

A college student was asleep in his bed in a college dormitory when his roommate, in a drunken fury, entered their room intending to attack the student with an ice pick while he slept. The phone rang and awakened the student. The roommate retreated quickly and threw the ice pick under his own bed in the same room. The next day, the student heard from friends about the roommate's murderous plans and later found the ice pick under the roommate's bed. Even though the college expelled his roommate, the student remained extremely upset and afraid to sleep.

In a suit against the roommate for assault, will the student prevail?

- A. No, because the roommate did not touch the student.
- B. No, because the student was not awake when the roommate entered the room and was unaware until later that the roommate had intended to attack him.
- C. Yes, because it was reasonable for the student to feel afraid of sleeping in his room afterward.
- D. Yes, because the roommate intended to inflict serious harm.

Explanation:

Assault occurs when a defendant:

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

causes the plaintiff reasonable apprehension of imminent contact.

Apprehension only exists when the plaintiff is **aware** of the defendant's act **at the time it occurs**.

Here, the roommate intended to attack the student with an ice pick (harmful contact). However, the attempted attack did not cause the student *apprehension* of imminent contact because he was *asleep* and *unaware* of the attempted attack until the *following day*. Therefore, there was no assault.

(Choice A) Assault only requires that the plaintiff be placed in *apprehension* of imminent contact. Actual bodily contact is not required, so the fact that the roommate never *touched* the student is irrelevant.

(Choice C) For assault, there must be apprehension of *imminent* contact (without significant delay). Although the student's apprehension (afraid to sleep) may be reasonable, it developed *after* the failed attack. Therefore, the imminent apprehension requirement is not met.

(Choice D) Proof of intent *and* harm is necessary for assault. Although the roommate had the requisite *intent* (to harm the student), he did not cause the requisite *harm* (apprehension of imminent contact).

Educational objective:

Assault requires proof of both intent AND harm. Harm for assault only exists when the plaintiff reasonably apprehends the defendant's intentional act at the time it occurs.

References

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

Restatement (Second) of Torts § 22 (Am. Law Inst. 1965) (attempt to cause harm unknown to other).

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Apprehension



No apprehension \neq Assault

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Apprehension = Assault