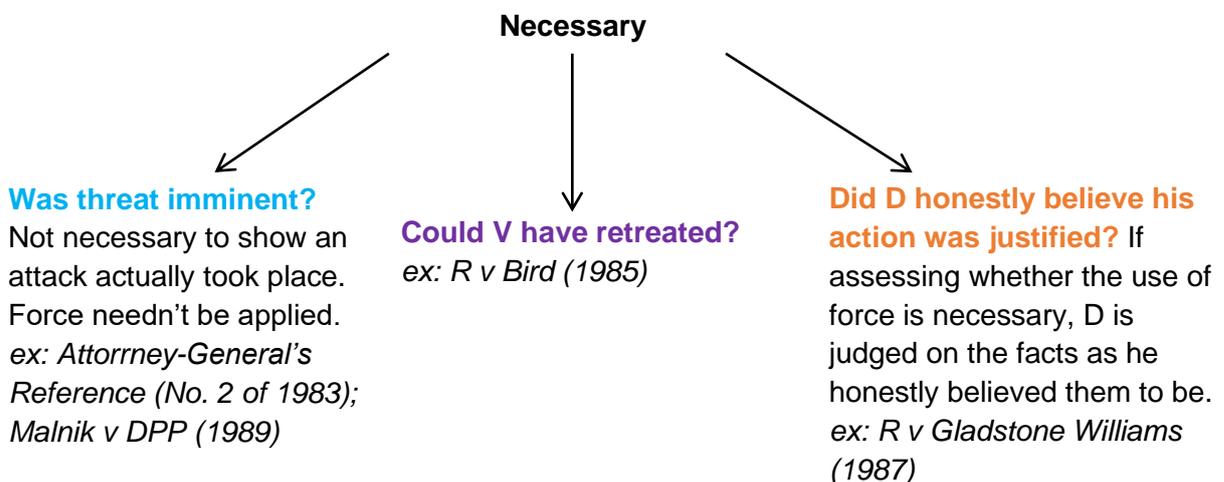


Necessity defences (self-defence and duress)

Necessity defences can be used for more than one offence. It is necessary to act/behave in a particular way.

1) Self-defence

- Self-defence can be:
 - defending yourself;
 - defending other people;
 - defending property; or
 - preventing crime (public protection; covered by a statute).
- } Private;
case law
- Self-defence is an 'all or nothing' defence. This means that if it is proven the defendant will not be guilty and vice versa: if it is not proven, then D will be guilty.
 - There is no need for self-defence when the force is lawful, e.g. defending your country or turning off life-support machines.
 - Self-defence will be unavailable if the danger has passed, e.g. in retaliation or revenge.
 - Two tests to prove self-defence: objective and subjective. The subjective test varies depending on the case's nature and circumstances. The objective test has a set standard applied regardless of the case.
 - Subjective test: was it necessary to use force?
 - Objective test: was the force used reasonable and proportionate? The problem is that the terms 'reasonable' and 'proportionate' are different for everyone. If both aspects are proven, then D will be not guilty
 - Force can be justified if D believes that given all of the circumstances (**as he sees it**), he is in imminent or specific danger.



A-G's Ref. (No. 2 of 1983)

- Street riots during Thatcher's rule
- A shop owner was worried the rioters would loot his shop
- Prepared bottles with paraffin in case the rioters came
- They didn't come => he didn't use the paraffin bottles
- Police later found his bottles and arrested him
- Successfully argued self-defence because threat was imminent

Malnik v DPP (1989)

- Business disagreement to do with cars
- D goes to V's house with a rice flail
- D was arrested before getting to the house
- D argued self-defence because he thought the disagreement would pose an imminent threat
- D was the one causing the dangerous situation => unsuccessful self-defence claim

R v Bird (1985)

- An 18-year-old girl was having a birthday party
- Her ex-boyfriend turned up with his new girlfriend
- Argument between the birthday girl and her ex
- Her ex pinned the girl against the wall
- She tried to escape
- She didn't realise she had a Pernod bottle in her hand
- Hit her in the head and removed his eye
- She couldn't have retreated as she was being pressed against the wall

R v Gladstone Williams (1987)

- A teenage boy tried to steal the bag of an elderly woman
- A man raced out of a bus to help claiming he was an off-duty policeman
- Another man thought the police officers was attacking the lady and punched him
- He was truly mistaken and was honest, therefore it was a justifiable mistake about the situation

Reasonable and proportionate

- Jury considers the circumstances. Force considered to be reasonable for protecting a person may be excessive if used to protect property.

