

Answers to Exam questions

Chapter 14

Question 1

Mildred and John, two law students, decide to go to the Student Union for a few drinks after their finals. After several drinks, Mildred confesses to John that she cheated in her criminal law exam. John threatens to tell their lecturer unless Mildred steals the takings from behind the bar. Mildred refused at first, but John makes further threats to reveal Mildred's homosexual inclinations on Facebook and to send someone round to beat her up. Frightened that John will carry out his threats, Mildred steals £100 from behind the bar. On her way out of the Student Union, Mildred is approached by Bert, a security guard, who has witnessed the theft. Fearing that John has sent Bert to find Mildred, she strikes Bert on the head with her textbook, causing him a serious injury.

Discuss whether Mildred has any defences.

Bullets

- This question asks you to explore the defences which might be available to Mildred. The defences which require discussion are: duress and self-defence, along with mistake induced by intoxication.
- Mildred will be charged with theft of £100. She may seek to rely upon the defence of duress to this charge. You should set out the elements of duress using the Court of Appeal decision in *Graham* (1982) and the House of Lords' decisions in *Howe* (1987) and, more recently, in *Hasan* (2005).
- Using the facts of the problem, consider whether the elements of duress are satisfied. The first question is subjective and requires consideration of whether Mildred was compelled to act because she reasonably feared that she would suffer serious injury. The second question is objective: would a sober person of reasonable firmness (sharing Mildred's characteristics) have responded in the same way?
- Discuss the implication of the cumulative threats and the decision in *Valderrama-Vega* (1985).
- Consider whether the threat is sufficiently immediate, such that Mildred could not reasonably have been expected to have taken evasive action: *Hasan*.

- Mildred will be charged with at least a battery in respect of striking Bert. As serious injury is caused, she may be charged with an offence of GBH under ss.20 or 18, OAPA 1861. She will seek to plead self-defence to this charge.
- Explain the elements of self-defence from *Palmer v R* (1971) (and possibly *Oatridge* (1992)). Using the facts of the problem, consider whether they apply here. You should also make reference to the provisions of the Criminal Justice and Immigration Act 2008 where appropriate.
- The first question is a subjective one: did Mildred honestly believe that the use of force was necessary? The second is objective: did she use reasonable force in the circumstances as she believed them to be? (see s.76(3), CJA 2008).
- Consider additional principles such as, there is no duty to retreat: *Bird* (1985) and Mildred may strike first in a pre-emptive manner: *Beckford* (1988). Did Mildred act in the “heat of the moment”? According to *Palmer v R*, a defendant is not expected to weigh to a nicety the exact measure of his defensive action (see also s.76(7), CJA 2008).
- Mildred has made a mistake here, believing that Bert has been sent to beat her up. A mistake does not usually preclude self-defence (*Williams (Gladstone)* (1987) and s.76(4), CJA 2008), but a mistake induced by intoxication will preclude a successful defence (*O’Connor* (1991) and *O’Grady* (1987) and s.76(5), CJA 2008).

Question 2

Critically evaluate the relationship between duress, necessity and duress of circumstances.

Bullets

- This question requires consideration of the relationship between the defences of duress by threats, necessity and duress of circumstances. You should consider whether each defence is categorised as a justification or an excuse and the significance of this distinction.
- Duress by threats is “a concession to human frailty”: *Howe* (1987). It is available where the defendant commits an offence because his will is overborne by threats that he must commit an offence or suffer death or serious injury. Duress by threats is an excuse rather than a justification.

- Discuss the elements of the defence of duress by threats as set out in the Court of Appeal decision in *Graham* (1982) and the House of Lords' decisions in *Howe* (1987) and, more recently, in *Hasan* (2005).
- The first question is subjective and requires consideration of whether the defendant was compelled to act because he reasonably feared that he would suffer serious injury. The second question is objective: would a sober person of reasonable firmness (sharing the defendant's characteristics) have responded in the same way?
- Consider the limitations on the defence. Explore which offences duress is available for.
- Whether or not necessity exists as a defence has been a problematic issue. If it does exist, necessity is a justification rather than an excuse.
- Consider *Dudley and Stephens* (1884). Consider also the use of the defence in medical cases such as *F v West Berkshire Health Authority* (1989). More recently, necessity was relied upon as a defence to murder by Brooke LJ in *Re A (Children) (Conjoined Twins: Surgical Separation)* (2001). Discuss the narrow limits placed upon the defence in this case.
- Necessity involves a choice between two evils rather than a threat of death or serious injury made by one person to another. It is similar to duress of circumstances because the threat does not emanate from a person but from circumstances.
- Discuss the fact that confusion between necessity and duress of circumstances has arisen due to the fact that the courts have used these terms interchangeably. Discuss cases such as *Willer* (1986), *Conway* (1989), *Martin* (1989), *Pommell* (1995).
- Duress of circumstances is an excuse rather than a justification and thus is similar to duress by threats in this respect. It also follows the same principles as duress by threats. However, it is usually associated more with necessity as the threat comes from circumstances rather than a person.