

### 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 a toy water gun pointed at him, but mistook the water gun for a real gun. (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 would be subjected to an unwanted touching when the defendant pointed a water gun at him.*

*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 a toy water gun.*

*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 the situation set out above where the plaintiff mistook a water gun for a real gun and sued for assault. Assume in that first case that the court DID allow the plaintiff to bring a claim, reasoning that there was sufficient evidence that the gun was realistic looking enough that a reasonable person could have thought it was real and would have felt threatened. (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 jump out and 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 won’t support a claim. (c) The third case involves a claim for assault that arose after a harmless explosion was set off near a shopping center. Several patrons sued for assault. The court did not allow their claims, reasoning that any threatened harm was too far removed to warrant the suits.

You are now a judge. There is a case before you involving a claim for assault where the plaintiff was riding on a school bus and found out later, after disembarking from the bus, that a student who had a grudge against him had carried a gun on board the bus. After being apprehended, the second student said defiantly, “Guns are so easy to hide that they might catch me this time, but they won’t catch me next time. I’m going to get my revenge.” The first student is now afraid to ride the school bus and sues the second student 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 contained in this question), how would you state the rule for assault? Would you allow the student on the bus to bring a claim for assault against the student who had brought the gun?

*Statement of Rule: A plaintiff who has a reasonable fear of immediate, specific harm at the time the harm is threatened has a claim for civil assault.*

*Can this student sue?: If I were the judge, I could go either way on allowing this suit. On the one hand, I could reason that the student with the gun had clearly established that he could get a gun undetected on to the school bus and that his threat was sufficiently concrete and imminent that the second student should be able to sue. On the other hand, I could reason that vague threats cannot be grounds for a suit for assault and this student’s threat was way too vague to support a claim. In either case, I clearly would NOT allow a suit based purely on the first incident (because the second student didn’t know about it until it was over).*

3. Assume that you are a lawyer practicing in a jurisdiction that decided the “water gun” case set out in the preceding two questions. You have a client whose five-year-old child pointed a water gun at an adult who was passing a school playground, and the adult is now suing for assault. Reasoning by analogy, do you think a court in your jurisdiction would necessarily *have* to allow the adult’s claim to go forward? Why or why not? Reasoning by analogy, *could* a court in your jurisdiction allow a claim to go forward?

*In this jurisdiction, according to the facts in Question #2 above, there has already been one case where a claim was allowed to go forward because the court reasoned that the water gun looked real enough to scare a reasonable person. The present case is arguably different. Here, rather than two adults, you’ve got one adult passing a playground and a child pointing a water gun at*

*him or her. I think the court could distinguish this case and not feel bound to follow the earlier precedent. However, the actual outcome is very fact specific: if the judge felt that the passer-by was justified in feeling afraid (say, if it was a very real looking gun or if the playground was in an area where children had been seen with real guns in the past), then the judge could definitely find that the plaintiff had a claim in this jurisdiction and that the case could go forward.*

*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 suing a five-year-old child 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.*