



*Session 27*

*Criminal Law*

*Case studies 3*

## Case1: R v Lifchus

Lifchus was a stockbroker who was accused of fraud and theft. He was convicted of one and acquitted of the other. He appealed on the basis that the judge did not properly explain the burden of proof to the jury. He said that "beyond a reasonable doubt" is simply an everyday idea and that everyone understands it - a "plain language" approach. The Court of Appeal allowed the appeal ordering a new trial, which the Crown appealed

How should a judge charge a jury on the meaning of "beyond a reasonable doubt"?

## Case2: R v Lyttle

Prosecution for robbery, assault; victim had been beaten by assailants with bats. Victim (V) stated that they were beating him to recover a chain that they mistakenly thought that he had stolen. Accused (A) stated that it was really a bad drug deal. In cross-examination, counsel for A wanted to put the drug deal theory to various witnesses, without presenting any evidence to support the theory.

Can you put suggestions to witnesses even though there is no basis as of yet to support the theory?

### Case3: Browne v Dunn

L appeared in court seeking an order against P to keep the peace; P said it was a sham and sued L for libel; L called witnesses to support his argument, P failed to cross-examine; P then argued that the witness should not be believed in their testimony.

If a party fails to challenge a witness about a specific point in cross-examination, is that party prevented from challenging the testimony on that point after the fact through argument?

## Case4: R v Tessling

Police had received information from 2 informants. Visual surveillance of the suspect's building revealed nothing to indicate that they were growing marijuana. Police used a thermal imaging device to take a 'heat' picture of the respondent's home from above (using a Forward Looking Infrared Radiometer, or FLIR). FLIR cannot see through the external surfaces of a building. The police did not obtain a search warrant before they used the FLIR. Use of the device indicate an elevated degree of heat emanating from the respondent's building. This and other evidence caused the police to infer that the respondent was growing marijuana. The police were able to obtain a warrant to search the home, and they found large quantities of marijuana.

The respondent argued that the use of the FLIR constituted a search of his home, in violation of s.8 of the Charter of Rights and Freedoms. Section 8 states: "Everyone has the right to be secure against unreasonable search or seizure."

## Case4: R v Tessling

Did the use of the FLIR without a warrant violate the rights of the respondent under s.8 of the Charter of Rights and Freedoms?