

**Necessity - Duress of Circumstances and Duress of threats – Starter Activity**

- Suppose Ms D has no money and she needs to feed her hungry/ possibly ill child who is a diabetic.
- Do you think that she should be able to steal from Budgens and then succeed with the defence that she had no money and it was necessary to feed her child?

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**Objectives of the Necessity Lesson(s)**

- All students to be able to discuss the relationship between **necessity** and **duress of threats** and **duress of circumstances**.
- A number of students will be able to analyse the relationship between necessity and the other areas of law.
- Some students will go on to evaluate the relationship in some of the key cases/ judgments.

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**Necessity and/or Duress of Circumstances** **2**

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There has always been some doubt as to the actual extent of the defence of necessity.

**Read and précis Chapter 11 of 'Criminal Law' by Diana Roe.**

**PRECIS NOTES WILL BE CHECKED**

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**We will be looking at three separate - but linked areas of law.** **3**

- **Necessity**
- **Duress of circumstances**
- **Duress of threats**

These areas of law seem to overlap and the law in this area is somewhat unclear.

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**Necessity** **4**

- When the Commission drafting the Criminal Code considered the matter they stated ...
- ***"We are not prepared to suggest that necessity should in every case be a justification, we are equally unprepared to suggest that necessity should in no case be a defence."***

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**Necessity**

**5**

- This suggests confusion and the case law suggests similar.
- **Dudley v Stephens [1884]** – 3 men and a 17 year old cabin boy lost at sea. The 2 D’s decide to eat the cabin boy to stay alive.
- Found guilty of murder and Div Court determined that ‘necessity is no defence to murder’.

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**Dudley v Stephens 1884**

**6**

- In this case Lord Coleridge claimed that if necessity was once allowed in such circumstances, it might *‘be made the legal cloak for unbridled passion and atrocious crime’*.
- **Go into a Law Firm – create a story/scenario in which the ratio of Dudley would be upheld by the courts** (5 mins).

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**Necessity - binding precedent says: ‘Necessity cannot be a defence to murder’.**

**7**

- Suppose that I am sightseeing at a dam and see it is about to burst. I see that, when it bursts, 10,000 people in a town will drown.
- I see a safety valve that I can turn to flood an adjacent valley. In this valley I see one man walking his dog. What should I do? What is the outcome of my actions?

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**Bourne 1939**

**8**

- Before the passing of the Abortion Act 1967 it was held that necessity could be a defence to carrying out an illegal abortion. As per Bourne (14 year old girl who had been raped) - this applies if an abortion is necessary to save the life of a mother.

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**Johnson and Phillips 1976**

**9**

- In this case it was held that a police officer – acting in the course of his duty – could permit a motorist to disobey traffic regulations if the action was felt to be necessary for the protection of people or property.

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**Re F (Mental Patient: Sterilisation) 1990**

**10**

- In this case West Berkshire Health Authority – acting with permission of the girls mother – sought a declaration that it was not unlawful to sterilise a patient suffering a very serious mental disorder after the girl had formed a sexual relationship with another patient. *They argued this action was necessary to protect the girl.*

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**Re A (Children) 2000**  
**[Sources 10 and 11]**

**11**

- Siamese Twins – in order to save Jodie the Doctor's argued that it was necessary to kill Mary.
- Court of Appeal accepted the argument and gave permission for the operation.
- **How can necessity be accepted here and yet denied in Dudley v Stephens? Discuss openly ...**

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**Duress of Circumstances**

**12**

- In the Willer 1986 case D was persuaded to drive to a shopping precinct by a Citizen's Band radio broadcaster. The directions sent him down a very narrow alley.

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**Willer 1986**

**13**

- **A gang of youths started to attack him and his car. He drove over the pavement to escape and was charged with reckless driving.**

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**Willer 1986**

**14**

- His attempt to put the defence of necessity to a Jury was denied by the Judge at the trial – but the C of A ruled a form of duress should have been put to the Jury – leaving it for them to adjudicate.
- What happened in Conway [Source 7] and why did the judges consider themselves to be bound by Willer 1986?

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**Duress of Circumstances**

**15**

- Why was Kitson [Source 7] described as one of the most ludicrous cases in post-war English Law?

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**Duress of Circumstances**

**16**

- Work in pairs - Can you define what 'Duress of Circumstances' is – by way of example?
- [(Special Study Only) - Provide a list of the special study cases which relate to Duress of Circumstances (see Appendix 4 of 'Criminal Law for A2').
- Produce a case note for each of these cases.]

