5HVHDUFK $UWLFOH 2SHQ $F

3ULYDWH 'HIHQFH $ /RRN DW 'HILQLWLRQDO $

'LY\DP 1DQGUDMRJ
1DWLRQDO /DZ 8QLYHUVLW\ 'HOKL ,QGLD
&RUUHVSRQGLQJ $XWKRU 1DQGUDMRJ 1DWLRQDO /DZ 8QLYHUVLW\ 'HOKL ,QGLD 7HO (PDLO GLY
5HF 'DWH \ $FF 'DWH \ 3XE 'DWH \

&RS\ULJKW 1DQGUDMRJ ' 7KLV LV DQ RSHQ DFFHVV DUWLFOH GLVWULEXWHG XQGHU WKH WHUPV RI WK
XVH GLVWULEXWLRQ DQG UHSURGXFWLRQ LQ DQ\ PHGLXP SURYLGHG WKH RULJLQDO DXWKRU DQG VRX

$EVWUDFW

7KLV SDSHU H[DPLQHV WKH FRQWHPSRUDU\ GHILQLWLRQDO HOHPHQWV RI ³UHDVF
E\ WKH 6XSUHPH &RXUW RI ,QGLD ZKLOH H[HUFLVLQJ LWV FULPLQDO MXULVGLFWL
ERG\ XQGHU WKH FULPLQDO ODZV RI ,QGLD :KLOH ORRNLQJ DW WKH WRWDOLW\ RI
JXLGHOLQHV ZKLFK FRXUWV KDYH DGRSWHG LQ WKHLU SXUVXLW RI D IDLU WULDO
FRQGXFW RI WKH DFFXVHG DQG VXEVWLWXWLQJ LWV RZQ KLQGVLJKW IRU WKH IRU
WKH\ H[LVWHG 2QH RI WKH QRWDEOH GHSDUWXUHV IURP LWV JHQHUDO FRQGXFW
WKH FRXUW D IHDWXUH ZULWH ODUJH DFURVV WKH FULPLQDO MXVWLFH V\VWHP 7K
WKH FRQYHQWLRQDO DGYHUVDULDO PRGHO WR FDUYH RXW D JUHDWHU VSDFH IRU
EXUGHQ RI SURRI ZKLFK UHVWV RQ WKH DFFXVHG $ FRQFHUQLQJ WUHQG LQ SULYL
PLVXVH ZKHUHE\ D SHUVRQ PD\ SURYRNH DQRWKHU LQWR D UDVK DWWDFN DQG XV
IRU ZKLFK WKH ,QGLDQ 3HQDO &RGH KDV QRW SURYLGHG H[SOLFLW VDIHJXDUGV 6
SUHVHQWHG DORQJ ZLWK WKH REVHUYDWLRQV DQG VXJJHVWLRQV RI WKH DXWKRU

.H\ZRUGV 5HDVRQDEOH $SSUHKHQVLRQ 5LJKW WR 'HIHQFH
%XUGHQ RI 3URRI ,QGLDQ 3HQDO &RGH 6XSUHPH &RXUW

,QWURGXFWLRQ

7KH ULJKW RI SULYDWH GHIHQFH LV D FRPPRQ ODZ SULQFLSOH WKDW KDV EHHQ
FRXQWU\ ,W LV D ULJKW ZKLFK LV LQKHUHQW LQ DQ LQGLYLGXDO DQG FDQ EH XV
IRU SURWHFWLRQ IURP ERGLO\ KDUP DQG KDUP
FRPPHQFHPHQW DQG WKH FRQWLQXDQFH RI WKH ULJKW RI SULYDWH GHIHQFH RI
WKH ERG\ ,W VWDWHV WKDW WKH ULJKW RI SULYDWH GHIHQFH FRPPHQFHV DV VRRQ
DSSUHKHQVLRQ RI GDQJHU WR WKH ERG\ DULVHV DQG WKH DWWDFN KDV QRW
EH IURP HLWKHU DQ DWWHPSW RU HYHQ D WKUHDW WR FRPPLW WKH RIIHQFH HYHQ
WKRXJK WKH RIIHQFH PD\ QRW KDYH EHHQ FRPPLWWHG DV \HW ,W IXUWKHU
SURYLGHV WKDW WKH ULJKW RI SULYDWH GHIHQFH FRQWLQXHV DV ORQJ DV WKH
DSSUHKHQVLRQ RI GDQJHU WR WKH ERG\ FRQWLQXHV

5HYLHZ RI WKH $SSUHKHQVLRQ DV RSSR
7KH H[WHQW RI WKH H[HUFLVH RI WKH U
GDQJHU EXW UDWKHU RU ZKHWKHU WKHUH
GDQJHU 7KHUH PXVW EH VRPH DWWHPSW
IURP ZKLFK UHDVRQDEOH DSSUHKHQ
LGH WKUHDW RU HYHU\ DSSUHKHQVLRQ
PXVW EH VRPH UHDVRQDEOH JURXQGV IR
FDXVH ZKLFK LQ WKH PLQG RI UHDVRQDE
DV WR OHDG WR WKH EHOLHI WKDW WKHU
JUHYRXV KXUW $QQQXVWUDWLYH HDDS
D RDQ ZKR LV ZRQLQJ GRZQ WKH VWUHH
FKLOG LV FDOORW DWWDFN WKH FKLOG R
WKDW WKHUH ZDV UHDVRQDEOH DSSUHKHQ
OHDU WKDW WKH FKLOG SOHG QR WR W
GDQJHU LV ZKDW VHHPV WR EH LPSOLHG L

