

GCE

LAW: NECESSITY DEFENCES OF SELF DEFENCE, DURESS AND DURESS OF CIRCUMSTANCES

CONSENT CASES
Brown and Others (1993)
R -v- Wilson (1986)



Necessity defences of self-defence, duress and duress of circumstances CONSENT

Brown and Others (1993)

Five homosexuals were indulging in sadomasochistic behaviour in the privacy of the home of one of the participants. This involved burning each other with metal wire and matches, applying stinging nettles to the genitals, inserting sharp instruments into the penises, whipping and caning. All the participants consented. No-one was injured and no-one needed any medical treatment for any infections.

They were convicted of s47 and s20 offences.

The appeal reached the House of Lords which upheld their convictions. They would not allow the defence of consent to be used for acts "which breed and glorify cruelty and result in offences under sections 47 and 20".

The House of Lords stated that consent could only be used as a defence to serious injury where certain exceptions arise:-

- Properly conducted games and sports
- Lawful chastisement and correction
- Reasonable surgical interference
- Dangerous exhibitions, etc

It should be noted that this is not an exhaustive list and has been extended to include tattooing, sexual relations, ear piercing, rough horseplay and male circumcision.

The Defendants appealed further to the European Court of Human Rights on the basis that Art 8 of the Convention provides a right to respect of a person's private life.

The ECHR stated that this right could be limited where it is "necessary in a democratic society" and upheld the decision of the House of Lords.

R -v- Wilson (1986)

The Defendant, at his wife's request and therefore with her consent, branded his initials on her buttock with a sharp knife which he sterilised over an open flame. This was done in the privacy of their home. The wife required medical attention for burns after the event and the husband was charged with a s47 offence. He was originally convicted on the basis of Brown but, on appeal, the Court of Appeal held that this fell under the recognised exception of tattooing and that this sort of consensual behaviour should not be criminalised.

Group Task

Compare and contrast the two cases above and:-

1. Suggest reasons, other than those stated, why you think the Courts reached the decisions that they did in each case.
2. Comment on the decisions that have been made by the Courts and whether you agree with them.
3. Comment on the exceptions that the Courts have set out for when consent can be used as a defence.