THE LAW

Israeli Penal Law (1995)
(5737-1977, as amended in 5754-1994)

Chapter Ten. Offenses Against the Person

Article One. Causing Death

Section 298. Manslaughter

If a person — by an unlawful act or omission — causes the death of another, he is guilty of manslaughter and is liable to twenty years imprisonment.

Section 300. Murder

(a) If a person does one of the following, he is guilty of murder and is liable to life imprisonment, and only to that penalty:

(1) he willfully causes the death of his father or mother or grandfather or grandmother by an unlawful act or omission;
(2) he premeditatively causes the death of any person;
(3) in the commission of an offense or while preparing for or facilitating the commission of an offense, he willfully causes the death of a person;
(4) having committed another offense, he causes the death of a person in order to secure the escape or to avoid punishment of himself or of a person who participated in the commission of that offense.

(b) A person convicted of murder under section 2(f) of the Nazis and Nazi Collaborators (Punishment) Law 5710-1950, is liable to the death penalty.

Section 300A. Reduced Penalty

Notwithstanding the provisions of section 300, a penalty lighter than that set in it may be imposed, if the offense was committed in one of the following situations:

(a) when, because of a severe mental disturbance or because of his limited intellectual capability, the defendant’s ability to do one of the following was severely reduced, even though not to the point of the complete incapacity said in section 34H:

(1) to understand what he was doing or that his act is wrong; or
(2) to refrain from committing the act;

(b) when, under the circumstances of the case, the defendant’s act exceeded by little what would have been reasonable, as required under
section 34P, for the application of the exceptions of self defense, necessity or duress under sections 34I, 34J and 34K can be applied;

(c) when the defendant was in a state of severe mental distress, because of severe or continued harassment of himself or of a member of his family by the person whose death the defendant caused.

Section 301. Premeditation

(a) For purposes of section 300, a person shall be deemed to have killed another person premeditatively, if he resolved to kill him and killed him in cold blood without immediate provocation, under circumstances in which he was able to think and understand the result of his actions, after having prepared to kill him or after having prepared the instrument with which he killed him.

(b) As regards the resolution and preparation to kill, it is immaterial whether the accused resolved to kill the other person or a particular member—or any member—of his family or race.

(c) To prove premeditation, it is not necessary to show that the accused was in any state of mind for any particular period before the offense was committed or that the instrument with which the offense was committed was prepared at any particular time before the act.

Section 304. Causing Death by Negligence

If a person causes another person’s death by negligence, then he is liable to three years imprisonment.

Section 309. Definition of Causing Death

A person even though his act or omission is not the immediate or sole cause of death, shall be deemed to have caused the death of another person in any of the following cases:

(1) he inflicted bodily injury which necessitated medical or surgical treatment and the treatment caused the injured person’s death; it is immaterial whether the treatment was mistaken, so long as it was given in good faith and with ordinary knowledge and skill; if it was not so given, the person who inflicted the injury shall not be deemed to have caused the injured person’s death;

(2) he inflicted bodily injury which would not have caused the injured person’s death, had he received proper medical or surgical treatment or had he observed proper precautions as to his way of life;

(3) he caused a person, by violence or threats of violence, to commit an act which caused his own death, if that act appeared to that person—under the circumstances—a natural way of avoiding the violence or threats;
(4) he hastened, by deed or by omission, the death of a person who suffers from a disease or injury, which—even without that deed or omission—would have caused death;

(5) the act or omission would not have caused death, unless accompanied by an act or omission of the person killed or of some other person.

**Article Four. Endangering Life and Health**

**Section 329. Harm with Aggravating Intent**

If a person does one of the following with intent to disable, disfigure or cause grievous harm to another, or with intent to resist or prevent the lawful arrest or detention of himself or of another, then he is liable to twenty years imprisonment:

1. he unlawfully wounds or causes grievous harm to a person;
2. he unlawfully attempts to strike a person with a projectile, knife or other dangerous or offensive weapon;
3. he unlawfully causes an explosive substance to explode;
4. he sends or delivers an explosive substance or other dangerous or noxious object to a person, or he causes a person to receive such a substance or object;
5. he puts a destructive or explosive substance or a corrosive fluid in any place;
6. he throws any substance or fluid said in paragraph (5) at a person or otherwise applies it to his body.

**Section 333. Grievous Harm**

If a person unlawfully does grievous harm to another person, he is liable to seven years imprisonment.

**Section 334. Wounding**

If a person unlawfully wounds another person, he is liable to three years imprisonment.

