Criminal Law

Table of Contents

[Introduction 3](file:///C%3A%5CUsers%5CHyder%5CDownloads%5C942824%28Final%20Copy%29.edited.docx#_Toc4843715)

[Main context 3](file:///C%3A%5CUsers%5CHyder%5CDownloads%5C942824%28Final%20Copy%29.edited.docx#_Toc4843716)

[Conclusion 6](file:///C%3A%5CUsers%5CHyder%5CDownloads%5C942824%28Final%20Copy%29.edited.docx#_Toc4843717)

[References 8](file:///C%3A%5CUsers%5CHyder%5CDownloads%5C942824%28Final%20Copy%29.edited.docx#_Toc4843718)

# Introduction

Seven people sailed out on a charter boat and a thunderstorm struck the ship. Two crew member lost they are conscious and regained it after 2-3 days and found out that there was no food and water left with them. Due to extreme hunger and to survive they killed a crew member called Bacon. When they got rescued charge of Bacon’s murder has been made on four cast members under first-degree murder section 76,271,272,273,279 and 279.1[[1]](#footnote-2). But considering their situation they cannot be convicted as there was no appropriate chance of saving life except killing someone.

# Main context

**Issues**

In the above mentioned case five survivors on a boat were charged with first degree murder. They killed Bacon out of necessity as there was no food or drink left for them in the boat. If they boat members had not killed Bacon they would all have died of hunger and starvation. The boat members were compelled by the situation to kill someone for their own survival. The third defense is of necessity, when it becomes necessary for a person to kill someone to save himself is not an offence under law and can be used as defense to avoid prosecution. Captain Bob was knocked down by a thunder storm and after regaining conscious they could not remember who they are and were of view that they were any character from comic show. So it can be said that Captain Bob was not mentally sound and therefore lacks the guilty mind while committing murder. Five of the survivors were charged with murder except for Shannon. He was weak but slowly recovered during the trial. Shannon was kicked out from the show by her producer as she found out that he is not fit for the role.

**Effect of the relevant case law**

 Murder is defined in the law of Canada as culpable homicide. The definition of culpable homicide is incorporated under section 229 in- the criminal code of Canada[[2]](#footnote-3). Under the criminal code of Canada, a person is said to have committed murder when he became the reason to the death of another individual either with the intention to cause death or by intending to cause harm of such nature that will eventually result in death. Murder under the criminal code of Canada is of two types. Murder can either be of first degree or second degree. First-degree murder is where the killing is intentional and thoughtful. If the murder is of a peace officer it will amount to first-degree murder irrespective of the fact that the murder was not planned and thoughtful. Murder is considered to be a first-degree murder when death is caused to a person while obligating an offense under section 76,271,272,273,279 and 279.1 irrespective of the fact that the murder was not planned and deliberate[[3]](#footnote-4). All other murders except those categorized as first-degree murder will come under second-degree murder. However, the common law allows a number of defenses to criminal action that have been defined in the case law. As per the third defense where an accused person has no choice except committing a crime because the circumstances allow no other choice except committing the crime someone and according to this the four members of the cast cannot be guilty as they are compelled by the situation to commit the crime.

There is life imprisonment in Canada for committing murder either of first degree or second degree. The sentence of life imprisonment under this section is a minimum punishment. In the above-mentioned case, all the persons who were in the ship were convicted of the murder of first degree except Shannon. All the surviving members have conspired to kill Bacon and eat him up as there was no food left with them. But considering their situation they cannot be convicted as there was no appropriate chance of saving life except killing someone for others to eat. In the case, R. v. Magoon, 2018 SCC 14, [2018] 1 S.C.R. 309 a six years old was tortured by her father and stepmother to such an extent that she succumbed to her injuries and the court convicted her parents of first-degree murder[[4]](#footnote-5). To constitute the offense of murder there should be both actusrea and men's rea. The act must be voluntary and willful. They must have knowledge of the fact that they have been doing and the consequences of the same. Under section 16 of the criminal code of Canada, it has been stated that it is a person is unable to judge the nature of the act and the consequences thereafter due to mental disorder they are not criminally responsible because due to their disability they cannot differentiate between the right and wrong. As they do not have any guilty mind they are not criminally liable[[5]](#footnote-6).

**Witness for clarifying the issues**

Shannon can be called as a witness to clarify the issues. Shannon was not involved in the conspiracy to kill Bacon while others have actively participated in his murder[[6]](#footnote-7). He was against this act done by the rest of the members in the ship. Shannon can clearly describe to the court about the situation of the other members. How they were suffering from hunger and left with no other option except killing Bacon. The members were starving for five days as there was no food left with. The crew members decided jointly to kill Bacon in order to survive on his flesh. Shannon can show the real picture as to how much those people were bound to commit such an act in order to save them from starving that if such an act was not done they would all have died in the ocean[[7]](#footnote-8).

