Self defence s 15 CLCA

Affirmative defence Complete defence

STEP 1: SD an affirmative defence thus make out elements of offence first

STEP 2: What was D defending?

Person <u>s 15 CLCA</u> = defence for intentional killing

Property <u>s 15A CLCA</u> = NOT defence for intentional killing

Home Invasion s <u>15C CLCA</u> = defence for intentional killing

These will be done separately

SD of Person - s 15 CLCA

D genuinely believed conduct necessary and reasonable (subjective) for a defensive purpose **AND** conduct reasonably proportionate (s 15B - objective) given what D believes (subjective – not objectively reasonable).

STEP 1: D genuinely believed conduct necessary and reasonable (subjective) for a defensive purpose s <u>15(1)(a)CLCA</u>.

15(3) defensive purpose =

(a) defend self or another

(b) prevent/terminate unlawful imprisonment of self or another

- SD = can be pre-emptive force, D not required to wait for the attack <u>Police v</u>
 Lloyd
- 'force in response to the application of force, or threat of it by another' <u>Police v</u>
 <u>M</u>
- at the time of the defensive conduct (not before) Clothier
- P must disprove that D genuinely held this belief BRD Gillman

Lavallee v The Queen: Canadian Case: courts have rejected the imminence as a necessary element to establishing D's belief that force was necessary **R v R:** woman killed husband in sleep after years of abuse and allegations he raped their daughters, self defence not available bc at the time of the offence here was no 'immediate/foreseeable threat' thus it was not necessary

ASK: Did they subjectively genuinely believe the conduct was necessary and reasonable?

It doesn't matter how unreasonable the threat may be (or whether D will carry it out) it will be sufficient that D genuinely believes there is a threat (<u>Police v Llyod</u>, <u>Morgan v Coleman</u>).

^{**}le If she feared for her life = best scope for it to be proportional.

- <u>did D think he/she absolutely had to engage in the conduct (grab a knife and stab him) in order to protect herself in this situation?</u>

If no genuinely held belief or defensive purpose = defence not made out BOP (don't continue)

If genuinely held belief + defensive purpose

SAY: (insert what D did). D subjectively believed that (insert conduct) was necessary and reasonable in order to (insert defensive purpose/why D did it) <u>s 15(3)(a)/(b)</u>
<u>CLCA</u>, as (insert evidence of what D subjectively thought/said) <u>s 15(1)(a)CLCA</u>
<u>Hirschausen v Brady</u>.......

STEP 2: D's conduct was reasonably proportionate (objective) given what D believed (subjective) **15(1)(b)CLCA**

<u>S 15B</u> reasonably proportionate - D can exceed force used against him/her

Weight up D's conduct vs the threat (as D believed it) to determine proportionality.

- Consider:
 - Size difference big guy threatening small woman she stabs him
 - Where did she stab him
 - What was purpose of stabbing him to disarm, shut up or kill
 - How many times did she stab him Police v Tee
 - <u>Police v Tee:</u> D stabbed the P 2 times in supermarket. Not reasonably proportionate to the threat (police yelled threats + broke down a barrier + punched Tee a couple of times)
 - Could she have threatened him with a knife instead? Would have this made him more angry though
 - Does he have a history of offending
 - Is this something that she has encountered before or is this a first (she doesn't know how he will react)
 - Could have she used something else (not a knife, a rolling pin or something to hit him with?)

If was reasonably proportionate to the perceived threat

SAY: (insert D's conduct) was reasonably proportionate given what D genuinely believed (insert the threat to be) *S 15B (Viro, Police v Lloyd)*.

= defence made out BRD, and D aquitted.

<u>If NOT reasonably proportionate to the perceived threat...</u> SD not made out on balance of probabilities = excessive SD....

Excessive SD

SAY: As D's conduct is not reasonably proportionate to the perceived threat, but D still rely on partial defence of excessive SD, as if D convicted of \underline{s} 11 murder \rightarrow reduced to voluntary manslaughter by \underline{s} 15(2) CLCA.

Does D have a defence? SD

S 15 People

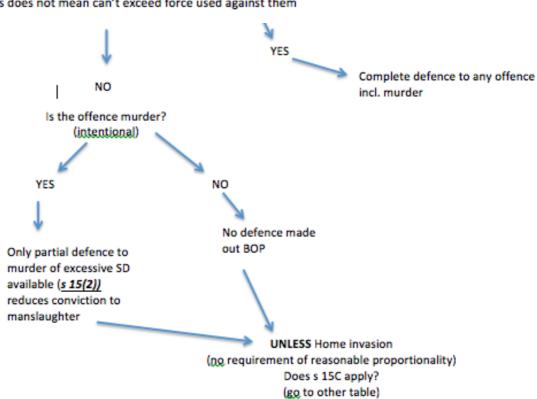
Did D have defensive Purpose (s 15(3)(a) protect self or other

(s 15(3)(b) prevent/terminate unlawful imprisonment of self or other

YES Was D resisting person purporting to make lawful arrest/action? \$ 15(4)(a) or Was D acting in response to unlawful act by Based on D's understanding, D genuinely believe that D or by D + others? 5 15(4)(a) conduct reasonable and necessary to achieve this purpose? (s 15(1)(a) YES No, no SD P to disprove BRD, 5 15(5) Was it (objectively) reasonable for D to believe No, no SD other person acting unlawfully? No, no SD

Defence reasonably proportionate to D's perceived threat? S 15(1)(b)

NOT objective, based on D's belief of threat or face S 15B this does not mean can't exceed force used against them



if so = acquittal