



## SELF DEFENCE AND THE LAW

### Module 3

#### THE LAW

Now the law allows only reasonable force to be used against an attacker and I will not go against this.

I will, however, say that it is difficult to judge what can be defined as 'reasonable' force.

It will go in your favour, nonetheless, when it can be shown that you simply resorted to a self-defence technique and which in fear and panic of the situation might have been slightly harder than you would have intended if you had not been in fear for your life.

What you are trying to do in effect is not to analyse your attacker in a crime that takes only seconds.

#### **A brief summary of the legal view of self-defence, justification and provocation is as follows:**

Anyone is entitled to use reasonable force to defend themselves, their property, or another person. In addition, a person may use such force as is reasonable in the circumstances in the prevention of crime.

Where a defendant puts forward a justification for the infliction of violence, such as self-defence, provocation or resistance to violence, the onus is on the prosecution to disprove these matters if a verdict of guilty is to be justified.

The degree of force permissible depends on whether the defendant's actions were reasonable in the circumstances.

When the issue of self-defence is raised, it is an important consideration that the accused should have demonstrated by his actions that he did not want to fight.

It is said that a person must have shown that he was prepared to temporise and disengage and perhaps make some physical withdrawal, but it was subsequently made clear that a failure to retreat is only an element in considerations upon which the reasonableness of an accused's conduct is to be judged; in some circumstances a person might act in self-defence and have a good defence without temporising, disengaging or withdrawing.

However, the test of reasonableness is not entirely objective and the state of mind of the accused should not be overlooked completely.

A breach of the peace can only be justified when used to prevent a breach of the peace, although the circumstances of provocation may be taken into consideration in awarding the punishment.

Provocation does not alter the nature of the defence, but it is allowed for in the sentence.

Put more simply, you may use only 'reasonable force's to defend yourself or others from attack.

What you see as reasonable will depend entirely on the situation and its progress.

For example, if you really believe that you or someone else is about to be murdered, then you can use any appropriate method to stop the assault.

However, this does not give you free licence to murder the assailant.

Likewise if you have used a metal bar to beat the assailant, to the point where there is no further risk from him, you are breaking the law if you continue your attack.

In essence, you must only do the minimum that is required to stop or avoid further injury.

If, in the cold light of day, the assailant who originally picked on you ends up in hospital with a broken skull, the courts may well find that your actions were excessive. However the courts do not recognise that

...a person defending himself cannot weigh to a nicety the exact measure of his necessary defensive action. If...in the moment of unexpected anguish a person had only done what he honestly and instinctively thought was necessary that would be deemed to be the most potent evidence that only reasonable defensive action had been taken.

Additionally, the law will have expected you to extract yourself from any impending violence, not confront it (but does accept that this is not always possible). Finally, remember, you are not allowed to go about the street armed with any article that is intended for violence.

### **Weapons**

If you are attacked or even injured, and you are carrying a weapon you will be charged; self-defence using an article that is outside the law, is no excuse.

Guns, knives, clubs and knuckle-dusters are all illegal. Stanley knives and other DIY tools fall into a very grey area, as do baseball bats, and garden tools.

Everyday items such as umbrellas, keys, a torch (at night), hairsprays and magazines are permissible, but only used with reasonable force.

### **Threats to kill**

In many trivial situations, people have often verbally threatened to kill another person. If this involves an ongoing feud, and a serious attack is made on that person, the threat to kill becomes a matter of law, so be careful what you say:

A person who without lawful excuse makes to another a threat, intending that the other would fear it would be carried out, to kill the other person shall be guilty of an offence and liable on conviction on indictment to imprisonment of a term not exceeding ten years.

A lawful excuse can exist if a threat to kill is made for the prevention or self-defence, providing that it is reasonable in the circumstances to make such a threat; the onus is on the prosecution to prove that there was no lawful excuse for making the threat.

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We will look at self defence and the law.

**When finding yourself in a hostile situation how would you defend yourself**

How can you justify reasonable force

What is reasonable force

Can you use excessive force

In what circumstances would excessive force be excepted.

**Write down some of your ideas on the points mentioned above**

I.N.

1. What you see as reasonable will depend entirely on the situation and its progress.
2. In essence, you must only do the minimum that is required to stop or avoid further injury
3. For example, if you really believe that you or someone else is about to be murdered, then you can use any appropriate method to stop the assault.
4. For example, if you really believe that you or someone else is about to be murdered, then you can use any appropriate method to stop the assault. However, this does not give you free licence to murder the assailant.

Notes: