

# Defenses to Criminal Liability I

**criminal conduct**: criminal act triggered by criminal intent

- **criminal conduct alone isn't enough to establish criminal liability**

**justification defenses**: defendants admit they were responsible for their acts but claim that, under the circumstances, what they did was right/justified

- classic justification is self-defense: kill or be killed

**excuse defenses**: defendants admit what they did was wrong but claim that, under the circumstances, they weren't responsible for what they did

more than 40 states have either passed/proposed statutes that expand the right to use deadly force to protect self, & home in two ways:

(1) "They permit a home resident to kill an intruder, presuming rather than requiring proof of reasonable fear of death/serious bodily harm."

(2) "They were general duty to retreat from attack, even when retreat is possible, not only in the home, but also in public space."

## Proving Defenses

**affirmative defenses**: defendants have to "start matters off by putting in some evidence in support" of their justification/excuse defenses

**perfect defenses**: defenses in which defendants acquitted if they are successful

- one major exception: defendants who successfully plead excuse of insanity don't "walk"—at least not right away

**competency hearings**: special hearings to determine if defendants are still insane

**imperfect defense**: when a defendant fails in the full defense but is found guilty of a lesser offense

**mitigating circumstances**: circumstances that convince fact finders (judges/juries) that defendants don't deserve the max penalty for the crime they are convicted of

**There are five justification defenses:**

(1) self-defense

(2) defense of others

(3) defense of home & property

(4) choice-of-evils defense

(5) consent

## Self-Defense

Self-defense amounts to a grudging concession to necessity. It's only good before the law when three circumstances come together:

- (1) the necessity is great
  - (2) it exists "right now"
  - (3) it's for prevention only
- preemptive strikes come too soon & retaliation too late

## Elements of Self-Defense

Self-defense consists of four elements:

- (1) **Nonaggressor**. The defender didn't start/provoke the attack.
- (2) **Necessity**. Defenders can't use deadly force only if they reasonably believe it's necessary to repel an imminent deadly attack — namely, one that's going to happen right now.
- (3) **Proportionality**. Defenders can use deadly force only if the use of non-deadly force isn't enough to repel the attack. Excessive force isn't allowed.
- (4) **Reasonable belief**. The defender has to reasonably believe that it's necessary to use deadly force to repel the imminent deadly attack.

**NONAGGRESSOR** Self-defense is available only against unprovoked attacks.

- self-defense isn't available to initial aggressor

**initial aggressor**: someone who provokes an attack can't then use force to defend herself against the attack she provoked

**withdrawal exception**: if initial aggressor completely withdraws from a attack they provoke, they can defend themselves against an attack by their initial victims

**NECESSITY, PROPORTIONALITY, & REASONABLE BELIEF**

**necessity**: defense that argues an eminent danger of attack was prevented

**immanence requirement**: element of self-defense regarding the danger to be "right now!"

- necessity doesn't want you to killing someone who's going to kill; you can also kill an attacker whom you reasonably believe is right now going to hurt you/

someone else badly enough to send you/them to hospital for treatment of serious injury; this is what serious (sometimes called "grievous") bodily injury means in most self-defense statutes

**What kind of belief does self-defense require? Is it enough that you honestly believed:**

- (1) that you were in imminent danger
  - (2) that you needed to use force to fend it off
  - (3) that you needed to use the amount of force you used
- **honest (subjective) belief won't do:** a reasonable person in the same situation would believe that the attack was imminent & that the need for force & amount of force used were necessary to repel an attack

## **RETREAT**

**stand-your-ground rule:** if you didn't start a fight, you can stand your ground & kill to defend yourself without retreating from any place you have a right to be

**The minority rule, the retreat rule, says you have to retreat if you reasonably believe that**

- (1) your endanger of death/serious bodily harm
- (2) backing off won't unreasonably put you in danger of death/serious bodily harm

**castle exception:** when attacked in your home, you have no duty to retreat & can use deadly force to fend off an unprovoked attack, but only if you reasonably believe the attack threatens death/serious bodily injury

## **Domestic Violence**

### **COHABITANT RULE**

**cohabitant exception:** in the jurisdictions that follow the retreat rule, people who live in the same home don't have to retreat

**BATTERED WOMEN WHO KILL THEIR ABUSERS** Courts in several castle doctrine states have adopted rules that allow women to "stand their ground & killed their batterers."

**battered women's syndrome (BWS):** mental disorder that develops in victims of domestic violence as a result of serious, long-term abuse

Reasonableness requires defendants to prove both that

(1) she had a reasonable belief that at the moment she killed, she was in danger of death/great bodily harm

(2) she reasonably believed that she needed to use that amount of force to repel it

## Defense of Others

- self-defense historically meant protection for only yourself & immediate family but that has since been changed in most places to anyone who needs immediate help

## Defense of Home & Property

The right to use force to defend your home is rooted deeply in the common law idea that "a man's home is his castle."

curtilage: the area immediately surrounding the home

## New "Castle Laws"

"RIGHT TO DEFEND" OR "LICENSE TO KILL?" Supporters & opponents of the castle laws see them in fundamentally different ways.

- supporters hail them as "right of the people to use any manner of force to protect their home & its inhabitants"
- gun control advocates decry the castle laws, warning that they are "ushering in a violent new era where civilians may have more freedom to use deadly force than even the police"; they're not a "right to defend"; they're a "license to kill"

## WHY THE SPREAD OF CASTLE LAWS NOW?

- no solid proof, only speculation
- one theory: Americans' heightened consciousness & concern about their safety since 9/11
- one theory: lack of police officers to protect the public

## "Choice of Evils"

choice-of-evils defense: also called "general defense of necessity", it justifies the

choice to commit a lesser crime to avoid the harm of a greater crime

- choice-of-evils defense consist of proving the defendant made the right choice, the only choice — namely, necessity of choosing now to do lesser evil to avoid greater evil

The Model Penal Code choice of evil provision sets out the elements in three steps:

- (1) identify the evils
- (2) rank the evils
- (3) choose based on the reasonable belief that the greater evil is imminent; namely, it's going to happen right now

## Consent

defense of consent: justification that competent adults voluntarily consented to crimes against themselves & knew what they were consenting to

In most states, the law recognizes only four situations where consent justifies otherwise criminal conduct:

- no serious injury results from the consensual crime
- the injury happens during a sporting event
- the conduct benefits, the consenting person, such as when a patient consents to surgery
- the consent is to sexual conduct

