

Necessity As A Criminal Defence, Some Practical Pointers

By Richard Small

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Introduction

There are numerous circumstances in which the issue of necessity and/or duress, as it is sometimes called, can be raised. The issue can be raised in various areas of the law, for example in Constitutional Law or the Civil Law. This paper will address the subject as it relates to the Criminal Law although there will be the occasional cross-reference to its application in other areas of the law. However I will not attempt to analyze all the nuances of the subject. This will be at most an introduction to the framework issues of the defence of necessity given the limitations of time both for preparation and for delivery.

While Commonwealth Courts have not defined necessity as a general principle, many courts have accepted the defence within a very limited sphere.¹ In general, the defence arises in situations where a person faces an immediate threat of imminent death or serious injury arising out of extraneous circumstances (as distinct from threats made by a person) and must choose to act to the detriment of another in order to prevent a greater harm to oneself or others. The defendant claiming a necessity defence claims that

his conduct, although technically an offence, was not unlawful because, under the circumstances, it was justified. For example, the authors in *Smith and Hogan* concluded that it would be lawful (as necessity justifies rather than excuses an otherwise criminal act) to shoot down a hijacked plane, killing all the innocent passengers and crew if this was the only way to prevent it from striking the World Trade Center and taking the lives of thousands more.² However, the defence is not clearly defined by the courts and is often difficult to distinguish from other defences of duress, self-defence and necessity.

Demarcating Duress, Self-defence and Necessity/Duress of Circumstances

The generic defence is that of necessity which takes one of two forms of duress and hence the term duress is often used interchangeably for the term necessity. The two forms are:

- duress based on threats caused by a human
- duress of circumstance where the force or coercion or compulsion is exerted by extraneous circumstances

In the U.K. a possible additional version of necessity may be the statutory provisions re martial coercion under Sec 47, Criminal Justice Act 1925.³

Traditionally, duress by threats and duress by circumstances were distinguished from necessity and self-defence in that the former were excusatory whereas the latter were justification defences.⁴ Duress by threats and duress of circumstances excuse a person for a criminal act, while necessity (to the extent that this might differ from duress of circumstances) and self-defence justify a person's behavior (making it not criminal at all).⁵ Excused conduct is wrong, but certain conditions make it unfair to assign blame.

On the contrary, justified conduct is conduct which is so valuable to the greater good of society that it is not deemed wrong at all.

Using the earlier World Trade Center example where the question is not whether the passengers of the plane will perish, but how (either by contact with the towers or as a result of a ground-to-air missile), the behavior in shooting down the plane is not excused, but in fact is not considered wrong at all. Were the opportunity to down the plane not taken, the failure to act might be an offence in itself depending on the actor. Compare this to a situation where a bank robber enters a taxi, holding a gun to the driver's head, forcing him to try and escape from the police and driving recklessly.

However, a more recent approach is that no distinction exists between defences of "duress of circumstances" and "necessity" at all. In the *Shayler*⁶ judgment, the House of Lords stated that "duress of circumstances" and "necessity" are "simply different labels for the same thing".

The defences of duress, self-defence and necessity/duress of circumstances have become increasingly difficult to tell apart and some have called for their inclusion into one inclusive defence.⁷ In *Howe*,⁸ Lord Hailsham said that:

"There is, of course, an obvious distinction between duress and necessity as potential defences, duress arises from the wrongful threats or violence of another human being and necessity arises from any other objective danger threatening the accused. This, however, is, in my view a distinction without a relevant difference, since on this view duress is only that species of the genus of necessity which is caused by wrongful threats. I cannot see that there is any way in which a person of ordinary fortitude can be excused from the one type of pressure on his will rather than the other."

Moreover, the court held in *Symonds*⁹ that whether a defendant pleaded self-defence or duress of circumstances did not "affect the substance of the case". In *Re A (Conjoined Twins: Surgical Operation)*¹⁰ the court considered both self-defence and necessity and

Robert Walker L.J. referred to the three "categor[ies] of necessity": duress by threats, duress of circumstances and self-defence. The *Safi*¹¹ court reinforced this approach describing duress by threats, duress of circumstances and self-defence as being "probably instances of the potentially wider defence of necessity".

