

LEGAL ASPECTS OF THE MARTIAL ARTS

GMAU PRESS



BY CLEMENT RIEDNER, PHD, SCD, LHD
8TH DEGREE BLACK BELT

COPYRIGHT©1993 - 2006 ALL RIGHTS RESERVED

ANY PART OF THIS BOOKLET MAY BE QUOTED PROVIDED
PROPER CREDIT IS GIVEN TO THE AUTHOR(S)
& THE GMAU PRESS

CONTACT GMAU AT:

GMAU INTERNATIONAL
1001 E. PALMER ST.
INDIANAPOLIS, IN 46203

OR ON THE WEB:

WWW.GMAU.ORG EMAIL: JRRUSSELL@IUPUI.EDU

Disclaimer

This document is not intended to be used as a substitute for advice from a lawyer. Its contents represent the opinion of the author, but in no way should be construed to be an authority in legal matters. You agree to hold the GMAU, its staff and members blameless and without fault for any issues that arise from implementing any advice given in this document.

LEGAL ASPECTS OF THE MARTIAL ARTS

Clement G. Riedner, PhD, ScD, LHD

While this is not designed to be the final, legal authority for the sensei, it does set forth some principles and concepts, which the sensei, for his own safety and peace of mind on legal responsibility, needs to be aware of and also to pass on to his students. There are some very important methods that must be considered.

Let's look first of all at this question of crime, the requirements for a crime and definitions of a crime, as they relate to the Martial Arts. And then, some legal points for the Martial Artist to remember, or at least to be aware of.

1. TYPES OF CRIME:

There are basically two types of crime. The first is the felony, which is a serious crime such as rape, murder, robbery (above a set legal amount of the city or county in which the crime takes place; usually anywhere from \$100 to \$500, depending upon where the crime takes place), kidnapping, and terrorism. These are basic crimes which would be considered felonies or major crimes. Then there are crimes which would be considered minor or misdemeanors. These are less serious crimes, such as trespassing, disturbing the peace, etc.

2. THE REQUIREMENTS FOR A CRIME:

What constitutes a crime? There are certain things that have been legally defined as being necessary for something to be a crime. First of all, there must be criminal intent. There must be intent in which to commit a crime. This may be verbal, such as in the case of a threat. One person threatens another with the intent to do bodily harm. Then that could be considered as criminal intent.

A person's actions may imply criminal intent. This is where the Martial Artist comes in. Under this is the ability to do damage to the person who is threatened. The ability to do physical damage to another may imply intent to do damage, or to produce bodily injury. Thus, the martial artist has Martial Arts training, a black belt, and is capable of doing physical damage to another and depending upon the judge and jury, could be construed to be or have criminal intent

A second requirement would be a criminal act. A criminal act must take place.

Another thing could be that of a statutory age. Most states, or all states have a minimal age, normally anywhere from sixteen to eighteen, but some may even be twenty. At that age, a person could be considered a criminal, and his act may be considered a crime. Below that age, he would be treated as a juvenile. There is normally a statutory age for an act to be defined as a crime.

3. LEGAL SANITY:

We are hearing much about this in the news today. For instance, a few years back, with the attempt upon former President Reagan's life, there was a question of legal insanity. Basically, there are some laws imposed before Congress on this, to change the legal aspects as to how some of these sanity laws should be changed. But the basic rule is if you are sane, you are responsible for any actions committed while under the influence of drugs or alcohol. If a person is sane while they are sober, then they are legally responsible for any act or action committed while under the influence of drugs or alcohol. So any sensei, who likes to indulge in alcohol after he leaves the Dojo, could find himself in trouble on this one.

Once again, the four requirements for a crime are criminal intent, (which may be verbal or written, or a person's actions or ability to do bodily damage), a criminal act must be committed, a required statutory age at which an act of a person is considered a crime, and the consideration of a person's legal insanity. The main point here is if you are legally sane when you are sober, you are also responsible for your actions when you are under the influence of drugs or alcohol.

