

## **CHAPTER 6**

### **DEFENSES: EXCUSES AND INSANITY**

#### **CHAPTER OUTLINE**

I. Introduction

II. The Nature of Excuses

III. Categories of Excuses

A. Duress

B. Intoxication

C. Mistake

D. Age

E. Entrapment

F. Syndrome-Based Defense Enhancements

IV. Mental Incompetence

#### **LECTURE OUTLINE**

I. Introduction

Discuss the Mahaffey case. Why would voluntary intoxication rarely be successfully used as a defense to a crime?

II. The Nature of Excuses

Excuse based defenses are just what the name implies: They are defenses that provide an excuse to criminal behavior, as opposed to a justification of that criminal behavior that was explored in the last chapter.

Excused based defenses are personal to the accused. What this means is that some condition of the accused, be it age or insanity, that is personal to him is generally accepted in the law as being a sufficient to excuse criminal liability.

Excuse based defenses are generally affirmative defenses, which again means that the accused must establish the facts and circumstances person to his/her situation that would warrant a jury being instructed to consider that situation as a defense.

### III. Categories of Excuses

#### A. Duress

Duress is based upon the theory that if a person is compelled or coerced to commit a criminal act, such as by fear for his/her own life or the lives of another, then such conduct was not the product of a free will and criminal liability would be excused. The crime committed must be less serious than the harm avoided, such as committing a bank robbery to save the lives of your family. It is not a defense to homicide, nor can a life be traded for a life.

#### B. Intoxication.

Voluntary intoxication is generally regarded as holding the actor accountable for placing himself in that position. Even though it may be considered in mitigation of specific attempt crimes, it is not effective as a defense based upon the sentiments of most any jury. Involuntary intoxication may serve as a defense to render one incapable of forming the requisite mental state, usually one of purpose or intent, to commit the crime in question.

#### C. Mistake

A good faith mistake of fact may be an excuse to criminal liability. Discuss the various scenarios and examples that would rise to the level of a mistake of fact (E.g., taking home a briefcase you thought was yours, but turns out to be a co-worker's).

A mistake of law, however, is not defense to criminal liability. Have students think of examples: If they drive in an area where they thought the posted speed was 55, but it is 35, that is a mistake of law. If they did not know that the possession of a shotgun with a barrel less than 18 inches is a felony, that is a mistake of law. Ignorance of the law is generally no excuse.

#### D. Age

The defense of age is that the person committing the offense should not be held criminally liable by virtue of age. At common law, a child under the age of seven was

presumed incapable of forming the requisite mental state to commit a criminal offense. Today, in most jurisdictions age is a factor of being charged with an offense as a juvenile (under 18 years) or as an adult (over 18 years). Although some states have a minimum age upon which to predicate criminal liability, there is a growing trend to charge young children if the facts and circumstances of the offense establish the existence of a criminal mental state. The defense of age is based chronological age, not level of maturity.

#### E. Entrapment

The entrapment defense is another of those, like intoxication, that is often misunderstood and rarely successful in court? Why?

The defense must establish that the government, usually through the conduct of law enforcement, planted in the mind of an otherwise innocent person, the inducement to commit a criminal offense.

Discuss what this must entail as far as the defense presentation of evidence, and how the prosecution may rebut this “innocent person” claim with evidence of prior bad acts relevant to crime charged. It has been called an admission-avoidance defense. In his defense the accused essentially admits that he committed the elements of an offense, but argues that but for the action of the government, the offense would not have been committed and criminal liability should be avoided.

Contrast the subjective test, which examines characteristics of the accused to determine if that person was predisposed to commit the offense, with the objective test, which is usually premised on extreme and outrageous government conduct.

#### F. Syndrome-Based Defense Enhancements

A syndrome entails signs and symptoms that manifest in a person and rises to the level of a recognized clinical condition. These are used in mitigation of, and not as an excuse to, criminal behavior. For instance, it may lower the degree of an offense by negating the required criminal mental state, such as purpose or intent, but it does not negate *mens rea* altogether.

Like other defenses that refer to clinical conditions, proof is in the form of expert opinions based upon a reasonable degree of professional, psychological, or medical certainty.

Most popular syndromes include battered women, attention deficit disorder, and others.

### IV. Mental Incompetence

The lack of mental competence can be broken down into two categories that have relevance to criminal culpability; competency and sanity. Competency is a legal question that entails the ability to understand the nature of the charges and the ability to assist in a defense.

Discuss how it is determined, through the evaluation process, and how it is presented as a legal issue to the court, not a jury. Competence involves the mental status of an accused at the time of trial, and the issue may be raised by defense counsel, the prosecution, or the court.

An accused who is incompetent to stand trial is usually referred to a course of treatment so that competency may be restored. The time limits for how long such treatment may be administered and how long an accused may be held are matters of state law. The treatment is required to be in the least restrictive environment considering the nature of the pending charge and the circumstances of the accused, such as whether he/she poses a danger to self or others.

The issue of sanity focuses upon the state of mind the accused possessed at the time the act was committed. It is in the nature of an affirmative defense that raises the issue of whether or not the accused possessed the required criminal mental state at the time the act was committed. Unlike competence, insanity is a question of fact for a jury to determine.

Compare and contrast the definitions from Black's Law Dictionary, the DSM IV, the review the disorders and categories of mental diseases and defects.

History – M'Naughten Test, knowing the difference between right and wrong, the Irresistible Impulse Test, the inability to conform conduct to the requirement of the law, the Durham Product Rule, and the ALI Substantial Capacity Test.

Guilty But Mentally Insane (GBMI) is a response to a finding that an obvious crime seen unfold on television (the attempted assassination of President Reagan) can result in a not guilty finding. Discuss how a true finding of insanity negates the presence of the *mens rea*, meaning no crime has been committed.

The consequence of an insanity finding is generally a civil commitment to the least restrictive alternative (e.g., mental hospital, treatment facility) until the court finds the person is no longer a danger to himself or others.

Many states and the federal government have directly connected criminal cases and civil confinement, particularly for sex predators. Be sure to discuss the connection between civil commitment and criminal cases.

## **RESEARCH PAPER TOPICS**

1. Outline the history of the insanity defense. Discuss its origin, evolution, and application up to the present time.
2. Research and report on the success of the insanity defense raised by an accused in a given time period or jurisdiction. What is your hypothesis, and does it differ from popular opinion that a guilty person escapes criminal liability on a technicality? What do the statistics tell you?

### **STUDENT ACTIVITIES**

Debate the issue of whether the insanity defense should be abolished. Have students prepare so that they use objective data, information, or case decisions rather than personal and emotional opinions.

### **CASE STUDIES**

Famous American Trials, The John Hinckley Trial, 1982.

### **REFERENCES AND RESOURCES**

Black's Law Dictionary, 8<sup>th</sup> Edition, available in most law libraries and in many libraries.

Diagnostic and Statistical Manual of Mental Disorders IV (DSM IV), available online at:

[www.dsmivtr.org](http://www.dsmivtr.org)