

School of Law
Scoil an Dlí

DIY Moot Teacher Resource Pack



**UNIVERSITY OF
LIMERICK**
OLLSCOIL LUIMNIGH

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The Facts

R v. DUDLEY AND STEPHENS

In 1883, the English yacht 'Mignonette' was purchased as a leisure vessel by Australian lawyer John Henry Want. The yacht could only reasonably be transported to Australia by sailing her there but she was a small vessel and it was difficult to find someone to agree to take the journey. She finally set sail for Sydney from Southampton on 19 May 1884 with a crew of four: Tom Dudley, the captain; Edwin Stephens; Edmund Brooks; and Richard Parker, the cabin boy. Parker was 17 years old and an inexperienced seaman.

On 5 July, the yacht was running before a gale off the Cape of Good Hope. Though the weather was by no means extreme and the vessel was not in any difficulties,

Dudley gave the order to heave to so that the crew could enjoy a good night's sleep. As the manoeuvre was completed, and Parker was sent below to prepare tea, a wave struck the yacht and washed away the lee bulwark.

Dudley instantly realised that the yacht was doomed and ordered the single 13-foot lifeboat to be lowered. Mignonette sank within five minutes of being struck and the crew abandoned ship for the lifeboat, managing only to salvage vital navigational instruments along with two tins of turnips and no fresh water.

Dudley managed to improvise a sea anchor to keep the lifeboat headed into the waves and maintain her stability. Over the first night, the crew had to fight off a shark with their oars. They were around 700 miles from the nearest land, being either St. Helena or Tristan da Cunha. Dudley kept the first tin of turnips until 7 July when its five pieces were shared among the men to last two days. On or around 9 July, Brooks spotted a turtle which Stephens dragged on board. The crew were resolutely avoiding drinking seawater as it was then universally held to be fatal and, though they devoured the turtle, they forewent drinking its blood when it became contaminated with seawater. The turtle yielded about three pounds of meat each, though the crew ate even the bones, and, along with the second tin of turnips lasted until 15 or 17 July. The crew consistently failed to catch any rainwater and by 13 July, with no other source of fluid, they began to drink their own urine. It was probably on 20 July that Parker became ill through drinking seawater. Stephens was also unwell, possibly having experimented with seawater

Drawing lots in order to choose a sacrificial victim who would die to feed the others was possibly first discussed on 16 or 17 July, and debate seems to have intensified on 21 July but without resolution. On 23 or 24 July, with Parker probably in a coma, Dudley told the others that it was better that one of them die so that the others survive and that they should draw lots. Brooks refused. That night, Dudley again raised the matter with Stephens pointing out that Parker was probably dying and that he and Stephens had wives and families. They agreed to leave the matter until the morning.

The following day, with no prospect of rescue in sight, Dudley and Stephens silently signalled to each other that Parker would be killed. Killing Parker before his natural death would better preserve his blood to drink. Brooks, who had not been party to the earlier discussion, claimed to have signalled neither assent nor protest. Dudley always insisted that Brooks had assented. Dudley said a prayer and, with Stephens standing by to hold the youth's legs if he struggled, pushed his penknife into Parker's jugular vein, killing him.

The three fed on Parker's body, with Dudley and Brooks consuming the most and Stephens very little. The crew even finally managed to catch some rainwater. Dudley later described the scene, "I can assure you I shall never forget the sight of my two unfortunate companions over that ghastly meal we all was like mad wolves who

should get the most and for men, fathers of children, to commit such a deed we could not have our right reason." The crew sighted a sail on 29 July.

Dudley, Stephens and Brooks were picked up by the German sailing barque Montezuma which returned the men to Falmouth, Cornwall on Saturday 6 September. Dudley and Stephens were later arrested and charged with murder.

See our video here:

Group Discussion

Questions:

- Did Dudley and Stephens commit murder?
- Are there any excusing factors?
- Does it matter that it happened at sea? Why or why not?
- Do you think that an action can ever be legal but immoral?
- Can an act be morally right but unlawful?
- What purpose is served by convicting the defendants?
- If convicted, what should the punishment be?