Defining Necessity and Duress of Circumstances

The defence of duress or necessity, simply stated, amounts to the accused pleading that the extraneous circumstances were such that it was necessary to do the act or break the law in order to either save the life of the accused or that of someone closely connected to the accused, or to prevent serious bodily injury to the accused or someone closely connected. Such an act will be justified if, "a) the commission of the crime was necessary or reasonably believed to be necessary (See *R. v. Cairns* [1999] 2 Cr.App.R. 137), for the purposes of preventing death or serious injury to himself or another; b) that necessity was the *sine qua non* of the commission of the crime; and c) the commission of the crime, viewed objectively, was reasonable and proportionate having believed what he did to have been necessary to avoid the evil if, viewed objectively, it was unnecessary, or, though necessary, was proportionate having regard to the evil to be avoided or prevented."¹² The essence of the defence of necessity in effect says that whatever is the true legal position it was nonetheless necessary for me to act as I did given the circumstances with which I was faced.

Is the necessity defence applicable in Jamaica?

Two cases have applied the principles to the Jamaican common law. The first, *Basil Fuller v. The Attorney General*,¹³ was a civil matter where the court accepted a

defence of necessity to a charge of trespass. Campbell J. ruled that the defence may be successfully brought:

"where the act complained of was done to save lives, especially where it is the lives of members of a whole community that are involved, a defence of necessity can be made out if from a fair, reasonable, and objective standpoint, that which was done was to avoid a real and imminent danger of loss of lives."

In the criminal case of *R v Rhone Warren*,¹⁴ the Jamaican Court of Appeal held that the defence of duress of circumstance applies where reckless driving resulted in the death of a pedestrian but the defendant claimed he feared for his life as he was being chased by six men with machetes in another vehicle. The court adopted and applied the test outlined in *R. v. Martin*¹⁵ and found that

"If a person is acting under "duress of circumstances" or necessity and, for that reason, he is put in a state of mind where he is reckless as to the consequence of his act, or his state of mind is such that he cannot reason as a normal person would, then in my judgment he ought to be the beneficiary of such a defence"

Citing *Martin*, the court ruled that:

"We accept as good law in this jurisdiction, the principles as outlined . . . in the case of *R. v. Martin*. We recognize that a person acting under the stress of threats to his life, or serious injury, which is either expressed or implied from the conduct of others, in circumstances where he reasonably believes that his life is in danger or that he might be seriously injured, would be entitled to avail himself of such a defence in respect of the offence of manslaughter, arising out of the driving of a motor vehicle. A necessary prerequisite of the success of such a defence would of course be a positive answer to the question whether a sober person of reasonable firmness sharing the same characteristics of the accused would respond to the situation in the same way that the accused did."

Aspects of the Defence

Burden, Evidential & Legal

Where a defence of duress is relied on, the evidential burden rests on the accused to raise the issue.¹⁶ However once the defence is satisfactorily raised the ultimate or persuasive burden of proof is on the Crown to destroy the defence.¹⁷

Elements of a successful necessity defence

In *R v. Shayler*,¹⁸ Lord Woolf C.J. analyzed this defence. He traced its origins from Stephen's Digest through to more recent authorities including *R v. Martin (Colin)*¹⁹ and *R v. Abdul-Hussain*. Although it appears that this review was not necessary to any decision the court had to make, it is nonetheless an authoritative guide. At page 2224E Lord Woolf C.J. said:

".....we extract the following ingredients as being required if the defence of necessity is to be relied on:

- i) the act must be done only to prevent an act of greater evil.
 - ii) the evil must be directed towards the Defendant or person or persons for whom he has responsibility or we would add, persons for whom the activities make him responsible.
 - iii) the act must be reasonable and proportionate to the evil avoided.
- We make the addition at ii) to cover, by way of example, the situation where the threat is made to set off a bomb unless the Defendant performs the unlawful act. The defendant may not have had any previous connection with those who would be injured by the bomb but the threat itself creates the Defendant's responsibility for those at risk if he does not give way to the threat."

Was There a Threat in fact, or Is There a Subjective and Objective Test?

*Martin*²⁰ identified two basic tests (or questions), one subjective and the other objective and restated the principle laid out in *Graham*²¹ as follows: "English law does, in extreme circumstances, recognize a defence of necessity . . ." It is conveniently called

'duress of circumstances' where the defence arises from other objective dangers threatening the accused or others. The defence is available only if from an objective standpoint, the accused can be said to be acting reasonably and proportionately in order to avoid a threat of death or serious injury. Finally, if the defence is open to the accused on his account of the facts, the issue of fact should be left to a jury who should be directed to determine if two questions can be answered in the affirmative and if so answered, then the defence of necessity would have been established. The two questions are:

- a. Was the accused, or may he have been, impelled to act as he did because as a result of what he reasonably believed to be the situation he had good cause to fear that otherwise death or serious physical injury would result?
- b. If so, would a sober person of reasonable firmness, sharing the characteristics of the accused, have responded to the situation as the accused acted?

