

The Intentional Torts: Battery & Assault



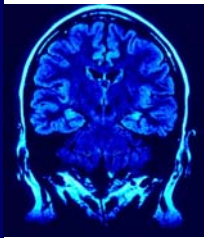
Torts I
Professor Hensel
8/25/09

Definition of Intent:

Intent is EITHER:

- A. The **desire** to bring about consequences against which the law protects; OR
- B. The **substantial certainty** that one's actions will bring about consequences against which the law protects

Intent: Effect of Mental illness



McGuire v. Almy

- * Statement of the Case
- * Holding
- * Policy Arguments
- * Jurisdictional Exceptions
- * Definition of Intent

Transferred Intent



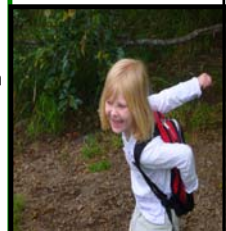
Talmadge v. Smith

- * Statement of the Case
- * Holding
- * Transferable Torts
- * Policy Rationales
- * Restatement's Position



Application of "Intent"

Ann, a five-year-old girl, was standing in a country lane throwing rocks for entertainment. Unbeknownst to Ann, she was on Ben's property rather than on her own family's property. Shortly thereafter, Ben and Carol rode by on bicycles. Continuing to throw rocks, Ann hit Ben, who fell and broke his arm. At trial, Carol testified that Ann aimed at her. Ann testified that she was trying to hit the trees behind Ben & Carol.



Ben sues Ann for battery and trespass. Did Ann act with intent?

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Battery

Issue: Did Ann intend to commit an unlawful or offensive touching?

YES:

1. Ann aimed at Carol and desired to hit her. This reflects intent as to Carol. (Garrett)

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2. Ann's intent as to Carol is transferable to Ben. (Talmadge)

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3. Ann is probably old enough to understand that if she aims a rock at someone, it will cause harmful or offensive touching. Age does not negate intent. (Garrett, McGuire)

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Battery cont.

NO:

1. Ann was trying to hit a tree. Thus, she did not desire to bring about harmful or offensive contact to Ben or Carol. (Garrett)

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2. The fact that there was a foreseeable risk that Ann would injure them by throwing rocks in their vicinity is not the same thing as a substantial certainty that contact would occur. (Spivey)

WHO DETERMINES WHICH SCENARIO PREVAILS?

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Trespass

Issue: Did Ann intend to enter Ben's land?

YES:

1. Ann intended to walk on to the property at issue. There is no evidence that she did so against her volition. (Garrett)

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2. The fact that Ann mistakenly thought that she was on her own property rather than Ben's does not negate intent. (Ransom)


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3. If Ann intended to commit a battery, that intent transfers to a COA for trespass in jurisdictions that do not follow the Restatement, which only transfers intent between assault & battery. (Talmadge)

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BATTERY: Changing Definitions

- * Historical Definition
- * Modern Definition




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Restatement: Battery

A. Intent to cause harmful or offensive contact with a person, or imminent apprehension of such harm;

AND


B. Harmful or offensive contact with person directly or indirectly occurs



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BATTERY: Changing Definitions

- * Historical Definition
- * Modern Definition
- * "Harmful" or "Offensive"




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“Offensive” Touching

Wallace vs. Rosen

- * Establishing the Required Intent
- * The Significance of Perspective
- * The Sensitive Plaintiff
- * The Role of Awareness



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The Intentional Torts: Battery, Assault & False Imprisonment



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The “Touching” Requirement

Fisher v. Carrousel Motor Hotel, Inc.

- * Statement of the Case
- * Procedural Posture
- * Meaning of “Touching”



Hypothetical




Al, 10, brings a turkey sandwich to school from home every day. All of his friends make fun of him for it; however, Al tells them he can't stand any other kind of sandwich. As a joke one day, Sue placed a PB&J sandwich in his bag, knowing Al was unlikely to notice until he had eaten it. Sure enough, Al took a bite before realizing what he had eaten. Unbeknownst to Sue, Al is severely allergic to peanut butter. He immediately went into shock and almost died. Al spent 5 days in the hospital, and his parents want to sue Sue. Is Sue liable for battery?

ASSAULT: Historical Origins

I de S et ux. V. W de S


- * Statement of the Case
- * Protected Interests
- * The Role of Transferred Intent



Elements of Assault

Western Union Telegraph Co. v. Hill

- * **Definition of Assault**



An Assault Occurs when D:

intends to and does put another person in apprehension of imminent harmful or offensive contact, coupled with the apparent present ability to complete the battery.

Elements of Assault

Western Union Telegraph Co. v. Hill

- * Definition of Assault
- * "Apparent Present Ability"
- * "Imminent" Threats
- * "Apprehension"
- * The Role of Fear

