

# Trial Procedures: DEFENCES

# AUTOMATISM

- Act must be voluntary in order to be criminal
- Acts committed in an unconscious state are not voluntary
- Therefore the argument is what degree of consciousness is required to commit a voluntary, thus criminal, act
- Involuntariness as a defence is called **automatism** and is a complex and confusing area of law
- A state of “impaired consciousness”

# AUTOMATISM cont...

- It has been recognized in cases involving:
  - Stroke
  - Pneumonia
  - Sleepwalking (Remember R vs. Parks?)
  - Severe blow to the head
- It has been rejected in cases involving:
  - Epileptic seizures
  - Psychological effects of being rejected by a girlfriend/boyfriend
  - Etc.

# Mental Disorder (Insanity)

- Prior to 1992 the term “insanity” was applied to individuals whose mental health exempted them from criminal responsibility
- Not a medical term, but rather a legal one
- The judicial system relies on testimony of medical experts to determine the mental health of the accused.
- NCR Aqutte: A person found not criminally responsible at trial
  - The court then decides whether treatment is needed and whether the aqutte must be restricted for public safety



# Mental Disorder cont...

- Can cast doubt on two sections of the judiciary process:
  - Fitness to stand trial – the mental capacity of the accused at the time of trial
  - Verdict of not criminally responsible – the accused's state of mind at the time of the offence
- If found unfit for trial the accused faces:
  - Conditional discharge based on criteria set by the court
  - Detention in a hospital as ordered by the court
  - Treatment for a specific period (not exceeding 60 days) as directed by the court

# Mental Disorder cont...

- Prior to 1992 if the accused was found not guilty by reason of insanity he/she was subject to indefinite detention at a mental hospital – could only be released by an order of the Lieutenant Governor
- With the reform of the Criminal Code in '92, “caps” were placed on terms of detention corresponding to the seriousness of the offence committed
- However, court can apply to have the cap increased in situations where the accused is a threat to the life, safety, or physical or mental well-being of other persons.

# Intoxication



- Similar to automatism and mental disorder
  - Main distinction is that intoxication (drug or alcohol induced) is at the accused's own hands
- Until 1994 drunkenness could be used as defence in an offence requiring the accused to have specific intent but not in offences requiring general intent
  - Remember: **Specific Intent Offences** – actus reus is linked to purpose beyond the act in question
  - Remember: **General Intent Offences** – relates only to the act in question, with no further ulterior purpose (here intoxication is not a defence)

# Intoxication cont...

- If someone is too drunk to form the specific intent to commit the offence, he/she is usually convicted of a “lesser included offence”
  - Example: A person is acquitted on murder (because they cannot form the specific intent) may be convicted of manslaughter (requiring general intent to do the act that led to the victim’s death)
- This changed in 1994 with the case of R. v. Daviault where the Supreme Court ruled that the intention to become drunk could no longer serve as the mens rea for an offence of general intent
  - Long story short – intoxication is a valid defence in offences requiring general intent – though it is highly unlikely it would succeed



## Scenario D:

- **A** purchases goods from **B** at a fraction of their acknowledged true value. **A** believes that he is getting such a bargain because the goods are stolen, and admits this to the police. After investigating, the police determine that the goods were not stolen, and that **A** simply got a good deal. Has the purchaser nonetheless committed an offence?

# Mistake of Law

- A mistaken belief that your actions are legal does not excuse criminal conduct – basically: ignorance is not an acceptable defence
- One important exception to this rule – **colour of right**
  - Colour of Right - The honest belief that a person owns or has permission to use an item
  - Example: People who take property believing they have claim to it may have a defence to the charge of theft should that claim be false

# Mistake of Law cont...

- As well, case law is beginning to recognize the defence of “officially induced” mistake of law
  - The offender acted on good faith on advice given by lawyers, police officers, etc.
- Mistake of law defence not well developed in Canada

# Scenario E: R v. Tutton

- Respondents were parents of a five-year-old diabetic. They believed in faith healing but their religious convictions did not prevent them from seeking and acting on medical advice or from taking medicines. As the result of the intentional withholding of prescribed insulin upon the belief that the child had been miraculously cured, the child died.
- MISTAKE OF FACT
- Respondents were charged with causing their son's death by criminal negligence in that they denied him the necessities of life without lawful excuse and thereby committed manslaughter. They raised the defence of an honest although **mistaken** belief in the existence of a circumstance which would render their conduct non-culpable. Respondents were convicted of manslaughter and appealed to the Court of Appeal which set aside the convictions and directed new trials. This appeal was taken by leave.

