

MANSLAUGHTER

Types

- Voluntary manslaughter: mens rea but mitigating circumstances
- Involuntary manslaughter: no mens rea

Provocation

- Words can amount to provocation at CL provided they are 'violently provocative' or of an 'exceptional character' **Moffa v R (1997)**
- **Burden of proof:** To raise defence, accused must satisfy **evidentiary burden** → then prosecution must negate provocation **beyond a reasonable doubt** **Woolmington**
- Defence of provocation under s 23
- Provocation requires reaction by D to V which occurs in sight/hearing. Provocative incident must directly involve accused/deceased but actual element may of provocation may not be directed at D (could be to the daughter) **R v Davis (1998)**
- Some states abolished, NSW retains
- Particularly moral foundation
- On one spectrum, if you kill someone in cold blood, that is morally more culpable than if you do it in boiling blood (spur of the moment)
 - Some argue provocation needs to stay bcos of this
 - Others argue that there's no difference btwn moral culpability
- It is a moral decision as to whether someone should be treated less severely bcos they were provoked vs. calculated kill

Voluntary manslaughter

- Provocation, self-defence, substantial impairment of the mind, excessive self-defence
- You have mens rea, but mitigating circumstances

R v Davis (1998) 100 A Crim R 573

- Loss of self-control by D must be induced by the conduct of V towards or affecting D
- Provocation could not be left to the jury
- It was too far removed from him, already a police investigation going on,
- Defendant lived with woman for 12 months
- Child complained of pain in genital area
- D became very angry, drank excessively over next few years
- Learned his brother-in-law that had also sexually assaulted V's 5 yr old niece
- D hit V with tree branch a number of times, causing death
- Trial judge says provocation not available, convicted of murder
- Provocative conduct: what the child said + knowledge of the niece
- Hearsay provocation not generally admissible, as it may lead to death of innocent life – reacting to what someone said that did
- Problem with hearsay is that it is mediated through a third person
- Other aspect: it is harder to show the loss of self-control if it is not being directed towards him or if it has come from a third party
- This case applies Quartyly, D been in relationship, then girl formed relationship with V, also V was supplying heroin to Julie, D told her to stay away from V, at some point when she left, the D shot the V in a men's toilet
- Friend alleged Juli had been raped by him, she confirmed
- Trial judge said that no evidence of loss of self-control, so should not consider provocation

- Paragraph 22 2A – no conduct of the deceased as such, bcos the provocative conduct was statements made by persons other than the deceased
- If you read s 23, nothing says it has to occur in the presence of the victim
- In the end, Simpson says she will adhere to the majority of the decision as it was well established during the time of law reform – clearly did not want to change it
- Self-induced provocation
 - Edwards case
 - Edward blackmailed V. he then grabs the knife and stabs him back. A blackmailer cannot rely. If u induce provocative conduct in another person, ordinarily you cannot rely on that. If reaction goes to extremes, then it might be sufficient provocation. If u induce provocation, and then it is much more extreme than u induced
 - Eg. u insult someone provocatively, then their act is much more extreme, you could still argue u were provoked in killing them
 - R v. Johnson
 - A behaving unpleasant at nightclub. Makes violent threats to V and gf. V's gf taunts A. Holds A and pins against wall. D drops glass and stabs
 - Judge declines – trial judge should have directed the jury to consider provocation
 - Appealed, saying that self-induced provocation should still be considered by jury.
 - D was entitled to rely on self-induced provocation
 - Seems to run counter to Edwards
 - Under the legislation, it does not specifically say it does not have to be self-induced
 - If defence does not want to run provocation, if there are sufficient facts raised to consider provocation, trial judge would offer that to the jury
 - Trial judge has to direct according to the law

Parker v R (1963) 111 CLR 610

- **FACTS:** D's wife, Joan develop relationship with neighbour, after several days, Joan announced leaving D. Dan/Joan on bicycle. D followed, ran down with car, thinking he had killed wife, then attacked Dan with knuckleduster and stabbed in throat. Parker "I wont be around to look after the kids"
- **HELD:** Stapleton asserted that **Smith** should be not an authority.
- **RULE:** where reasonable evidence of provocation, must be left to jury (even if the defence has not been raised / even though A not given evidence of loss of self-control)
- **CLASS:** Dan Kelly lured away Frank's wife. Kelly jeered. Woos Ms Parker in front of Frank and children. Provocative conduct was
- Dixon's facts were not as clear if you read Taylor and Owen – Dixon does not mention – Kelly apparently taunts about short stature, and will enjoy intercourse
- Wife says she is in love with Kelly, pleads her not to leave
- Later that day, she leaves with Kelly
- He and his friend carried sheathed knives in his cars, and knuckledusters
- Ran them over, bcos they escaped on a bicycle
- Initially thought he had killed his wife, finds her face down in the ditch, realises she's not killed
- When he thinks he has killed her, even more enraged and stabs Kelly
- Part of provocative conduct - "ill take your wife with one hand and beat you with the other" – this, in conjunction with wife having affair and going to leave him
- Historically is this enough?
- The physicality of the act,
- In the past, most of provocation cases, involved insulting, physical, then immediate reaction, then claiming provocation