

PROBLEM SET

You are standing in hallway. You hate Professor Schwartz because he made you work so hard during the first week and he is always so prepared in class. As he is walking to his car in his perfectly matching designer shoes and clothes you do the following:

- a. You sneak up behind him just as you had planned and with a big Expert Learning text, hit him on the back of his head and he slumps unconscious to the ground. You were so efficient and stealthy he never saw you coming. Using the elements we identified please discuss the possibility that these events constituted either battery and/or assault?

Basic review of elements indicates battery but introduce the need for apprehension in assault. Hence no assault here because Schwartz, "never saw you coming."

- b. Instead of sneaking up behind him, you confront him and scream, "I am going to hit you with this book for being so prepared." You did not intend to hit him but just to scare him by swinging the book close to his head and making him flinch. Unfortunately you misjudge the length of the book and the book strikes his head after he flinches. Using the elements we identified please discuss the possibility that these events constituted either battery and/or assault?

Intent to assault and he "flinched" so indicates apprehension of imminent harmful or offensive contact so assault, but because assault and battery are both torts subject to the doctrine of transferred intent then even without intent for battery the intent from assault "transfers" to the tort of battery so there also is a battery

- c. Again, instead of sneaking up behind him you confront him and scream, "I am going to hit you with this book for being so prepared." You did not intend to hit him but just to scare him by swinging the book close to his head and making him flinch. Everything went according to plan. Using the elements we identified please discuss the possibility that these events constituted either battery and/or assault?

Similar to above but no contact so only assault

- d. The situation is exactly like in scenario (c) except this time reality takes over. As you swing the book at Professor Schwartz you are unaware that on one of his globetrotting trips he learned the Indonesian fighting art of Pent Jak Silat. As you swing the book towards him, he reacts faster than you can comprehend, using his precious Louis Vuitton brief case which he always carries and even sleeps with, to hit a pressure point on your left arm, immediately paralyzing your entire body. Afterwards, Professor Schwartz, in

an interview with Fox News mentions that he was never fearful but he was uneasy about the contact you were trying to make with him. Using the elements we identified please discuss the possibility that these events constituted either battery and/or assault? Do not discuss whether or not Professor Schwartz's actions constituted assault or battery? Be creative, and shock the trial judge with a superb argument in addition to the obvious one.

There is intent to cause harmful or offensive contact but the question becomes who causes it. Does Schwartz cause it by moving the briefcase? Perhaps, but the difference between causation in intentional torts and negligence is that in the former causation is theoretically limitless and chains of causation are less easily broken than in the latter. While this may be a stretch it is possible to argue that the swinging of the book is ultimately the cause of the contact with the briefcase. Based on the facts (which he always carries and even sleeps with) the briefcase may also be considered an object in intimate association with the body and the rule that an object in intimate association with the body is considered the body for the purposes of battery is invoked. Additionally remember fear is not required for assault but apprehension may be satisfied simply by the awareness of an unconsented to contact.