

Taekwon-Do and the Law of New Zealand

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References

Texts

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Articles

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General Choi Hong Hi, the founder of Taekwon-Do, states that this art is "designed for the purpose of self defense". The Student Oath contains "I shall never misuse Taekwon-Do". However, this philosophy is broadened by the end of the Oath: "I shall be a champion of freedom and justice" and "I shall build a more peaceful world".

The aim of this paper is to give an accurate but concise explanation of the practical areas of the current law of New Zealand which, as they converge with the philosophy of Taekwon-Do, are likely to be of interest to a student of the art. As such, it is written for those with some knowledge of Taekwon-Do and its philosophy, but with little knowledge of the law of New Zealand.

The body of this paper will be divided into four parts. The first part will briefly explain four matters of law relevant to the understanding of the rest of the paper: common and statutory law; civil and criminal law; the role of defences; and ignorance of the law. The second part will cover self defence and the defence of others, and the third will look at the defence of property. The final part will look at the power of one citizen to arrest another.

1. Matters of Law

a. Common and Statutory Law.

As a Commonwealth nation, New Zealand inherited its legal system from the United Kingdom. Historically, when a person or other legal entity prosecuted another, (took them to court), the Judge would look to see if a similar case, (legal action), had been decided in the past. If so, this would influence - or even bind - the Judge's decision in the present case. If not, the Judge would decide the case upon its own facts. This is called Judge-made law, or the common law.

Frequently, the sovereign and his or her advisers would find faults in the law. It could be that they disagreed with the law, found the law unclear, or perhaps there was no law on the point they had in mind. In such an instance, they would write a statute, or Act, which would then become law. The Act could alter or change existing Acts and override the common law.

The role of the sovereign's advisers - discussing and writing new Acts - is now that of Parliament. The "rubber stamp" role of the sovereign is now the assent given by the New Zealand Governor-General.

b. Civil and Criminal Law.

A legal entity may be prosecuted by one of two types of legal entities.

The first is the Crown - in the area of the law we are concerned with, usually represented by the police. The defendant, (the party facing legal action), is charged with an offence or crime against society. This area of the law is called criminal law. In New Zealand there are no common law crimes, all are statutory. This is because s9 of the Crimes Act 1961 states "Offences not to be punishable except under New Zealand Acts...".

The second type of party that may prosecute a legal entity is another legal entity. These actions usually come about when one entity causes an injury to another - physical, emotional, financial or similar - and the victim sues for damages. This is called civil law. In New Zealand, this area of the law is made up of both statutes and the common law. The injuries can arise out of contracts, (contract law), or out of the day to day non-contractual interrelationships of legal entities in society - neighbours, customers, strangers, et cetera. This is the law of torts.

The areas of interest in this paper are criminal law and the law of torts. These two areas often overlap. For example. A defendant kidnaps a victim. As this is a crime, the police may prosecute, (criminal law). Further, the victim may prosecute the defendant for false imprisonment, (a tort), and seek damages.

Note, however, the effect of the Accident Rehabilitation and Compensation Insurances Act 1992. Section 14 bars civil action for damages for any personal injury covered by the Act. Hence there can be no civil cases for some torts, such as battery, in New Zealand.

c. The Role of Defences.

If a legal entity is prosecuted, the prosecutor will attempt to establish that the defendant has breached the law in question - for example a crime or tort. If this is established. The defendant has the opportunity to give an excuse or explanation recognised by the law - either in a statute, or by the common law. Excuses recognised by the law are called defences. If the defendant can establish a defence, the action will be dismissed.

Defence of oneself or others, defence of property, and arrest are all established defences. The aim of this paper is to explain each of these three.

d. Ignorance of the Law>

It is a well established legal principle that ignorance of the law will be no excuse. This has been codified in the New Zealand criminal law by s25 of the Crimes Act, which reads: "The fact that an offender is ignorant of the law is not an excuse for any offence committed by him."

Further, a mistaken understanding of the law, (mistake of law), will likewise not excuse any action of a defendant. Distinguish a mistaken understanding of the facts, (mistake of fact), which will not always defeat a defence.

2. Self Defence and Defence of Others

a. Crimes Act, s48.

As stated earlier, Taekwon-Do is a martial art designed for self defence. Further, as "a champion of freedom and justice", it would seem that to defend others is well within the realm of the art.

The right to defend oneself and others is also recognised by New Zealand law. Section 48 of the Crimes Act provides:

"Every one is justified in using, in the defence of himself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use."

Definitions in s2 include:

"'Justified', in relation to any person, means not guilty of an offence and not liable to any civil proceeding".

Hence. The s48 definition of "justified" is relevant in both criminal and civil law. Further, s20 states the criminal protection extends to both indictable and summary offences in any Act. (That is, the protection is not limited to crimes in the Crimes Act.)

Many recent cases have clarified that "another" means any other person - one need not be in a formal relationship with, nor even know, the victim.

"Force" was defined in *R v Terewi* as including the threat to use physical power, as well as the actual use of physical power.

These definitions aside, the defence can be divided into a two stage test.

The first stage of the test is a subjective element: an honest belief in circumstances. Hence the Judge or jury will look at how the defendant actually perceived the facts, regardless of how mistaken he or she was.

Note, however, the difference between a mistake of fact and a mistake of law. For example. In *R v Thomas*. The defendant honestly believed the police were beating up a suspect. This was held to be a mistake of fact, and the defence of defence of another succeeded. Compare *Tuialli v Police*, where Tuialli believed the police were arresting another with an excess of force, and came to the other's aid. The force was not excessive, and Tuialli's mistake was held to be one of law, not fact, so the defence failed, and Tuialli was convicted of assaulting a police constable.

