Duress & Necessity

By the end of this unit you will be able to (AO1):

- Explain the scope of the defence of duress
- Understand what is meant by the term “duress of circumstances”, and its relationship to the defence of necessity
- Explain the law surrounding self-induced or voluntary duress

You will also be able to (AO2):

- Discuss the importance of public policy in the development of the defences
- Evaluate the limits of the defences’ availability
- Discuss whether necessity exists in the common law.

End of Unit Evaluation:

At the end of this unit, you will be given two weeks to revise for a DRAG test on the subject of duress and necessity. You will also complete the following past essay in timed circumstances to test out your progress and skills:

3* 'The defences of duress and necessity are invaluable although critics argue that they are inconsistent.'

Discuss the extent to which this statement is accurate. [50]

Homework:

1. Read the edited case report of R v Batchelor 2013 EWCA Crim 2638, which has been emailed to you and complete the tasks attached to the case. Please note: this is the latest case from the Court of Appeal on the topic of duress, and comments and clarifies some of the comments from Hasan (Z) and so therefore is a very useful tool.

   Bring these notes with you to the planning session for your essay, as this will be invaluable to help shape your AO2,

2. Read the edited case report of R (Nicklinson, Lamb) v Ministry of Justice (2013) EWCA Civ 961, which has been emailed to you and complete the tasks attached to the case. Please note: this is the latest case from the Court of Appeal on the topic of necessity as a defence to euthanasia and comments on the decisions on Re A. It did go on to the Supreme Court, but was focused on other grounds.

Key Terms:

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duress of Threats</td>
<td>General defence</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Necessity</td>
<td>Duress of Circumstances</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Imminence</td>
<td>Scope of Duress</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Self induced duress</td>
<td>Persuasive Precedent</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**Introduction:**

*So, what are duress & necessity?*

All of you need to decide whether or not you think that the defendant should have a defence. Most of you should be able to explain why they should or should not have a defence, to develop your answers. Some of you may be able to determine the key rules governing this defence, using your understanding of the cases and scenarios.

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Defence?</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>D is told that unless he does as he is asked, his affair with another woman will be revealed. He takes part in a robbery</td>
<td></td>
<td></td>
</tr>
<tr>
<td>D is told that unless he does as asked, he may be killed and/or his family informed of his debts and his homosexuality. He imports drugs to the UK.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>D is told that unless he pays back his debt to the local money lender, he, his girlfriend and his child may suffer physical harm. He robs two post offices</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DD hijacked a plane in Afghanistan, forcing it to fly to the UK, and claiming they were fleeing the Taliban after fearing for their lives. The plane stopped in Moscow and then flew on the UK. They held 150 people hostage at a UK airport for 3 days.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>D is married, and living with his gay lover, who can be violent. One night the lover puts a thin wire round the neck of the wife and hands the other end to D, telling him to pull. D, worried that the lover may attack him, does so.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Bonus Challenge:** We have already met a number of the key cases on this topic at AS. Can you identify them from the clues below?

- Be a man son... I’m not *mothering* you any longer.
- How could I do anything else?!
- Separate and die
**Duress**

**General Notes:**

Duress is a complete defence, which means that if it is successfully argued it negates D’s criminal liability and results in a complete acquittal. Duress comes into play where D would otherwise be liable as they have done the offence, and have the required _____________ and _____________.

However, they have not had an effective choice in doing the actions, and so DD are not independent actors.

As far as theories of the criminal law is concerned, duress is an excuse.

**Why?**

It has evolved in the common law (hence the number of cases), and despite the number of calls from the higher courts urging Parliament to step in... they haven’t yet!

There are two different types of duress:

- _______________ e.g. _______________
- _______________ e.g. _______________

**Who has the burden of proof?**

Simple: D raises evidence and it is up to the prosecution to disprove it. As with the other defences, if the judge does not think there is sufficient grounds for the defence, he can withdraw it from the jury.
What is the scope of duress?
(This means which crimes it acts as defence to)

1. Well, it used to be a defence to all offences....

DPP for Northern Ireland v Lynch 1975

**Facts:**
D was threatened by IRA. Drove them, they killed policeman, and he was the getaway driver.

**Ratio:**
HL 3:2 held that D could rely on the defence of duress to 2nd party participation in murder. D had been threatened with death or serious injury.

2. ...But then the HL changed their minds.

R v Howe 1987 HL

*key case*

**Task:** Read the enclosed edited case report and answer the following questions. Remember that this is aimed at developing both your explanation and evaluation skills.

1. Why does Hailsham think that duress should not be a defence to murder?

2. How does he explain the anomaly of duress being a defence to an s.18 wounding, but not to murder, where the s.18 wounding is sufficient for MR (“intention to commit GBH”)?

