

1. Issue? + 2. AR/MR fulfilled.
Section 48 - Self-Defence (justification)
Wang (Hong Kong); Green (KGB); Thomas (Drunk, Excessive); McNaughton (Gang fight)
Trigger: was there an application of force?
3 – What did D believe the circumstances to be?
 a. **an honest subjective belief by D – Li, Thomas, Green, Wang (534).**
 b. **Pragmatic Test – believability?**
4 – Given belief, acting in self-defence?
 a. Subjective Belief – Li, Wang (534).
 b. Weapons allowed – Powell.
5 – Given belief, was the use of force objectively reasonable? Li, Wang – (534)
 a. **Was it proportional? Wang (534)**
 b. **Was there an opportunity to retreat? Cannot be other viable options.**
 c. **Was the threat imminent? – matter of fact/degree (534); pre-empt allowed.**
6 – Policy Considerations
 - Fairburn – reasonableness more subjective.
 - Law Commission – inevitable better.
 - Other Jurisdictions – “momentary hiatus in continuing reign of terror”
 - McNaughton – partial defence excessive force (sentencing better)
 - Battered Women Reality: Sarah Buel
7 – Putting it to Jury
 - Fairburn – “air of reality” “reasonableness always for jury”.
 - Wang – should not go if impossible.
Sec 24 Compulsion – Excuse – Person Threat
Tiechelman (Drug HeadOff); Raroa (Nark); Lynch (Perjury+); Joyce (Outside); Akulue (Nigeria); Mauriere (BlackEyes); Abdul-Hussein (Hijack); Hudson (Perjury-); Coles (Future debt); Witika (Abuse 100% presence); Ruka (similar); Neho (Credit Card).
3– Is the offence excluded under s 24?
4– Has a threat overborne D’s will?
 a. **Must be an actual threat – Raroa fear CF**
 b. **The threat must be of GBH/Death – s 24, Serious Mauriere CF, Tiechelman CF, Raroa – not transitory or trifling.**

c. **Implied or express: explicit, gestures, past threats – Lynch (CF)**
 d. **Specific association; threat directed at specific demands – Raroa CF.**
 d. **Can be a third party reasonably regard themselves responsible Hansen.**
5 – Threat of immediate harm – s 24.
 a. **Immediate Harm – “standover situations, then and there” Tiechelman; CF Abdul-Hussein, Hudson, Hassan; Inevitability insufficient – Akulue.**
 b. **Threatener physical present – CF: Joyce; “Standover;” Constructive Insufficient: Akulue; Wikita.**
6 – Subjective belief that threat will be carried out?
 a. **D subjectively believed situation to be? Raroa; Tichelman;**
 b. **Honest and genuine belief?**
 c. **Availability of alternatives? – Hansen, Lynch, Neho.**
7 – No association to conspiracy; Joyce – reasonably foreseeable subject to compulsion.
8 – Policy
Section 20 (Common Law) - Duress of Circumstances – Kapi – Situation Threat.
Kapi (Porirua); Kawiti (Simester and Brookbanks) (Shoulder); Matsuba (Japanese); Re A (Twins)
3 – Inconsistent with statute to apply?
4 – Does not apply to murder Dudley and Stephens; Kawiti
5 – Honest and reasonable belief of imminent peril or serious injury?
 a. **Subjective belief.**
 b. **Actually reasonable: level and imminence? Reasonable firm charc. Kapi CF**
6 – Nexus between peril and action – Kawiti – in response to threat?
7 – Any other realistic choice? CF Kapi; Matsuba
8 – Proportionate Response: CF Matsuba – Minimum Amount; Kawiti – Reasonable actor same way.
9 – Policy: Parl want these justified? Undermine Law? Floodgates? Coded crimes.

Necessity Proper – Re A – Uncertain.
 Allows for murder – *inevitable/irreparable evil + proportional to harm avoided; distinguished from D and S – victim – source; twin going to die anyway; side-effect, not intended.*
Section 72 Attempts; 311 Penalty
1 – Issue
2 – Primary Offence AR – statute
 Conduct; Result; LRC.
3 – MR – 72(1) Intent to all aspects
 Conduct – Intent.
 Results – Intent.
 LRC – Default, Knowledge.
R v L – maybe less; “know or ought to know” – reflect statute; sex assault atm.
4 – AR attempts: are acts sufficiently proximate?
Wylie (Denim); Wilcox (Bank+Drive); Drewery (Car Insurance); Stonehouse (Life Insurance); Harpur (Imaginary Child); Johnston (Backyard)
 a. **s 72(1) does or omits and act.**
 b. **s 72(2) question of law.**
 c. **s 72(3) Past mere preparation; not too remote; immediately connected offence.**
 “Matter of fact and degree” – Wylie, Johnston.
 “Both done and yet to do” – Johnston, Harpur.
 “Unequivocal intent can colour AR to reduce proximity” – Harpur, Johnston
 “Real + Practical” – Wylie, NOT Harpur.
 “Only yet to do; not just putting in position” – Wilcox but is bad; “Only done” – Drewery
5 – Abandonment After attempt - sentencing consideration only.
Impossibility
Donnelly (Records, Station);
1 - Was offence impossible to complete?
2 – How was it impossible?
 2 – Changed mind after attempt.
 3 – Outside agency prevented.
Factual
 4 – Failed Through Ineptitude.
 5 – Offence not physically possible – empty pocket.
Ring (Empty Pocket); Jay (Lawn clippings); Austin (Noxious Abortion); Nicholls (Boyfriend Run)
Legal
 6 – Everything correct, fail legal elements;
 OR imaginary Crime.

