

A mother gave her daughter, a high school senior, permission to host a party at their house. Around midnight, the daughter's boyfriend confronted another boy, the daughter's neighbor, and the two boys began to push and throw punches at each other. The mother overheard the commotion and yelled at the boys to stop fighting. When they continued to fight, the mother approached the boys and placed herself between them. The boys were so angry that they were not aware that the mother had tried to intervene. Meaning to hit each other, the boyfriend and the neighbor both hit the mother.

In a suit against the boyfriend and the neighbor for battery, will the mother likely prevail?

- A. No, because the boys intended to cause harmful contact with each other and not with the mother.
- B. No, because the mother assumed the risk of injury when she placed herself between the boys.
- C. Yes, because the boyfriend intended to hit the neighbor and the neighbor intended to hit the boyfriend.
- D. Yes, because the boys, by continuing to fight, were substantially certain to cause harmful contact with the mother.

Explanation:

An actor may **intend to commit an intentional tort against one person but instead commit:**

a different intentional tort against that same person
the **same intentional tort against a different person** *or*
a different intentional tort against a different person.

When this occurs, the actor's **initial intent transfers** to the **tort that was actually committed** or to the **person who was actually harmed**. This doctrine of transferred intent applies to five **intentional torts**, including battery, which is the intentional infliction of harmful or offensive contact with another.

Here, the boys intended to cause harmful contact with each other since the boyfriend intended to hit the neighbor and the neighbor intended to hit the boyfriend (intent to commit battery). Because the boys hit the mother instead (same intentional tort; different person), each boy's initial intent to commit a battery against the other transferred to the mother **(Choice A)**. Therefore, she will likely prevail in her suit against the boys for battery.

(Choice B) **Assumption of the risk** is a defense to claims alleging negligent or reckless conduct. It negates or reduces the defendant's liability when the plaintiff voluntarily accepted a known risk of harm. But since battery requires proof of *intentional* conduct, this defense is irrelevant.

(Choice D) The intent element for battery is met if the defendant (1) acted with the purpose of causing harmful or offensive contact or imminent apprehension thereof or (2) knew that his/her action was substantially certain to cause that result. Here, the boys were *unaware* that the mother had tried to intervene, so they did not act with the intent (purpose or knowledge) to commit a battery against her.

Educational objective:

Under the doctrine of transferred intent, an actor's intent to commit an intentional tort against one person transfers to the actor's commission of (1) a different intentional tort against that same person, (2) the intended tort against a different person, or (3) a different intentional tort against a different person.

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 1 (Am. Law Inst. 2010) (intent defined).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 110 (Am. Law Inst. 2015) (transferred intent).

Transferred intent for battery

