

*S v Zinn* 1969

Principle: Theory of Punishment

Facts: Accused committed multiple fraud and theft over 8 years.

Significance: Combination theory – triad of crime, the criminal and interests of society.

*S v Francis* 1994

Principle: Legality – criminal norm

Facts: Accused absconded from rehabilitation centre after Act changed regarding criminal norm.

Significance: No criminal norm = no prosecution or conviction.

*S v Masjya* 2007

Principle: Legality – Constitutionality of broadening definition of common law crime

Facts: Accused committed anal sex with 9 year old girl.

Significance: criticized judgment – Courts not there to make law. S 39(2) more applicable to civil law as criminal law protected by s 35(3) (l) and (n)

*S v Mshumpa* 2008

Principle: Legality – unborn child

Facts: Accused conspired to kill unborn child

Significance: Left broadening of crime to legislature.

*R v Dhlamini* 1955

Principle: Requirement of act.

Facts: Accused awoke from nightmare and stabbed victim No motive or volition.

Significance: Automatism – asleep – could not commit crime.

*S v Trickett* 1973

Principle: Legality – Sane Automatism

Facts: Accused had blackout while driving, swerved into car and killed driver.

Significance: a) if caused by mental disease, onus on defendant  
b) if caused by drowsiness etc – negligence  
c) if caused by involuntary induced state onus on prosecution. Accused must lay foundation with medical or expert evidence.

*S v Henry* 1999

Principle: Requirement of act – Sane Automatism

Facts: Accused shot ex wife and MIL after argument.

Significance: Accused must lay foundation if raises defence of sane automatism.

*Minister van Polisie v Ewels* 1975

Principle: Act – Omission – Legal Duty

Facts: Complainant was assaulted in charge-office. Police failed to protect.

Significance: Legal duty to act. Constitutional and statutory duty on police.

*S v Leeuw* 1975

Principle: Act - impossibility

Facts: Accused drove car without license. Lived in restricted area and restricted person Difficult to get license.

Significance: Inconvenience or difficulty does not constitute impossibility. Positive duty is requirement for impossibility defense.

Principle: Causation – casual link  
*S v Mokgethi* 1990

Facts: Accused shot deceased in bank robbery. Deceased had medical attention but died of septicemia 6 months later after ignoring medical advice.

Significance: *nova actus interveniens* – *causa sine qua non* needs *mens rea* and wrongfulness.

Dissenting judgments – perhaps adequate causation enough.

*S v Daniels* 1983

Principle: Causation – *nova actus interveniens*

Facts: Accused shot taxi driver in ear (fatal shot) after X shot driver in back (mortally wounded) Significance: criteria – failure of victim to adhere to medical advice, wound not lethal at the time & failure by victim not unreasonable according to his characteristics and convictions.

Factual causation – *condition sine qua non* – limit test by invoking consideration of fair & reasonable.

*S v Tembani* 2007

Principle: Causation – *nova actus interveniens*

Facts: Accused shot girlfriend in chest and calf. Received substandard treatment in state hospital and died 14 days later.

Significance: negligent treatment contributory cause but not absolute liability – not *nova actus interveniens*

*S v Fuzie* 2001

Principle: Unlawfulness – general

Facts: Regional magistrate exceeded speed limit to get to court on time.

Significance: *Boni mores* test for unrecognized grounds of justification, First determine definitional elements, then balance of reason for law and reason for transgression.

*R v Patel* 1959

Principle: Unlawfulness – Justification – Private defence

Facts: Accused shot deceased who attacked brother with hammer.

Significance: Same defense for another as for oneself. Don't be an armchair critic. Onus on state. Must not exceed bounds of justifiable homicide.

*Ex parte die Minister van Justisie: in re S v Van Wyk* 1967

Principle: Unlawfulness – Justification – Private defence of property

Facts: After constant burglaries, accused set shotgun booby-trap.

Significance: Private defence used as defence when protecting property

*S v Mogohlwane* 1982

Principle: Unlawfulness – Justification – Private defence

Facts: Deceased robbed accused of goods, threatened with axe. Accused ran for help and fetched knife. Approached deceased to regain goods, Stabbed deceased when threatened again.

Significance: Act of accused was part of defence. Questioned when attack completed – space, time & casual relationship. Onus on state to refute private defence.

*S v Goliath* 1982

Principle: Unlawfulness – Justification – Necessity

Facts: Accused threatened by Y to help kill Z. .

