Criminal Law (Offences against the Person)

Criticisms & Reform

Voluntary Manslaughter
Diminished Responsibility: Reform.

• This was reformed by the Coroners and Justice Act 2009.

• The Law Commission recommended in *Murder, Manslaughter and Infanticide* that diminished responsibility should be modernised to take into account changing medical knowledge.

• By using the phrase 'recognised medical condition' the defence will now be flexible enough for future developments and changes in medical knowledge.
The defence now also lists what aspects of the D's mental functioning must be substantially impaired in order to have the partial defence. This incorporates the decision in Byrne (1960) into the statutory definition.
DR: Problems remaining.

Burden of proof.

- The burden of proof for this defence should not be on the D.
- In most other defences the D simply raises a defence and the prosecution must disprove this.
- At the moment Ds raising diminished responsibility as a defence are at a disadvantage which is not faced by those relying on loss of control.
• This burden of proof issue may also be in breach of Art 6(2) of the European Convention of Human Rights that 'everyone charged with a criminal offence shall be presumed innocent until proven guilty ...'

• Making it the Ds job to prove diminished responsibility may be taking away this presumption and suggesting the D is guilty until proven innocent.
Developmental immaturity.

- The Law Commission suggested that developmental immaturity should have been included in the defence of diminished responsibility for those under 18.

- There is evidence to show that frontal lobes of the brain that play an important role in controlling impulsive behaviour (taking responsibility for actions) do not mature until the age of 14.

- The Government believed that this did not need to be included in the 'new' defence because learning disabilities were a recognised medical condition. But 'developmental immaturity' is not a learning disability.

- This means children as young as 10 may be convicted of murder even though they are developmentally immature and would not be able to use a partial defence of diminished responsibility.
Loss of Control: Reform

• The Coroners and Justice Act 2009 abolished the old law of provocation (which was highly criticised) and introduced the defence of loss of control.

• The defence of loss of control can be wider than the defence of provocation because the loss of control no longer needs to be sudden. This opens up the defence to more situations and resolves the issue that provocation was seen as a sexist defence as it was sometimes difficult for women to prove it (Ahluwalia).
• The defence of loss control is also narrower than the defence of provocation for example sexual infidelity is no longer allowed as a qualifying trigger.

• Also, where D relies on things done/things said they must be of an extremely grave character. This means that situations like Doughty (1986), where the crying of a baby was considered provocation, would not be allowed under the new law.
Loss of self-control.

• The Law Commission proposed removing the 'loss of control' criteria completely because women in abusive relationships may kill from a 'combination of anger, fear, frustration and a sense of desperation'.

• The Government decided not to follow this proposal. The only concession made was that loss of control need not be sudden. It is highly probable that some abused women will still not be able to use the defence of loss of control.
Sexual infidelity.

- This is no longer a qualifying trigger.
- This is something that could clearly lead to someone losing their self-control but now would not be allowed as a defence to murder.
- It will also only be relevant in situations where there is a duty to be sexually faithful (such as marriages). In other situations relating to casual relationships, for example, it would not be considered sexual infidelity and therefore a defence may be available.
Fear of serious violence.

- This was added largely as a result of the decisions in Clegg and Martin (Anthony) who both acted out of fear but did not have a defence for murder.

- Proving that the D lost their self-control though is once again a barrier to the defence in those situations. People may not lose their self-control just because they are acting out of fear. It still does not rectify the excessive force issue that it was supposed to.