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## Step One—The Central Ideas: Ability, Opportunity, Jeopardy, and Preclusion

*. The use of lethal force that can end in homicide is justified in the situation of immediate, otherwise unavoidable danger of death or grave bodily harm to the innocent. — Massad Ayoob*

That statement by Mr. Ayoob, one of the premier authorities on these matters, is a succinct summary of the basic elements of any justifiable use of force in self-defense. Essentially, it is very simple: In order to determine justifiability, the courts want to know that you *had to do what you did*. Since “had to” is a pretty subjective judgment, it is legally defined, usually in the following way:

### Ability

Your attacker must have the ability—the physical, practical ability—to cause you harm. Common sense applies here, as does context. A gun gives your attacker ability (lethal ability, in fact); a knife gives ability as well. Indeed, most weapons qualify, all the way down to glass bottles, baseball bats, and screwdrivers. While the latter are not *designed* as weapons, if they are applied as such, they can certainly kill you just as dead.

Other “ability” considerations include disparity in size or physical power between you and your attacker—a very large man versus a very small man, a strong man versus a cripple, a trained fighter versus a bookworm, a man versus a woman, all can apply. And don’t forget disparity in numbers—four men attacking one can very easily kill or cripple, unless that one is a Hollywood action hero.

Most of the above are valid lethal force scenarios, but non-lethal force uses the same standard. Just about anyone can punch you and break your nose, or break your arm, or bruise your stomach.

In short, common sense is a more or less effective guide on this point. The important question is simply whether, as far as you know, the attacker has the ability to harm you—kill or maim you, if you respond with lethal force, or lesser degrees of danger for equivalently lesser uses of force.

### Opportunity

Although opportunity can be viewed as a subset of ability, it is an equally important criterion. Basically, while your attacker may very well have the *ability* to cause you harm, it means nothing unless he also has the *opportunity* to do so—right here and right now. After all, there are probably countless criminals in the world who “could” kill you and might do so, given the chance; but they aren’t standing in front of you at this moment, so they don’t have that opportunity.

The biggest consideration here is range or proximity. Although a man with a gun is considered dangerous at any reasonable distance, a man with a knife standing 300 feet away is not, simply because he cannot stab you from that far away. Yet there is another factor, as well. If he were standing mere yards away, he *still* probably couldn't reach you with his knife, but because it would *only take him moments* to approach you and change that, he would still be considered dangerous. A common police standard is to assume that a knife-wielding assailant is capable of covering 21 feet and striking with the blade in 1.5 seconds. Mull on that time span.

Some other considerations may apply when it comes to Opportunity. For instance, is a knife-wielding assailant behind a locked door a threat? Probably not. Therefore, if you were to shoot him through the door, that would not be justifiable. On the other hand, if he started—successfully—breaking the door down, then he would promptly become dangerous again. Again, use common sense.

## Jeopardy

The most subjective factor of the AOJP analysis is the jeopardy requirement, sometimes called “imminent jeopardy.” This criterion requires that, in your specific situation, a “reasonable and prudent” person would have believed himself to be in immediate danger.

In other words, jeopardy is what distinguishes between a *potentially* dangerous situation and one that is actually dangerous. Hundreds of times every day, you walk by people who *could* punch or stab or shoot you. The reason you aren't “defending” yourself against them is because you have no reason to think that they are actually about to attack you. (Why would they?)

On the other hand, if someone screams a threat and points a gun at you, any sane person would expect that behavior to indicate an intent to cause you harm.

It's important to recognize that you cannot *actually know* this person's intent; you are not a mind reader. All you can judge is his outward appearance and demeanor, which, in that case, are consistent with harmful intent. If it turns out that he was joking, or lying, or the gun was fake, or he wouldn't actually have pulled the trigger, nothing changes, because you could not have known those things.

The other important qualifier to remember is that the jeopardy must be *immediate*. A general threat to your well-being in the distant future is meaningless, but “I'm gonna kill you right now!” is meaningful.

Finally, it's essential to understand that the “immediate jeopardy” condition can go away at the drop of a hat. On the one hand, if you are attacked, beaten, and left lying in an alley, you are *not* justified in shooting your attacker in the back as he walks away, because he will have ceased to be a threat. On the other hand, if he turns around and comes back for more, then the immediate jeopardy resumes. Jeopardy can cease suddenly and unexpectedly if your attacker surrenders or

clearly ceases to be a threat (if you knock him unconscious, for instance, or he tries to run), and continuing to use force in such situations can change your action from legal self-defense to illegal battery in moments.

## Preclusion

Preclusion is not so much an individual consideration as it is an all-encompassing lens through which to view your actions. More complex than the others, it is nevertheless just as important. It is the idea that, whatever the situation, you are expected to use force *only as a last resort*—that is, only when the circumstances *preclude* all other options.

In other words, even when the ability, opportunity, and jeopardy criteria are satisfied, and knowing that you must clearly do *something* to protect yourself, the use of force, particularly lethal force, may only be that “something” if you have no other safe options.

The word “safe” is key there, because at no time does the law ever require you to choose an action that endangers yourself. If you can run away or retreat, you should, but if doing so would put you in harm’s way, you are not required to do so.

Preclusion is the factor that is missing in most self-defense arguments, and thus the reason most fail. You must remember that you bear the burden of proof; until you prove otherwise, the law merely sees two equal citizens in a dispute. You can say, “He tried to hit me,” but then the police and the courts will ask, “Why didn’t you \_\_\_\_\_?” You must have no options to offer to fill in that blank—there must have been no other courses of action you could have taken to maintain your safety except the use of force. Otherwise, you’re just fighting because you want to, and that’s a crime.

Does the Preclusion standard mean that an ultimatum like “give me your money or I’ll hurt you” requires you to, well, give him your money? Unless you honestly believe that he may hurt you anyway, yes. The law values “life and limb” above property. Or you can refuse, but you may not respond with a fist. He’s giving you a choice, which, by definition, means that you still have options other than force.

The point is simply that you must exercise self-restraint to the greatest extent possible. One vital aspect of this requirement concerns the *appropriateness* or *degree* of the force you employ, or how well suited your response is to the threat itself. If a man punches you, you probably cannot justifiably shoot him, because that’s a lethal response to a non-lethal attack. If a three-year-old punches you, you probably cannot do anything at all. If, on the other hand, a 300-pound boxer punches you, you may be justified in responding with deadly force, because his fists can be deadly as well.

Always remember:

- . The threat must be current, immediate, and unavoidable.
- . Your level of force must be appropriate to the threat.
- . Your use of force must stop when the threat ceases.

If at any point you smudge the first, exceed the second, or forget the third, you are running the risk of a criminal indictment—and if the results are glaring (e.g., you killed him), it's nearly certain.

Knock your attacker over—then keep stomping on him while he's down and not moving? Bad. Pull a knife and slash—and keep slashing when your assailant pulls away? Uh-oh; now you're not only breaking the rules, you're leaving “defensive wounds,” a signature of cuts and marks which forensics experts will use to prove that *he* was an unwilling victim.