal behaviour.⁹ Indeed, historically, a party's intoxication when committing a criminal offence is seen as an aggravating feature of an offence, increasing the level of culpability which the law considers the defendant should bear.¹⁰ However, intoxication can, in certain circumstances, absolve the defendant's criminal liability if its effect is such that it prevents the defendant from forming the *mens rea* of the offence in the first place, as was held in *DPP v Beard*.¹¹

The law has acknowledged that two kinds of intoxication are relevant. The first is when the intoxication in question took place involuntarily, that is, without the defendant's awareness that they were consuming an intoxicating product, such as where a third party 'spikes' the other's drink with alcohol or drugs without the defendant's notice of the same.¹² In such cases, the prosecution is unable to prove *mens rea*, so, logically, the defendant will be acquitted,¹³ as seen in the decisions of the Australian High Court in *R v O'Connor*¹⁴, the New Zealand Court of Appeal in *R v Kamipeli*¹⁵ and the South African courts in *S v Chretien*.¹⁶ In Hong Kong, in the case of *Fung Chun-Wai and The Queen*, a jury direction was given that they had to determine whether the defendant was so drunk that he was unable to form the intention of causing serious bodily harm

⁸ Michael Jackson, *Criminal Law in Hong Kong* (6th edn, HKUP 2014) 255.

⁹ *ibid.*

¹⁰ *ibid.*

¹¹ [1920] AC 479 (HL).

¹² Jackson (n 8) 255.

¹³ Jacqueline Martin, Tony Storey, *Unlocking Criminal Law* (4th edn, Routledge 2013) 280.

¹⁴ (1980) ALR 449.

¹⁵ [1975] 2 NZLR 610.

¹⁶ [1981] (1) SA 1097

to the defendant who he had killed.¹⁷ The appellant argued that the direction was faulty because the trial judge did not leave open the question of whether or not he did in fact form this intent, but merely asked whether the jury felt he was capable of forming that intent. It was held on appeal that the jury ought to be directed that both the question of capacity of forming intent, and the question of whether that intent was formed, should be considered.¹⁸ This is fairly straightforward law: the defendant is unable to form the *mens rea* of crimes of specific intent not as a result of their own fault or culpability, and so cannot be held to account for such acts legally. For crimes of basic intent, the defendant is excused their failure if they were involuntarily intoxicated.

Perhaps the only real difficulty with the law on involuntary intoxication comes when the defendant had been partially intoxicated voluntarily before having had some other substance administered to them without their knowledge. Such a case occurred in Scotland: in *Ross v HM Advocate*, a man who had been drinking beer, had the psychoactive substance LSD added to their drink without his knowledge.¹⁹ A similar situation also occurred in the American state of California, in *People v Cruz*.²⁰ In both of these (common-law) jurisdictions, it was determined on the facts that the intoxication was in fact involuntary. On the other hand, where the defendant is aware that they are drinking alcohol (or indeed, taking drugs), but are unaware of the strength of the intoxicating substance they are taking, under the law of Hong Kong, intoxication will not be regarded as being involuntary, as held in *R v Allen*.²¹

Involuntary intoxication, meanwhile, is not a defence if the effect of the intoxication is not simply to prevent a *mens rea* being formed, but acts to disinhibit a person from committing an act which they did voluntarily but which

¹⁷ [1981] CACC No 1117 of 1981.

¹⁸ *ibid.*

¹⁹ *Ross v HM Advocate* (1991) SLT 564 (Scotland).

²⁰ *People v Cruz* 83 Cal App 3d 308 (1978) (California).

²¹ [1998] Crim LR 698.

they would never otherwise have done had they not been intoxicated as was held in *R v Kingston*.²² In such cases, as Ong notes, the prosecution must prove beyond reasonable doubt that the defendant did indeed have the requisite *mens rea* at the time of the offence to commit the offence in question, notwithstanding the fact that the defendant was intoxicated involuntarily.²³ This is, clearly, a necessary safeguard, which prevents the intoxicated defendant from excusing all of their later criminal conduct upon that intoxication, whether it was caused by involuntary intoxication or not. It is submitted that this is a position of the law which is sound, and capable of being fully justified in this respect.