# Mistake of Fact

- Based on an accused persons lack of *mens rea*
- Therefore if the person is mistaken about the consequences or nature of their actions they may not have the required mens rea
- In order for defence to succeed, the mistake must be an honest one
- While the definition of what can be considered to be an “honest” mistake might be unclear, the court usually factors in whether the mistake was reasonable or not before deciding

# Scenario F: R v. Hill

- The position of the Crown at trial was that Hill and Pegg were homosexual lovers and that Hill had decided to murder Pegg after a falling out between them. The Crown argued that Hill deliberately struck Pegg in the head while Pegg lay in bed. This did not kill Pegg who immediately ran from the bedroom into the bathroom to try and stop the flow of blood from his head. Realizing he had been unsuccessful, Hill took two knives from the kitchen and stabbed Pegg to death.
- Hill's version of the events was very different. Hill testified that he had known Pegg for about a year through the latter's involvement with the "Big Brothers" organization. Hill stated that on the night in question he had been the subject of unexpected and unwelcome homosexual advances by Pegg while asleep on the couch in Pegg's apartment. Pegg pursued Hill to the bathroom and grabbed him, at which time Hill picked up a nearby hatchet and swung it at Pegg in an attempt to scare him. The hatchet struck Pegg in the head. Hill then ran from the apartment but returned shortly afterward. Upon reentering the apartment, he was confronted by Pegg who threatened to kill him. At this point, Hill obtained two knives from the kitchen and stabbed Pegg to death.
  - WHAT WAS HILL'S DEFENCE?

# Self-Defence

- Criminal act that may have had an overriding purpose that would excuse or justify the conduct
- Refers to the right to defend oneself or one's family from death or serious injury
- Section 34 sets the requirements needed before a successful self-defence argument is a possibility – these include:
  - Must be assaulted without provoking the attack
  - Force used to repel that assault must not have been intended to cause death or serious harm and must not have been more than was necessary to defend oneself

# Self-Defence cont...

- In situations where the attacker is killed or seriously injured, the defence must prove the following requirements:
  - Defender acted under a reasonable fear of death or serious injury
  - Defender must have reasonable grounds to believe that they could not have otherwise been saved from death or serious injury
- A person who exceeds the necessary amount of force is criminally responsible for the excess



## Scenario G:

- Appellant admitted the acts of intercourse against the complainant's will and without her consent. Complainant had been first raped by one Durack, while appellant waited near the car, and then by the appellant. Although the appellant had initially refused to have intercourse with the complainant when ordered to do so by Durack, he complied because he said he feared for his life. Durack was a violent man and armed with a knife. Complainant testified that she was forced to perform further sexual acts with both men. Despite the relative proximity of a farm-house which could have provided both appellant and complainant with assistance, appellant did not take advantage of his opportunities to escape—at least two and perhaps three rapes occurred.
- **WHAT IS THE APPELLANT'S DEFENCE?**

# Compulsion

- The defence of compulsion excuses individuals whose criminal conduct is compelled by threats and who have no realistic choice but to commit a criminal offence.
- The accused person must be subjected to serious threats by a person who has the present capacity to act on the threats. These are known as requirements of immediacy and presence.

# COMPULSION

- Also known as duress
- Similar to self-defence because it involves excusing criminal behaviour on the basis of an overriding social good
- Dissimilar in the sense that the victims of the “excused” conduct are often innocent bystanders and not the victims who have committed criminal acts

# Compulsion cont...

- Duress defence is raised when the accused has failed to apply his or her will to his or her actions – still have a choice, may not be much of a choice but still there is a choice
- Therefore, the defence of being involuntary cannot be raised
- This defence requires discovering what was in the accused's mind – belief that the action was honest and “reasonable”

# Scenario H: R v. Latimer

- The accused was charged with first degree murder following the death of T, his 12-year-old daughter who had a severe form of cerebral palsy. T was a quadriplegic and her physical condition rendered her immobile. She was said to have the mental capacity of a four-month-old baby, and could communicate only by means of facial expressions, laughter and crying. T was completely dependent on others for her care. She suffered five to six seizures daily, and it was thought that she experienced a great deal of pain. She had to be spoon-fed, and her lack of nutrients caused weight loss. There was evidence that T could have been fed with a feeding tube into her stomach, an option that would have improved her nutrition and health, and that might also have allowed for more effective pain medication to be administered, but the accused and his wife rejected this option. After learning that the doctors wished to perform additional surgery, which he perceived as mutilation, the accused decided to take his daughter's life. He carried T to his pickup truck, seated her in the cab, and inserted a hose from the truck's exhaust pipe into the cab. T died from the carbon monoxide. The accused at first maintained that T had simply passed away in her sleep, but later confessed to having taken her life.
- **WHAT IS THE ACCUSED'S DEFENCE?**

# NECESSITY

- Courts have been reluctant to recognize this defence even in dire or life threatening circumstances
- This defence is recognized only as an excuse not as justification
- Necessity as a defence “rests on a realistic assessment of human weakness, recognizing that a liberal and humane criminal law cannot hold people to the strict obedience of laws in emergency situations where normal human instincts, whether of self-preservation or of altruism, overwhelmingly impel disobedience”

# Necessity cont...

- R v. Dudley and Stevens (1884) – Two men killed a boy and resorted to cannibalism when lost at sea – necessity rejected, convicted of murder
- R v. Beriman (1987) – Woman exceeded the speed limit because she believed an attacker was pursuing her – necessity rejected!
- R v. Perka (1984) – Drug smugglers were forced to come ashore in Canada because of rough and dangerous seas – necessity allowed.

