CORPUS JURIS

BEING

A COMPLETE AND SYSTEMATIC STATEMENT

OF

THE WHOLE BODY OF THE LAW

AS EMBODIED IN AND

DEVELOPED BY

ALL REPORTED DECISIONS

EDITED BY

WILLIAM MACK, LL.D.
Editor-in-Chief of the Cyclopedia of Law and Procedure

WILLIAM BENJAMIN HALE, LL.B.
Contributing Editor of the Cyclopedia of Law and Procedure

AND

DONALD J. KISER, LL.D.
Contributing Editor of the Cyclopedia of Law and Procedure

The law is progressive and expansive, adapting itself to the new relations and interests which are constantly springing up in the progress of society. But this progress must be by analogy to what is already settled.

GREENE, C. J., in 1 R. I. 356.

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alleged to have been spoken by him, he cannot be convicted unless the words are spoken in the hear-
ing of the persons engaged in the assault."

VI. JUSTIFIABLE OR EXCUSABLE HOMICIDE

[By STANLEY A. HACKETT]

[§ 184] A. In General—1. What Constitutes

-2. In General. Concrete illustrations of classes of cases arising and treated under the headings of exercise of authority or duty, 75 accident or misfortune, 76 duress or compulsion, 77 self-defense, 78 and defense of habitation, 79 property, 80 or of another person, 81 are deemed to furnish better and safer guides for the determination of what does or does not constitute excusable 82 or justifiable 83 homicide than abstract definitions. Even statutory definitions and rules may fall short of a statement of the law as it has been interpreted and established by precedents and authorities of long and recognized standing. 84

[§ 185] b. Justifiable Homicide. Justifiable homicide is the necessary killing of another in the performance of a legal duty or where the slayer, not being himself at fault, had a legal right to kill. 85 It is a homicide authorized by law. 86 Homicide may be justifiable because it is committed by an officer in the execution of a legal sentence; 87 because it is committed to prevent the commission of felony, 88 to suppress a riot, 89 to effect an arrest of a felon, or to prevent his escape; 90 or because it is committed in necessary self-defense, 91 or in defense of habitation, 92 of property, 93 or of another's person. 94

[§ 186] c. Excusable Homicide. Excusable homicide is where the slayer, although himself at fault, had the legal right so to kill, or where the killing was the accidental result of a lawful act done in a lawful manner. 95 Excusable homicide has also been defined as that not properly justifiable but allowable under certain circumstances, for example, those defined by law. 96 And it has also been defined as "that not properly justifiable but allowable under certain circumstances, for example, those defined by law." 97

For later cases, developments and changes in the law see cumulative Annotations, same title, page and note number.
2. Matters Not Constituting. The intentional taking of human life can be justified on the mandate of the law, or upon the ground of necessity. A homicide is not justified by any kind of provocation unaccompanied with acts of violence, especially where the provocation is past and defendant’s heat of passion has had time to subside. And, unless expressly so provided by statute, the killing of a human being in being of passion does not constitute justifiable homicide, but merely has the effect of reducing the crime to manslaughter. Mere words, threats, or insulting or opprobrious epithets, do not furnish a justification for taking human life. Any thing unknown or accused at the time of the killing cannot afford justification. Miscellaneous matters held not to be sufficient, of themselves, to justify a homicide. The fact that deceased was tall and of heroic build; the taking of a proposal of marriage by deceased to a daughter of accused; a previous delusion; the fact that deceased placed accused’s name on a black, unfair, or debased letter or failed to deliver to him a letter of condemnation belonging to him; that the victim who was the mother-in-law of accused, notified to stay away from her home where his wife and children were; and the fact that a reward has been offered by officers of the state for the killing of deceased.

Excuse. Accused is not entitled to be acquitted upon the ground of excusable homicide merely because he killed deceased in a sudden difficulty. A homicide is not excused merely because deceased did not in fact answer, when hailed or called to human life and utterly escape punishment, provided the shooting was done upon a sudden difficulty. This would be the rule of anarchy, not of law.
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1. In General. Where a public officer, or one acting under his authority, in the exercise of his duty as such, takes another's life by unavoidable necessity without any will, intention, desire, negligence, or inadvertence on his part and therefore without blame, as where an officer in the due performance of his duty repels assaults or resists him, or where an officer, in punishing a criminal within bounds of moderation and within the limits of the law, unfortunately kills him, the homicide is justifiable or excusable; but not where it is committed in excess of such officer's authority or duty. The mere fact that a person is a peace officer does not justify him in taking life otherwise than in the execution of his duties of his office.

