

A host pointed an unloaded revolver at her guest, threatening to shoot him. The guest knew that the revolver was not loaded, and that the ammunition for the revolver was stored in a locked basement closet, two stories below where the two were then standing.

In an action brought by the guest against the host for assault, will the guest be likely to prevail?

- A. No, because the host did not intend to shoot her guest.
- B. No, because the host did not put her guest in apprehension of imminent contact.
- C. Yes, because the ammunition was accessible to the host.
- D. Yes, because the host threatened her guest with a revolver.

Explanation:

Assault requires that the defendant:

intend to inflict (1) harmful or offensive contact or (2) imminent apprehension of such contact *and*

cause the plaintiff reasonable apprehension of imminent contact.

Apprehension only exists when the plaintiff **believes** that the defendant can cause **imminent contact**.

Here, the guest did not believe that the host could cause imminent contact because the guest knew that the host's revolver was not loaded and that her ammunition was in *a locked basement closet* below. As a result, the guest was not in apprehension of imminent contact, and the host is not liable for assault.

(Choice A) A defendant must intend to cause harmful or offensive contact OR imminent apprehension of such contact. Although the host did not intend to shoot the guest (the revolver was unloaded), she did intend to scare her guest by threatening to shoot him (imminent apprehension). Had the host succeeded in scaring the guest, the host would be liable for assault.

(Choice C) Assault requires apprehension of *imminent* contact. Imminent means without significant delay. Although the ammunition was accessible to the host, it could not be retrieved without significant delay because it was locked in a closet two stories below.

(Choice D) A threat alone does not constitute an assault. The threat must cause apprehension of imminent contact.

Educational objective:

An assault occurs when a defendant intentionally causes a plaintiff reasonable apprehension of imminent contact. Apprehension only exists when the plaintiff believes that the defendant can cause such contact.

References

Restatement (Second) of Torts § 21 (Am. Law Inst. 1965) (definition of assault).

Restatement (Second) of Torts § 24 (Am. Law Inst. 1965) (apprehension requirement).

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Assault

Defendant must



intend to inflict

harmful or offensive contact
or
imminent apprehension of contact



and cause

Plaintiff to reasonably
apprehend imminent contact

