

The Five Elements of Self-Defense Law



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Know The Law! – Self Defense Legal Rationale

- You need self-defense legal instruction by someone who understands the subject well enough to effectively translate all the legalese into plain English, to distill that legal knowledge from the theoretical to the actionable.
- FACT: You don't have to know hundreds of legal concepts to really understand self-defense law. Self-defense law is very straight forward but there are basic tenets that **MUST** be adhered to!
- There are at most **five elements** to any self-defense case (and often not even that many). This is true in all 50 states, and all US territories.
- Let's discuss the five basic legal (and important elements) to justify a claim of self-defense.

The 5 Elements of Self-Defense Law

Every claim of self-defense is based on (up to) 5 legal elements.

NOTE: If a prosecutor disprove ANY one of the requirements, your entire self-defense justification is invalid:

- **Innocence**
- **Imminence**
- **Proportionality**
- **Avoidance**
- **Reasonableness**

NOTE: You don't have to make perfect decisions in self-defense, but you do have to make reasonable decisions. Mistakes, if any, must be reasonable mistakes.

Innocence

- You can't start the fight.
- You can't have been the initial aggressor, and then justify your use of force as self-defense.
- Often, however, whether you, in fact, started the confrontation can easily be a fact in dispute. Naturally, you'll say the other guy was the initial aggressor. But that other guy—or his buddies—could say that you were.
- That kind of uncertainty is the “messy” part of this “simple” element.
- Bottom line, if a prosecutor reviews your case and sees evidence that suggests you might have started the fight, you've just made yourself way more likely to be brought to trial on criminal charges, because now you look like a vulnerable target for conviction.
- But starting (or appearing as if you started) the fight isn't the only thing you must avoid.

Imminence

- The law allows you to defend yourself from an attack that's either happening or about to happen very soon, meaning within seconds. It's not intended to justify vengeance for some past act of violence, nor to "stop" a speculative future attack that you have time to avoid by other means.
- You can think of the element of imminence as a window that opens and closes. Before the window of imminence is open—before the threat is actually occurring or imminently about to occur—you can't use defensive force. After the window of imminence has closed —after the threat is over—you again cannot use defensive force.
- It's only while that window of imminence is open that you can lawfully use defensive force.
- Imminence has to do with when you can use defensive force, but what about how much defensive force you can use? That has to do with the next element:

Proportionality – Part 1

- The law puts any use of force into one of two buckets: the non-deadly force bucket, or the deadly force bucket.
- What qualifies as deadly force? Legally, deadly force is more broadly defined than only force that kills. Force that can cause death is part of the definition, but deadly force also includes force that causes serious bodily injury, like maiming injuries, as well as rape.
- What qualifies as non-deadly force? Non-deadly force is essentially all lesser degrees of force that cannot readily cause death or serious bodily injury.
- If the threat you're facing is non-deadly, then you're only allowed to use non-deadly force in response. If the force you're facing is deadly in nature, then you're entitled to use deadly force OR non-deadly force to defend yourself.

Proportionality – Part 2

- If you respond with deadly force to an attacker using only non-deadly force, you're using disproportional force, you've "lost the element of proportionality," and you are not acting lawfully.
- It's essential to make sure you limit yourself to only the degree of defensive force that's proportional to the threat you're defending against.
- But what about running rather than fighting? Does the law require you to resort to flight before you can resort to fight? That brings us to the fourth element of self-defense law:

Avoidance

- The fourth element addresses, “Could you have safely avoided the fight?”
- A minority of about 13 states impose a legal duty to run away, when you can do so safely, rather than fight. These are called “duty-to-retreat” states.
- Most states do not impose such a legal duty to retreat, even if you could have done so with complete safety. These are the “stand-your-ground” states.
- In the minority 13 states that do impose a legal duty to retreat, however, failing to run when you safely could have is not lawful, loses you the required element of avoidance, and therefore loses you self-defense.
- Even the duty-to-retreat states only impose that legal duty when retreat is possible with complete safety. That begs the question, however—was a completely safe avenue of retreat actually available under the circumstances facing that specific defender?
- To put it another way, would a reasonable defender under attack have been aware that a safe avenue of retreat was available? This leads us to the last of the five elements of self-defense law:

Reasonableness

- This the “umbrella” element because it overlays the other four.
- Everything that you perceive, decide, and do in defense of yourself or others must be reasonable and prudent, given the circumstances you faced, the information you knew, and your abilities (or disabilities).
- Mistakes in self-defense are allowed, and a mistaken use of defensive force can still qualify as lawful self-defense. The bad guy’s “gun” turned out to be a toy? That’s not a problem for your defensive use of force against the apparent gun if perceiving it as a real gun was a reasonable belief under the circumstances.
- Bottom line: We’re not required to make perfect decisions in self-defense, just reasonable ones.
- What’s reasonable to one person may not be reasonable to another, however. This element of reasonableness is partly a reflection of the particular defender under the specific circumstances. The reasonable perception of, and defensive options for, a defender who is young, healthy, and fit may well differ from the reasonable perceptions and defensive options of an elderly, ill, or disabled defender.

The 5 Elements Are Easy ... But the Real World is Complicated

- That cover the legal mandates—the 5 MUST KNOW elements of self-defense law. How hard can applying just five elements be?
- More complicated than one might think. While the elements themselves are relatively simple, applying them to a real-world case can be complicated.
- Why? Because the real world is not simple. It is messy and involves real people, real victims, real violence, and so forth. So, applying these elements to the real-world takes practice. Applying them quickly enough in real-time to respond correctly in the critical moment of an attack takes even more practice.
- I highly recommend the book “Law of Self Defense” by Andrew Branca. It is very informative and help you understand the law of self-defense so that you can not only make yourself hard to kill, you can also make yourself hard to convict.

THE 5 ELEMENTS OF SELF-DEFENSE LAW

Every claim of self-defense is based on (up to) 5 legal elements. If a prosecutor disproves any one required element, your entire self-defense justification collapses.

Innocence

Don't start the fight

A person who is the initial physical aggressor in a confrontation is not the innocent party and cannot justify their use of force as self-defense.

Imminence

Attack in progress

The threat being defended against must be actually occurring or immediately about to occur. An already completed threat or a speculative future threat does not justify the defensive use of force.

Avoidance

Run if you can

Some states impose a legal duty to retreat, when safely possible, before you may use deadly force in self-defense. In all states retreat is the smart choice if safely possible.

Proportionality

Right tool, right job

Deadly defensive force may be used only to counter a deadly force threat. If the threat is non-deadly, only non-deadly defensive force may be used.

Reasonableness

Good decisions, under the circumstances

You don't have to make perfect decisions in self-defense, but you do have to make reasonable decisions. Mistakes, if any, must be reasonable mistakes.

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Questions

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The Indispensable Guide
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