

GUILTY OR NOT GUILTY, LIABLE OR NOT LIABLE: UNDERSTANDING DEFENCES UNDER NIGERIAN LAW

GREENFIELD CHAMBERS IN-HOUSE LECTURES

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INTRODUCTION

- In every legal case, whether criminal or civil, there is always an alleged wrongdoing (there must be an accused or a defendant). The defendant stands accused of an act and the duty of the court is to determine whether the defendant is guilty or not (for criminal cases), or liable or not (for civil cases).
- In Nigeria, the legal system is built on the principle of “*innocent until proven guilty*” as enshrined in Section 36 (5) of the CFRN. This means that a person may seem to have committed the act they are accused of, yet they can still be found innocent.
- All evidence might point towards a person’s guilt, but the law allows room for that person to be found innocent. This is not a flaw, but a safeguard of fairness.

INTRODUCTION CONTD

- This is where the concept of defence comes into play. A defence can mitigate the severity of an act or can go as far as acquitting or exonerating the defendant entirely if proven.
- Defenses are critical in the legal process because whether a defendant admits or denies an act, a strong defence can change the trajectory of the case.
- However, it is noteworthy that the mere raising of a defence is not enough. The accused or defendant must prove their defence for it to be accepted and result in acquittal or reduced liability.
- Ordinarily, the burden is on the prosecution or the claimant to prove the defendant's liability. But once an accused or a defendant raises a defence to the act, the burden is on such accused person to prove the defence.

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- The power of defenses lies in their ability to challenge the claims against the accused. In law, a well-constructed and proven defense can be the difference between guilt and innocence, liability and exoneration.

DEFINITION OF DEFENCE

- A defence in law refers to a legally recognized reason or argument that a defendant uses to justify, excuse or mitigate liability for an alleged wrongful act or offence in a legal dispute.
- Defences challenge the validity of the plaintiff's claim or the prosecution's case, aiming to either reduce or eliminate the defendant's responsibility in the action.
- Defences also serve as a means for defendants to protect their legal rights and avoid unfavorable judgments or penalties.
- In conclusion, defences are applied to protect the defendant's legal rights and interests. They provide a fair and just balance between the legal rights of the plaintiff and the defendant.

OVERVIEW OF LEGAL DEFENCES

- The various types of defences can be categorized into three namely:
 1. Negation defences
 2. Affirmative defences and
 3. Procedural defences

NEGATION DEFENCES

- These are defences that deny or negate elements of the offence one is accused of, arguing that the prosecution has not met its burden of proof. In this type of defence, the accused party asserts that the prosecution did not meet its obligation of proving guilt beyond a reasonable doubt.
- It focuses more on the idea that there might not be enough definite evidence to prove that a person committed a crime, instead of focusing on telling a different story from what was said to have happened. E.g. Alibi
- **NB: THIS IS USED WHERE ONE IS ACCUSED OF COMMITTING A CRIME.**

AFFIRMATIVE DEFENCES

- These defences do not dispute that the offence occurred. They justify or excuse the defendant's actions under law.
- In this case, it goes beyond refuting the prosecution's case. Here, the accused party takes a more active stance by presenting evidence, witnesses or arguments to support their innocence or a justifiable reason for their actions.
- In other words, they admit the action done but they want the court to say they are not guilty because of certain reasons. E.g. Self-defense
- **NB: THIS IS ALSO USED WHERE THE ACTION COMPLAINED OF IS CRIMINAL.**

PROCEDURAL DEFENCES

- These defences challenge the legal process or procedures used in bringing charges or claims against the defendant.
- It focuses on legal technicalities and the defendant's constitutional rights rather than the substance of the case. These type of defences emphasize the importance of adhering to due process and lawful procedures e.g. during investigation, arrest and trial.
- In this case, the person accused of crime uses legal rule violations to oppose the charges. E.g. Statute of Limitations, lack of jurisdiction, insufficient service of process, double jeopardy.

