

DEFENSE OF PROPERTY

A person has a right to use reasonable force to protect their real and personal property from trespass, theft, or destruction.

(A person may use reasonable force, but not deadly force, to defend their property against someone who has no right to it.)

(A person may use reasonable force, but not deadly force, to regain possession of their property where their possession has been interrupted by someone with no right to the property.)

(A person may use reasonable force, but not deadly force, to remove a trespasser from their property after the trespasser has been requested to leave and has refused to do so.)

See Instruction 8.220 (Trespass). "It is generally for the jury to determine whether the victim in a particular case was, in fact, unlawfully present in a dwelling, and the judge may instruct on the law of trespass to assist the jury in this determination." *Commonwealth v. Peloquin*, 437 Mass. 204, 208 (2002) (discussing the "castle law," G.L. c. 278, § 8A).

To prove that the defendant did not act in defense of property when using force, the Commonwealth must prove at least one of the following things beyond a reasonable doubt:

One, that a reasonable person in the defendant's position would not have believed that force was necessary in order to (defend) (regain possession of) (remove a trespasser from) their property.

Two, that the defendant used deadly force to (defend) (regain possession of) (remove a trespasser from) their property. Deadly force is

force that is intended to or likely to cause death or serious bodily harm. It refers to the level of force the defendant used, not to the degree of injury, if any, to (the alleged victim).

Three, that the defendant used force that was unreasonable to (defend) (regain possession of) (remove a trespasser from) their property. How much force is reasonable may vary with the situation. Exactness is not always possible, and you may take into account whether the defendant had to decide how to respond quickly under pressure. A person who uses what is clearly excessive and unreasonable force becomes an aggressor and loses the right to act in defense of their property.

NOTE:

1. **Scope of the right to defend property.** Defense of property “relates to the right to use limited force to defend personal property from theft or destruction and real property from unwelcome invasion.” *Commonwealth v. Haddock*, 46 Mass. App. Ct. 246, 248 n.2 (1999). A defendant must present “credible evidence” that they were acting in defense of property to raise the issue. *Id.* at 248.

Once properly raised, the Commonwealth bears the burden of proving beyond a reasonable doubt that the defendant did not legitimately act in defense of property. *Commonwealth v. Ogarro*, 95 Mass. App. Ct. 662, 666 (2019). “[T]he relevant inquiry is whether (1) the defendant used only nondeadly force, and (2) the force used was ‘appropriate in kind and suitable in degree, to accomplish the purpose.’” *Haddock*, 46 Mass. App. Ct. at 248-49 (quoting *Commonwealth v. Goodwin*, 57 Mass. 154, 158 (1849)).

A person “may defend or regain [their] momentarily interrupted possession by the use of reasonable force, short of wounding or the employment of a dangerous weapon.” *Commonwealth v. Donahue*, 148 Mass. 529, 531 (1889).

Defense of property may include ejecting a trespasser. *Haddock*, 46 Mass. App. Ct. at 248. A residential landlord may not evict a tenant except through court proceedings. See G.L. c. 186, § 14; G.L. c. 266, § 120.