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Defence to an Action for Assault and Battery

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ABSTRACT

Through this extensive research project, we were able to conclude that although attacks and batteries may appear similar, they are two completely different concepts, with the main difference being physical contact.

The main elements of the assault were, firstly, the plaintiff's fear of direct physical contact, secondly, the plaintiff's reasonable fear, and thirdly, whether the defendant's sabotage was intentional. The first and foremost element of assault is that the act was committed intentionally.

Resulting in, or the threat of, harmful or offensive contact from the other party or a third party, and secondly, if the contact was not authorized by the other party or was obtained with the other party's consent through fraud or extortion; and Third, that contact is otherwise privileged.

Defendants have access to certain defenses that some cases have in place, such as self-defense, consent, and legal authority. Tort law is expected to develop more as the people of India become more aware of their rights.

Assault is an attempted crime, and the law is intended to prevent possible assault by punishing acts done in a dangerous way to obtain assault. As with most attempted crimes, there is no clear distinction between an attack by a criminal and an action solely aimed at preparing an attack. There must be intent to harm, but if that creates the potential for harm or the danger of a distorted future battery, that's not enough. Instead, the intent should be removed from the immediate danger, the obvious action that endangers the battery. Words and intentions therefore do not become mere attacks.

Keywords: Action, Assault, Battery.

I. INTRODUCTION

The defences to be had in attack and battery instances can range extensively relying at the statistics and circumstances, particularly due to the fact such instances can vary from the straight-ahead to the extraordinarily complex. However, working below the belief that the simple factors of an attack / battery exist in a case (i.e., it is now no longer a case of fallacious identification or a few different essential errors), the subsequent are a few viable defenses to attack and battery costs alongside some beneficial examples.

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II. MEANING OF ASSAULT

At Common Law, an intentional act with the aid of using one individual that creates a terror in every other of an approaching dangerous or offensive contact. An attack is done with the aid of using a hazard of physical damage coupled with an apparent, gift capacity to purpose the damage. It is each a criminal offense and a tort and, therefore, may also bring about both crook or civil liability.

Definition of Assault

‘An assault is an attempt or a threat to do a corporal hurt to another, coupled with apparent present ability and intention to cause harm’.

The tort of assault consists in putting a man in present fear of violence. Assault is committed by making:

- a) attempt to cause harm, (though actual harm is not yet caused)
- b) by creating a present fear of violence (actual physical contact to another ‘s body is not necessary)

Example of assault

Examples of irritated attack include: placing or threatening to strike **someone** with a weapon or risky object. taking pictures someone with a gun or threatening to kill a person whilst pointing a gun on the victim. attack with the rationale to devote any other legal crime consisting of theft or rape.

John will become indignant with Mark over the \$one hundred that mark owes him. They guys get right into a violent argument at some stage in which John threatens to punch Mark within side the face. This risk reasons Mark to worry he could be harmed. John is charged with assault, despite the fact that he didn't perform the risk, and so there has been no real physical harm.

III. MEANING OF BATTERY

Batteries are not uncommonly described as "illegal and unwanted contact with an individual by the attacker or by movement of material installed by the attacker". For the most part, batteries are now governed by law, the severity of which is determined by local ordinances.

Definition of Battery

‘ Battery is the intentional and direct application of any physical force to the person (I.e. body) of another ‘.

A battery is the actual act of hitting another person or touching them in a rude, angry, persuasive,

or arrogant way.

Example of battery

John will become irritated with Mark over the \$one hundred that mark owes him. The get into a controversy that results in John punching Mark within side the face, breaking his nose. John is arrested and charged with battery, and, similarly to the crook case, Mark sues John in civil courtroom docket for scientific expenses.

Example of assault and battery

John and Mark are embroiled withinside the above argument, whereupon John threatens to interrupt Mark’s nose. Mark will become afraid of the ability for such injury, the guys start fighting, and John does certainly punch Mark withinside the face, breaking his nose. John has now devoted each attack and battery, and can be concern to each criminal “attack and battery” charges, and a civil lawsuit.