2. Prevention of Offenses.—a. In General. The taking of human life is justifiable when done for the prevention of any atrocity or crime attempted, or of any other legal felony attempted, by force to prevent it, if need be, by the extinguishment of the felon's existence. A homicide is justifiable when committed by necessity and in good faith in order to prevent a felony attempted by force or surprise, such as murder, robbery, burglary, arson, rape, sodomy, and the like. In applying the rule no distinction ground that the man so executed was a bad man. If this was the law no man could live in the country who amounts to anything has enemies, and it could always be proven by them that he was a bad man. Thompson v. State, supra.


35. Coulter v. State, 72 Tex. Cr. 674, 70, SW 1853.


40. Misuse of position. Where accused was mistaken as to the identity of deceased and really believed he was killing another person, it is entitled to all the defenses he would have been entitled to had the original accused been guilty. Wilson v. State, 70 Tex. Cr. 355, 156 SW 1185.

Accident or manslaughter see infra §§ 268-271.

b. To a danger to a slayer acting in self-defense see infra § 229. 41. See State v. Bridges, 133 Mont. 530, 32 SW 191. 42. For a prisoner, see infra §§ 356 and 357. 43. SW 239 (where accused claimed that his father had taught him to consider his enemies as having a bib of drink wine, and caused him to associate with disreputable men). 44. See infra § 288. 45. State v. Elliott, 94 N. J. L. 767.

46. I Hawkins P. C. c 28. See Comment on § 33. 47. 66, 1 Super. 641 (stating the former rule).


50. Foster Cr. Cas. p 288.


52. 36 A. 458; State v. Powell, 34 Mont. 217, 159 P. 46; Erwin v. State, 29 Oh. St. 186, 23 AmR 733; Com. v. Long, 34, 35, 36, 37. 53. State v. Lodge, 14 Del. 542, 19 Am. R. 344. 54. Does not furnish the least justification or excuse for the taking of his life. The fact alone that deceased cursed accused does not justify or excuse the homicide. 55. It is said that a homicide is never justifiable or excusable where the slayer is at the time violating some law. A homicide is neither justified nor excused by a mistake of law as to the slayer's right to take life. But a person is not criminally responsible for a homicide committed by him by reason of a mistake as to the facts where his ignorance or mistake is not due to negligence on his part and where he would be exempt from criminal liability if the facts were as he supposed them to be. Tennessee v. State, supra.

It is no defense to a son who has killed his father that the latter had reared him badly. The contributory negligence of deceased is not a defense in a prosecution for murder or manslaughter. In fact, any defense based on the imbecility or incapacity of deceased to foresee the danger and avoid its consequences is not allowable in a criminal prosecution for manslaughter.

...
Generally, however, it is only in connection with the mere fact that the accused arms himself after some time prior to the homicide may have a tendency to provoke a deadly combat. Generally, however, it is only in connection with some other facts that the act of accused in arming himself is important in determining whether or not he provokes the difficulty which results in the killing. The mere fact that defendant had a dangerous weapon and used it does not take away the right of self-defense if without that fact the right would have existed. And the fact that a person is carrying a weapon unlawfully does not deprive him of the right to use it in his necessary self-defense. A person who arms himself, not for purposes of aggression, but in anticipation of a possible attack and for the sole purpose of necessary self-defense, may exercise the right of self-defense where he does nothing else or nothing wrongful to provoke or bring on a difficulty.

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[§ 217] (f) Carrying Arms. It has been held that the mere fact that accused arms himself after he has been held that the mere fact that accused arms himself after deceased arrives at the scene of the homicide may have a tendency to provoke a deadly combat. Generally, however, it is only in connection with some other facts that the act of accused in arming himself is important in determining whether or not he provokes the difficulty which results in the killing. The mere fact that defendant had a dangerous weapon and used it does not take away the right of self-defense if without that fact the right would have existed. And the fact that a person is carrying a weapon unlawfully does not deprive him of the right to use it in his necessary self-defense. A person who arms himself, not for purposes of aggression, but in anticipation of a possible attack and for the sole purpose of necessary self-defense, may exercise the right of self-defense where he does nothing else or nothing wrongful to provoke or bring on a difficulty.

