

AFFIRMATIVE DEFENSE

CULPABILITY | LIABILITY | JUSTIFICATION



Jeannie Santiago



Unanimously, most individuals seek to evade the consequences of a criminal conviction or civil penalties. When accused of an offense, defendants frequently encounter various possible outcomes, which might lead to plea bargains or legal settlements, potentially hindering situations that could have been more advantageous with affirmative defenses. This article aims to provide a comprehensive overview of affirmative defense, including its definition, examples of clauses considered affirmative defense, burden of proof requirements, history, and an exploration of its advantages and disadvantages and its application in mediation and the court system.

Affirmative defense refers to a plea raised by a defendant in a legal proceeding, in which the defendant admits to the allegations made by the plaintiff or prosecutor of a civil or criminal case to obtain vindication to justify or excuse their conduct. Unlike denying the prosecutor's or plaintiff's allegations with a negating defense, an affirmative defense seeks to provide evidence through a "motion" or "summary judgment" that explains why the defendant should not be held criminally liable or civilly liable for the plaintiff's, state's, or federal's claims. [i]

The concept of affirmative defense has its roots in the common law tradition, where courts developed various legal doctrines to allow defendants to assert justifications or excuses for their actions. Over time, affirmative defense has become a well-established principle in both criminal and civil law, providing defendants with important legal protections and safeguards.

It is important to note that the rules that dictate the applications of affirmative defenses vary depending on jurisdiction. For instance, Insanity defenses are applicable in most states with legal standards that require the burden of proof for The M'Naghten Rule, The Irresistible Impulse Test, The Model Penal Code Test, and The Durham Rule. However, states like Kansas and Idaho do not allow Insanity pleas to be submitted under any circumstances. [ii]



Examples of clauses that are considered affirmative defense include:



Self-Defense: A defendant in a criminal or civil case may assert self-defense as an affirmative defense, arguing that their actions were justified because they were acting in defense of themselves or others against imminent harm or danger.

Statute of Limitations: In some cases, a defendant may assert the statute of limitations as an affirmative defense, arguing that the plaintiff's claim is barred because it was not filed within the applicable period specified by law.

Contributory Negligence: In cases involving negligence, a defendant may assert contributory negligence as an affirmative defense, arguing that the plaintiff's negligence contributed to the injuries or damages they suffered.

Entrapment: When a defendant alleges that a state or federal authority utilized tactics to lure the defendant to engage in criminal activity to commence prosecution.

Respondeat Superior: "Respondeat superior" is a Latin term that translates to "let the master answer." In legal terms, it refers to a doctrine that holds employers or principals liable for the wrongful acts or omissions committed by their employees or agents while acting within the scope of their employment or agency.

Assumption of risk: A legal principle whereby an individual voluntarily accepts and understands the potential dangers or risks inherent in an activity, and as a result, may not hold another party liable for any resulting harm or injury.

"Diplomacy & defense are not substitutes for one another. Either alone would fail"

-JFK

Breach of contract: The failure, without legal excuse, to uphold any promise that forms the whole or part of a contract. In simpler terms, it occurs when one party fails to fulfill their obligations under a contract, leading to a violation of the agreed-upon terms and potentially resulting in legal consequences.

Failure of Condition Precedent: Refers to a situation in contract law where a specific event or condition must occur before certain contractual obligations become binding. If this condition fails to occur as specified in the contract, the parties may be relieved of their obligations under the contract, and the contract may become void or unenforceable.

Failure to Join Necessary or Indispensable Party: a case can be dismissed where a plaintiff has not included or is absent from a party whose participation is required.

Fraud: Fraud is the deliberate deception or misrepresentation made by one party to another, typically for financial or personal gain, resulting in harm or loss to the deceived party.

(For more examples of Affirmative Defenses please visit www.courtroom5.com "31 Affirmative Defenses and How to Assert Them")



As with all aspects of legal doctrine, there are advantages and disadvantages of affirmative defense that should be considered.

The advantages of affirmative defense allow for the protection of the defendants' rights which ensures that defendants have the opportunity to present all relevant evidence and legal arguments in their defense, protecting their rights to due process and a fair trial. By allowing defendants to assert justifications for their actions, affirmative defense promotes fairness and justice by considering all relevant facts and circumstances before reaching a verdict.

Lastly, affirmative defense can encourage settlements by giving defendants leverage to negotiate favorable terms with plaintiffs or plea deals with governmental entities, especially when defendants have strong legal arguments or evidence to support their defense.

However, the complexity of affirmative defense can add challenges to legal proceedings, requiring parties to present additional evidence and legal arguments to support their defense.

The burden of proof refers to the obligation or responsibility placed on a party in a legal proceeding to provide sufficient evidence to support their claim or defense. In some cases, defendants bear the burden of proving affirmative defenses, which can be challenging to meet, especially when the evidence is disputed or unclear.

Unfortunately, there is a potential for abuse. Affirmative defense can be abused by defendants who assert frivolous or meritless defenses in an attempt to delay or obstruct the legal process, leading to unnecessary costs and delays for plaintiffs or authorities.



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Mediation & the Court System

In mediation, affirmative defenses can play a crucial role in resolving legal disputes by providing parties with an opportunity to explore potential justifications or excuses for their actions and negotiate mutually acceptable resolutions. Mediators may help parties identify and evaluate affirmative defenses, facilitating constructive dialogue and compromise.

In the court system, affirmative defenses are raised and litigated during the pre-trial phase of legal proceedings, where parties present evidence and legal arguments to support their positions. Courts carefully consider affirmative defenses before reaching a decision, weighing the merits of the defense against the plaintiff's claims and applicable legal standards.

In conclusion, affirmative defense is a fundamental aspect of legal proceedings, allowing defendants to assert justifications for their actions and ensuring fairness and justice in the resolution of legal disputes. While it offers important protections for defendants, affirmative defense can also complicate legal proceedings and pose challenges for parties and courts alike. By understanding the purpose, history, and application of affirmative defense, legal practitioners and parties to litigation can navigate the legal process more effectively and promote the fair and timely resolution of disputes.

[i] [Affirmative Defense - Definition, Examples, Cases, Processes \(legaldictionary.net\)](#)

[ii] [The Insanity Defense Among the States - FindLaw](#)