CRIMINAL LAW DEFENCES

- Under criminal law, there is a requirement that for there to be a crime, the act amounting to crime (actus reus) concurs with the intention to commit the said crime (mens rea). This emphasizes that only a man who is guilty of an action amounting to crime and no one else, should be isolated and sanctioned for the crime.
- This is why section 36(6) (c) of the CFRN provides that an accused be given adequate time and facilities to prepare for his defence and defend himself in person or by a legal practitioner of his choice.
- It has been affirmed that “it is better that ten guilty persons escape, than that one innocent suffer” Sir William Blackstone, Commentaries on the Laws of England (1765-1769)
- This is where defense comes in. An accused person must be given adequate time to show that he is guilty or not guilty of the offence he is said to have committed.

CRIMINAL DEFENCES IN LAW CONTD

- The two principal operational codes used in criminal proceedings in Nigeria are:
 - 1. The Criminal Code (for Southern States)
 - 2. The Penal Code (for Northern States including the FCT)
- Both codes made provision for some of the defences under criminal law. It is pertinent to note that not all defences are embedded in the codes.
- In addition to these, the Administration of Criminal Justice Act (ACJA) 2015, serves as the primary guide for criminal proceedings in the Federal Capital Territory, Abuja. Moreover, several states have adopted their own versions of the Act, known as the Administration of Criminal Justice Law (ACJL), to reflect their local contexts while aligning with the principles of the ACJA.
- Most defences under criminal law relate to the offence of murder or assault.

CRIMINAL DEFENCES IN LAW CONTD

- Some of the defenses under criminal law are:
- Self- defense
- Provocation
- Accident
- Alibi
- Intoxication
- Bonafide claim of rights
- Insanity
- Mistake of facts

CRIMINAL DEFENCES IN LAW CONTD

- **SELF-DEFENCE:** This is provided for under Section 286-293 of the Criminal Code and Section 59-67 of the Penal Code Act. Under the Penal Code Act, the term “private defense” is adopted instead of Self- defence but the provisions are substantially similar to that of the Criminal Code.
- This defence stems from the provision of Section 33 (2) the CFRN which summarily states that a person cannot be said to have been deprived of his right to life if he dies in a situation where reasonable force is used:
 1. To defend a person or property from unlawful violence
 2. To effect a lawful arrest or prevent escape of a person detained; or
 3. To suppress riot, insurrection or mutiny.

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- Self-defence is the act of defending oneself. It is the use of force to protect oneself, one's family or property from real or threatened attack.
- This is to say that self-defence cannot only be claimed where a person is threatened, it can also be a defence where property is threatened.
- An individual may also invoke self-defense when acting to protect another person under direct threat, even if they themselves are not personally at risk, including in cases resulting in the death of the aggressor.
- In the case of *EKPOUDO v. STATE* (2021) LPELR-52826(CA), Self-defence was defined as *"the use of force to protect oneself, one's family or one's property from a real or threatened attack. Generally, a person is justified in using a reasonable amount of force in self-defence if he or she believes that the danger of bodily harm is imminent and that force is necessary to avoid the*

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- The defence of self-defence will not avail a person who uses a greater degree of force than was necessary in repelling the imminent attack. This is to say that the force used must be proportionate to the force a person is threatened with.
- From the above, the following elements must be present before a plea of self defence can avail the Defendant.
 - a. There must be reasonable apprehension of death or grievous harm;
 - b. It was necessary to use force at that time;
 - c. The force used by the Defendant must be proportionate to the force used or imminently threatened against him and reasonable in the circumstances. (Proportionality can be determined by the nature of weapon used in retaliation, and the obvious disparity in the relative physical strength of the parties **GEORGE v STATE (1993) LPELR-1320 (SC)**).

CRIMINAL DEFENCES IN LAW CONTD

- Self-defence falls under the category of Affirmative defences. This is because the defendant is not denying that he committed the crime, he is admitting to it but giving reasons why he acted in the way he did.
- The defence of self-defence is an exonerating defence and if successfully pleaded would result in an acquittal. Where the defence of self-defence fails a person charged with killing another, it would result in conviction for murder.

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- **PROVOCATION:** This is provided for under Section 283 and 284 of the Criminal Code. The defence of provocation is based on the law of compassion for human weakness.
- Section 283 of the Criminal Code states summarily that *“Provocation,” in relation to an offense involving assault, includes any wrongful act or insult likely to cause an ordinary person to lose self-control and respond with an assault. This applies if the act is directed at the person or at someone under their immediate care or with whom they have a close relationship (such as a spouse, parent, child, sibling, or servant).*
- Literally, provocation is an action or event that makes someone angry i.e. intentional causing of annoyance to another person that makes him reach violently.

