

Appendix A

Please read the following case situation, you will then be presented with several evidential facts and statute provisions relevant to the case.

This case took place in a small town in the Otago region, New Zealand.

R v Zellman

Peter and his wife Kathleen decide to visit the local bar and grill for dinner, with the intention of going to the theatre after dinner. On completing dinner, Peter walks to the cashier desk to pay the bill while his wife Kathleen goes to the ladies-room to freshen up. Kathleen needs to go through the bar area to get to the ladies-room and in doing so encounters only one person, Johnny, an unemployed local who has been drinking heavily at the bar for some time. Johnny insists on Kathleen in joining him for a dance on the dance floor, Kathleen promptly refuses his invitation. Johnny becomes increasingly insistent and physically rough in an attempt to force her to dance. At this point, the barperson intercedes and warns Johnny to leave Kathleen alone or he will have to leave the premises. Kathleen continues on her way to the ladies-room and the barperson leaves the bar area to change a keg out the back. When returning through the bar area, Kathleen encounters Johnny for a second time and again Johnny becomes physically insistent that Kathleen join him for a dance. At this moment, Peter (Kathleen's husband) enters the bar area and witnesses Johnny's treatment of Kathleen. Peter immediately demands that Johnny move away from Kathleen and Johnny's response to this request is to ignore Peter. Again, Peter demands that Johnny leave Kathleen alone and consequently Johnny picks up a pool cue from the pool table, swings the object at Peter's head and misses. Johnny then turns his attention to Kathleen and physically threatens to hit her with the pool cue. In an attempt to stop Johnny's attack, Peter pushes Johnny with *considerable* force and Johnny falls to the ground, however, not before he smacks his head against the edge of the bar. On inspection, Johnny appears to be unconscious, however, is pronounced dead by paramedics who arrive at the scene thirty minutes later. Apart from Kathleen, there were no other witnesses to the altercation between Peter and Johnny.

Depending on the established facts – Either Self Defence *or* Culpable Homicide

Culpable Homicide is either:

1) Manslaughter

or

2) Murder – if the act of homicide is proven to be with appropriate mens rea (malice forethought) and not under provocation.

Sentencing:

- 1) "Self Defence" carries no term of imprisonment.
- 2) "Murder" carries a term of life imprisonment.
- 3) "Manslaughter" usually carries a term of significantly less time served than murder.

Appendix B

Evidential Facts & Relevant Statute Provisions -Either an Advantage or a Disadvantage to the Defendant

Advantage:

1. A provision of the Crimes Act statute states that everyone is justified in using reasonable force in employing self-defence for his or her own protection.
2. The alcohol level found in Johnny's blood system was 3 times above the legal limit for driving.
3. A section of the Crimes Act states that culpable homicide may be 'manslaughter' if the person who caused the death did so under provocation.

4. When arresting Peter for Johnny's death, the arresting officers failed to inform Peter as to his legal rights, therefore, a possibility exists that the procedural aspects of the arrest are illegal.
5. Self-defence is legally justifiable when a defendant uses force for the protection of another person, such as a husband or wife.
6. Johnny has been a middleweight boxer for several years and consequently had received numerous blows to the skull, causing significant damage to the head area.
7. During a police interview, Johnny's girlfriend stated that recently, Johnny had blamed Peter (even though Johnny was responsible) for a failed business venture that he and Peter had collaborated in and that Johnny swore he would get revenge on Peter.
8. Johnny's autopsy results were inconclusive and it could not be established that the cause of death was related to the blow to his head that he had received when Peter pushed him.
9. Prior to the paramedics' arrival, Peter, believing that Johnny was in an unconscious state, placed Johnny in the recovery position to ensure that he had clear airways and was not in any danger of suffocating.
10. During a police interview, the barperson supported Peter's testimony concerning Johnny's prior physically abusive treatment of Kathleen in the bar area.

Disadvantage:

1. Peter has a history of serious anger issues, which sometimes resulted in violent outbursts and has attended anger management programs.
2. Johnny and Peter were previously business partners in a business that is currently bankrupt, due to irresponsible management decisions made by Johnny.
3. Kathleen has a previous history of committing adultery with other men.
4. A provision of the Crimes Act states that 'murder' has occurred if the offender means to cause the death of the person killed.
5. With the death of either Peter or Johnny several outstanding debts from their previous business becomes null and void.
6. Several witnesses in a local hotel claim they viewed an altercation the previous weekend between Johnny and Peter in which Peter threatened Johnny's life.
7. A principle of self-defence states that when the accused uses more force than what the law allows, the accused is liable for the excess of force used.
8. A principle of self-defence states that if the accused's use of force is proven as revenge or retaliation, then the Court may reject self-defence as a defence.
9. A provision of the Crimes Act states that culpable homicide is 'murder' if the offender means to cause any bodily injury (e.g., a blow to the head) that is known to the offender to be likely to cause death.
10. The forensic evidence relating to Johnny's fingerprints on the pool cue was contaminated and therefore, inadmissible in Court.

Appendix C

Perspective 1

"As part of the following experiment, you will be asked to read a Criminal case situation and then shown relevant evidential facts and Statute provisions linked to the case.

NB: It is important that you read the next instruction CAREFULLY!!!!

When you read the following case and view the evidential facts and statute provisions Please imagine yourself as the 'Criminal Defence Lawyer' that will be defending the accused in this case in the High Court. The prosecution has charged the accused with 'Culpable Homicide'. The accused is your Brother and the consequences of losing this case could be DIRE."

Perspective 2

“As part of the following experiment, you will be asked to read a Criminal case situation and then shown relevant Evidential facts and Statute provisions linked to the case.

NB: It is important that you read the next instruction CAREFULLY!!!!

When you read the following case and view the evidential facts and statute provisions Please imagine yourself as the ‘Public Defender’ that will be defending the accused in this case in the High Court. The prosecution has charged the accused with ‘Culpable Homicide’ and the consequences of losing this case could be dire.”

Appendix D

Final Recall Instruction for Perspective Participants

“N.B. IMPORTANT - Remember that the consequences of losing Peter’s case are DIRE!

Hence, it is very important that you attempt to recall as many of the ADVANTAGE as well as the DISADVANTAGE Evidential Facts and the Statute Provisions as possible. As this information, in a real-life situation would help determine the outcome of Peter’s case.”

Appendix E

Additional Evidential Facts & Statute Provisions

Advantage:

1. A general principle of NZ criminal law provides that the burden of proof rests with the prosecution to prove beyond all reasonable doubt any crime committed, and this may prove difficult with no third party witnesses to the incident between Johnny & Peter.
2. NZ case law suggests that a jury may take into account that a reasonable person may overreact in a crisis situation and use ‘excess force’ (a situation that normally negates Self-Defence) when defending themselves or others.

Disadvantage:

1. The barperson is actually Peter’s cousin and this family association may weaken the validity of the barperson’s testimony to the police that Johnny was physically abusive towards Kathleen.
2. Threats of violence from Peter, in the form of abusive e-mails, were found by the police on Johnny’s computer.