

Mock Trial Competition Case Materials 2019 Round 1

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The Law Society of Western Australia

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PD ACTIVE

The State of Western Australia v Maclean

Case Summary

The defendant is charged with grievous bodily harm under section 297 of the Criminal Code.

The victim is 19 years old and a professional basketball player. He was walking home from a night out with friends at the time of the incident. He stopped to talk to a girl he had seen at the party that night and to ask her out. The girl's boyfriend, who had also been at the party earlier, saw them talking and went up to the victim. Both men were intoxicated and behaved aggressively towards each other. The accused punched the victim and then ran away with his girlfriend. The victim fell to the ground and suffered injuries that resulted in him being in a coma for a week. He has been unable to play professional basketball since the incident.

It is a concession of the defence that the victim suffered grievous injury.

The defence also admits:

1. that both the accused and the victim were under the influence of alcohol; and
2. the accused punched the victim.

The Prosecution and the Defendant will receive:

1. Prosecution Notice
2. Legal Notes
3. Statement of the first witness for the prosecution, Aaron O'Shaughnessy (*male) [Victim]
4. Statement of the second witness for the prosecution, Jacqueline Garvey (*female)
5. Statement of Blake Maclean (*male) [Accused]
6. Statement of Denise Lu (*female) [Girlfriend of the Accused person]

*** Please Note**

The gender of each witness is fixed in order to avoid difficulties of references to "he/she" etc. Students playing the part of a witness are to adopt the role of male or female as indicated.

Criminal Procedure Act 2004

Prosecution Notice

Western Australia Criminal Procedure Act 2004 Magistrates Court at PERTH No: 0246 of 2019	Prosecution Notice	
Details of alleged offence ¹	Accused BLAKE MACLEAN	
	Date or Period 26 October 2018	
	Place Perth	
	Description Grievous Bodily Harm	
	Written Law Section 297 Criminal Code	
Notice to Accused	You are charged with the offence described above, or the offences described in any attachment to this notice. The charge(s) will be dealt with by the above Court.	
Accused's Details ²	Date of Birth 28 January 1999	Male/Female Male
	Address 17 Beauchamp Street, Inglewood	
Prosecutor ³		
Person issuing this notice ⁴	Full name Timothy St John	
	Official title Sergeant	
	Work address Perth Police Station	
	Work telephone (08) 9324 8604	
	Signature <i>T St John</i>	
	Witness's Signature ⁴	<i>Dhineas Q Butterfat</i> JP/Prescribed court officer
Date	This prosecution notice is signed on 14 December 2018	

Legal Notes

Grievous bodily harm is a crime.

Section 297 of the Criminal Code provides:

297. Grievous bodily harm

- (1) Any person who unlawfully does grievous bodily harm to another is guilty of a crime, and is liable to imprisonment for 10 years.

...

And:

248. Self-defence

- (1) In this section —
harmful act means an act that is an element of an offence under this Part other than Chapter XXXV.

- (2) A harmful act done by a person is lawful if the act is done in self-defence under subsection (4).

...

- (4) A person's harmful act is done in self-defence if —
 - (a) the person believes the act is necessary to defend the person or another person from a harmful act, including a harmful act that is not imminent; and
 - (b) the person's harmful act is a reasonable response by the person in the circumstances as the person believes them to be; and
 - (c) there are reasonable grounds for those beliefs.

...

And:

28. Intoxication

...

- (3) When an intention to cause a specific result is an element of an offence, intoxication whether complete or partial, and whether intentional or unintentional, may be regarded for the purpose of ascertaining whether such an intention in fact existed.

Definitions:

Chapter I — Interpretation

1. Terms used

...

The term *grievous bodily harm* means any bodily injury of such a nature as to endanger, or be likely to endanger life, or to cause, or be likely to cause, permanent injury to health;

...

Notes on Self-Defence and Intoxication:

The burden of proof is on the State to satisfy the court beyond reasonable doubt that Mr Maclean was not acting in self-defence. There is no onus on the accused person to prove anything.

The State can discharge its burden of proof by proving any one of the following three things beyond reasonable doubt:

(1) that Mr Maclean did not (subjectively) believe that it was necessary to touch or apply force to Mr O'Shaughnessy to defend himself;

OR

(2) that Mr Maclean's act of touching or applying force to Mr O'Shaughnessy was not (objectively) a reasonable response by him in the circumstances as he (subjectively) believed them to be;

OR

(3) that (objectively) there were not reasonable grounds for those beliefs.

If the State has proved any one of these things, (1), (2) or (3), beyond reasonable doubt then it has proved Mr Maclean's harmful act is not excused by the law as an act done in self-defence.

Intoxication is only relevant to an assessment of the belief held by the accused as to what conduct was necessary in his self-defence and as to the circumstances perceived by the accused.

The state of sobriety of the accused must be irrelevant to an assessment of the reasonableness of the accused's response.

...

A person who believes he or she is about to be attacked is not required to wait until a blow is actually struck. They can use force to forestall an attack: *Regina v Conlon* (1993) 69 A.Crim.R.92.

Zecevic v Director of Public Prosecutions (Vic) (1987) 71 ALR 641 per Wilson, Dawson & Toohey JJ and Mason CJ agreeing:

“It is whether the accused believed upon reasonable grounds that it was necessary in self-defence to do what he did. If he had that belief and there were reasonable grounds for it, or if the jury is left in reasonable doubt about the matter, then he is entitled to an acquittal”

As will appear, courts around Australia have consistently rejected the proposition that intoxication can mitigate the seriousness of an offence or reduce the offender’s culpability. An ‘out of character’ exception is acknowledged to exist, but it has almost never been applied. On the other hand, it is recognised that intoxication can be an aggravating factor where the offender is shown to have had foreknowledge of how he/she is likely to behave when affected by alcohol: *Hasan v The Queen* (2010) VSCA 352 at 21.

