

Video transcript
Video Tutorial (n): Defences (chp 14)

Hi, in this video I'm going to talk to you about defences and sort of defences probably so called, those ones that we deal with in Chapter 14 of the textbook. Now there's a few little pieces of advice I want to give you here, mostly about the way in which you should think about defence and the way in which you should analyse them when it comes to problem questions in particular.

So the first thing to mention is that whenever you are asked to discuss potential liability it's always relevant to consider defences. So logically, in order to decide whether someone has committed a crime or not you also need to look at even though they've committed the elements of that offense, actus reus and mens rea, if they have a full defence, a complete defence that exculpates them then the outcome is that they will be acquitted. If there's a partial defence of course to murder then the outcome will be manslaughter, etc etc. So with every question that you answer it's important to look at the potential for defences applying.

Now, having said that, it is always important to consider the potential for defences but it isn't appropriate with problem questions to analyse every single defences to rule it out one by one. Simply and practically that wouldn't be appropriate, either because it would be a waste words to a large extent, in say, a course work type question or in the context an exam you would spend a lot of time doing it and you'd be missing the point. So when you get to the stage that you've looked at the potential crime, you've identified the potential offence, you've looked at the actus reus and mens rea, and you've found that there is liability for that offence, the next stage is then to think could that be potentially a defence which applies, and that is a mental question, where you should think through the various types of defences and think whether there is one which is potentially applicable. If the answer is 'No', then you don't need to discuss defences or if you do discuss it, it would simply be to have one or two sentences saying "it doesn't look like there are any defences which would be applicable in this scenario and therefore it is not necessary to go into detail".

Now when you're doing that, have a think about the types of motivations that can lead to potential defences and also to help you with this we have put a flowchart in Chapter 14 detailing the various defences and the sorts of cues that you should look for within problem facts that might lead you to consider one of those defences in more detail. So, for example, if you see that the defendant was threatened in some way to commit the offence then you should consider duress, duress by threats, even if one of the elements is lacking you should still discuss it because a threat should lead you to discuss it and then you can discuss whether the elements are satisfied or not. If there isn't an explicit threat from a person but there is some kind of circumstantial threat, so I don't know, for example there is a tidal wave coming, and so it leads the defendant to break into a car and drive away, then that threat imposed by that that tidal wave on its way should lead you to discuss duress by circumstances for example. If there is force being used by the defendant committing an offence in order to protect himself or herself from external force then

you might want to discuss, self-defence for example. So in all of these ways, you look for these cues within the facts, or in relation to necessity, a kind of balance of evils. But you look for those cues within the facts. If there is some indication that a defence might be applicable then you should discuss it in detail, but if there's no indication then there's no requirement for you to go through like to tick-box through all the various defence that are potentially applicable, because it's simply a waste of your time within the question answer.

Incidentally, just when I mentioned necessity in the end there - just as we used it within the flow chart, it's often useful to think of necessity as a backup option. Generally you would always analyse the other defences first, insanity, duress by threats, duress by circumstances, and self-defence, the public and private defence. These are the defences that you would look to first, and if none of those are applicable but you still think on the balance of evils what the defendant did was in some way justifiable, it's then that you look, reluctantly I might add, to necessity. And that's the same approach the courts take. The reason why necessity essentially forms almost an imperfect safety net below the other defences - it's there to provide defence where the other defences fails to, in extreme circumstances. But the difference with necessity is there are basically very few, almost no legal rules at all which actually apply to tell you when necessity applies in practice. And so the courts have been consistently reluctant to apply it to scenarios. And so in that sense, you should take your lead from that when you're answering a problem question. For you as well, that should be a reluctant safety net as opposed to a defence that you analysis alongside the others. And then, when you're analysing the defence just make sure you remember the languages of actus reus and mens rea is no longer appropriate. That's the language that we use to describe offenses. When it comes to a defence, you're simply discussing the elements of that defence. If they are all satisfied, then it lead you to an outcome, either in relations to an acquittal, or as I saying relation to insanity, the special verdict of not guilty by reason of insanity.

Thank you!