



Historic Special Committee

Background guide:

Agenda:

The Case of the Speluncean Explorers



Disclaimer:

The background guide is a compilation of various sources and scholarly work of various authors available to us through doctrinal and non doctrinal methods. The background is only a source of information to provide you all with basic guidelines to pursue your further research and is not a document in its absolute nature which covers up everything you need to know about the committee, kindly use this background guide as a premise to draw your future research. It is significant to note that this background guide does not reflect the personal ideology of the Executive board, Secretariat members, Mody School, IPSC or any authorities concerned with the conference; the background guide is a document prepared in the best academic interest of the conference.

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LETTER FROM THE CHAIRPERSON'S DESK-

Greetings Delegates!

It gives me immense pleasure to welcome you to MS-IPSCMUN 2022. With a full heart I announce our committee as the "Historic Special Committee", which is to be led by Ms. Hiya Sanganeria (Chairperson), Ms. Muskan Rewar (Vice- Chairperson) and Ms. Nishita Mittal (Rapporteur).

We heartily welcome you to this esteemed forum in order to discuss the famous hypothetical case of the Speluncean explorers and to come to a conclusive outcome for the same. This platform is to bring forth the arguments and opinions of different countries to express their views on the basis of the constitution of their respective nations and to see where they stand on the issue of cannibalism. Keep in mind that this is not a decision-making body. The primary aim would be to discuss the crux of the problem and formulate an efficient procedure to deal with similar cases. The delegates can use this platform to come up with comprehensive solutions that are to be devised with the view that they are to serve as a uniform reference to related cases that may arise in the unforeseen future.

The issue of cannibalism is a very complex one, specifically in exceptional circumstances like that in the hypothetical case where survival of the parties is at stake. There have been numerous discussions and judgements with regard to this and it has caught the limelight as it poses a question on the underlying principles of the statutory criminal laws. The Executive Board merely urges you to examine this issue from different angles and prepare resolutions, keeping in mind the interest of the public and their basic rights. This committee simply calls for an in- depth research of the case and the related statutory laws prevalent in different countries . We hope that this committee stimulates your legal aptitude and solution oriented thinking.

This background guide lays out the prime facts and subject matter of the case .The purpose is to serve as a starting point for more detailed research.

Conclusively, we hope participating in this committee broadens your horizons, increases your knowledge and most importantly becomes a part of your best memories. Until then we bid you a fond adieu and wish for your happy learning.

For any queries feel free to contact the Executive board.

Best Regards

Hiya Sanganeria

Chairperson HSC

Director General MS-IPSCMUN 22

POSITION PAPER GUIDELINES-

The position paper is an opportunity for delegates to summarise their research in preparation for the conference.

Delegates are strongly encouraged to write the position paper on each topic.

Your position paper must contain your country's stand on the issue being discussed and how these ideas facilitate in the making of a firm judicial precedent that can be uniformly referred to by all, to effectively resolve similar, theoretical cases that may arise in the unforeseen future.

Below is the general structure for papers that can be adapted depending on your country and committee :

- I. Topic background: include a brief summary of the topic and outline your country's past involvement and experience with the issue.
- II. Country stance : explain your country's policies and position on the issue , including relevant statistics and research.
- III. Proposed solutions : propose and provide further details on possible solutions and identify and analyse potential drawbacks. Remember that your solutions should reflect your country's policies.

Delegates should write one position paper per topic , with each paper a maximum of one page long (excluding the work cited page). The position paper must be brief, it should have a minimum of 500 words and maximum 1000 words.

No cover pages. All papers should be single- spaced with standard margins in Times New Roman 12pt font. Place the following in the top left hand corner of both your position papers : committee, country, delegate's name, school, and topic. All sources should be appropriately cited.

Position paper should be submitted to- hscpscmun.modyschool@gmail.com

Either as a word document or PDF to the above-mentioned email by 15th November,2022. Please title the email in file with your committee's name and country. Delegates who do not submit the position paper will be ineligible for awards. Questions regarding position paper should be directed to the above-mentioned email.

The format should be as follows:

POSITION PAPER

HISTORIC SPECIAL COMMITTEE

Agenda: The Case of The Speluncean Explorers

Country:

(CONTENT)

INTRODUCTION-

The Speluncean explorers case is a fictitious case by a renowned professor, legal philosopher and jurist Lon Luvois Fuller. This exceptional case came forward in a book written by Fuller in Harvard Law Review in 1949. Largely taking the form of a fictional judgement, it presents a legal philosophy puzzle to the reader and five possible solutions in the form of judicial opinions that are attributed to judges sitting on the fictional "Supreme Court of Newgarth" in the year 4300. It is built around hypothetical facts and the *Constitution of the Commonwealth of Newgarth and its laws*. (A 'commonwealth' is a traditional English term for a political community founded for the common good, also, 'public welfare').