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## Duress of Circumstances **17**

- **Martin (1989) [Source 7]** - a case of driving while disqualified. D's wife had become hysterical and had threatened to kill herself if D did not drive her son (who was late) to work. D agreed to this even though he was disqualified.
- The case of **Pommell (1995)** confirmed defence of circumstances to be of general application.

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## Produce a case note **18**

- **Produce a case note on Pommell (1995) [Source 8] - which Court was this case decided in?**

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## Conway 1988 [Source 7] **19**

- In this case the judge agreed that a defence of 'duress of circumstances' is an example of necessity and whether duress of circumstances is called 'duress' or 'necessity' does not matter.

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**Abdul-Hussain 1999** **20**

- In this case the Court of Appeal allowed the defence of duress of circumstances to be put forward in the case of hijacking.
- The court held that the threat can be imminent - and need not be immediate (what's the difference?).

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**Duress of Threats ...** **21**

**AG v Whelan (1934)**

- Defence of duress exists where:
- "Threats of immediate or serious personal violence so great as to overbear the ordinary powers of human resistance."
- Establish notes/discuss the cases of Valderamma-Vega and Cole [Source 5]

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**Graham (1982) [Source 1]** **22**

- Diana Roe broke threat down into 3 separate elements.
- D's belief in the threat must be a reasonable one.
  - He must have good cause to fear death or personal injury would result.
  - A sober person of reasonable firmness, sharing the characteristics of D, would have reacted in the same way.

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**Duress of threats**

**23**

- A typical example of this can be found in the case of **Sharp (1987) [Source 6]**. Sharp and two men robbed a post office in Wraysbury. Sharp said he only did the job because he was threatened with having his head blown off. Judge withdrew the defence and D found guilty. C of A upheld the conviction. Why?

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**Duress of threats**

**24**

- In **Sharp (1987)** [Source 6] Lord Lane identified the features that deny the defence of threats:
- 1. D must voluntarily join the criminal gang.
  - 2. He must have knowledge of its nature.
  - 3. He must know other gang members 'might bring pressure on him to commit an offence'.
  - 4. Must have been an active member when put under pressure.

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**Duress of threats -**

**25**

- (In class) Produce case notes - from the textbook - on cases that extend or limit the legal principles established in **Sharp (1987)**.
- **Explain your cases to the class.**

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## Limits to the defence of duress of threats. **26**

- As the earlier cases have demonstrated - duress may be pleaded as a defence to a wide range of offences.
- The defence is applicable for any crime except MURDER!.
- **Why is that?**

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## Dudley v Stephens (1884) **27**

- Dudley illustrates that 'necessity is no defence to murder' - this principle also extends to duress.
- While this seems rational - is it always logical?
- Look at the case of **Lynch (1975)**. If a taxi driver is forced by gunpoint to drive a bomber to a rail station - surely he must have a defence of duress? See also the case of **Howe & Bannister (1987)**

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## Howe and Bannister [Sources 2, 3, and 4] **28**

- [(Special Study Only) - visit [www.bailii.org](http://www.bailii.org) and make detailed case notes looking at the arguments of the different judges.]
- Produce a case note on **Howe (1987)** - and then read the reasons for the House of Lords as to why the defence of duress should not apply to murders (see pages 257-259 of 'Criminal Law' by Storey and Lidbury - red first edition).
- Break into Law firms to explain and deliver each of the seven reasons given.

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Attempted Murder

**29**

- Produce a case note on the case of **Gotts (1991)**. [Source 4] - Note in particular the comments of Lord Jauncey. **Do you agree with him? Why?**

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Reform ...

**30**

- This is often seen as a confusing area of law.
- How could this area be reformed?
  - Should 'necessity and/or duress' in murder cases be a partial defence (like provocation) that reduces D's liability to manslaughter?

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Activity ...

**31**

- **Break into Law Firms** to do the activity on page 235 of 'Criminal Law' by Diana Roe.
- **In Law Firms: Plan, and then individually undertake the examination questions on page 197 of 'Criminal Law for A2'.**

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**Activity**

**32**

**[Break into Law Firms ...**

- **[Source 9] - Research and make notes on the Law Commissions proposals for reform of this area.**
- **Present these reform proposals to class.]**

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