3. Why does Griffith think that there should be no defence to murder?

4. Why does he say that attempted murder should also be excluded from the defence?

5. Is this ratio or obiter? Why?

6. What is the ‘compromise’ solution? What do you think of it? Why?
R v HOWE [1987] 1 AC 417

LORD HAILSHAM OF ST MARYLEBONE LC:
In general, I must say that I do not at all accept in relation to the defence of murder it is either good morals, good policy or good law to suggest, as did the majority in Lynch ... that the ordinary man of reasonable fortitude is not to be supposed to be capable of heroism if he is asked to take an innocent life rather than sacrifice his own. Doubtless in actual practice many will succumb to temptation, as they did in Dudley and Stephens [[1884] 14 QBD 273] [in the Library]. But many will not, and I do not believe that as a ‘concession to human frailty’ the former should be exempt from liability to criminal sanctions if they do.

I have known in my own lifetime of too many acts of heroism by ordinary human beings of no more than ordinary fortitude to regard a law as either ‘just or humane’ which withdraws the protection of the criminal law from the innocent victim and casts the cloak of its protection upon the coward and the poltroon in the name of a ‘concession to human frailty.’

I must not, however, underestimate the force of the arguments on the other side ...

A long line of cases ... establish duress as an available defence in a wide range of crimes, some at least, like wounding with intent to commit grievous bodily harm, carrying the heaviest penalties commensurate with their gravity. To cap this, it is pointed out that at least in theory, a defendant accused of this crime under section 18 of the Offences against the Person Act 1861, but acquitted on the grounds of duress, will still be liable to a charge of murder if the victim dies ... I am not, perhaps, persuaded of this last point as much as I should. It is not simply an anomaly based on the defence of duress. It is a product of the peculiar mens rea allowed on a charge of murder which is not confined to an intent to kill ...

LORD GRIFFITHS:
...

[Are there any present circumstances that should impel your Lordships to alter the law that has stood for so long and to extend the defence of duress to the actual killer? My Lords, I can think of none. It appears to me that all present indications point in the opposite direction. We face a rising tide of violence and terrorism against which the law must stand firm recognising that its highest duty is to protect the freedom and lives of those that live under it. The sanctity of human life lies at the root of this ideal and I would do nothing to undermine it, be it ever so slight.

... If the defence is not available to the killer what justification can there be for extending it to others who have played their part in the murder. I can, of course, see that as a matter of common sense one participant in a murder may be considered less morally at fault than another. The youth who hero-worships the gang leader and acts as lookout man whilst the gang enter a jeweller’s shop and kill the owner in order to steal is an obvious example. In the eyes of the law they are all guilty of murder, but justice will be served by requiring those who did the killing to serve a longer period in prison before being released on licence than the youth who acted as lookout.

However, it is not difficult to give examples where more moral fault may be thought to attach to a participant in murder who was not the actual killer; I have already mentioned the example of a contract killing, when the murder would never have taken place if a contract had not been placed to take the life of the victim. Another example would be an intelligent man goading a weak-minded individual into a killing he would not otherwise commit.

It is therefore neither rational nor fair to make the defence dependent upon whether the accused is the actual killer or took some other part in the murder ...

As I can find no fair and certain basis upon which to differentiate between participants to a murder ... I would depart from the decision of this House in Director of Public Prosecutions for Northern Ireland v Lynch [[1975] AC 653] and declare the law to be that duress is not available as a defence to a charge of murder, or to attempted murder. I add attempted murder because it is to be remembered that the prosecution have to prove an even more evil intent to convict of attempted
murder than in actual murder. Attempted murder requires proof of an intent to kill, whereas in murder it is sufficient to prove an intent to cause really serious injury.

It cannot be right to allow the defence to one who may be more intent upon taking a life than the murderer. This leaves, of course, the anomaly that duress is available for the offence of wounding with intent but not to murder if the victim dies subsequently. But this flows from the special regard that the law has for human life, it may not be logical but it is real and has to be accepted.

I do not think that your Lordships should adopt the compromise solution of declaring that duress reduces murder to manslaughter. Where the defence of duress is available it is a complete excuse. This solution would put the law back to lines upon which Stephen suggested it should develop by regarding duress as a form of mitigation. English law has rejected this solution and it would be yet another anomaly to introduce it for the crime of murder alone.

3. What about attempted murder then?

**R v Gotts 1992**

**Facts:**

**Ratio:**

"intent of attempted murder is more evil than that required of a murderer"

Sentencing should be used instead.

How does the decision of the Court of Appeal here link to the decision of the Court in Howe?

4. The most recent statement of the law:

**R v Wilson (Ashlea) 2007**

Look at the report of the case on the IWB. Using the information, complete the sections below:

<table>
<thead>
<tr>
<th>Facts:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The basis of D's argument:</td>
<td></td>
</tr>
<tr>
<td>Does the CA think there were grounds for the defence? Why/ why not?</td>
<td></td>
</tr>
<tr>
<td>Outcome for D:</td>
<td></td>
</tr>
</tbody>
</table>
| How does it link to: | a) Howe  
  b) Gotts |

6
**Student Thinking:**

Although the Courts seem to have been consistent in denying a defendant the use of the duress in response to a charge of murder, the Law Commission in 2006 suggested that they should change, and that Lynch was the correct approach in the law. What do you think?