In the given case, the accused are charged and found guilty of murder, by the Court of General Instances. If their appeal to the Supreme Court of Newgarth fails, they face a mandatory death sentence. Although the wording of the statute is clear and unambiguous, there is intense public pressure to spare the men from the death penalty.

The case deals with various aspects of cannibalism, exception of self defence and revolves around theories like that of 'purposive approach', 'a new charter of the government' and abstract theories proposed by the distinctive hypothetical judges of the case. And while the conclusive judgement of the given case is quite firm the outcome thereafter has not been mentioned by Fuller. It has gained popularity within the corridors of law largely due to the complexity of facts and philosophical twists of judgments evident in the case.

This provides a scope for the predicament of various possible outcomes .

Besides, an interpretation of the case according to the contrasting constitutions of different nations is possible and judgements may also vary.

FACTS OF THE CASE:

In Newgarth, c. 4300, five men go exploring a cave and due to a landslide they are trapped in a remote area from the entrance. When they fail to return home, their families inform the *Speluncean Society* (an amateur cave-exploration organisation).

Following this, A huge and temporary camp of workmen and engineers is set up in the remote location of the cave as the task of rescuing the spelunkers proves one of great expense and difficulty. In addition to the Society's funds, it took an additional 800,000 'Frelars' (ie, the currency of the Commonwealth of Newgarth) which was provided by popular subscription and legislative grant to rescue the explorers. Repeated landslides occur in which ten of the rescuers lose their life.

On the twentieth day of their entrapment it is learned that the men in the cave have a similar wireless machine that is installed in the rescue camp. The men ask how long it will be until they can be freed. The engineers estimate that it might take at least another ten days, if no further landslides occur. The Spelunkers then ask for a physician and a committee of medical experts. They describe their condition and the rations they have, and then they ask for a medical opinion as to whether they are likely to survive without food for ten days longer. The chairman of the committee tells them there might be a possibility of their survival. The radio in the cave then goes silent for about eight hours.

When communication is restored, one of the explorers 'Roger Whetmore', speaking on behalf of himself and the others, asks the physicians if they might survive if they consumed the flesh of one of their number. The doctor reluctantly answers "yes".

- 1 Whetmore then asks if it would be advisable for them to cast lots to determine which of them should be eaten. No doctor is willing to answer.
- 2 Whetmore asked if there was a judge or other official of the government who would answer. None of those attached to the rescue camp was willing to assume the role of advisor.
- 3 Whetmore then asked if there was a priest or minister who would answer. Again "none was found who would do so."

No further messages are received from the men in the cave.

The men are finally freed on the thirty- second day, and it is revealed from their own testimony that on the twenty- third day, Whetmore had been killed and eaten by the other four. The remaining four are tried for murder. From their testimony, which was accepted by the jury, it appears that it was Whetmore who first proposed the idea of drawing lots determining that one of them should be killed and eaten and he also provided the dice which was to be used. But after an equitable method (method exhibiting equity) was devised, he withdrew from the arrangement just before the dice were to be cast, he declared that he intended to wait another week before undertaking this frightful expedition.

He was accused of a break of faith by the others and so the rest of the explorers proceeded to cast the dice. When the dice was cast for him, he was asked if he had any objections "to the fairness of the throw" and he



declared that he did not have any objections whatsoever. The result was that the throw went against him and **he was put to death and eaten.**

Timeline-

Early on (c. 4300, in Newgarth) - Five men stuck in a cave, where starvation was a possibility. Ten workmen from the rescue camp set up, killed due to landslides.

20th day- Two-way radio of sorts and oral communication was established and the spelunkers were informed by engineers that at least **10 more days** would be needed to rescue them. Meanwhile, a team of medical experts and physicians informed them that survival for a further 10 days was unlikely, due to lack of food.

When the spelunkers asked the physicians whether they would survive if they killed and ate one of their number, the physicians reluctantly advised them that they would. 'Whetmore', one of the spelunkers asked if casting lots (rolling a dice) as to whom should be eaten was advisable, no authority as such answered this query.

23rd day - The radio was turned off, and later a lottery was held which worked out the loser who was killed and eaten (an act of cannibalism). Whetmore had been killed and eaten.

