

2006 BATTERY: SELF-DEFENSE

(Defendant) claims that any injury to (plaintiff) was inflicted by (defendant) in self-defense.

"Self-defense" is the right to defend one's person by the use of whatever force is reasonably necessary under the circumstances.

If (defendant) reasonably believed that (his) (her) life was in danger or that (he) (she) was likely to suffer bodily harm, then (defendant) had a right to defend (himself) (herself) by the use of force as under the circumstances (he) (she) reasonably believed was necessary. (Defendant), who alleges that (he) (she) acted in self-defense, has the burden of proof to satisfy you by the greater weight of the credible evidence, to a reasonable certainty, that (he) (she) reasonably believed that the use of some force was necessary to prevent injury and also that the amount of force used by (defendant) was reasonable under the circumstances.

A belief may be reasonable even though mistaken. In determining whether the defendant's beliefs were reasonable, the standard is what a person of ordinary intelligence and prudence would have believed in the defendant's position under the circumstances that existed at the time of the alleged offense. The reasonableness of the defendant's beliefs must be determined from the standpoint of the defendant at the time of the defendant's acts and not from the viewpoint of the jury now.

In determining whether the force used by (defendant) was reasonably necessary, you may consider the actions of (plaintiff), the force or threat of force used by (plaintiff), the amount of force used by (defendant), the means or instrument by which the force was applied, as well as the relative strength and size of (plaintiff) and (defendant).

If you determine that the (defendant) acted in self-defense, then you should answer "Yes" to Question No. _____, if you are required to answer that question.

SPECIAL VERDICT

Question No. 1.

Did (defendant) commit a battery on (plaintiff) on [date of alleged battery]?

Answer: _____
Yes or No

If you answered "Yes" to Question No. 1, then answer Question No. 2.

Question No. 2.

Was the battery a cause of (plaintiff)'s injuries?

Answer: _____
Yes or No

If you answered "Yes" to Question No. 2, then answer Question No. 3.

Question No. 3.

Did (defendant) act in self-defense when (he) (she) struck (plaintiff) on [date of alleged battery]?

Answer: _____
Yes or No

COMMENT

The instruction and comment were originally published in 1967. They were revised in 1994, 2010, 2011, and 2012. This instruction addresses the use of self-defense in cases not covered by Wis. Stat. § 895.62.

Privilege of Self-Defense. A defendant in a battery case can assert privilege as an affirmative defense. When the defendant's actions are privileged, "conduct which, under ordinary circumstances, would subject the actor to liability, under particular circumstances does not subject him to such liability." Restatement, Second, ©2013, Regents, Univ. of Wis.

Torts § 10. This instruction deals with the privilege of self-defense, the most common example of privileged conduct asserted in a battery case.

See Maichle v. Jonovic, 69 Wis.2d 622, 230 N.W.2d 789 (1975), and Crotteau v. Karlgaard, 48 Wis.2d 245, 179 N.W.2d 797 (1970).

Use of more force than is reasonably necessary constitutes a battery to the extent of the force used in excess of the privilege. Schulze v. Kleeber, 10 Wis.2d 540, 545, 103 N.W.2d 560 (1960); Palmer v. Smith, 147 Wis. 70, 77, 132 N.W. 614 (1911); Gutzman v. Clancy, 114 Wis. 589, 90 N.W. 1081 (1902); McConaghy v. McMullen, 27 Wis. 73, 79 (1870); Restatement, Second, Torts § 71 (1965).

In the case of children, beliefs, instincts, and impulses are judged in relation to those of a reasonable person of like age, intelligence, and experiences. The reasonableness of the actor's beliefs, moreover, is not defeated by a subsequent determination that the beliefs were mistaken. Maichle v. Jonovic, supra at 627-28.

Oral abuse is not sufficient to justify a battery. See Crotteau, supra at 250. However, there may be situations involving what the court in Maichle described as an "overt act of an ambiguous character." In these situations, self-defense is a justifiable defense in a civil action where the act gives rise to "a reasonable belief of imminent bodily harm when coupled with knowledge of previous threats of physical harm and dangerous propensities exhibited by the victim." Maichle, supra at 630.

This instruction needs to be tailored when the affirmative defense is based on the defense of a third party.

A defendant who is the initial aggressor can lose the right to claim self-defense unless the defendant abandons the fight and gives notice to his or her adversary that he or she has done so. Root v. Saul, 2006 WI App 106, 293 Wis.2d 364, 718 N.W.2d 197. See also Wis JI-Criminal 815.

Burden of Proof. The burden of proof to prove self-defense as a justification for injurious physical contact with another is on the defendant. See Rinehart v. Whitehead, 64 Wis. 42, 24 N.W. 401 (1885).