

A teenager was riding a bicycle when she saw a classmate walking toward her. The teenager rode quickly toward the classmate, knowing that he would think she would run into him on her current trajectory. The teenager was not purposefully trying to harm or touch him. The classmate saw the teenager riding toward him and yelled at her to stop. The teenager swerved at the last moment and avoided hitting him. The classmate had a panic attack because he thought that the teenager would hit him.

Is the classmate likely to succeed if he sues the teenager for assault?

- A. No, because the teenager did not make contact with the classmate.
- B. No, because the teenager did not purposefully try to harm or touch the classmate.
- C. Yes, because the teenager acted with the requisite intent.
- D. Yes, because the teenager's conduct was extreme and outrageous.

Explanation:

Assault occurs when a defendant's **intentional act** causes a plaintiff reasonable **apprehension** of imminent harmful or offensive **bodily contact**. The intent requirement is met when the defendant acts with either:

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

knowledge – the **substantial certainty** that such apprehension will result.

Here, the teenager rode her bicycle directly at her classmate, causing him to think that she would hit him (reasonable apprehension of imminent contact). The teenager did not purposefully try to harm or touch the classmate **(Choice B)**. But the teenager knew with *substantial certainty* that the classmate would think she would run into him, so she acted with the requisite intent. As a result, the classmate is likely to succeed in a suit against the teenager for assault.

(Choice A) Assault merely requires that the plaintiff be placed in *apprehension* of imminent contact. Actual bodily contact is not required. Therefore, the fact that the teenager did not make contact with the classmate is irrelevant.

(Choice D) Extreme and outrageous conduct (ie, conduct that is unacceptable in civilized society) is an element of **intentional infliction of emotional distress**—not assault, which only requires intentional conduct.

Educational objective:

For assault, intent exists when a defendant acts with the purpose (desire) or knowledge (substantial certainty) that his/her conduct will cause apprehension of imminent harmful or offensive contact.

References

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

Restatement (Second) of Torts § 32 (Am. Law Inst. 1965) (explaining the requisite intent for assault).

Two types of intent

