The South Australian law on self-defence: Unworkable Quagmire or Unavoidable Necessity?

Self-defence is an important concept in the criminal law. Yet the present South Australian law on self-defence is perceived as unduly complex and very difficult to operate, especially in trying to explain it to juries in terms they can reasonably understand. This was emphasised very recently by Justice Gray in R v Dunn.

It would be appropriate as a research project to look at the background of the current law and why it is there, how it has been interpreted and applied in practice, some of the problems of law, policy and practice that have arisen and in particular is it even viable to explain the present law on self-defence to juries. This would require a detailed scrutiny of Court of Appeal judgments and directions by trial judges. It would then be useful to compare the South Australian law with the models interstate and in the UK and New Zealand. Finally, if the researcher identifies major flaws in the present law in South Australia, to make some suggestions for reform to address these problems. Alternatively it may be the present law despite its apparent complexity is unavoidable.

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Sentencing Possessors of Child Exploitation Material in South Australia: Informed Choices or Stab in the Dark, Potential Sexual Predator or Social Misfit?

The possession and distribution of child exploitation material is viewed with revulsion and has become disturbingly widespread with the internet. There is some indication that such offenders are not likely to escalate onto more serious contact offending but this assumption is now doubted. South Australian courts are regularly sentencing such offenders and initial indications are that there is a concerning lack of consistency in sentencing and a lack of proper distinction either in terms of the gravity of the offending or the degree of risk the offender poses to children and others. There has been no proper study of sentencing outcomes in South Australia to see what themes emerge as to the profiles of such offenders, the sentences they receive and the degree of risk they pose of more serious offenders. Are such offenders socially awkward misfits or potential sexual predators? Is imprisonment necessarily the best option for all offenders? Can the gravity of the crime and the degree of risk be identified to assist in tailored sentencing outcomes?

It would be appropriate as a detailed research project to look at these involved and topical issues by focus of the sentences in South Australia and to also look at sentences interstate and other studies (especially the most recent work from the AIC and to link background studies as to offenders with sentencing outcomes) and literature in the area. This will require a detailed scrutiny of sentencing remarks by SA trial judges.

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Can a psychologist change his or her spots? The Psychologist as an objective expert witness?

Expert witnesses play a crucial role in modern civil and criminal litigation. The strict role of the expert witness, even in an adversarial legal framework, is to provide objective and unbiased evidence to assist the court in the consideration and resolution of the issues before it. The expert witness should not be influenced by the interests or cause of the party calling them. However, it is debatable how practical or realistic it is for the expert to provide wholly impartial evidence and adopt a truly neutral role.

The expert is likely to be placed on a pedestal to provide meaningful and articulate evidence: an insight which is gleaned by virtue of their profession and position. Great weight is often attached to their evidence. However, what happens when the nature of the profession (for example, psychology, or psychiatry) commonly lends itself to an inbuilt bias that is at odds with their paramount role to provide objective and impartial assistance to the court? While witting biases can be explained through more overt and explicit influences, unwitting biases are those which can emerge in the expert’s mind, unbeknownst to them.

The preliminary role of the psychologist, or psychiatrist, is to diagnose; essentially, their profession and training requires them to profile their patients in an attempt to give the patients a functional label: for example, depressive, or suffering from social anxiety. The characterisation and subsequent classification of past behaviour, when given upon testimony, is likely to influence or frame their evidence in a certain way: perhaps justifying or excusing the actions of an accused, in psychological terms.

It would be important to explore the features of these professions (and more specifically the processes) which are vulnerable to lending themselves to an unwitting bias. It is not suggested that the psychologist has a vested interest in the portrayal of a patient in a certain way. Rather, the way in which they account for the state of mind of an accused involves steps which will have the intrinsic effect of creating a bias in their presentation of evidence: by the very virtue of their professional training.

A psychologist, in accordance with their role, training and dogma, is primarily concerned with their patient’s state of mental well-being. Is expert evidence, which is premised on the basis of an impartial and objective account, always compatible with the psychologist’s role and testimony in legal proceedings. That is, is the psychologist’s duty to their patient (professional capacity) and duty to the court (expert witness capacity) truly reconcilable, without the interference of unwitting bias?

Ultimately, the question becomes: what are the unwitting biases of the psychologist or psychiatrist expert witness? And further, how much weight can be given to the testimony and opinion of the expert in light of these biases? Given the apparent conflict between these roles, is it realistic or desirable in the present adversarial legal system to expect the psychologist or psychiatrist expert witness to discard unwitting biases and act as the truly neutral expert that is contemplated? Or are there alternative models that could be employed to reconcile the apparent conflicting roles of the expert witness?

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Company Brand Names: Continually Passed Off or Good Economic Business Strategy?
With the ever increasing globalisation of the world, passing off has become rampant. The legislation is only concerned with the reputation of a company within its own jurisdiction thus allowing for sharp business practices to occur. As successful brands are passed off and sold to an increasing market share with minimal brand name changes, how can business protect their reputation and integrity without proper unified law in worldwide?
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Reconciling the Impossible? Improving the Testimony and Situation of Vulnerable Witnesses in the Criminal Justice System whilst Maintaining the Defendant’s Right to Cross-Examination and a Fair Trial?
The South Australian Attorney-General on 29 November 2011 announced major measures to improve the way vulnerable witnesses engage with the justice system. The measures raised include new and alternative ways of taking and receiving evidence in criminal proceedings from children and people with an intellectual disability. The Attorney noted that there was understandable concern about the way vulnerable witnesses are currently treated in the criminal justice system and it was intended the changes would go at least part of the way to address the very real problems in the investigation and prosecution of such cases. The Attorney emphasised that the overall aim of these changes was to balance the legitimate interests of vulnerable witnesses whilst preserving the vital right of any accused to fair trial. This is no easy balance to maintain. Reforms in both South Australia and other jurisdictions are widely perceived to have had only limited success. It is suggested that it is the very nature of the adversarial criminal process and the role and purpose of cross-examination in such a system that is the underlying fundamental problem in relation to vulnerable witnesses. Confusion and conflicting accounts are often the basis for discrediting vulnerable witnesses in cross-examination who have unavoidable cognitive or developmental delays, such as children and intellectually disabled persons. This results in major problems in investigating and prosecuting offences, in particular sexual and serious violent offences, committed against vulnerable persons. What would be the benefits, for the vulnerable witness and the trial process, of taking one comprehensive account at the outset of the case from a vulnerable witnesses? Also, what obstacles must be overcome in order to successfully implement such a process? What measures, whether legislative or otherwise, can be taken in South Australia that will maintain the balance the Attorney spoke of and both improve the testimony and situation of vulnerable witnesses in the criminal justice system whilst maintaining the defendant’s right to cross-examination and a fair trial or is this ultimately a case of reconciling the impossible?
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