On the other hand, the law adopts a different approach where the intoxication was voluntary. Voluntary intoxication takes place where the defendant is aware that they are taking an intoxicating substance, and do so knowingly.²⁴ As noted in *Beard*, voluntary intoxication is not regarded as a defence.²⁵ However, as the ‘defence’ of intoxication is not really a defence, but is instead an acknowledgment that a party is not capable of being culpable for offences which they are incapable of forming a *mens rea*, it is nevertheless possible for a party to be voluntarily intoxicated to such a degree that they are then incapable of forming this *mens rea*.²⁶ This was determined in the case of *DPP v Majewski*, in which the English Court of Appeal followed the earlier decision in *Beard*, and noted that the law on voluntary intoxication required there to be a distinction drawn between offences of specific intent, and those of basic intent.²⁷ For crimes of specific intent, where it is necessary for the prosecution to prove beyond reasonable doubt that the defendant ‘intended’ to cause the result of their action, then if the defendant’s intoxication is so great that the

²² [1995] 2 AC 355.

²³ Rebecca Ong, ‘Criminal Law’ in Eric Wing Hong Chui, T. Wing Lo (eds), *Understanding Criminal Justice in Hong Kong* (2nd edn, Routledge 2017) 48.

²⁴ Victor Ho Wai-Kin, *Criminal Law in Hong Kong* (3rd edn, Kluwer Law International 2019) 129.

²⁵ *R v Beard* [1920] AC 479 (HL).

²⁶ *DPP v Majewski* [1977] AC 443.

²⁷ *ibid.*

prosecution are unable to prove that this intent was present, then it is irrelevant that the defendant themselves voluntarily and intentionally intoxicated themselves to the degree that they were unable to form this level of intent. The defendant, in such cases, will not be liable for the offence in question, unless it is simply the case that the intoxication was such that it allowed them to ‘cast off restraints of reason and conscience’, as was noted by the Lord Chancellor, Lord Elwyn-Jones in *Majewski*²⁸ and as was found in the case of *Kingston*, discussed above in relation to involuntary intoxication.²⁹

Meanwhile, where the defendant is charged with a crime of basic intent, which requires only recklessness as a state of mind for guilt to be proved, then voluntary intoxication provides no defence to the defendant in such cases.³⁰ The rationalisation for this rule appears to be that there is an acceptance that the recklessness of the defendant in such cases is shown by the fact of their intoxication itself. This was acknowledged by Lord Mustill explicitly in *Kingston*, when his Lordship noted;

*‘The first is that the absence of the necessary intent is cured by treating the intentional drunkenness...as a substitute for the mental element ordinarily required by the offence. The intent is transferred from the taking of the drink to the commission of the prohibited act’.*³¹

In addition, voluntary intoxication may be relied upon as a defence by the defendant to offences of specific or basic intent where the product voluntarily taken by the defendant was something other than alcohol or dangerous drugs, unless the prosecution can prove beyond reasonable doubt that the defendant

²⁸ *ibid* 474.

²⁹ *R v Kingston* [1995] 2 AC 355.

³⁰ Jackson (n 8) 259.

³¹ *R v Kingston* [1995] 2 AC 355, 369.

was reckless in the taking of this substance as determined in the English case of *R v Hardie*.³²

The law on intoxication can therefore be summarised as follows. Firstly, involuntary intoxication may be a defence to offences of specific and basic intent, as long as the defendant was unaware of the fact that they were taking the substance in question, and as long as the intoxication prevented them from being able to form a *mens rea*. Where the defendant is voluntarily intoxicated, including situations where the defendant knew that they were taking some intoxicating substance, but were unaware as to the strength of this substance, the defendant is entitled to acquittal for crimes of specific intent, as long as their intoxication prevented them from being able to form the requisite *mens rea* necessary for that offence, but they will be able to be found guilty of any alternative offences requiring only basic intent.

Now that the position of the law in Hong Kong has been set out, this essay shall find some justification for this approach, and to identify difficulties and problems and the rationale on which it is based.

IV. Problems with the Law

The law in this area is in a position which appears to be controversial. It is in fact possible to argue that the law as it stands is too harsh, or too lenient. It might be argued that the law should be reformed because it is too harsh, for the criminal culpability should be required to be based on the state of mind of the defendant at the time the offence was committed.³³ Alternatively, it can be argued that the law is too lenient, and should be tightened so that intoxication

³² [1985] 1 WLR 64.

³³ Kevin Kwok-Yin Cheng, 'Aggravating and Mitigating Factors in Context: Culture, Sentencing, and Plea Mitigation' (2017) 20 *New Criminal Law Review* 506, 507.

should not provide a defence to the defendant.³⁴ Each of these arguments will be examined now.

a) Is the Law too Lenient?