**Should duress be a full defence to murder and attempted murder?**

- **One who takes the life of an innocent cannot claim they are choosing the lesser of two evils.**
- **The Law Commission had recommended in 1977 that duress be a defence to murder, and that recommendation was unimplemented.**
- **Ld Bridge thought it was up to the legislature to decide the scope of the defence.**
- **Hard cases could be dealt with by not prosecuting, the Parole Board or exercise of the Royal Prerogative of mercy.**
- **To allow the defence would destroy the ‘special sanctity that the law attached to human life and which denies to a man the right to take another’s innocent life even at the price of his own or another’s life’ as laid down in Dudley & Stephens.**

- **If self defence can be a complete defence to murder, why not this?**
- **The current approach does not take into account the age or influence of the duressor.**
- **Leaving it to sentencing is unfair and could lead to inconsistency for defendants.**

---

It requires an unreasonable approach from the person in the situation.
**Duress of Threats.**

**Remember:** Strictly speaking, to be liable in the criminal law, D has to have both a voluntary mens rea and the actus reus.

**So, what do we mean by ‘duress of threats’?**

Ok... a little scenario. For each bullet point, decide whether or not, using your common sense, I should be able to rely on a defence of duress and not and why.

Mr Button calls me into his office and tells me that if I don’t steal all the exam papers from the examination office in the next 24 hours, so that I can help all the Law students cheat and get fantastic grades, he will:

- Kill my sister?
- Take my ID card from me and chop it up in front of me?
- Ban me from drinking coffee for the next 6 months?
- Break both my legs?
- Rather than telling me to steal the papers, Mr Button tells me to do everything in my power to make sure that the Law students do brilliantly or he’ll break my legs. I decide to steal the papers.
- Threatens to shoot three people passing the school, (and he’s a good shot!) if I do not steal the papers
- Tells me that I have two months to accomplish the theft, or he’ll kill me
- Tells me he’ll kill me, but as I am mentally disordered, I do not realise that he is joking and think that he is acting on behalf of the little green men who talk to me, and steal the papers.

**So, what rules can you work out on the basis of this?**

According to Lord Bingham in Hasan (Z), there are seven limitations on the use of duress:
What have the Courts got to say about this?

**Key rules:** let’s make it clear that the threat must be **serious, unavoidable** and **imminent**, as well as **not being self-induced**.

Aside from that, to decide if D is actually operating under duress, we have to apply the following test:

**R v Graham 1982**

**Facts:**

**Ratio:**

1. Was D compelled to act as he did because he reasonably believed he had good cause to fear serious injury or death as a result of what X says or does; and

2. If so, would a sober person of reasonable firmness, sharing the characteristics of D have responded in the same way.

**Student Thinking:**

- It was a case of murder, so why was Graham even able to argue duress?

- One of these branches is subjective... and one is objective – can you spot which is which?

- What problem(s) can you spot with the test so far?

- What kind of characteristics might affect D’s perception of a duress?

**Apply the Law:**

| James steals a diamond ring, claiming he was threatened with breaking his legs by his elderly grandmother, who is confined to a wheelchair | Adam robs a bank after Jill threatens him with a gun, claiming she’ll pull the trigger if he doesn’t. | Ida is told by Joey, the local thug, to steal her mum’s car. He is joking, but she steals it anyway. |
1. More on what the courts think of the subjective branch of the test....

Although this was supposed to be a subjective branch, the Court seemed to have slipped up because it mentions the word __________________. So, over the courts to see what happens next!

Martin (DP) 2000

Facts: 
D was suffering from schizoid affective disorder, which meant that he regarded unthreatening things as threatening.

Ratio: 
He claimed that he was forced by 2 men on the estate where he lived to rob.

The trial judge held that the disorder was only relevant to the second branch, as the first branch used the word:

D appealed on the grounds that....

Does the threat even need to exist?

Cairns 1999

Facts: 

Ratio: 

Note: this is not a case of duress of threats, but of circumstances... but the same rule would apply!

So, that's nice and clear huh?

Well, go on, guess what I am going to say now! Yup, you guessed it... it's not that straightforward. In one of the most recent key cases on duress, the Court of Appeal seemed to muddy the water slightly..

Hasan 2005 says that D's belief in the threat must be both reasonable and genuine.

Can you spot the problem(s)?
2. **And now the objective branch**

So, the reasonable man must have responded in the same way, which limits the use of the defence to those occasions where he really should have an excuse.

However, according to the definition, the jury is allowed to take into account some of D’s *characteristics*. The question then becomes **which** characteristics are allowed in?

**Bowen 1996**

**Facts:**

**Task:** Read the enclosed extract and complete the grid below:

<table>
<thead>
<tr>
<th>Characteristics Allowed</th>
<th>Characteristics Not Allowed</th>
</tr>
</thead>
</table>

1. What about **self-induced** characteristics e.g. drug taking, alcohol etc.?

2. Why do you think that the courts have created these exceptions?

3. Are they in line with the law on loss of control as a partial defence to murder? Why? Why not?
STUART-SMITH LJ:
The classic statement of the law is to be found in the judgment of the Court of Appeal in R v Graham [1982] ... But the question remains, what are the relevant characteristics of the accused to which the jury should have regard in considering the second objective test.

