

## Answers to practical exercises

### Chapter 11: Legal Reasoning

#### *Page 258: Speluncean Explorers*

Truepenny CJ: positivist

Affirmed the decision of the trial court but requested clemency. Felt the statute was against the conspirators. Did not reflect the statute itself. The appeal for clemency is an abandonment of the judicial role: acknowledging that the legal system was not really able to handle the complexities of the issue.

Foster: natural

Considers that if the case took place a mile beyond the territorial limits of a state, no one would pretend that the law of the state would be applicable to the case. Law is not absolute, and that when the normal rules of society break down, then the force of positive law disappears with it, and the law of nature takes over. Even though there is nothing in the wording of the statute that suggests self-defence, the exception of self-defence is accepted.

Tatting: positivist

Disagreed with Foster on the state of nature issue, but he agreed with Foster that there is value in the self-defence theory of self-defense. However, the conspirators acted 'willfully'. Considers that both perspectives (acquittal and conviction) have equally strong arguments and he cannot decide.

Keen: positivist

A harsh decision will force the legislature to reconsider the statute. The scope of the exception in favour of self-defense clearly applies to cases of resisting an aggressive threat to the party's own life. This case does not fall within the scope of the exception, since Whetmore made no such threat. Law can be enforced whether it is good or bad: Judges should apply the law and not their personal morals. It is not the judiciary's role to influence the legislature; that is for the people.

Handy: realist

Conscious of public opinion: the legitimacy of the judiciary derives from it reflecting the will of the people.