

A college student and her roommate were invited to a Halloween party. The roommate decided to dress up as an anime character whose defining feature was bright green hair. The roommate planned to buy a wig, but the student convinced the roommate to allow the student to dye the roommate's hair using a temporary green dye that would wash out after a single shampoo. They went to a store where the roommate accidentally purchased a bottle of permanent dye. The student noticed that the dye was permanent but did not point out the roommate's mistake. Instead, the student applied the permanent, bright-green dye to the roommate's hair. Unable to dye her hair back in time for her next shift, the roommate lost her part-time job as a server.

If the roommate sues the student for battery, is the roommate likely to prevail?

- A. No, because the roommate consented to having her hair dyed by the student.
- B. No, because the student did not misrepresent the permanent nature of the dye.
- C. Yes, because the roommate lost her part-time job as a server.
- D. Yes, because the student was aware of the roommate's mistake.

### Explanation:

When a defendant intends to inflict contact (or imminent apprehension of contact) and causes harmful or offensive contact with the plaintiff, the defendant is liable for **battery** absent some defense. Actual or express **consent is a defense** to battery (and other [intentional torts](#)) when the plaintiff's words or actions manifested a willingness to submit to the defendant's conduct. However, consent is **not valid** and will not serve as a defense **if**:

the plaintiff consented because of a **substantial mistake** concerning the **nature of the invasion** of the plaintiff's interests or the **extent of the expected harm** *and* the defendant **knew about the mistake** or caused it by affirmative misrepresentation or fraud.

Here, the student applied *permanent*, bright-green dye to the roommate's hair (harmful contact). Although she consented to having her hair dyed by the student, the roommate believed that the dye she had purchased was *temporary* (substantial mistake). The student was aware of the roommate's mistake but said nothing. Therefore, the roommate's consent is no defense, and the roommate will likely prevail in her suit against the student for battery **(Choice A)**.

**(Choice B)** Although the student did not misrepresent the permanent nature of the dye, the student *knew* that the roommate mistakenly believed it was temporary. This is enough to render the roommate's consent invalid.

**(Choice C)** Battery does not require proof of actual harm, so evidence that the roommate lost her job does not provide a basis for her to prevail. Instead, this evidence goes to how much she can recover in damages once her battery claim is established.

### Educational objective:

Consent is no defense to battery (or other intentional torts) if (1) the plaintiff gave consent because of a substantial mistake concerning the nature of the invasion of the plaintiff's interests or the extent of the expected harm and (2) the defendant knew about the mistake or caused it by affirmative misrepresentation or fraud.

### References

Restatement (Second) of Torts § 892B (Am. Law Inst. 1981) (consent under mistake, misrepresentation, duress).

## Consent to contact

### Actual

Plaintiff willingly submits to contact



### Apparent

Consent reasonably understood by plaintiff's conduct or implied by custom



### Implied by law

Plaintiff cannot consent and contact required to prevent serious harm

