

## Self Defence – s 48

### 1. ISSUE

### 2. *Li* TEST

(Trigger: did D use force?)

- a) What did D believe the circumstances to be? (subj.)
  - i. Sensitivities?
  - ii. LEGAL Q: Honestly held belief? No need reasonable.
  - iii. PRAGMATIC Q: Will jury believe?
- b) Bearing in mind the above, did D believe they were acting in self-D? (subj.)
  - i. LEGAL Q
  - ii. PRAGMATIC Q
- c) Given D's belief, was the force used reasonable? (contextual objective – *Wang*).
  - i. Proportionality
  - ii. Imminence – *R v Terewi*:
    - a. *R v Whynt* – imaginary assault, must be imminent danger
    - b. Pre-emptive? Warranted?
    - c. *Fairburn*: inevitability
  - iii. Alternatives?

### 3. CONCLUSION

#### 4. [Critique]

- *Fairburn*: would the outcome have been different?
  - considering sensitivities, inevitability, what D thought reasonable, jury decide what is reasonable.
- Obiter: D's belief as what was necessary should be part of the circs in step 1 of *Li*.
  - jury asked if force proportional, not if necessary.

## McNaughton v R

- Excessive force is not a partial defence in NZ.

- *Wallace v Abbott*: if too much force but no murderous intent = manslaughter can be entered (Elias CJ).

## Compulsion – s 24

### 1. ISSUE – OUTLINED IN s24

### 2. [IS IT AN EXCLUDED OFFENCE?]

### 3. THREATS OF CLAIMANT

- a. Threats:
  - i. *Raroa*: express or implied – real threat
  - ii. Mere fear or apprehension cannot amount to a threat.
  - iii. Threat of GBH or death → linked with a particular demand.
- b. Threshold:
  - i. Death or GBH
  - ii. GBH more serious than assault (*Mauriere*) – “really serious harm.”
  - iii. Threat towards the accused → maybe 3<sup>rd</sup> party/family (*Hansen*) – kind of looked down upon in *Akelue*,

### 4. PRESENCE + IMMEDIACY

- a. Cases
  - i. *Teichelman* (drug supply 3<sup>rd</sup> party): v strict in s24. “Belief in the inevitability of immediate and violent retribution for failure on his part to comply with the threatening demand.”
  - ii. *Joyce* (gas station robbery): threatener must be in position to execute the threat.
  - iii. *Ncho* (Mob): no choice but to break the law → can't have options for help + can't offend willingly.

- a. ‘Standover situation’ BUT threats from X can be carried out by Y.

- iv. *Akelue* (Nigeria): unsure if NZ adopts constructive pres.
- v. *Wikita* (Child abuse): must not be able to get help.
  - a. Lapse between threat + offence is ok provided the threat is continual and can still be carried out.
- vi. *Abdul-Hassain* (hijacking): imminence more appropriate.
- vii. *Hudson*: person in the court-room, criticised by *Hasan*.
- viii. *Howe*: can't be reasonably expected to resist the threat.

### 5. BELIEF THAT THREAT WILL BE CARRIED OUT

- a. Subjective – no need to be reasonable (*Raroa*)
- b. Honestly held
  - i. Will jury believe?
  - ii. Reasonableness goes to credibility?

### 6. [CRIMINAL ASSOCIATION?]

- a. *Joyce*: reasonably foreseeable *when you join* that you could be subject to compulsion – objective.

### 7. CONCLUSION

## Duress of Circ/Necessity – s 20

*Kapi*: “honest belief formed on reasonable grounds of imminent peril of death or serious injury. Breach of the law... only excused where there was no realistic choice but to act in that way... response... excused only where it is proportionate to the peril.”

1. Belief formed on reasonable grounds (*Kapi*)
2. Of imminent peril of death or serious injury (*Kapi*)
3. No realistic choice but to act in that way (*Perka*).
4. Response must be proportionate (*Matsubara*)
5. Nexus between imminent peril and the response (*Kawiti*)

## *Re A*: Brooke LJ

1. Act needed to avoid inevitable and irreparable evil.
2. No more should be done than is reasonably necessary for the purpose to be achieved (objective).
3. Evil inflicted must not be disproportionate to the evil avoided.

## Automatism (s20) /Insanity (s24)

### 1. ISSUE.

### 2. PRELIMINARY MATTERS

- a. Burden:
  - i. Sane: D evidential, P disprove BRD.
  - ii. Insane: P cannot bring evidence unless D or judge raises.
  - iii. must prove on B of P if they raise. Negate s 24(1).
  - iv. APPLICATION – WHO SHOWS WHAT?
- c. 2 questions:
  - i. Evidential foundation?
  - ii. If so, sane or insane? – DISEASE OF MIND Q.

### 3. EVIDENTIAL FOUNDATION

- a. Facts – don't need complete loss of consciousness (*Campbell*)

### 4. ASSESSMENT – HOLISTIC (*Yesler/Stone*)

- a. Internal/External Cause (*Rabey/Parks*)
  - i. *Falconer* – contextual objective test – normal person.
- b. Continuing Danger
  - i. Recurring violence/mental illness (*Bratty*).
  - ii. Recurring trigger (*Stone*) – unsure if in NZ yet.
- c. Policy Considerations.

