

While throwing warm-up pitches on the sidelines during a professional baseball game, a pitcher was continuously heckled by some spectators seated behind a wire mesh fence in the stands above the dugout. On several occasions, the pitcher turned and looked directly at the hecklers with a scowl on his face, but the heckling continued. The pitcher then wound up as though he was preparing to pitch in the direction of his catcher, but threw a fastball toward the hecklers instead. The ball passed through the wire mesh fence and struck a woman who was one of the hecklers. The woman brought an action against the pitcher and the team to recover damages for negligence and battery. The trial court entered judgment as a matter of law in favor of the defendants on the battery claim. The jury found for the defendants on the negligence claim because the jury determined that the pitcher could not foresee that the ball would pass through the wire mesh fence.

The woman has appealed the judgment on the battery claim, contending that the trial court erred in entering judgment as a matter of law in favor of the defendants.

On appeal, should the court affirm the judgment as a matter of law entered in favor of the pitcher on the battery claim?

- A. No, because a jury could find that the pitcher's conduct was extreme and outrageous, and the cause of the woman's physical harm.
- B. No, if a jury could find on the evidence that the pitcher intended to cause the hecklers to fear being hit.
- C. Yes, because the jury found that the pitcher could not foresee that the ball would pass through the fence.
- D. Yes, if a jury could find on the evidence that the pitcher was mentally ill and that his act was the product of his mental illness.

Explanation:

A defendant is entitled to judgment as a matter of law (ie, directed verdict) if the evidence presented at trial is not legally sufficient to support every element of the plaintiff's claim (ie, no reasonable jury could find in the plaintiff's favor). Therefore, on appeal, the court should affirm the trial court's judgment on the **battery** claim if no reasonable jury could find that the defendant:

intended to inflict harmful/offensive contact or imminent apprehension thereof *and* **caused** harmful/offensive **contact** with the plaintiff.

Here, however, a reasonable jury could find on the evidence that the woman was struck by a baseball thrown by the pitcher (harmful contact). If a reasonable jury could also find that the pitcher threw the baseball with the *intent* to hit the hecklers (contact) or cause them to fear being hit (imminent apprehension), then the appellate court should reverse (ie, not affirm) the judgment as a matter of law and remand the case for a jury to decide whether a battery occurred.

(Choice A) For battery, a jury does not need to find that the defendant's conduct was extreme and outrageous—only that the conduct was intentional. Therefore, even if a reasonable jury could find that the pitcher's conduct caused the woman's harm, the appellate court should reverse the judgment only if the jury could also find that the pitcher's conduct was intentional.

(Choice C) Foreseeability is not an element for battery. Therefore, the jury's finding that the pitcher could not foresee that the ball would pass through the fence has no effect on the woman's battery claim.

(Choice D) Although mental deficiency is considered when determining whether the defendant was capable of forming the intent required for battery, it is not a defense to battery. Therefore, the appellate court should not affirm the lower court's judgment merely because the jury could find that the pitcher was mentally ill and that his act was the product of his mental illness.

Educational objective:

For battery, the plaintiff must prove that the defendant (1) intended to inflict harmful/offensive contact or imminent apprehension thereof and (2) caused such contact with the plaintiff.

References

Fed. R. Civ. P. 50(a) (judgment as a matter of law).

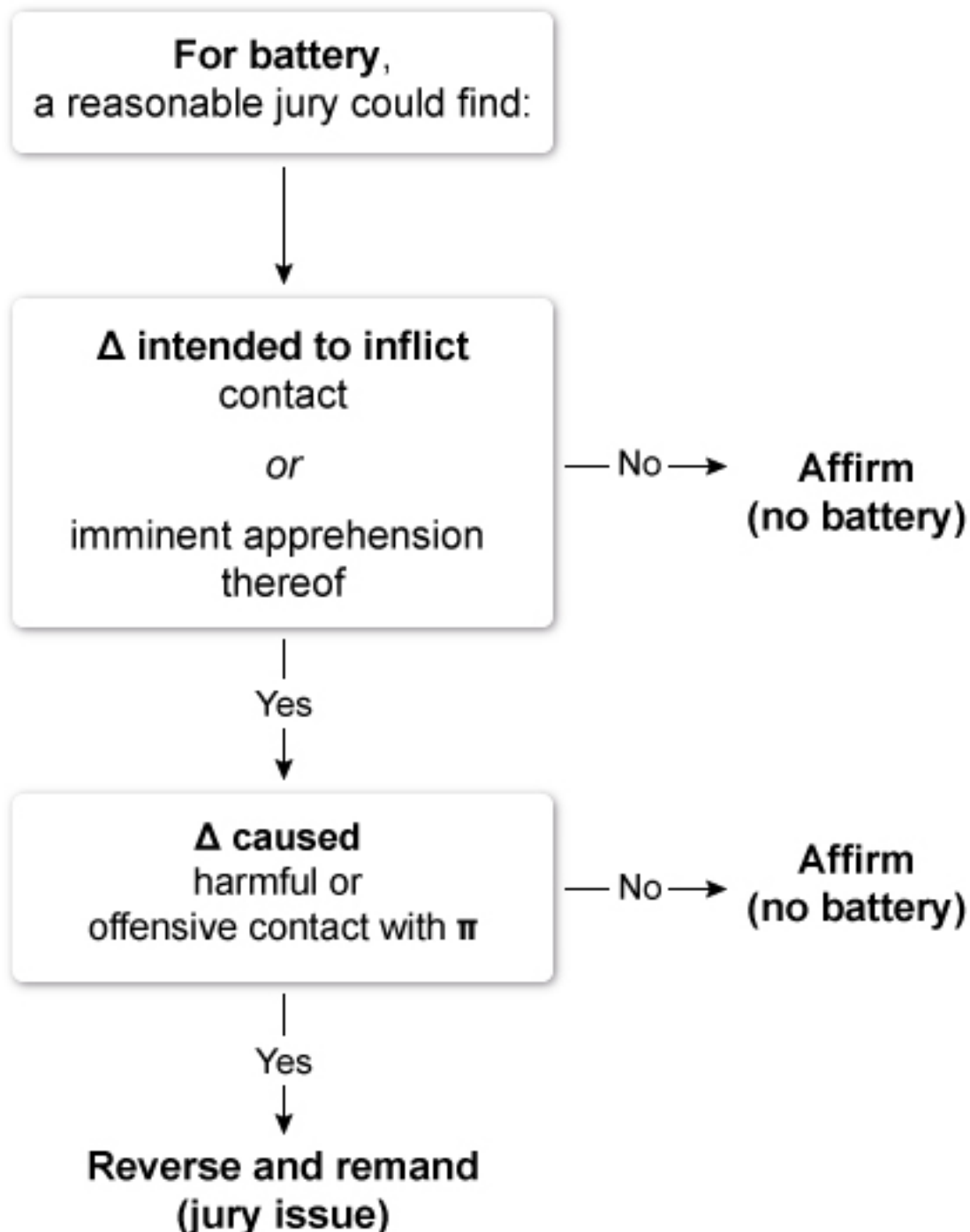
Restatement (Third) of Torts § 1 (Am. Law Inst. 2010) (definition of intent).

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

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Judgment as a matter of law for defendant



Δ = defendant; π = plaintiff