

THE LAW AND REASONABLE FORCE

UNIT 5

Combat Academy Instructor Training Programme

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Learning Outcomes

The aims of this unit are to enable you to:

- Have a broad based knowledge of the law and reasonable force.
- To understand the laws that impact the subject of reasonable force.
- To be able to discuss and objectively debate the sometimes ambiguous area of law.

The Law

What is Reasonable Force?

UK common law states the following:

"A defendant is entitled to use reasonable force to protect himself, others for whom he is responsible and his property. It must be reasonable."

Source: Wikipedia online 2014 - http://en.wikipedia.org/wiki/Self-defence_in_English_law

TUTOR TALK



The subject of law can be highly ambiguous and the subject of reasonable force is particularly subjective. The fact that the test of reasonable force is triangulated with a test against whether the defence is proportionate, necessary and reasonable creates three areas of debate that are largely influenced by the perceived the circumstance.

Statutory Provision

Section 3(1) of the Criminal Law Act 1967 provides that:

"A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large."

Section 3(2) states:

"Subsection (1) above shall replace the rules of the common law on the question when force used for a purpose mentioned in the subsection is justified by that purpose."

This abolished common law rules on what was "reasonable," such as the (duty to retreat). Thus, reasonable force can be used in the prevention of any crime or in making an arrest to:

1. Allow the defendant to defend himself from any form of attack so long as the attack is criminal.
2. Prevent an attack on another person, e.g. in *R v Rose*, a young son shot dead his father to protect his mother from a serious assault, believing that this was the only practical way of defending her given his small physical size.
3. Defend his property against criminal attack in the widest sense, i.e. it can be physical possessions like a watch or credit cards demanded by a mugger (where there would also be physical danger to the owner) or, at the other extreme, possession of land.

The Human Rights Act 1998, incorporates into English law (Article 2 Convention for the Protection of Human Rights and Fundamental Freedoms), which defines the right to life as follows:

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - a. In defence of any person from unlawful violence;
 - b. In order to affect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c. In action lawfully taken for the purpose of quelling a riot or insurrection.

Section 76 of the Criminal Justice and Immigration Act 2008 codifies English case law on self defence. However, it makes no changes to the law.

Arrest and Private Citizens

A private citizen does have a power to arrest and, where it is lawfully exercised, may use reasonable force and other reasonable means to affect it. In *R v Renouf*, the Court of

Appeal ruled that s3(1) was available against a charge of reckless driving where the defendant had used his car to chase some people who had assaulted him and had maneuvered his car to prevent their escape. Lawton LJ said:

"This case has to be considered in the light of the evidence which was said to have amounted to reckless driving. This evidence had two facets: one was what the prosecution alleged to be the acts of recklessness; and the other was that these same acts amounted to the use of reasonable force for the purpose of assisting in the lawful arrest of offenders."

Reasonable Force

Opinions differ on what constitutes reasonable force but, in all cases, the defendant does not have the right to determine what constitutes "reasonable force" because the defendant would always maintain they acted reasonably and thus would never be guilty. The jury, as ordinary members of the community, must decide the amount of force reasonable in the circumstances of each case. It is relevant that the defendant was under pressure from imminent attack and may not have had time to

make entirely rational decisions, so the test must balance the objective standard of a reasonable person by attributing some of the subjective knowledge of the defendant, including what they believed about the circumstances, even if mistaken. However, even allowing for mistakes made in a crisis, the amount of force must be proportionate and reasonable given the value of the interests being protected and the harm likely to be caused by use of force. The classic test comes from the Australian case of *Palmer V the Queen*, on appeal to the Privy Council in 1971:

"The defence of self defence is one which can be and will be readily understood by any jury. It is a straightforward conception. It involves no abstruse legal thought. ...Only common sense is needed for its understanding. It is both good law and good sense that a man who is attacked may defend himself. It is both good law and good sense that he may do, but may only do, what is reasonably necessary. But everything will depend upon the particular facts and circumstances. ...It may in some cases be only sensible and clearly possible to take some simple avoiding action. Some attacks may be serious and dangerous. Others may not be. If there is some relatively minor attack it would not be common sense to permit some action of retaliation which was wholly out of proportion to the necessities of the situation. If an attack is serious so that it puts someone in immediate peril, then immediate defensive action may be necessary. If the moment is one of crisis for someone in imminent danger, he may have [to] avert the danger by some instant reaction. If the attack is all over and no sort of peril remains, then the employment of force may be by way of revenge or punishment or by way of paying off an old score or may be pure aggression. There may no longer be any link with a necessity of defence... If a jury thought that in a moment of unexpected anguish a person attacked had only done what he honestly and instinctively thought was necessary, that would be most potent evidence that only reasonable defensive action had been taken."