

A bank employee took substantial kickbacks to approve certain loans that later proved worthless. Upon learning of the kickbacks, the bank president fired the employee, telling him, "If you are not out of this bank in ten minutes, I will have the guards throw you out bodily." The employee left at once.

If the employee asserts an assault claim against the bank president, will the employee prevail?

- A. No, because the bank president gave the employee ten minutes to leave.
- B. No, because the guards never touched the employee.
- C. Yes, because the bank president threatened the employee with harmful or offensive bodily contact.
- D. Yes, if the bank president intended to cause the employee severe emotional distress.

Explanation:

Assault requires that a defendant cause the plaintiff reasonable apprehension of **imminent** harmful or offensive contact. Imminent means **without significant delay**. Therefore, a defendant is **not liable** for assault if he/she only causes apprehension of **future contact**.

Here, the employee was not placed in apprehension of *imminent* contact because the bank president threatened *future* harm—that he would have the guards throw the employee out bodily if he did not leave in *ten minutes*. Because the threat of future harm does not satisfy the imminent contact requirement, the bank president is not liable for assault.

(Choice B) Assault only requires *apprehension* of imminent contact, so the employee does not need to prove that the guards actually touched him. In contrast, *battery* (an intentional act that causes harmful or offensive contact with another) requires proof of *actual* contact.

(Choice C) Although the bank president threatened the employee with bodily contact, assault requires apprehension of *imminent* contact. Since the bank president threatened *future* contact (after ten minutes), he is not liable for assault.

(Choice D) Severe emotional distress is not an element of assault. Rather, it is an element of *intentional infliction of emotional distress* (extreme or outrageous conduct that intentionally or recklessly causes a plaintiff severe emotional distress).

Educational objective:

Assault requires apprehension of imminent contact. Therefore, a threat of future contact does not support an assault claim.

References

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

Restatement (Second) of Torts § 29 (Am. Law Inst. 1965) (imminence requirement).

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Assault

Defendant must



intend to inflict

harmful or offensive contact
or
imminent apprehension of contact



and cause

Plaintiff to reasonably
apprehend imminent contact

