

Formal Paper # 2 (Memo to the Supervisor)

No Independent Research! This includes Google. You may only use the materials (including your notes) provided in class to complete this assignment.

Your tone should be objective and professional. You are not taking either party's side. You are providing a neutral/objective assessment of the case.

Times New Roman. 12 font. Single-spaced.

Format and Sections

Everyone will begin their memo with the following:

To: Supervising Attorney
From: Your Name
Date: March 9, 2020.
Re: Alwaze Wright, Case No. 06-178
Civil Battery

Your memo will have the following main sections:

1. Statement of Facts
2. Issue
3. Rule (Cause of Action)
4. Application (Including Arguments for Plaintiff and Defendant). Your application should also have a separately labeled section where you discuss the available damages.
5. Conclusion

*Clear labeling/organization is essential.

Statement of Facts

You do not have to create your own version of the statement of facts for this assignment. Please just copy and paste the statement of facts you have been given.

Issue

Legal issue including legally significant facts and the relevant rule of law. Can be phrased as a question or with a "Whether."

Rule

Begin by defining an Intentional Tort (include a brief explanation of how intentional torts differ from negligence).

Introduce the Intentional Tort of Battery with a clear layout of the elements (each element must be labeled).

Include the nuances under each element that help us understand the element and how to prove it. Again, everything must be clearly labeled.

Include a separately labeled Damages section after you have discussed all of the elements.

Include a separately labeled Defenses to Battery section.

Application

Clearly labeled sections that apply each element of battery to the facts of the case in order to show the likely arguments for the plaintiff and for the defendant.

You must first label → Argument for the Plaintiff. Provide an element by element application to the facts under this section.

You must then label → Argument for the Defendant. Provide an element by element application to the facts under this section.

Example

Argument for the Plaintiff

Intent

Plaintiff could argue that the required **intent** is present because the Defendant dug a hole hoping that the plaintiff would fall into it. The intent element under Battery requires only that D did the act (dug the hole) knowing a consequence would occur. P would probably not have to show that D actually intended for P to fall and become injured by the fall (a harmful or offensive contact) because of battery's single intent requirement. In other words, even if D thought that digging a hole in order to make P fall would make P laugh, the intent element could still be satisfied.

Harmful or Offensive Contact

P could argue that there was **harmful or offensive contact**. The contact does not have to be body to body for the contact element to be satisfied. Gaps in time between D's act and the contact made to P do not relieve D of liability.

P would argue that it is sufficient that D dug the hole in the hope that P would fall in. In other words, D did not have to physically push P (immediate and direct body-to-body contact) into the hole in order for there be "contact" under the element.

Harmful or offensive contact is measured by a reasonable person standard. A reasonable person in assessing whether the contact to P was harmful or offensive would likely find that falling into a hole that was created for the purpose of making them fall would be harmful or offensive. Falling into a hole can

cause serious injury and possibly fear and/or embarrassment. The harmful or offensive element also stresses physical dignity. P would likely argue that it offended her sense of physical dignity when she was made to fall into a hole which posed a serious risk of injury and was shocking/frightening. There was also clearly no consent on the part of P to be dropped down into a hole.

Harmful or Offensive Contact Did Result

P would argue that **harmful or offensive contact to P did result**. P fell into a hole that D dug with the intention of having P fall in. It is likely that P was physically harmed by the fall (serious injury is not required) and was likely also terrified once she fell in, which could also be deemed an offensive contact.

Argument for Defendant

Same as above just for the Defendant. You must also reference whether or not D would be able to use any of the defenses to battery.

Damages

Even if P cannot show bruises, a broken leg, etc. damages would be available (with explanation). In this case compensatory damages could be awarded for: economic and non-economic harm such as: medical bills or lost wages from the injury (the fall), pain and suffering, emotional distress for the mental anguish/fear caused by D's act, loss of enjoyment of life, etc. If there was no clear harm, nominal damages could still be awarded for the plaintiff and would represent the fact that D did cause harm to P and that P was legally correct. Punitive damages would be unlikely in this case as any monetary compensation to P would likely prevent D from conducting himself in a similar fashion in the future.

Conclusion

Prediction (Objective Assessment) using key facts/elements/nuances. For example, it is likely that P would succeed in a battery claim against D...