Perhaps the most difficult point to rationalise here is that a defendant who is voluntarily intoxicated is entitled to avoid liability for the most serious of offences, such as murder or rape by virtue of their drunken state, which they might have intentionally engaged in so achieving, but at the same time the law holds them liable for much less serious offences.³⁵

A hypothetical example might help highlight the apparent inconsistency in this approach. Imagine a situation where a man voluntarily engages in a bout of drinking and becomes voluntarily intoxicated. This man takes a bicycle which he drunkenly imagines is his own and proceeds down the road. If the drunk man then sees a pedestrian, and in his drunken state, decides to attack that man, ending up in the man's death, then if the prosecution cannot prove that the defendant was able to form a *mens rea* of intent, the defendant will avoid liability for murder and theft of bicycle. He may instead be found guilty of the less serious offence manslaughter.

In the first place, it is arguable that the defendant who voluntarily intoxicates themselves to the extent where they are not capable of controlling their actions is actually more of a threat to society, and liable to cause greater harm to the public at large, than one who is not intoxicated.³⁶ As such, it is arguable that if one of the goals of the criminal justice system itself is to seek to deter criminal activity from taking place,³⁷ on the basis that it is harmful to society, then it

³⁴ Simon Parsons, 'Voluntary Intoxication – Is the Law too Harsh?' (2020) 7897 *New Law Journal* (July), <<https://www.newlawjournal.co.uk/content/voluntary-intoxication-is-the-law-too-harsh>> accessed 15 November 2020.

³⁵ *ibid.*

³⁶ Rebecca Williams, 'The Current Law of Intoxication' in Phil Withington and others (eds), *Intoxication and Society: Problematic Pleasures of Drugs and Alcohol* (1st edn, Palgrave MacMillan 2013) 250.

³⁷ Gunther Jacobs, 'On the Theory of Enemy Criminal Law' in Markus D. Dubber (ed), *Foundational Texts in Criminal Law* (1st edn, OUP 2014) 419.

would be conceivably more advantageous to withdraw the defences associated with voluntary intoxication.

This point of view is also supported by the fact that there is some inconsistency in the law as it applies to the imputation of a mental state as it stands at present. As was noted by Lord Mustill in *Kingston*, the lack of basic intent in cases of voluntary intoxication where the defendant is incapable of being proved specifically to have acted recklessly in the commissioning of the *actus reus*, is 'cured' by the court transferring their 'recklessness' in becoming intoxicated in the first place to this act.³⁸ This is a jurisprudential technique which is adopted, according to Lanham and others, writing from an Australian perspective, on the policy considerations at stake, which involve the fact that it is necessary to deter the individual from engaging in such a level of drunkenness that they are liable to act negligently.³⁹ If this argument is accepted, then it is unclear conceptually why the same arguments cannot be extended to crimes of specific intent. In other words, it is submitted that it is perfectly reasonable to hold a person liable for acts which they committed as a result of the fact that they intentionally became intoxicated. The intent required for any offence of specific intent can therefore be imputed from the fact that the intoxicated individual intended to get themselves drunk.⁴⁰

It is acknowledged that this could, potentially, be a very harsh doctrine, and it is probable therefore that the law relies on distinguishing between the more serious offences of specific intent, which it requires intent to be specifically proven for the *actus reus* of, and less severe offences, which do not require intent to be proved, but through which, intent can be imputed by the reckless behaviour involved in becoming intoxicated. This is also a reflection of the fact that intoxication, by itself, is not a criminal offence (although there are specific

³⁸ *R v Kingston* [1995] 2 AC 355, 369.

³⁹ David Lanham and others, *Criminal Laws in Australia* (1st edn, Federation Press 2006) 54.

⁴⁰ *ibid.*

offences in which the intoxication of the defendant in question might make their actions an offence, such as is the case under the Road Traffic Ordinance).⁴¹

A counter-argument against this however might be put forward that the law already criminalises situations where a defendant is intoxicated voluntarily, and then goes on to commit an offence which they intended to commit in any event, and in which the effect of the intoxication was merely to disinhibit them as held in *Kingston*.⁴² Regardless of this however, it is submitted that it is a valid criticism of the law as it stands to suggest that there is something of an inconsistency in a drunken individual being liable for less serious offences, but not for those which are considered more grave by society, when they engaged in the intoxicating substance voluntarily. This in fact appears to act as something of a loop-hole for defendants, and operates not as a result of any well-reasoned theory of criminal justice and punishment (such as deterrence theory, retribution, rehabilitation or incapacitation theory for example)⁴³, but is instead largely a by-product of the fact that intoxication is not a criminal defence *per se*, and is instead an acknowledgment of the need for the prosecution to find a specific *mens rea* for certain crimes designated as being of specific intent.

b) Is the Law too Harsh?

