

Chapter 14 Summary: General defences

Chapter 14 discusses defences properly so called, sets of rules that D appeals to for exculpation having satisfied all of the elements of the offence charged. The defences discussed in this chapter are 'general' in the sense that they apply to multiple offences.

Introduction (Chapter 14.1)

The distinction between 'excusatory' and 'justificatory' defences has no formal substantive impact on defence definitions. However, the terminology is commonly used, and therefore essential to understand:

- Excusatory: These defences are concessions to human fallibility. D may not have done the right thing, but should not be blamed;
- Justificatory: These defences recognise that sometimes committing a crime is the right thing to do.

Insanity as a defence (Chapter 14.2)

The insanity rules can apply as a defence, as well as a denial of liability (Chapter 13). As a defence, D maintains that, although she committed the offence charged, she was suffering from a defect of reason caused by a disease of the mind that led her to not understand that her actions were legally wrong (key case: *M'Naghten*).

Duress (Chapter 14.3-14.4)

The defence(s) of duress can arise by threats or by circumstances. The defence applies where D commits an offence because she is threatened that if she does not she will suffer serious bodily harm or death (key case: *Hasan*).

Public and private defence (Chapter 14.5)

The public and private defence (commonly referred to as self-defence) applies where D uses force (committing an offence) in order to protect herself, or another, or property. D's use of force must be necessary, and the degree of force must be reasonable. The defence is largely codified within section 3 of the Criminal Law Act 1967 (public defence) and section 76 of the Criminal Justice and Immigration Act 2008 (private defence).

Necessity (Chapter 14.6)

The defence of necessity is loosely defined within the current law, performing a useful function as a flexible defence that can be employed by courts where other defences are unavailable (key case: *Re A*).

Reform (Chapter 14.7)

Debates in this area have focused on potential reform of the defences discussed, looking particularly at the (lack of) coherence between them.

Eye on assessment (Chapter 14.8)

This section provides a roadmap of how to apply and discuss defences in the context of a problem question.