Now, let's look at some of these definitions as they apply to the Martial Artist. There are some definitions that apply to the Martial Artist that the sensei must be aware of.

a. THE QUESTION OF A DEADLY WEAPON:

A deadly weapon can be defined as "Any object that can cause serious bodily injury or death." The basic rule on this is that it is not the weapon but how it is used. For the average layman untrained in the Martial Arts, I don't think a pencil would be considered a deadly weapon, especially when it is not sharpened. A fresh pencil out of a box that had not been sharpened might not be considered a deadly weapon. Yet, in the hands of someone who is trained and knowledgeable of the Martial Arts, this could very easily be a deadly weapon. So it is not the weapon, or object itself, but how it is used that makes this definition.

b. ASSAULT:

For an assault to be legally an assault, you must have five things:

1) **A physical act must occur.** As long as you don't touch a person, you are okay, but the moment you touch a person, or grab hold of them, assault might be considered as having taken place.

2) **The act must be unlawful.** Something that would be considered as unlawful would be to grab someone and shake them. It is basically unlawful. So the question is, "Was the way the person handled, grabbed or held, unlawful or not?"

3) **An ability to do bodily injury must be present.** Here is where the Martial Artist finds himself in jeopardy. The Martial Artist must be careful. If he has the ability, and normally the Martial Arts would give him that ability to commit bodily injury, then he has a greater potential for being held for assault, than a person untrained in the arts.

4) **An apparent intent to commit bodily injury must be present.** If you create the apprehension or fear in a person's mind that you might actually injure them, you have committed assault. Let's say that again, for it is very important. If you create the apprehension or fear in a person's mind that you might actually injure them, you have committed assault. I know of one sensei who likes to leave his Dojo in his black Gi and run down to the bank, or the corner market, wearing his Gi. This of course does produce various comments when someone passes by. On one occasion he and his wife related to me (and were very proud of the fact), someone had made a comment to him and he put a restraining hold on him and took the guy down. They may have been very proud of that technique, but he could have found himself in a real lawsuit in this case. Wearing a black Gi, and acting in a threatening, "macho" way raises the question of creating apprehension or fear in a person's mind, that he might actually injure them. So this is nothing to play with. This is very serious from the standpoint of the Martial Artist.

5) **Verbal abuse does not constitute assault.** In other words, "Sticks and stones may break my bones, but words will never hurt me." As long as a person just verbally abuses you, but does not lay a hand on you, you cannot claim assault. Verbal abuse does not count.

c. AGGRAVATED ASSAULT:

Aggravated assault consists of all the five points above on assault, with the use of a deadly or dangerous weapon. When a deadly or dangerous weapon is added, then you have aggravated assault. The presence of a weapon constitutes aggravated assault.

d. BATTERY:

You may have heard of someone who was being held on the charge of Assault and Battery. We have defined assault. What then is Battery? Battery is simply defined as "The unlawful contact on a person by a voluntary physical act."

1) **Physical contact must be made, no matter how strong or weak.** Once physical contact is made, it constitutes Battery.

2) **The physical contact must be made from the results of an unlawful force.** We will discuss this later when we get into the question of the Dojo problems of student injury from techniques within the Dojo. There is a fine line between what is done in a Dojo with consent and what would be considered Battery, or unlawful contact upon a person.

So the deadly weapon and assault and battery are concepts which the sensei should be aware of and to keep in mind in his teaching and his moral and ethical instruction to his students, if he wishes to avoid problems.

e. LEGAL POINTS OF THE MARTIAL ARTIST:

First of all, let us look at some of the warnings which the Martial Artist must be aware of. These are directed mostly at the sensei.

1) **Avoid initiating physical contact in a fight.** I don't care how good you are, how fast you can kick or even if you want to "show off." Save it for the Dojo. But on the street, avoid any physical contact. If you like to go to bars and different places, avoid initiating physical contact. Let the other guy initiate the action. You must let the other guy hit or grab first. You must avoid initiating physical contact. This is the basic rule if you want to legally claim self-defense.

2) **Do not strike or touch anyone who is verbally abusing you.** Just because he is calling you names, or making fun of you because you are in the Martial Arts, or for whatever reason, that does not give you the right to hit him or put a restraining hold on him or show him the latest choking techniques you have learned. You do not strike or touch anyone who is verbally abusing you. Remember that and you will save yourself some possible pain later.