At the same time as these arguments, some others such as Robinson have argued that the law on intoxication can also be too harsh.⁴⁴ Robinson gives a hypothetical example of a situation in which the law can be simultaneously too lenient and too harsh; one individual (A) dislikes, and wishes to kill another

⁴¹ Road Traffic Ordinance (Cap 374).

⁴² *R v Kingston* [1995] 2 AC 355.

⁴³ Findlay Stark, 'Prior Fault (Case Comment)' (2014) 73 Cambridge Law Journal 8, 9.

⁴⁴ Paul H. Robinson, 'A Brief Summary and Critique of Criminal Liability Rules for Intoxicated Conduct' (2018) Faculty Scholarship, Pennsylvania State University, <

https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2982&context=faculty_scholarship> accessed 16 November 2020.

party (C). Knowing that she gets violent when intoxicated, she decides to get intoxicated with her friend (B), who lives with C, hoping that they will end up back at B and C's apartment. During their drinking session, A slips an intoxicant into B's glass of wine, leading to her being seriously intoxicated. Both then return to B's house, whereupon they abuse C by stuffing paper into his mouth, not realising that C is suffocating. In this case, B will be liable for manslaughter on the basis of her voluntary intoxication, as she was aware that she was drinking and that there was a substantial risk of becoming intoxicated (even though she did not know the strength of the wine as in *Allen*).⁴⁵ In such a case, Robinson suggests that both would be liable for manslaughter, but that this over-punishes B, who was guilty only of risking intoxication in the first place, and under-punishes A, who should be punished for murder.⁴⁶ Robinson's example can be subject to two criticisms in turn. Firstly, it is likely that a jury in B's case would find that her recklessness was the result of involuntary intoxication, not voluntary, but this is a question of fact, as was seen in the Scottish case of *Ross v HM Advocate* and the Californian case of *People v Cruz* both of which were mentioned earlier. Secondly, it is submitted to not be right that A in this scenario be convicted of murder if she lacked the specific intent to kill or cause serious bodily harm at this point in time, even if she had hoped that this might happen at some point in the future; if it is found by a jury that she had intended to act in this way and that the alcohol merely disinhibited her, then she will be liable for murder anyway on the basis set out in *Kingston*. Thus, it might actually be the case that the law in this area already provides for a sophisticated set of rules which operates as a compromise, and which represents a fair position in law as it is anyway.

V. What Options for Reform are there? Assessing other Jurisdictions and the Model Penal Code

⁴⁵ *R v Allen* [1988] Crim LR 698.

⁴⁶ Robinson (n 44).

In considering whether or not the law requires reform, it must be acknowledged that it is still unclear whether or not the criticism, or fault in the law, is that the law is too harsh, or that it is too lenient. In summary, considering the arguments set out above, this essay submits that the law on voluntary intoxication is not too harsh on defendants, and nor is the distinction drawn between crimes of specific and basic intent too harsh. It is fair, and just, for a defendant to be considered to have acted recklessly when voluntarily intoxicated, as recklessness is not a state of mind in which any specific degree of intent is required in the first place; it is instead a state of mind reached by a failure to apply one's thoughts carefully and appropriately to a situation, or, as seen in *Caldwell v MPC*⁴⁷, when there is an objective risk of an event happening which would have been obvious to a reasonable person, which the defendant has failed to appreciate because of their intoxication (it is notable that the law in England, if not in Hong Kong, on recklessness is that a defendant is reckless if they fail to give any regard to the fact that a situation is dangerous, or that they recognise there is some risk in their act, but continue to take that risk regardless⁴⁸ has moved away from this purely objective approach to recklessness in recent years as seen in *R v G*⁴⁹). As such, the law on voluntary intoxication is not in apparent need of reform.

This however is not an opinion which appears to be universally shared. In Australia for example, the courts have moved away from the rule in *Majewski* which was rejected by the High Court of Australia in *R v O'Connor*.⁵⁰ The Australian approach, rejecting the English law and Hong Kong law's approach, has been to discard the distinction between specific and basic intent offences, and hold that wherever a defendant's intoxication was such to prevent the

⁴⁷ *Caldwell v MPC* [1982] AC 341.

⁴⁸ *The Queen v Kong Cheuk-Kwan* [1986] HKLR 648.

⁴⁹ *R v G* [2003] UKHL 50.

