

A woman was crossing the street at a crosswalk. A man on the nearby sidewalk thought he saw a speeding automobile headed in the woman's direction even though the car was clearly about to turn onto a different street before it would reach her. As a result, the man ran into the street and pushed the woman out of the path of the car. The woman fell to the ground and broke her leg.

In an action for battery brought by the woman against the man, will the woman likely prevail?

- A. No, because the man believed that the woman was actually in danger.
- B. No, because the man's intent was to save the woman, not to harm her.
- C. Yes, because the man could have shouted a warning instead of pushing the woman out of the way.
- D. Yes, because the man should have realized that the woman was not actually in danger.

Explanation:

If a defendant's **intentional act** causes harmful or offensive contact with the plaintiff, then the defendant is liable for **battery** absent some **defense** (eg, actual, apparent, or implied **consent**). Consent is **implied by law** when:

the plaintiff was in an **emergency situation**

the defendant's contact was actually or apparently necessary to protect the plaintiff from the emergency

the plaintiff could not consent to the defendant's action *and*

the defendant reasonably believed that the plaintiff would have consented if given the opportunity.

Here, the man intentionally pushed the woman, causing her to fall and break her leg (battery) because he believed that he needed to push the woman to prevent her from being hit by the car. However, he should have realized that there was no need to protect her because the car was *clearly* about to turn onto a different street before it would reach her **(Choice A)**. Since there was no emergency, consent cannot be implied by law and—because the man has no other defense to the woman's battery claim—she will likely prevail.

(Choice B) Battery requires intent to cause contact—not intent to cause harm. As a result, though the man never intended to *harm* the woman, he is still liable for battery because he intended to *push* her.

(Choice C) The man's ability to shout a warning instead of pushing the woman would be relevant to whether the man's contact was actually or apparently necessary to protect her. However, this analysis is unnecessary because there was no emergency.

Educational objective:

Implied consent exists when (1) the plaintiff is in an emergency situation, (2) the defendant's contact is actually or apparently necessary to protect the plaintiff from the emergency, (3) the plaintiff is unable to consent, and (4) the defendant reasonably believes that the plaintiff would consent if given the opportunity.

References

Restatement (Second) of Torts § 892D (Am. Law Inst. 1979) (consent implied by law).

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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

