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High School Legal Education: A Treatment of Assault

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A TREATMENT OF ASSAULT

PREFACE (FOR THE TEACHER)

This unit should follow the presentation on battery. Throughout the unit, students should be encouraged to arrive at their own conclusions through class discussions as to what the law should be. What rules of law would the student develop for application to the examples given?

The subject treated in this unit is simple assault. (Aggravated assault, which includes crimes such as assault with a deadly weapon, assault with intent to kill, and others, is not included.)

CRIMINAL AND CIVIL ASSAULT

There are distinct differences between criminal prosecutions and civil court actions. An assault can be both a crime, bringing about prosecution by the state, and a tort, resulting in a civil action brought by the assaulted party.

ASSAULT, AS A TORT, IS AN INTENTIONAL ACT WHICH CAUSES ANOTHER TO BE PUT IN APPREHENSION OF A BATTERY OR IMMEDIATE HARM.

CRIMINAL ASSAULT IS AN UNLAWFUL ATTEMPT, COUPLED WITH A PRESENT ABILITY TO COMMIT A VIOLENT INJURY ON THE PERSON OF ANOTHER. California Penal Code Section 240.

Through a civil suit, the assaulted party can receive money damages from the wrongdoer. The criminal penalty is up to \$500 and/or 6 months in the county jail.

ASSAULT UNIT

I. THE STUPID QUESTIONS

Greg approached Mark just after Spanish class and said, "You ask too many stupid questions; you're wasting class time." After listening to this, Mark tried to kick Greg, but he slipped and fell.

QUESTION:

Was an assault committed, either in tort or as a crime?

DISCUSSION:

If Greg saw that he was about to be kicked, there was a tort. The important factor is that he was put in apprehension of immediate harm. When Mark attempted to kick Greg, he committed a criminal assault. Does this depend on whether Greg thought Mark would succeed?

II. THE TURNED BACK

Same facts as above except that Mark waits until Greg turns his back to leave before kicking him in the rear end.

QUESTION:

Was there an assault?

DISCUSSION:

There was a tortious battery, but no tortious assault. The critical element in a tortious assault is that the plaintiff be placed in apprehension of a battery (or immediate

harm). Since Greg didn't see the kick coming, he could not have been placed in apprehension of it.

Note that a different rule is applied in the criminal case. Was the attempt a criminal assault, even though Greg was looking the other way? Check the definition above.

III. A WELL DIRECTED ARROW

During lunch hour Ann went to the athletic field to nap. She picked a comfortable spot behind the hay bales that are used as a backstop for arrows during archery class. Georgia was the first one ready to practice archery after lunch. She had no reason to know, nor did she know, that Ann had fallen asleep behind the hay bale. Ann awoke and stood up just in time to see Georgia pull back and shoot the arrow. Although the arrow safely hit its target, Ann fainted, and fell to the ground.

QUESTION:

Has Georgia committed an assault?

DISCUSSION:

According to the definitions, Georgia must intend to cause the apprehension of a harm or battery before the elements of the tortious assault are complete. Should this intent be required for a criminal assault? What does the Penal Code say?

ASSAULT UNIT

IV. THE SCHOOL DEAN, AT GUNPOINT

Ben and a few of his friends decided to play a joke on the dean who was well known for his strict disciplinary actions. On Friday afternoon Ben and friends went to the dean's office, walking in without knocking. Ben took a toy pistol from his pocket and pointed it directly at the dean and said, "We've had it with you, Dean." Ben pulled the trigger and the cap exploded.

QUESTION:

Was there a tortious assault?

DISCUSSION:

It depends upon whether the dean has actual knowledge of the joke. If he actually believes that he is going to be shot, a tortious assault has been committed; he has been put in the apprehension of an immediate harm. Even though the expected harm was not in fact possible, it was apparently possible to the dean.

QUESTION:

Was there a criminal assault?

DISCUSSION:

We must read the Penal Code carefully this time. Ben must have the present ability to commit a battery. Since the gun is a toy, Ben is unable to shoot the dean. Should this be a criminal assault? What if you were the dean?.

V. THE FRIGHTENING NOTE

During Psychology class John received a note which stated: "I'll see you after class when I'm going to beat the hell out of you," signed Butch. John decided that Butch must have learned about the close relationship that had recently developed between him and Butch's girl friend.

QUESTION:

Was there an assault?

DISCUSSION:

Should mere words be sufficient to establish assault? The definitions, above, don't answer this question. The rule has developed that there must be some actual act, no matter how small before the words will be an assault.

VI. THE THREATENING GESTURE

Same as above, but when Butch meets John after class he shakes his fist under John's nose and says, "If you weren't such a twirp, I'd break your head."

QUESTION:

Is there an assault?

DISCUSSION:

Note that we have an act (the fist). But the words that Butch used said he would not hit John. Could John successfully argue that the assault was completed before Butch's words negated the assault? That is, do the note and the shaking fist add up to an assault? (See the next question)

ASSAULT UNIT

QUESTION:

Was there an assault if Butch did not make the statement at all?

DISCUSSION:

The question is whether Butch's putting his fist under John's chin makes any difference. There would be an assault if John had been put in apprehension of immediate harm. However, if he knew, even though no words were spoken, that Butch was not going to hit him, there would be no assault. How would you feel in John's place?

VII. THE UNINVITED TOUGHS

Carla was having a fantastic graduation party until Marvin and his friends, who hadn't been invited to the party, came to the door seeking to be admitted. Carla thought everything would be okay so she let them in. Drinking from bottles that each of them had brought, they soon became drunk. Carla realized the party would deteriorate if Marvin and his friends were permitted to remain. She went to her brother, Frank, and asked him to take care of the situation.

Frank immediately went to his father's room and grabbed the shot gun, placing a shell in each of the two barrels. He went to the living room, pointed the gun at Marvin, cocked both hammers, and said, "If you and your friends don't leave now, I'll kill you."

QUESTION:

Does this constitute assault?

DISCUSSION:

Even an otherwise lawful act will become an assault if it is performed with the use of an excessive amount of force. Frank had the right to eject Marvin from the premises, but only after requesting him to leave. He then could use only such a degree of force which would do the job.

What if Marvin would not leave any other way?

SUMMARY

Note the difference in definitions for civil and criminal assault.

TORTIOUS ASSAULT:

A tortious assault is the intentional act which causes another to be put in apprehension of immediate harm.

CRIMINAL ASSAULT:

An unlawful attempt, coupled with a present ability to commit a violent injury on the person of another.

You should review the definitions of battery and summaries to insure that you understand assault and battery as both torts and crimes.

ASSAULT UNIT

Behavioral Objectives:

The student shall achieve a score of not less than 80% on a thirty minute test (without the use of support materials) designed to measure his ability to distinguish between a civil and a criminal assault, what does and does not constitute an assault (whether civil or criminal), to define the penalties for the same and to describe the rationale for the laws that are applicable in cases of assault.

1. Given eight hypothetical instances of arrest, either civil or criminal, or of both criminal and civil assault, or of no criminal and civil assault, the student shall:
 - a. Determine if either a tortious or criminal assault has been committed;
 - b. explain the rationale for his decision.
2. The student shall define:
 - a. tort
 - b. crime
 - c. tortious assault
 - d. criminal assault
 - e. assault
3. The student shall distinguish between criminal and civil law and the rationale for that difference.
4. The student shall describe the limits of penalties for both tortious and criminal assault.