3) **Once a student begins an illegal attack on another person, he loses his legal rights of protection from Battery.** Now, as soon as a person grabs you or threatens you, and he has lost his protection legally from battery, you are then free to confront him for your own protection. But the basic rule of this also is to use only that force of violence which is necessary to prevent further violence. Let the other person attack you first. Once he initiates his attack, he loses his rights of protection and you then have legal rights of self-defense when you counter.

4) **Keep in mind that legally you can only use what force is necessary to prevent further violence.** There are some basic points which you must remember in reference to self-defense. If you are in a position where you have to claim or prove self-defense, these are the points to remember.

a) **Did you have the right to be where you were?** If you were trespassing, then you may have a problem. But if you have a legal right to be in that section, block, or part of the street when you were attacked, that will work in your favor.

b) **Perceived intent.** Did you perceive the intent of the other person to harm you? Did you see a weapon on him? Did he move toward you in a threatening manner? Did he actually strike at you? Can you show an honest, perceived intent to do bodily injury?

c) **Consent, given or implied.** Did you consent to being hit? Did you consent, either verbally or implied, to what he did to you? For the sensei in the Dojo, when a student is injured, and there is a lawsuit after the injury, this is one of the questions which will come up; whether the student gave or implied consent to the technique which injured him. The same thing applies on the street, should you be attacked.

d) **Criminal neglect or negligence.** Were you negligent in any manner? If your technique in the way you defend yourself could be demonstrated to be negligence and you did not conduct yourself in a controlled manner, and control the situation in a controlled manner, this goes back to the point on legally using only whatever violence is necessary to prevent further violence. If this is not the case, then criminal neglect or negligence could be pointed at you

e) **Awareness of impending injury.** Were you aware of any impending injury? This also goes back to intent. Did you honestly perceive the given intent to hurt you, and also, did you have an awareness of impending injury. If you did, and there was a definite awareness that there was perceived intent, then you have the case of self-defense.

Now let's quickly review again. The question of crime and what constitutes a crime is important for the sensei. Because of the particular nature of the Martial Arts and the way the law currently looks upon the Martial Arts, you have to be aware that primarily, if you are a black belt and you end up in a court of law in a self-defense situation, you will find that the law will probably work against you. The law will probably favor the untrained. This means that you will have to prove you are innocent. This may sound like a reversal, but basically, the law and the concept of the law is that the law may work against you.

The requirements for a crime, again, are criminal intent, criminal act, statutory age, and legal sanity. If these are all there, then you have the requirements for a crime.

And once again, within the definition of a deadly weapon, if you are a black belt, you will probably be considered as a deadly weapon. You have the ability to do serious bodily injury, or even to kill someone. Remember, it is not the weapon, but how the weapon is used. A paper clip could be considered a dangerous weapon if the person knows how to use it. The same thing applies to anything else in the hands of a Martial Artist trained to use it.

In assault, the physical act must occur, and it must be unlawful. Verbal abuse does not constitute assault. Also, the ability to commit bodily injury must be present.

Aggravated assault is when a deadly or dangerous weapon is used.

Battery is unlawful contact. The basic point under this rule is to not make first contact with the other person. Let him strike first.

Then finally, on these legal points, the warnings are to avoid initial contact, do not strike or touch anyone who is abusing you, but once a person begins a legal attack he loses his rights of legal battery and you are then in the position to assault in self-defense. And the points to remember in self-defense are: do you have the right to be there, do you perceive intent, consent, given or implied, is there criminal negligence on your part which you, by evidence of your black belt you should have controlled but did not, and did you have an awareness of impending injury.

All these points are very important for the sensei to be aware of and to communicate to his students. We must say, in closing, that this material did not originate with us, but we have taken this information from several articles written on the subject.. And we recommend that you read resources available on the legal aspects of the Martial Arts. Now we will deal more closely with the Dojo and the legalities that the sensei will face in the Dojo situation, not simply in the Dojo, but also in the private lessons of the Martial Arts which must be considered.

