

A rancher and his neighbor were involved in a boundary dispute. In order to resolve their differences, each drove his truck to an open pasture area on his land where the two properties were separated by a fence. The rancher was accompanied by four friends, and the neighbor was alone. The neighbor got out of his truck and walked toward the fence. The rancher got out but simply stood by his truck. When the neighbor came over the fence, the rancher shot him, inflicting serious injury.

In a battery action brought by the neighbor against the rancher, the rancher testified that he actually thought his neighbor was armed. However, the rancher could point to nothing that would have reasonably justified this belief.

Is the neighbor likely to prevail?

- A. No, because the rancher suspected that the neighbor was armed.
- B. No, because the rancher was standing on his own property and had no obligation to retreat.
- C. Yes, because deadly force is never appropriate in a property dispute.
- D. Yes, because it was unreasonable for the rancher to consider the use of a gun necessary for self-defense.

Explanation:

The privilege to use reasonable force (eg, [battery](#)) in **self-defense** arises when the defendant **reasonably believes** that the plaintiff is about to inflict harmful or offensive contact on the defendant. The **force** used must be **proportionate** to the anticipated **harm**, so deadly force can only be used when the defendant reasonably believes that he/she is facing death or serious bodily injury.

Here, the rancher committed a battery when he shot the neighbor, inflicting serious injury. The rancher alleges that he shot the neighbor (deadly force) in self-defense because he thought that the neighbor was armed when he exited the truck and walked toward the fence. However, the rancher could point to no evidence that would have *reasonably justified* his belief (eg, a friend's testimony that the neighbor had a gun holstered to his waist). Therefore, the rancher cannot show that he was privileged to use deadly force in self-defense and the neighbor will likely prevail on his battery claim.

(Choice A) Since the rancher's suspicion that the neighbor was armed was not supported by any evidence (no reasonable belief), the rancher's use of deadly force was not justified.

(Choice B) A person has a duty to retreat in lieu of using deadly force in self-defense, unless confronted with deadly force inside his/her own home (ie, no duty to retreat inside one's castle). Since the rancher was in an open pasture on his property—not inside his home—he had an obligation to retreat if he could safely do so.

(Choice C) Although deadly force cannot be used to protect property, it can be used when a property dispute escalates into a situation in which a participant is in danger of death or serious bodily injury. However, the rancher could not reasonably believe that he was facing death or serious bodily injury during this property dispute, so he was not justified in using deadly force.

Educational objective:

The force used in self-defense must be proportionate to the anticipated harm. Therefore, deadly force can only be used when a person reasonably believes that he/she is facing death or serious injury.

References

Restatement (Second) of Torts § 63 (Am. Law Inst. 1965) (self-defense).

Restatement (Second) of Torts § 65 (Am. Law Inst. 1965) (self-defense by deadly force).

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