This question has given rise to considerable difficulty in recent cases. It seems clear that age and sex are, and physical health or disability may be, relevant characteristics. But beyond that it is not altogether easy to determine from the authorities what others may be relevant ... In the case of duress, the question is: would an ordinary person sharing the characteristics of the defendant be able to resist the threats made to him? What principles are to be derived from [the] authorities? We think they are as follows:

(1) The mere fact that the accused is more pliable, vulnerable, timid or susceptible to threats than a normal person are not characteristics with which it is legitimate to invest the reasonable/ordinary person for the purpose of considering the objective test.

(2) The defendant may be in a category of persons who the jury may think less able to resist pressure than people not within that category. Obvious examples are age, where a young person may well not be so robust as a mature one; possibly sex, though many women would doubtless consider they had as much moral courage to resist pressure as men; pregnancy, where there is added fear for the unborn child; serious physical disability, which may inhibit self protection; recognised mental illness or psychiatric condition, such as post traumatic stress disorder leading to learned helplessness.

(3) Characteristics which may be relevant in considering provocation, because they relate to the nature of the provocation itself will not necessarily be relevant in cases of duress. Thus homosexuality may be relevant to provocation if the provocative words or conduct are related to this characteristic; it cannot be relevant in duress, since there is no reason to think that homosexuals are less robust in resisting threats of the kind that are relevant in duress cases.

(4) Characteristics due to self-induced abuse, such as alcohol, drugs or glue-sniffing, cannot be relevant.

(5) Psychiatric evidence may be admissible to show that the accused is suffering from some mental illness, mental impairment or recognised psychiatric condition provided persons generally suffering from such condition may be more susceptible to pressure and threats and thus to assist the jury in deciding whether a reasonable person suffering from such condition might have been impelled to act as the defendant did. It is not admissible simply to show that in the doctor's opinion an accused, who is not suffering from such illness or condition is especially timid, suggestible or vulnerable to pressure and threats. Nor is medical opinion admissible to bolster or support the credibility of the accused.

(6) Where counsel wishes to submit that the accused has some characteristic which falls within (2) above, this must be made plain to the judge. The question may arise in relation to the admissibility of medical evidence of the nature set out in (5). If so, the judge will have to rule at that stage. There may however be no medical evidence, or, as in this case, medical evidence may have been introduced for some other purpose, e.g. to challenge the admissibility or weight of a confession. In such a case counsel must raise the question before speeches in the absence of the jury, so that the judge can rule whether the alleged characteristic is capable of being relevant. If he rules that it is, then he must leave it to the jury.

(7) In the absence of some direction from the judge as to what characteristics are capable of being regarded as relevant, we think that the direction approved in R v Graham without more will not be as helpful as it might be, since the jury may be tempted, especially if there is evidence as there was in this case relating to suggestibility and vulnerability, to think that these are relevant. In most cases it is probably only the age and sex of the accused that is capable of being relevant. If so, the judge should, as he did in this case, confine the characteristic in question to these.

How are these principles to be applied in this case? Miss Levitt submits that the fact that he had, or may have had, a low IQ of 68 is relevant, since it might inhibit his ability to seek the protection of the police. We do not agree, we do not see how low IQ, short of mental impairment or mental defectiveness, can be said to be a characteristic that makes those who have it less courageous and less able to withstand threats and pressure ... For these reasons, the appeal will be dismissed.
Other rules governing the use of duress as a defence...

How serious does the threat need to be?

Valderrama-Vega 1985 CA

Facts:
D imported cocaine from Columbia. He claimed that he only did so because he and his family had received death threats, they would disclose that he was gay and financial pressures.

The trial judge said that he could only use duress if death threats were the only reason for his actions.

Ratio:

Student Thinking (AO2):
Would the jury have been able to consider other threats if they hadn’t made death threats? Why?

Applying your understanding:
R v Singh 1973 argued that the threats to reveal his adultery were sufficient to argue duress. Does he succeed? Why/why not?

More recently, the Court of Appeal has held that pressure is not the same as duress in the case of A 2012.

Dao 2012

Facts:
D was a Vietnamese national, who met a woman at a bus stop. She offered to pay him to clean a factory. He agreed and was taken to the factory where he was locked in and prevented from leaving, cultivating the cannabis farm that was there.

D argued that the threat of false imprisonment should be sufficient for a defence of duress.
**Who can be threatened & you act to protect?**

The general rule is that D should be the one threatened.

However, case law does tell us that threats to those who D reasonably feels himself responsible for may also be included. Although, this is quite narrowly defined, it would clearly include:

How narrow is the list?

**Wright 2000**

**Facts:**

**Ratio:**

How has this developed?

A number of these cases are actually come from the duress of circumstances area...

<table>
<thead>
<tr>
<th>Case</th>
<th>Facts</th>
<th>Relationship?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Martin 1989</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conway 1988</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cole 1994</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Student Thinking (AO2): What if the threat is to a stranger?**

Jim wants someone to plant a bomb, but doesn’t want to do it himself. He grabs Bob and holds a gun to his head. Whilst Bob has the gun pointed at his head Fred walks by. Jim tells Fred to plant the bomb or he will kill Bob.

Is this sufficient? Would Fred have a defence if he planted the bomb?
What if D has the chance to get help or escape?

