

Answers to practical exercises

Chapter 11: Legal Reasoning

Page 251: Hard cases

R v Dudley and Stephens

1. Whether necessity could be a defence to murder.
2. The legal rule was the law of murder: the unlawful killing of a human being under the Queen's Peace with intention to kill or cause grievous bodily harm
3. Three sailors and a cabin boy were shipwrecked and were adrift in an open boat 1600 miles from land. After they had been eight days without food, and six without water, the defendants decided that their only chance of survival was to kill the cabin boy and eat him. They did so.
4. The fact that if they had not killed and eaten the cabin boy, they all would have died anyway.
5. Necessity can never be a defence to murder. The sentence of death was later commuted to six months' imprisonment. Do you agree?

Re (A) (Children)

1. Whether medical necessity could be a defence to murder.
2. The legal rule was the law of murder: the unlawful killing of a human being under the Queen's Peace with intention to kill or cause grievous bodily harm
3. Conjoined twins 'Jodie' and 'Mary' joined at the lower abdomen. Jodie's heart and lungs provided oxygenated blood for both. Both would die shortly if nothing were done. If the twins were separated, Jodie had a good chance of life but the operation would kill Mary. The twins' parents opposed the application for religious reasons.
4. Whether it was better to permit both twins to die, or to kill one (who would have died anyway) to give the other a chance of life.
5. The least detrimental alternative was to allow the operation to proceed. Necessity was still not a defence to murder, but *Dudley and Stephens* could be distinguished in that there was no selection of the victim. The court expressly stated that this case creates no precedent for future cases. Do you agree?