Moot Roles:

- 3 prosecution counsel
- 3 defence counsel
- 2 defendants (Dudley & Stephens)
- 1 Witness (Brooks)
- 3 judges
- 12 jurors

Moot Trial Procedure

The case: Dudley and Stephens are on trial; Brooks is a witness

Step 1: Counsel for Prosecution Opening Statement (summary of main arguments)

Step 2: Counsel for Defence Opening Statement (summary of main arguments)

Step 3: Prosecution calls first witness – direct examination (Brooks: he will explain what happened on the boat)

Step 4: Cross-examination of Brooks by counsel for the defence

Step 5: Defence calls second witness – direct examination (Dudley – the accused)

Step 6: Cross-examination of Dudley by Prosecution

Step 7: Defence calls third witness – direct examination (Stephens – the accused)

Step 8: Cross-examination of Stephens by Prosecution

Step 9: Counsel for Prosecution sums up arguments

Step 10: Counsel for the Defence sums up arguments

Step 11: Judges sum up the case and give directions to the jury. Must decide if the issue will be manslaughter or murder and if murder, will the defence of necessity be allowed?

Step 12: Jury decides: Are the accused guilty or not guilty?

Step 13: (If guilty) Judges pass sentence (If guilty of murder the sentence is mandatory life sentence)

In the real case: The defendants were convicted of murder. The defence of necessity was not allowed for murder. They were sentenced to death but then granted a pardon by the Crown and served 6 months.

Directions

Council for the state: Examine witnesses, argue that taking a life is still murder no matter the circumstances – they might all have been rescued the next day, Parker could have been saved.

Council for accused: Examine witnesses, argue necessity should be a defence – like self defence, no other choice, would have died

Judges: Consider - will you allow the jury to consider manslaughter or just murder? If murder – is necessity a defence?

Jury: Decide guilty or not guilty?

General

- Has anyone engaged in a mock trial before? Seen a trial on TV?
- What is a trial?
 - Parties to a dispute come to a neutral setting; present information/ evidence and ask the independent judge/ jury to decide the outcome
 - Jury (criminal) = random selection of 12 members of the public
- Who are the key players in a trial?
 - What is the difference between the prosecution and defence?
 - What is the difference between a barrister and a solicitor?
- Difference between a judge and jury in a criminal trial
 - Judge sums up arguments, decides on directions to give to the jury – eg decides which defence can be relied upon
 - Jury decides on the issue of guilty or not guilty

Addressing the Court as Counsel

- Introduce yourself and state who you represent

- “May it please the court...”
- Address the Court as “Judge” or “the Court”
- Do not use “my Lord” or “your honour” – these terms are from other jurisdictions
- Be professional & always stand when speaking to the court
- You must use formal language and always be polite

Questioning Witnesses

Direct Examination: telling a story

Questions should begin with: What? When? Where? How? Who?

No leading questions (questions which prompt the witness to answer in a particular way or direction) – witnesses should use their own words

Cross Examination: get evidence to support your case

Leading questions allowed: try to get a yes or no response

Key issues

The difference between Murder and Manslaughter

Current law on murder and involuntary manslaughter

The law of homicide in Ireland is currently divided into murder and manslaughter. Murder occurs if a person intended to kill, or cause serious injury to, another person who dies as a result. Murder convictions can include situations where a killing was planned in advance; where the victim was knowingly shot; and where the accused is aware that the natural consequences of their actions would lead to death. For example, in *The People (DPP) v John Cullen (1982)*, the accused was convicted of murder after he had thrown a fire bomb through the window of a house and where three women in the house died in the resulting blaze.

Manslaughter is an unlawful killing that is not murder and currently consists of two categories, voluntary manslaughter and involuntary manslaughter. Voluntary

manslaughter deals with what would otherwise be murder but where there is some excusing circumstance - such as provocation - which reduces the offence from murder to manslaughter.

Whether the defence of Necessity will be allowed

It is generally accepted that necessity is a recognised defence in Irish law, although it is only allowed in a narrow range of circumstances. But there are clear examples where a person is permitted to break the letter of the criminal law in order to prevent another evil to them or another person, or, sometimes, to other property.

A common law example of necessity is where a doctor operates on an unconscious person who cannot give consent to the operation, in order to save the person's life. Without the consent of the patient, the operation amounts to an assault, but the necessity of the situation provides a defence for the doctor.

An example in legislation is section 6 of the *Criminal Damage Act 1991* which states that it is a defence to a charge of criminal damage to property that the intentional damage was done to avoid injury to a person or to save other property and where this damage was reasonable in the circumstances. Emergency rescue teams who cut through a car to save a person trapped in the car or fire officers who deliberately knock a building to prevent a fire spreading to other buildings come within section 6 of the 1991 Act.

Good Luck!

We would be delighted to hear how you found your moot experience – feel free to share your videos with us on social media and if you would like to email us an entire video of your moot we would be happy to provide feedback.

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