[§ 218] (g) Criminal Intercourse with Wife or Daughter of Another or Resentment Thereof. Killing of husband by wife's paramour. Sexual intercourse between wife and paramour is not so obviously calculated to bring on a difficulty with the husband, that if the paramour when caught in the act or just after it is over kills the husband in order to save himself from death or great bodily harm, he cannot invoke the doctrine of self-defense as a justification or excuse, except where the husband attempts to kill him in vengeance for past wrongs, as where, knowing of his wife's infidelity, he deliberately lays a trap for her paramour in order to kill him if caught in the act. However, it is held in some jurisdictions that illicit intercourse with the wife of another is not such a provocation or bringing on a difficulty as to deprive the paramour of the right of self-defense. The right of self-defense is not forfeited by the fact that some time prior to the homicide accused had intercourse with the wife of deceased. Killing of wife or her paramour by husband. The doctrine as to aggression in respect generally to that of the accused against the paramour is that a husband who kills his wife or her paramour in self-defense is in a struggle ensuing from his attack upon her and her paramour in or immediately after the act of adultery. But where the husband, armed with a deadly weapon, breaks into the house or apartment of the paramour, while the latter is asleep, under circumstances sufficient to cause on the part of the paramour a reasonable apprehension of death or great bodily harm, the husband is the aggressor and precluded from setting up self-defense.

Killing of father by seducer of daughter. Engaging in illicit intercourse with the daughter of deceased is a wrongful act reasonably calculated to provoke her father to a自然科学 or is therefore deprives accused of the right of self-defense where he is found in such intercourse at the time of the homicide, but not where it occurred some time prior thereto.

[§ 219] (h) Exercise of Legal Right. The exercise of a legal right in a lawful manner is not such an act of provocation as will deprive the person exercising it of his right of self-defense, although, having reason to believe that it
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cases where a serious injury is threatened to a wife or husband, child or servant. In a few states the statutes enumerating the relatives in defense of whom a husband is justified do not expressly include brothers and sisters, it is held that they cannot be included by construction. But in other jurisdictions similar statutes are construed not to provide an exclusive enumeration but rather to ingraft the common-law rule into the statutes of the state, and it is held that the statutes, with the common-law rule so incorporated, undoubtedly apply to the defense of a brother as well as to the defense of a wife or other relative specifically named in the statutes.5

[§ 261] 5. Against Sexual Offenses. Under the rule that the husband has the same right to defend his wife against a wrong committed in his presence, as the wife would have to defend herself, where a husband discovers another in the act of ravishing or attempting to ravish his wife, and the taking of the life of such person reasonably appears to be necessary to protect the wife from the assault, the husband is justified in taking life as fully as the wife would have been. However, accused is not wholly excused or exempted from criminal liability where the means employed to repel the attack on the wife’s honor went beyond those reasonably necessary to obtain the object in view, as where deceased was unarmed and defenseless and accused did not require that accuser, after striking the first blow, should continue the attack. A father, who acts in good faith and on reasonable appearances of imminent danger, has a right to defend his daughter against an assault, whether consisting of one or more acts other than the instant killing of her assailant. However, for a homicide to be justifiable as in defense of the honor and chastity of the wife or daughter, it must be to prevent an impending or progressing wrong, and not for a past offense.

164 P 226. (2) Where the person defended is in the presence of any company of the slayer within the meaning of such a statute, the homicide is justifiable. Nutter v. Smith, 115 Wash. 406, 197 P 770. Prevention of felonies generally see supra § 192.

