

**QUESTION 10 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV
OR IN SOFTEST ANSWER SCREEN 10**

Pauline Plaintiff worked in a cubicle at her place of employment. Because she was surrounded on three sides by the cubicle, Pauline could not see people approaching her from behind. One day, Pauline had made lunch plans with her husband and was expecting him around noon. At just about that time, as she was reading some paperwork at her desk, Pauline felt two large and strong hands grab hold of each shoulder and start to massage her shoulders. Thinking it was her husband who had arrived for lunch, she smiled and turned around. To her astonishment, however, it was not her husband, but it was Dan Defendant, a co-worker. Pauline immediately jumped up from her chair, told Dan that she did not appreciate him placing his hands on her shoulders, and that she had warned him about doing this before. In response, Dan stated that he was simply trying to give her a quick friendly rub, because he knew she had been tense at work.

Once Pauline's husband arrived, they went to lunch. During lunch, Pauline told her husband how upset she was about Dan again placing his hands on her shoulders. As a result, after lunch they met with a local attorney, who filed a civil action against Dan setting forth two claims, (1) assault and (2) battery. Dan eventually filed a motion to dismiss, arguing that Pauline Plaintiff cannot establish the elements of either claim.

Explain whether his motion should be granted.