Compare also a situation where one is arrested by the police, believing the arrest unlawful. This, too, is a question of law. Thus, if the arrest is unlawful, (hence there is no mistake), the police are not in the execution of their duty, and one may defend oneself, others, or one's property as if against another citizen. However, if one is mistaken, and the arrest is lawful, the defence will fail.

The second stage of the s48 test is objective: reasonable force. Whether or not the force the defendant uses is reasonable in the defendant's perceived circumstances is a question to be decided by the Judge or jury. The force used can vary from threats, to the infliction of death.

To the latter, Brookbanks wrote:

"Generally, the use of deadly force must meet special conditions if it is to be justified, Normally, death, serious bodily injury, kidnapping or sexual violation must be anticipated by the actor when he/she resorts to such extreme measures to defend himself."

Deciding the reasonableness of force used will require, according to Adams, "consideration of the imminence and seriousness of the attack or anticipated attack, whether the defensive reaction was reasonably proportionate to the perceived danger, and whether there were alternative courses of action of which the accused was aware."

In *Tuli v Police*, threatening assailants with a crowbar to protect a companion was held to be reasonable. In *King v Police*, a youth with one arm in plaster and a glass of beer in the other hand, seated at a barstool was grabbed by the throat. Smashing the glass in the assailant's face was held to be reasonable force. The size and number of opponents will also be relevant.

As the Adams quote above states, the perceived danger must be imminent. That is, the assailant must have the present ability to carry out his or her threat immediately. The killing of a sleeping husband in fear of future attack does not constitute self defence. Similarly, one who is under no immediate threat may not strike with a knife in order to prevent future danger.

However, one may strike first if the situation calls for it. Fleming provides that it "is not necessary that the person threatened should wait until he is actually struck, so that if one raises his hand against you within reasonable distance you may strike to prevent him." In *Dixon v Police*, Dixon was faced with an assailant swinging a heavy electric flex at him. Dixon struck with a knife, causing an injury to his assailant's arm requiring thirteen stitches. The defence of self defence succeeded.

This case is also authority that retreat is not necessary. (But failure to show an unwillingness to fight will be considered in deciding whether the force used was reasonable in the circumstances.)

The consideration of alternative courses of action in deciding what is reasonable was illustrated in *R v Wang*, where it was held a woman was not justified in killing her sleeping husband because she had alternative courses of action available, (and was also not in imminent peril).

Another important point is that this defence may be raised against any charge in crime or tort except taking part in a riot. For example, it succeeded against a charge of disorderly behaviour in *Jenkins v Police* where Jenkins threw a milk bottle at the feet of his companion's assailants. It was also held to be a defence to possession of an offensive weapon, (a crowbar), in *Tuli v Police*.

The final point in this area is the carrying of an item "to defend oneself", such as a softball bat in the boot of one's car, or a knife on one's person. In these situations, the perceived harm is not imminent, so the defence of self defence will fail. One may be prosecuted for possession of offensive weapons, or possession of knives.

b. Excess of Force.

Section 62 of the Crimes Act reads:

"Every one authorised by law to use force is criminally responsible for any excess, according to the nature and quality of the act that constitutes the excess."

Although there are no New Zealand cases deciding the point, authorities such as Adams believe, based on pre-1961 New Zealand law and foreign decisions, that courts will not mitigate, (reduce to a lesser charge), on the basis that force was

justified but used excessively. Hence, one would be criminally tried as if the defence were not available at all.

Continuing to use force once the danger is past or acting for revenge will be clear evidence of excessive force.

Further, if excessive force is used, so the defence fails, one will also be liable civilly. (Note, however, the application of ARCI). As an example of where one could be prosecuted civilly, a person locks an assailant in a cupboard in alleged self defence. This force is held to be excessive. The assailant could prosecute for false imprisonment.

3. Defence of Property

Although the defence of one's land and personal property does not strictly come within the legal meaning of the term "self defence", and therefore arguably may not come within General Choi's definition, as a "champion of freedom and justice", one should have the right to defend these things. The law of New Zealand treats their defence in a number of smaller areas. These are dealt with below in their order of legal importance.

a. Defence of Dwellinghouse.

The defence of a dwellinghouse is codified by s55 of the Crimes Act:

"Every one in peaceable possession of a dwellinghouse, and every one lawfully assisting him or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of the dwellinghouse if he believes, on reasonable and probable grounds, that there is no lawful justification for the breaking and entering."

As with s48, the term "justified" protects from criminal and civil liability.

The term "dwellinghouse" is not defined in the Act, nor has it been defined by the courts in this context. It has, however, been defined in the context of other statutes. In *Vaile and Sons Ltd v Mayor, etc, of Auckland* it was defined as "a house in which people actually live or which is physically capable of being used for human habitation." Hence, a shop, office, or business premises was held not to be a dwellinghouse. In *NZ Breweries Ltd v Auckland City Corp*, a licensed hotel was held to be a dwellinghouse because "a bar is the predominant producer of revenue, and such revenue could not be obtained were it not for the existence and maintenance of the living accommodation."

This defence combines a subjective and an objective element: the person must have a belief in the circumstances, (subjective), but this belief must be based on reasonable and probable grounds, (objective). (That is, the reasons for the belief must be reasonable.) In contrast to s48, this definition will not cover those with

vivid imaginations. Also, recall that any mistake made by the defender must be a mistaken understanding of the facts, not a mistaken understanding of the law.

The provision allows the defender to call others to his or her assistance, to aid in the defence of the dwelling.

"Necessary" force has not yet been defined by the New Zealand courts, so it is uncertain whether this means "reasonably necessary", or is different from "reasonable". It is possible that "such force as is necessary" is a standard slightly less than "reasonable", allowing the defender to use less force. If an intruder is attempting to enter one's house, it may be reasonable to kick the intruder in the shin to distract his or her attention, then close and lock the door, where a slight push followed by closing and locking the door, may be all that is necessary.