R v Palmer (1971)

- A person being attacked should not be expected to 'weigh to a nicety the exact measure of his necessary defensive action'

R v Clegg (1995)

- A British Army officer was in Belfast
- He shot a teenager with his last of the 4 bullets he had fired whilst the teenager had been driving a stolen car
- Court held that D had used force without a lawful purpose
- Conviction was later overturned
- Self-defence/preventing crime

R v Martin (1999)

- D lived in a flat which was subject to numerous break-ins; 2 men broke in
- D heard voices and shot that direction killing one of the men

- D appealed that his personality disorder should be taken into account in assessing whether he had used reasonable force for the purposes of self-defence
- Conviction for murder was quashed
- Not reasonable/proportionate

If D, due to his intoxicated state, makes a mistake about the use of force that is necessary, he will not be entitled to use self-defence

R v O'Grady (1987)

- D drank with his friend
- D had a nightmare; thought his friend was attacking him
- D killed his friend
- D had no recollection of this event
- D proved force was necessary
- The court held it was not reasonable to be so drunk, thus force was not reasonable too
- D passed the subjective test, but not the objective

2) Duress

- Duress means to be stressed. A person is pressured because (s)he has to do something (s)he wouldn't normally do.
- Duress is **NOT** a defence to murder, attempted murder and treason.
- Phone threats are not duress because the police could be called afterwards.
- Two types of duress: duress by threats and duress by circumstances.

R v Dudley and Stephens (1884)

- Ds were in a boat in the middle of nowhere; didn't know whether they'd be saved
- Ds ate a cabin boy so as to survive
- Ds were arrested when they arrived on land
- Convicted of murder

Threat needs to be of death or serious injury. Lesser threats, e.g. disclosing a previous conviction, are insufficient.

R v Valderrama-Vega (1985)

- D illegally imported cocaine
- D argued that he did so because he had been threatened by the mafia
- Mafia threatened to tell his wife he was homosexual
- Mafia also threatened to kill him (only thing that could be used as a defence)
- If his wife/family had been threatened => cumulative threat (hypothetically)
- Found not guilty after appeal

Threat can be to:

- Family;
- Friends;
- Strangers [R v Conway (1988)].

R v Conway (1988)

- Person A sees somebody getting shot earlier in the day
- Later in the day, person A is in the back of D's car (person B)
- Person C is also in the car; C knows A and B
- A sees 2 people approaching the car
- A thought they came to shoot him after witnessing the earlier shooting
- A tells B to be quick and to drive off
- B drives off recklessly
- The people are plain-clothed policemen
- D (person B) was arrested for reckless driving
- D said he was in duress of circumstances => successful
- D was put under pressure by a stranger

Two-stage test to determine duress (the 'Graham test'):

1. Did D reasonably believe he had good cause to fear death or serious injury (subjective test)?
2. If so, would a person of reasonable firmness sharing the characteristics of the accused act in the same way (objective)?

R v Graham (1982)

- D lived in a flat with his wife, Mrs Graham + his homosexual lover, Mr King
- D suffered from anxiety attacks for which he was prescribed Valium
- Mrs Graham left the house after Mr King attacked her
- King and the appellant began drinking heavily and the appellant also took a large quantity of Valium
- King then told the appellant it was time to get rid of her for good
- Mrs Graham came back; King killed V with a flex; D assisted by holding onto the flex
- D then helped King to dispose of the body
- D raised the defences of duress and intoxication. In relation to duress, the appellant raised an argument which was supported by medical evidence that his anxiety and intake of Valium would have made him more susceptible to threats
- Conviction was upheld: the fact that a defendant's will to resist has been eroded by the voluntary consumption of drink or drugs or both is not to be taken into account