32nd day - The Spelunkers are rescued and they are prosecuted for murder after being treated for injuries and shock.

**Similar, theoretical cases were prevalent even in prehistoric times and in the 17th century also, then it was a popular practice for the patients to consume human body parts as a form of medicine. The physicians at that time had not considered it to be an act of cannibalism.*

For example- The powdered remains of Egyptian mummies were prescribed to quell internal bleeding, blood clots, and menstrual issues etc. One of King Charles II's favourite homoeopathic potions, called "The King's Drops", was actually made of mixed powdered human skulls with booze (liquor).

*Thus, it becomes vital to examine the cannibalism related cases prevalent across the globe throughout history till date, so as to examine and compare the facts to that of the hypothetical case.**

JUDGMENTS-

In this 1949 case, Fuller presents five different fictitious judgments delivered by five presiding judges. Each of the five jurists had a unique philosophical approach in arriving at the final complex judgement. The complexity of circumstances surrounding the case made each of the judges explore how to precisely interpret the case according to provisions in the commonwealth law. In the long run, the judges arrived at different judgmental conclusions with each offering a variety of reasons behind their decisions.

The **statute that informed the judgement** for this case is the assertion that “Whoever shall willfully take the life of another shall be punished by death.” It thence, permitted the judge and jury no latitude in mitigation of the sentence. The above commonwealth law statute did not permit an exception despite the odd circumstances that surrounded the Speluncean explorer’s case. Upon hearing of their case, a positive conviction was arrived at, and the verdict of the trial was that they would be hanged.

Therefore, the defendants are **initially convicted** and sentenced to be hanged by the ‘*Court of General Instances of the County of Stowfield*’ as in **the Commonwealth of Newgarth**, a guilty verdict carries a mandatory sentence of capital punishment.

Fuller, however, furthermore in his writing presents an appeal situation for the case where opinions of five different judges are provided, wherein, after the declared judgement of conviction by a lower court, the Spelunkers bring a petition of error before the Supreme court.

The bench that reviews the case includes five judges (CJ Truepenny, J Foster, J Tatting, J Keen, J Handy); (*CJ- Chief Justice, J- Justice*), who proffer their varied opinions as to the verdict of the case :

CJ TRUEPENNY-

Chief justice Truepenny **upholds the conviction** .Even though the people may be sympathetic toward the situation of the defendants it is unreasonable to neglect the statutory provisions but he expects **executive clemency** to be given to the defendants.

He takes the viewpoint of an exclusionary legal positivist and plainly states that law is to be considered as law and the language of the statute is such that it does not permit any exceptions whatsoever, believing there was no choice but to uphold the conviction. In this way, he, as a positivist, shows complete and utmost regard for the law. That said, he was **sympathetic towards the accused** and states that, unlike the judges, the Chief Executive is not bound by the law and has complete power to pardon.

Therefore, suggests that the **Chief Executive can be instructed** to exercise clemency given the circumstances of this case to mitigate the rigours of the law. (*Clemency is essentially an act of mercy towards a criminal by someone in an authoritative position at their own discretion.*)

It is the process by which a Governor, President, or in this case, Chief Executive reduces the defendant's sentence or grants a pardon considering the specifics of the case at hand. Indeed, given the facts of the case, the



executive is likely to provide clemency, and the Court, according to him, should formally encourage the executive to do so.

J FOSTER-

Judge Foster argues against the judgement of CJ Truepenny. He in fact believes that **the spelunkers should not be convicted**. His reasoning is justified by the following arguments:

- The maxim '*cessante ratione legis, ceassat ipsa lex*' (the reason for a law ceasing, the law itself ceases; herin, as the spelunkers were outside of civil society, the law newgarth ceased to be applicable on them, and they consequently were only under the jurisdiction of natural law) applies. The law of the Commonwealth of Newgarth does not apply as the spelunkers were not being governed by it. They were said to be in a unique situation as they were not in a "state of civil society" (where human coexistence is possible) but in a "state of nature" (where human coexistence became impossible as survival of others was dependent on the killing of Whetmore).
- The fact that they existed outside the jurisdiction of civil society meant they operated under laws of nature and were ignorant to the laws of men as applied in civil societies.
- The agreement to cast lots was 'a new charter of government appropriate to the situation'
- The statutory interpretation identifiable as the 'purposive approach' is promoted
- What was done by the explorers was a matter of self defence for which exceptions are granted.

J TATTING-

Justice Tatting **recuses himself** from the matter stating that there is no way to distinguish the principles according to which the case can be decided in a free and rational manner. That said, he does criticise Justice Foster's natural law position.