Likewise, "forcible" has not been defined. Hence, it is uncertain whether there must be actual force, or merely a technical breaking sufficient for burglary.

In *R v Frew*, it was held that the defence is not to be construed so narrowly that the defence fails as soon as the offender actually enters the dwellinghouse. The point at which the breaking and entering would be complete, so that it could no longer be prevented, has not been clearly established, but in this case the defence succeeded where the offender had moved two or three metres from the point of entry.

It was also held in this case that the defence would succeed even if the purpose of the defender is to prevent theft and the continuation of the burglary, and to disable and detain the burglar.

Once the breaking and entering is complete, one must resort to the defence of land or building. However, as soon as the defender believes himself, herself, or others are in imminent danger, the defender may resort to the more liberal defence of s48.

b. Defence of Land or Building.

This defence has a broader scope than the defence of dwellinghouse section, but allows less force. Section 56 of the Crimes Act provides:

"Every one in peaceable possession of any land or building, and every one lawfully assisting him or acting by his authority, is justified in using reasonable force to prevent any person from trespassing on the land or building or to remove him therefrom, if he does not strike or do bodily harm to that person."

This defence, (which also covers civil and criminal liability), is unlike the defence of dwellinghouse provision because it can be used to prevent a trespass, which is an ongoing act, rather than an entering, which is not.

In tort, trespass to land requires first, the presence of something physical, (s56 states a person), on secondly, the plaintiff's land, thirdly, without lawful excuse. Hence, any time a person is found on one's land without lawful excuse, one may remove the person under s56.

The most common lawful excuse is consent of the occupier. This consent may be revoked at any time, hence one has the right to demand a person to leave the property, even if one invited the person to enter. This person is allowed a reasonable time to leave before he or she becomes a trespasser.

In the criminal law, trespass is codified by the Trespass Act 1980. Section 3 states every person who refuses or neglects to leave a property, after being asked to do so by the occupier, commits an offence. Section 4 gives an occupier the power to warn a person to stay off the land, which is effective for two years. There is a defence of emergency to both offences.

Further, s9 of the Act allows an occupier to demand of the trespasser his or her name and place of abode, and the number of his or her firearm's licence if the trespasser is carrying a firearm. However, if the trespasser refuses to answer, the occupier has neither a power of arrest, nor a right to use force under the Trespass Act.

It has been held that persons authorised to be on land may become trespassers if they exceed the scope of authority.

According to Adams, it seems "peaceable possession" need not be lawful possession. It is sufficient that the defender has actual control of the property, which is "peaceable" if the possession has not been challenged by another prior to the incident in question.

"Reasonable force" is limited to expressly exclude a strike or the infliction of bodily harm. The word "strike" would not be interpreted as narrowly as it is in Taekwon-Do. It would include most hand attacks and attacking kicks. However, so long as no bodily harm is caused in doing so, the use of a hand pressing technique, or "come-along" hold, such as a wrist lock, would probably not be lethal to the defence.

It was held in *Galvin v Police* that a push to the chest with the palm was reasonable force. One might think that a pushing kick would be similar, but General Choi includes them with attacking kicks, and they would most probably be perceived as a strike by non-martial artists, so it may be wiser not to use one of these techniques in this situation.

In *Deans v Police* it was held that it was unreasonable to "manhandle" a trespasser that has not been asked to leave.

Therefore, it may be reasonable to use a wrist lock to escort a trespasser, who has been asked to leave the property but refuses, from the property.

This provision also allows the defender to call others to his or her assistance.

An important distinction with the defence of dwellinghouse section is the lack of belief in circumstances element. Hence, the defender is not justified in the use of force if there is a mistake of fact, unless the mistake is induced by the intended or negligent words or actions of the intruder.

c. Defence of Movable Property.

The defence of movable property is covered by ss52 - 54 of the Crimes Act. The first of these covers defence of movable property against a trespasser. This reads:

"Every one in peaceable possession of any movable thing, and every one lawfully assisting him, is justified in using reasonable force to resist the taking of the thing by any trespasser or to retake it from any trespasser, if in either case he does not strike or do bodily harm to the trespasser."

Clearly, this is very similar to the defence of land or building provision. It justifies the use of similar force, and the calling of assistance, in the instance of peaceable possession. It also has no subjective belief element.

The tort of trespass to chattels requires first, an injury to the plaintiff's possession or a thing in the plaintiff's continued possession with secondly, intent by the defendant. Note, however, that s52 relates only to the taking of property, not to the damaging of property. For example, a person finds a trespasser scraping the side of his or her car with a piece of metal. The trespasser is clearly not trying to take the vehicle, so there is no justification under this provision. Although the person may sue civilly for trespass to chattel, the trespasser's name is required. But there may be relief under s53, or under s39(3) of the Summary Offences Act.

Again, if the situation escalates, the defence of self defence may become available.

The second of these provisions, s53, covers defence of movable property with claim of right:

"Every one in peaceable possession of any movable thing under a claim of right, and every one acting under his authority, is protected from criminal responsibility for defending his possession by the use of reasonable force, even against a person entitled by law to possession, if he does not strike or do bodily harm to the other person."

Again, one may protect peaceable possession, call assistance, and use force like to ss52 and 56. Again there is no subjective element. However, here the defender is not protected from civil liability, because the words "protected from criminal responsibility" replace "justified".

The reason for this is that more than one legal entity may have a claim of right to property, (hence the words "even against a person entitled by law to possession"). Most of these situations involve contracts - such as hire purchase agreements, (hirer/purchaser and owner/financier), lease agreements, (owner/lessor and lessee), and hire of movable property, (owner and customer) - so there is often a difficult legal situation that should be resolved in court. Unfortunately, in allowing civil proceedings to decide who is entitled to possession, the section also allows civil action for other torts committed when force is used to protect the property.

