



LAMONT LAWYERS

SELF-DEFENCE

Section 418 (1) of the Crimes Act 1900 provides that a person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in self-defence. The law recognises the right of a person to act in self-defence from an attack or threatened attack. Once self-defence is raised as a defence, the prosecution has the onus of proving, beyond reasonable doubt, that the person did not carry out the conduct in self-defence. The prosecution must prove beyond reasonable doubt either : (a)the accused did not believe at the time of the act that it was necessary to do what he or she did in order to defend himself or herself; or (b)the accused's act was not a reasonable response in the circumstances as he or she perceived them. If the prosecution fail to prove (a) or (b) then self-defence will have succeeded as a legal defence to an otherwise unlawful act.

DURESS

A person acts under duress if that person's actions were performed because of threats of injury or death. The prosecution must prove that the actions were done voluntarily, and so the burden is with the prosecution to negative the defence.

NECESSITY

The defence of necessity operates where circumstances induce the accused to perform what would otherwise be an unlawful act to prevent even more dire consequences. The acts done to avoid those dire consequences must not be out of proportion to the peril avoided. The accused has the onus of establishing a basis for a defence of necessity and, thereafter, the prosecution bears the onus of negating the defence beyond reasonable doubt

CORRECTING A CHILD

S 61AA of the Crimes Act 1900 provides for the defence of lawful correction. In criminal proceedings brought against a person arising out of the application of physical force to a child, it is a defence that the force was applied for the purpose of the punishment of the child, but only if (a) the physical force was applied by the parent of the child or by a person acting for a parent of the child, and (b) the application of the force was reasonable. The application of the force is not reasonable if applied to the head or neck area of the child or cause harm for more than a short period.

HONEST AND REASONABLE MISTAKE

The defence of honest and reasonable mistake of fact applies to strict liability offences, such as traffic and license offences. The prosecution do not have to prove that the accused intended to commit the offence. The defence may be available when a person conducts themselves in a certain way thinking that they were entitled to do so.

INTOXICATION

Self-induced intoxication is only available for those offences which have the element of a specific intent to bring about a specific result.

Call our criminal law hotline on **1300 365 075**