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- It has been submitted that discovering a wife committing adultery is sufficient provocation but a mere confession of adultery without more is not enough.
- In *Holmes v. D.P.P* (1946) 2 All ER 124, where a wife jeered at her husband who is an illiterate and primitive peasant, taunted him with being impotent and told him she was having sexual relations with another man, it was held to be sufficient provocation.
- Also in *R v Adekanmi* (1944) 17 N.L.R. 99 at 101, it was held that the abusive remarks of a pregnant and nursing mother, referring to her husband as a fool because the latter demanded to know who was responsible for her five-month old pregnancy were sufficient enough to constitute provocation for the act of the husband.
- But a wife's refusal to prepare food for her husband has been held to be insufficient for this purpose, *Oladiran v The State* (1986)1 NWLR (Pt. 14)75.

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- Also, an arrest which is unlawful is not necessarily provocative but may be evidence of provocation to a person who knows it is illegal.
- The dicta in certain cases tend to suggest that the defence of provocation will not be available when actual intent to kill or inflict grievous bodily harm exists. This view has been discredited and described as archaic and anachronistic.
- The Privy Council stated that the defence of provocation may arise where a person does intend to kill or inflict grievous bodily harm but his intention to do so arose from sudden passion involving loss of self-control by reason of provocation.
- Delving further, Devlin L. J (a prominent English judge), in the case of *Lee Chun Chuen v R* (1963) AER 73 affirmed the law as stated above and pointed out that "if it was the law that whenever provocation excites any sort of intention to kill or cause grievous bodily harm the offence is murder, then provocation would be eliminated as a plea open to the defence".
- However, in *Yaro v. The State* (2007) 7-10SC 77, the appellant and five accused persons charged along with him had heard from some sources that the deceased had somewhere in their village made some statements or comments considered insulting to prophet Muhammed (S.A.W.). The

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- The defense of provocation failed and the court stated that if the exact statement made was provided, then the defence of provocation may have been considered.
- The following are the elements of provocation:
 1. That the act of provocation is grave and sudden; the provocation is such that causes a reasonable man to lose his self control. The question of who is a reasonable man has been confined to the discretion of the court, bearing in mind the facts of each case as well as the status of the accused in life.
 2. The sudden provocation resulting in death must be done in the heat of passion. If there is any “cooling time” between the provocation and the retaliation, the defence of provocation will fail.

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- In R v. Green [1955] 15 WACA 73, the accused's wife had abandoned him and moved to her mother's house. Despite his efforts to win her back, she refused to return. One evening around 9 p.m., the accused went to his mother-in-law's house and found his wife having sexual intercourse with another man.
- He left but returned around 1 a.m. with a machete. Hearing his wife and the man talking, he killed both his wife and mother-in-law.
- The court rejected his plea of provocation because the four-hour gap between the initial provocation and the killings provided enough time for him to cool off. If he had killed them at 9 p.m. when he first saw them, the plea might have been valid, but the delay destroyed his defense.

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- While it has been said that an action caused by provocation which resulted in death must be done in the heat of passion, the concept of continuous provocation can be presented as an exception to this rule.
- Continuous provocation refers to a series of events or ongoing conduct that may lead the accused to lose self-control over a longer period.
- For example, continuous provocation could apply if the defendant is subject to prolonged or repeated abusive behavior, and the cumulative effect of this provocation results in the act which led to the death of the abuser.
- Where continuous provocation is proved, it could potentially override the traditional requirement for provocation to be immediate.

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- In a number of provocation cases involving a history of abuse, the previous maltreatment of the accused by her victim has been taken into account in assessing the gravity of the provocation offered.
- Thus, an act which, on its own, may not be sufficient to amount to provocation, when considered in the light of previous provocative acts or words may be regarded as serious enough to cause the accused to lose her self-control.
- However, if a final wrongdoing triggering off the accused's reaction cannot be identified, the accused's claim of being provoked would be difficult to accept.
- In the case of Ahluwalia [1992] 4 All ER 889, the Court of Appeal took the view that loss of self-control following immediately after the provocative conduct of the deceased remained an essential element of the provocation defence.

