

During a deer-hunting season open to rifle hunters, a hunter saw a deer in the forest. He shot his rifle at the deer, hoping to hit and kill it. Instead, he hit and injured a hiker. The hunter had not realized that the hiker was there.

Does the injured hiker have an actionable battery claim against the hunter?

- A. No, because the hunter did not intend to shoot the hiker.
- B. No, because the hunter did not make direct physical contact with the hiker.
- C. Yes, because the bullet from the hunter's rifle made direct physical contact with the hiker.
- D. Yes, because the hunter intentionally shot the rifle.

## Explanation:

**Battery** requires that the defendant act with intent, which is either:

the **purpose** of inflicting harmful / offensive contact or creating imminent apprehension thereof *or*

the **knowledge** that such contact or apprehension is substantially certain to occur.

If the intentional act **causes** harmful or offensive **contact** with the plaintiff, then the defendant is liable for battery.

Here, the hunter shot his rifle with the *purpose* of hitting the deer—not the hiker. Additionally, the hunter had no *knowledge* that the hiker was there, so the hunter could not have been substantially certain that he would hit the hiker when he shot his rifle. Since the hunter did not shoot his rifle with the intent to hit the hiker, the hunter is not liable for battery.

**(Choice B)** Contact can be either *direct* (eg, the defendant punches the plaintiff) or *indirect* (eg, the defendant fires a bullet at the plaintiff). Although the hunter did not make direct physical contact with the hiker, the hunter made indirect contact by shooting the hiker.

**(Choice C)** Battery requires proof of both intent and contact. While the bullet from the hunter's rifle made physical *contact* with the hiker, the hunter is not liable for battery because he did *not intend* to shoot the hiker.

**(Choice D)** For battery, a defendant must intend to inflict harmful or offensive contact (or create the imminent apprehension thereof) with the plaintiff. Although the hunter intentionally shot the rifle, he is not liable for battery because he did not shoot with the intent to make *contact* with the hiker.

## Educational objective:

Battery requires that a defendant act with the (1) purpose of inflicting harmful / offensive contact or creating the imminent apprehension thereof or (2) knowledge that such contact or apprehension is substantially certain to occur.

## References

Restatement (Second) of Torts § 13 (Am. Law Inst. 1965) (battery by harmful contact).

Restatement (Third) of Torts § 1 (Am. Law Inst. 2010) (definition of intent).

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Purpose to hit man

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Knowledge man is  
substantially certain to be hit



No intent to hit man