

1. **John and Michelle, who have been dating for several months, are out on a date at a frat party. John, thinking that the party is lame, decides to do everyone a favor by spiking a large punch bowl with a few shots of vodka – a move he genuinely believes will be greatly appreciated. Michelle, unaware of the vodka, takes a sip of her punch and says, “Excellent! Someone’s spiked the punch!” Rico, a reformed alcoholic, takes a drink of punch and immediately spits it out, yelling, “Hey! Who spiked the punch?” After John admits his role, Rico sues him the next day. For what, if anything, is John liable?**

A. Rico vs. John: COA for battery

1. Battery occurs when D intends to commit a harmful or offensive touching.

A. Intent: desire or substantial certainty

1. Substantial certainty that contact will occur with others

2. But: Does not appear to intend harm or offense

A. Some jurisdictions require intent to harm or offend. Others simply intend to touch. Not clear that former is satisfied.

B. Seems particularly inappropriate to protect John in these circumstances; he is not clueless.

B. Harmful or offensive?

1. Not harmful

2. Offensive

A. Offends a reasonable sense of human dignity (objective standard)

B. Most people would be offended by putting something in the punch.

C. Fact that one person liked it is irrelevant.

C. Touching?

1. Placed liquor in punch knowing it would come into contact with another

2. Began chain of events that led to touching.

Can Michelle sue if she wasn’t actually offended?

2. **Student in class, after failing miserably at the Socratic method in front of his peers, gets out of his seat, moves to the podium, raises his fist, and says menacingly to the professor, “If you weren’t my professor, I’d punch your lights out.”**

Professor vs. student: Assault

1. An assault occurs when D has the intent to place P in reasonable apprehension of imminent harmful or offensive contact, and D has the apparent ability to carry out battery.
2. Intent – yes. Desire to make apprehend imminent contact.
3. Apparent ability? Yes
3. Imminent
 - A. Close in space; could carry out
 - B. Took an overt act; raised fist
 - C. Not close in time – conditional threat. Words themselves negate threat.

3. Arnold, a personal trainer, eats right and works out with heavy weights on a daily basis. Nevertheless, he is only 98 pounds. He is known for his drill sergeant motivational tactics. John, a large man, signs up to be Arnold’s client with the intent of losing weight. During the first training session, Arnold pushes John to the point of exhaustion, and he stops to take a break. Arnold walks up to John, shouting and pointing his finger in his face, “Get up right now! If I have to get you up myself, you’ll be sorry! Do you want to be fat & lazy your whole life? You should be ashamed of yourself!” Furious, John leaves the building.

1. Definition of assault
2. Intent; clearly satisfied; wants to place in apprehension of imminent contact with statement “If I have to get you up myself, you’ll be sorry”
3. Apparent ability?
 - A. Arnold is small; may appear that there is no way he could make John get up.
 - B. Not about actual fear, but perception. He clearly could touch him & make the attempt, which would be offensive if not harmful.
 - C. Probably enough that would touch him even if couldn’t ultimately carry him.
4. Imminent?
 - A. Overt act satisfied – finger in face
 - B. Close in space
 - C. Close in time but conditional. “If you don’t get up.” Plus, but nature of style is to threaten. Wouldn’t a reasonable person know that he’s not actually going to do anything?

2. Maybe as a personal trainer he has a right to make the conditioned request.
2. IIED?
 - A. Intent to cause distress?
 1. Probably. But maybe desire is to motivate rather than distress.
 2. Outrageous? Fat – hardly. Common insult.
 3. Severe emotional distress? Doesn't look like it. Only walked out angry. No other evidence.
4. **Mary has worked as a cashier at McDonald's for over five years. She has no high school education and is the sole source of support for her six-year-old son, Luke. She is barely making ends meet. In the middle of her shift one day, Mary's sister ran in to tell her that Luke's school had called to say that he had broken his arm, was extremely upset and repeatedly asking for Mary. The school had requested that she come to get him immediately to take him to the hospital. When asked, Mary's manager refused to let her use the company phone to call school and threatened to fire her immediately if she left her shift early.**
 1. IIED:
 - A. Probably no intent to cause her distress. He is manager & wants her to stay and do job.
 - B. Not so outrageous – people get fired for leaving work every day no matter what the cause. Manager insisting on shift completion.
 - C. No facts relating to distress
 2. FI?
 - A. Desire to restrain? Probably
 - B. Confinement / bounded area – workplace.
 - C. Force or Threat of Force? Doesn't look like it. She has the ability to leave if she wants to, just under unpleasant circumstances.