He argued that if the defendants were right to kill Whetmore, then in a situation wherein Whetmore kills them in self-defence, pleading the same wouldn't get him acquitted. That, however, is inconsistent with the self-defence theory which is a legitimate ground for acquittal when self-defence is exercised proportionally and within limits. So, the theory of self-preservation being similar to self-defence and being a valid ground for acquittal must be wrong.

He also pointed out that Justice Foster fails to consider Whetmore's withdrawal which took place even before the dice was rolled. He points out that another reason for the failure of the self-defense point of view would be that murder requires a willful act whereas self-defense is an impulse. In this scenario, the accused acted in a wilful manner after prolonged deliberation and not impulsively.

To further substantiate his stance on Justice Foster's reason for acquittal being flawed, Justice Tatting cited the case of *Commonwealth vs Valjean (4291)* wherein the Court rejected hunger as a valid justification for stealing food and convicted the thief.

He questions the basis for convicting one man for stealing due to starvation and acquitting four men for murder

and cannibalism for the very same reason. Anguished by the moral and legal dilemma, Justice Tatting finds the case undecided and **withdraws from the decision of the case entirely.**



J KEEN -

Judge Keen J is of the firm belief that **the conviction should be upheld**. He states, 'judicial dispensation does more harm in the long run than hard decisions'. He comes to this conclusion by heavily criticising the inability of the other judges to separate their morals from their responsibility to abide by the law of the land (specially criticising the 'element of fantasy' in the judgement by Foster J). Also, the judges are to play no role in the decisions of the executive so as to not violate the separation of powers and thus executive clemency should not be affected by them. According to him, Chief Justice Trupenny requesting the Chief Executive to exercise clemency and pardon the accused is a violation of the judicial process.

That said, **he sides with Chief Justice Trupenny's opinion** on this case not being one of self-defence as he is of the opinion that the scope of self-defence is applicable only when the party is resisting an existential threat to their own life. Whetmore posed no threat to the lives of the accused and hence applying that theory here is a flawed approach.

The clear-cut principles of the constitution are to be taken strictly into consideration and **punishment to those who commit murder is necessary**. The judgement is one based on complete intellect and knowledge of the laws.

J HANDY-

According to J Handy **the defendants are innocent** and the conviction is to be set aside. Justice Handy **acquitted the accused explorers** and followed the **approach of legal realism** which was connected to common sense.

He appeals to public opinion and believes that the defendants should be pardoned. Justice Handy, through indirect means, learned that if the accused were found guilty, the Chief Executive would not commute the sentence.

In contrast, various public polls suggested that over 90% of the voters believed that the explorers ought to be pardoned and left off with a kind token as a punishment. He believed that **common sense dictated acquittal** and used the poll results to justify the same.

In his opinion, this matter required practical wisdom to be exercised with respect to human realities and not abstract theories.

CONCLUSION-

As it can be construed from the aforementioned decisions, the 5 judges have conflicting opinions on the situation and proceed to give an evenly divided judgement with one judge recusing himself from the case, 2 affirming the conviction, and 2 overturning it. According to the natural course of the judicial process, in situations of a tie, the original opinion is to be upheld.

So, the original justice of the *Court of General Instances* stood and the public executioner was directed to impose a **death sentence on the accused explorers**. Tatting J was asked by the Chief Justice whether he wanted to re-examine his position, but he declined and affirmed he would not participate in the case. Thus, after

Tatting J withdrew from the case, **the conviction was affirmed** by the bench of judges, as the previous judgement became applicable due to the impasse (stalemate).



THEMES AND SCHOOLS OF THOUGHT INCORPORATED IN THE CASE-

The case of the Speluncean explorers is a complex one and has many facets which require it to be critically analysed and looked into. Some predominant obstacles are :

Cannibalism:

The practice of feeding on human flesh is abolished and is punishable by law in the majority of the countries. Although cases of the same are still prevalent in some of them, and many have at the same time ambiguous statutes regarding the same as well.

Self defence:

It has been argued that cannibalism when performed under exceptional circumstances especially when survival is at stake is justified .It then becomes a form of self defence. This is justified as an exception under self defence (J Foster). One should be able to defend oneself from circumstances which are threatening to life and for that if resorting to cannibalism is necessary such an act should apparently be justified.

