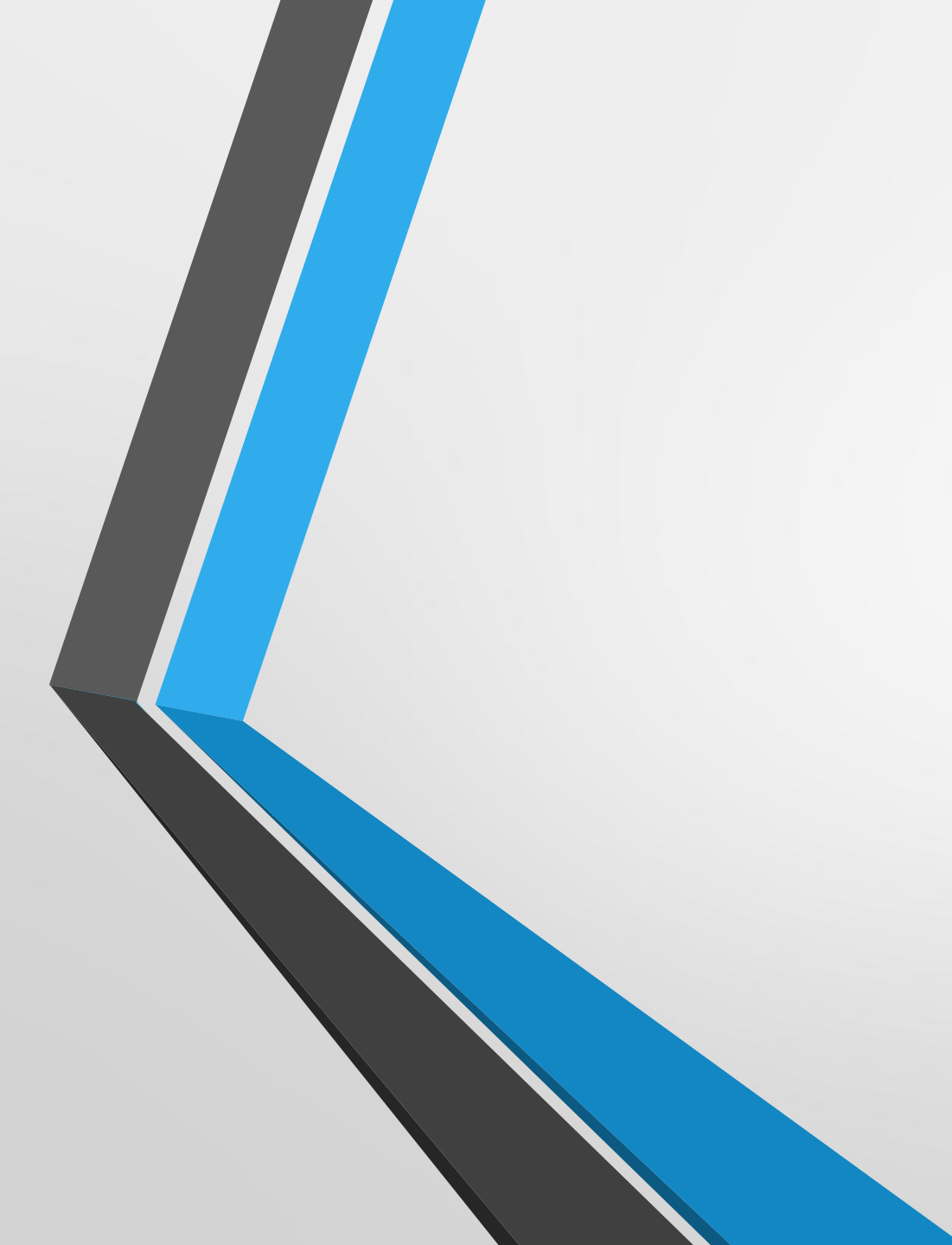




Foundations of Criminal Law

- Exemptions From Criminal Liability
 - Age
 - Insanity
 - Intoxication
 - Mistake of law & Mistake of Fact
 - Casus
 - Legitimate Defence

Three classes of exemptions

- Where the agent does not have the full use of his intellectual faculties;
- When the will or the understanding is not directed to the deed;
- Where the will is overborne by compulsions;



Where the agent does not have the full use of his intellectual faculties;

- Young Age
- Insanity
- Intoxication

Young Age

- Article 35(1) of the Criminal Code:
 - "...a minor under fourteen years of age shall be exempt from criminal responsibility for any act or omission"

Young Age

- Courts of Magistrates As a Court of Criminal Judicature – The Police (Inspector Colin Sheldon) vs Omissis – Magistrate Dr. Joseph Mifsud – 14th May, 2019

Insanity

- Article 33(a) of the Criminal Code:
- *33. Every person is exempt from criminal responsibility if at the time of the act or omission complained of, such person –*
- *(a) was in a state of insanity;*

Insanity

- Two categories of insane persons:
 - Those over whom the threats and prohibitions of criminal law would exercise no control and on whom therefore it would be absolute cruelty to inflict punishment, and,
 - Those whose form of insanity is only such that they would not have yielded to their insanity had a policeman been at their elbow.