4. OPENING A DOJO:

There are a few legalities and technicalities that the sensei should look into, at least through the local Chamber of Commerce, to get an answer to these questions.

a. Business License:

Does the sensei need to legally have a business license to run a Dojo? Is the Dojo legally considered a business or a private club? This can only be answered by the local authorities, depending upon their definition. So the sensei should check into this before he actually opens the doors to the Dojo.

b. Zoning:

In a formal Dojo, zoning restrictions might become important. This is a simple legality or technicality, but it could close you down. You could pour a lot of money getting your Dojo all prepared and then come to find out you have some zoning restriction that could operate against you. City, county, town, township or local city ordinances against Martial Arts may apply. Maybe the local officials have not heard of the Martial Arts. You never know what kind of laws may be on their books. Did you know that in the state of Indiana, it is illegal to walk down the streets with an ice cream cone in your pocket on Sundays? So anytime you may be in the state of Indiana don't walk down the street with an ice cream cone in your pocket on Sunday, because it is illegal. "But that is ridiculous". Yes, it may sound ridiculous, but that is the sample of some of the laws that are on our books, so you better do your homework before you open your Dojo.

c. OPERATION OF A DOJO:

Legally, the question of incorporation may or may not be necessary. You could operate with or without a partnership. The main legal advantage of a corporation is, should there be a student injury in the Dojo, and a lawsuit follows, the corporation would be the one sued and the sensei would not be involved personally as far as his personal assets, etc. So a corporation could be a legal protection worth considering. Another legal protection that should be considered is that of obtaining accident insurance. There are various companies that have experimented with this, and there might be accident insurance available for you. That would be worth checking into.

Having a student signing a release form as part of their application procedure is legally questionable. Some authorities would say it has absolutely no value. I personally do it and recommend it, simply because it does show a basic amount of caution. The student is, by reading and signing it, giving you some legal means to point to and say, "I was careful on this and informed the student on the danger, and he understood the possible dangers of injury." So this will work legally, if nothing else, in your favor. If the student is under eighteen, then have the parent(s) or guardian(s) sign. But I would not recommend letting anyone practice in your Dojo unless he had this.

Also, having clearly posted Dojo rules, where they are easily seen, would be important. And the rules should be enforced. Make them simple, but enforce them. Clearly enforced rules are a legality which will help you in case of a lawsuit for student injury.

As for private lessons, the same procedures might be followed, although we would question incorporation at this point. But safety should not be overlooked, simply because the group is small. The legalities are protecting the sensei, where question of safety arises, and these legalities should not be overlooked. They should be taken into consideration.

In case of student injury, a couple things will happen in court. First, the question of instructor negligence will come up. Was the instructor negligent in the class? If there was criminal negligence, then the lawsuit will probably stand against you. This is an area where you may run into some problems. We have heard of a case in Florida, where a person under the legal age was injured in a Dojo, taken to a local emergency room, treated and subsequently died from a reaction to the medicine given to him in the emergency room. He had an allergy, reacted to the medicine, and died. The student's parents sued the sensei and won. Why did they win the lawsuit? Negligence possibly. So, the answer to this problem is very simple. On your application forms have a section which includes medical history and any allergies, who to notify in case of injury, what hospital to take them to, and the name of the family doctor. The form should also include consent to take to an emergency room for treatment. These are things that should be on the basic application form. The particular case listed shows what could possibly happen. This is something that most sensei's might not even think of, and yet, it can hurt you in a lawsuit.

You must have proper supervision. What constitutes proper supervision? It will be helpful if the Kai, has a definite instructor certification program. If you as a sensei have a good solid instructor certification program, whereby the instructors are trained in various matters of supervision of the class, legalities of supervision, and the teaching methods, and first aid methods, then you may be protected. But to be careless in the supervision of a class could work against you and create for you, in case of injury, many legal problems.

Another question you have in case of student injury is that of consent. Did the student consent to the move or technique which produced the injury? You could argue that he was in the class; therefore he gave an implied consent to the technique within the class. However, the students could be broken off from the main group and practicing among themselves. In this less formal setting if a student comes along and injures another student with a technique he had no business applying, or was not properly trained to apply whose fault is it going to be? Well, I'm sorry sensei, but it will still come down as being your responsibility. So being careful and having proper supervision of your class is absolutely essential.

