

Chapter 6

Defenses to Criminal Liability: Excuse

LEARNING OBJECTIVES

After studying this chapter, you will:

1. understand that defendants who plead an excuse defense admit what they did was wrong but argue that, under the circumstances, they were not responsible for their actions.
2. understand that the defense of insanity excuses criminal liability when it seriously damages defendants' capacity to control their acts and/or capacity to reason and understand the wrongfulness of their conduct.
3. appreciate that very few defendants plead the insanity defense, and those who do rarely succeed.
4. understand how insanity is not the equivalent of mental disease or defect.
5. understand how the right-wrong test focuses on defect in reason or cognition.
6. understand how the volitional incapacity test focuses on defect in self-control or will.
7. understand how the substantial capacity test focuses on reason and self-control.
8. understand how the product-of-mental-illness test focuses on criminal acts resulting from mental disease.
9. know how current trends favor shifting the burden of proof for insanity to defendants.
10. understand difference between diminished capacity and diminished responsibility and appreciate how they apply only to homicide.
11. understand how the different processes the law handles age and how juvenile court judges can use their discretion to transfer a juvenile to adult criminal court.
12. understand how it is sometimes OK to excuse people who harm innocent people to save themselves.
13. understand that voluntary intoxication is no excuse for committing a crime; involuntary intoxication is.
14. understand that entrapment is used in all societies even though it violates a basic purpose of government in free societies – to prevent crime, not to encourage it.
15. despite criticism of them, understand why syndrome excuses should be taken seriously.

CHAPTER OUTLINE

I. Defense of Insanity

- A. The insanity defense attracts a lot of public and scholarly attention, but the public badly misunderstands the way the defense actually works
- B. Insanity is a legal concept, not a medical term.
- C. Insanity excuses criminal liability only when it seriously damages the person's capacity to act and/or reason and understand.
- D. Few defendants plead the insanity defense, and those that do hardly ever succeed.

- E. The few who “succeed” don’t go free. In a noncriminal proceeding, called a civil commitment, courts have to decide if defendants who were insane when they committed their crimes are still insane.
- F. There are four tests of insanity:
 1. The right-wrong test (*M’Naghten* rule)
 - a. The right-wrong test focuses exclusively on reason – the capacity to tell right from wrong.
 - b. The test consists of two elements:
 - (1) The defendant had a mental disease or defect at the time of the crime, and
 - (2) The disease or defect caused the defendant not to know either
 - (a) the nature and the quality of his or her actions, or
 - (b) that what he or she was doing was wrong.
 2. Volitional incapacity test (irresistible impulse): we can’t blame or deter people who because of a mental disease or defect lose their self-control and can’t bring their actions into line with what the law requires.
 3. Substantial capacity test (MPC)
 - a. In the substantial capacity test, defendants have to lack substantial, not complete, mental capacity.
 - b. The substantial capacity test emphasizes both of the qualities in insanity that affect culpability—reason and will.
 - c. The MPC’s definition of *mental disease or defect* excludes psychopathic personalities, habitual criminals, and antisocial personalities from the insanity defense
 4. Product test (*Durham* rule)
 - a. According to the *Durham* rule, acts that are the “products” of mental disease or defect excuse criminal liability.
- G. Burden of proof
 1. States vary as to who has to prove insanity and how convincingly they have to do so.
 2. In 1984, the federal Comprehensive Crime Control Act (Federal Criminal Code and Rules 1988, § 17[b]) shifted the burden of proof from the government having to prove sanity beyond a reasonable doubt to defendants having to prove they were insane by clear and convincing evidence.
 3. Most states don’t follow the federal standard; they call insanity an affirmative defense. As an affirmative defense, sanity and, therefore, responsibility are presumed.

