



Class 15

Criminal Law

Self Defense, Defense of Others and Defense of Property

► Self-Defense - Elements:

1. **reasonable** belief
2. that the illegal **action (e.g., assault) was necessary**
3. to defend against an **imminent threat**
4. of **bodily injury** that
5. is **proportionate** (meaning, the defensive “illegal” action) to the force used

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

- **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