The first is a subjective test whereas the second is objective. In *R. v Safi*,²² where the defendant claimed that he was a political opponent of the Taliban regime in Afghanistan and acted under an imminent threat of death or serious injury. The Court of Appeal of the U.K. found that a judge had made a material error in directing that there had to be, in fact, an actual threat before the necessity defence could apply. However, in *R. v Baker*,²³ duress of circumstances could not be extended to circumstances where the defendant had only feared serious psychological injury. *R. v Pommell* was distinguished as merely accepting that necessity might be extended from driving cases to other charges except murder, attempted murder and treason.

While a threat need not actually exist in fact,²⁴ the House of Lords recently found in *R v. Hasan*²⁵ that it is essential that the defendant should actually believe that a real threat existed and as a result of that belief he was compelled to act as he did. In *Hasan*, the court held that the necessity defence would not avail where, as a result of the accused's voluntary association with others engaged in criminal activity, he either foresaw or should have foreseen the risk of being subjected to any compulsion by threats of violence. The court reasoned that allowing the defence in such circumstances would allow organized criminals to effectively shield themselves from prosecution as any member might successfully plead that he would be punished by the wider organization had he not carried out his assigned task.

Threats, Mens Rea & Imminence

It is essential to the defence of duress that the threat should be effective to neutralize the will of the accused at the moment when the *actus reus* was committed and that the circumstances of necessity persisted throughout the offending period. The jury should be left to decide whether the threats had overborne the will of the defendant at the time when the *actus reus* was committed, so held the Court of Appeal in the U.K. in *Northern Ireland v Lynch*.²⁶ Accordingly in *Safi*,²⁷ in order to meet the threshold test of duress there had to be evidence that there was in fact or might in fact have been an imminent peril. The Lord Chief Justice adopted from Rose L.J.'s judgment in *R v Abdul-Hussain* these additional requirements: that the evil directed at the Defendant or those for whom he was responsible must be imminent, that is 'about to happen'. It need not be immediately about to happen.

In *R. v. Pommell*, the court found that while the defence of necessity was available for a defendant for the unlawful possession of a gun, duress of circumstances cannot excuse the commission of an offence after the threat has ceased.²⁸ In finding that a delay of a few hours overnight might not be unduly long, the court held that "the defence of duress of circumstances could not avail him once a reasonable person in his position would have known that the duress, in this case the need to obtain and retain the firearm, had ceased."²⁹

Proportionality

The defence of necessity is only available if from an objective standpoint, the accused is acting reasonably and proportionately to avoid a threat of death or serious harm. The *Shayler*³⁰ court nicely summarized proportionality as having two elements; "The act done should be no more than is reasonably necessary to avoid the harm feared and the harm resulting from the act should not be disproportionate to the harm avoided." In determining proportionality, courts may consider whether the defendant's choice was overborne or whether he were forced to make a choice between two evils.³¹ The *Safi* court cited a decision in the civil division to describe this concept as

"The defence is available on the basis that, if it is established, the relevant actors have in effect been compelled to act as they did by the pressure of the threats or other circumstances of imminent peril to which they were subject, and it was the impact of that pressure on their freedom to choose their course of action that suffices to excuse them from criminal liability"³²

It is necessary to incorporate social standards and mores when determining what sort of threats are reasonable and proportionate.³³ For example, a starving, homeless man who steals food would not likely succeed in a defence of necessity whereas a person

starving on a ship might be justified in stealing food from the galley. The issue is context dependent and requires an examination of the broader implications of allowing the defence: the availability of food from other legitimate sources (such as soup kitchens), the “one-off” nature of the emergency on the ship compared to setting a precedent allowing the homeless to take food without paying.³⁴ Moreover, the idea of proportionality in a situation such as killing a plane full of people as in the World Trade Center example, might be acceptable in such a circumstance, as the death of those on the plane is not disproportionate to the harm that would otherwise be caused (i.e. the deaths of the thousands in the tower).

Does the Accused Have to Assert the Wrongful Conduct or merely the Compelling Circumstances?

