

**THE DEFENCE OF UNSOUNDNESS OF MIND UNDER
SECTION 84 OF THE PENAL CODE: A REVIEW OF THE
COURTS APPROACHES IN DETERMINING SUCH A
DEFENCE**

By

Nurul Jannah bt Sulaiman (2007143955)

Sarah Liyana bt Ayub (2007143983)

Sarah Liyana bt Saad (2007143987)

Sharizad bt Sazali (2007143993)

Submitted in Partial Fulfillment of the Requirements for the Bachelor in Legal Studies (Hons)

Universiti Teknologi MARA

Faculty of Law

April 2010

The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

ACKNOWLEDGEMENT

First and foremost, we would like to express our utmost gratitude to the Al-Mighty Allah for giving us the opportunity, courage and strength in completing this project paper within the time constraint.

Besides that, we would like to thank our supervisor of this project, AP. Rohani binti Sahak for her valuable guidance and advice. She inspired us greatly to work on this project. Her willingness to motivate us contributed tremendously to our project paper. We would also like to thank her for giving us examples and suggestions that to improve this project paper.

Our deepest appreciation goes to Dr. Rabaiah Mohd Salleh, a Forensic Psychologist, for her contribution and imparting her vast knowledge through an interview session conducted at Hospital Bahagia Ulu Kinta, Ipoh. This gave us the opportunity to learn on how the patients are treated either mentally or physically. Also, we would like to thank Mr. Tun Muhamad Ammar bin Tun Muhamad Aziz, a criminal lawyer from Ammar & Aziz Co. for his opinion over certain issues in the criminal field which provided us valuable information as guidance for our project paper.

Finally, an honorable mention goes to our family, friends and also to those who had directly or indirectly gave their supports and understanding on us in completing this project paper. Without their helps from the people mentioned above, we would have faced many difficulties while working on this project paper.

ABSTRACT

This dissertation examines the application of the defence of unsoundness of mind under section 84 of the Penal Code through the cases where this defence has been successfully raised. By examining these cases, it reveals the standards that have been put forward out by the court in sending their judgment.

The core of the problem lies when there is no precise standard that has been laid down. Inferences were made by the society that this defence is not a good law since it opens up the opportunity to raise a bogus defence. This project paper concentrates on the determining factors that are taken into consideration by the judges in their judgment is concluded. Furthermore, this project paper also provides some recommendations and suggestions that can be considered in order to curb the problem on the imprecise factors or standards used by the court in applying this defence.

Therefore, it comes to the conclusion that the defence of unsoundness of mind by virtue of section 84 of the Penal Code needs to be reviewed so that it would reduce or eliminate its use of a bogus defence cannot be successfully raised easily and to deal with the critiques and presumption made over the years.

TABLE OF CONTENTS

Acknowledgement	i
Abstract	ii
Contents	iii
List of Cases	iv

CHAPTER ONE: INTRODUCTION

1.0	Introduction	1
1.1	Problem Statement	3
1.2	Objectives of the study	5
1.3	Significance of the Research	5
1.4	Scope and Limitations of the Research	6
1.5	Methodology	7
1.6	Conclusion	7

CHAPTER TWO: LITERATURE REVIEW

2.0	Introduction on unsoundness of mind in Malaysia	8
2.1	Burden of Proofs	9
2.2	What amounts to unsound mind?	10
2.3	Unsoundness of mind as a defence in Malaysia	12
2.4	Conclusion	15

**CHAPTER THREE: DETERMINING FACTORS USED BY THE COURT IN
DERIVING THEIR DECISION**

3.0	Introduction	16
3.1	Definition of Section 84 under the Penal Code	16
3.2	Literal Definition of Unsoundness of Mind	17
3.3	Distinction between Legally Insane and Medically Insane	18
3.4	Elements of Unsoundness of Mind under the Penal Code	21
3.4.1	First Element of Section 84 of Penal Code: Incapable of Knowing	21
3.4.2	Second Element of Section 84 of Penal Code: Must Not Know	23
3.4.3	Third Element of Section 84 of Penal Code: Wrong or Contrary to Law	25
3.5	Evidence taken by the Court	27
3.6	Procedure when the Accused is Suspected to be of Unsound Mind by the Judge or Magistrate or Public Prosecutor	29
3.7	Procedure to Release of a Person of Unsound Mind Pending Investigation or Trial	30
3.8	Statistics on the Admission of Patients Under the Criminal Procedure Code	31
3.9	Legal View by the Expert	33
3.10	Medical Views on Unsoundness of Mind	35
3.10.1	Introduction	35
3.10.2	Admission of an Accused to the Mental Institution	36
3.10.3	Automatism as a Defence under Section 84 of the Penal Code	38
3.10.4	Medical Procedure	39
3.10.5	Criticism on section 84 of the Penal Code	40
3.10.6	Medical View by the Experts	41
3.10.6.1	Fitness to Plead	42
3.10.6.2	The psychiatrist Dilemma	42
3.10.6.3	Presence of the Disease of Mind	43
3.10.6.4	Criticism on Mc Naughten Rules	44
3.10.6.5	State of Mind at the Time of the Alleged Offence	44
3.10.7	Conclusion	45
3.11	Development of the Defence of Unsoundness of Mind	46