Well, common sense says:

**Reasoning:** if you can get help or escape you are not clearly not acting under ‘duress’ and certainly there is an argument that the threat level is also much lower, so you shouldn’t be able to argue duress.

This approach is illustrated in Gill 1963

**Facts:**

**Ratio:**

But: what is the help is of no help... do you still have to get it?

However, the courts have seemed to take a little more pragmatic approach in the following case,

R v Hudson & Taylor 1971

**Facts:**

**Ratio:**

**But:** the court’s decision in this case was quite heavily criticised in Hasan 2005, and it is now doubtful that D would succeed in arguing duress in similar situations

**Student Thinking:** Why might the current approach of the court prove unfair to battered spouses or children?
How close do the threat and the action need to be?

The question here is whether the threat should be **imminent** or **immediate**

What's the difference between the two words?

**Rule:** The threat must be **operative** at the time the crime is committed. **However,** it is not necessarily one that has to be carried out immediately.

**Abdul-Hussain 1999**

**Facts:**
DD were Shiite Muslims who fled from Iraq to Sudan and feared being sent back. They hijacked a plane, eventually went to UK.

The trial judge thought that the threat was not sufficiently ‘close and immediate’ to give rise to a ‘virtually spontaneous action’ and thus no duress.

**RULES:**
1. Imminent peril of death or serious injury to those D is responsible for.
2. The peril must be operative on D’s mind at the point of committing the act, such that it overbears their will. [this is judged by the jury]
3. Not necessarily immediate execution.

This was confirmed by the House of Lords in **R v Safi**

**Facts:**

**Ratio:**

**Guess what?**
In the later case of **R v Hasan (Z),** Lord Bingham uses the phrase “D reasonably expects to follow immediately or almost immediately”.

**Why might this cause confusion for the courts?**
A specific crime must be mentioned

This applies to duress of threats only.

A general threat to do something is not sufficient. Which one of the following statements would have a defence of duress of threats?

- Bob threatens me with the death of my granny unless I steal a school laptop
- Bob threatens me that unless I give him the money I owe him, he will kill my granny.

What's the justification for imposing this limitation?

<table>
<thead>
<tr>
<th>R v Cole 1994</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facts:</td>
</tr>
</tbody>
</table>

What problems does this approach incur?

Well, look at the following facts, from another type of duress, and explain the problem.

D had been drinking in the pub, and his friend Y offered to drive him home. D fell asleep in the car, and woke up to find that Y had vanished. He leaned over and pulled the car over to the side of the road, when he was arrested for drink driving.

The problem is...
What if you put yourself in a ‘duress’ situation?

‘Self-induced’ or ‘Voluntary’ duress

This means where D puts themselves in a position where they are likely to be subject to duress or threats e.g. gang member.

Think: which case(s) have we already looked at where this may be an issue?

Key Rule:

If D is aware that he may be put under duress to do acts, then he can’t use it.

It means that if you voluntarily put yourself in a position where you know you might be threatened with violence to commit a crime, you cannot plead duress!

Why do you think that this rule exists?

Sharp 1987

Facts:

D was the bagman for a gang who robbed Post Offices. D claimed that he wanted to stop and was threatened with injury if he stopped. In the last robbery, the postmaster was shot dead.

*Key Case*

Ratio:

The rules governing gang membership were also laid out by Lane LCJ (in the ratio)

1. D voluntarily joins criminal gang likely to use violence
2. D knows the nature of the gang
3. D puts himself in a position where he knows that it is likely that he is subjected to violence or threats of violence
4. D was under active membership when put under pressure.

How far does the rule extend?

Shepherd 1987.

Facts:

On what grounds do you think the court distinguished this case from Sharp?
What if you’re not a gang member... you just hand around with bad ‘uns?

Q: Did you really think the court was going to allow them a defence?!
A: Voluntary duress also includes those who put themselves in a situation where they are likely to be threatened. [or in posh words ‘consort with those with a propensity for violence’]

Heath 2000

Facts:

Ratio:
Defence of duress was denied and conviction upheld.
This is because he voluntarily put himself in a situation where he knew he might be threatened.

Hasan (Z) 2005

The facts:

3. ... The defendant had worked as a driver and minder for Claire Taeger, who ran an escort agency and was involved in prostitution. In about July or August 1999, according to the defendant, Sullivan became Taeger’s boyfriend and also her minder in connection with her prostitution business. He had, the defendant said, the reputation of being a violent man and a drug dealer.

... 7. ... The defendant admitted ... that he had forced his way into [a] house ... armed with a knife, and had attempted to steal the contents of [a] safe, but claimed that he had acted under duress exerted by Sullivan, who had fortified his reputation for violence by talking of three murders he had recently committed. On the day in question, the defendant claimed he had been ambushed outside his home by Sullivan and an unknown black man whom he described as a ‘lunatic yardie’. Sullivan demanded that the defendant get the money from the safe ... and told the defendant that the black man would go with him to see that this was done. Sullivan said that, if the defendant did not do it, he and his family would be harmed. The defendant claimed that he had no chance to escape and go to the police. The black man drove the defendant to the house and gave him a knife, saying that he himself had a gun. The defendant then broke into the house ...