II. Defense of Diminished Capacity

- A. Diminished capacity is not an affirmative defense, it’s a failure-of-proof defense, arguing the defendant lacks the ability required for the requisite intent of the crime charged but may be guilty of a lesser crime.
- B. Diminished capacity isn’t the same as diminished responsibility.
- C. Most states reject diminished capacity of both types.
- D. In practice, diminished capacity and diminished responsibility only apply to homicide.

III. The Excuse of Age

- A. The common law divided children into three categories for the purpose of determining their capacity to commit crimes:

1. *Under 7*: Children had no criminal capacity.
 2. *Ages 7–14*: Children were presumed to have no criminal capacity, but the presumption could be overcome.
 3. *Over 14*: Children had the same capacity as adults.
- B. Today, statutes decide when young people can be convicted of crimes.
1. One type of statute identifies a specific age, usually 14, but sometimes as young as 10 and as old as 18.
 2. Another type of statute grants exclusive jurisdiction to juvenile courts up to a certain age but makes exceptions for a list of serious crimes.
 3. A third type of statute simply states that juvenile court jurisdiction isn't exclusive.
- C. Waivers from a juvenile court to adult criminal court come in three varieties:
1. Judicial
 2. Prosecutorial
 3. Legislative

IV. Duress

- A. The Problem of the Defense of Duress
- a. It's hard to blame someone who's forced to commit a crime, but should we excuse people who harm innocent people to save themselves?
- B. The Elements of the Defense of Duress
1. There are four elements in the defense of duress. The definitions of the elements vary from state to state:
 - a. Threats amounting to duress
 - b. Immediacy of the threats
 - c. Crimes the defense applies to (duress is usually not a defense to murder)
 - d. Degree of belief regarding the threat

V. The Defense of Intoxication

- A. The defense of intoxication is stuck between two conflicting principles:
1. *Accountability*—Those who get drunk should take the consequences of their actions.
 2. *Culpability*—Criminal liability and punishment depend on blameworthiness.
- B. Involuntary intoxication is an excuse to criminal liability in all states.
- C. Alcohol is not the only intoxicant covered by the defense of intoxication; it includes all “substances” that disturb mental and physical capacities.

VI. Entrapment

- A. All societies rely on entrapment, even though it violates a basic purpose of government in free societies.
- B. The modern practice of entrapment arose because of the difficulty in enforcing laws against drug offenses, pornography, official wrongdoing, and prostitution.
- C. Entrapment is an affirmative defense, and defendants have to show that they were entrapped.

VII. The Subjective Test of Entrapment

- A. The subjective test of entrapment focuses on the predisposition of defendants to commit crimes.

- B. According to the test, the defense has to prove the government pressured the defendants to commit crimes they wouldn't have committed without the pressure.

VIII. The Objective Test of Entrapment

- A. The objective test focuses not on the predisposition of defendants but instead on the actions that government agents take to induce individuals to commit crimes.
- B. According to the objective test, if the intent originates with the government and their actions would tempt an "ordinarily law-abiding" person to commit the crime, the court should dismiss the case even if the defendant was predisposed to commit the crime.

IX. The Syndromes Defense

- A. Some syndromes are and should be taken seriously.
- B. Syndromes include:
 1. Battered woman syndrome
 2. Premenstrual syndrome
 3. Post-traumatic stress syndrome

CHAPTER SUMMARY

The insanity defense attracts a lot of public and scholarly attention, but the public badly misunderstands the way the defense actually works. Mental disease is legal insanity only when the disease affects a person's reason and/or will. Insanity excuses criminal liability only when it seriously damages the person's capacity to act and/or reason and understand. The insanity defense is rarely used and the few who do plead insanity hardly ever succeed.

The few who "succeed" don't go free. In a noncriminal proceeding, called a civil commitment, courts have to decide if defendants who were insane when they committed their crimes are still insane. If they are they're locked up in maximum-security prisons called "hospitals."

