

# Defenses to criminal culpability research paper

[Law](#), [Evidence](#)



## **Abstract**

There exist numerous defenses to criminal charges. The defenses are usually used by the persons facing particular charges in a bid to negate the requisites of a crime, especially the aspect of intent. In criminal cases the general rule is that crimes are offences that are usually committed against the government. Every person is usually presumed innocent until the contrary is proved. As such, the burden of proof lies on the government to prove that a crime was committed and that the accused person committed the alleged crime. The prosecution side, which represents the government in a criminal trial, must convince the judge or the jury that the accused is guilty 'beyond reasonable doubt'. Ideally, the criminal defenses may provide the accused person an opportunity to obtain partial or total protection from a foreseeable punishment. The defendants may agree that they committed the crime, agree to having committed the crime but provide reasons for the same, or state that they did not commit the alleged crime. This paper shall consider the various criminal defenses that are available to accused persons.

## **Defense of Necessity**

The defense of necessity is referred to the situation where the accused persons state that they actually committed the crime but they did so under extraordinary circumstances. In this regard the accused persons may state that they were in a truly desperate situation that provided them no choice but to commit the offence. However, it is notable that over the years courts have set out criteria that they would use to determine whether accused persons can rely on the defense successfully. The criterion is met if the

accused persons are able to show that they committed the unlawful act in a bid to prevent a greater evil and that there was no alternative and realistic lawful cause of action. The courts also consider whether the offense was greater than what the accused alleges could have resulted in a greater evil. Accordingly, the offense must have been effective in averting the alleged greater evil (Christie, 1999, p. 1011). Generally, courts are very reluctant in accepting the defense of necessity because of the possible precedents that may send a wrong message to the public. As such, there is usually a high probability that an accused relying on the foregoing defense will be convicted even if the defense meets the criteria but is not very much convincing.

## **The Defense of Duress**

This defense arises where the accused persons allege that they were compelled to commit the offense by other persons. Compulsion in this case refers to the situation where another person forced the accused to commit a give crime by threatening to cause death or bodily harm to the accused for refusal. In most jurisdictions, duress is allowed in criminal defense if the threats that the accused received could cause greater harm than the offense committed. The threats must also be immediate and inevitable and that they were intended to cause bodily harm or death. However, it is noteworthy that some countries exclude the use of duress as a viable defense in certain cases. For instance, a defendant may be stopped from relying on the foregoing defense if evidence is adduced to show that the defendant intentionally placed themselves in a situation where they were aware they would likely be subjected to duress. Accordingly, a wife cannot assert that

she acted based on the command of her husband, unless she provides evidence to show that she acted under the coercion of her husband. Notably, while relying on the defense of duress it is not sufficient to for a wife to show that she acted in the presence of her husband.

## **The Automatism Defense**

This is where the accused persons allege that they were not in control of their actions during the time they committed the offence hence they cannot be responsible for their criminal acts. A defendant may seek to rely on the defense of automatism in cases where they were incapacitated, severely ill, or in cases where the accused committed the offense while sleepwalking. Such scenarios are narrated in support of the automatism defense to show that the state of mind of the accused was such that they were not in control over their activities. As such, they were not in a position to understand that they were committing an illegality.

It is notable that most courts distinguish the automatism and the insanity defense by referring the accused for psychiatric examination. If the accused is found to be insane, they are referred to psychiatric treatment. However, if the accused is not insane the court may acquit them or prefer a much lenient punishment.

## **Mistake of Fact**

While ignorance of the law is no defense, some jurisdictions recognize that ignorance of facts may constitute a defense. This is possible where the defendant was unaware of the circumstance that would have made an act illegal. For instance, in a case where a bartender may have served a juvenile

patron, the patron having presented a counterfeit identification document, the defendant could successfully rely on the defense of 'mistake' because he/she honestly believed the patron to be of legal age. However, this defense is not available for a person who gives a minor alcohol believing that the legal age was lesser than it actually was.

This defense is closely related to the accident defense where the accused states that they did not intend to perform an illegal act. For instance, an accused whose cloth jammed in the fire alarm or a surgeon who mistakenly sent an alarming or confidential message of a patient to a wrong mobile phone number.