7KH GDQJHU RU WKH DSSUHKHQVLRQ RI
DSSDUHQW 7KH ULJKW RI SULYDWH GHI
VXGGHQO\ FRQIURQWHG ZLWK WKH LPPH
LPSHQGLQJ GDQJHU WKDW LV QRW WKH L
ULJKW RI SULYDWH GHIHQFH FRPPHQFHV

5HFRXUVH WR 3XEOLF $XWKRULWLHV P

)XUWKHUPRUH WKH ULJKW RI SULYDWH
UHFRXUVH WR WKH SXEOLF DXWKRULWLHV

LV WKHQ SHU IRUFH UHTXLUHG WR H[HUFLVH IRUFH IRU WKH SURWHFWLRQ RI W

DFFRUGHG D YHU\ KLJK LPSRUWDQFH LQ WKH H\HV RI WKH FRXUW DV fKH LV D
ZLWQHVV WKDW FRPHV ZLWK D EXLOW LQ JXDUDQWHH RI KLV SUHVHQFH DW WK
VFHQH RI WKH FULPH DQG LV XQOLNHO\ WR VSDUH KLV DFWXDO DVVDLODQW V
RUGHU WR IDOVHO\ LPSOLFDWH VRPHRQHg DQG H[WUHPHO\ VWURQJ DQG
FRQYLQFLQJ HYLGHQFH LV UHTXLUHG WR GLVFUHGLW VXFK D ZLWQHVV

:KHQ &DVHV *R ,QWR $SSHDO

,Q DSSHDOV LQ FDVHV LQYROYLQJ WKH H[HUFLVH RI WKH ULJKW RI SULYDWH
GHIHQFH WKH SRLQW KDV EHHQ H[SRXQGHG WKDW DQ DSSHOODWH FRXUW PXV
H[DPLQH WKH HQWLUH HYLGHQFH RQ UHFRUG WR GHWHUPLQH ZKHWKHU WKH
MXGJHPHQW RI WKH WULDO FRXUW ZDV FRUUHFW RU QRW ,W IXUWKHU VWDWHV W
DSSHOODWH FRXUW PD\ QRW UHYHUVH WKH MXGJHPHQW RI DFTXLWWDO RI WKH W
FRXUW ZKHUH WZR YLHZV RI WKH VLWXDWLRQ DUH SRVVLEOH HYHQ LI WKH WU
FRXUW KDG SODFHG WKH EXUGHQ RI SURRI LQFRUUHFWO\ RU IDLOHG WR WDNH L
FRQVLGHUDWLRQ DQ\ DGPLVVLEOH HYLGHQFH RU HYHQ FRQVLGHUHG HYLGHQFH
EURXJKW RQ UHFRUG FRQWUDU\ WR ODZ 7KH FRXUW VD\V WKDW HYHQ LI WKH YL
RI WKH DSSHOODWH FRXUW LV PRUH SUREDEOH LW ZRXOG QRW UHYHUVH WKH
GHFLVLRQ RI WKH WULDO FRXUW VLQFH WKH WULDO FRXUW KDV WKH EHQHILW
ZDWFKLQJ WKH GHPHDQRU DQG PDQQHULVPV RI WKH ZLWQHVVHV DQG WKXV LV
EHWWHU SODFHG WR MXGJH WKHLU FUHGLELOLW\ fZKHUH WZR YLHZV RI WKH
HYLGHQFH DUH UHDVRQDEO\ SRVVLEOH +LJK &RXUW LV QRW MXVWLILHG LQ
UHYHUVLQJ WKH DFTXLWWDOg

7KH FRXUW DOVR VD\V WKDW LI WRR PDQ\ DFFXVHG ZKR DUH DFWXDOO\

FRYHU ZLWKLQ WKHLU DPELW WKH HQWLUH DPRXQW RI %LWFRLQV ZKLFK DUH FXUUHQWO\ LQ FLUFXODWLRQ
DULVH DQG PHHW WKH HQGV RI MXVWLFH 6KULUDP Y 6WDWH RI 03 6&&

5HIHUHQFHV

&KDQGUDVKHNKDU 9LVKZDQDWKDQ 7+(,1',$1 3(1$/ &2'(
5DWDQODO DQG 'KLUDMODO 1HZ 'HOKL
6HQ $ /D[PDQ 6DKX YV 6WDWH 2I 2ULVVD $,5 6&
&KDXKDQ % 6WDWH 2I 0 3 YV 5DPHVK $QG $QU
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)D]DODOL 60 3XUDQ 6LQJK 2UV YV 6WDWH 2I 3XQMDE
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0DMXGDU 6% :DVVDQ 6LQJK YV 7KH 6WDWH 2I 3XQMDE
-DJDQQDWKD 6. +DUH .ULVKQD 6LQJK YV 6WDWH RI %LKDU
*RWWLSXOOD 9HQNDWDVLYD 6XEEUD\DP Y 6WDWH RI $ 3 6&&
&KDQGUDFKXG < 6WDWH 2I 8 3 YV 5DP 6ZDUXS $QU
3DVD\DW $ -DPHV 0DUWLQ YV 6WDWH 2I .HUDOD