⁵⁰ *R v O'Conner* [1980] HCA 17.

formation of an intent to act in a given way, the defendant cannot be guilty.⁵¹ This still preserves the *Kingston* rule on so-called ‘Dutch courage’ as it was held in *O’Connor* that where the intoxication was voluntary for the purpose of weakening the defendant’s inhibition, or to help obtain the level of will required to carry out the act for which an intention had already been formed, this would allow the formation of a *mens rea* to be found.

The Australian approach is capable of being commended at least for its clarity. The law is clear and is capable of rationalisation on the basis that it does not need to specifically impute, or transfer, intention as does the law in Hong Kong for offences of basic intent. However, this approach too can be criticised on the basis that it fails to acknowledge the potential harm which can accrue to society as a result of the actions of intoxicated defendants.⁵² Given this, it is submitted that the Australian approach is in fact as flawed in its own way as that of the English or Hong Kong approaches. The same is true of the suggested approach adopted in the United States’ Model Penal Code, which, under §2.08, adopts the same position as that of Hong Kong law, in that it provides that for voluntary intoxication, recklessness is to be assumed by virtue of the intoxicated defendant’s voluntary act of becoming intoxicated (in line with the rule in *Majewski* therefore).⁵³ Thus, reform on the US model and the Australian model is not recommended.

Ultimately, it does appear as though the law in Hong Kong in this area is not in a position in which any real reform can be suggested. Whilst it might be tempting to do away with the somewhat artificial distinction being drawn between basic and specific intent offences, as suggested by some such as Smith and Hogan, who argue that this distinction is largely illusory, doing so would possibly prove too harsh an approach, as it would allow defendants to be made

⁵¹ *ibid.*

⁵² Gerry Ferguson, ‘The Intoxication Defence: Constitutionally Impaired and in Need of Rehabilitation’ (2012) 6 *Osgoode Digital Commons* 57, 57.

⁵³ §2.08 Model Penal Code (US) 1962.

liable for specific intent offences despite there being no proof that such an intention was formed at the moment at which the *actus reus* was committed.⁵⁴ By acknowledging that basic intent offences do not require such a state of mind to be formed, there is at least some real rationale for allowing defendants to be liable for such offences whilst under voluntary intoxication.

If the basic-specific intent distinction for voluntary intoxication is not to be reformed, can voluntary intoxication be made an offence by itself along the line of the cases under the Road Traffic Ordinance? Perhaps we can have new offences of voluntary intoxication causing death, causing previous bodily harm, or causing property damage, etc. that are offences which traditionally involve proof of specific intent, each carrying a different level of maximum penalty. Or, if the concern is about failing to prove murder charges, we may consider a legislative change requiring mandatory life sentences to be imposed for manslaughter cases resulting from voluntary intoxication.

Conclusion

It is clear that the law on intoxication is required to meet some degree of conflicting interests. On the one hand, as Williams notes, there is a clear and obvious need to ensure that society is protected from the harm and risk posed by the intoxicated.⁵⁵ At the same time, the law must also note that intoxicated defendants are arguably subjectively less culpable at the time at which an offence is committed than one who commits the offence without their thought process being clouded by intoxication.⁵⁶ The use of a compromise, whereby the law distinguishes between crimes of specific and basic intent appears to be a compromise based on an acknowledgment of these difficulties. Whilst this

⁵⁴ David Ormerod, Karl Laird, *Smith & Hogan's Criminal Law* (9th edn, OUP 2007) 222.

⁵⁵ Williams (n 36).

⁵⁶ *ibid.*

approach is not satisfactory as it allows defendants to avoid liability for more serious offences without any real justification other than the fact that it cannot be proved that they intended to commit this offence at the time, there are presently few other avenues for reform which can be suggested. As such, it may well have to be that the law remains an unhappy compromise in this area for the time being. Perhaps one option to resolve this compromise might be to remove the availability of voluntary intoxication as a defence, and ask simply if the *actus reus* of a certain offence has been carried out by a defendant who claims to have been intoxicated. This would not acknowledge that defendants who were voluntarily intoxicated would be morally less culpable for their actions than those who were sober, but would still be capable of criticism on the grounds of being too harsh. Nevertheless, we may consider creating new offences that tackle with voluntary intoxication which could deter voluntary intoxication leading to criminal activities. In conclusion, there cannot be a more satisfactory solution than the position we have now under the Hong Kong law, unless offences for voluntary intoxication are created, or unless magic could make drinks and substance vanish from the world for good.

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