

QUESTION I THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I

Sam Smith, an avid hiker, took his two close friends, John James and George King, on a long, 15-mile hike through the Michigan woods. James and King were out of shape, and they quickly started to lag behind Smith. They also constantly complained about the pace, the terrain, and seemingly everything else about the hike. Perturbed, Smith repeatedly told the two men to keep quiet and move faster.

Hours more into the hike, the situation remained poor, but mostly because of James, who was now closest behind Smith and complaining the most. Eventually, James threatened to turn around because his feet were aching. In response, Smith picked up a big stick, turned and threw the stick towards James, stating "I'll show you what really hurts!" As Smith threw the stick, James was looking forward, saw the stick and quickly ducked, closely avoiding being hit. King, however, was not looking towards Smith and never saw the stick coming, as he was ducking under an overhanging branch. Unfortunately, the stick hit the branch and deflected into King, cutting his head.

James and King both sue Smith for an assault and a battery. Can they establish these claims? Explain your answers.

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