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- Since Ahluwalia, in cases of battered women who kill, a lapse of time of itself is no longer sufficient to negate provocation. It is now recognized that, where the provocation is cumulative, especially in those circumstances where the accused is found to have suffered domestic violence from the victim over a long period of time, the required loss of self-control may not be sudden as some persons experience a “slow-burn” reaction and appear calm.
- In general, the tendency in English law is towards treating the accused in cases involving cumulative provocation with leniency. Often the judge is prepared to accept the accused’s plea of not guilty to murder but guilty to manslaughter directly. There have been cases in which the accused was found guilty of manslaughter only, in spite of evidence suggesting that she did not kill her victim “on the spur of the moment”.

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- For example, in Maw and Maw (1980-08-20 The Times), the accused, two sisters, killed their violent and drunken father by stabbing him with a kitchen knife. On the night of the killing, the father assaulted and abused the accused and their mother. In the fight that followed he was struck on the head by a heavy mirror and was knocked unconscious.
- While he was unconscious the accused agreed that, if he used violence on them or their mother again, they would kill him. When the victim regained consciousness and began using violence, he was stabbed to death by one of the sisters with a knife.
- The jury found the two accused guilty of manslaughter and not murder on the grounds that they have acted under provocation.

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- It is worthy of note that in a defence of provocation, whether immediate or continuous, any evidence of planning and deliberation would be fatal to the accused's plea, as it would tend to negate the element of loss of control as required by the definition of the defence.
- Continuous provocation presents a complex and controversial issue in law, as some courts recognize that prolonged abuse or repeated insults can lead to a loss of self-control, justifying a provocation defense. However, the challenge lies in balancing fair legal standards with understanding human emotional responses to sustained stress. This nuanced defense remains subject to varying interpretations across jurisdictions.

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3. The mode of retaliation must be commensurate and reasonably proportionate to the provocation offered.

- Provocation which may cause a reasonable man to retaliate a slap on the face may not reduce murder to manslaughter where the accused savagely battered the offender to death with deadly weapon. For example if a man who is provoked retaliates a blow with his fist on another grown man, a jury may well consider probably that there was nothing excessive in the retaliation even though the blow might cause the man to fall and fracture his skull, for the provocation may well merit a blow with fist. It would be quite another thing if the person provoked struck the man and continue to rain blows upon him or hit his head against the ground.

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- In *R v Adelodun* (1959) NN R 144, A was provoked by abusive songs against his family. He lost his self-control and killed one of the singers with a machete. The plea of provocation failed because the injury inflicted on the deceased was so severe and the weapon (machete) used was held not to be proportional to what the deceased said or did to him.
- The court however has been inconsistent in addressing this important element. This is because, in *The State v Mohammed* (1969) 1 WNLR 296 for instance, the court took into account the fact that the dagger used by the accused, who is a Kanuri man, is usually worn by his tribe as ornament. therefore, one wonders if this consideration is relevant to dispensation of justice? So a Kanuri man can use a dagger to retaliate a mere abusive word simply because he has a dagger which he wears as ornaments?
- Also in *R v. Philip* [1969] AC 130. 281, where the accused used a deadly weapon on the deceased, it is difficult to justify the use of deadly weapon to retaliate abusive words on his mother (the deceased), yet the plea of provocation succeeded to mitigate his punishment. It is sufficient to note however, that where the accused himself seeks to be provoked so as to create an excuse for exhibiting violence, the defence will not avail him.

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4. A person provoked must cause harm only to the person who caused the provocation and not to another person who did nothing wrong.

- In the case *R v. Ebor* (1950) 19 NLR 84, the accused met four women, one of whom was his ex-wife on a farm; she had since married another man. He demanded the cloth she was wearing and as she was untying it in the presence of another woman, he stabbed that other woman too. It was held that even if the accused lost his self-control as a result of the provocation given by his ex-wife, he was nevertheless guilty of murder because the second woman did not provoke him in anyway.
- However, provocation given by a group of persons acting in unison may be successfully pleaded where the person so provoked kills a member of such group.