Ratio: The Court of Appeal quashed the conviction, but sent it on to the HL for appeal, who reinstated his convictions, and said that duress is excluded where “as a result of his voluntary association with others :

“he foresaw (or possibly could have foreseen) the risk of being then and there subjected to any compulsion by threats of violence.”

However, Lady Hale wasn’t so happy with it...
Student Task: Applying the decision in Hasan

This case, as you have seen, has also commented on a number of other areas of duress. Use your understanding of the topic so far and your notes to complete the table below, outlining what they have to say.

Some of you will be able to comment on the approach of the CA and whether you agree or not.

<table>
<thead>
<tr>
<th>Area</th>
<th>Comment</th>
<th>Your opinion</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Ali 2008
Fact:  
Ratio:

Mullally 2012
This is a slightly odd case, as D was not using duress as a defence, but rather as mitigation in sentencing. He had been convicted of robbery, and claimed that he had done so due to threats from his drug dealer. The obiter of the court, though, is still very useful in this area:

“Increasingly the court see that those who have allowed themselves through drug addiction to acquire a debt to criminals who ... supply class A drugs in particular are brought under pressure to commit offences of one kind or another. Those who are in that position must realise that that kind of excuse cannot radically affect the sentence to be passed on them if they offend, particularly if they offend in such a way as this.

Offences causing intrusion into homes, offences of robbery with violence to the individual, offences which are bound to affect in an important way other people, cannot be excused to any significant extent by the fact that the offender has permitted himself to fall into debt and chooses to pass on the pain in this kind of way.”
Duress [2]

Duress of Circumstances

This is a recent development in the law (honest! Twenty years ago is fairly recent in the law!!).

This is where the threat arises as a result of the **circumstances** that D finds themselves in, rather than from a single identifiable person.

*Warning: this is often talked about with necessity.*

---

**So, why wasn't duress of threats enough?**

Remember the drunk driver? Well, *Kitson 1955* (the case) seemed to show that there was a loophole in the current approach to attempts...

---

**Why couldn't D rely on duress of threats?**

---

**Willer 1986**

D was charged with reckless driving. D&X were in a narrow alleyway and were surrounded by youths. To escape they drove on the pavement slowly (at about 10MPH). As they were good citizens, they went to the police station to report the incident and guess what... they arrested and charged!

“[D was] wholly driven by force of circumstances into doing what he did and did not drive the car otherwise than under that form of compulsion i.e. under duress” Watkins LJ

**Note:** the term ‘duress of circumstances’ was **not** used by the Court of Appeal, they simply seem to have taken a broad, inclusive interpretation of ‘duress’

---

**Conway 1988:** The first case to use the phrase!

**Fact:**

**Ratio:**

CA quashed his conviction, stating that D was able to rely on duress, if objectively, acting to avoid a threat of death or serious injury.

They considered themselves bound by *Willer*, and said that the facts amounted to duress of circumstances; that duress is an example of necessity and whether its called duress or necessity doesn’t matter.
R v Martin (Colin) 1989

Facts: 

Ratio: 
Said that the defence of duress of circumstances did exist, and that the test was the same as for duress of threats [Graham]

Thinking: What have these cases all got in common?

So it cover other offences?

R v Pommell 1995

Facts: 
Police found D in bed at 8am with a submachine gun against his leg. D said that he had taken it off another Who had threatened to do harm with it. D said he planned To get his brother to give it to the police in the morning.

Ratio: 

CHARGE: possessing a prohibited weapon.

What if there was no 'real' threat?

Can D still rely on duress of circumstances? The important thing is that D reasonably believed that such a threat existed, not that it actually existed.

Cairns 1999

Can you name any duress of circumstances cases we have already covered?
Applying your knowledge
from Martin's Criminal Law

**Student Task:**
For each of the following, say whether D can rely on a defence of duress, and why:

1. Clancy is threatened by Neil, a fellow employee, who tells Clancy that he will tell their boss about Clancy’s previous convictions for theft. Neil says that Clancy has to help him shop lift from a small corner shop by distracting the counter staff whilst Neil steals. Clancy feels obliged to do this as he does not want to lose his job.

2. Joseph, who is of a timid nature and low intelligence, is told by Katya that she will beat him up unless he obtains good by for her from a shop using a stolen credit card. He does this and obtains a DVD player for her.

3. Natasha’s boyfriend, Ross, is a drug dealer. She also knows that he has convictions for violence. He threatens to beat her ‘senseless’ unless she agrees to take some drugs to one of his ‘customers’. She is caught by the police and charged with possessing drugs with intent to supply.

4. Sanjeet’s wife has tried to commit suicide previously. She is very depressed because they are heavily in debt. She tells Sanjeet that she will throw herself under a train unless he can get the money to pay off the debts. Sanjeet obtains the money by robbing a local off-licence.

5. Tamara is due to give evidence against Alexia’s boyfriend who is facing trial for attempted murder. A week before the trial is due to take place. Alexia sends Tamara a text message saying that Tamara will be killed if she gives evidence. Tamara attends the court but lies in evidence saying, untruthfully, that the man she saw was much shorter than Alexia’s boyfriend.
### Does the law actually work?