Insanity

- Insanity must be proved by the defence because:
 - Every person is presumed to be sane;
 - He who alleges something must prove it

Insanity

- There are two tests for the interpretation and assessment of insanity:
 - The M'Naughton rules
 - The Irresistible Impulse Test

Insanity

- The M'Naughton Rules:
- Every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crime until the contrary can be proved to the satisfaction of the jury.
- To establish a defence on the ground of insanity, it must be 'clearly' shown that at the time of committing the act, the party accused was labouring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he was doing was morally wrong.
- As to his knowledge of wrongfulness of the act, the Judges say: 'If the accused was conscious that the act was one which he ought not to do and if that act was at the time contrary to the law of the land, he is punishable' Thus the test is the power of distinguishing right and wrong not, as once supposed, in the abstract cut in regard to the particular act committed.
- Where a criminal act is committed by a man under some insane delusion as to the surrounding facts, which conceal him from the true nature of the act he is doing, he will be under the same degree of responsibility as if the acts have been as he imagined them to be.

Insanity

- The Irresistible Impulse Test
- Where the defence of insanity is interposed in a criminal trial, the capacity to distinguish between right and wrong is not the sole test of responsibility in all cases.
- In the absence of legislation to the contrary, the Courts of Law are bound to recognise the existence of a form of mental disease which prevents the sufferer from controlling his conduct and choosing between right and wrong. Though he may have the mental capacity to distinguish between right and wrong;
- The defence of insanity is established if it provides that the accused had, by reason of such mental disease, lost power of will to control his conduct in reference to the particular act charge as an offence.
- The capacity of the accused to control his own conduct must be presumed till the contrary is proved.

Local Interpretation of the Insanity Defence

- Two constituent elements:
 - a. The capacity of intellectual discrimination and
 - b. The freedom of will.

Insanity

- Time when insanity must exist:
 - During the commission or omission of the crime.

Insanity

- Court of Criminal Appeal – The Republic of Malta vs David Norbert Schembri decided on the 25th September, 2008.
- Court of Criminal Appeal – The Republic of Malta vs Anthony Schembri decided on the 4th March, 2010.

Intoxication

- *34.(1) Save as provided in this article, intoxication shall not constitute a defence to any criminal charge.*
- *(2) Intoxication shall be a defence to any criminal charge if –*
- *(a) by reason thereof the person charged at the time of the act or omission complained of was incapable of understanding or volition and the state of intoxication was caused without his consent by the malicious or negligent act of another person; or*
- *(b) the person charged was by reason of the intoxication insane, temporarily or otherwise, at the time of such act or omission.*

Intoxication

- (3) Where the defence under sub-article (2) is established, then, in a case falling under paragraph (a) thereof, the person charged shall be discharged, and, in a case falling under paragraph (b), the provisions of articles 620 to 623 and 625 to 628 shall apply.

Intoxication

- *(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention specific or otherwise, in the absence of which he would not be guilty of the offence.*
- *(5) For the purposes of this article "intoxication" shall be deemed to include a state produced by narcotics or drugs.*

Mistake of Fact

- If the supposed circumstances were true, no guilt would have been attached to the person in doing what he did.
- The mistake must be:
 - Essential
 - Inevitable

Mistake of Law

- *Ignorantia legis neminem excusat*
 - *Absolute*
 - *Applies for all crimes and contraventions*
 - *Applies for all – both local and foreigners*

Coercion

- 33. *Every person is exempt from criminal responsibility if at the time of the act or omission complained of, such person –*
 - *(b) was constrained thereto by an external force which he could not resist.*

Coercion

- Moral Coercion:
 - There are three conditions which must exist for moral coercion:
 - 1.The imminent danger
 - 2. The imminent danger of harm threatened on the victim is more grievous than the harm to be committed by the victim.
 - 3.The danger could not have been averted by committing the criminal act.

Casus

- *Nullum crimen est in casu*
 - *i. No voluntary act or omission on his part*
 - *Unintended consequences of conduct which is neither unlawful or negligent*

Lawful Self-Defence

- 223. *No offence is committed when a homicide or a bodily harm is ordered or permitted by law or by a lawful authority, or is imposed by actual necessity either in lawful self-defence or in the lawful defence of another person.*

Lawful Self-Defence

- 224. Cases of actual necessity of lawful defence shall include the following:
- (a) where the homicide or bodily harm is committed in the act of repelling, during the night-time, the scaling or breaking of enclosures, walls, or the entrance doors of any house or inhabited apartment, or of the appurtenances thereof having a direct or an indirect communication with such house or apartment;
- (b) where the homicide or bodily harm is committed in the act of defence against any person committing theft or plunder, with violence, or attempting to commit such theft or plunder;
- (c) where the homicide or bodily harm is imposed by the actual necessity of the defence of one's own chastity or of the chastity of another person;

Lawful Self-Defence

- The evil threatened must be:
 - Unjust
 - Grave
 - Inevitable
 - Sudden
 - Actual
 - Absolute
- Proportionality

Lawful Self-Defence

- 24th April, 2003 – Court of Criminal Appeal – The Republic of Malta vs Eleno sive Lino Bezzina
- 4th February, 2003 – Court of Criminal Appeal – The Police vs Karmenu Cutajar
- 16th October, 2003 – Court of Criminal Appeal – The Republic of Malta vs Domenic Briffa