

# Dangerous Weapons Act

## (Dangerous Weapons Amendment Act of 1993)

The **Dangerous Weapons Amendment Act of 1993** states that any person who is in possession of any dangerous weapon, or of any object which so resembles a firearm, that under circumstances such as those under which such person is in possession thereof, is likely to be mistaken for a real firearm, shall be guilty of an offence, unless he is able to prove that he at no time had any intention of using such weapon or object for any unlawful purpose, and shall on conviction be liable for a fine or imprisonment for a period not exceeding two years.

## General Law

In order for you to successfully plead a case under the provisions of common law where you took defensive action, depending on the circumstances of that particular case, you can request that your actions fell within the parameters of either **Private Defence (Noodweer)** or **Necessity (Noodtoestand)**.

## Private Defence

The court will require you to have met the following conditions or requirements:-

### The attack

- the attack on you, your family or someone you choose to place under your protection, **must be unlawful**.
- the attack **must be against a legal interest**, either **endanger or infringe** on **your right to life or property**. Under our current Bill of Rights, we have the **right to life** and to live in security. Remember that you may only use lethal or deadly force to protect life.
- the danger must be **imminent** (about to happen) or **immediate** (already in progress). NB. Your response must take place at the same time that the danger is either perceived or occurs.

### The defence

your defensive action must be four things:

- **directed only against the attacker;**
- **reasonable** - acting reasonably means that you must use "minimum force" - in other words - the least amount of force that is necessary to end/stop the attack; and
- **necessary** – the action you take must be absolutely necessary to protect the legal interest
- **there must be no other way of avoiding the danger**. It is very important to remember that the purpose of your defensive action is to **stop the attack** and **not** to kill your attacker.

One must keep in mind that each and every case will be judged on the merits and individual circumstances of that specific case.

## Necessity

Necessity is a defence that is available in the case of an emergency where a person harms an innocent third party in order to protect themselves. An unlawful attack is not a requirement as in the case of private defence. In *State vs Goliath*, A threatened to kill B, unless B killed C. In killing C, B was held to have acted out of Necessity.

## The law of common humanity

The use of a firearm in the eyes of the law constitutes the use of deadly or lethal force. You should be quite sure that the nature of the crime that has been committed warrants the use of a firearm. Because the use of a firearm may result in the death of the person being shot, you should ask yourself the following question before firing the gun: **"Is what has happened or is happening, so serious, that I'm justified in shooting and perhaps killing another human being?"** Asking yourself this question is often referred to as **the law of common humanity**.

**As a guide line, any deadly or lethal force encounter can be analysed according to three factors:**

1. **Present Opportunity**, i.e., if the suspect is not physically close enough to effect serious bodily harm at this time, there is no present opportunity; e.g. threats over a phone line.
2. **Physical Capability**, i.e., Can a 5 year old child physically subdue and harm a 250 kg sumo wrestler?

Physical capability also has to do with the type of weapon that may be used and the ability of the suspect to utilize it.

3. **Manifest Intent**, i.e., what actions by the suspect caused you to believe that you were in danger of serious bodily harm or have reasonable fear?

If you analyze any encounter according to these three factors, you can determine whether or not it is a deadly force encounter, which would require you to respond in kind to protect yourself or another.

### The reasonable man test

When confronted with the decision of whether or not you should use your firearm, remember the following:

**“Would a reasonable person who faced the same or similar situation to your own, have acted in the same or similar manner to you?”** You should therefore only use your firearm against another human being if you are quite sure in your mind that your actions are reasonable.

### Continuum of force

**What is a Continuum of Force? The *Force Continuum* is a concept designed TO EXPLAIN the use of force by individuals in response to when they are confronted with criminal behaviour or a threat.**

Let us now discuss the legal options available to you where you are being targeted for your property or a variety of other non-lethal threatening situations or harassments. The rule is that law requires that you **use minimum force to either control or repel a situation.**

In the *Force Continuum*, **the amount of force is determined by the resistance encountered and nature of threat that you perceive in that specific situation.** By moving up the *Force Continuum*, you would **escalate force** which **means moving to a higher force level to exercise control.** De-escalation is the reverse process as you gain control over the situation. Remember that you are not entering into a wrestling match. **You, like any law-enforcement officer, must use a level of force high enough to gain control.** A propensity to become injured or to injure the subject or damage his/her property exists if the subject does not submit. **The objective of your action is to control, not punish.** Remember, you have to be able to justify your actions in a court!

**All the following control methods can be used to gain compliance (in a roughly ascending order):**

Body language, aggressive attitude, verbal commands, the use of non-lethal compliance measures such as pepper products, restraining, holding or controlling with your hands or feet, stunning or striking techniques, impact equipment such as cricket bats or hockey sticks or impact instruments such as Tonfa, straight or expandable batons, shocking instruments such as electronic stun guns, cutting instruments such as knives or projectile equipment such as bows or firearms which may cause temporary or permanent injury or even lead to death.

### Vicarious liability

Vicarious liability is liability of one person for the acts of another person where there is some form of relationship, for example the liability of an employer for the negligent actions of an employee.

### Criminal case vs civil case

When the State institutes a legal case against a person, the state prosecutor, acting on behalf of the Director of Public Prosecutions, has to prove to the court that the person being charged with an offence is guilty of that offence, **“beyond reasonable doubt”**. This for example will be a case where a suspect is charged with drunken driving, murder or fraud. This is referred to as a **criminal case**. If the state prosecutor refuses to prosecute, the victim of the crime can then institute a private prosecution (a criminal case).

In a **civil case**, the plaintiff (instituting the claim), must prove the liability of the defendant (against whom the claim is instituted) for example for damages, on **“a balance of probabilities”**.

The purpose of a criminal case is the punishment of crime. The purpose of a civil case is the recovery of (financial) loss.

To illustrate, assume John was attacked by a large dog while walking to the shop. In private defence, he shoots and kills the dog. The State considers this legal private defence and does not prosecute or proceed with criminal charges against John. The owner of the dog, however, feels that he has suffered great loss, because the dog was a valuable

stud animal for breeding. He proceeds with civil action against John, to sue for loss of property and the potential income from stud fees he may have earned when breeding with his dog.

### **Important points to remember!**

#### **Assisting the police**

Any South African male, aged between 16 and 60 years, is obliged to assist a police officer, if the police officer requests his assistance in either detaining or arresting a suspect.

#### **Remember!**

The firearm is deemed to have been “used” once it has been either pointed or directed at another person or property.

### **Conclusion**

**One should only use a firearm as an absolute last resort. Knowledge of the law will assist anyone using a firearm in making the decision to shoot or not to shoot.**

