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## ILLINOIS LAW MANUAL

### CHAPTER VII INTENTIONAL TORTS & DEFAMATION

#### A. ASSAULT/BATTERY

##### 1. Assault and Battery Distinguished

Civil battery is defined by Illinois case law as the willful touching of another person. Pechan v. Dynapro, Inc., 251 Ill. App. 3d 1072, 1084 (2d. Dist. 1993). The defendant does not have to be the one to come into contact with the plaintiff; a defendant still commits a civil battery if the defendant set in motion some substance or force that touched the plaintiff. Id. An action for battery does not depend on the hostile intent of the defendant, but on the absence of the plaintiff's consent to the contact. Id. However, where the defendant is not doing an unlawful act, the defendant's intent to cause harm will be material. Id.

A civil assault is an intentional act, directed toward the plaintiff, that causes the plaintiff reasonable apprehension of an imminent, offensive contact with the plaintiff's person. McNeil v. Carter, 318 Ill. App. 3d 939, 944 (3<sup>rd</sup> Dist. 2001). In order for there to be a "reasonable apprehension," the defendant must have had the apparent ability to engage in harmful or offensive contact with the plaintiff. Parrish v. Donahue, 110 Ill. App. 3d 1081, 1083 (3d Dist. 1982).

Whereas assault generally consists of the fear of an imminent harmful contact, battery consists of the actual offensive or harmful contact itself. Parrish v. Donahue, 110 Ill. App. 3d 1081, 1083 (3d Dist. 1982). Thus, an assault can take place without a battery, but a battery is always accompanied by an assault.

## **2. Analysis**

The element of intent in an assault or battery action does not necessarily have to be hostile or meant to cause harm. Rather, there need only be intent to do the act constituting the assault or battery. Gragg v. Calandra, 297 Ill. App. 3d 639 (2<sup>nd</sup> Dist. 1998). For example, a physician who intentionally performed bypass surgery on a patient without consent could be liable for battery. Id.

Additionally, the required intent may be transferred. Smith v. Moran, 43 Ill. App. 2d 373, 376 (2<sup>nd</sup> Dist. 1963). For example, if a person is accidentally shot, the intention to hit the original target is transferred to the injured party. Id.

However, in a crowded world, a certain amount of personal contact is inevitable and must be accepted. See Pechan, 251 Ill. App. 3d at 1084. The law assumes that a party consents to all of the ordinary contacts that are customary and reasonably necessary to common life. Id. at 1084-85.

## **3. Defenses**

### **a. Consent**

The alleged victim's consent to, or participation in, the acts causing the injury is a complete legal defense to an action for assault or battery. Cadwell v. Farrell, 28 Ill. 438 (1862). However, an assault or battery committed in the course of a fight that was entered into by mutual consent will not relieve a defendant from all liability, since the fight itself is unlawful. Thomas v. Riley, 114 Ill. App. 520 (3d Dist. 1904).

**b. Self-Defense**

Self-defense is an affirmative defense to assault and battery. Self-defense is evaluated according to what an objective, reasonable person would do in a similar emergency situation. Winn v. Inman, 119 Ill. App. 3d 836 (3d Dist. 1983). However, a person may use only force that is necessary to protect his or her person from wrongful injury (and cannot use excessive force). Id. For example, a person who uses deadly force as self-defense must show a reasonable belief that he was in imminent danger of being attacked with deadly force. Newton v. Federal Barge Lines, Inc., 81 Ill. App. 3d 454 (5<sup>th</sup> Dist. 1980). Similarly, a person cannot claim self-defense where the perilous situation resulted from his own aggressive conduct. Thompson v. Petit, 294 Ill. App. 3d 1029 (1<sup>st</sup> Dist. 1998).

A defendant who raises a claim of self-defense must show: (1) force had been threatened against him; (2) he was not the aggressor; (3) the danger of harm was imminent; (4) the force threatened against him was unlawful; (5) he had an actual belief that (a) a danger existed, (b) force was necessary to avert the danger, and (c) the amount of force used was necessary; and (6), his belief was reasonable. Thompson, 294 Ill. App. 3d at 1035.

Under certain circumstances, one may use necessary force to protect another person, such as a family member, from wrongful injury. Kehl v. Burgener, 157 Ill. App. 468 (2d Dist. 1910). Under certain circumstances, one may also use reasonably necessary force to protect one's personal property, Spelina v. Sporry, 279 Ill. App. 376 (1<sup>st</sup> Dist. 1935), real property, Shea v. Cassidy, 257 Ill. App. 557 (1<sup>st</sup> Dist. 1930), or to eject a trespasser or intruder, Abt v. Burgheim, 80 Ill. 92 (1875).

**c. Provocation**

Mere words, no matter how abusive or offensive, do not justify an assault or battery on another. Hough v. Mooningham, 139 Ill. App. 3d 1018 (5th Dist. 1986); Willhite v. Goodman, 64 Ill. App. 3d 273 (3<sup>rd</sup> Dist. 1978). Rather, the words must be accompanied by an overt act of hostility or other demonstration or gesture to justify a reasonable belief that one is in imminent peril and must respond in self-defense. Balice v. Weiland, 40 Ill. App. 2d 168 (1st Dist. 1963); Irwin v. Omar Bakeries, Inc., 48 Ill. App. 2d 297 (2d Dist. 1964).