# Scenario I: R v. Cleghorn

- The appellant was convicted of trafficking in cocaine. An undercover officer arrived at the scene of the transaction at 2:18 p.m. The half-minute transaction took place sometime thereafter and was completed not later than 2:25 p.m. The undercover officer identified the individual involved as the appellant, who was then arrested, at about 3:40 p.m. The appellant claimed that he was at home with his mother at the time of the alleged transaction. The mother claimed during this conversation, which focused on determining the time of the arrest, that the accused was with her at 2:30, 3:00 and 3:15 p.m.
- **WHAT IS THE APPELLANTS DEFENCE?**



# ALIBI

- A defence to a criminal charge to the effect that the accused was elsewhere than at the scene of the alleged crime.
- Evidence in support of an alibi defence is evidence that tends to show that by reason of the presence of the defendant:
  - at a particular place; or
  - in a particular area at a particular time.
  - S/he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.

# SCENARIO J : R v. Mallot

- The accused and the deceased were common law spouses for about 19 years and had two children together. The deceased abused the accused physically, sexually, psychologically and emotionally. She had gone to the police, but the deceased was a police informant on drug deals and the police told him of her complaints, resulting in an escalation of his violence towards her. A few months before the shooting, the deceased separated from the accused, took their son and went to live with his girlfriend. The accused and their daughter continued to live at the deceased's mother's house. Contact between the deceased and the accused continued after the separation, as he dropped by his mother's home on a regular basis, often bringing his girlfriend with him. On the day of the shooting the accused was scheduled to go to a medical centre with the deceased to get prescription drugs for use in his illegal drug trade. She took a pistol from the deceased's gun cabinet, loaded it and carried it in her purse. After driving to the medical centre with the deceased, she shot him to death. She then took a taxi to his girlfriend's home, shot her and stabbed her with a knife. The girlfriend survived and testified as a Crown witness. At trial, the accused testified to the extensive abuse which she had suffered, and the Crown conceded that she had been subject to terrible physical and mental abuse at the hands of the deceased.
- **WHAT IS THE ACCUSED'S DEFENCE?**

# Battered Woman Syndrome

- The **battered woman defense** is a legal defense representing that the person accused of an assault or murder was suffering from *battered person syndrome* at the material time.
- Because the defense is almost invariably invoked by women, it is usually characterised in court as *battered woman syndrome* or *battered wife syndrome*.
- There is currently no medical classification to support the existence of this "syndrome" in the sense used by lawyers, though it has historically been invoked in court systems.
- Although the condition is not gender-specific, the law has been persuaded to remedy perceived gender bias. Thus, this is a reference to any person who, because of constant and severe domestic violence usually involving physical abuse by a partner, may become depressed and/or unable to take any independent action that would allow him or her to escape the abuse.

# Scenario ????? – R v. Shubley

- Appellant, an inmate, allegedly assaulted another inmate. The superintendent of the detention centre conducted an informal hearing to ascertain the facts pertaining to appellant's alleged misconduct and ordered him placed in solitary confinement for five days with a restricted diet. The victim of the alleged assault later laid a complaint which resulted in the appellant's being charged with assault causing bodily harm contrary to s. 245.1(1)(b) of the *Criminal Code*. After arraignment, counsel moved to stay the proceedings on the indictment, on the ground that a trial would violate appellant's right under s. 11(h) of the *Charter*, not to be tried and punished twice for the same offence. The trial judge accepted this submission.

# Double Jeopardy

- To be in put in criminal law jeopardy twice as to the same offence.
- The term refers to a defence available to a person autrefois acquit (previously acquitted) or previously convicted, to prohibit any subsequent attempt to re-try him/her for the same offence.

# Other Controversial Defences...

- **Corporal Punishment Defence:**
  - Defence against a charge of assault for a parent (or one who acts on behalf of a parent, such as a guardian or teacher) who spans his/her child
  - The defence justifies the hitting of a child for the purposes of correction, providing that the force used is reasonable under the circumstances
  - Corporal Punishment cannot be used against children under two, children any age with a disability, be degrading, used on teenagers, involve use of objects such as straps or belts, or involve slaps, or blows to the head

- **“Twinkie Defence”**

- Otherwise known as “diminished responsibility”
- San Francisco city worker Dan White is upset at the loss of his job, kills the Mayor and another city employee
- Lawyer argues addiction to junk food resulted in too much sugar and caused White to suffer from depression
- The murder charge was reduced to manslaughter

- **Cultural Background**

- R v. Ly (1987). Born and raised in Vietnam, Ly’s lawyer argued his cultural background should be considered when looking at the fact he lost self-control when his wife refused to tell him where she had been for the evening
- This defence was **rejected**
- However, as Canada’s multiculturalism increases the likelihood of this defence being accepted is on the rise