Caulfield J in the U.K. Court of Appeal in *Stanley Arthur Denton v R.*³⁵ held that the defendant must assert that he was forced to take the risk of causing harm to others because of the particular circumstances. Counsel for the Crown relied on this dicta to argue in the Jamaican case of *R v Rhone Warren*, C.A. 23.2.00 that because the appellant, who was charged with reckless driving in his defence never admitted that he was driving recklessly or dangerously he could not rely on a defence of duress to explain his conduct. It was submitted that the defendant never claimed that the compelling circumstances caused him to drive dangerously or recklessly. Indeed the essence of his defence was that although he was seeking to escape from persons who he thought were endangering his life the manner of driving that he said he was engaged in did not constitute reckless or dangerous driving.

However, Forte P. speaking for the Jamaican Court of Appeal at page 11

specifically disagreed with the English Court of Appeal and held that

“The danger of accepting that dicta as a correct approach to the question in that case, as in the instant case, is that the jury could have come to the conclusion that the accused was in fact driving recklessly, but believed that he was doing so as a result of the fear of being injured by men whom he believed were intent on doing so. In the instant case, it is quite possible that the jury could have disbelieved the appellant as to the manner in which he was driving the car, but nevertheless believed that though he was driving in the manner alleged by the prosecution, he was doing so as a result of the men chasing him. For those reasons, we do not accept this approach contended for by counsel for the Crown”

Duress arising on a caution statement even though the accused denies that the statement is his

An issue very similar to the above issue arises when defence issues arise in a caution statement tendered by the Crown but the accused denies making the statement. Should the trial judge consider or direct a jury to consider the defence issues, albeit not relied on by the accused? The Jamaican Court of Appeal decided as far back as 1974 that where duress arises as an issue in a caution statement it was the judge's duty to leave the issue for the jury's consideration even though the accused (a) denied making the cautioned statement, (b) did not raise duress as a part of his case and (c) in fact denied having taken part in the offence. The basis for this ruling is that once the Crown adduces evidence of a caution statement the factual issues that arise on the caution statement are before the jury for its consideration. The evidential burden then shifts to the Crown to destroy those factual issues and it is a determination that can only be made as part of the jury's overall function. The Court found that in the event of the jury rejecting the defence, it was then open to the jury to determine whether or not the contents of the statement as a whole were consistent with the other evidence in the case and whether or

not they believed that it was true, so held Luckoo P. (Ag) speaking for Swaby J.A. & Zacca, J.A. (Ag) in *R v Talbot & Kerr*.³⁶

This approach has recently been restated by the Privy Council in *Ricardo Williams vs. The Queen* P.C. 25.4.2006. In that case although the Privy Council was primarily concerned with the approach which the trial judge took to the issue of voluntariness and the admissibility of the cautioned statement, the Board did comment at ¶22 that the judge “...*did not deal with the issue whether the duress, if not disproved by the prosecution, might be said to negative the appellant’s intention to join in the joint enterprise.*” Both of these cases are illustrations of the principle that once there is sufficient material to raise the issues of duress, necessity or indeed any other defence, the legal burden of destroying that defence then shifts to the Crown.

Evaluating Scope – As Applicable to Specific Offenses

Whilst there has been no general recognition of necessity as a defence, it has been permitted to operate under various guises, on a limited basis in criminal and civil cases. In *Re F (Mental Patient: Sterilisation)*, Lord Goff of the House of Lords reviewed three categories of circumstances where necessity might arise.³⁷ They may be summarized as:³⁸

1. Public necessity: this applies where an individual interferes with another man's property in the public interest - for example, the destruction of another man's house to prevent the spread of a catastrophic fire, as occurred in the Great Fire of London in 1666.

2. Private necessity: this occurs when an individual interferes with another's property to save his own person or property from imminent danger - for example, when he enters

upon his neighbour's land without his consent, in order to prevent the spread of fire onto his own land.

3. General cases of necessity: for example where an individual seizes another and forcibly drags him from the path of an oncoming vehicle, thereby saving him from injury or even death, he commits no wrong. Lord Goff clearly embraced medical treatment, including sterilisation, within this latter category.

It should be borne in mind that the principles which guide consideration of the issues of duress are not limited to the criminal law and defence issues which arise therein. The principles arise in civil law and more recently in constitutional law in relation to the validity of the pardon which the leader of the Jamaat al Muslimeem received from Acting President Carter in the midst of the insurrection/rebellion in Trinidad. There, three judges of the Court of Appeal and High Court held that the pardons were valid and not issued under duress. The Privy Council decided the case on other principles and held, obiter that it was not necessary to decide whether the pardon could be set aside for duress. However, in criminal law, the defence of necessity has most commonly been applied in cases of medical necessity and reckless driving. Courts have generally rejected its applicability to murder.