IV. PERSONAL INJURY AND BATTERY LAWSUIT DEFENSE

Assault and battery may be justified in the following nine cases:

1. Parental authority

Parents are not held accountable for assault or physical harm to punish their children If the force used is reasonable and proportional to the mistake the child has made. The child also needs to understand the reasons for punishment.

2. Self-defense: Son assault demesne

Self-defense or defense of one’s wife or husband, children, parents or one’s master, is always permissible. Self-defense is technically known as ‘son assault demesne’, which means that the act complained of was the of the plaintiff’s own attack.

Cases: *Cockcroft vs Smith (1705) 11 MOD 43*

Cockcroft v Smith (1705) 11 Mod 43 is an English tort case. It was about defining legitimate self-defense.

Facts

Mr. Cockcroft ran his finger towards Mr. Smith’s eyes. Mr. Smith bit off part of Mr. Cockcroft’s finger.

Judgment

Holt CJ said in the judgment: When a man hits another, he doesn't get angry right away, but

he takes the opportunity and after a while falls on top of him and hits him, in this case. Attacking my son is not a good plea. Also, in the case of minor assaults, men should not react violently or inappropriately. But in such cases plea what is necessary for a man's defense, and not who struck first; though this, he said, has been the common practice, but this he wished was altered; for hitting a man a little blow with a little stick on the shoulder, is not a reason for him to draw a sword and cut and hew the other.

3. Defense of one's property

If one enters the house of another with force and violence, the owner is justified in turning him out in defense of the possession of the house or goods and chattel

4. To prevent a forcible entry or seizure of chattels

The rightful owner [or his servants by his order] shall, unless unnecessary force is used, to take back land or property wrongfully owned by another person, or coercion to his land or establishments. Attacks can be justified to prevent intrusions.

5. In exercise of parental or quasi-parental authority

Force may be used for the chastisement or correction of a pupil, child or apprentice, provided the force is not excessive or unreasonable. A husband, however, has no corresponding power over his wife, and of course, vice versa.

6. Leave and license

A man cannot complain of harm to which he has exposed himself with knowledge and of his free will, as for example, boxing, fencing, hockey, football, etc.

7. Preservation of public peace

A person who disturbs a public worship or meeting may be removed by using reasonable force. However, the force used should not be more than what is necessary.

8. Legal Process

Assault may be justified on the ground that it was committed in serving any legal process including a search warrant under any law.

9. Misadventure (inevitable accident)

Inevitable accident is a good defense for a trespass to person if the act is lawful in itself and is done in a reasonable and careful manner. If, however that is done in a negligent manner, inevitable accident cannot be pleaded.

Cases: *Timothy v. Simpson (1885)*

It became argued that a combat among men and women couldn't aid the arrest of each for breach of the peace. Holding that the arrestor did now no longer should determine at the deserves of the dispute. Held: 'If no person can be confined of his liberty, in instances of mutual conflict, besides the celebration who did the primary wrong, and the bystanders acted at their peril on this respect, there might be little or no risk of the general public peace being preserved through the interference of personal individuals, nor certainly of police officers, whose electricity of interposition on their personal view seems now no longer to differ [at common law] from that of any of the King's different subjects.

V. CONCLUSION

So, battery refers back to the intentional advent of damage to someone or his property, and attack refers back to the advent of worry of damage closer to someone. In the case of battery bodily touch could be very critical and in attack, intentional advent of worry is enough. As worry or bodily damage impacts the individual the sufferers have treatments. There are prison treatments in which reimbursement may be claimed with the aid of using the sufferer and Restitution Ary treatments to repair the placement of the sufferer. Thus, mere bodily touch or worry does now no longer quantity to battery or attack. Some factors are required to represent attack and battery.