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- The defence of provocation falls under the category of Affirmative defences.
- It is a mitigating defence and not an exonerating defence hence, the effect of a successful plea of provocation is that it reduces the charge of murder or culpable homicide to manslaughter. See Section 318 and 222 of the Criminal Code and Penal Code respectively.
- It is worthy of note that where the right of private or self defence does not avail an accused, the same facts upon which the plea was raised may support the defence of provocation. It is necessary to bear this in mind because a successful plea of self defence would result in an acquittal, an unsuccessful plea would result in a conviction for murder. If the defence of provocation is relied upon in the alternative and accepted, a conviction for manslaughter may be entered against the accused

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- ACCIDENT (Intention: Motive): This defence is provided for under Section 24 and 48 of the Criminal Code and Penal Code respectively. A person is not criminally responsible for an act or omission, which occurs independently of the exercise of his will or for an event which occurs by accident.

An event occurs by accident if:

- It is too remote and indirect a consequence of the accused's unlawful act or omission.
- A reasonable man in the shoes of the accused, would not have foreseen it as likely or probable i.e. the accused person could not reasonably have foreseen as likely or probably.
- A defence of accident falls under the category of negation defences.

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Illustration: **State v Appoli (1970)**

- A and B were pushing each other near a river, T warned them that they were playing a dangerous game. B pushed A further. A slipped, fell into the river and drowned. Rejecting a defence of accident, the court held that a reasonable person would have appreciated the danger of pushing another near a river in the particular circumstance.

Can an Accused Person Rely on the Defences of Provocation, Self-defence and Accident on the Same Facts?

- It is not unusual for the defence counsel in murder cases to rely on defences of accident, provocation and self-defence at the same time. The defences of provocation, self-defence and accident are mutually exclusive. Provocation and self-defence admit the intentional doing of the act resulting in injury or death. On the other hand, accident negates intention and whereas the defences of provocation and self-defence may be raised on the same facts, it is not possible on the same facts to also rely on the defence of accident.

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- An accused person who relies on provocation as a defence to a charge of murder, is indirectly saying that he killed the deceased but due to provocation. Similarly, an accused who relies on self-defence in a charge of murder is also saying that he killed the deceased intentionally while defending himself from imminent danger to his life. But in accident, an accused person is saying he did not deliberately kill the deceased, that the event happened unexpectedly.
- A reliance on all the aforementioned defences on the same fact and or evidence shows a misconception of the nature of the defences and thus contradiction in the terms. In raising up defences, care should be taken to ensure that an accused is not regarded as an unserious person who is merely trying to exculpate himself unjustly. Raising the three defences together may not also be in the overall interest of an accused person as they have the potentials of subtly indicating to the trial court that the accused person has no genuine defence. An accused that relies on all the three defences at the same time on the charge of murder may be likened to a drowning man who clings even to a straw.

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- ALIBI: Unlike the other defences aforementioned, the defence of Alibi is not contained in any positive law rather has remained nourished under case laws.
- For the defence of Alibi to avail a defendant, it must be raised at the earliest opportunity i.e. at the point of interrogation *Rabiu v. State* (2010) 10 NWLR (Pt. 1201) 127.
- The defence of Alibi means that a person charged with a crime was not even at the place of the crime at the time of the crime.
- The defence of alibi can be categorized as a negation defence.
- The Elements one must prove to be availed by the defence of Alibi are:
 1. Presence at a Different Location: The defendant must show that they were at a specific place other than the scene of the crime when the offense occurred. This must be a location far enough away that they could not have been at the crime scene *Adebiyi vs State* (2016) 1-2 S.C (pt iv) 95.
 2. Supporting Evidence: The alibi must be supported by credible evidence. This could include: Witness testimony (Statements from people who saw or were with the defendant at the time of the crime), Documentary evidence (Receipts, surveillance footage, or records showing the defendant's presence at another location), any other corroborating proof (GPS data, phone records, or other digital evidence.)

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3. Timely Disclosure: In many jurisdictions, the defendant must notify the prosecution of the alibi before trial. If not disclosed early enough, the court may disallow the defense unless there is a valid reason for the delay.

4. Reasonable Doubt: Once the defendant raises the defense of alibi, the prosecution has the burden to prove beyond a reasonable doubt that the defendant was at the crime scene and committed the offense. The alibi does not need to be proven beyond doubt, but it must raise reasonable doubt in the mind of the court about the defendant's presence at the crime scene **OROBOSA EYONAOWA v. COMMISSIONER OF POLICE (2014)LCN/7662(CA)**.