Another contrast to s52 is protecting the "defending of possession", which includes both resisting against taking, and protecting against damage.

The final section relating to the defence of property, s54, clearly states that a person neither with a claim of right to movable property, nor acting under the authority of a person claiming right to it, has no grounds to protect it against someone with a claim of right.

Together, ss52 - 54 mean that one may resist if a trespasser tries to take movable property. One may resist against taking, and protect from damage against another if one has a claim of right (or authority). If one has no claim of right (or authority), one may neither resist the taking, nor protect from damage against someone with a claim of right.

d. Prevention of Offences Likely to Cause Serious Injury to Property.

There is one other section of the Crimes Act that should be discussed in the context of the defence of people and property. Section 41 covers "Prevention of suicide or certain offences". However, this section has not yet received judicial scrutiny, so its meaning is uncertain. It appears to justify force that "may be reasonably necessary" to prevent an act by another that would amount to suicide, or "an offence which would be likely to cause immediate and serious injury to the person or property of any one".

In order to prevent serious injury to a person, one may rely upon the more permissive s48. However, this section allows greater force to be used than the defence of property sections, and as it may be another defence, it is discussed here.

This section replaces s72 of the Crimes Act 1908, which made no mention of suicide. Therefore, one may be lead to believe this defence is relevant to the use of force to prevent immediate and serious injury to the property of any one, if the

defender believes, on reasonable grounds, that the actor would commit an offence if the act is performed.

Without judicial clarification, however, one cannot be certain on this point.

With all situations of defence of property - movable property (ss52 - 54), dwellinghouse (s55), land or building (s56), and s41 - if one uses an excess of force, one will be liable for the whole of the force used, (s62), and may be liable to civil prosecution.

4. Citizen's Arrest

As "a champion of freedom and justice", it would seem that to arrest an offender if the Police are not able to do so would not be outside the realms of Taekwon-Do. In New Zealand, there are two statutes giving citizens the power to arrest others: the Crimes Act 1961, (ss35-38), and the Summary Offences Act 1981, (s39(3)).

The first of these provisions, s35 of the Crimes Act, reads:

"Every one is justified in arresting without warrant:

- a. Any person whom he finds committing an offence against this Act that is punishable by death or for which the maximum punishment is not less than 3 years' imprisonment.
- b. Any person whom he finds by night committing an offence against this Act."

Appendix 2a lists crimes in the Crimes Act with maximum penalties not less than three years' imprisonment, and Appendix 2b lists all other crimes in the Crimes Act. Hence, one can arrest a person found by night committing a crime in either appendix.

"Night" is defined in s2 as "the interval between 9 o'clock at night and 6 o'clock in the following morning".

"Found committing" has not yet been defined by the New Zealand courts, but, according to Adams, decisions on similar wording in the Summary Offences Act would imply, first, there must be a concurrence of the finding and the relevant behaviour, and secondly, a person may be "found" in a place, despite having entered it openly and in sight of others.

It is important to note the lack of a subjective belief element in this section, implying one is civilly, (and criminally), liable for any mistake of fact.

In giving citizens the power to affect arrests, the law must balance the civil liberties of others. For this reason, ss36 - 38 of the Crimes Act, because they contain a subjective element of belief, protect one from criminal responsibility, but not from civil liability. Hence, in each of these situations, one may face civil prosecution for false imprisonment.

(However, if the person was actually committing or had actually committed the offence for which he or she was arrested, this will be a defence to civil litigation.)

The first such provision is s36, which states:

"Every one is protected from criminal responsibility for arresting without warrant any person whom he finds by night in circumstances affording reasonable and probable grounds for believing that that person is committing an offence against this Act."

This provision contains the subjective and objective elements "reasonable and probable grounds for believing". Found in the defence of dwellinghouse section. This section also relates to "committing"; any offence against the Crimes Act; by night, (between 9pm and 6am).

The next provision, s37, reads:

"Where any offence against this Act has been committed, every one who believes, on reasonable and probable grounds, that any person has committed that offence is protected from criminal responsibility for arresting that person without warrant, whether or not that person committed the offence."

In this provision, an offence must have been committed, and one may only arrest a person for that particular offence. One must have reasonable and probable grounds for believing the person one arrests actually committed the offence - a standard of belief similar to ss36 and 55.

The final provision in the Crimes Act giving citizens the power to arrest is s38, which covers arrest during flight. Subsection one protects from criminal responsibility one who arrests without warrant, any person believed on reasonable and probable grounds to fall all of three provisos. First, committed a crime against the Crimes Act. Secondly, is escaping from someone with lawful authority to arrest him or her, and thirdly, being freshly pursued by that person. The element of reasonable and probable belief relates to all three provisos.

Subsection two states the section "shall apply whether or not the offence has in fact been committed, and whether or not the arrested person committed it".

The provision in the Summary Offences Act giving a citizen a further limited power of arrest is s39(3):

"Any person who, on or in any property of which he or she is the owner or occupier, finds any other person committing an offence against any of the provisions of sections 9 to 11, 29, and 30 of this Act, is justified in arresting that other person without a warrant; but, if he does so, he shall as soon as possible call a constable to his aid and deliver the arrested person into the constable's custody."

The offences for which one can arrest under this provision, (ss9 to 11, 29 and 30 of the same Act), are listed in Appendix 2c.

This provision, similar to s35 of the Crimes Act, contains no subjective element, hence justifying the arrest, but not protecting from a mistake of fact.

The person arresting must be on or in property of which he or she is the owner or occupier. "Property" as defined by s2 of the Crimes Act "includes real and personal property, and any estate or interest in any real or personal property, and any debt, and any thing in action, and any other right or interest". This definition includes both land and moveable property, whether fully owned, part-owned, leased, hired, or similar.