**Section 341. Harm Through Negligence**

If a person unlawfully commits any act, or omits anything which it is his duty to do, that act or omission not being one specified in sections 338 to 340, and if by that act or omission harm is caused to a person, then he is liable to one year imprisonment.
Article Eight. Assault

Section 378. Definition of Assault

If a person directly or indirectly strikes, touches, pushes or otherwise applies force to another without his consent or with his consent, which was obtained by fraud, he is said to commit assault; for this purpose, the application of force includes the application of heat, light, electricity, gas, smells or any other thing or substance, if it is applied to a degree that causes injury or discomfort.

Section 379. Common Assault

If a person unlawfully assaults another, he is liable to two years imprisonment, except to the extent that this Law provides a different punishment for the offense, in view of its circumstances.

Section 380. Assault that Causes Actual Bodily Harm

If a person commits assault that causes actual bodily harm, he is liable to three years imprisonment.

Section 381. Various Kinds of Assault

(a) If a person does one of the following, he is liable to three years imprisonment:

1. he assaults another in order to commit a felony;
2. he assaults another in order to steal anything;
3. he assaults another in order to resist or prevent the Lawful arrest or apprehension of himself or of another for any offense;

(b) If a person assaults a public servant, or a person who performs a duty or function assigned to him under law, or a person who renders a service to the public on behalf of a body that provides a service to the public—the assault being connected with the performance of the assaulted person’s duty or function—he is liable to five years imprisonment.

Section 382. Assault Under Aggravating Circumstances

If any offense under sections 379, 380, or 381(a)(1) or (3) was committed in the presence of two or more persons, who combined for the commission of the act by one or some of them, each of them is liable to double the penalty prescribed for the offense.
Chapter Five. A Restrictions on Criminal Liability

Article Two. Restrictions on Criminal Nature of Act

Section 34J. Defensive Force

No person shall bear criminal responsibility for an act that was immediately necessary in order to repel an unlawful attack, which posed real danger to his own or another person’s life, freedom, bodily welfare or property; however, a person is not acting in self defense when his own wrongful conduct caused the attack, the possibility of such a development having been foreseen by himself.

Section 34K. Necessity

No person shall bear criminal responsibility for an act that was immediately necessary in order to save his own or another person’s life, freedom, bodily welfare or property from a real danger of severe injury, due to the conditions prevalent at the time the act was committed, there being no alternative but to commit the act.

Section 34M. Justification

No person shall bear criminal responsibility for an act that he committed under any of the following circumstances:

1) he was lawfully obligated or authorized to commit it;
2) he committed it under the order of a competent authority, which he lawfully was obligated to obey, unless the order is obviously unlawful;
3) in respect of an act which lawfully requires consent, when the act was immediately necessary in order to save a person’s life or his bodily welfare, or to prevent severe injury to his health, if, under the circumstances, he was not able to obtain the consent;
4) he committed it on a person with lawful consent, in the course of a medical procedure or treatment, the objective of which was that person’s or another person’s benefit.
5) he committed it in the course of a sports activity or of a sports game, such as are not prohibited by law and do not conflict with public order, in accordance with rules customary for them.

Section 34P. Unreasonableness

The provisions of sections 34J, 34K, and 34L shall not apply, if, under the circumstance, the act was not a reasonable one for the prevention of the injury.
Section 34R. Misinterpretation of Situation

(a) If a person commits an act, while imagining a situation that does not exist, he shall not bear criminal responsibility, except to the extent that he would have had to bear it, had the situation really been as he imagined it.

(b) Subsection (a) shall also apply to an offense of negligence, on condition that the mistake was reasonable, and to an offense of [strict liability]...

Model Penal Code
(Offer Draft 1962)

Section 3.02. Justification Generally. Choice of Evils

(1) Conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable, provided that:

   (a) the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and

   (b) neither the Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and

   (c) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

(2) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his conduct, the justification afforded by this Section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

PROBLEM
A Life-Saving Break-In

Burke and his two roommates, Tim and Henry, have AIDS. Burke as yet has few debilitating symptoms. He remains physically and mentally strong. Tim is in very poor health and is getting worse rapidly. Henry was in the same condition several months ago until he began participating in a research study using a drug called IIR. His health, like that of many others in the study, dramatically improved upon use of the drug. While Burke is thrilled with Henry’s recovery, he is angry that the study’s sponsors will not let him and Tim participate. He has urged government authorities in the Food and Drug Administration to make IIR generally available, but his requests have been denied on grounds that insufficient research has been done to justify FDA approval. Burke is convinced that the only way he can save his own life and Tim’s is to break into the research study’s offices and steal sufficient doses of IIR for them both. He breaks into the building but