For each of the following areas, identify some of the issues (remember that this can be positive or negative) with that point. Aim to be as **precise** as possible, and remember you will need to refer to these in considering AO2.

<table>
<thead>
<tr>
<th>Area</th>
<th>Explanation</th>
<th>Cases to illustrate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not available for murder</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No allowances for low IQ</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police Protection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Self-induced</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duress of Circumstances</td>
<td></td>
<td></td>
</tr>
<tr>
<td>'Person D feels reasonably responsible for'</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Imminence or immediate?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Alternatives... a new way forward?

- Well, the first option is to change the **impact** of a defence of duress, from a complete acquittal to a mitigating factor.
- Get rid of duress by circumstances - it is an anomaly and really already covers areas included in necessity.
Being made to do a crime

When someone gets involved in a killing because they feel they have to or else they will be killed themselves, this is called duress.

Like when a man gets into a taxi and holds a gun to the driver’s head and asks to be taken somewhere so he can kill another person. The taxi driver might feel he has to take him or he would be shot.

If the taxi driver did as he was told and the gunman shot someone dead, at the moment both the gunman and the taxi driver would be charged with murder.

They could both get life in prison.

The Law Commission don’t think this is fair because the taxi driver only did what the gunman said as he thought he would be shot if he said no.

What should be changed?

The Law Commission think that if someone is involved in a killing because they were made to, like the taxi driver, then they should not go to prison for murder or even attempted murder.

But a jury would have to believe that they really were afraid they would be killed themselves and had no chance of calling the police.

The jury would also have to believe that anyone would have done the same thing and not fought back because it was just too dangerous.

or... if you want a little more detail try: http://lawcommission.justice.gov.uk/docs/lc304_Murder_Manslaughter_and_Infanticide_Report.pdf
Duress [3]ish

**Necessity**

This is also known as the choice between "two evils". The choice means that a **worse** evil will not occur.

As I have now said about thirty times... it does overlap with the duress defences, and was thought not to exist at all in the criminal law for a number of years (and Miss H does not think that it does, but many others including her profs think it does!)

The courts were reluctant to recognise it within the criminal law...

**Classic statement of the law:**

**Dudley & Stephens 1884**

**Facts:**

**Ratio:** Coleridge LJ said that if they had allowed the defence of necessity, it would “be made the legal cloak for unbridled passion and atrocious crime”

[interestingly, their death penalties were pardoned & DD were released after only 6 months!]

**So when has it been recognised?**

Largely, the defence has evolved in the **civil** law, where it has been used in a number of very controversial cases concerning medical consent & necessity.

**Re F (Sterilisation)**

**Facts:**

**Ratio:**

“In many cases it will not only be lawful for doctors, on the ground of necessity to operate on or give other medical treatment to adult patients disabled from giving consent, it will also be their common duty to do so.” Brandon LJ

Firstly: Do you agree? Why? Why not?
Secondly: How has the law changed since then?

Ok, so to sum up: the judges had seemed to put a stop to it in the criminal law, but allowed it to develop in the civil law of medical consent. So, along comes a case which crosses the two:

Re: A (conjoined Twins) 2000

*KEY CASE*

Facts:

Ratio... or obiter?

Test for necessity:

Student Thinking: Can you use your understanding of the case to answer the following questions?

- What principle[s] underlie the use of necessity as a defence?

- What offences is necessity a defence to?

- Is this binding precedent on the Criminal Courts? Why/why not?

- Is the decision of the Court of Appeal a general one, applicable to all other cases?
The issue for the court was whether an act by the doctors which, while saving Jodie’s life, and although not primarily intended to kill Mary, would have that inevitable effect, would be unlawful or could be justified ... This led finally to a detailed consideration of the doctrine of necessity.

The Court’s approach was to accept that the doctrine of necessity, which in its related form of duress has been rejected by the House of Lords in Howe ... as a defence to murder, ... could nevertheless in the unique circumstances of this case be extended to cover the doctors’ intended action ... Robert Walker LJ concluded that in the absence of Parliamentary intervention the law as to the defence is going to have to develop on a case by case basis ... and this was an appropriate case to extend it, if necessary.

Ward LJ having identified the rationale of the rejection of the defence of necessity as one based on the sanctity of life, and having identified as the crucial question in this case the question posed by Lord Mackay in Howe whether the circumstances could ever be extreme enough for the law to confer a right to choose that one innocent person should be killed rather than another, held that ... the law should allow an escape by permitting the doctors to choose the lesser of two evils.

Brooke LJ carried out an exhaustive review of the jurisprudence ... From ... Stephen, he derived three necessary requirements for the application of the doctrine:

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

Given that the ... law pointed irresistibly to the conclusion that the interests of Jodie must be preferred to the conflicting interests of Mary, he considered that all three of these requirements were satisfied in this case.

How have the courts approached necessity since?

Shayler 2002

Facts:
D former member of MI5 who was charged with disclosing confidential documents contrary to the Official Secrets Act 1989, and D pleaded necessity. Was convicted at first instance and appealed.

