



Duress Defense

- ◆ Whether the standard of reasonableness is subjective or objective.
- ◆ Source of the threat.
- ◆ Whether the threat should be imminent.
- ◆ Whether the defense should be excluded for certain types of crimes (e.g. homicide).
- ◆ Whether particular types of threats are required.
- ◆ Whether the defendant should be free from fault.



Duress Defense

- ◆ Whether the standard of reasonableness is subjective or objective.
 - Common Law: Reasonable fortitude
 - MPC: Reasonable firmness



Duress Defense

- ◆ Source of the threat.
 - Most jurisdictions require that the source of the threat be another person.



Duress Defense

- ◆ Whether the threat should be imminent.
 - Common Law: Present, imminent & Pending
 - MPC: -----



Duress Defense

- ◆ Whether the defense should be excluded for certain types of crimes.
 - Common Law: Homicide (including felony murder?)
 - MPC: -----



Duress Defense

- ◆ Whether particular types of threats are required.
 - Common Law: Death or serious bodily harm.
 - MPC: Unlawful force.



Duress Defense

- ◆ Whether the defendant should be free from fault.
 - Common Law: Yes
 - MPC: Sort of.
 - Reckless: Defense is barred.
 - Negligence: Negligence Mens Rea



Definitions

◆ Competency:

- Person, as a result of a mental disease or defect lacks capacity to understand the proceedings against him/her or to assist in defense.

◆ Execution:

- *Ford v. Wainwright* (1986): bar on execution of insane.
- *Atkins v. Virginia* (2002): bar on execution of the mentally retarded.



M'Naghten (p. 879)

- ◆ Defect of reason or defect of mind; *and*
 - Did not know the nature of the act, *or*
 - Knowing the nature of the act, did not know that it was wrong.

- ◆ Problems with test:
 - Complete impairment
 - Restriction to impairment of cognition
 - Artificial restriction on expert testimony



MPC §4.01

- ◆ As a result of a *mental disease or defect* he or she lacked *substantial capacity* to:
 - *Appreciate* the criminality (wrongfulness)
 - *Conform his or her conduct* to the requirements of the law.