

LEGAL DEFINITION OF SELF-DEFENSE

DEFENSE, SELF-DEFENSE - A defense to certain criminal charges involving force (e.g. murder).

Use of force is justified when a person reasonably believes that it is necessary for the defense of oneself or another against the immediate use of unlawful force. However, a person must use no more force than appears reasonably necessary in the circumstances.

Force likely to cause death or great bodily harm is justified in self-defense only if a person reasonably believes that such force is necessary to prevent death or great bodily harm.

The Right To Protect One's Person And Property From Injury.

It will be proper to consider: 1. The extent of the right of self-defense. 2. By whom it may be exercised. 3. against whom. 4. For what causes.

As to the extent of the right: First, when threatened violence exists, it is the duty of the person threatened to use all prudent and precautionary measures to prevent the attack; for example, if by closing a door which was usually left open, one could prevent an attack, it would be prudent, and perhaps the law might require, that it should be closed in order to preserve the peace, and the aggressor might in such case be held to bail for his good behavior. Secondly, if after having taken such proper precautions, a party should be assailed, he may undoubtedly repel force by force, but in most instances cannot, under the pretext that he has been attacked, use force enough to kill the assailant or hurt him after he has secured himself from danger; such as if a person unarmed enters a house to commit a larceny, while there he does not threaten any one, nor does any act which manifests an intention to hurt any one, and there are a number of persons present who may easily secure him, no one will be justifiable to do him any injury, much less to kill him; he ought to be secured and delivered to the public authorities. But when an attack is made by a thief under such circumstances, and it is impossible to ascertain to what extent he may push it, the law does not requite the party assailed to weigh with great nicety the probable extent of the attack, and he may use the most violent means against his assailant, even to the taking of his life. For homicide may be excused where a man has no other probable means of preserving his life from one who attacks him while in the commission of a felony, or even on a sudden quarrel he beats him, so that he is reduced to this inevitable necessity. And the reason is that when so reduced, he cannot call to his aid the power of society or of the commonwealth, and being unprotected by law, he reassumes his natural rights which the law sanctions, of killing his adversary to protect himself.

The party attacked may undoubtedly defend himself, and the law further sanctions the mutual and reciprocal defense of such as stand in the near relations of husband and wife, parent and child, and master and servant. In these cases, if the party himself or any of these his relations, be forcibly attacked in their person or property, it is lawful for him to repel force by force, for the law in these cases respects the

passions of the human mind, and makes it lawful in him, when external violence is offered to himself, or to those to whom he bears so near a connection, to do that immediate justice to which he is prompted by nature, and which no prudential motives are strong enough to restrain.

The party making the attack may be resisted, and if several persons join in such attack they may all be resisted, and one may be killed although he may not himself have given the immediate cause for such killing, if by his presence and his acts he has aided the assailant.

The cases for which a man may defend himself are of two kinds; first, when a felony is attempted, and secondly, when no felony is attempted or apprehended.

1st. A man may defend himself and even commit a homicide for the prevention of any forcible and atrocious crime, which if completed would amount to a felony; and of course under the like circumstances, mayhem, wounding and battery would be excusable at common law. A man may repel force by force in defense of his person, property or habitation, against any one who manifests, intends, attempts, or endeavors, by violence or surprise, to commit a forcible felony, such as murder, rape, robbery, arson, burglary and the like. In these cases he is not required to retreat, but he may resist and even pursue his adversary, until he has secured himself from all danger.

2d. A man may defend himself when no felony has been threatened or attempted: 1. When the assailant attempts to beat another and there is no mutual combat, such as where one meets another and attempts to commit or does commit an assault and battery on him, the person attacked may defend himself, and; 2. An attempt to strike another, when sufficiently near so that there is danger, the person assailed may strike first, and is not required to wait until he has been struck.

When there is a mutual combat upon a sudden quarrel both parties are the aggressors, and if in the fight one is killed it will be manslaughter at least, unless the survivor can prove two things: 1st. That before the mortal stroke was given he had refused any further combat, and had retreated as far as he could with safety; and 2d. That he killed his adversary from necessity, to avoid his own destruction.

A man may defend himself against animals, and he may during the attack kill them, but not afterwards.

As a general rule no man is allowed to defend himself with force if he can apply to the law for redress, and the law gives him a complete remedy.

Taken from the website; <http://www.lectlaw.com/def/d030.htm>