

As an encyclopedia salesman approached the grounds on which a woman's house was situated, the salesman saw a sign that said, "No salesmen. Trespassers will be prosecuted. Proceed at your own risk." Although the salesman had not been invited to enter, he ignored the sign and drove up the driveway toward the house. As he rounded a curve, a powerful explosive charge buried in the driveway exploded, and the salesman was injured.

Is the salesman likely to recover damages from the woman for his injuries?

- A. No, because the salesman ignored the sign, which warned him against proceeding further.
- B. No, if the woman reasonably feared that intruders would come and harm her or her family.
- C. Yes, if the woman was responsible for the explosive charge under the driveway.
- D. Yes, unless the woman, when she planted the charge, intended only to deter, not to harm, a possible intruder.

## Explanation:

### Defenses & privileges to intentional torts

Defense of Property	Use of reasonable force to prevent or stop trespass
Defense of Others	Use of force reasonably necessary to prevent harm to third party
Parental authority	Parent, guardian, or teacher may use reasonable force to discipline children
Consent	Actual – plaintiff willingly submits to contact Apparent – consent understood by plaintiff's conduct or custom Implied – plaintiff cannot consent & emergency action necessary to prevent serious harm
Arrest	Misdemeanor – plaintiff breached the peace in defendant's presence Felony – felony committed & defendant reasonably suspects plaintiff committed that felony
Necessity	Public – intrusion actually or apparently necessary to avert imminent public disaster Private – intrusion actually or apparently necessary to protect oneself, third parties, or property
Self-defense	Use of reasonable force to prevent harm to self

Mnemonic: **POPCANS**

A defendant is liable for **battery** if he/she **intends** to inflict harmful or offensive contact (or imminent apprehension thereof) and causes such **contact** with the plaintiff. Intent for battery exists when the defendant acts with either:

**purpose** – the **desire** to cause contact or imminent apprehension of contact *or*

**knowledge** – the **substantial certainty** that contact or imminent apprehension of contact will result.

Here, the salesman was injured by an explosive charge that detonated in the woman's driveway (harmful contact). And since the woman would have been substantially certain that the charge would contact a person driving over it had she planted it under the driveway (intent), the salesman would likely recover damages for battery absent some defense.

**(Choice A)** Assumption of the risk (the plaintiff's voluntary acceptance of a known risk of harm) is an affirmative defense to negligence or strict liability, but not intentional torts like

battery. Therefore, this defense does not apply here. Even if it did, the salesman did not knowingly or voluntarily accept the risk of harm because the woman's sign only warned of prosecution—not explosion.

**(Choice B)** A person is privileged to use reasonable force to defend his/her property against trespassers. However, deadly force (eg, explosive charge) is only reasonable if the defendant reasonably believes that the trespasser is about to inflict death or serious bodily harm. Here, there was no such evidence, so the woman was not privileged to use deadly force.

**(Choice D)** Battery requires the intent to inflict harmful / offensive contact or the immediate *apprehension* of such contact. Therefore, the woman would be liable for battery even if she only intended to deter possible intruders.

**Educational objective:**

Battery liability arises when a defendant intentionally (ie, purposefully or knowingly) inflicted harmful or offensive contact or (imminent apprehension thereof) and caused such contact with the plaintiff.

**References**

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

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

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