However, in the context of s39(3), it seems the definition could be restricted to land. On the other hand, it is arguable that the provision would still make sense if some items of movable property were included in the term. It remains uncertain if one can effectively arrest another under this section whilst in or on one's car, boat, caravan, bicycle, skateboard, et cetera.

Unlike ss35 - 38 of the Crimes Act, the person making the arrest must call a constable as soon as possible and deliver the offender into his or her custody.

Sections 39 and 40(1) of the Crimes Act provide for the use of force during an arrest.

Section 39 extends the amount of protection provided by the section giving the power of arrest, (justification or protection from criminal responsibility), to the limited use of force. It allows "such force as may be necessary to overcome any force used in resisting such execution or arrest", with two limitations. The first disallows the force if the arrest could be "made by reasonable means in a less violent manner". The second is that the force used must not be "intended or likely to cause death or grievous bodily harm".

Section 40(1) extends the same protection of a like amount of force with the same two limitations, to prevent the escape of the offender "if he takes flight in order to avoid arrest", or to prevent the escape or rescue of the offender after the arrest.

As with the other defences discussed, any excess of force used falls within s62 of the Crimes Act and civil law.

The duties of a citizen arresting another are detailed in s316(1) of the Crimes Act. This states that one must inform the offender why he or she is being arrested at the time of the arrest, unless it is "impracticable to do so", or "the reason for the arrest is obvious in the circumstances". The language used need not be "technical and precise", it is sufficient that the words give the offender notice of the true reason for his or her arrest.

If the offender is not so informed, this may provide evidence that the arrest could have been carried out in a less violent manner.

Conclusion

In summary, this paper has covered three areas of likely interest to a student of Taekwon-Do: defence of oneself and others, defence of property, and citizen's arrest. It is the intent of this paper that students of Taekwon-Do be aware of their rights in these areas, so they may more effectively "never misuse Taekwon-Do", "be a champion of freedom and justice", and "build a more peaceful world".

The law of defence of people and property is designed to operate when the police and the courts are likely to be ineffective. In times of emergency, immediate reasonable action is far more appropriate than using the legal system.

The law of citizen's arrest is likewise limited to situations of urgency, when the police may not arrive in time. A society where citizens go about arresting each other for minor offences is undesirable, due to the likelihood of false arrests, hence the limitations. Where possible, the police should be called instead of "taking the law into one's own hands".

Appendices

1. Relevant Sections of New Zealand Statutes.

a. Crimes Act 1961.

9. Offences not to be punishable except under New Zealand Acts - No one shall be convicted of any offence at common law, or of any offence against any Act of the Parliament of England or the Parliament of Great Britain or the Parliament of the United Kingdom:

Provided that -

(a) Nothing in this section shall limit or affect the power or authority of the House of Representatives or of any Court to punish for contempt:

(b) Nothing in this section shall limit or affect the jurisdiction or powers of any Court Martial, or of any officer in any of the New Zealand forces.

20. General rule as to justifications - (1) All rules and principles of the common law which render any circumstances a justification or excuse for any act or omission, or a defence to any charge, shall remain in force and apply in respect of a charge of any offence, whether under this Act or under any other enactment, except so far as they are altered by or are inconsistent with this Act or any other enactment.

(2) The matters provided for in this Part of this Act are hereby declared to be justifications or excuses in the case of all charges to which they are applicable.

25. Ignorance of the law - The fact that an offender is ignorant of the law is not an excuse for any offence committed by him.

35. Arrest of persons found committing certain crimes - Every one is justified in arresting without warrant -

(a) Any person whom he finds committing an offence against this Act that is punishable by death or for which the maximum punishment is not less than 3 years' imprisonment:

(b) Any person whom he finds by night committing an offence against this Act.

36. Arrest of person believed to be committing crime by night - Every one is protected from criminal responsibility for arresting without warrant any person whom he finds by night in circumstances affording reasonable and probable grounds for believing that that person is committing an offence against this Act.

37. Arrest after commission of certain crimes - Where any offence against this Act has been committed, every one who believes, on reasonable and probable grounds, that any person has committed that offence is protected from criminal responsibility for arresting that person without warrant, whether or not that person committed the offence.

38. Arrest during flight - (1) Every one is protected from criminal responsibility for arresting without warrant any person whom he believes, on reasonable and probable grounds, to have committed an offence against this Act and to be escaping from and to be freshly pursued by any one whom he believes, on reasonable and probable grounds, to have lawful authority to arrest that person for the offence.

(2) This section shall apply whether or not the offence has in fact been committed, and whether or not the arrested person committed it.

39. Force used in executing process or in arrest - Where any person is justified, or protected from criminal responsibility, in executing or assisting to execute any sentence, warrant, or process, that justification or protection shall extend and apply to the use by him of such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, warrant, or process can be executed or the arrest made by reasonable means in a less violent manner:

Provided that, except in the case of a constable or a person called upon by a constable to assist him, this section shall not apply where the force used is intended or likely to cause death or grievous bodily harm.

40. Preventing escape or rescue - (1) Where any person is lawfully authorised to arrest or to assist in arresting any other person, or is justified in or protected from criminal responsibility for arresting or assisting to arrest any other person, that authority, justification, or protection, as the case may be, shall extend and apply to the use of such force as may be necessary -

(a) To prevent the escape of that other person if he takes flight in order to avoid arrest; or

(b) To prevent the escape or rescue of that person after his arrest -

unless in any such case the escape or rescue can be prevented by reasonable means in a less violent manner:

Provided that, except in the case of a constable or a person called upon by a constable to assist him, this subsection shall not apply where the force used is intended or likely to cause death or grievous bodily harm. [...]

