



## Understanding Criminal Law

A Crime is defined as: *An act or omission that constitutes an offence and may be prosecuted by the state and is punishable by law.*

For an act to fall under the definition of a specific crime it needs to fulfil all five elements of Criminal law viz.

**1- Maliciousness** (Unlawfulness)

**2- Intent** (The 'unlawful' Intent must be aimed at 'undermining the specific law in question')

**3- An Act** (The manifestation of the deed must fall under the definition of a specific crime)

**4- Volition** (The act must be volatile/wilful)

**5- There must be a victim.**

If any of these five elements fall away the act can no longer be defined as a 'crime-under a specific definition' e.g.

**Definition of Murder:** "Murder is the unlawful intentional killing of one human being by another."

Understand this well: *If you are to use force in self-protection there are two elements of "lawfulness" that you must remember viz.*

**1. The attack must be pending (There must be a direct threat on your life)**

**2. Do not overstep the boundaries of self-protection (The force you use must be in reasonable relation to the pending threat / the force must be necessary)**

*Now let's say that you are being attacked by a man yielding a machete, the attack is in progress therefore you are in direct danger and in order to survive you shoot the culprit; the man dies on the scene as a direct result of the wound inflicted by you.*

*In face value this sounds like murder since it is illegal to kill another human (**1- Malicious**), you deliberately shot the man (**2 - Intent & 3 - Act**); in full control of your senses (**4 - Volition**) and the dude is dead-meat (**5 - Victim**).*

*In this case your justification for the act of killing another human is held in the exclusion of (**No 2***

**Intent), since your INTENT was not to murder, but rather to protect yourself!**

The act of Murder needs all 5 elements to stand as an offence therefore, in this case, Murder falls away and the next relevant offence after murder will normally be: **Culpable Homicide.**

Yet, Culpable Homicide is the Malicious and Negligent killing of another human and in this case you were not negligent since you fired out of self-protection, nothing negligent about that!

The outcome of this this incident, based on Section 36 of the Bill of Rights (which states that every person has the right to live) will be **Justifiable Homicide!**

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Any South African citizen may execute an arrest for "any conspiracy, incitement, or attempt to commit any offense", pertaining to any Schedule 1 offense, as determined by THE CRIMINAL PROCEDURES ACT OF 1977, Act 51, and THE CRIMINAL LAW AMENDMENT ACT OF 2007, Section 3 and 4.

## **LAWFUL CITIZENS' ARREST**

**The South African Criminal Procedures Act of 1977, Act 51, Section 42,** says concerning an "Arrest by private person without warrant":

1. Any private person may without warrant arrest any person –
  - a. Who commits or attempts to commit in his presence or whom he reasonably suspects of having committed an offence referred to in schedule 1;
  - b. Whom he reasonably believes to have committed any offense and to be escaping from and to be freshly pursued by a person whom such private person reasonably believes to have authority to arrest that person for that offence;
  - c. Whom he is by any law authorized to arrest without warrant in respect of any offence specified in that law;
  - d. Whom he sees engaged in an affray;
2. Any private person who may without warrant arrest any person under subsection one –
  - a. May forthwith pursue that person, and any other private person to whom the purpose of the pursuit has been made known, may join and assist therein.
3. The owner, lawful occupier, or person in charge of property on or in respect of which any person is found committing any offense, and any person authorized thereto by such owner, occupier or person in charge, may without warrant arrest the person so found.

**The South African Criminal Procedures Act of 1977, Act 51, Section 39,** says

concerning the "*Manner and effect of arrest*":

1. An arrest shall be effected with or without a warrant, and, unless the person to be arrested submits to custody, by actually touching his body or, if the circumstances so require, by forcibly confining his body.
2. The person effecting an arrest shall, at the time of effecting the arrest or immediately after effecting the arrest, inform the arrested person of the cause of the arrest and, in case of an arrest effected by virtue of a warrant, upon the demand of the person arrested hand to him a copy of the warrant.
3. The effect of an arrest shall be that the person arrested shall be in lawful custody and that he shall be detained in custody until he is lawfully discharged or released from custody.

