

Answers to problem solving questions

Outline Answer

Offences: Perjury, murder (AR/MR)

Defences: Duress, self-defence, mistaken belief, necessity

1. Defences to Perjury: Duress

First element: (See 9.1.2) (Subjective) Was D forced to act as s/he did because of a reasonable fear of death or personal injury? (Graham/Howe) Use all the headings of the chapter to structure your answer.

- **(9.1.2.1)** The threat must be of death/serious injury: was there a specific threat from X? If not, did she believe her safety was threatened due to her circumstances of domestic violence?
- **(9.1.2.1)** She must fear physical as opposed to psychological violence (*Baker & Williams*).
- **(9.1.2.3)** The threat must be of immediate harm so that D could not reasonably be expected to take evasive action. Delay will defeat the defence (*Hasan*) overruling *Hudson & Taylor* and *Abdul Hussain*, preferring *Cole*. But should the defence remain available to one who is genuinely too frightened to go to the police? How much of a time delay was there here?
- **(9.1.2.5)** The threat need not exist in fact so long as D believes that it does. Perception is relevant not reality (*Cairns, Safi, Hasan*).
- **(9.1.2.5)** Belief needs to be both honest and reasonable (*Hasan*) casting doubt on *Martin* which said that only an honest belief was required. Her characteristics will be relevant to her belief. D's belief in violence here is probably genuine and reasonable. The result will be that a D will have her condition taken into account in relation to belief in the threat. If it is an honest belief the jury will then proceed to decide whether D's reaction was reasonable on the basis of the belief.

This part of the test would probably be satisfied except for doubt regarding immediacy.

Second element: (9.1.2) (Objective). Would a sober person of reasonable firmness, sharing D's characteristics, have responded to D's belief in the same way? Which characteristics are relevant?

- Age and sex (*Graham*)
- Relevant medical conditions which make D less able to resist pressure or threats than a normal person (*Bowen*): age (she is nineteen), sex, post-traumatic stress disorder leading to learned helplessness (is she suffering from BWS?). Timidity is not enough.

This part of the test may be satisfied. But there are limitations on duress which could deny her the defence in relation to either offence:

- **Voluntary association (9.1.3)** with criminals where D ought to have known that s/he will be coerced into committing any type of activity (*Lord Bingham in Hasan preferring Ali/ Heath over Baker and Ward*). Is D voluntarily associating with a

criminal? This might be thought to be too simplistic an analysis of a violent relationship. She is not associating with X to engage in criminal activity. Baroness Hale's views should be explained. The new *Hasan* objectivity (i.e.: the defence will be defeated where D ought to know of the risk of violence/coercion regardless of whether s/he actually does so) should be examined.

Conclusion: if her genuine belief is allowed, and if her cohabitation with X is not regarded as voluntary association, she may be allowed the defence in relation to perjury. It ought to acquit her but may well simply mitigate her sentence.

[The defence of marital coercion was abolished by s177 Anti-social Behaviour, Crime and Policing Act 2014]

2. Defences to murder: Self-defence, mistaken belief, necessity

Self-defence/mistaken belief: (See 9.3) D acted in mistaken self-defence by pushing X over the precipice. She will have to establish evidence in support:

a. **(See 9.3.2)** *Necessity for force - The test is subjective.*

D may make a pre-emptive strike (*Beckford*).

The threat of attack must be imminent (*Devlin v Armstrong*).

D may not normally prepare for an attack under the common law (*AG's Ref (No 2 of 1983)*).

Mistaken belief in an imminent threat: the mistake needs to be honest but need not be reasonable: a subjective test (*Morgan, Williams/Beckford*).

D's characteristics (age, timidity, BWS) will not be relevant (*Martin*) but sensitivity to danger might be relevant to the subjective test (*Martin, Shaw*).

Even provoked attacks can be defended by self-defence (*Harvey, Keane*).

For self-defence of the person, the threat does not need to be unlawful (*Lord Walker in Re A- conjoined twins*) but it does for self-defence of property (*Burns*).

She will have to establish a genuine mistaken belief that it was necessary for her to act in self-defence by virtue of what she thought was X's imminent attack and all other relevant facts and circumstances. There is no definite answer.

Degree of force – (9.3.3) *The test is objective*

The degree of force need not be precise (*Palmer*).

But it must be reasonable on the facts as D believed them to be (*Williams*), taking into account her mistake and sensitivity (*Shaw*).

Excessive force which is due to an honest mistake can in most crimes result in mitigation but not in murder (*AG for NI Ref (No 1 of 1975 & Clegg)*).

Where excessive force is not due to honest mistake, the defence will fail.

There is potential conflict between domestic law and Article 2 (honest mistake/reasonable force v good reason and absolutely necessity: (*McCann*) **(9.3.4)**).

The defence will fail if:

- the force is excessive/unreasonable on the basis of D's mistaken belief or
- if it is excessive due to aggression.

She will be convicted of murder which cannot be mitigated.

Was her response and the degree of force (pushing X over the precipice) reasonable on the facts as she believed them to be or excessive? There is no definite answer. Set out both sides of the arguments.

3. Necessity – cutting the rope.

See 9.2: D knows that cutting the rope is virtually certain to lead to D's death (*Oblique intent: Woollin*). She has unlawfully killed with MR and has therefore committed murder. Can her actions be justified and the killing become lawful?

9.2.1 & 9.2.2: Necessity (the lesser of two evils): sacrificing one life to prevent the loss of two lives. Set out general principles. Although the *Dudley & Stephens/Howe/Graham* test prohibits necessity (and duress) in respect of murder or attempted murder (*Gotts*) (**See 9.1.4**), *Re A* has potentially (and doubtless controversially) admitted it in particular circumstances. *Re A* is authority for the proposition that murder is justifiable where the victim is designated for death. It could be argued that D's intention was not to end X's life but to save her own. Brooke LJ and Ward LJ thought this would still amount to the MR of murder. Walker LJ thought not. It would be a question of morality as to whether X's life could be justifiably taken to save D. Is X designated for death? General discussion of the above cases required and analysis of Brooke LJ's judgment in *Re A* in particular (**9.2.2**).

You should also refer to the Law Commission recommendations for reform on homicide/duress/necessity.

If D is charged with gross negligence manslaughter instead of murder, the AR requires proof of a duty (close relationship? assumption of responsibility? Creation of danger?) and the MR requires gross negligence in breach of that duty (*Adomako*). Necessity is not restricted in relation to manslaughter but the question remains as to whether the killing was justifiable. (**Chapter 7**).