

A jockey was seriously injured in a race when a rider cut sharply in front of the jockey's horse without adequate clearance. The two horses collided, causing the jockey to fall to the ground, sustaining injury. The State Racetrack Commission ruled that, by cutting in too sharply, the rider committed a foul in violation of racetrack rules requiring adequate clearance for crossing lanes.

In an action by the jockey against the rider for battery, is the jockey likely to prevail?

- A. No, because the jockey assumed the risk of accidental injury inherent in participating in a horse race.
- B. No, unless the rider intended to cause impermissible contact between the two horses or apprehension of such contact by the jockey.
- C. Yes, because the rider was reckless in cutting in front of the jockey's horse.
- D. Yes, because the State Racetrack Commission determined that the rider committed a foul in violation of racetrack rules.

### Explanation:

For **battery**, a defendant must (1) intend to inflict harmful/offensive contact or the imminent apprehension thereof and (2) cause harmful or offensive contact with the plaintiff. **Contact** can occur between the plaintiff and the defendant OR between objects **intimately associated** with either party (eg, dog on a leash).

Here, the jockey can prove that there was contact between the rider's and the jockey's horses (objects intimately associated with the parties) and that this contact caused the jockey to fall and sustain an injury (harmful contact). However, the jockey cannot prevail on her battery claim unless she can also prove that the rider cut in too sharply with the *intent* to cause harmful or offensive contact between the horses or cause the jockey imminent apprehension of such contact.

**(Choice A)** Assumption of the risk is an affirmative defense that prevents a plaintiff from recovering damages for a harm caused by *negligent* or *reckless* conduct. However, this defense is not available when the plaintiff's injury is caused by the defendant's *intentional* conduct (eg, battery).

**(Choice C)** Battery requires proof that the defendant acted *intentionally* (purpose or knowledge that one's act will cause a particular result), not merely *recklessly* (indifference to a known or obvious risk of harm). Therefore, evidence that the rider was reckless is irrelevant.

**(Choice D)** Although the State Racetrack Commission ruled that the rider committed a foul, that ruling does not prove that the rider acted with the *intent* required for battery.

### Educational objective:

Battery requires that a defendant (1) intend to inflict harmful/offensive contact or create the imminent apprehension thereof and (2) cause harmful or offensive contact with the plaintiff. Contact can occur between the plaintiff and the defendant OR between objects intimately associated with either party.

### References

Restatement (Third) of Torts § 1 (Am. Law Inst. 2010) (definition of intent).

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

Restatement (Second) of Torts § 18 cmt. c (Am. Law Inst. 1965) (definition of contact).

Copyright © 1997 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

## **Battery**

Defendant must



**intend to inflict**

contact  
*or*  
imminent apprehension thereof



**and cause**

harmful or offensive  
contact with plaintiff

