

Justification: Self-Defense - Necessary Force

That the force used must be necessary encompasses a number of requirements. First, force may not be used unless the situation requires that some force be used. If, without retreating, the threat may be safely prevented without the use of force, then force is unnecessary. Second, the amount of force used must be the minimally necessary force to thwart the attack. Third, the amount of necessary force used must be proportional in relation to the gravity of the harm threatened.

Necessary force and proportional force must be carefully distinguished. Force may be necessary but disproportional. For example, it may be the case that only lethal force will thwart a minor assault. Though necessary, lethal force to prevent a minor assault is disproportional. Force may also be proportional but unnecessary. Suppose a frail, old woman attempts to attack a martial arts master with a knife. Defending against a potentially lethal attack, the master's use of lethal force is proportional. But it would not be the minimally necessary force if the master could safely grab the knife out of the woman's hand.

There is some dispute as to the limitation of proportional force where to repel the aggression disproportional force is necessary. The law of self-defense must make a choice between an innocent victim suffering a comparatively minor harm from an aggressor's attack because of the inability to repel the attack using only proportional force and an aggressor suffering comparatively greater harm from the defender's use of disproportional force. While American law has chosen the former option, the moral forfeiture and personal autonomy theories, which dispense with the proportionality requirement, have chosen the latter. The argument is that if either an innocent victim or a wrongful aggressor must suffer an unjust harm, it is preferable that the aggressor sustain the harm from disproportional force. After all, the aggressor has created the situation and is responsible for the necessity of the innocent victim to use force. Furthermore, the aggressor has chosen the type of attack and the type of victim who, under the circumstances, is unable to thwart the attack without using disproportional force. As a result, it is the aggressor who should bear the burden of sustaining any unjust harm.

The limitation of proportional force is particularly problematic where there is a significant disparity in the physical prowess between the aggressor and the defender, especially where the aggressor is a large man and the defender is a slight woman. The large man may repeatedly attack the slight woman with substantial but nonlethal force, which the slight woman is unable to defend against without using lethal force. Increasingly, but not uniformly, the law has moved in the direction of relaxing the proportionality requirement in just such cases. In addition, the admission of battered woman syndrome evidence may make the defender's use of disproportional force nonetheless reasonable and justified. The continued adherence to some form of the proportionality requirement may be best defended by the need to deter escalations of violence and the view that human life, even those of aggressors, should be preserved.

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