

Lecture Title: DEFENCES

Lecturer: **Roberta Bonello Felice**

Date: **13th November 2023**



Diploma in Law (Malta)



CAMILLERI PREZIOSI

- There are a wide range of defences which an accused can plead in a criminal case.
- What is the purpose of an accused to raise a legally defence ?
To elide criminal liability altogether or to diminish the seriousness of the crime.

- One can identify two principle ways in which defences can operate.
- 1) Some defences represent an effort by the accused to raise a reasonable doubt concerning a material element of the prosecutions case.
- 2) There are defences which result in the acquittal of the accused even though the prosecution has proved each element in the definition of the crime.



- **JUSTIFICATIONS**

- Some defences amount to a justification for the accused's conduct.
- The essence of a justification defence is that it renders a notional infringement of the criminal law lawful.
- The accused who raises a justification defence claims that he has done nothing wrongful for which he should be punished.



Excuses

An excuse defence exculpates the accused who has satisfied all the elements of a crime but who, because of some excusing condition, cannot be regarded as responsible for his actions.



Distinction between Justifications & Excuses

The basic distinction between a justification and an excuse is that the former focuses upon the conduct of the accused, whereas the latter concentrates upon his responsibility.

An excuse does not render conduct lawful and proper.

An excuse negates the accused's personal responsibility for violating

The criminal law.

Excuses are recognized by the criminal law in circumstances

Where an accused has perpetrated an unjustifiable act.



MITIGATING CIRCUMSTANCES (Factors that lessen the severity or culpability of a criminal act)

Plea in mitigation

If an accused cannot avail himself of a legally recognized defence, he can always ask a court to take what he claims to be mitigating circumstances into account.

Evidence of mitigating circumstances

An accused is entitled to introduce evidence of mitigating circumstances in the course of his trial.



SPECIAL DEFENCES



YOUNG AGE

The child acquires the notion of right and wrong only by the passage of his growing years and reasoning faculty develops by gradual stages.

Our Criminal Code minors are divided into three cases.

- 1) Those under 9 years of age
- 2) Those between 9 and 14 years of age
- 3) Those between 14 and 18 years of age



OLD AGE

- In modern progressive systems of law account may be taken of the old age of the offender for the purpose of fitting the punishment to him.



DEAF- MUTISM

A deaf- mute, deprived as he is of speech and hearing, cannot acquire
But late, and perhaps never completely, the capacity to discriminate
Between right and wrong.

Deaf- mutes who, at the time of commission of the offense have
Not completed their fourteenth year of age are exempt from
Criminal liability.

After a deaf-mute has completed his 14th year of age
And whatever his age above that age he is
Likewise exempt UNLESS it is proved that he
Committed the deed with a mischievous discretion



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