

Sample Classroom Exercise: GCE Law (H524) Criminal Law Special Study (G144)

Exercise 1 – Identifying the key points in cases for question 1

Read Source 2 and Source 3 on *R v Howe* and the case or other text materials on the case and identify the critical points from the judgment of the case. Use the completed list as a revision aid.

Suggested list of critical points that can be found in the case:

- In *Lynch v DPP for Northern Ireland* the House of Lords had originally held that duress was available as a defence to accessories as distinct from principals to a murder;
- In *Howe* the House of Lords used the Practice Statement 1966 to overrule its own previous decision in *Lynch*;
- Its justification for doing so was that the distinction between secondary participants to murder and principal offenders had no basis in logic;
- The House of Lords also felt that the justification for duress was that a man of average courage is entitled to make the choice which is the lesser of two evils;
- But in circumstances like the case in hand the killer could not claim to have chosen the lesser of two evils but merely using the end to justify the means;
- The House of Lords also felt that it would be unjust to withdraw protection from innocent victims to protect those who would kill them to save themselves;
- However, the case also shows potential injustice in imposing such high standards of heroism on the person subjected to duress when the majority of people are not heroes;
- There is also the potential inconsistency and possible injustice of allowing duress for some crimes but not for others.

Exercise 2 – Identifying critical comment in Sources in the Special Study Materials booklet for AO2 in question 2

Read Source 9 and identify critical points as a series of bullet points citing the lines in which the critical comment can be found. Use the completed list as a revision aid.

Suggested list of critical comment that can be found in source 9:

- 'In 1974 the Law Commission proposed ... a general defence of necessity ... [but] ... three years later it rejected the idea' (lines 1 to 2)
- [it said] 'if a defence of necessity already existed in common law it should be abolished' (lines 2 to 3)
- 'It felt that allowing such a defence to a charge of murder could effectively legalise euthanasia' (lines 3 to 4)
- [it] felt that specific statutory provisions already covered those areas where the defence might be most needed' (lines 5 to 6)
- 'For minor offences ... prosecutions were unlikely and ... sentencing policy ... was such that people convicted in those situations would probably receive a minimal sentence' (lines 6 to 8)
- 'at the same time as making these 'totally negative' proposals the Law Commission was recommending that duress be extended to *all* crimes' (lines 10 to 11)
- 'The absurdity of this position was exposed by the ... Criminal Code Bill [which] emphasised that it was unacceptable to rely on prosecutorial discretion' (lines 11 to 13)
- 'it is unfortunate that the Draft Bill perpetuates the terminology of 'duress of circumstances'' (line 15)
- 'The courts have come a long way in a short time in recognising that blame is inappropriate in circumstances of necessity' (lines 19 to 20).