

## 8/27 Hypothetical Answer

Write or outline a response to the following hypothetical, using the posted guide to writing answers to legal hypotheticals:

Al, 10, brings a bologna 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?

Answer:

Al has a cause of action for battery against Sue. A battery occurs when a defendant intends to make harmful or offensive contact with the plaintiff, and the contact actually occurs.

Sue will argue that the contact element was not satisfied because she never touched Al. Al will argue that his contact with the altered sandwich was sufficient. Contact is established when a defendant puts a sequence of events in motion that result in harmful or offensive contact with the plaintiff. By placing the sandwich in Al's bag, Sue began the chain of events that resulted in Al touching the sandwich, satisfying this standard.

The contact was clearly harmful, as Al landed in the hospital. It also would probably offend a reasonable sense of dignity to secretly replace the food that one intends to eat. Although Sue would argue this was not offensive because the two have a relationship together, the relationship suggests that she is aware of Al's heightened sensitivity relating to his food, and she will be held to this knowledge.

In order to establish intent, Al must show that Sue desired or was substantially certain to make harmful offensive contact with him. There is a split in authority as to whether Sue need only intend to make the contact, or must intend to make harmful or offensive contact. There is no question that by placing the sandwich in the bag, Sue desired it to come into contact with Al. Because she is Al's friend, however, it is questionable whether she desired harmful or offensive contact. Given her knowledge of his heightened sensitivity to food issues, however, Al can make the argument that she was substantially certain that it would be offensive, thus satisfying intent in jurisdictions following the latter definition of intent.

Thus, Sue is likely to be liable for battery.