**Defense**

The four-member of the cast killed one crew member name Bacon as they did not have any other option. If my clients have not killed Bacon and eaten him then they might not have survived. There was no appropriate chance of saving life except killing someone for others to eat. As a defense I would argue on the basis on the law that is when a private person acting upon his own decisiontakings the life of a fellow person, his act can only be justified on the ground of self-defense against the acts of the person whose life is taken. They cannot be accused guilty because at the time they killed Bacon, but killed him under the pressure of necessity[[8]](#footnote-9).

An individual who, in order to escape death from hunger, killing someone for the determination of consumption his flesh, is guilty of murder; thoughduring the time of the act he was in such conditions that he believed and has justified ground for believing that it afforded the only chance of saving his life. Murder has been defined as “culpable homicide” in ss 229 to 231 of the Criminal Code of Canada. It explained that a person commits murder where they cause the death of another person either intentionally or intended to cause harm that the person knows that it might cause death and are reckless as to whether death results. However, the common law allows a number of defenses to criminal action that have been defined in the case law. As per the third defense where an accused person has no choice except committing a crime because the circumstances allow no other choice except committing the crime and according to this my clients cannot be guilty as they are compelled by the situation to commit the crime[[9]](#footnote-10).

# Conclusion

A charge is considered to be a first-degree murder when death is caused to a person while obligating an offense under section 76,271,272,273,279 and 279.1. irrespective of the fact that the murder was not planned and deliberate. The five surviving members except Shannon was charged with the murder of first degree as their act was seen as planned and deliberate with an intention to kill Bacon. But at the same time if they would have not killed Bacon then they might not have survived. The common law allows a number of defenses to criminal activity that has been defined in the case law. As per the third defense where an accused person has no choice except committing a crime because the circumstances allow no other choice except committing the crime and according to this the four members of the cast cannot be convicted.

# References

Baker, D. (2014). The temptation of provincial criminal law. *Canadian Public Administration*, 57(2), pp.275-294.

Garvey, S. (2013). Canadian Scholars on Criminal Responsibility. *Criminal Law and Philosophy*, 9(2), pp.351-364.

Husak, D. (2013). The Philosophy of Criminal Law: Extending the Debates. *Criminal Law and Philosophy*, 7(2), pp.351-365.

Kirton, J. and Madunic, J. (2009). *Global law*. 4th ed. Farnham: Ashgate.

Libman, R. (2014). *Canadian criminal law (ITLP401)*. 3rd ed. [Toronto]: Internationally Trained Lawyers Program, Faculty of Law, University of Toronto.

Melton, B. (2010). *The law*. 4th ed. New York: Chelsea House Publishers.

Proulx, M. and Layton, D. (2015). *Ethics and Canadian Criminal Law*. 3rd ed. Toronto: Irwin Law.

Reid, S. (2013). *Criminal law*. 5th ed. New York: Oxford University Press.

Scc-csc.lexum (2019). *R. v. Magoon - SCC Cases (Lexum)*. [online] Scc-csc.lexum.com. Available at: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17058/index.do [Accessed 30 Mar. 2019].

Thomas, G. (2010). *Cornerstone law series*. 3rd ed. [Adelaide]: Law Society of South Australia.

1. Baker, D. (2014). The temptation of provincial criminal law. *Canadian Public Administration*, 57(2), pp.275-294. [↑](#footnote-ref-2)
2. Husak, D. (2013). The Philosophy of Criminal Law: Extending the Debates. *Criminal Law and Philosophy*, 7(2), pp.351-365. [↑](#footnote-ref-3)
3. Reid, S. (2013). *Criminal law*. 5th ed. New York: Oxford University Press. [↑](#footnote-ref-4)
4. Scc-csc.lexum (2019). *R. v. Magoon - SCC Cases (Lexum)*. [online] Scc-csc.lexum.com. Available at: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17058/index.do [Accessed 30 Mar. 2019]. [↑](#footnote-ref-5)
5. Libman, R. (2014). *Canadian criminal law (ITLP401)*. 3rd ed. [Toronto]: Internationally Trained Lawyers Program, Faculty of Law, University of Toronto. [↑](#footnote-ref-6)
6. Thomas, G. (2010). *Cornerstone law series*. 3rd ed. [Adelaide]: Law Society of South Australia. [↑](#footnote-ref-7)
7. Melton, B. (2010). *The law*. 4th ed. New York: Chelsea House Publishers. [↑](#footnote-ref-8)
8. Kirton, J., and Madunic, J. (2009). *Global law*. 4th ed. Farnham: Ashgate. [↑](#footnote-ref-9)
9. Proulx, M. and Layton, D. (2015). *Ethics and Canadian Criminal Law*. 3rd ed. Toronto: Irwin Law. [↑](#footnote-ref-10)