

Justification: Self-Defense - Imminence

Self-defense is crucially a matter of timing. If the defensive force is used too soon in relation to the fruition of the threatened aggression, the force is a preemptive attack and unjustified. If used too late, that is, after the aggression is complete, it is retaliation and is also unjustified. The general rule is that defensive force can only be used against aggression that is imminent or about to occur (*State v. Norman*, 378 S.E.2d 8 (N.C. 1989)). The rationale of the imminence standard is that it ensures that defensive force is used neither too late nor too soon; defensive force should be used only when absolutely necessary. The rule has been heavily criticized for barring self-defense in situations where defensive force is necessary to prevent a certain, but distant (in time), attack. Supporters of the imminence rule rejoin that it insures that defensive force is used only against certain attacks and not speculative ones. But the imminence rule is overinclusive: not all imminent attacks will come to pass, even imminent attacks may be abandoned or frustrated. Richard Rosen argues that the real principle involved is that defensive force must be necessary (380). Imminence is a good proxy for the principle, but where the proxy and the principle diverge, the principle should control.

In spousal abuse cases, the imminence standard is particularly problematic. When a powerful man's attack is imminent, a slight woman's defensive response may be ineffective. However, force used at a point when the attack is not quite imminent but is nonetheless fairly certain might be effective. Joshua Dressler argues that one difficulty with relaxing the imminence requirement, for example, allowing a battered spouse to use force used against the battering, but sleeping spouse, is that it might trigger a right of self-defense in the battering spouse.

Under the MPC, force may be used not merely when the threat of aggression is imminent but when defensive force is "immediately necessary . . . on the present occasion." Though allowing force to be used sooner than the imminence standard, it may still not suffice to aid battered women or defenders in other situations. For example, suppose you are wrongfully being held captive and are told that you will be killed in ten days. Your best chance to escape is when you are brought food each day by your captor. On day five your captor lets down his guard and you kill him and escape (Kadish, p. 832). Though your force is not imminent or even immediately necessary, as under the MPC, it certainly seems necessary and arguably should be justifiable self-defense.

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