Argument against this exception: Excusing cannibalism on grounds of self defence is not justifiable as it usually includes murder which combined with cannibalism harms the peaceful coexistence of humans in a society. To provide an exception to such an act defies the very purpose of law itself which is meant to safeguard the rights of the citizens (e.g. the common principle of the Right to life).

Relevance of a 'purposive approach':

The basic purpose of any law is taken into regard to procure a rational judgement. The purpose is to reduce the loss of human life as much as possible, a law such as NCSA (Constitution of Commonwealth of Newgarth) 12-A, which states that "whoever shall willfully take the life of another shall be punished by death," fails to serve its underlying purpose. The act of killing and cannibalising Whetmore was not done willfully but was a compulsion given the circumstances. The utilitarian and moralistic natural law principle must be taken into consideration. Keen and Tatting recognize the purpose of the law as retribution, rehabilitation, and deterrence while Foster J recognizes the purpose to be quite straightforward – mitigating the loss of human life. The latter justifies the act of the spelunkers as their conduct was to alleviate the loss of human life while the former purpose focuses on a literal interpretation of the statute.

Irony-

J Foster points out that the value of a life seems to be overrated in this particular case. Consider the irony in this case, that in the rescue efforts to rescue five explorers ten rescuers lost their lives, so Justice Foster says those rescuers who went into the cavern to help the others knew the risks they were taking. He further goes on to

specify that, if we allow ten to die for the sake of rescuing five how is it that we can suddenly not allow for four (the accused) to live at the expense of taking one's life. Justice Foster in his third argument finds that this is a



case of self-preservation. Since it's a case of self-preservation we should employ the same logic as that is used in the case of self-defence in other words, we can acquit someone accused of murder if we realize that that person had no choice. It was an act of self-defense and therefore that kind of killing in self-defense is not murder.

SCHOOLS OF THOUGHT-

POSITIVIST SCHOOL OF LAW- Legal positivism is a theory wherein written rules, principles, and legislation that have been expressly recognised, enacted, or adopted by an authority like the government or any other political institution are considered to be the only legitimate sources of law. Justice Keen and Chief Justice Truepenny rely on this approach while deciding the case. Following this approach, they keep morality and personal feelings out of the decision-making process and simply apply the words enacted by the legislature in the form of the statute. Justice Keen even mentioned that if he were to take a decision in his capacity as a private individual, he would acquit the defendants but in his capacity as a judge, he has to apply the statute and hold them guilty.

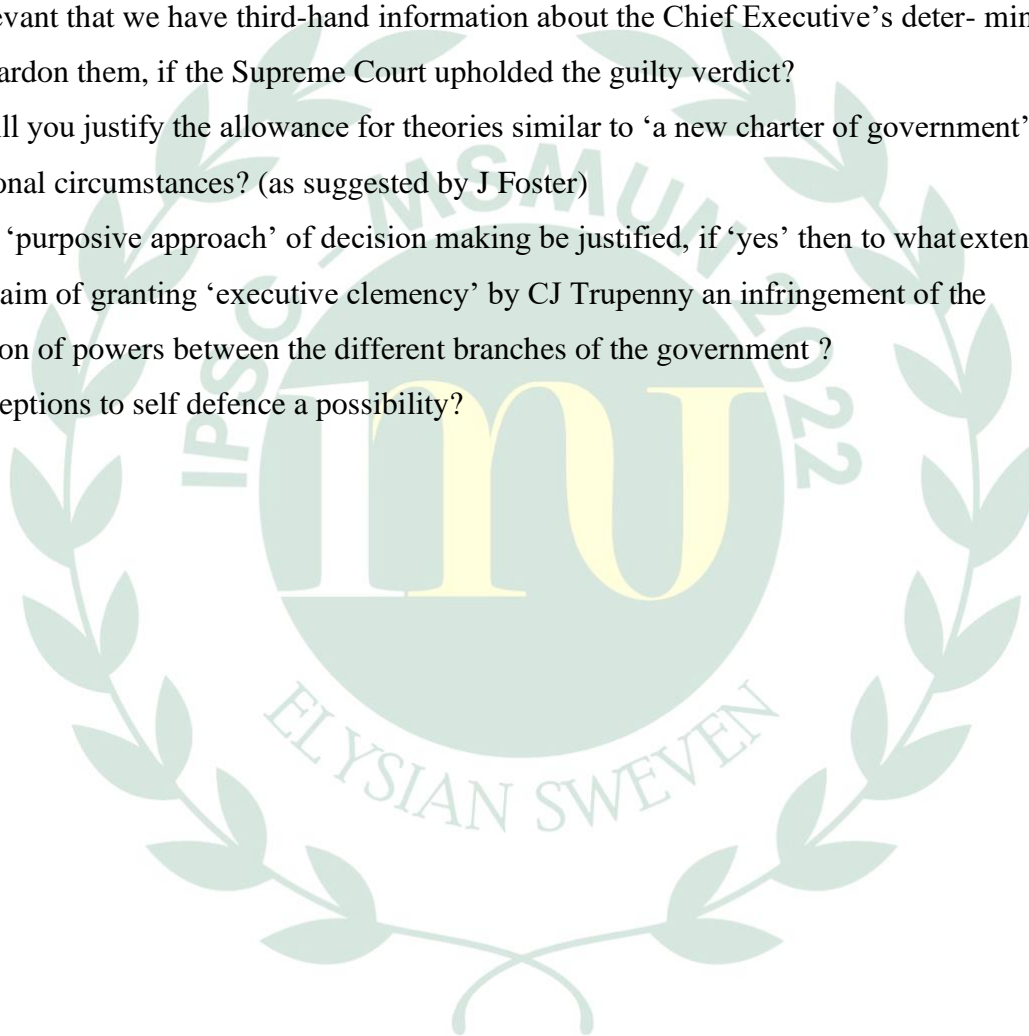
NATURAL SCHOOL OF LAW- The natural school of law, simply put, is the law of nature. Also referred to as divine law, this approach is based on the idea that a higher law based on morality exists which measures the validity of human law. According to this theory, law comprises a set of universal and eternal rules prescribed by an authority superior to the state. Justice Foster constructed his arguments on this basis.

