

Self Defense, Defense of Others and Defense of Property

Self-Defense- Elements:

- a) *reasonable* belief
 - b) that the illegal *action* (e.g. *assault*) was *necessary*
 - c) to defend against an *imminent threat*
 - d) of *bodily injury* that
 - e) is *proportionate* (meaning, the defensive “illegal” action) to the force used
- **Proportionality:** Deadly force cannot be used to ward off a non-deadly attack
 - Initial Aggressor may not claim self-defense unless the attacked party responds so disproportionately that deadly force is the only way to defend against it
 - **Duty to retreat**
 - Victim has no “duty to retreat” in his/her home and can use defense of deadly force
 - Outside the victim’s home, and in some jurisdictions, even in one’s home, there is a “duty to retreat” before using deadly force

Self Defense, Defense of Others and Defense of Property (cont.)

Defense of others: Same as self defense

- Old rule (“alter ego” rule): This defense was only allowed where the victim of the attack actually could have himself legally used self-defense

e.g. Defense not available when “victim” was actually a fugitive criminal etc.
- New rule (MPC rule): Defense allowable as long as the belief of the threat was *reasonable*

Defense of Property:

- Victim can only defend property with **non-deadly force** (in order to avail himself of self-defense protection)
- Can **threaten deadly force** to get intruder off property, **but can't actually use it**

Use of Force to Effectuate Arrest and to Prevent Crime

Police Officers:

- Can use non-deadly force to prevent any crime or make any arrest
- Common law: Can use deadly force to stop a felony or arrest a felon
- MPC (modern rule): Can use deadly force only to stop the use of deadly force or to arrest criminal who used deadly force
- Reasonable belief that any of the above is true is sufficient

Private Citizens (Citizen's Arrest)

- Same rule as police officers **except that** private citizen's belief of a crime taking place must turn out to be true (i.e., **reasonable belief is not sufficient**) if the private citizen is to use the citizen's arrest defense