

**PROVOCATION AS A PARTIAL DEFENCE IN MURDER : A STUDY ON ITS
APPLICABILITY IN RELATION TO THE BATTERED WOMEN
IN MALAYSIA AND THE UNITED KINGDOM**

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SEPTEMBER 2008

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ABSTRACT

In criminal law, provocation is a possible defence by excuse or exculpation alleging a sudden or temporary loss of control (a permanent loss of control is in the realm of insanity) as a response to another's provocative conduct sufficient to justify an acquittal, a mitigated sentence or a conviction for a lesser charge. Provocation can be a relevant factor on a court's assessment of a defendant's mens rea, intention, or state of mind, at the time of an act of which the defendant is accused. This paper aims to examine the differences between the laws of provocation in Malaysia as compared to United Kingdom and to identify whether the Court in Malaysia will accept "battered women syndrome" as an element to qualify for the defence of provocation. In completing the paper, library based method is adopted to collect and analyse data gained from various sources. The major statute analysed in this paper is the Penal Code of Malaysia and the Homicide Act 1957 of the United Kingdom. A hypothesis of various decided cases by the courts in the United Kingdom involving battered women suffering from battered woman syndrome was done according to the law of provocation in Malaysia. This is to make an analogy of the outcome of those cases should they were decided in Malaysia. To date, evidence of battered woman syndrome had not been sought to be admitted in a local trial proceeding. It remains a big question mark whether it will be accepted by the court in Malaysia should such evidence is adduce during trial. It is proposed that the court in Malaysia should consider such evidence as to protect those wives who had been battered by their abusive husbands and still remained in the household due to several reasons, but one day decided to retaliate when they could not take it anymore. Therefore, it is hoped that this research paper could be a catalyst to some legal revolutions in protecting the "victim" who killed their abusive partner as a means of retaliation and self-defence when they could not tolerate further abuse.

1.0 INTRODUCTION

In criminal law, provocation is a possible defence by excuse or exculpation alleging a sudden or temporary loss of control (a permanent loss of control is in the realm of insanity) as a response to another's provocative conduct sufficient to justify an acquittal, a mitigated sentence or a conviction for a lesser charge. Provocation can be a relevant factor on a court's assessment of a defendant's mens rea, intention, or state of mind, at the time of an act of which the defendant is accused.¹

In some Common Law jurisdiction such as United Kingdom, Canada and several Australian states, the defence of provocation is only available against a charge of murder and only acts to reduce the conviction to manslaughter.² In some states with Criminal Codes, such as the Australian states of Queensland and Western Australia, provocation serves as a complete defence to the range of assault-based offences.

In Malaysia, under the Penal Code, provocation operates as a partial defence to non-fatal offences as well as to murder. However, there are some technical differences between the defence of provocation in the context of homicide as opposed to the non-fatal offences.³

2.0 RESEARCH OBJECTIVES

The objectives of this research are :

- 2.1 To examine the differences between the laws of provocation in Malaysia as compared to United Kingdom.

¹ <http://en.wikipedia.org/wiki/Provocation> (Accessed on 15 July 2007)

² In Malaysia, manslaughter is termed as culpable homicide not amounting to murder, under section 299 of the Penal Code

³ Stanley Yeo, Neil Morgan, Chan Wing Cheong, *Criminal Law in Malaysia and Singapore*, (Lexis Nexis : Singapore, 2007) page 296

- 2.2 To identify whether the Court in Malaysia will accept “battered women syndrome” as an element to qualify for the defence of provocation.

3.0 HOMICIDE

Homicide is causing the death of a human being. What the offence will be, will depend on the mens rea that accompany the act. Higher degree of mens rea is required to constitute murder under section 300.

The killing of human being can be :

- a) Murder under section 300, punishable under section 302 of the Penal Code
- b) Culpable homicide not amounting to murder under section 299, punishable under section 304 of the Penal Code
- c) Causing death by negligence under section 304A of the Penal Code

3.1 Murder

Murder is defined in section 300 of the Penal Code. There are four limbs to section 300 :

- a) Doing an act with the intention of causing death
- b) Doing an act with the intention of causing bodily injury which the accused knows is likely to cause death
- c) Doing an act with the intention to cause bodily injury and the injury intended is sufficient in the ordinary course of nature to cause death
- d) Doing an act which is known to be imminently dangerous that in all probability, it will cause death or bodily injury likely to cause death and the accused commits the act without lawful excuse