- APPLICATION: remember, *what would jury believe?*

### 5. CONCLUSION

6. DISPOSITION – s 24 (special patient) or s 25 (ordinary) MIPA

## Attempts – s 72(1) and s 311

### 1. ISSUE STATEMENT

### *MENS REA*

### 2. STATUTE: s 72(1)

- Intention is required for all elements, even if predicate has less.

### 3. THE OFFENCE:

- a. Statutory Breakdown
  - i. Conduct
  - ii. LRC's
  - iii. Result.
- b. [If D has no knowledge for LRCs] *R v L*: does the predicate offence allow a lower MR that we should adopt for attempt.
  - Remember: will jury believe no knowledge?

### 4. MR SATISFIED?

### *ACTUS REUS*

### 1. STATUTE: s 72(1)

- Question of law – cannot be too remote.

### 2. PROXIMITY

- a. Cases
  - i. *Harpur* (pedo) and *Johnston* (sleepout): no strict test.
    - Can look at acts cumulatively: mostly what has been and what needs to be done. Look at in context of a plan.
    - Confirm *Drewery*- clear intent = less proximity.
    - Overturn *Wilcox*.
  - ii. *Wylie* (drugs): Has D taken any real and practical [substantial] steps in the commission of the offence?
  - iii. *Wilcox* (post office): Only get themselves into position? Step in the commission of the actual crime itself?
    - Focus on what needs to be done/can't look at things cumulatively.
  - iv. *Drewery* (burning car): has D commenced a series of steps essential to the successful commission of the crime? No unequivocal.

### [3. ABANDONMENT]

- Has the AR occurred? Sufficiently proximate?

### [4. IMPOSSIBILITY]

- Factual will not exculpate (*Donnelly* category 1-5).
- Legal will – *Donnelly* type or imaginary (cat. 6).

### 5. CONCLUSION

## CONSPIRACY – s 310

AR: 2 parties making an agreement. Cannot really withdraw.

MR: must both have the relevant intent (*Kotyszyn*)

NO impossibility will exculpate – *R v Sew Hoy*.

## CULPABLE HOMICIDE

### 1. ISSUE

### 2. IS IT HOMICIDE?

- a) S 158
- b) *But for* causation

### 3. IS IT CULPABLE HOMICIDE? S 160

- a) Unlawful act? (160)(2)(a)
  - i. Breach of act/regulation/bylaw/rule
  - ii. Objectively dangerous (*Lee/Myath*) – series or individually.
  - iii. Is the predicate offence satisfied?
  - iv. Legal causation? (substantial and operative cause)
- b) Negligent culpable homicide? (160)(2)(b)
  - i. Identify the duty?
  - ii. Omitted/neglected to perform/observe that duty?
  - iii. Was it a major departure from the reasonable standard of care expected?

- a. *Hamer* - objective test - reasonable p.
- b. *Powell* - gross negligence.
- iv. Is there a lawful excuse?
- v. Legal causation? (substantial and operative cause)
- c. Threats of fear/violence? (160(2)(d)).  
*from Perry/Tomars:*
  - 1. Did D threaten violence, do something to make V fear violence or deceive V?
  - 2. Did the fear/deception cause the V's response? "not insignificant" i.e (subs and operative cause)
  - 3. Was V's response could have been foreseen by a reasonable and responsible person in D's position?
    - a. Individual characteristics are irrelevant.
    - b. No separate proportionality test (*Perry*).
  - 4. Was V's response causative of death (not insignificant/substantial and operating).

#### 4. CONCLUDE

- If any of these, they have at least committed manslaughter.
- "Likely to have committed (a-c) because of X"

#### 5. MURDER: ADDITIONAL MR REQUIREMENT

- a) 167(a) - Intention to kill
  - i. Can be direct, means-to-an-end or oblique.
- b) 167(b) - Reckless murder/implied malice
  - i. Must be intention to cause bodily injury.
  - ii. Did the offender know that it was likely to cause death?
    - a. Could well happen/real and substantial risk.
  - iii. Reckless to whether it ensues or not.
    - a. Subjective recklessness (*Harney*).
    - b. Pragmatic Q - will jury believe?
- c) 167(d) - Unlawful object murder/constructive malice
  - i. Was the unlawful object a crime? And was it a distinct crime to the fatal act?
    - a. *Shadrock/Aramakutu* for arson.
    - b. *McKeown/Downey*: different kind of GBH?
  - ii. Was the fatal act done FOR the unlawful object?
    - a. Looking at proximity: factual enquiry on a case by case basis.
    - b. Time and Space cumulatively (*Shadrock*)
    - c. Fatal act has to occur whilst the unlawful object is occurring/before it occurs.
    - d. Did D know that the act was likely to cause death?
      - No need intention 4 bodily injury.
- d) 168(1)(a) - Felony murder
  - i. Must also have MR for GBH for
  - ii. D DOESN'T have to know that their action could cause death/death was likely to ensue.
    - a. S 2 offences include *Rapira* - aggravated robbery.