Donnelly stolen; overseas – only imaginary.
Section 310 (penalty) Conspiracy
1 – Issue
2 – AR 2+ parties form proper agreement to do illegal thing – Kotysyzn (Police).
3 – MR Intent to agree; Intent to carry out. – Gemmell.
4 – Abandonment – offence is complete; continues until only one left.
5 – Impossibility not exculpate – Sew Hoy (legal) Nock (Factual)
Section 311 – Incitement ; Claydon; Curr
1 – Issue
2 – AR Persuading to do something.
3 – MR Knows circumstance of crime; intent for to commit; knowledge of MR.
Incapacity (23) and Automatism (CL)
Campbell (Car Battery); Rabey (Geology); Stone (Small Penis); Yesler (Sex-Shop)
1 – Issue
2 – Preliminary Matters:
 a. **Onuses: sane (evidential, s 20)**
 b. **Insane (sanity presumption Balance of Probs 23(2))**
3 – Evidential Foundation leave to jury?
 Low threshold: unconscious volition + whoosh Bratty; pale, dazed Stone; Campbell
4 – Sane or Insane?
 a. **Internal or External – internal towards insane Rabey, Stone [204], Yesler [32].**
 i. **Shocking Psychological Blow Rabey, Stone [205]**
NOT Ordinary stresses of everyday life Stone [205]
 ii. **Contextual Objective: Ordinary person in circ acted in same way? Stone [210]; Yesler [38]**
 Finances/relationships Yesler [42]
 iii. **History Yesler**
 b. **Continuing danger? – leans towards insane – Bratty, Stone [212], Yesler [28]**
 i. **Did it manifest in violence?**
 ii. **Is that violence prone to reoccur? Violent history, psychiatric history – Yesler [39]?**
Trigger prone reoccur? Stone; NOT NZ.

c. Other Policy Factors

- Feignability – *Parks*; Presumption of Sanity; Access to help – who needs it? *Rabey*; Public's view of the system.

5 – Holistic Balancing Exercise for Conclusion – *Stone* [213]; *Yesler* [41]

6 – Disposition: Sane, acquittal; insane, CP(MIPersons)A 2003, S 24 Special Patient; S 25 Ordinary Patient

Manslaughter

Conclude with which most arguable + sentence (murd. presume; mansl. Max)

Homicide – s 158

1 – Killing: *someone causes death at a BUT-FOR LEVEL*; directly or indirectly, any means whatsoever.

2 – Of human, by human – s 159 – from mother in living state; injury any point; *Morris-Right* no corporate.

S160(2)(a) Unlawful Act Manslaughter

Lee (Exorcism); *Rapira* (Young baseballbat)

2 – Identify Unlawful Act – s 2 breach of act, reg, byl; *Franklin* criminal sense.

3 – Offence Done:

a. AR: act, result, LRC

b MR: at least gross negligence, *Powell*

4 – Actual unlawful act objectively dangerous?
a. *Lee* [137] *Myatt*; Objective, reasonable person w/ D's knowledge know likely to cause harm.

b. Likely to harm to class of persons inc. v. *Myatt*; More than trivial *Rapira*, not serious *Myatt*.

c. Danger not to jury if v. clear – *Lee* [139] *bouncing on chest*.

5 – Unlawful Act causes death – *Smith, Lee* – substantial and operating.

S160(2)(b) Omissions Liability

Q Breastfeeding

2 – Identify Relevant Omissions: 151 – actual care or charge providing necessities/protect from injury; 152 parents - necessities/protect; 153 employer necessary; 155 persons doing dangerous act; 156 ps in charge of dangerous things; 157 avoid omissions dangerous to life;

3 – How do they apply in this instance?

4 – Omission a major departure from expected level of care, as reasonable person?

Specific re: acts *Q* – sed + alc only

Major departure; *S150A*; *Q* [25]; *Powell*

Objective Level: *Hamer*

Reckless only further incriminates *Q*;

In situation, not w/ charact – *Q*; tired/ill

5 – Omission substantial/operating cause

SPECIFIC about what acts/omissions *Q Maj*

S160(d) Reasonably Foreseeable – must be specific.

Perry (Meth/Levee); *Williams* (Hitchhiker);

Tomars (Motorcycles); *Royall* (window)

1 – Identify the act that V did that caused death; this must result from fear.