Traditionally courts have been very wary of allowing the defence of necessity in criminal cases. At least part of this is the concern that allowing necessity will create a defence to any crime if the situation is dire enough. As Lord Denning explained in

Southwark London Borough Council v. Williams and Another,³⁹

"... if hunger were once allowed to be an excuse for stealing, it would open a door through which all kinds of lawlessness and disorder would pass If homelessness were once admitted as a defence to trespass, no one's house could be safe. Necessity would open a door which no man

could shut. It would not only be those in extreme need who would enter. There would be others who would imagine that they were in need, or would invent a need, so as to gain entry."

More recently, Dickson J. said in the Supreme Court of Canada in *Perka et al. v. R.*⁴⁰:

"... no system of positive law can recognise any principle which would entitle a person to violate the law because on his view the law conflicted with some higher social value'. The Criminal Code has specified a number of identifiable situations in which an actor is justified in committing what would otherwise be a criminal offence. To go beyond that and hold that ostensibly illegal acts can be validated on the basis of their expediency, would import an undue subjectivity into the criminal law. It would invite the courts to second-guess the Legislature and to assess the relative merits of social policies underlying criminal prohibitions."

More recently, however, judges' distaste for necessity has waned and courts are more likely than ever to accept the defence although its scope is unclear. In *R. v. Abdul-Hussain and ors*⁴¹, the court held that the defence of duress by threat of circumstances was available to all offences other than murder, attempted murder or some forms of treason.

Homicide/Murder

Courts have traditionally refused to allow necessity as a defence to murder;⁴² however, recent decisions suggest a softening of this view.⁴³ The most well-known and influential decision relating to whether necessity is a defence to murder is *R. v. Dudley and Stephens*.⁴⁴ In *Dudley*, a crew cast adrift in a lifeboat following a shipwreck, chose to eat a cabin boy in hope of surviving long enough to be rescued themselves. The court found that despite the likelihood that the crew would have perished had they not committed their act of cannibalism and that the cabin boy would not have survived to be rescued, a necessity defence could not apply to murder.

Compare this to the more recent decision of *Re A (Children) (conjoined twins; surgical separation)*⁴⁵ where the court determined that necessity could justify what would otherwise be murder in two very specific circumstances:

- a. where taking no action would result in two deaths, an accused may choose to sacrifice the life of one to save another despite it accelerating the death of the other; or
- b. where an accused must sacrifice the life of another in order to save his own where failing to do so would result in both of their deaths, for example, where a climber who must cut the rope to his partner, causing his partner's death, because not doing so would mean the two of them falling to their deaths and cutting it would save his life, but not his partner's.

Brooke L.J. defined the requirements of the necessity defence using the three prerequisites set out by Stephen in his *Digest of the Criminal Law*:

- "(i) the act must be needed to avoid inevitable and irreparable evil, and
- (ii) it should be no more than is reasonably necessary for the purpose to be achieved, and
- (iii) the evil inflicted must not be disproportionate to the evil avoided."

While *Re A (Conjoined Twins: Surgical Operation)*⁴⁶ appears to be an acceptance of the doctrine of necessity as a defence to murder, it must be noted that the judgment itself relied heavily on the specific facts of the case, thereby precluding the general assertion that the defence can be available in homicide cases.⁴⁷

Medical Necessity

Medical necessity as a defence to marijuana use is one of the most controversial uses of the defence in law today.⁴⁸ In the case of *R v. Quayle*,⁴⁹ the U.K. Court of Appeal refused to allow a necessity defence where the defendants claimed their

cultivation, preparation, use and possession of cannabis were all excusable in law since they genuinely and reasonably believed that those activities were necessary to avoid them suffering serious injury or pain. The court found that necessity should be confined to cases where there was an imminent danger of physical injury and pain and reasoned that allowing the necessitous use of marijuana otherwise was in conflict with the purpose and effect of the legislative scheme which did not permit even Doctor supervised use.

