

A fan and his friend were watching a football game at the fan's home when they began to argue. The friend became abusive, and the fan asked him to leave. The friend refused, walked into the kitchen, picked up a knife, and said he would cut the fan's heart out. The fan pulled a gun from under the sofa, walked to his front door, opened it, and again told the friend to leave. The friend again refused. Instead, he walked slowly toward the fan, brandishing the knife in a threatening manner. The fan, rather than running out the door himself, shot in the friend's direction, intending only to scare him. However, the bullet struck the friend, killing him instantly.

The fan is charged with murder.

Should he be convicted?

- A. No, because he did not intend to kill his friend.
- B. No, because he was acting in self-defense and had no duty to retreat.
- C. Yes, because he had a clear opportunity and duty to retreat.
- D. Yes, because the use of deadly force was unreasonable under the circumstances.

Explanation:

Self-defense

(justification for criminal conduct)

	General requirements	Duty to retreat
Nondeadly force	Actual & reasonable belief of imminent <i>unlawful</i> harm Force reasonably necessary to prevent harm Not initial aggressor	No duty to retreat
Deadly force	Actual & reasonable belief of imminent <i>serious harm</i> or <i>death</i> Deadly force necessary to prevent harm Not initial aggressor	Majority rule: No duty to retreat Minority rule: Duty when safe retreat available <i>unless</i> inside one's home

Murder requires proof that a person unlawfully killed another with **malice aforethought**. But the use of **deadly force in self-defense** justifies a killing and serves as a **defense to murder** if the person:

actually and reasonably believed that such force was **necessary to prevent** imminent serious bodily harm or **death** *and*

was **not the initial aggressor**—ie, did not engage in physical force first or intentionally provoke the altercation.

Under the majority rule, there is **no duty to retreat** before using deadly force in self-defense. And though a minority of jurisdictions require retreat before using deadly force if it is safe to do so, a person **never** has a duty to retreat **in his/her own home**.

Here, the fan shot and killed his friend. But the fan actually and reasonably believed that he needed to use deadly force in self-defense because (1) the friend had threatened to cut out the fan's heart and (2) was walking toward him while brandishing a knife. Additionally, the fan was not the initial aggressor, so he justifiably shot his friend in self-defense **(Choice D)**. And though the fan had a clear opportunity to run out the open front door, he had no duty to retreat since he was in his own home **(Choice C)**. Therefore, the fan should not be convicted of murder.

(Choice A) A person may be convicted of murder—even if there was no intent to kill—if the person recklessly disregarded a high risk of serious bodily harm or death (ie, depraved-

heart murder). Since the fan recklessly disregarded the high risk that the fired bullet would hit and kill the friend, the fan's lack of intent to kill will not prevent his conviction.

Educational objective:

Deadly force can be used in self-defense when a person (1) actually and reasonably believes that such force is necessary to prevent imminent serious harm or death and (2) is not the initial aggressor. There is generally no duty to retreat before using such force—especially when a person is inside his/her home.

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