

A pilot was flying his small plane when he experienced engine trouble and was forced to make an emergency landing. He landed the plane safely in a large yard behind a home located in a relatively remote area. Unfortunately, when he disembarked from the plane, he was attacked and injured by two large dogs kept by the homeowner to discourage trespassers. The homeowner, who had seen the plane land, had ordered the dogs to attack. Several months earlier, the homeowner had posted large signs around the perimeter of the yard warning of the dogs.

Does the pilot have a viable claim against the homeowner for battery?

- A. No, because the homeowner had provided adequate warning.
- B. No, because the pilot was a trespasser.
- C. Yes, because the pilot can invoke the privilege of necessity.
- D. Yes, because the pilot could not reasonably have been expected to see the warning signs posted by the homeowner.

Explanation:

Defenses for intentional harm to persons

(justifications & excuses)

Defenses

Counterdefenses

Consent

Consent revoked
Exceeded scope of consent
No capacity to consent (eg, youth, incompetence)
Consented to crime (eg, statutory rape)
Fraud, mistake, duress

Defense of self & others

Used excessive force
Unreasonable mistake
Defendant was initial aggressor

Defense of property

Used excessive force
Necessity (public & private)

Arrest &

Used excessive force
Unreasonable mistake

prevention of crime

Parental discipline

Used excessive force

Battery requires that the defendant intend to inflict contact (or apprehension of contact) and cause harmful or offensive contact with the plaintiff. Although the defendant may generally use **reasonable force** (eg, battery) to stop a **trespass** (an intentional entry onto another's property without permission), force cannot be used to stop a trespass committed out of **private necessity** (an intrusion that is, or reasonably appears to be, necessary to protect oneself, third parties, or property).

Here, the homeowner committed a battery when he ordered his dogs to attack the pilot (intent to inflict contact) and the dogs then attacked and injured the pilot (harmful contact) to stop his trespass. However, the homeowner's battery was not justified because the pilot had been forced to make an emergency landing on the homeowner's property to *protect himself* (private necessity). Therefore, the homeowner is liable for battery.

(Choice A) The homeowner could use watchdogs to discourage trespassers, since he provided adequate warning of the dogs' presence. However, the homeowner could only use the dogs to inflict the same level of harm he was privileged to inflict directly. Since the homeowner could not use force to stop a trespass committed out of private necessity,

neither could the dogs. Therefore, the warning signs do not excuse the homeowner's battery.

(Choice B) Although the pilot intentionally entered the homeowner's property without permission (trespass), the homeowner could not use force to stop the pilot because his trespass was excused by private necessity.

(Choice D) A landowner must take reasonable care to make a watchdog's presence known to *probable* intruders, not *all* intruders. Here, the homeowner took reasonable care to warn probable intruders about his watchdogs by posting large warning signs around the perimeter of his yard. Therefore, it does not matter that the pilot could not reasonably have been expected to see the warning signs from the air.

Educational objective:

Although a defendant is generally privileged to use reasonable force (eg, battery) to stop a trespass, the defendant cannot use force to stop a trespass committed out of private necessity (an emergency intrusion that is, or reasonably appears to be, necessary to protect oneself, third parties, or property).

References

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

Restatement (Second) of Torts § 77 (Am. Law Inst. 1965) (privilege to use reasonable force).

Restatement (Second) of Torts § 197 (Am. Law Inst. 1965) (private necessity).

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