

## EL CONSENTIMIENTO DEL OFENDIDO: ENTRE LA JUSTIFICACIÓN Y LA EXCLUSIÓN DE LA TIPICIDAD

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### SUMARIO

1. Introducción. 2. Situaciones reguladas en nuestro derecho. 3. Estado actual de la cuestión. a) El consentimiento como causa de exclusión de la tipicidad. b) El consentimiento como causa de justificación. 4. Teorías diferenciadoras: "Acuerdo" y "Consentimiento *stricto sensu*". 5. Ámbito de aplicación: bienes jurídicos disponibles e indisponibles. 6. Requisitos para su validez. 7. El consentimiento presunto. 8. El consentimiento en los delitos culposos. 10. Conclusiones. 11. Bibliografía.

### 1. INTRODUCCIÓN

En el presente trabajo, se abordará lo concerniente al instituto del consentimiento del ofendido, partiendo de las diversas posiciones que hay al respecto: desde la teoría diferenciadora, la posición unitaria, pasando por la ubicación que le correspondería dentro de la teoría del delito, sin olvidar de los bienes jurídicos en cuanto a su disponibilidad o no, los requisitos necesarios para la validez del mismo, como asimismo los vicios del consentimiento como hipótesis de invalidez, enfrentarnos al consentimiento presunto y su hermandad con el estado de necesidad, precisar el alcance del consentimiento en los delitos culposos, concluyendo con un apartado de conclusiones al respecto.

El estudio de la eficacia del consentimiento del titular del bien jurídico protegido, a mi juicio, tiene una importancia preponderante como excluyente del ilícito, no obstante, se podrá comprobar tras la consideración de la voluntad del sujeto pasivo una determinada concepción del individuo y del Estado, plasmada a través de la prelación de valores tenidos en cuenta por el ordenamiento jurídico de una sociedad en

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