1. Mitchell v. State, 43 Fla. 188, 38 So. 363; Richard v. State, 42 Fla. 499, 33 S. 413.
7. U. S. v. Ocampo, supra.
15. Patterson v. State, supra.
20. There is no law, unless made so by statute, which wholly excuses the husband from liability for taking the life of the wife or her paramour, although he slay them or either while in the act of adultery. Hooks v. State, supra.
22. State v. Thomas, supra; State v. Thomas, supra; State v. Thomas, 169 Iowa 551, 552, 151 N. W. 842.
23. "The distinction between a case where the husband kills a person ravishing or attempting to ravish his wife and committing adultery is that the former offense is perpetrated by force, against which he may resort to force in protecting his wife the same as he might have done in the latter case, by her consent." State v. Thomas, supra.
25. "The fact that the defendant [a]ccused [applied is one which, following other instances, shows that he is not guilty because the husband with his wife that he is or anticipated attempt. It is held that a husband is not justified in killing another to prevent the seduction or debauching of his wife by artifice or fraud.

Adultery. Unless so provided by statute, the husband is not entirely excused or justified in taking the life of another whom he discovers in the act of adultery with the wife. This is an act consented to by her and as she would have no right to take the life of her paramour because of the act committed, her husband, acting in her defense, has no greater right. Under the statutes of some states, a husband has as much right to protect his wife from adultery as from other felonies, and, if necessary to prevent its perpetration, he is justified in taking life, provided he has not forfeited his right by his previous conduct. Under some statutes of this nature, after the act of adultery has been committed by the wife, the husband is not justified in killing her paramour. The killing must be to prevent new acts of adultery with the wife; the danger must be present and impending; urgent and pressing; and the killing must be necessary, or apparently necessary, to prevent the act of adultery. But some statutes provide that homicide is justifiable when committed by the husband upon the person of anyone taken in the act of adultery with the wife, provided the killing takes place before the parties to the act of adultery have separated. The phrase "taking a life of a relative whom a homicide is justifiable do not apply to the defense of whom a homicide is justifiable do not apply to the defense of a sister or brother. In Georgia the statute applies is one which, following other instances, shows that he is not guilty because the husband with his wife that he is

For later cases; developments and changes in the law see cumulative Annotations, same title, page and note number.
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AUTHORIZED IN SLAYING HIS ADVERSARY. 26 If v. State, supra.

15 Am. Crim. Law 592. See Reed v. State; 75 Neb. 509, 106 NW 649

for self-protection or protection of the habitation. 36

Against person lawfully in house. The rights of a householder against a violent intruder have no relevancy, and the ordinary rules as to self-defense are alone applicable, where deceased is not even a trespasser but is lawfully in the house, as where he and accused are members of the same family. He is justified in taking possession of the dwelling for the purpose of ejecting accused and his household goods from it. 38

[§ 263] 2. WHAT CONSTITUTES HABITATION. The habitation which may be defended, even to the extent of taking life, includes any place where a person lives and which is his only home and place of abode, even though it is a mere tent or a box stall. It includes outbuildings within the curtilage. 41 It does not extend beyond the curtilage or the limits of the dwelling and the customary outbuildings. 36 And on the theory that a man is entitled to defend his house, not as property, but as his castle affording protection to his person, it is held that the rule does not apply to the lot of ground on which the house stands. 43 In a restricted sense, a barn or an automobile may be regarded for the time being as a man's "castle," which he is entitled to defend for the protection of himself and others therein. It is held that a person has a right to take life to prevent the violent entry of his place of business for the apparent purpose of inflicting death or great bodily injury on an

section 261. E. Defense of Habitation 28 1. In trespasser but is lawfully in the house, as where

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It is a general rule, expressly affirmed by the statute, that a person is justified in taking life in defense of his habitation where it is actually or apparently necessary to do so in order to repel another person who attempts to enter in a forcible or violent manner for the apparent purpose of committing a felony therein upon either person or property or of inflicting great bodily harm or of assaulting or offering personal violence to a person dwelling or being therein. 29 The right to take life in a proper case in defense of habitation may be exercised not only by the owner or occupant of the house but also by his servants and guests. 32 And the persons who may be protected include guests. 28 The principle that the taking of life in defense of habitation is excusable or justifiable is not applicable to a common brawl for which accused is mainly responsible or to a case where deceased is on a public way in front of accused's house and is not attempting to enter or to make any forcible attack or invasion, 26. The homicide is not justifiable where, although deceased is attempting at the time unlawfully to enter accused's dwelling house, the killing is done with malice and ill will and not

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