What happens if a former student abuses his knowledge which he gains from you, and goes out on the street and injures someone. Does this happen? Yes. Every one of us who has been in the arts for any length of time has had at least one student who has gone out and tried to prove how "macho" he was, and has either gotten himself beat up or beat up someone else. Well sensei, are you responsible for the knowledge he gained from you? Perhaps. Once again, could you be sued, if a student goes out and injures someone? Possibly. It will depend upon the state. What then is the answer? The answer is, in your class try to convey attitudes which would prevent such abuse. If you are known to teach such proper attitudes of warning students against this, that would stand in your favor. You could call other students as witnesses, who were in the class with the student who abuses his knowledge, and if these students could testify that the abusing student heard you warn against such attitude, then you probably would be not held accountable. So this would be our recommendation. Be sure that you teach and warn your people in your class against such abuses. This would be your best legal protection.

d. LEGAL CONTROLS IN THE ARTS:

The most common myth in America is that of registration of black belts, in which he has to register his hands as a deadly weapon. Well, to my knowledge, this is not in effect, although this may become a reality in American very soon. And perhaps rightly so, considering what is going on between the movies and television. Now, many of the television programs of Martial Arts give good techniques, but they also create a "macho" image. We must at this point make a comment about one that came out in 1984, called The Master. A particular technique shown in the move is good, but I have one major objection to it. You have a very macho hot-shot student, who I wouldn't teach for love or money, but the master, in the opening program, for no reason at all tore up a bar. The whole purpose was to show his technique. So any legal control that might come upon the arts could be as a result of Hollywood. But it might be good to check into the locality, especially larger cities, to see if there are any controls that might affect you.

As far as the legal controls of the exotic Martial Arts weapons, these are in effect. For instance, in New York State, Indiana, and others where Martial Arts weapons are listed, they are felonies and listed as lethal weapons, and possession of them would constitute a felony. Remember, a felony is a major crime, or a serious crime. So the Nunchaku and many of these weapons are considered lethal in many states. That is, just like a gun, if they are considered a lethal weapon you then cannot carry them concealed upon your person. Sometimes you can carry them in the open, but I wouldn't recommend that either. First, they are a direct invitation for someone to challenge you. And also, it would depend upon the local law enforcement agencies. Is this going to be enforced?

I know one sensei in Indiana who, if he sees anyone walking down the street carrying them, he will take the weapon away from them. There are some parents a little upset with him, and complained to the local police department because he has taken their "toys" away. But I don't think, if they tried to legally pursue it, that he is going to get into any legal problem over that, for taking those weapons away, because he turns around and hands them to the police. The police are legally supposed to do that anyway when they catch anyone with them. But remember, sensei, these Oriental and exotic weapons are illegal in many states. So your attitude, how you handle this, and how you train your students are going to be important.

To restate a previous point, in question of the law and self-defense, remember that in the case of self-defense, if you are a black belt, the law is going to work against you. So keep that in mind.

Some legal questions that you should answer and keep in mind are: 1) First aggression. Who struck first? Who initiated the action? So be sure you don't initiate the incident. Whatever happens, be sure you don't initiate it. 2) Intent to do bodily injury. When you reacted and finally got into the fight, what was your perceived intent? Your attitude at this point, whether calm and collected, angry or whatever may work for or against you in the case of self-defense. Your intent to do, or not to do, bodily injury, is important. 3) The Minimum amount of force necessary to prevent further violence. If a simple restraining hold will do the job, don't break his arm. In other words, use only that force which is necessary to prevent further violence. 4) Witnesses. What they see or didn't see. Or what they thought they saw. You could put ten people in a room, have someone come in and rob them, and you will get ten different descriptions of the robber. So you cannot rely upon witnesses, because they generally will not in reality see what really was. They will only see what they thought they saw. And that is not going to be very reliable.

Another issue is control of Martial Arts weapons. This is another one we would suggest you check into. It would be very good from this standpoint to make friends as soon as possible with all the local officials, the local police force, starting with the town constable and working your way up the legal authorities. Get to know these authorities. Make friends with them and offer to help them in any way that you can.

Remove suspicion as to who you are and what you are by taking the first steps in forming friendship with these local individual authorities. You might be called upon as an expert in case of rape prevention, hostility, and other things like this. It will work in your favor to work with these individuals and to be open and honest with them. Much better than trying to sneak around and not make contact with them. Work hand in hand with them. It will work to your benefit.

In the law of self-defense keep these points in mind and convey these points to your students. It is good to go over the Martial Arts laws with your students. Be sure your students are aware of where they legally stand in the Martial Arts training.

We trust that these points have been are will be of value to you, and will be of value to your students.