

Justifications, Excuses, & Defenses

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Self Defense:

CL:

Non-Deadly: Force must be proportional. There is no duty to retreat before pursuing non-deadly forced. Cannot be the initial aggressor (though an initial aggressor can regain the right of self defense via RESURRECTION or ESCALATION).

Deadly: The actor is justified in killing in self-defense if at the time the actor used deadly force that person reasonably believed that such force was necessary to combat imminent, unlawful deadly force AND he was not the initial aggressor (though an initial aggressor can regain the right of self defense via RESURRECTION or ESCALATION).

Retreat before deadly force? Varies by jurisdiction; majority rule is that you are required to retreat to the wall if possible to do so in 100% safety.

MPC 3.05:

Non-Deadly: the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

Deadly: Same as above, plus: he actor believes that such force is necessary to protect himself against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat (exceptions: unavailable if D is initial aggressor, D is required to retreat)

Retreat before deadly force? Yes, if he can do it in complete safety and is not in his own home and is not a cop in the line of duty.

Defense of Others:

CL: Defendant must have a reasonable belief that the third party is in a position where they would have the right of self-defense. In a minority of Jurisdiction, his reasonable belief must also be correct in hindsight.

MPC 3.05:

(a) the actor would be justified under Section 3.04 in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect; and

(b) under the circumstances as the actor believes them to be, the person whom he seeks to protect would be justified in using such protective force; and

(c) the actor believes that his intervention is necessary for the protection of such other person.

Duress:

MPC 2.09: It is an affirmative defense if Δ was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, that a person of reasonable firmness in his situation would have been unable to resist. (Exception: if Δ recklessly placed himself in a

situation in which it was probable that he would be subjected to duress).

-Can be a defense to homicide.

CL: For duress to qualify as a defense, four requirements must be met: (1) The threat must be of serious bodily harm or death; (2) The threatened harm must be greater than the harm caused by the crime; (3) The threat must be immediate and inescapable; (4) The defendant must have become involved in the situation through no fault of his or her own

-Never a defense to murder

Necessity:

[MPC 3.02](#) – Choice of Evils: Conduct that the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable, provided that the harm or evil sought to be avoided is actually the lesser of the two evils. (Exception: when the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his conduct). CAN be a defense to homicide.

CL Necessity: (1) Δ reasonable believes his conduct is necessary to avoid a greater harm; (2) that greater harm must be imminent; (3) there was no other, less harmful way to avoid the threatened danger; (4) Δ was not at fault in creating the situation. CANNOT be a defense to homicide.

Voluntary Intoxication:

[MPC 2.08\(1-3\)](#): (1) Intoxication is not a defense unless it negatives an element of the offense; (2) when recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial.

CL: Never a defense to crimes of general intent, but it can negate an element of specific intent for a specific intent crime (e.g. "intent to commit a felony within).

Involuntary Intoxication:

[MPC 2.08\(4\)](#): Intoxication that (a) is not self-induced or (b) is pathological is an affirmative defense if by reason of such intoxication the actor at the time of his conduct lacks substantial capacity either to appreciate its criminality [wrongfulness] or to conform his conduct to the requirements of law.

CL: Is a defense to a general intent crime because it negates mens rea.

Insanity:

[MPC 4.01](#): A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law.

CL: Several Tests:

McNaghten Rule: Δ did not know nature and quality of act at time he did the act OR Defendant did not know he was doing something wrong.

Irresistible Impulse test: Δ was unable to control himself (volition, not cognition).

Product/Durham Test: defendant is not guilty if criminal conduct if the conduct is the product of a

mental illness.

[Info on all 50 States' Insanity tests can be found at: <http://criminal.findlaw.com/criminal-procedure/the-insanity-defense-among-the-states.html>]

Diminished Capacity:

MPC: no distinction from insanity

CL: 2 ways to use it:

1. Mens rea defense: If defendant, because of mental condition, lacks specific intent to commit a specific intent crime, he will be acquitted.

2. Partial responsibility, partial defense: Used to reduce the crime of murder to the lesser offense of manslaughter on the ground that person claiming defense is mentally ill, or has a low IQ, making him less culpable than a person who does not have that condition. Conviction comes in proportion to capacity.