



BY: **RUSSELL D. MAYER, ADV.**

SUBJECT: **BEARING ARMS AND SELF-DEFENSE**

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In view of the security situation in our country, we take this opportunity to address an individual's right to self-defense and to some degree, bear arms.

It is important to begin with the proposition that physical contact to which a person has not consented as well as the threat of physical contact may constitute criminal assault/battery and/or a claim for civil damages (i.e. Torts). The unwelcome physical contact can be by the alleged assailant's own person (e.g. hand, leg, etc.) or by use of an instrument (e.g. weapon such as a gun or knife, rock, spray or stick). The concept of self-defense, therefore, can serve as a justification for the physical contact and could be raised by someone seeking to defend against a claim of assault/battery and/or homicide-murder/attempted homicide-murder.

### **Self-Defense With Respect to Criminal Charges or Civil Claims**

Self-defense is recognized as a defense to assault/battery under the Israeli Penal Code as well as the Torts Ordinance when proven to have complied with the provisions of the law and will absolve the alleged perpetrator from criminal and civil responsibility notwithstanding their having made physical contact with the complainant. The law in both criminal and civil law require that the "self-defense" be immediately necessary to repel an unlawful attack. The right to self-defense is not absolute and the nature and extent of the self-defense response by the alleged perpetrator must be reasonable in view of the actual or threatened attack by the alleged claimant. The extent of the self-defense will, therefore, be examined in view of the circumstances to determine whether the acts were reasonable.

If it comes to court, the judge will make a determination as to the reasonableness and timing of the asserted self-defense.

### **Bearing/Using Arms as a Means of Self-Defense**

In parallel to the question of self-defense is the limited right of a private individual to possess and use instruments such as various weapons before/during the acts of self-defense.

The Penal Code prohibits bearing "firearms" contrary to the law as well as ammunition and any other instrument which can emit or deliver a substance which was intended to injure a person (personal use canisters of pepper spray are excluded from the prohibition). "Firearms" are weapons which can shoot bullets, slugs, shells, explosives, etc.

A private citizen may only possess firearms if he has an appropriate license to do so for that weapon and he has the license on his person. There are numerous other conditions to the possession and regulation of firearms which are beyond the scope of this article.

Use of firearms is subject to applicable law as well as the policies and procedures of the Ministry of Public Security and the Bureau of Licensing of Firearms most notably:

1. Rules Regarding the Use of Firearms

- (a) the use of firearms towards a person is only permitted if it is immediately necessary to protect the shooter or others from the unlawful attack of another which is liable to present a substantial risk of their lives;
- (b) the use of a firearm as a means of self-defense must be a last resort after considering and attempting other means of stopping the attack including issuing a warning in advance provided that doing so would not endanger the life of the shooter or others, when there is no other means under the circumstances to overcome the attacker who endangers a life or lives;
- (c) the need to use firearms will be examined in various stages of the incident and one must cease firing immediately when the attack ends and there is no longer a risk to life;
- (d) when it is established pursuant to the above that it is permitted to use firearms to repel an attack which endangers life, it is permitted to fire at the body of the attacker for the purpose of injuring him and prevent him from completing the attack PROVIDED THAT if it is possible to frustrate the attack by shooting at the attacker's legs, that is the required procedure. One must stop firing immediately upon the cessation of the attack when there is no longer risk of life from the attacker;
- (e) firing is to be done to the body of the attacker himself with single, aimed shots while taking care to avoid injuring innocents who are in the vicinity of the shooting;
- (f) if the attacker escapes with his weapon and is still a danger to life, one may shoot at his legs and if that is not sufficient to eliminate the danger - to his body in order to end the attack or prevent endangering the lives of others in the course of his escaping. If the attacker flees without a weapon, one may not shoot at him;
- (g) risk to property which does not include risk of life does not justify shooting a gun.

2. Rules Regarding "Cold Weapons"

The Penal Code absolutely forbids possessing a knife outside of the home or one's yard. If a person is found with knife on his body or in his belongings outside of the home or yard, the burden of proof turns on the person to prove that the possession was not intended for illegal purposes. So-called "brass knuckles" is another instrument which may not be carried in public and the possession of which shifts the burden to the person to prove that the possession was not with the intention of illegal acts. Both with respect to someone possessing a knife or brass knuckles, unless proven otherwise, an argument of self-defense will not be available to them.

Even regarding items which are not expressly prohibited by the law, the police have the discretion to arrest someone who possesses these items and bring them in for questioning to determine the intended use of the items to ensure that they are not to be used to attack.

In all events, the circumstances need to be considered in determining whether force may be used for self-defense and in particular whether it is reasonable to do so in self-defense or in defense of others while minimizing dangers to oneself or innocent bystanders.

May we traverse this difficult period with least harm to ourselves and others.

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*This memorandum is not to be considered as a legal opinion.  
For legal advice, we suggest you contact legal counsel directly.*

**R.D.M.**