

CRIMINAL LAW JOURNAL

Volume 41, Number 6

December 2017

EDITORIAL

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ARTICLES

Separating the Inseparable? An Empirical Study of Australia’s Approach to Comorbidity and Criminal Responsibility – Christina White

This is an empirical study of how Australian courts deal with comorbidity and criminal responsibility. It evaluates cases where the defence of mental illness/impairment is contested and there is evidence that the defendant’s mental state was affected by both intoxication and mental illness. Such comorbidity challenges the division between the two theoretically distinct doctrines. The article first assesses how legal principles are applied, particularly in relation to two key questions: (1) whether drug-induced psychoses constitute a “disease of the mind” and (2) how the effects of intoxication are to be considered when there is a separate underlying illness. On the latter question, three different approaches are identified outside of jurisdictions with specific legislation. Turning next to evidentiary issues, the article evaluates the role of experts, diagnostic uncertainty, and the “longitudinal approach”. Last, the article explores moral fault and character judgments, which take on significance in certain trials. Ultimately, the article reveals an area of law marked by inconsistency and requiring further attention. 312

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