The necessity defence may also be used in rare circumstances of medical necessity as in *R. v Bourne*⁵⁰ where a surgeon who unlawfully performed an abortion on a 14-year-old girl successfully pleaded a necessity defence. In finding that the surgeon's actions were justified, the judge ruled that "the unborn child in the womb must not be destroyed unless the destruction of that child is for the purpose of preserving the yet more precious life of the mother". In *Re F (Mental Patient: Sterilisation)*⁵¹ Lord Goff of the House of Lords invoked recourse to necessity to allow sterilisation for persons unable because of mental handicap (and similarly unconsciousness) to give informed consent. The conclusion in that case was that, in all the circumstances, the operation was justified; otherwise the well established general rule is that the performance of a medical operation upon a person without his or her consent is unlawful, as constituting both the crime of battery and the tort of trespass to the person.⁵²

Reckless Driving

Necessity has been defined in *R v Conway* [1989] QB 290, [1988] 3 All ER 1025, [1988] 3 WLR 1238, a driving case, as "duress of circumstances", that is "where the Defendant was constrained by circumstances to drive as he did to avoid death or serious bodily harm to himself or another person". Necessity may be a defence to allegations of

dangerous driving without due care and attention,⁵³ however the U.K. Court of Appeal in *R v. Willer* and *R. v. Denton*⁵⁴ found that in allegations of dangerous driving without due care and attention, the necessity defence will only succeed in the most extreme circumstances.

The defence may also be available in cases of strict liability.⁵⁵ In *Regina v. Shayler*⁵⁶ the House of Lords found that necessity may be raised as a defence to strict liability offences if the defendant believes that the forbidden act was necessary to avoid a demonstrably greater harm which was likely to have befallen him or those he had a duty to protect.

Conclusion

It seems clear from all of the above that this is an area in which the common law is still in a gestation period. It is clear that there are two strands in active contention constantly pulling the law one way and then another and some times pulling against each other at the same time. One strong element is the criminal law's justifiable concern to recognize that if an accused's mind has in fact been demonstrably overcome by external forces either originating in another individual's conduct or from the combination of circumstances then such a person should not be regarded as criminally responsible for acts done in such circumstances. Jurisprudentially there would be an absence of the essential mental element that is the foundation of criminal liability. On the other hand there are justifiable public policy considerations which dictate that the courts should not open the door to dangerous loopholes to avoid criminal responsibility. That seems to be the basis for what seems essentially a policy decision that the defence should not be

available in the serious offences of murder and treason, albeit that there has been a slight inroad into this rule. The other area in which the courts have clearly created a rule to restrict the use of the defence is the development of the objective tests in the assessment of the mental element. This is a clear policy shift away from the trend towards the development of the subjective test of honest belief as the basis of mens rea in other areas of the criminal law. This tension in the development of the law is likely to remain a feature of the growth of the common law in this area for quite some time to come.

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- ¹ Archbold: Criminal Pleadings, Evidence and Practice 2003, P. 1592-1594.
- ² Smith and Hogan, Criminal Law (10th ed., 2002) (Butterworths, London), pp.273-274.
- ³ See R v Hasan [2005] U.K. H.L. 19.5.2005.
- ⁴ Clarkson, C.M.V., Necessary Action: A New Defence, Crim. L.R. 2004, FEB, 81-95
- ⁵ Clarkson, C.M.V., Necessary Action: A New Defence, Crim. L.R. 2004, FEB, 81-95 at 82.
- ⁶ R v. Shayler [2002] UKHL 11 (21st March, 2002)
- ⁷ Clarkson, C.M.V., Necessary Action: A New Defence, Crim. L.R. 2004, FEB, 81-95.
- ⁸ R. v. Howe [1987] A.C. 417, 429
- ⁹ R. v. Symonds [1998] Crim. L.R. 280
- ¹⁰ Re A (Children) (conjoined twins; surgical separation) [2000] 4 All E.R. 961, [2001] Crim.L.R. 400
- ¹¹ R. v Safi (Ali Ahmed) [2003] Crim L R 721
- ¹² Archbold: Criminal Pleadings, Evidence and Practice 2003, at 1594.
- ¹³ [1981], 18 J.L.R. 188
- ¹⁴ [2000] Jamaica Court of Appeal, No. 78/99
- ¹⁵ [1989] 1 All. E.R. 652
- ¹⁶ See R v Gill 1963, 47 Cr. App. R. 166 at 171-2 and for a clear illustration of the distinction between the two burdens and the failure of lay justices to keep them distinct
- ¹⁷ See A v. The Director of Public Prosecutions, Q.B.D. 20. 3. 2000
- ¹⁸ [2002] UKHL 11 (21st March, 2002)
- ¹⁹ [1989] 1 All. E.R. 652
- ²⁰ [1989] 1 All. E.R. 652