

CHAPTER 5

JUSTIFICATIONS AS DEFENSES

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LECTURE OUTLINE

I. Introduction

Discuss the George Zimmerman case. What defense he is expected to claim, and why may he qualify under the facts and circumstances?

II. Types of Defenses

Based upon our legal system, an accused may, but is not required, to put forth a defense to the crime charged. Defenses consist of failure of proof, alibi, justifications and excuses.

III. The Nature of Defenses

Justification and excuse based defenses are known as affirmative defenses. In most states, an affirmative defense must be raised by an accused and proven by a preponderance of the evidence to warrant a jury instruction on that issue. It does not negate an element of the crime charged, but raises a legal question that may excuse or justify the defendant's act. Explain to students how this does not eliminate the prosecution's obligation to prove the charge beyond a reasonable doubt. Nor does it infringe upon the right of the accused requiring the state to prove each element of the charged offense(s).

A. Necessity

This defense is based upon the premise that the criminal act was committed through the necessity of avoiding the greater evil or harm. However, an accused cannot commit a more serious offense than the one charged and avail of this defense.

B. Self-Defense

Based upon the recognition that a person has the right to repel an unlawful attack, this defense generally requires that an accused establish that there was a good faith belief there was an imminent threat of harm, that force was necessary to repel the attack, and the force was reasonable under the circumstances. Deadly force can only be used to repel an attack that threatens great bodily harm or death. Discuss the duty to retreat, including if one was the primary, physical aggressor.

Also, discuss that deadly force cannot be used to defend property except in very limited circumstances when a threat of harm is presumed and no duty to retreat exists.

A minority of states have passed the so-called stand-your-ground laws as referred to in the George Zimmerman case. This statute permits the use of deadly force to repel life- or limb-threatening force in public spaces with no duty to retreat.

Discuss the perfect self defense which justifies the harm caused by the defender, whether it is in the nature of a battery or death, and the imperfect self defense, where one or more elements may be missing which may result in a lesser offense

C. Defense of Others

Discuss the two theories of this defense, using examples of a person who comes to the aid of what appears to be a physical attack against another person by the perpetrator. If the perpetrator turns out to be a plain clothes police officer making a lawful arrest, can the defense of another (in this case a criminal) be justified? The Model Penal Code follows the rule that what a person reasonably believes to be occurring may justify acting in defense of that other person, even if that belief is mistaken.

D. Defense of Home and Property

A person is entitled to defend his home, family, and property. Generally, defense of the home and family entitles a person to assert the defense the same as if the attack were made personally against the defender. Deadly force is not permitted to defend property. However, some states have statutes where a presumption arises that an attack upon the home is for the purpose of infliction great bodily harm or death upon the occupants.

No duty to retreat from the home under what has been called the “castle rule.” Every man’s home, no matter how humble or how grand, is his castle to which he is afforded and entitled peace and solitude.

Discuss booby traps, spring guns, and other devices that mete out the indiscriminate use of force regardless of the circumstances (E.g., emergency personnel coming into the home, someone fleeing the attack of another, or taking refuge from a violent storm.)

E. Resisting Unlawful Arrest

Most modern day statutes provide that an arrest must be lawful in order for a person to be charged with resisting arrest. While resistance may be considered justified at common law, some jurisdictions find that it is no defense to the arrestee if it is later shown that the arrest was unlawful. This places the citizen in the position of compliance for the safety of the officer, and the determination as to the merits of that arrest left to the court. A citizen could still file a civil lawsuit if the arrest was held unlawful.

Deadly force by a law enforcement officer may only be used to prevent death or serious injury to the public, the officer, or to apprehend a suspect who poses a serious risk of future harm if not taken into custody. However, it is unconstitutional to automatically resort to deadly force to apprehend a fleeing felon.

F. Consent

The defense of consent means that the criminal conduct for which the accused is charged was consented to by the alleged victim. This may be in the nature of an assault, battery, or sexual activity. In order to be valid, however, consent must be freely and voluntarily given by a person who is legally competent and is not a minor. Discuss statutory offenses and how consent of the victim is irrelevant. Many offenses cannot be consented to, such as homicide and those involving serious harm.

RESEARCH PAPER TOPICS

1. Find the law in your state that deals with offenses against the person, defenses, and the use of deadly force. Are these concepts statutorily defined? Are they in the nature of an affirmative defense, or does a presumption arise if certain facts and circumstances exist?
2. Research the case of *Tennessee v. Garner*, 471 U.S. 1 (1985). Provide the factual background of the case, the procedural history, and the issues and analysis confronted by the court in dealing with the issue on when a law enforcement officer may use deadly force. Are the guidelines set by the court clear, or do they provide a less than bright line standard that a law enforcement officer must decide upon in a split second?

STUDENT ACTIVITIES

1. Divide the students into two groups. On one side instruct students that they are to give a list of factual situations of when, where, why and how the use of force should be justified as a defense. On the other side, instruct students that they are to consider how a claim of defense may be rebutted by the prosecution in a charge against an accused by way of character, reputation, prior specific instances of conduct, both by the accused and the victim, and how they would present this evidence in court.
2. Does your state allow citizens to carry concealed weapons? Find the law and the requirements for eligibility in your state. Are they more or less stringent than you thought they would be?

CASE STUDIES

1. Find recent case law in your jurisdiction that deals with a justification based defense. Most states have websites for their supreme courts, and many state

appellate courts have similar websites. These are free and accessible to the public. Find out how to use key words to search for a case, and how cases are cited. Explain to students what those citations mean, what implications the court opinion has in that jurisdiction, and the concept of case precedent and *stare decisis*.

REFERENCES AND RESOURCES

1. Browse and search topics specific to individual states and territories including access to state supreme courts, appellate courts, trial courts, and case information through the National Center for State Courts at:

www.ncsconline.org