

## **Chapter 5**

### **Defenses to Criminal Liability: Justifications**

#### **LEARNING OBJECTIVES**

After studying this chapter, you will:

1. understand that the law of self defense is undergoing major transformation.
2. understand that defendants are not criminally liable if their actions were justified under the circumstances.
3. understand that defendants are not criminally liable if they were not responsible for their actions.
4. understand how the affirmative defenses operate in justified and excused conduct.
5. appreciate that self-defense limits the use of deadly force to those who reasonably believe they are faced with the choice to kill or be killed right now.
6. know and understand the differences, of the four elements of self-defense.
7. appreciate the historic transformation of retreat and its shaping of the stand-your-ground rule and the retreat rule.
8. understand the retreat rule and appreciate its historic transformation.
9. understand that there is no duty to retreat from your own home to avoid using deadly force.
10. appreciate that the “New Castle Doctrine” laws are transforming the law of self-defense.
11. that the choice to commit a lesser crime to avoid an imminent threat of harm from a greater crime is justified.
12. understand that the defense of consent represents the high value placed on individual autonomy in a free society.

#### **CHAPTER OUTLINE**

##### **I. Introduction**

- A. Proving Criminal Conduct
  1. Was there criminal conduct?
  2. Was the conduct justified?
  3. Was the unjustified conduct excused?
- B. Justification Defenses
- C. Excuse Defenses

##### **II. Affirmative defenses and proving them**

- A. Affirmative Defenses
  1. Burden of Production
  2. Burden of Persuasion
  3. Preponderance of the Evidence
  4. Perfect Defenses

## 5. Imperfect Defense

### **III. Self-Defense**

- A. Elements of Self-Defense
  - 1. Unprovoked Attack
    - a. Initial aggressor
    - b. Withdrawal exception
  - 2. Necessity
    - a. Imminent danger
  - 3. Proportionality
  - 4. Reasonable Belief
  - 5. Retreat
    - a. Stand-your-ground rule – majority rule
    - b. Retreat rule – minority rule
    - c. Castle exception
- B. Domestic Violence
  - 1. Cohabitants

### **IV. Defense of Others**

### **V. Defense of Home and Property**

- A. Curtilage

### **VI. The “New Castle Laws:” “Right to Defend” or “License to Kill”?**

- A. Law Enforcement Concerns
  - 1. Officers Use of Force
  - 2. Operations and Training
  - 3. Increased Investigative Burdens
  - 4. Effect on Law Enforcement Attitudes on Performance
- B. Doubts That Castle Laws Will Deter Crime
- C. Why the Spread of Castle Laws Now?
- D. Cases Under New Castle Laws
  - 1. Two Shootings in Florida
  - 2. Two Robberies in Texas
  - 3. State v. Harold Fish

### **VII. “Choice of Evils” (General Principle of Necessity)**

- A. Legislative Preemption
- B. The Necessity Defense and Citizen Intervention
- C. Burdens of Proof in Necessity Defense Cases
- D. The Reasonable Belief Standard
- E. The Choice of Evils Requirement
- F. The Imminence of Grave Harm Requirement
- G. The No Legal Alternative Requirement
- H. The Casual Relationship Requirement

## **VIII. Consent**

- A. Voluntary Consent
- B. Knowing Consent

## **IX. Summary**

## **X. Key Terms**

### **CHAPTER SUMMARY**

Most justifications and excuses are affirmative defenses which require defendants to produce credible evidence. They also require the defendant to prove the defense by a preponderance of the evidence. Successful perfect defenses result in acquittal except for the excuse of insanity. Imperfect defenses result in the defendant being guilty of a less offense.

All the justification defenses are exceptions to the rule of law. They allow individuals to take the law into their own hands. According to the rule of law, the government has a monopoly on the use of force. Use of force by individuals must be justified by law.

Self-defense is a concession to necessity and is only justified when the force is reasonably and immediately necessary for defense. Deadly force is justified only when the necessity is unprovoked and the attack involves threatened death or serious bodily injury. The amount of force used must be the minimum amount reasonably necessary to defend against an imminent threat. The general rule is that a person must retreat if they can safely do so before using deadly force. This rule puts a premium on human life—even the life of an attacker. The castle exception and the rules regarding the defense of home clearly demonstrate the ancient doctrine that “homes are castles” is still alive and well. In general, a person is not required to retreat from or in their own home before using deadly force.

The right to defend others includes everyone from close family members to any stranger who needs immediate protection from attack. The same rules apply as in self-defense.

The choice-of-evils defense is also based on necessity. This defense protects those who make the right choice in deciding to commit a lesser crime to avoid the imminent harm of a greater crime or social harm. The crime results in a net social good.

The general rule is that consent by the victim is not a defense. However, consent is a defense to some crimes in some circumstances. The consent must be knowing and voluntary. The value of individual autonomy (not necessity) is the heart of the defense of consent.