41. Prevention of suicide or certain offences - Every one is justified in using such force as may be reasonably necessary in order to prevent the commission of suicide, or the commission of an offence which would be likely to cause immediate and serious injury to the person or property of any one, or in order to prevent the act of any one which he believes, on reasonable grounds, would, if committed, amount to suicide or to any such offence.

Cf. Crimes Act 1908, s72. Prevention of certain offences:

Every one is justified in using such force as may be reasonably necessary in order to prevent the commission of an offence for which an offender might be arrested without warrant, and the commission of which would be likely to cause immediate and serious injury to the person or property of any one, or in order to prevent any act being done which he believes, on reasonable grounds, would, if committed, amount to any such offence.

48. Self defence and defence of another - Every one is justified in using, in the defence of himself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use.

52. Defence of movable property against a trespasser - (1) Every one in peaceable possession of any movable thing, and every one lawfully assisting him, is justified in using reasonable force to resist the taking of the thing by any trespasser or to retake it from any trespasser, if in either case he does not strike or do bodily harm to the trespasser. [...]

53. Defence of movable property with claim of right - (1) Every one in peaceable possession of any movable thing under a claim of right, and every one acting under his authority, is protected from criminal responsibility for defending his possession by the use of reasonable force, even against a person entitled by law to possession, if he does not strike or do bodily harm to the other person. [...]

54. Defence of movable property without claim of right - (1) Every one in peaceable possession of any movable thing, but neither claiming right thereto nor acting under the authority of a person claiming right thereto, is neither justified in nor protected from criminal responsibility for defending his possession against a person entitled by law to possession. [...]

55. Defence of dwellinghouse - Every one in peaceable possession of a dwellinghouse, and every one lawfully assisting him or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of the dwellinghouse if he believes, on reasonable and probable grounds, that there is no lawful justification for the breaking and entering.

56. Defence of land or building - (1) Every one in peaceable possession of any land or building, and every one lawfully assisting him or acting by his authority, is justified in using

reasonable force to prevent any person from trespassing on the land or building or to remove him therefrom, if he does not strike or do bodily harm to that person. [...]

62. Excess of force - Every one authorised by law to use force is criminally responsible for any excess, according to the nature and quality of the act that constitutes the excess.

316. Duty of person arresting - (1) It is the duty of every one arresting any other person to inform the person he is arresting, at the time of the arrest, of the act or omission for which the person is being arrested, unless it is impracticable to do so, or unless the reason for the arrest is obvious in the circumstances. The act or omission need not be stated in technical and precise language, and may be stated in any words sufficient to give that person notice of the true reason for his arrest. [...]

(4) A failure to fulfil any of the duties mentioned in the foregoing provisions of this section shall not of itself deprive the person arresting, or his assistants, of protection from criminal responsibility, but shall be relevant to the inquiry whether arrest might not have been effected, or the warrant executed, by reasonable means in a less violent manner.

Summary Offences Act 1981.

39. Arrest - [...]

(3) Any person who, on or in any property of which he or she is the owner or occupier, finds any other person committing an offence against any of the provisions of sections 9 to 11, 29, and 30 of this Act, is justified in arresting that other person without a warrant; but, if he does so, he shall as soon as possible call a constable to his aid and deliver the arrested person into the constable's custody.

Trespass Act 1980.

3. Trespass after warning to leave - (1) Every person commits an offence against this Act who trespasses on any place and, after being warned to leave that place by an occupier of that place, neglects or refuses to do so.

(2) It shall be a defence to a charge under subsection (1) of this section if the defendant proves that it was necessary for him to remain in or on the place concerned for his own protection or the protection of some other person, or because of some emergency involving his property or the property of some other person.

4. Trespass after warning to stay off - (1) Where any person is trespassing or has trespassed on any place, an occupier of that place may, at the time of the trespass or within a reasonable time thereafter, warn him to stay off that place.

(2) Where an occupier of any place has reasonable cause to suspect that any person is likely to trespass on that place, he may warn that person to stay off that place.

(3) Where any person is convicted of an offence against this Act committed on or in respect of any place, the Court may warn that person to stay off that place.

(4) Subject to subsection (5) of this section, every person commits an offence against this Act who, being a person who has been warned under this section to stay off any place, wilfully trespasses on that place within 2 years after the giving of the warning.

(5) It shall be a defence to a charge under subsection (4) of this section if the defendant proves that -

(a) The person by whom or on whose behalf the warning concerned was given is no longer an occupier of the place concerned.

(b) It was necessary for the defendant to commit the trespass for his own protection or for the protection of some other person, or because of some emergency involving his property or the property of some other person.

9. Obligation to give name and other particulars - (1) An occupier of any private land upon which any person is found trespassing, or any member of the Police, may require that person to -

(a) Give particulars of his name and place of abode; and

(b) Give the number of his firearms licence under the Arms Act 1983 if he is in possession of a firearm.

(2) If any such person fails or refuses to comply with a requirement made under subsection (1) of this section, any member of the Police may caution him and, if he persists in his failure or refusal, may arrest him without warrant.

(3) Every person commits an offence against this Act who, in response to a requirement under subsection (1) of this section, -

(a) Fails or refuses to comply with that requirement; or

(b) Gives a false name or place or abode; or

(c) Wilfully gives particulars of his place of abode that are insufficiently precise to enable it to be identified readily.

Accident Rehabilitation and Compensation Insurances Act 1992.

3. Interpretation - In this Act, unless the context otherwise requires, -

"Accident" means -

(a) A specific event or series of events that involves the application of a force or resistance external to the human body and that results in personal injury, but does not include any gradual

process; and the fact that a personal injury has occurred shall not of itself be construed as an indication or presumption that it was caused by any such event or series of events; [...]

