



Battery and Assault

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Battery

Battery

A plaintiff can establish a prima facie case for battery by showing:

- (1) the defendant undertook an act,
- (2) with intent, effecting a
- (3) harmful or offensive
- (4) touching of the plaintiff.

The Act

- Almost always very easy to show
- Merely need some volitional action
- Who is a defendant that might have no act?
 - a sleepwalker
 - a jumpy person whose limbs flail in reaction to a noise
 - omissions - standing by and watching someone get hit by an object

Intent

- Acting either with purpose or with substantial certainty to ...
- Effect a harmful or offensive touching
- Transferred intent applies:
 - In all courts, to and from assault
 - In the traditional view, additionally to and from false imprisonment, trespass to land, and trespass to chattels

Harmfulness or Offensiveness

- Doesn't have to actually do harm
- Societal convention plays a huge role
 - Example: tapping on shoulder
- Can differ in different places with different norms
- Social convention yields to expressed wishes
 - Example: "I don't like to be tapped on the shoulder."

Touching

- Think broadly about what counts as a touching. Can be indirect.
 - Laying a trap.
 - Poison, adulteration of food or beverage
 - Smoke, particulates
 - Directing someone with words to a position in which they will be touched.
 - Touching something a person is wearing, holding, in, on, etc.

Leichtman v. WLW

**Fisher v. Carrousel
Motor Hotel**

I de S et Ux v. W de S

Assault

Assault

- (1) The defendant undertook an act,
- (2) with intent, effecting
- (3) the immediate apprehension of
- (4) a harmful or offensive
- (5) touching of the plaintiff.

Assault

- (1) The defendant undertook an act,
- (2) with intent, effecting
 - Intent for an assault
 - Transferred intent applies
- (3) the immediate apprehension of
 - Distinguished from fear
 - Must be immediate
- (4) a harmful or offensive
- (5) touching of the plaintiff.

From the casebook ... p, 173

A. Betty and Harvey are two campers at Lake Monaveit Summer Camp. Betty, wanting to get Harvey back for pushing her into the lake during canoe races, sneaks up on Harvey as he is sleeping and spoons peanut butter onto his hair. When Harvey wakes up, Betty is sitting there grinning. Harvey runs his hands through his hair, feels the peanut butter, licks a finger, and breaks out into hearty laughter. Does Harvey have a good claim against Betty for assault? For battery?

From the casebook ... p, 173

B. Stephen is giving Gerald a haircut. Gerald is a working model who does mostly catalog work, although lately he has been struggling. He has asked Stephen for a little off the top – just a trim. As Stephen works, Gerald is absorbed in his cell phone. When he finally looks up in the mirror, he sees that Stephen has changed his entire look, making his hair much, much shorter. Stephen's intention is to give Gerald's career a boost, and he's convinced that the haircut will get him more work. After Gerald leaves the salon, as he is walking down the street, he runs into Freda, an acquaintance who is the chief marketing officer of a major retailer. As soon as Freda sees Gerald, she begins running her fingers through his hair. She loves the haircut, and based on his new look, she offers him a \$1.5 million exclusive contract to be the new face of her company's L'Homme au Travail clothing line. Does Gerald have a good claim against Stephen for assault? For battery? Does Gerald have a good claim against Freda for assault? For battery?