

**JUSTIFICATION:
USE OF PHYSICAL FORCE
TO PREVENT DAMAGE TO PREMISES
PENAL LAW 35.20(1)**

NOTE: This charge should precede the instructions for the crime(s) to which the defense applies, and then, the final element of any such crime should read as follows:

"and, #. That the defendant was not justified." ¹

With respect to count(s) (specify count(s) and name(s) of crime(s)), one of the elements that the People must prove beyond a reasonable doubt is that the defendant was not justified. The defendant is not required to prove that he/she was justified; the People must prove that he/she was not.

I will now explain when, under our law, a person is justified in using physical force to prevent or terminate a crime involving damage to premises.

Under our law, any person may use any degree of physical force, other than deadly physical force, upon another individual when he or she reasonably believes to be necessary to prevent or terminate what he or she reasonably believes to be the

¹ See *People v McManus*, 67 NY2d 541, 549 (1986); *People v Higgins*, 188 AD2d 839, 840 (3d Dept 1992); *People v. Feuer*, 11 AD3d 633 (2d Dept. 2004).

commission or attempted commission by that individual of a crime involving damage to premises.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: “premises,” [“deadly physical force”] and “reasonably believes.”

PREMISES includes the term “building” and any real property.²

[DEADLY PHYSICAL FORCE means physical force which, under the circumstances it is used, is readily capable of causing death or other serious physical injury.³]

A defendant REASONABLY BELIEVES physical force to be necessary to prevent or terminate what he or she reasonably believes to be the commission or attempted commission of a crime involving damage to premises by another individual when the following two circumstances exist:⁴

First, the defendant actually believes that another individual is committing or attempting to commit of a crime involving damage to premises, and also actually believes that his or her use of physical force is necessary to prevent

² Penal Law §§ 35.20(4)(a) and 140.00(1).

³ Penal Law §10.00(11). The definition of serious physical injury is set forth in Penal Law § 10.00(10) and may be added as necessary.

⁴ *People v Goetz*, 68 NY2d 96 (1986).

or terminate the commission or attempted commission of that crime involving damage to premises . It does not matter whether those beliefs are mistaken, provided the defendant actually holds them.

Second, a “reasonable person” in the defendant’s position, knowing what the defendant knows and being in the same circumstances, would also hold those same beliefs.

The People are required to prove beyond a reasonable doubt that the defendant was not justified. It is thus an element of [each] count(s) (*specify*) that the defendant was not justified. As a result, if you find that the People have failed to prove beyond a reasonable doubt that the defendant was not justified, then you must find the defendant not guilty of [all] count(s) (*specify*).⁵

⁵ *People v Roberts*, 208 AD2d 415 (1st Dept 2001); *People v Higgins*, 188 AD2d 839, 840-841 (3d Dept 1992); *People v Castro*, 131 AD2d 771, 773 (2d Dept 1987).