Significance: Compulsion valid defence to murder. No person values another's life more than own. Weigh up interests served and infringed.

### *R v C* 1952

Principle: Unlawfulness – Justification – Consent

Facts: Sleeping woman thought accused was her husband having intercourse with her. Significance: Consent requires willing mental state and specific.

Principles dealt with:

### *S v Mostert* 2006

Principle: Unlawfulness – Justification – Obedience to orders

Facts: Accused sent to take another traffic officer to superior and used force.

Significance: Requirements - 1) Order from superior 2) Duty to obey 3) No more harm than necessary 4) Order must not be manifestly unlawful

Balance obedience with *boni mores* of concept of justice and fairness.

### *S v Chretien* 1981

Principle: Unlawfulness – Justification – Intoxication

Facts: Accused drank at party. When leaving drove into people.

Significance: Justified defence but criticized because treated less harshly than sober person.

- 1) If so drunk movements involuntary 2) In exceptional circumstances, person can lack legal capacity 3) Specific intent theory rejected 4) Court should not lightly infer intoxication led to involuntary conduct.

Subsequent statutory offence under Criminal Law Amendment Act 1988

### *S v Eadie* 2002

Principle: Unlawfulness – Justification – Criminal Capacity

Facts: Case of road rage. After drinking accused attacked deceased viciously with hockey stick.

Significance: Non pathological criminal intent – onus on state but accused to lay foundation for defense. Subjective test – can distinguish between right and wrong (cognitive) but not able to control conduct (cognitive) NB - Accused can lack self-control when acting in state of automatism. No difference between state of sane automatism and non pathological criminal intent.

### *S v Masilela* 1968

Principle: Culpability – *mens rea*

Facts: Accused and another strangled victim. Believing him dead, set fire to house. Died from fire. Significance: Single series of an act with intent - Principle of contemporaneity

### *S v Goosen* 1989

Principle: Culpability – *mens rea*

Facts: Accused and 2 others in car. Stopped another car and one pointed gun at driver. Car started to move. Gunman jumped out way and accidentally shot driver.

Significance: Criticised judgment – material from result excluded intent.

### *S v Ngubane* 1985

Principle: Culpability – *mens rea* - *dolus eventualis* / *culpa*

Facts: Accused stabbed girlfriend 5 times. Pleaded guilty to culpable homicide. During trial judge change charge to murder.

Significance: Criticised judgment – *dolus eventualis* – unconscious negligence – *culpa* – conscious negligence

Objective *culpa* – measured against reasonable person Subjective *culpa* – measured against own capabilities.

Indeed possible to act negligently (which is required for culpable homicide) without having intention.

*S v Mthiza* 1970

Principle: Culpability – *mens rea* - *aberration actus*

Facts: Accused drinking with P. Quarreled, went to stab P, Wintervened and got stabbed. Significance: Judge refused to implement *versari in re illicita doctrine*. Minority judgment followed later

*S v Ntuli* 1975

Principle: Culpability – *mens rea*

Facts: Accused argued with older woman. Hit her twice after she attacked him.

Significance: 1) exceeds bounds of private defence – depends on *mens rea*. 2) Recognises awareness of unlawfulness as element of *dolus*. 3) Rejected 'partial excuse' rule.

Court simply applies ordinary principle of intent & negligence when exceeds bounds of private defence.

*S v De Blom* 1977

Principle: Culpability – *mens rea* - Ignorance of law

Facts: Accused took more money and jewelry abroad claiming lack of awareness of regulations. Significance: Rejection of 'ignorance of law is no excuse' = not apply to specific section or specific punishment. Only *dolus* when acts with full knowledge ( subjective test) or *culpa* when negligently failed to enquire about possible law (objective test)

*S v De Oliveira* 1993

Principle: Culpability – *mens rea* – Putative private defence

Facts: Accused and wife lived in crime area but house burglar proof. Employee knocked on gate with friends to gain access to his quarters. Accused fired six shots at 'unknown' people in manner they would be hit. Not even warning shot.

Significance: Objective test for putative private defence. Culpability of erroneous thought conduct was lawful is *dolus eventualis*.

*S v Lungile* 1999

Principle: Culpability – *mens rea*

Facts: Accused one of four robbers in shop. Policeman exchanged fire. An employee killed.

Significance: 1) not under duress 2) actively participated 3) knew 2 were armed 4) *novus actus interveniens* must be abnormal and completely different act.

*Goosen* not referred to – indicates wrongly decided.