NB: The defence of alibi where it is successfully proven is an exonerating defence.

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- The defence of Alibi has however been trailed with some problems making it fail defendants even when the defendant had good cause and could have been exonerated by the defence. Some of these problems are:
 1. The police may be overzealous to pin the alleged crime on someone for many reasons ranging from hatred, to bribery and corruption or just a mere over zealousness to get applauded for doing a good job.
 2. There is a high level of illiteracy in Nigeria which means that witness statements may be lost in translation.
 3. Finally, intimidation and torture has become the order of the day during interrogations, thereby causing a problem for the accused who may have raised the defence at the earliest possible time but was intimidated into changing his statement by the IPO.

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- Other criminal defences are:
 1. Intoxication: this is provided for under Section 29 of the Criminal Code and Section 44 and 52 of the Penal Code. Under the law, intoxication is deemed to include a state produced by narcotics or drugs.
- Intoxication generally does not constitute a defense in criminal law but can constitute a defence where it is proven that the state of intoxication was involuntarily induced (Involuntary intoxication).
- Where intoxication is successfully proven, it can serve as either a mitigating or exonerating defence depending on if it is a voluntary intoxication or involuntary intoxication.

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2. Bonafide claim of rights: this is provided for under Section 23 of the Criminal Code. It is a defence which exonerates a person for an offence relating to property; for any act done with respect to the property in the exercise of an honest claim of right and without intention to defraud. e.g. if A severely beats up B and takes the money on him, mistakenly believing that B was one of the thieves who had just stolen from him, the defence of Bonafide claim of rights would exonerate him on a charge of robbery.

3. Insanity: this is provided for under Section 28 and 51 of the Criminal Code and Penal Code respectively and it states that a person is not responsible for an act done at such a time that he is mentally incapable of understanding what he is doing.

Insanity is categorized under affirmative defences.

CIVIL LAW DEFENCES(TORTS AND CONTRACT)

- In civil law, defenses serve as vital mechanisms that allow defendants to respond to claims and assert their rights. Unlike criminal law, where the stakes often involve potential imprisonment, civil law typically addresses disputes between individuals or entities seeking compensation or relief.
- Understanding these defences help in the outcome of the case and plays a role in upholding the principal of fairness and justice.
- **DEFENCES UNDER TORTS:** Torts law is an essential aspect of the legal system that compensates individuals who have suffered harm or injury due to the wrongful actions of others.
- However, there are certain situations where a defendant may be able to escape liability by using a defence.

DEFENCES IN TORT

- VOLENTI NON FIT INJURIA (Consent): this means that the plaintiff has voluntarily assumed the risk of injury or harm. In this case, the defendant can argue that the plaintiff was aware of the risk involved in the activity and willingly accepted it.
- The essential ingredients of this defence are :
 - 1.The plaintiff must have knowingly assumed the risk of harm or injury.
 - 2.The plaintiff must have been aware of the nature and extent of the disease.
 3. The plaintiff must have consented to the risk.

E.g. a professional wrestler cannot claim damages for a severe Injury sustained during match because he voluntarily participated in the activity, fully aware of the risks involved.
- This is a complete defence and where it is upheld, it exonerates the defendant from liability completely.

DEFENCES IN TORT CONTD

- **CONTRIBUTORY NEGLIGENCE:** in this defence, the defendant claims that the plaintiff's own negligence contributed to the harm they suffered. E.g. where a pedestrian carelessly crosses the road and is hit by a car, their own negligence may reduce the damages they can claim.
- In **Sheun v Aferre (1998) NWLR Pt. 546 CA 119**, it was held that in order to succeed in the defence of contributory negligence, the defendant must prove that the plaintiff has failed to take reasonable care of his own safety and the failure was a cause of his damage.
- Contributory negligence serves as a mitigating defence.

DEFENCES IN TORT CONTD

- PLAINTIFF THE WRONG DOER (Illegality): there is a maxim “ex turpi causa non oritur action” which says that “from an immoral action, no cause of action arises.”
- This defence means that the plaintiff was also responsible for the harm or injury suffered.
- The effect of this is that if the plaintiff is deemed a wrongdoer, courts may refuse to entertain their claim meaning the plaintiff cannot recover damages at all. E.g a person injured while committing a robbery cannot sue the property owner for injuries sustained during the crime, even if the property owner acted negligently in some way.
- This defence is under the affirmative defence category.