There are four tests of the insanity defense. The right-wrong (M'Naghten) test focuses on defects in reason. The product-of-mental illness test (Durham rule) focuses on criminal acts resulting from (are the product of) mental disease. The irresistible impulse test focuses on defects in volition or self-control. The substantial capacity test (Model Penal Code) focuses on reason and self-control. Insanity is an affirmative defense in which the actual burden of proof varies, depending on the jurisdiction.

The right-wrong test depends on defendants' mental capacity to know right from wrong. The test consists of two elements: 1. The defendant had a mental disease or defect at the time of the crime, and 2. The disease or defect caused the defendant not to know either: a. The nature and the quality of his or her actions, or b. That what he or she was doing was wrong.

According to the irresistible impulse test, we can't blame or deter people who because of a mental disease or defect lose their self-control and can't bring their actions into line with what the law requires. According to the test, even if defendants know what they're doing and know it's wrong, they can qualify for a verdict of not guilty by reason of insanity if they suffer from a mental disease that damages their volition (willpower). After Hinckley's attempt to kill President

Reagan, the federal government and several states abolished the irresistible impulse defense on the ground that juries can't distinguish between irresistible impulses beyond the power to control and those that aren't.

The substantial capacity test, adopted in the MPC, is supposed to remove the objections to both the right-wrong test and its irresistible impulse supplement while preserving the legal nature of both tests. It emphasizes both of the qualities in insanity that affect culpability: reason and will (Schlopp 1988). The substantial capacity element clears up the possibility that "irresistible" in irresistible impulse means total lack of knowledge and/or control.

The U.S. Circuit Court for the District of Columbia replaced the right-wrong test with the product-of-mental-illness test, also known as the Durham rule. According to this test, acts that are the "products" of mental disease or defect excuse criminal liability. So, with this test, the court stretched the concept of insanity beyond the purely intellectual knowledge examined by the right-wrong test into deeper areas of cognition and will.

States vary as to who has to prove insanity and how convincingly they have to do so. To overcome the sanity presumption, the defense has the burden to offer some evidence of insanity. If they do, the burden shifts to the government to prove sanity. States differ as to how heavy the government's burden to prove sanity is.

Diminished capacity is a failure-of-proof defense. It is an attempt to prove that the defendant is incapable of the necessary intent of the crime charged and is therefore innocent of that crime but may be guilty of a lesser one. Diminished responsibility is different; it is a defense of excuse, or lowered responsibility.

At common law, children under 7 had no criminal capacity, seven and fourteen, there was a presumption of incapacity that could be overcome and at age fourteen, children were presumed to have the same capacity as adults. Today, statutes determine when young people can be convicted of crimes. All states have established juvenile justice systems to handle juvenile delinquency.

Duress can be an excuse when individuals are threatened and forced to commit a crime or be killed. In most states, duress is not a defense to murder. There are four elements in the defense of duress. The definitions of the elements vary from state to state: 1. Threats amounting to duress. 2. Immediacy of the threats. 3. Crimes the defense applies to. 4. Degree of belief regarding the threat.

Voluntary intoxication is not a defense. While voluntary intoxication is not an excuse, involuntary intoxication is a defense.

Entrapment occurs when law enforcement officers actively induce, trick, or persuade individuals to commit crimes they otherwise wouldn't commit. There are two main types of entrapment defenses. The majority of state and all federal courts have adopted a subjective test of entrapment. The subjective test of entrapment focuses on the predisposition of defendants to commit crimes. According to the test, the defense has to prove the government pressured the defendants to commit crimes they wouldn't have committed without the pressure. A minority of

courts follow an objective test of entrapment. The objective test focuses not on the predisposition of defendants but instead on the actions that government agents take to induce individuals to commit crimes. According to the objective test, if the intent originates with the government and their actions would tempt an “ordinarily law-abiding” person to commit the crime, the court should dismiss the case even if the defendant was predisposed to commit the crime.

Various types of syndromes or conditions such as post-traumatic stress disorder and premenstrual syndrome (PMS) have been tried as defenses. In general, they are not successful.