Duress can only be used as a defence if there is no chance of escaping:

R v Gill (1963)

- D threatened to commit an offence so he could pay off a debt
- D was left alone for a significant period of time => could've raised a claim before the police
- Committed the offence anyway, thus duress was unavailable

R v Hudson and Taylor (1971)

- 2 teenage girls, who are to give evidence in a GBH trial

- The D from the trial threatens the girls with murder, unless they lie in court; they do so (committed the offence of perjury)
- The girls raised the defence of duress
- Couldn't be harmed when giving evidence, but the imminent threat was 'hanging over them'

Threat must be close and imminent:

R v Abdul-Hussain (1999)

- Shiite Muslims were persecuted in Iraq (D was one such)
- D feared torture and death
- D had fake weapons hijacked a plane going to Sudan
- D diverted the plane to England
- D let all the hostages go and stood on the plane for hours
- D got arrested and was put on trial in the UK
- It was decided D was under duress => not guilty

R v Cole (1994)

- D claimed he and his wife and family had been threatened with serious harm unless he repaid his debt
- D was threatened with a baseball bat
- D didn't have money => carried out 2 robberies
- D robbed two building societies
- D was arrested for robbery
- D wasn't being threatened to commit a specific offence (robbery); threatened with duress by threat => guilty of robbery

SELF-INDUCED DURESS

An example of self-induced duress is being a member of a criminal gang.

R v Sharp (1987)

- D joined a gang, who carried out robberies
- D wanted not to participate in the last robbery
- The gang threatened him to participate in one more robbery
- A sub-postmaster was shot
- D argued he was under duress as he wanted to leave the gang
- Court said he wouldn't have the defence because he voluntarily joined the gang => liable

R v Shepherd (1987)

- D was a member of a gang of shoplifters => threatened with violence if he stopped
- D was charged with burglary, but the conviction was quashed because a shoplifting gang (less violent) is different from a gang of armed robbers

R v Heath (2000)

- D had become indebted to a drug supplier + compelled by threats of physical violence to collect the consignment of drugs, which gave rise to his conviction
- Defence failed as D had put himself in a situation likely to experience threats

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R v Hasan (2005)

- D's drug dealer told D to rob a safe in a house, otherwise D's family would be hurt
- D carried a knife, broke into the house, but was unable to open the safe
- D was convicted of aggravated burglary as the defence of duress is excluded when as a result of the accused's voluntary association with others engaged in criminal activity he foresaw, or ought reasonably to have foreseen, the risk of being subjected to any compulsion by threats of violence

R v Bowen (1996)

- This case set out some relevant characteristics that must go to the ability to resist pressure and threats
- Low IQ is not an allowed characteristics
- Problem: we have a different degree of IQ; if A is 18 and has the IQ of a 4-year-old, A will be measured against B (same age, different IQ)

Allowed characteristics for measurement: pregnancy, disability, age, psychiatric illness, gender

DURESS BY CIRCUMSTANCES

R v Willer (1986)

- First case to recognised duress by circumstances; created an original precedent
- D drove down a very narrow street, which had a path to the right
- His car was surrounded by a gang of people
- D swerved onto the one pavement to get away
- D was arrested for reckless driving
- There was no escape + there was imminent threat => Court of Appeal ruled out that the circumstances were threatening

R v Conway (1988)

- Person A sees somebody getting shot earlier in the day
- Later in the day, person A is in the back of D's car (person B)
- Person C is also in the car; C knows A and B
- A sees 2 people approaching the car
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R v Martin (1989)

- D's wife was suicidal + their son was late for work
- Wife threatened D with suicide if he didn't drive the son to work
- D was disqualified from driving, but this was not different from driving recklessly
- Defence was allowed

R v Cairns (1999)

- D had been driving a car; surrounded by a group of youths
- One of them threw himself on the bonnet of the car
- D felt threatened, drove off and the man was injured
- D needed to only show a reasonable and genuine perception of a threat of serious physical harm

R v Pommell (1995)

- Duress of circumstances could be used as a defence to all crimes except murder, attempted murder and treason

END.