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**Ownership**

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## SELF DEFENCE—HOW FAR CAN I (LAWFULLY) GO?

We have all heard someone at the club or bar state “If anyone comes into my house while I’m there I’ll use my shotgun on him – I have the right to protect my property.” Well let’s just take a step back and look at that for a moment using an analysis of the law.

The Crimes Act 1961 (Act) provides when and to what extent the law allows people to defend their property, and of course themselves.

### Defending Property

Sections 52 to 56 of the Act provide the defences available in protecting property.

Section 52 applies when you are defending your own “movable” property. You and anyone assisting you are justified in using *reasonable* force to resist the taking of that property from a trespasser (i.e. a person who has no right to take it), or to retake it from any trespasser. Fair enough you might say – the trouble is that in resisting the taking, or recovering the property you can only use ‘reasonable’ force that did not involve striking or causing of bodily harm to the trespasser.

Section 55 applies when you are defending your house, you and anyone lawfully assisting you or acting on your authority are justified in using *such force as is necessary* to prevent the forcible breaking and entering of the house if you believe on reasonable and probable grounds that there is no justification for the breaking and entering. This is more difficult – how much force is necessary? While the court will look at your subjective view of whether there was justification for the breaking and entering, the court will take its own objective view as to whether you used only such force as was necessary to prevent it, or whether you went overboard with that force.

### Defending People

This is the most talked about defence and will be the subject of a newsletter in 2013; it comes in Section 48 of the Act. When you

believe on reasonable grounds that a situation requires you to use force to protect yourself or others, you are entitled to use *such force as is necessary* to effect that protection. Once again the court will look at your subjective understanding of the situation to decide whether you should have used force in the first place but will then also look objectively at whether the force you used was reasonable in that situation.

### Subjective vs Objective

When the court looks at something from a ‘subjective’ view, it is listening to the view of the person actually faced with that situation. What did that person understand was happening? What did that person understand were the consequences of taking or not taking action at that time? What was that person thinking at the time and how did they feel?

However when the court looks at the situation ‘objectively’ the original person’s perception no longer counts for much, if at all. The whole test is how would a reasonable man (or woman) in that person’s situation have reacted. Sometimes the result of that objective view is an unhappy one for the actual person involved (and I don’t mean the offender). Was the force used objectively ‘necessary’ or ‘reasonable’ in that circumstance?

So you see, not all situations allow for the shotgun to protect yourself or your property. Otherwise upstanding members of society have found that out the hard way. Of course there may be situations where it is called for – happily in this country they are very rare. Hopefully you will never be faced with the decision, but it is always helpful to know what the law says.

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