

Criminal Procedure - Defenses

I. Defenses, Generally - Presumption of Innocence

II. Affirmative Defenses

A. Basic Concepts

1. Burden of proof – preponderance
2. Notice
3. Rebuttal

B. Specific Affirmative Defenses

1. Alibi
2. Self-defenses
3. Excessive Force
4. Defense of others
5. Consent
6. Mutual combat
7. Duress, necessity, compulsion, coercion
8. Intoxication
9. Mistake
10. Incapacity for age
11. Entrapment

III. Insanity Defense

A. M'naghten Test: by reason of mental illness or defect, could not determine whether act was right or wrong

B. Irresistible Impulse Test: by reason of mental illness or defect, was unable to resist the impulse to do a criminal act

C. Modern innovations and problems:

ORS161.295: "A person is guilty except for insanity if, as a result of mental disease or defect at the time of engaging in criminal conduct, the person lacks substantial capacity either to appreciate the criminality of the conduct or conform the conduct to the requirement

of law." If found guilty except for insanity, the defendant is sent to a hospital for the maximum sentence of the crime committed.

- D. Burden of proof
- E. Diminished capacity

IV. Nice tries:

- A. battered woman,
- B. PMS,
- C. Prozac,
- D. sugar shock,
- E. video games,
- F. rock music,
- G. Satanic cults.

V. Constitutional and Statutory Defenses

- A. Equal protection
- B. Due process
- C. Double jeopardy
- D. Statutory defect, vagueness, over breadth, bills of attainder, ex post facto laws.
- E. First amendment
- F. Statute of limitation