

Defenses & Justifications

Ch. 14 Justification vs. Excuse:

- I. Justification – You did the right thing
 - A. Ex. Self-Defense, Necessity, Privilege
- II. Excuse – You did the wrong thing, but the law will not punish you for it
 - A. Duress, Mistake of Fact, Insanity
- III. Accomplice is usually off the hook if the principal was justified and not if he was excused.

Ch. 15 **Self-Defense** – Subjective belief

- I. **Actor must REASONABLY BELIEVE force is IMMEDIATELY NECESSARY in RESPONSE to UNLAWFUL FORCE by another**
 - A. Belief need not be correct
 - B. Proportionality – non-deadly force only for non-deadly attack
 - C. Must be an unlawful force – not available against innocent/legal force (cop)
 - D. ✍ **What if the original assailant lacks capacity** (child, crazy person)?
 1. Look to def. of unlawful force: (1) unwelcomed force; (2) the act amounts to a crime or tort; (3) even if the person cannot otherwise be prosecuted
- II. **Defense of others** – REASONABLY BELIEVE that other person was entitled to use self defense
- III. **Original aggressor** can only use self-defense when:
 - A. Revival Rule – A stops/leaves/ends encounter; then B attacks A
 - B. Escalation Rule – A punches B; B takes out a knife; A can shoot B because B was the first one to escalate to deadly force and is now the aggressor.
- IV. **Imperfect Self-defense** – Mitigates to Manslaughter
 - A. Where belief is unreasonable
 - B. Where is the original aggressor, but otherwise qualifies for self-defense (same as extreme emotional disturbance?)
- V. **Retreat Rule: Only applies when faced w/ using DEADLY force**
 - A. You must be attacked w/ deadly force
 - B. You must be contemplating the use of deadly force in defense/retaliation
 - C. You KNOW you can retreat with 100% safety
 - D. You are NOT in your own HOME

Ch. 16 **Difference between Necessity & Duress**

- I. **Necessity cares about the lesser of 2 evils – justification, utilitarian**
- II. **Duress cares only about the stress to the individual – excuse**
- III. **Both** - All or nothing, no imperfect versions

Ch. 17 **Necessity** - Causing a harm or evil is JUSTIFIED if the actor reasonable believes that he is avoiding a GREATER to self or others

- I. Objective and Subjective Components:
 - A. Objective: Harm avoided must actually be worse than harm caused
 - B. Subjective: Belief that it is necessary is based on reasonable belief – Dudley & Stevens would have still gotten the defense had they been rescued 5 minutes after killing the cabin boy.
- II. Can be based on natural causes (earthquake, shipwreck) OR
- III. Can be based on threat from another person (threat of rape makes inmate escape prison)
- IV. Can excuse Homicide
- V. Cannot be used if:
 - A. Non-Criminal alternatives are available
 - B. If brought about the dangerous situation
 - C. Can't be used to argue political points:
 1. Cannot seek to undo legislation by civil disobedience and argue necessity
 2. The law broken must not have a specific provision against use of necessity
 3. Killing abortion doctors b/c law has already resolved the issue of life
 4. Vietnam War: "We are engaging in an illegal war"
 5. Using marijuana medicinally were it is banned – maybe?? ✍

Ch. 18 **Duress** – About the stress on the individual – Lesser evil is irrelevant - Excuse

- I. **Definition:**
 - A. **Objective & Subjective: Must show:**
 - B. **Subjective: You were coerced AND**

C. **An average person of reasonable firmness would have been coerced** – hard test to pass

1. Brought about by: Coersion, force or threat of force to self or another
2. Property threat is insufficient
3. ✍ What about “build this bomb or I will kill Al Gore”? – person or reasonable firmness would resist

II. **CAN BE AN EXCUSE FOR HOMICIDE**

III. Not available if:

- A. Actor put himself in a situation where he would foreseeably end up under duress (gang members lying under oath)
- B. Note: gang activities can be cooperative or coercive based on the situation