2 – Did D threaten violence/make V fear?

3 – Did fear/violence cause V's response?

Substantial + Operating

4 – V's response = reasonably foreseen,

reasonable + responsible p in D's position?

a. Natural consequence of the fear?

When make V fear and is natural to escape, then injured while escaping, it is natural cons

– *Royall*

In fear, not always rational + reasonable and disproportionate maybe expected? Royall [59]

b. Proportional?

5 – V's response oper/subs cause death?

Section 167 Murder

Section 167 - MR

(a) Intent to cause death of person killed.

(b) Intention – injury; Reckless – death;

(c) Intention (a) or (b) but directed at V.

(d) Intention to commit a crime; Intention to do another crime towards it; Reckless towards death. (means to an end)

S 167(d) Unlawful Act – *Shadrock* (Handbag)

Aramakutu (Arson) *McKeown* (Gag)

i – What unlawful object? – unlawful in criminal sense – *Shadrock* [45]

ii – What was the fatal act?

Different to unlawful act – e.g. assault for theft *Shadrock McKeown*

Overlap – *Aramakutu* (arson 2reasons)

iii – Fatal act known likely to cause death

iv – Proximate link: *Shadrock*

Time and Place + Factually or Legally ongoing + Essential for Success.

v – causal connection.

vi – must recognise risk of death.

Section 168 Murder

MR:

a – whether or not means to cause death/does not know Death.

b – Intends GBH for:

i – for ss(2) offences + *Rapira* aggravated rob.

ii – flight, avoid detection, resist lawful apprehension.

Parties Liability s 66(1)

1 – Guilty Principle:

a. Yes – AR + MR.

b. Innocent Agency, D is principle: uses innocent dupe for AR *Patterson*.

c. Procurement Exception takes liability of P. *Bourne* (bestiality); *Cogan and Leake* (wife consent); *Van Nieuwkoop* (mortgage)

AR

2 – S 66(1)(b) Aiding – *Larkins* (Left behind)

a. Must aid before crime complete (286)

b. Must provide actual help (287)

c. P's knowledge not required (287) *Russell* – possible for stranger to help P without them knowing (tripping etc)

(c) – abetting (encouraging)

(d) – counsel, incite, procure

P must know; actual encouragement

required CF not passive *Clarkson* (barracks)

Voluntary deliberate presence + no opp

when expected may suffice *Duncan*

MR

1 – Must know nature of P's action

a. Nature of offence – not particular

time/place – *Baker* (Whanganui Bank) (543); *Knew crime would be likely* (541)

b. "List of crimes reasonably possible"

Maxwell (Ireland) – narrowed *Kimura*

2 – D must intend:

a. Their acts.

b. To encourage etc D.

Intention is not purpose *Gamble*

Not need to be primary purpose / desired outcome *Richards* (pharmacy)

S66(2) Joint Enterprise Liability – *Ahsin*

(Whanganui Black) [102]

1 – Offence committed by P.

AR: Share common intent unlawful thing active.

AR: Liable for offence committed pursuing common purpose.

Not liable after abandoned – total departure exonerates.

AR – Not liable if purpose not common intent.

MR – Intent to form common purpose + help.

MR – Know Offence – probable consequence of common purpose: Both AR and MR.

"Could well happen" "not slim" *Harney*

True Defence Withdrawal – *Ahsin* [116]

1 – Unequivocal notice of withdrawal given.

2 – all reasonable steps taken to undo or prevent crime: must be proportional; depends on time left.

Parties to Homicide:

General Rule: need to intend to assist/appreciate all elements of crime.

General Rule: liability is derived from whatever P is guilty of.

MR Rule - S 66(1) – Knowledge of essential matters within Intent; if armed assault, must know both those *Hartley*.

Mur	167/6 6(1)	AR: Assist etc as usual. MR: Intent to assist Murder (acts with murderous MR)
Man	167/6 6(1)	AR: Assist MR: Intent Assist type of act (which happened to cause death) + NOT intend death.
Mur	167/6 6(2)	AR: Same. MR: Probable consequence murder (killing intent) appreciated.
Man	167/6 6(2)	AR: Same MR: Risk of death in that way appreciated; OR (better) incl. appreciates risk of act that causes death; OR w/ weapons – <i>Tomkins</i> (BBQ Fork)
Mur	168/6 6(1)	AR: Same MR: Intent to aid GBH for one of those reasons.
Man	168/6 6(1)	Intent to aid in Act, but not intent to aid GBH in situation with MR.
Mur	168/6 6(2)	Knew intentional GBH for those purposes was probable consequence. (Facilitate or flee scene for 168(2))
Man	168/6 6(2)	Knew harm not transitory or trifling probably consequence; no foresight to death/GBH. – <i>Rapira</i> [32] (Young Baseball)

Principle with Manslaughter – Intent to assist in ACT that was done which caused death.