4. Definition of "personal injury" - (1) For the purposes of this Act, "personal injury" means death of, or physical injuries to, a person, and any medical injury suffered by that person which is an outcome of those physical injuries to that person, and has the extended meaning assigned to it by section 8 (3) of this Act.

(2) For the purposes of this Act, no cardio-vascular or cerebro-vascular episode shall be regarded as personal injury unless -

(a) It is a result of medical misadventure; or

(b) It is a work injury by virtue of section 6(1) of this Act.

8. Cover for personal injury occurring in New Zealand - (1) This Act shall apply in respect of personal injury occurring in New Zealand on or after the 1st day of July 1992 in respect of which there is cover under this Act.

(2) Cover under this Act shall extend to personal injury which -

(a) Is caused by an accident to the person concerned; or [...]

(d) Is a consequence of treatment for personal injury.

(3) Cover under this Act shall also extend to personal injury which is mental or nervous shock suffered by a person as an outcome of any act of any other person performed on, with, or in relation to the first person (but not on, with, or in relation to any other person) which is within the description of any offence listed in the First Schedule to this Act. [This list includes mostly sexual crimes.]

(4) For the purposes of subsection (3) of this section, it is irrelevant that -

(a) No person can be or has been charged with or convicted of the offence; or

(b) The alleged offender is incapable of forming criminal intent.

14. Application of Act excludes other rights - (1) No proceedings for damages arising directly or indirectly out of personal injury covered by this Act or personal injury by accident covered by the Accident Compensation Act 1972 or the Accident Compensation Act 1982 that is suffered by any person shall be brought in any Court in New Zealand independently of this Act, whether under any rule of law or any enactment.

(2) For the avoidance of doubt, it is hereby declared that nothing in this section shall be affected by -

(a) The failure or refusal of any person to lodge any claim for any treatment, service, rehabilitation, related transport, compensation, grant, or allowance under this Act or those Acts; or

(b) Any purported denial or surrender by any person of any rights under this Act or those Acts; or

(c) The fact that a person who has suffered personal injury covered by this Act or personal injury by accident covered by the Accident Compensation Act 1972 or the Accident Compensation Act 1982 is not entitled to any treatment, service, rehabilitation, related transport, compensation, grant, or allowance under this Act.

(3) Nothing in this section shall apply to any proceedings relating to, or arising from, -

(a) Any damage to property; or

(b) Any express term of any contract or agreement; [...]

Offences For Which One Citizen May Arrest Another.

Should you require any further information about any section(s) on these lists, please refer to the relevant section(s) of the relevant Act(s). Note that some items appear in Appendix 1a and Appendix 1b. This is because different punishments exist for different circumstances.

Crimes Act Offences With Maximum Sentences Not Less Than Three Years' Imprisonment.

s68. Party to murder outside New Zealand.

s69. Party to any other crime outside New Zealand.

s74. Punishment for treason or attempted treason.

s76. Punishment for being party to treason.

s77. Inciting to mutiny.

s78. Espionage.

s78A. Wrongful communication, retention, or copying of official information.

s79. Sabotage.

s80. Oath to commit offence.

s90. Riotous damage.

s92. Piracy.

s94. Punishment of piratical acts.

s95. Attempts to commit piracy.

s96. Conspiring to commit piracy.

s97. Accessory after the fact to piracy.

s98. Dealing in slaves.

s100. Judicial corruption.

s101. Bribery of judicial officer, etc.

s102. Corruption and bribery of Minister of the Crown.

s103. Corruption and bribery of Member of Parliament.

s104. Corruption and bribery of law enforcement officer.

s105. Corruption and bribery of official.

s105A. Corrupt use of financial information.

s105B. Use or disclosure of personal information disclosed in breach of s105A.

s109. Punishment of perjury.

s110. False oaths.

s111. False statements.

s113. Fabricating evidence.

s114. Use of purported affidavit evidence.

s115. Conspiring to bring false accusation.

s116. Conspiring to defeat justice.

s117. Corrupting juries and witnesses.

s118. Assisting escape of prisoners of war or internees.

s119. Breaking penal institution.

s120. Escape from lawful custody.

s121. Assisting escape from lawful custody.

s122. Assisting escape of mentally disordered person under detention for offence.

s128B. Penalty for sexual violation.

s129. Attempt to commit sexual violation.

s129A. Inducing sexual violation by coercion.

s130. Incest.

s131. Sexual intercourse with girl under care or protection.

s132. Sexual intercourse with girl under 12.

s133. Indecency with girl under 12.

s134. Sexual intercourse or indecency with girl between 12 and 16.

s135. Indecent assault on woman or girl.

s136. Conspiring to induce intercourse.

s137. Inducing sexual intercourse under pretence of marriage.

s138. Sexual intercourse with severely abnormal woman or girl.

s139. Indecent act between woman and girl.

s140. Indecency with boy under 12.

s140A. Indecency with boy between 12 and 16.

s141. Indecent assault on man or boy.

s142. Anal intercourse.

s142A. Compelling indecent act with animal.

s143. Bestiality.

s144. Indecency with animal.

s147. Brothel-keeping.

s148. Living on earnings of prostitution.

s149. Procuring sexual intercourse.

s151. Duty to provide the necessities of life.

s152. Duty of parent or guardian to provide necessities.

s153. Duty of employers to provide necessities.

s154. Abandoning child under 6.

s172. Punishment of murder.

s173. Attempt to murder.

s174. Counselling or attempting to procure murder.

s175. Conspiracy to murder.

s176. Accessory after the fact to murder.

s177. Punishment of manslaughter.

s178. Infanticide.

s179. Aiding and abetting suicide.

s180. Suicide pact.

s182. Killing unborn child.

s183. Procuring abortion by any means.

s186. Supplying means of procuring abortion.

s188. Wounding with intent.

s189. Injuring with intent.