## **Self-defense**

This defense is very common in cases where the accused persons are charged with homicide or assault. By relying on this defense the accused states that they acted the way they did after the victim attacked them. Of note is that this defense does not provide an easy escape for the persons accused of committing homicide. This is precisely because in homicide cases, courts must establish that the deceased would most likely have killed the defendant if the latter had not acted fast to avoid his/her own death. In this regard, the defendant must not have used more against the victim in a bid to fend off the initial aggression.

## **The Defense of Intoxication**

Some jurisdictions acknowledge the fact that intoxication can negate the intent of a person. The intoxication defense is only applicable to some cases. For instance, if persons accused of homicide plead guilty but states that

when they committed the crime while under the influence of a drug, the court may find that the defendants lacked specific intent to commit a homicide and reduce the same to manslaughter, which is a lesser charge. However, the intoxication must not have been voluntary otherwise it will constitute basic intent. On the other, hand unintentional intoxication does not give rise to basic intent, which is enough to prove the offense of manslaughter. Involuntary intoxication is a viable criminal defense because at the time of committing the offense the accused did not have the requisite capacity to appreciate the gravity of their actions. That is, an unintentionally intoxicated person does not have the necessary willpower to make a decision whether to proceed to do an act or to avoid doing it.

## **Insanity Defense**

Accused persons can acknowledge that they committed the crime that they are charged with, but contend that they are not liable for their actions because they have a mental illness. Over the years, there have emerged different definitions regarding the meaning of legal insanity. Some of the definitions of legal insanity are provided in the American Legal Institute definition that considers the intention of an accused person, the M'Naghten Rules, and the Durham Rule (Dalby, 2006, p. 17). Basically, the insanity defense takes into consideration the evaluation of the mental health of an accused by mental health professionals depending on the jurisdiction. The report and testimony of the mental health professionals assist the judge or the jury, or both to decide the extent to which an accused person is criminally liable. Of note is that the health professionals are not allowed to present testimony relating to the criminal responsibility of the accused.

In some cases, the defense of insanity resembles the defense of as 'diminished capacity' because the two defenses relate to the mental competence of an accused person. However, the difference is that 'diminished capacity' defense is used to plead to a lesser charge while the 'not guilty by reason of insanity' is a complete defense to a specified crime. If an accused is found to be insane, they are not criminally responsible but are referred to psychiatric treatment except where it is shown that the accused suffered from temporary insanity during the commission of the crime (Schneider, 2009, p. 4).

## **Legal Capacity**

Legal capacity is a defense that is usually available to the public servants as well as persons who respond first to distress such as the fire fighters, paramedics, and police officers. This defense generally shields the first responders from criminal responsibility for criminal acts that the responder must carry out during the course of performing their legal duties whether legal or otherwise. For instance, paramedics who force their way into a house in response to a distress call are not liable for breaking and entering.

## **The Alibi Defense**

Alibi is a defense that involves production of evidence to the effect that the accused was not at the scene of the alleged crime that the defendant is accused of committing. If the accused provides compelling evidence that they were in a place other than the at the crime scene at the time the crime is alleged to have occurred, the court is likely to acquit them.

I Did Not Do It

An accused person may simply say that they did not commit the crime that they have been charged with. In such scenario, the burden is on the prosecution to prove that the accused committed the offense alleged beyond reasonable doubt. The prosecution will adduce evidence and call witnesses in a bid to prove that the accused is criminally responsible for committing an unlawful act. Conversely, the accused is not under a duty to say anything in response to the prosecution's claims and does not have to present evidence to prove their innocence (Smith, 2009, p. 13).

## **The Entrapment Defense**

The entrapment defense is used where the accused alleges that they were induced by another to commit the crime. This is a proper defense where a police officer induces a person to commit a crime and then arrests the person for the crime. However, it is important to note that the accused will not succeed by using this defense where the judge or the jury is made to believe that the accused was predisposed to commit the alleged offense (Allen, 1999, p. 408).

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