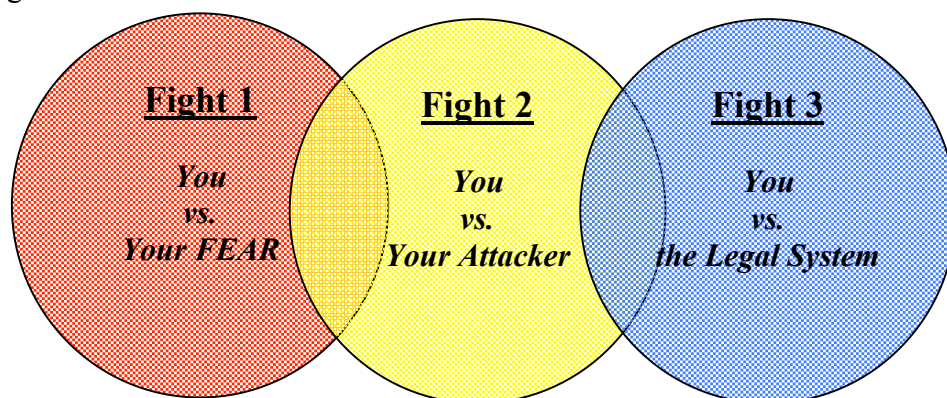


MARTIAL ARTS, SELF DEFENCE AND THE LEGAL SYSTEM

The martial arts industry in Australia is made up of a rich blend of traditions from a broad range of combative disciplines. The range of defensive techniques and methodologies is as diverse as the participants themselves. One thing that most martial arts do have in common is that they are, in one form or another, concerned with self-defence.

The problem with teaching self defence techniques is that in today's society the legal and financial ramifications of injuring another person, in self defence or otherwise, can be as debilitating as losing the actual physical fight itself.

Canadian based instructor Tony Blauer, of Blauer Tactical Systems, teaches his students and instructors that self-defence is composed of three separate fights, the fight against yourself to manage your fear, the fight against the opponent, and the fight against the legal system. Using his methodology, this article will focus on the third fight.



Firstly, it is important to be aware of the relevant laws in your State so that you do not unwittingly commit an offence and end up in jail or being fined and then gaining a conviction which may deny you from getting various jobs or licences (like security, crowd control or firearms).

This article is a broad overview of the concepts involved and it is not the purpose or intention of this article to replace legal advice from a registered legal practitioner (see disclaimer at the end of the article).

It is important to note at this point in time that police, prosecutors, juries and judges all watch television and movies and probably have an unrealistic expectation as to what a martial artist can do. This means that, rightly or wrongly, martial artists are often held to a higher standard and prosecuted more vigorously for the mere fact that they are martial artists.

Remember that everything relating to the situation is based on perceptions. Yours, the offenders (or victims depending on your viewpoint), the witness's, the police, the prosecutors and so on.

APPLICATION OF FORCE

For anyone, but particularly the martial artist, an understanding of the difference between assault and self-defence is critical and can make the difference as to whether they get charged or sued or, preferably, have no legal action to face at all.

Self-defence is really just a lawful application of force.

It is not an assault if you are lawfully:

- a. defending yourself or another person,
 - b. arresting a person, or
 - c. applying lawful force, or
 - d. ejecting a trespasser from property,
- provided that the force used is reasonable and proportionate to the immediate need and is not more force than a particular law states can actually be used.

SELF DEFENCE

Most of the law on self-defence revolves around the word "reasonable". In the case of an unlawful assault on yourself, it is legal to use reasonable force to defend yourself (or another person).

There are two key components to be successful in defending a charge of assault if you find yourself being charged.

1. The first element is whether the accused believed on reasonable grounds that it was necessary to use the amount of force that they did whilst defending themselves or another person.
2. The second element is whether the accused's belief was reasonable.

Both of these elements have to be shown to have a successful defence.

You must remember that once self-defence is raised the prosecution has to show that these two elements were not present.

In the some states like Queensland, NSW and Western Australia, the law on self-defence is covered in specific sections of the Criminal Law and is very similar to the other states, where it is covered by case law.

In order to work out what is a "reasonable" amount of force, you must look at all the circumstances at the time. This is called the ***totality of the circumstances*** and relates to everything involved in the fight. These circumstances will include such factors as:

- martial arts skills (if they are known by the Court),
- size,
- gender,
- age,
- number of people involved,
- prior knowledge of the attacker (ie. you have had fights with them before or you know they are a black belt etc),
- the level of aggression shown,
- injuries and disabilities,

- weapons available,
- how many attackers, and
- any other relevant factors.

Remember, this is based on your perceptions at the time but can be affected by the perceptions and evidence of the witnesses. It takes in the ‘big picture’ and looks at things from both sides. This is sometimes referred to as parity/disparity. So, for example, when looking at your size, it is taken in context with the size of the offender, your strength is taken in comparison to that of the offender and so on.

Another important factor that the police and the courts consider is how much damage you did. They will consider the level of harm and the number and type of injuries that you caused. They will look at this in the context of the attackers size etc.

If you were a female martial artist defending yourself against a male, it will be a lot easier to prove that you believed that you had to use the amount of force you did, and also that the amount of force was reasonable. Whatever we think about being non-sexist, most of society, and that includes Magistrates, will believe that the odds are stacked against a female if she is attacked by a male. Therefore it would be considered reasonable to use more force in order to successfully defend yourself.

The most obvious problem will arise where the person defending themselves is a big strong male or becomes known as a martial arts expert. If the attacker is smaller than you, it will automatically look as though unreasonable or disproportionate force has been used.