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- ACT OF GOD: this means that the harm or injury suffered was due to natural events beyond human control and there was no way the defendant could have prevented the harm or injury.
- It falls under the category of negation defence.

- Other defences under tort include:
 - Mistake
 - Necessity
 - Self defence
 - Inevitable accident etc.

DEFENCES UNDER CONTRACT LAW

- A contract is a legally binding agreement between two or more parties that creates mutual obligations.
- Defences under contract aims to justify a party's failure to perform their contractual obligations. These defences can show that the breach of a contract should be excused, justified or that the contract should not be enforced, potentially relieving the defendant from liability.
- Some defences under contract law are:
 - That the contract was unconscionable: a contract may not be enforced if one is pressured into agreeing to it when the terms are grossly unfair.
 - Illegality: one can argue that a contract should not be enforced if the purpose for which it was entered is illegal.

DEFENCES UNDER CONTRACT LAW

- Duress: parties are to willingly enter a contract hence, where a party was not allowed to freely enter into a contract, such a party can raise the defence of being under duress in a claim for breach of contract.
- Impossibility: a party sued for breach of contract may argue that it would be impossible to carry out the terms of the contract.

DEFENCES UNDER INTELLECTUAL PROPERTY

- In the realm of Intellectual Property (IP) law, defenses play a crucial role in balancing the rights of creators with the interests of the public. IP law aims to encourage innovation and creativity by granting exclusive rights to creators for their inventions, works, and brands. However, these rights are not absolute, and various defenses can be raised to challenge claims of infringement or violation.
- Some of these defences are:
 1. FAIR USE: this is a defense that permits limited use of copyrighted material without obtaining permission from the copyright holder, usually for purposes such as criticism, comment, news reporting, teaching, scholarship, or research. E.g. Using a small portion of a book in a classroom for educational purposes.

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2. **FIRST SALE DOCTRINE:** This defense allows the purchaser of a legally acquired copyrighted work to resell or distribute that specific copy without the copyright holder's permission. However, it doesn't allow the purchaser to make new copies. E.g. Selling a used book or DVD that you lawfully bought.

3. **LACHES:** This is a defense that prevents a party from asserting a claim if they have unreasonably delayed in bringing the claim, causing prejudice to the defendant. E.g. If a trademark owner delays for years before suing for infringement, the defendant might use laches as a defense.

THE ROLE OF LAWYERS IN DEFENDING CLIENTS

- **Legal Strategy:** Lawyers assess the facts, identify applicable defenses, and develop a strategy to either absolve or mitigate liability for their clients.
- **Burden of Proof:** In both criminal and civil cases, it's often the responsibility of the lawyer to ensure that the necessary evidence is presented to support the defense, whether it's an affirmative defense or a negating one.
- **Advising Clients:** Lawyers play a critical role in advising their clients on the viability of defenses, the potential outcomes, and the legal implications of pursuing certain defenses.
- **Negotiating Settlements:** In civil cases, where a strong defense is raised by a lawyer, it can also be a bargaining tool for negotiating settlements or reducing claims.
- **Ensuring Fair Trial:** Lawyers ensure that their clients' rights are upheld and that the legal process is followed properly, including the proper application of defenses.

CONCLUSION

- The role of defenses in both civil and criminal law is fundamental in ensuring justice is served. They offer protection to individuals, not by denying the occurrence of an event, but by providing justifiable, excusable, or mitigating circumstances that challenge liability or guilt.
- Whether it is a complete exoneration or a reduction of liability, defenses underscore the principle that not every wrongful act should lead to punishment or civil liability. The law, through these defenses, strikes a balance between holding individuals accountable and recognizing human vulnerabilities and societal interests.
- Understanding and effectively invoking these defenses is not just a tool for lawyers but a vital part of safeguarding fairness and equity in the legal system. Ultimately, defenses demonstrate that the legal process is not just about what was done, but why it was done, and under what circumstances.

THANK YOU!!!!!!!!!!!!!!!!!!!!