

Justification: Self-Defense - Deadly Force And The Duty To Retreat

Deadly force is eligible to be justified in self-defense against attacks risking death or serious bodily injury, forcible rape, and forcible kidnapping. The majority rule that deadly force may be employed without retreating is defended on the grounds that retreat is unmanly and thus unreasonable, Right should not yield to Wrong, and that it deters aggression. The minority rule that deadly force should not be used if the defender is aware of the ability to retreat in complete safety is justified by its placing a higher value on human life than an archaic sense of "manly" honor. Even under the minority rule requiring retreat, according to the "castle" exception, one need not retreat if one is attacked in one's home, and in some states, one's place of business. In most states adopting the retreat rule, one need not retreat if attacked in the home even if it is by a co-dweller.

An initiator of deadly aggression may regain the right to use deadly force only after completely withdrawing from the conflict. Courts are split on whether the initiator of nondeadly aggression immediately regains the right to deadly self-defense force against a deadly and disproportional response or whether the initiator must first retreat.

The MPC section 3.04(2) (b) adopts the minority rule requiring retreat, if it can be done safely, before resort to deadly force with the exception of when the defender is at work or at home. If attacked at home by a co-dweller, the defender need not retreat; if attacked at work by a coworker, the defender must retreat. In another exception, the defender need not continue to retreat once the defender has already retreated and the aggressor has pursued the defender. One who initiates a deadly conflict may not use deadly force without first completely withdrawing from the conflict. One who initiates a nondeadly conflict and faces a response of deadly force may use deadly force under the same conditions as an ordinary defender.

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