



TU 122 Law in Everyday Life

Semester 2/2015

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Outline

9. Defenses

- (9.1) Infancy
- (9.2) Consent
- (9.3) Insanity
- (9.4) Intoxication
- (9.5) Ignorance or mistake of law
- (9.6) Self- defense / Defense of others
- (9.7) Necessity
- (9.8) Duress

10. No crime no punishment without law

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9. Defenses

Legal grounds for denying criminal liability

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9.1 Infancy

Under age 7 is conclusively presumed unable to form a criminal intent and therefore cannot be convicted of a crime.

Children aged 7-14 are presumed incapable of forming criminal intent. Presumption rebuttable.

Age 14 and older are treated as adult – no presumption of incompetency. Look at the age at the time of commission of the crime

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9.2 Consent

Under normal circumstances, consent is not a ground for escaping from criminal liability. Unlike tort, consent of the injured person exempt the debtor from liability for compensation.

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9.3 Insanity

A defendant is entitled to an acquittal if, at the time of the crime, he was so impaired by mental illness or retardation as to be “insane” within the meaning of the law e.g. does not understand what he’s doing.

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9.4 Intoxication

- **Voluntary intoxicated** – never a defense
- **Involuntary intoxicated** – a complete defense/ proof of lack of *mens rea*
 - Did not know substance ingested was intoxicating
 - Know but consume under duress

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9.5 Ignorance or Mistake of Law

Section 64 No person shall be excused from criminal liability due to ignorance of the law.

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9.6 Self- defense / Defense of Others

Section 68 A person who reasonably commits an act for the defense of his right or right of another person so as to escape from a danger arising from an act of violence which violates the law and such danger is imminent shall not be guilty.

Conditions

- (1) a danger arising from an act of violence which violates the law
- (2) such danger is imminent
- (3) defends his right or right of another person
- (4) proportionally commit against the person who caused danger

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9.6 Self- defense / Defense of Others

The courts specifically sets forth the situations in which deadly force is justifiable: when the defendant believes that such force is immediately necessary to protect himself on the present occasion against:

- (1) death
- (2) serious bodily injury;
- (3) forcible rape; or
- (4) kidnapping.

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9.6 Self- defense / Defense of Others

Protection of property

A person in possession of personal property is justified in using non-deadly force against a would-be dispossessor if he reasonably believes that such force is necessary to prevent imminent and unlawful dispossession of the property.

Under no circumstances may a person use deadly force to prevent dispossession.

Rationale : Interest in security of property does not justify jeopardizing the lives of others (i.e. society places a much higher premium on the preservation of human life)

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9.6 Self- defense / Defense of Others

Protection of dwelling

Deadly force could be used in defense of one's dwelling if it reasonably appeared necessary to prevent a forcible entry of the dwelling, and a warning had first been given the intruder to desist and not enter.

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9.7 Necessity

Section 67 (2) When a person acts reasonably in order to make himself/herself or another person escape from an imminent danger (which such person did not cause to exist through his own fault), he/she shall not be punished for committing any offence on account of necessity.

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9.7 Necessity

The defense of necessity is available where the accused acted in the reasonable belief that perpetration of the offense would prevent the occurrence of a greater harm or evil.

Conditions

- (1) Objectively reasonable belief
- (2) Greater harm threatened
- (3) Threatened harm "imminent"
- (4) No fault on the defender's part

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9.8 Duress

Section 67 (1) A person shall not be punished for committing any offence on account of necessity when he/ she is under compulsion or under the influence of a force which he/she cannot avoid or resist, provided that no more is done than is reasonably necessary.

Conditions

- (1) Objectively reasonable belief
- (2) Threat must be of sufficiently serious harm
- (3) Subject of threat – can be anybody
- (4) Immediate harm

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10. No Crime No Punishment Without Law

Section 2 A person shall only be sentenced when the alleged act committed is proven to be a criminal offence and any sentence imposed upon the offender shall only be that provided by the law in force at the time of any alleged offence.

Criminal law cannot retrospectively allege or punish anyone. But it can retrospectively be applied to benefit offenders.