#### 6. ANY DEFENCES?

#### 7. CONCLUSION

- a) Murder state
- b) Overall

#### DUTIES

- 151: Duty to provide necessities and protect from injury.
- 152: Duty of a parent/guardian to provide necessities/protect from injury
- 153: Duty of an employer to provide necessities.
- 155: Duty of persons doing dangerous acts (e.g surgery).
- 156: Duty of persons in charge of dangerous things.
- 157: Duty to avoid omissions dangerous to life.

#### PARTIES

#### S 66(1)

#### 1. ISSUE

#### 2. DERIVATIVE LIABILITY

- i. *Paterson* - is there a primary offender?
  - a) Principles does not need to be identified - *Stewart*
- ii. Is there a primary offence?
- iii. [If not, do we need to use an exception?]
  - a) Procurement exception (*Bourne, Cogan and Leak*)
  - b) Doctrine of Innocent Agency (*Paterson*).

#### 3. STATUTE

- i. What subs are we dealing with?

#### 4. ACTUS REUS

66(1)(b) - aiding	66(1)(c) - abetting
a) Actual assistance? i. <i>Larkins</i> - must actually help (low threshold).	a) Actual encouragement?
b) Is it occurring in fact? - PO doesn't need to know SP's presence = harder to say actual assistance.	b) Is it occurring in fact? - PO must know that you are there encouraging.
c) Assistance must be contemporaneous.	c) Mere presence not enough i. must be a connection between encouragement and offence - <i>Clarkson</i> . ii. presence not enough unless you have a duty - <i>Witika</i> . iii. unless you can be reasonably expected to dissent ( <i>Duncan</i> ).
d) Act or omission?	d) Contemporaneous?
e) Mere presence not enough.	

#### 5. MENS REA - IS IT A PARTY TO MURDER CHARGE? →

- a. Knowledge of essential matters.
  - i. Type of offence:
    - a) *Baker*: type of offence, not specifics.
    - b) *Maxwell*: particular nature enough, list of offences.
    - c) *Hartley*: knowledge that PO going to carry out an offence of the type that actually occurred.
  - ii. Subjective - *Hartley*.
    - a) But must be accepted by jury - *Bainbridge*.
- b. Intention as to 66(1)
  - i. The conduct
  - ii. To assist/encourage the offence - different from motive (*Gamble*)
  - iii. Can be oblique - *Richards*: factual virtual certainty to assist (*Woollin*)

#### [6. WITHDRAWAL]

#### S 66(2) - *Ahsin* elements.

#### 1. ISSUE

#### 2. DERIVATIVE LIABILITY - element a).

- a. Primary offender? Primary offence?
- 3. 2+ PPL W INTENT FOR CUP AND TO AID EACH OTHER - element b) and c).
  - a. Meeting of the minds - same intention.
  - b. Can be spontaneous: want to aid each other therein.
  - c. Does not have to be spoken - can be inferred from collective acts

#### 4. OFFENCE DONE IN PURSUIT OF THE CUP - element d).

- a. Intended offence not excluded - *Ahsin*.
- b. Anything after C.U.P achieved or abandoned does not count.

#### 5. OFFENCE KNOWN TO BE CONSEQUENCE OF CUP - e)

- a. Intended the offence to be committed - CUP or probable consequence (covering collateral offences).
  - i. Could well happen, real and substantial risk - *Gush/Harney*.
  - ii. Foresight of the MR and AR.
- b. Total departure excluded.
  - i. Fact based - entirely different motive or purpose.
- c. Subjective - *Ahsin*.

#### 4. [WITHDRAWAL] - *Ahsin*.

- a. Demonstration of withdrawal.
  - i. Clear and unequivocal.
- b. Steps to undo involvement.
  - i. Reasonable and sufficient, proportionate to previous involvement.

#### 5. CONCLUSION.

PARTIES TO HOMICIDE MR REQUIREMENTS	66(1) - put into knowledge of essential matters. <i>TOMKINS</i> - taxi.	66(2) - put into CUP/SP knows as probable consequence. <i>RAPIRA</i> - pizza.
MURDER  (knowledge of weapon + knowledge of a MR for murder/GBH for 168 = murder).	- Knows that killing MR for s 167s is a real risk OR PO would commit GBH for 168.  - Intend to assist/encourage the murder.  - MUST APPRECIATE RISK OF DEATH FOR 167	- Knows killing is a probable consequence w intent [167].  - Knows GBH being used w intent to facilitate the offence is the CUP or probable consequence [168].
MANSLAUGHTER  <i>NO NEED TO APPRECIATE THE RISK OF DEATH</i>	- No weapon: Knows type of act/omission will occur.  - Intends to assist etc. that act/omission.  - Weapon: knows present, and killing might eventuate, at least MS even if weird circs ( <i>Reid</i> )  - OR circs not contemplated.	- Knows unlawful act/omission probable [167]  - Knows that injury that is more than trivial or transitory will be the CUP or probable consequence [168].