Statement of Aaron O'Shaughnessy

I, Aaron O'Shaughnessy, of 3 Daphne Street, North Perth in the State of Western Australia state:

1. I am a professional basketball player.
2. I was walking home from a party in Monger St, Perth. It was pretty late and my phone was dead and it's always hard to get a taxi in Perth.
3. I had been with my friends all evening. We met up around 5pm I think, it had been a pretty hot afternoon. We ended up at this party because my mate knows the owner of the house.
4. I saw a girl I recognised from the party standing out in the street. I started chatting to her and then asked her out.
5. Well, this guy came up and started abusing me. I asked him what his problem was and I told him he was smashed.
6. Then he suddenly punched me. The next thing I know, I woke up in hospital.
7. I didn't know who he was then.
8. To be honest, I can't really remember a lot of what he said. We had both had a lot to drink. He was just yelling a lot aggressively.
9. I only enjoy a drink during the off season. I wouldn't want to risk my place in the team.
10. Other guys are often jealous because I'm popular with the girls.
11. After that night I was in a coma for a week and now I have to wear a helmet. I haven't played pro basketball again yet.

Statement of Jacqueline Garvey

I, Jacqueline Garvey of 21 Monger St, Highgate in the State of Western Australia state:

1. I own and manage a fashion store in Subiaco and I am 41 years old.
2. On the night of 26 October I was sitting in my lounge room watching TV. It would have been about 10.30pm as I had just finished watching 'I'm Alan Partridge'.
3. I heard a commotion outside on the street. I went to the window and looked out and saw a couple of people standing under the street light across the road from my house.
4. I went out the front door and hid behind one of the front bushes near the letterbox to get a better look.
5. There was a tall young fella chatting to a girl who was wearing a really pretty blue top and jeans. She didn't seem to want to talk to him.
6. There was another young fella yelling and screaming at the tall man. He was walking towards the two under the street light and seemed unsteady on his feet. He was much shorter than the first man, about the same height as the girl.
7. Both men were very aggressive towards each other. There was a lot of yelling. I heard the taller man say something like 'smash' but I couldn't quite work out what it was.
8. Suddenly, the shorter man threw a punch at the taller one and hit him in the face.
9. The taller man fell back in a slump and hit his head on the pavement. He didn't move. The shorter man grabbed the girl and they both ran off.

10. I ran over to the man on the ground. He was unconscious. I put him on his side and ran back inside to get my phone to ring an ambulance.
11. The ambulance came and so did the police. I gave the police a description of the shorter man and the girl.
12. This is normally such a quiet area, it was really quite concerning and I was worried about that tall young man. I heard that he didn't wake up for a week.

Statement of Blake Maclean

I, Blake Maclean of 17 Beauchamp Street, Inglewood in the State of Western Australia say:

1. I am a third year university student and I am 20 years old. I am studying Business Management full time.
2. I like to keep my wits about me at parties and very rarely drink alcohol. In fact I've never been in trouble with the police before in my life.
3. I had been drinking all afternoon after my dog, Chloe, died. I was really upset about Chloe. She was my best mate. I had her for as long as I can remember.
4. Nothing much happened at the party. I didn't want to stay 'cos I was too upset about Chloe, so I left. I was pretty wasted and didn't really know what was happening.
5. I was at the party with Denise, my girlfriend.
6. I can't really remember leaving with Denise. I remember wandering around outside when I heard Denise's voice. She was calling me.
7. I walked towards Denise and saw a guy giving her a hard time. He wouldn't leave her alone. I yelled at him to get lost and to get away from her.
8. He started shouting at me and stuff. He looked as though he was going to hit me. He was puffing his chest up and saying he was going to smash me.
9. I threw a punch to protect myself. He was much bigger than me and I knew I wouldn't have a chance if he hit me first.
10. I didn't wait to see what he did after that, I just grabbed Denise by the arm and we ran off.

11. I didn't wait around to see if he followed me or not. Denise and I ran home. Denise was really upset. I remember being really scared.

Statement of Denise Lu

1. Blake Maclean is my boyfriend.
2. We've been together three years and two months. We met in high school.
3. On the night of 26 October, Blake and I were at a party in Monger St, Perth.
4. Blake was upset because his dog, Chloe, had died earlier that day. He loved Chloe. His sister told me they had been together 13 years. When Chloe died, Blake opened a bottle of scotch in her honour.
5. He drank all afternoon and was smashed by the time we got to the party.
6. I'd only had half a glass of wine at the party but I was enjoying it.
7. Blake didn't want to stay at the party. He was too upset about Chloe. He left without me. I was worried about him, so I left to go and find him and make sure he was ok.
8. I didn't know which direction Blake had gone, so I stood under a street light and called out for him.
9. This guy came out of nowhere and started talking to me. He was pretty drunk and started cracking onto me. I remember seeing him earlier at the party and my friends told me that he was a bit of a sleaze.
10. He stank of alcohol. He couldn't talk properly and he was staggering all over the place.
11. He kept calling me sweetheart and asking my name.
12. I said "*leave me alone*" and then Blake appeared.
13. He was yelling at the guy and told him to get away from me.

14. The other guy said he was going to smash Blake. I was terrified. He was so much bigger than Blake and looked really strong.
15. The big guy stood over Blake in a threatening way as though he was going to hit him. All of a sudden Blake hit him in the face, grabbed my arm and told me to run.
16. I didn't see what happened to the big guy after that, I just did as Blake said and ran. I was so scared. I thought the guy was going to come after us. We raced off together and went home where Blake helped me to calm down.