s190. Injuring by unlawful act.

s191. Aggravated wounding or injury.

s192. Aggravated assault.

s193. Assault with intent to injure.

s195. Cruelty to a child.

s197. Disabling.

s198. Discharging firearm or doing dangerous act with intent.

s198A. Using any firearm against law enforcement officer, etc.

s198B. Commission of crime with firearm.

s199. Acid throwing.

s200. Poisoning with intent.

s201. Infecting with disease.

s202. Setting traps, etc.

s202C. Assault with a weapon.

s203. Endangering transport.

s204. Impeding rescue.

s206. Punishment of bigamy.

s207. Feigned marriage.

s208. Abduction of woman or girl.

s209. Kidnapping.

s210. Abduction of child under 16.

s227. Punishment of theft.

s229A. Taking or dealing with certain documents with intent to defraud.

s230. Criminal breach of trust.

s231. Fraudulently destroying document.

s233. Bringing into New Zealand things stolen, etc.

s234. Robbery.

s235. Aggravated robbery.

s236. Compelling execution of documents by force.

s237. Assault with intent to rob.

s238. Extortion by certain threats.

s239. Demanding with intent to steal.

s240A. Aggravated burglary.

s241. Burglary.

s242. Entering with intent.

s243. Being armed with intent to break or enter.

s244. Being disguised or in possession of instruments for burglary.

s246. Obtaining by false pretence.

s248. Personation.

s249. Acknowledging instrument in false name.

s250. False statement by promoter, etc.

s251. Falsifying accounts relating to public funds.

s252. False accounting by public officer or member of body corporate.

s253. False accounting by employee.

s255. Issuing false dividend warrants.

s256. Concealing deed and encumbrances.

s257. Conspiring to defraud.

s258. Receiving property dishonestly obtained.

s262. Taking reward for recovery of stolen goods.

s265. Punishment of forgery.

s266. Uttering forged documents.

s266A. Altering or reproducing document with intent to defraud.

s266B. Using altered or reproduced documents with intent to defraud.

s267. Counterfeiting public seals.

s268. Counterfeiting corporate seals.

s269. Sending false telegram.

s270. Procuring execution of document by fraud.

s271. Possessing forged bank notes.

s272. Drawing document without authority.

s273. Using probate obtained by forgery or perjury.

s274. Paper or implements for forgery.

s275. Counterfeiting stamps.

s276. Falsifying registers.

s277. Falsifying extracts from registers.

s278. Uttering false certificates.

s279. Forging certificates.

s280. Imitating authorised marks.

s281. Imitating customary marks.

s283. Preparations for coining.

s284. Counterfeiting coin.

s285. Altering coin.

s286. Impairing coin.

s290. Uttering counterfeit coin.

s291. Buying and selling counterfeit coin.

s292. Importing and exporting counterfeit coin.

s294. Arson.

s295. Attempted arson.

- s296. Damage to other property by fire or explosive.
- s297. Attempt to damage property by fire or explosive.
- s298. Wilful damage.
- s299. Wilful waste or diversion of water, gas, or electricity.
- s300. Interfering with means of transport.
- s301. Wrecking.
- s302. Attempting to wreck.
- s303. Interfering with signals, etc.
- s304. Interfering with mines.
- s306. Threatening to kill or do grievous bodily harm.
- s307. Threatening to destroy property.
- s308. Threatening acts.
- s310. Conspiring to commit offence.
- s311. Attempt to commit or procure commission of offence.
- s312. Accessory after the fact to crime.

Crimes Act Offences With Maximum Sentences Less Than Three Years' Imprisonment.

- s82. Seditious conspiracy.
- s83. Seditious statements.
- s84. Publication of seditious documents.
- s85. Use of apparatus for making seditious documents or statements.
- s86. Unlawful assembly.
- s87. Riot.
- s91. Forcible entry and detainer.
- s107. Contravention of statute.

s121. Assisting escape from lawful custody.

s123. Blasphemous libel.

s124. Distribution or exhibition of indecent matter.

s125. Indecent act in a public place.

s126. Indecent act with intent to insult or offend.

s145. Criminal nuisance.

s150. Misconduct in respect of human remains.

s181. Concealing dead body of a child.

s194. Assault on a child, or by a male on a female.

s196. Common assault.

s202A. Possession of offensive weapons or disabling substances.

s215. Punishment of criminal libel.

s216B. Prohibition on use of listening devices.

s216C. Prohibition on disclosure of private communications unlawfully intercepted.

s216D. Prohibition on dealing with listening devices.

s227. Punishment of theft.

s228. Conversion or attempted conversion of motor car, etc.

s229. Being in possession of instruments for conversion.

s232. Fraudulent concealment.

s246. Obtaining by false pretence.

s247. Obtaining credit fraudulently.

s254. False statement by public officer.

s258. Receiving property dishonestly obtained.

s287. Defacing coin.

s288. Melting coin.

s289. Possessing counterfeiting coin.

s305. Providing explosive to commit crime.

s309. Conspiring to prevent collection of rates or taxes.

s310. Conspiring to commit offence.

s311. Attempt to commit or procure commission of offence.

s312. Accessory after the fact to crime.

s312I. Destruction of irrelevant records made by use of listening device.

s312K. Prohibition on disclosure of private communications lawfully intercepted.

s317A. Power to stop vehicles.

s317B. Road blocks.

s320B. Arrest of absconder.

s401. Contempt of Court.

Summary Offences Act Offences.

s9. Common assault.

s10. Assault on Police, prison, or traffic officer.

s10A. Ill-treatment or wilful neglect of child.

s10B. Leaving child without reasonable supervision and care.

s11. Wilful damage.

s29. Being found on property, etc., without reasonable excuse.

s30. Peeping or peering into dwellinghouse.