

San Joaquin College of Law
First Year IRAC Seminar
July 27, 10:00 am

Professor Purvis

Students:

Read the fact patterns in the two hypotheticals set forth below. Each fact pattern is followed by a rule set. Using the provided rules, do an analysis in which you apply each rule element to the facts to determine whether that rule is or is not satisfied.

Hypothetical 1

A, B, and C wanted to operate a gourmet coffee kiosk at their law school. They decided to form a corporation in order to do so. They agreed that each of them would have an equal percentage of ownership in the corporation. A drafted articles of incorporation and took the necessary steps to cause the corporation (Karfee, Inc.) to obtain legal status. The articles designated A, B, and C as the initial directors of the corporation. A, B, and C held a meeting as the board of directors, and voted to select C as Chief Executive Officer, A as Chief Operating Office, and C as Chief Financial Officer. Pursuant to authorization in the articles, the board then voted to issue 300 shares of common stock, 100 apiece for A, B, and C.

After three months of operation, A and B called a shareholder meeting and voted their combined shares to remove C from the board of directors. A and B then held a board meeting and removed C from his position as CFO. C tried to sell his 100 shares of stock but could not find a willing buyer. C then brought suit against A and B for violation of the special fiduciary duty owed to shareholders of a closely held corporation.

Issue: is Karfee a closely held corporation?

Rule: A closely held corporation is one in which

- there are few shareholders
- the shareholders participate in management
- there is no ready market for the corporation's stock.

Analysis:

Hypothetical 2

Donald and Hillary were both running for the same City Council seat. They attended a public meeting at which city residents were permitted to ask each of them questions about their suitability for the City Council. One person asked Donald, "What will you do to reduce crime?" Donald replied, "I will direct the police to profile for Scottish Americans, because we all know that they are all rapists and murderers. I mean, the Scotties love me, but I've got to say they are the worst criminals in the world, except for Crooked Hillary over there."

The same question was posed to Hillary. She said, "Reducing crime is difficult, but I know I would never order a horrible, racist program like the one Donald just described."

A number of Donald's supporters in the audience booed Hillary and yelled, "Shut up, bitch!" Donald then said, "You know, Hillary is a horrible person, probably the worst person in the world. When she says things like that I wish someone would just punch her in the face. I'm serious--I'll pay the legal fees if anyone says things like Hillary said and someone just punches them in the face."

A large man rose from the front of the audience and walked toward Hillary with his right fist raised as though he was going to punch. When the man got within three feet of Hilary, she raised her arms in front of her face. At the same time, two police officers seized the man and wrestled him to the floor. Hillary subsequently sued Donald for the tort of assault. Is Donald liable to Hillary?

RULE SET:

Assault is a volitional act, done with the requisite intent, which causes plaintiff to experience a reasonable apprehension of an immediate, harmful or offensive contact.

Defendant must act with intent (1) to bring about a reasonable apprehension of an immediate harmful or offensive contact or (2) to inflict such a contact on plaintiff or a third person. This means that defendant must desire that the apprehension or contact occur or be substantially certain that it will occur.

Plaintiff's apprehension must be legally caused by defendant's act or a force set in motion by that act. Although plaintiff subjectively experiences the requisite apprehension, liability for assault will not follow unless a reasonable person in the same position would have experienced the same apprehension. Threatened contact is actionable if (harmful) it would inflict pain, injury, disfigurement or impairment of any bodily organ or function, or if (offensive) a reasonable person of ordinary sensibilities would regard it as offensive.

One is subject to liability for harm resulting to a third person from the tortious conduct of another if he knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself.

Analysis: