

Two women, a boxer and a martial artist, agreed to compete against one another in a 12-round boxing match. Prior to the match, the referee cautioned both fighters that striking an opponent with an open glove, below the navel, in the kidneys, or behind the ears was not permitted. The referee further warned that hitting an opponent when she was knocked down on the ground was impermissible.

Toward the end of the twelfth round, by which time the fighters had become exhausted, the boxer repeatedly punched the martial artist in the face with a closed glove. As the martial artist was falling to the ground, and before the referee could separate them, the boxer punched the martial artist in the face one more time and broke her nose. The martial artist subsequently filed a criminal complaint against the boxer for battery.

If the boxer is indicted, what is her best defense against a charge of battery?

- A. The boxer did not intend to break the martial artist's nose.
- B. The boxer punched the martial artist in the face with a closed glove.
- C. The martial artist consented to the battery.
- D. The martial artist had not fallen when the boxer landed the final blow.

**Explanation:**

Criminal battery is the unlawful application of force to another that results in harmful or offensive contact. A victim's consent is generally not a defense to a crime. However, **consent to bodily injury or conduct that may cause bodily injury** is a **defense** when: the **injury was not serious** *or*

the victim and the defendant were engaged in an **activity** in which the **defendant's conduct** and the victim's resulting **injury** were **reasonably foreseeable**.

This is true regardless of whether the victim's consent was given explicitly (eg, by signed authorization) or implicitly (eg, by participating in an activity likely to result in injury).

Here, both fighters consented to conduct that may cause bodily injury when they agreed to compete and participated in a boxing match. And since boxing is an activity in which the boxer's conduct (punch) and the martial artist's resulting injury (broken nose) were reasonably foreseeable, consent is the boxer's best defense against the charge of battery.

**(Choice A)** The boxer may not have specifically intended to break the martial artist's nose. But this is no defense to battery since it is a *general* intent crime that merely requires that the criminal act (the punch) be consciously performed or criminally negligent.

**(Choices B & D)** The boxer did strike the martial artist with a closed (not open) glove, and the final blow was landed before the martial artist fell (not when she was on the ground). But the boxer could still be convicted of battery under these facts *unless* the martial artist consented to the battery.

**Educational objective:**

A victim's consent is a defense to battery if (1) the injury was not serious or (2) the parties engaged in an activity in which the defendant's conduct and the victim's resulting injury were reasonably foreseeable.