Finally, a person does not have to wait to be hit first before being allowed to defend themselves. Many lawyers say things like “it would be better for you if he hit you first”. What they *mean* is, it looks better for the court and the witnesses if it is obvious that you were defending yourself after the attacker had already physically assaulted you. This is a dangerous ploy in reality as if the blow lands, that might be the end of the fight, for you!

Remember, the defence of self-defence is made out if the defendant can show that they:

- a. used such force as they believed reasonable in the circumstances, and
- b. that such a belief was reasonable.

STRATEGIES FOR PREVENTING BEING CHARGED

A funny thing about Courts is that they sometimes believe that a martial artist can “decide” whether to use martial arts. We have heard people in Court say that they didn’t want to hurt their attacker so they didn’t use any martial arts. The Court believed them and the martial artist was found “not guilty” of assault whilst defending themselves.

Pre-fight

Avoidance is definitely the best policy but if you decide you have to fight then you must fight to win! The right to self-defence is a fundamental human right.

There is a common myth that needs to be dispelled at this point. Firstly, it is absolute rubbish to believe that a martial artist has to tell the attacker that they train in martial

arts. Don't tell them – just do it whilst defending yourself. It does **not** always pay to advertise your school or style through your clothing etc. Why let the attacker (or police) know you are a martial artist? Conversely, look for this sign in your attackers clothes too!

Don't 'shape up' or adopt an aggressive fighting stance. Practice your self defence moves from a variety of positions but learn to adopt a neutral stance. A recommended position is with your feet about shoulder width, with one foot back about the same distance. Keep your posture erect and put your hands up in front of you, palms forward in a non-aggressive negotiation style posture. Step back if possible.

If at all possible you might consider calling for help or yelling something like "back off". While this can sound a little lame it is a sound strategy for calling witnesses attention to who is doing what to whom. Wait for their attack if necessary so it is obvious you are countering but don't take excessive risks with this. If you must, use a pre-emptive attack once you firmly believe that you have no choice and that an assault on you is imminent.

During the fight

Only do what you must and stop immediately once you have the situation under control. Some martial arts teach a form of 'overkill' whereby you keep striking a downed, disabled or disarmed attacker. Remember that you can only use reasonable force that is proportionate to the level of the threat. You **can not** punish the attacker!

In most cases, never use any kicking technique unless you are outnumbered or are losing. Always use the minimum amount of force you need to defend yourself. In simple terms, don't eye gouge if you don't have to. Don't break bones, dislocate joints or cause permanent injury unless you have to. Likewise, your safety, and the safety of those you are fighting to protect are paramount so if you reasonably believe that the only way to control the situation and make a successful defence is to maim or kill the attacker (or attackers) then so be it. Remember that ultimately the attacker is the one that chooses by their actions how much force you will use to defend yourself.

Post fight

Provide first aid if you have to. It shows your humanity and compassion.

Expect to be charged with assault. Have a contingency plan to cover this eventuality. Do not expect the police to be sympathetic. They hear lots of stories and in almost all of them someone is claiming to be an 'innocent victim'. They get a little cynical. It is also the job of the police to successfully prosecute offenders who break the law. So if they can, they will.

You have the right to remain silent. We strongly urge you to use it. Many people get themselves into serious trouble by prematurely talking to the police after a self-defence situation. The emotional turmoil and the effects of a hormonal response can affect your perceptions and your memory so stay quiet until you have spoken to your legal representative. Be co-operative with police but stick to who you are and the barest details i.e. you and the other person were involved.

Don't mention any martial arts skill you have. In some situations however, it can be useful to do so later (on the advice of your lawyer) in order to show how restrained

you were, and what damage you could have caused if you were not defending yourself using the minimum force possible.

If you do mention it, remember you are a martial arts student and never an expert. It sounds better to a Court, so that they do not have unreasonable expectations eg if you were such an expert why didn't you just disarm the knife from the attacker and restrain them without hurting them.

Gather the names of any independent witnesses (people who don't know you) at the scene. Do not rely on the police to do this as in many cases, the witnesses have either left or don't want to get involved by the time police arrive.

If you have any injuries get medical attention. The doctor and hospital will document this. Get the doctor to record your fight related injuries. Injuries to your face and body are evidence to support your assertion that you were defending yourself. Photo's are good too.

Only participate in a formal record of interview with police after consulting your lawyer and with your lawyer present.

Make extensive private notes for your own use later. These should be made as soon after the event as possible. Remember, you may not be in court until years later. Full recollection usually takes a few days. Try not to be emotional, just record the facts. Particularly the facts related to the totality of circumstances.

WEAPONS

In many states, martial arts weapons are now controlled by law. You may need a licence or permit to actually use or even have them in your bag or at home.

In other states you may just need a "reasonable excuse" to have them – like for training. Having them in your car under the seat on a Saturday night is not reasonable. In a training bag in the boot of your car may be OK.

In other states, some weapons are simply banned.

You or your instructor **MUST** check with the police to find out exactly which weapons are restricted in any way. Sometimes swords are fine, but often shuriken, nunchakus and tonfas are controlled, restricted or even banned.

In all states, your "legal" weapons may become illegal if used incorrectly. They then become an offensive weapon and in all states it is an offence to possess an offensive weapon. Example: a katana or bo is legal when used in a dojo or for training. If you have them on the street on a Saturday night it will be considered an offensive weapon as it is not being used for the "peaceful" purpose of martial arts training. Penalty on conviction for assault if you have used weapons or kicking is higher fines and longer jail terms.

SUMMARY

If you ever have to use force in self-defence or in defending another, make sure you only use reasonable force to simply defend yourself or the other person. You are a “student” not a martial arts “expert”. Do not go any further and teach the person a lesson. Protect yourself physically but don’t forget to protect yourself legally as well.

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