

In an action for battery, the evidence established the following: The plaintiff was bad-tempered and, as the defendant knew, carried a gun and used it often; the plaintiff struck the defendant first; during the altercation, the plaintiff repeatedly tried to get to his gun; and the blows inflicted upon the plaintiff by the defendant resulted in the plaintiff being hospitalized.

Which finding of fact would be most likely to result in a verdict for the defendant?

- A. The defendant feared death or serious bodily harm.
- B. The defendant used no more force than he actually believed was necessary to protect himself against death or serious bodily harm.
- C. The defendant used no more force than he reasonably believed was necessary to protect himself against death or serious bodily harm.
- D. The defendant was justified in retaliating against the plaintiff because the plaintiff struck the first blow.

## Explanation:

### Deadly force in self-defense

Defendant reasonably believes:

plaintiff is about to intentionally inflict serious bodily harm or death upon defendant *and* plaintiff can only be stopped by defendant's immediate use of deadly force

A defendant is not liable for an intentional tort (eg, **battery**) committed while acting in **self-defense**—the privilege to use reasonable force to protect oneself against the intentional infliction of harmful or offensive contact. However, the force used must be **proportionate** to the **anticipated harm**, so the defendant can only use **deadly force** in self-defense when he/she **reasonably believes** that the plaintiff:

is about to intentionally inflict **serious bodily harm** or **death** upon the defendant *and* can only be stopped by the defendant's immediate use of deadly force.

Here, the plaintiff struck the defendant first and repeatedly tried to grab his gun during the fight. Therefore, the defendant could *reasonably believe* that (1) the plaintiff was about to intentionally inflict serious bodily harm or death and (2) he could only stop the plaintiff with deadly blows. And since the defendant used no more force than he reasonably believed was necessary to protect himself, he can establish the self-defense privilege and obtain a verdict in his favor.

**(Choices A & B)** Self-defense requires that the defendant reasonably fear serious bodily harm or death and reasonably believe that deadly force is required. Therefore, even if the defendant (1) feared that the plaintiff's actions threatened death or serious bodily harm or (2) used no more force than he actually believed was necessary to protect himself, he could still be liable for battery if his fear or actual belief was unreasonable.

**(Choice D)** The self-defense privilege never permits retaliation and terminates once there is no threat of further harm (eg, the defendant would not be privileged to use force in self-defense if the plaintiff walked away after striking the first blow). Here, the defendant's conduct was justified because he reasonably believed that the plaintiff was about to shoot him—not because the plaintiff struck the first blow.

### Educational Objective:

A defendant is privileged to use force in self-defense when (1) the defendant reasonably believes that the plaintiff is about to intentionally inflict harmful or offensive contact and (2) the defendant uses no more force than he/she reasonably believes is necessary to prevent the threatened contact.

### References

Restatement (Second) of Torts § 65 (Am. Law Inst. 1965) (force threatening death or serious bodily harm).

Tatman v. Cordingly, 672 P.2d 1286 (Wyo. 1983).

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