LEGAL REALISM- Legal realism is an approach derived from the natural school wherein jurisprudence relies on empirical evidence. Here, emphasis is laid on the law as it actually exists instead of law as it ought to be. This theory suggests that law is derived from prevailing social interests and public policy so judges have to consider them while making a decision rather than relying just on abstract rules. Justice Handy employs this approach by appealing to public opinion and exercising practical wisdom.

LITERALISM- Literalism, simply put, refers to the interpretation of words in their literal sense. It can be construed as a subset of the positivist theory. Here, the contents of a statement are determined entirely by the rules of the language, irrespective of the speaker's intention. Justice Keen employs this approach and promotes the direct application of statutes with little to no judicial discretion or legal interpretation.

QUESTIONS A RESOLUTION MUST ANSWER-

- Did the men have any alternative?
- Is this case solvable if occurred in the modern world? If 'yes', arrive at a verdict, using the facts of matter at hand.
- Can a 'judicial precedent' be set by arriving at the verdict of this case?
- Is it relevant to finding these men guilty, and so condemning them to death, that ten men died trying to save them?
- Is it relevant that we have third-hand information about the Chief Executive's determination not to pardon them, if the Supreme Court upheld the guilty verdict?
- How will you justify the allowance for theories similar to 'a new charter of government' under exceptional circumstances? (as suggested by J Foster)
- Can the 'purposive approach' of decision making be justified, if 'yes' then to what extent?
- Is the claim of granting 'executive clemency' by CJ Trupenny an infringement of the separation of powers between the different branches of the government ?
- Are exceptions to self defence a possibility?



FURTHER READINGS-

<https://drive.google.com/file/d/133tsXjTM8Nwp-u40sKLVGuItQpeyqgP0/view?usp=sharing>

The Case of The Speluncean Explorers, Author- Lon. L Fuller

https://drive.google.com/file/d/1FOrf_HcU50hr57KLeQVwdimDTGGWJciR/view?usp=sharing

The Case of The Speluncean Explorers, Review- Robert Cogan

<https://youtu.be/QR2z1W6ZkXk>

Complete facts of the case explained

[Speluncean-explorers-Summary.pdf \(reachcambridge.com\)](#)

A summary of the case

[Case of Speluncean Explorers: Summary \(legalserviceindia.com\)](#)

Brief facts of the case

[R v Dudley and Stephens - 1884 \(lawteacher.net\)](#)

[Sinking of William Brown, and Murder of 14 Survivors - HistoricalCrimeDetective.com](#)

Similar Factual Cases

https://www.salon.com/2021/08/07/7-historical-cases-of-cannibalism_partner/

Cases that have similar themes to the matter at hand

[The Speluncean Explorers Legal Case Analysis - 2231 Words | Essay Example \(ivy panda.com\)](#)

A sample analysis of the case

<https://listverse.com/2015/02/28/10-gruesome-cases-of-cannibalism-in-modern-day-america/>

Few cases of cannibalism