

THE PLEA OF PROVOCATION
IN CRIMINAL LAW

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PREFACE

Defence of provocation is one of the several defence available for the accused in murder charges. The defence of provocation apply when the accused was deprived of his self-control as the result of grave and sudden provocation by the deceased. Before the court allowing the defence of provocation the court has to determine whether the provocation by the deceased is grave and sudden that it deprived the self-control of the accused. Thus, the test apply is the test of 'reasonable man'.

The uncertainty of the test of reasonable man cannot be used as a reason for saying that this area of law is quite unsatisfactory. One cannot denied that this objective test is the best test available for the court to determine whether there is provocation or not.

The purpose of the project paper is to study the defence of provocation available in criminal law and to analyse to what extend the court consider such act as provocation.

In the first chapter, it deal specifically with the ingredient of provocation required under section 300 of the Penal Code. The writer in analysing this section had refer to the India Penal Code which is *pari materia* with the Malaysia Penal Code.

The third chapter of this project paper deals with the burden of proof required from both the prosecution and the accused. Reference has been

CHAPTER I

THE PLEA OF PROVOCATION IN CRIMINAL LAW

1. General Introduction

Provocation is a defence to a charge of murder at¹ Common Law, entitling the accused to be convicted of manslaughter. These Common Law defence of provocation owed its origin to the growth by the late sixteenth century of a consciousness that different modes of inflicting death reflected different shades of moral culpability, and that each of the forms of killing these was prescribed an appropriate punishment.

By the first half of the sixteenth century the practice had evolved whereby one who killed in necessary and reasonable self-defence was permitted to go free. Devlin J., in what the Court of Criminal appeal described as a 'classic direction' as follow:

"Provocation is some act, or series of acts, done by the dead man to the accused, which would cause in any reasonable person, and actually causes the accused, a sudden and temporary loss of self-control rendering the accused so subject to passion as to make him or her for the moment not master of his mind"².