Ratio:
“Apart from some of the medical necessity cases like Re: F, the law has tended to treat duress of circumstances and necessity as one and the same... The distinction... has correctly been by and large ignored or blurred by the courts.”

So, according to the CA, is there a separate defence of necessity in the common law?
Quayle 2005

Read the article on the cannabis case. Summarise the facts and ratio below.

<table>
<thead>
<tr>
<th>Facts</th>
<th>Ratio</th>
</tr>
</thead>
</table>

Cannabis pain relief appeal fails

The Court of Appeal has rejected a bid to permit the use of cannabis for the relief of chronic pain.

Three judges ruled against the argument that unlawful conduct could be “excused or justified by the need to avoid a greater evil”.

They also said necessity was no defence for using or supplying the drug.

The court dismissed appeals in six cases where people were given fines or suspended sentences after convictions for possessing or importing cannabis.

The court had been told that cannabis was more effective than conventional forms of pain relief and did not have the potentially serious and life-threatening side-effects of alternative treatments.

But the judges ruled that the defences of necessity or duress should be confined to cases where someone committed what would otherwise be an unlawful act to avoid “imminent danger of physical injury”.

Benefits 'outweighed'

Barry Quayle, 38, from Market Rasen, Lincolnshire, who had both legs amputated below the knee and suffered pain from damaged tissue and “phantom limb” sensation; Reay Wales, 53, of Ipswich, who has serious bone and pancreas conditions and Graham Kenny, 25, from Shipley, West Yorkshire, who has chronic back pain, all used cannabis for pain relief.

Anthony Taylor, 54, who ran a holistic clinic in King’s Cross, north London, attended by around 700 people with HIV/Aids or multiple sclerosis and May Po Lee, 28, also from London, a former employee of Mr Taylor, were convicted of importing the drug.

All had been given either a fine, community service or a suspended community sentence.

The judges also ruled that the defence of necessity should not have succeeded in the case of Jeffrey Ditchfield, of North Wales, who was acquitted of possessing the drug with intent to supply it to victims of serious and painful medical conditions.

Despite the decision, Mr Ditchfield cannot now be convicted of the offence.

Lord Justice Mance, sitting with Mr Justice Newman and Mr Justice Fulford, said the general prohibition on cannabis in the 1971 Misuse of Drugs Act showed that any benefits perceived or suggested for individual patients were regarded as outweighed by the disbenefits of allowing its use.

Dr Peter Maguire, Deputy Chair of the British Medical Association’s Board of Science said: “BMA research has shown that crude cannabis is unsuitable for medical use because it contains toxic components that are harmful to human health.

“However the potential for cannabis-based medicines to offer effective pain relief can not be overlooked and the BMA would like to see more research in this area.”

The judges have left open the possibility of an appeal to the House of Lords, because of the public importance of the issue.
R v Rodger (1999)

Facts

Ratio:

So, the debate over the extent to which it acts as a criminal defence continues...

- it does form the basis of a number of other defences such as self defence and certain statutory defences e.g. Criminal Damage Act 1971 s. 5(2)(b) which allows a defence to criminal damage where other property was at risk and in need of immediate protection, provided D’s actions were reasonable in all the circumstances.

- Its traditional role as a defence to motoring offences seems to be more freely accepted by the courts (See case below)

Pipe v DPP 2012

Facts:

D was driving his nephew to hospital. His nephew was 14, and had broken his leg in a football match, and was screaming with pain. D was driving at 70 mph.
Criticism of the law on necessity.

All of you should be able to complete each of the following sentences to demonstrate your critical engagement with the law on necessity as a criminal defence.  
Most of you should be able to make reference to a case to complete your explanation.  
Some of you should be able to develop a counter argument for most of your points.

<table>
<thead>
<tr>
<th>The defence is not based in the criminal law, but in the civil law...</th>
</tr>
</thead>
<tbody>
<tr>
<td>It shares too many similarities with other defences, which D should have open to them...</td>
</tr>
<tr>
<td>It conflicts itself on the law of murder...</td>
</tr>
<tr>
<td>The Law Commission “we are... unprepared to suggest that necessity should in no case be a defence...”</td>
</tr>
<tr>
<td>But, in LBC v Williams (1971) Denning LJ “necessity would open a door which no man could shut”</td>
</tr>
<tr>
<td>It isn’t actually a criminal defence at all!</td>
</tr>
<tr>
<td>It is too similar to duress to be a separate defence...</td>
</tr>
</tbody>
</table>
Angelo is having an affair with Beyonce, owes Colin money and is a member of a drugs gang run by Desmond. Colin tells Angelo that unless he repays the debt he will reveal his criminal activities to the police. Angelo robs a shop to pay the debt. Desmond e-mails Angelo from Italy and orders him to beat up Ethan, an addict who owes Desmond money, or Angelo will be killed. Angelo goes to Ethan’s flat and beats him up. As he is leaving in his car, he sees Capone, a member of Desmond’s gang, sitting in the car behind. Angelo drives across a pedestrianised precinct to escape. When he gets home, Beyonce says she will harm Angelo’s child unless he kills his wife within the next week. Angelo puts poison in his wife’s drink.