

While a woman was riding her horse on what she thought was a public path, the owner of a house next to the path approached her while shaking a stick and shouting, "Get off my property." Unknown to the woman, the path on which she was riding crossed the owner's private property. When the woman explained that she thought the path was a public trail, the owner cursed her, approached her horse, and struck the horse with his stick. As a result of the blow, the horse reared, causing the woman to fear that she would fall. However, the woman managed to stay on her horse, and then departed. Neither the woman nor the horse suffered bodily harm.

In an action against the owner for damages, will the woman likely prevail?

- A. No, because the owner was privileged to exclude trespassers from his property.
- B. No, because the woman suffered no physical harm.
- C. Yes, for battery and assault.
- D. Yes, for trespass to chattels.

## Explanation:

**Battery** occurs when a defendant:

intends to inflict harmful or offensive contact (or imminent apprehension thereof) *and* causes harmful or offensive **contact** with the plaintiff's body or an object intimately associated with the plaintiff's body (eg, clothing, dog on a leash).

In contrast, **assault** occurs when a defendant:

intends to inflict harmful or offensive contact (or imminent apprehension thereof) *and* causes the plaintiff reasonable **apprehension** of imminent contact.

Here, the owner intentionally struck the woman's horse with a stick, which (1) caused harmful *contact* with the woman's horse (battery) and (2) caused the woman to *fear* that she was about to fall (assault). And though a plaintiff cannot recover twice for the *same* injury or harm (ie, no double recovery), the owner's act of striking the horse caused the woman two *distinct* harms (contact and apprehension). Therefore, the woman can recover for battery AND assault.

**(Choice A)** A landowner is privileged to use reasonable force to stop an unexcused trespass if the landowner (1) first asks the trespasser to leave and (2) reasonably believes that force is necessary to remove the trespasser. Although the owner told the woman to get off his property, there is no evidence that force was *necessary* to remove her (eg, had she told the owner she was staying). Therefore, the owner could not use force to exclude the woman.

**(Choice B)** The harm requirements for battery (harmful or offensive contact) and assault (apprehension of contact) can be satisfied without proof of bodily harm. Therefore, the woman's lack of physical harm will not prevent her from recovering damages.

**(Choice D)** Trespass to chattels (intentional interference with another's possession of tangible property) requires proof of actual damages—eg, impairment of the physical condition, quality, or value of the chattel. Since there is no evidence that the woman's horse was impaired (eg, unable to walk), she will not prevail on this claim.

## Educational objective:

While the intent requirements for battery and assault are similar, the harm requirements for battery (harmful or offensive contact) and assault (apprehension of contact) are distinct.

## References

Restatement (Second) of Torts § 18 (Am. Law Inst. 1965) (battery by offensive contact).

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

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## Battery v. Assault

