

CHAPTER 3 (ADVANCED THINKING LEADS TO ADVANCED READING):

In italics below, you will find some thoughts from the author about ways you might have responded to this chapter's practice exercises. If you responded differently, you may have had good reason for doing so. Take the author's ideas as food for further thought as you develop your legal reading skills.

Practice Exercises:

1. It is widely recognized in tort law that the intentional tort of assault protects our interest in being free from the “fear of an unwanted touching.” If someone alarms/scares us in a way that satisfies all of the requirements of a particular jurisdiction for a successful claim of assault, we are entitled to damages. In applying and developing this rule, courts have determined that the person bringing a claim actually has to have been reasonably afraid *at the time the defendant acted* – it’s not enough to find out about a scary situation later or to be threatened with a scary situation in the future and then to claim assault.

Knowing that rule, write out in the space below a *deductively reasoned logic syllogism* that would allow a claim for a plaintiff who had attended a play-off game in the National Football League where the fans for the home team got progressively more verbally threatening about the visiting team, with some home-team fans even making physically threatening gestures in the direction of the visiting fans. The day after the game ended the plaintiff read in the paper that numerous fights had broken out and at least one fan was hospitalized. (Hint: when you write out a logic syllogism, state your rule (the Major Premise) clearly and make sure that you state the facts (your Minor Premise) in language that parallels that of the rule.)

Major Premise: An individual who is put in reasonable fear of an unwanted touching has a claim for civil assault.

Minor premise: Here, the plaintiff was reasonably afraid that he might have been harmed by fans whose behavior had become increasingly aggressive and even included physically threatening gestures.

Therefore: The plaintiff has a claim for civil assault.

Can you write out a deductively reasoned logic syllogism that would NOT allow relief for that plaintiff?

Major premise: An individual has a claim for civil assault only if he has a reasonable fear that he will be subjected to an unwanted touching by the defendant.

Minor premise: Here, the plaintiff was unreasonably afraid of actual harm from rowdy fans in a venue where being rowdy is part of the nature of being a fan. .

Therefore: The plaintiff does not have claim for civil assault.

Note: If you're having trouble developing logic syllogisms that are valid and sound, check out the article about logic on our website written by Neal Ramee.

2. Assume you are a first year law student reading a series of cases about assault in your casebook: (a) The first case concerns a situation similar to the one set out above but here the plaintiff attended a Division I college sporting event and sued a fan from the opposing team for assault where the over-zealous fan stood between the plaintiff and the plaintiff's car in the parking lot after the game. Assume in this first case that the court DID allow the plaintiff to bring a claim, reasoning that a reasonable person might have felt afraid of immediate harm from the over-zealous actions of the fan from the opposing team. (b) The second case concerns a situation where a group of friends go to the movies to see *Scream*. After seeing the movie, one of the friends tells another, "I'm going to hide someplace where you won't expect it and really scare you this week." The second student sues for assault. The court does NOT allow the plaintiff to bring a claim, reasoning that the fear has to be of a present action, and that vague verbal threats about the future won't support a claim. (c) The third case involves a claim for assault that arose after the plaintiff attended a Thanksgiving Day parade where a clown approached the crowd and appeared to prepare to spray water on the plaintiff, but sprayed only confetti instead. The court did not allow the parade-goer's claim for assault on the grounds that a reasonable person would have understood that the clown's action was in jest and was a normal part of parade activity.

You are now a judge. There is a case before you involving a claim for assault where the plaintiff was an all-state center on the local high school's basketball team. The player hit a winning three-pointer that won the Conference Championship for his team. Immediate after the game, a student fan who supported the losing team shoved a piece of paper in the player's hand as the player boarded the team bus. The paper said, "We'll see that you pay for that win. That's the last three-pointer you'll ever shoot." The star player is now concerned about his safety as the upcoming State Championship game approaches, and he wants to sue the fan for assault.

Reasoning *inductively* (forming a rule in your mind based on the statements about assault set out in Question 1 above and on the examples in the cases contained in this question), how would you state the rule for assault? Would you allow the star basketball player to bring a claim for assault against the student who gave him the note? Why or why not?

Major Premise: An individual who is put in reasonable fear under the circumstances of an immediate, present unwanted touching can sue for civil assault.

Minor Premise: Here, the prospective plaintiff (the basketball player), like the fan who was separated from his vehicle by an opposing fan, was reasonably afraid under the circumstances that he might be harmed, but the threat of harm was not immediate and present.

Therefore: The basketball player does not have a claim for civil assault.

3. Assume that you are a lawyer practicing in a jurisdiction that decided the assault cases set out in the preceding two questions. You have a client whose fourteen-year-old daughter loudly yelled a threatening insult from ringside at a goalie during a professional ice hockey game. Reasoning by analogy, do you think a court in your jurisdiction would necessarily *have* to allow a claim for

assault by the goalie to go forward? Why or why not? Reasoning by analogy, *could* a court in your jurisdiction allow a claim to go forward?

The judge's decision in this case would be highly fact specific (meaning that how the judge views the facts will heavily influence whether the judge would allow the case to go forward). Some judges might think that this case might decide that the case SHOULD (or certainly COULD) go forward because the threat from the girl was both immediate and present (like the case of the fan blocking access to another fan's car). On the other hand, a different judge might decide that the circumstances (a threat from a fourteen-year old girl) would not create reasonable fear in an adult hockey player given the rough nature of the game and the generally rowdy nature of its fans.

Note that law is interesting because resolution of one question often leaves other questions open. The logical thing to do is deal with each of them, one at a time. In law school, it is also important to focus on the EXACT question you're being asked and not to wander afield. Here, common sense would tell you that there might be a problem with an adult professional athlete suing a young teenage (a minor) for assault (for example, does the alleged assailant have to have intended to scare the victim? Can a child have such intent? Can an adult sue a juvenile as a matter of civil procedure?, etc.), but those are all questions for another day. Stay focused on the exact question you're being asked, but tuck these other thoughts in the back of your mind. You may come back to them later in this course or even in a different course.