

Introduction to Consent

→ In theory, individuals can waive certain rights because we <3 autonomy and freedom! So we can technically consent to injury AND the wrongdoer might not be liable (DELICT ONLY)

↪ *volenti non fit injuria* - an injury is not done to one who consents. Again, applies to delict only.

→ In Crim, a crime is committed against the whole community so a victim may **not** waive their right as there is a greater public interest.

↪ Thus, victim cannot make an unlawful act suddenly lawful just by consenting, as we have to consider public policy.

🔊 **General rule:** a victim's consent will not excuse the conduct of the wrongdoer!

📄 NB to note: Sometimes the victim's consent may be considered. The weight of this consent is determined by the court. The will compare individual autonomy vs consent should never be a defense against harm. Depends on the crime tho.

REQUIREMENT #1

→ Consent must be recognized by law as a possible defence. ...so is the crime in question one which recognises consent as defence?

CRIMES YOU CANNOT CONSENT TO:

↪ like you cannot consent to crimes that harm the State in any way e.g perjury, treason
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↪ Crimes against community interests e.g domestic violence, women/children abuse, slavery

↪ Crimes against the individual e.g murder

CONSENT CAN BE USED AS A DEFENCE:

↪ When LACK OF CONSENT is part of the definitional element of a crime, then the victim's consent is obsv important because it provides a DEFENCE. e.g rape "the unlawful, intentional sexual penetration of another without consent"

e.g theft "Unlawful appropriation of a thing capable of being stolen with the intention of permanently depriving the owner of ownership"

"If the owner consents to the thing being taken or used then there is not theft"

↪ When there is an individual interest at the disposal of the victim, and they consent. e.g malicious damage to property Can consent to have property damaged as long as you have the ownership of the property