### **UNLAWFUL CITIZENS' ARREST**

**The South African Criminal Procedures Act of 1977, Act 51, Section 53, says concerning the "*Saving of civil law rights and liability*":**

**Subject to the provisions of Section 46 and 331, no provision of this chapter relating to arrest shall be construed as removing or diminishing any civil right or liability of any person in respect of a wrongful or malicious arrest.**

### **Examples**

**Always take into consideration that you may only execute Citizens' Arrest for Schedule 1 offenses, and no other.**

- » Sodomy is **NOT** a Schedule 1 offense.
- » Prostitution is **NOT** a Schedule 1 offense.
- » Drug-dealing is **NOT** a Schedule 1 offense.
- » Public drunkenness is **NOT** a Schedule 1 offense.
- » Dumping rubbish is **NOT** a Schedule 1 offense.
- » Littering is **NOT** a Schedule 1 offense.
- » Urinating in public is **NOT** a Schedule 1 offense.

Abusive language is **NOT** a Schedule 1 offense.

### **Schedule 1 Offenses**

- » **Treason:** "*serious acts of betrayal of one's country or nation*"
- » **Sedition:** "*to inspire revolution*"

- » **Murder:** *"the unlawful killing of another human being with intent"*
- » **Culpable Homicide:** *"the purposeful, reckless, or negligent act of killing a human being"*
- » **Rape or Compelled Rape:** as contemplated in THE CRIMINAL LAW AMENDMENT ACT OF 2007, Section 3, concerning Sexual Offenses and Related Matters.
- » **Indecent Assault, Sexual Assault, Compelled Sexual Assault, or Compelled Self-Sexual Assault:** as contemplated in THE CRIMINAL LAW AMENDMENT ACT OF 2007, Section 5 and 7, concerning Sexual Offenses and Related Matters.
- » **Any sexual offense against a child or the mentally disabled:** as contemplated in THE CRIMINAL LAW AMENDMENT ACT OF 2007, Section 3 and 4, concerning Sexual Offenses and Related Matters.
- » **Human Trafficking for sexual reasons:** as contemplated in THE CRIMINAL LAW AMENDMENT ACT OF 2007, Section 71, concerning Sexual Offenses and Related Matters.
- » **Bestiality:** *"the practice of sex between humans and animals"*
- » **Theft:** *"the illegal taking of another person's property without that person's freely-given consent"*, by stealth or fraud
- » **Robbery:** *"the crime of seizing property through violence or intimidation"*
- » **Knowingly receiving stolen goods**
- » **Kidnapping or Childstealing:** the taking away, or asportation, of any individual, by force or fraud, against his or her will, whether an adult or a minor.
- raud:** *"an intentional deception made for personal gain or to damage another individual"* .
- » **Public Violence or Assault:** especially when a dangerous wound is inflicted.
- » **Arson:** *"the crime of deliberately and maliciously setting fire to structures or wildland areas"*

» **Malicious damage or injury to Property:**

» **Breaking and entering any Property**, with the intent to commit an offense:

» **Forgery**, or knowingly using either, forged documents or coinage: "*the process of making, adapting, or imitating objects, statistics, or documents, with the intent to deceive*"

» **Intimidation:** "*behavior which would cause a person of ordinary sensibilities fear of injury or harm*"

## **Summary**

### ***AUTHORIZED TO ARREST***

» Any South African citizen may arrest anyone who commits or attempts to commit a Schedule 1 offense.

» Any South African citizens may arrest anyone who he/she reasonably suspects of having committed a Schedule 1 offense.

» Any South African citizen may arrest anyone attempting to escape a security officer, police officer, detective, or national security officer.

» Any South African citizen may arrest anyone engaged in fighting.

» Any South African citizen may pursue anyone who committed a Schedule 1 offense, and may authorize anyone else to assist them.

» Any South African citizen may arrest anyone on any property they own, rent, or guard.

» Any South African citizen may physically subdue a suspect, when resisting arrest.

» **South African citizens** "*are privately liable if [they] perform an unlawful arrest*"

» Always remember that while South African citizens may not execute a Citizens' Arrest for Schedule 2 Offenses (**except when duly authorized to do so by a Police Official**), they may still offer eye witness testimony in Court.

### **NOTIFICATION OF ARREST**

» Any South African citizen must inform the suspect of the reason for his or her arrest, either

while performing it, or immediately thereafter.

## **FOLLOWING THE ARREST**

- » From the moment of arrest, the suspect has the right to consult a lawyer.
  
- » Apart from giving his or her name and address, the suspect has "*the right to remain silent*". He or she is under no legal obligation to answer any questions, whatsoever, until his or her lawyer is present.
  
- » No South African citizen may release any suspect, unless lawfully discharged or released from custody by a Police Official.