

*Gerald v. Stephen*  
*Exam Writing Exercise - In-Class*

**FACTS:** Problem B on p. 172-173

**QUESTION:** Does Gerald have a good claim against Stephen for assault? For battery?

**LAW<sup>1</sup>:** A plaintiff can establish a **prima facie case for battery** by showing: (1) the defendant undertook an act, (2) with intent, effecting a (3) harmful or offensive (4) touching of the plaintiff.

[A]cting either with purpose or with substantial certainty suffices as intent.

A touching is “offensive” in the battery sense if it intrudes upon a person’s reasonable sense of dignity.

Any touching of a person in a way that is not socially sanctioned under the circumstances and that a person would reasonably find objectionable is a battery.

A plaintiff can establish a **prima facie case for assault** by showing: (1) the defendant undertook an act, (2) with intent, effecting (3) the immediate apprehension of (4) a harmful or offensive (5) touching of the plaintiff.

**Answer Version 1 [done in class; 103 words]:**

There is a good case for battery here because S undertook an act of cutting G's hair. We know there's intent because S did it with the purpose of boosting G's career. I think a jury would agree that cutting someone's hair without permission is intruding on a person's reasonable sense of dignity. Sure, you could argue S was made better off, but so was the plaintiff in *Mohr v. Williams*, and he still had a good battery claim. Finally, it's a touching.

There's not a good claim for assault because there's no apprehension here since he was absorbed in his cell phone.

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<sup>1</sup> This text has been copied from the casebook.

**Answer Version 2 [done in class; 85 words]:**

There is probably not a good case for battery here because, although S undertook an act of cutting G's hair, and we know there's intent because S did it with the purpose of boosting G's career, the problem is with the harmfulness/offensiveness element. I think a jury would disagree that cutting someone's hair without permission is intruding on a person's reasonable sense of dignity.

There's also not a good claim for assault because there's no apprehension here since he was absorbed in his cell phone.

**Answer Version 3 [done before class; 118 words]:**

G has a good claim for battery against S because when S cut a large amount of hair from G, he was effecting a harmful touching -- separating his hair from his body. It's also offensive because cutting off hair from someone without permission intrudes upon a person's reasonable sense of dignity and is not socially sanctioned. We know S acted with intent because he did it on purpose to change G's look to get him more work. It doesn't matter that G suffered no damages, because battery doesn't require damages.

G does not have a good claim for assault against S because G was absorbed in his phone and therefore had no immediate apprehension of the battery.

**Bonus – Explaining away affirmative defense [done before class; 32 more words]:**

If S tries an affirmative defense of consent, it won't work: Although he had G's consent to cut his hair, S went beyond the scope of that consent by cutting additional hair.