

Section 267 – Defence of Moveable Property

The law provides certain protection for a householder where there is an intrusion onto his premises by someone he believes is intending to commit a crime.

A person in peaceable possession of such property under a claim of right may use such force as is reasonably necessary in order to defend his possession of the property, even against a person who is entitled by law to the possession of the property provided that he does not do grievous bodily harm to the other person. Whether or not a person is in peaceable possession of property is a question of fact for you to decide.

The law recognises that ‘possession’ is a very wide concept. It includes having under control in any place whatever, whether for the use or benefit of the person of whom the term is used or of another person, and although another person has the actual possession or custody of the thing in question (refer to the evidence relevant to this question).

“Property” includes everything that is capable of being the subject of ownership^{1 2}.

A (refer to property) is movable property.

A “claim of right” is a right to the property (refer to the evidence relevant to this question)³.

This section does not authorise the doing of grievous bodily harm.⁴ This section does not permit a person to use unreasonable force.

You should remember that a person defending his property cannot always weigh precisely the exact action which he should take in order to avoid the threat to his property. You should take account of the situation in which the defendant found himself. You must consider the whole of the circumstances.

¹ See s1, for the definition of property.

² For a useful examination of the authorities on ‘peaceable possession see *Shaw v Garbutt* (1996) 7 BPR 97,600; (1997) NSW Conv R 55-801.

³ See s 22 for the general effect of a claim of right. See also *R v Waine* [2006] 1 Qd R 458.

⁴ See s 1 for definition of grievous bodily harm.

It is not for the defendant to prove that he used reasonable force. It is for the prosecution to satisfy you beyond reasonable doubt that the force used was more than reasonably necessary⁵.

If the prosecution cannot satisfy you of that beyond reasonable doubt, the defendant would not be regarded as criminally responsible for the result and you should find him not guilty.

If the prosecution does satisfy beyond reasonable doubt that the force used was not reasonable, this particular defence is not open.

⁵ See the directions on Self Defence in respect of the term “reasonably necessary”.