**ASSAULT AND BATTERY**

**BY: WILLIAM G. MORRIS, ESQ.**

People tend to use the terms assault and battery interchangeably. That use is incorrect. Assault and battery are related but different.

Assault and battery are both crimes, but this column focuses on civil liability. Hence, we will address lawsuits involving assault and battery and not possible criminal prosecution for the same action.

Let’s start with assault. Assault is defined as an intentional action with force that places another in fear of imminent peril coupled with the apparent present ability to complete the attempt. Our column usually stays away from legalese, but today that definition seems better than any this author could provide using non-legal jargon.

What is clear in the definition is assault requires intent. It does not require intent to harm but only intent to apply force to someone. Assault crosses the line from negligence with that element as it means the person must recognize impact by force is likely and makes no effort to avoid it. Said another way, it is the intentional creation of reasonable fear in the victim.

Placing another in fear of imminent contact by force requires the victim be aware of the threat. If the plaintiff is not afraid or in fear due to the threat, there is no assault. The threatened contact need not place someone in fear of bodily harm or injury. Fear of unwanted contact is enough. Threat of possible future action would not be sufficient to establish assault, as the party claiming injury would not be in fear of imminent peril.

Merely threatening someone (“mere words”) without any overt action to place someone in fear is not an assault. It does not matter how offensive the words might be. That was emphasized in a recent federal case.

In the case of *Lawrence v. Wal-Mart Stores, Inc*., a supervisor told an African-American employee that the employee “should remember how we did blacks in the thirties when they got out of hand…we would take them out back and lynch them” and that he used guns like the one missing from the store “to shoot blacks.” The court ruled the comments did not place the employee in fear of imminent peril as the supervisor had no gun nor any mechanism to immediately effectuate his “threats.”

Battery is an unwanted touching. It does not have to cause physical harm. The actual contact is what differentiates battery from assault. If the recipient of the unwanted contact was not aware it was coming, there can be a battery without assault.

Physical harm is not required to pursue a successful claim for assault or battery. But, recovering a lot of money damages can be tough when someone is not physically hurt.

Assault and battery are considered heinous and will support punitive damages in many cases. Punitives are imposed when a person has done something which is particularly bad. They are intended to punish the wrongdoer and set an example to others. Florida statutes limit punitive damages to cases including gross negligence or intentional misconduct.

Since both assault and battery require intent, they satisfy the test of intentional misconduct. But, not always. The case of *Spivey v. Battaglia* is a good example.

In the *Spivey* case, one employee intentionally put his arm around another employee and pulled her head toward him. Although she resisted, he kissed her hard. The defendant was hurting the fellow employee as she struggled to free herself and the defendant was laughing. In her effort to pull away, the woman struck her face on an object she could not identify and suffered paralysis of her face and mouth.

The Florida Supreme Court found the defendant did not intend the “hug” to cause paralysis and that paralysis was unintentional. Since no reasonable person would think the results here were almost certain to follow the defendant’s action, the court held there was no liability for assault or battery.

Similar results are reached in contact sports, but on a different basis. In those situations, the person injured by contact has assumed the risk of contact and that precludes a claim for battery. Cases may attempt to split contact that is an inherent part of a sport from other intentional contact, but those scenarios are considered on a case-by-case basis. A football player does not generally assume the risk of getting hit by another player swinging a helmet as opposed to being jarred by a violent tackle.

Liability for battery is usually greater than liability for assault because there are physical injuries caused by actual contact. Most battery cases also involve assault (just prior to the battery). So, cases usually seek damages for assault and battery. That is likely why the terms are often used as synonyms. Regardless of improper use of the terms, a defendant can be liable for either and both assault and battery.

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