

Facts:

- Π , Wallace, was at the High School and stopped at the top of a stairway to talk to her daughter and 2 of her daughter's friends.
- A fire alarm sounded and students began filing down the stairs, while Wallace took a step or two up the stairs to 2nd floor landing.
- Δ , Rosen, a teacher, was escorting her class to the stairway and noticed 4 people together at the top of stairway, blocking exit.
- π , back to Δ , was unable to hear over the alarm Δ telling them to move
- Δ had to touch π on back to get her attention, "gotta move it's a fire drill."
- Δ testified that π pushed her and she slipped, falling down the stairs.
- Π denied pushing but admits touching her back.

Procedural History: charge negligence

- At close of TC, judge refused to give jury inst. on battery requested by π
- Jury found in favor of π . Δ appealed.

Issue and Holding:

- Did the touching constitute ~~intentional tort, battery~~ ^{offensive contact} (do circumstances matter in issue?)
- No, π touching Δ to get her attention cannot be said to be rude, insolent or angry. ~~TC was correct, no jury inst on battery. Affirmed.~~ ^{not import / not part of rule}

Rules:

- Battery: knowing or intentional touching of a person against her will in a rude, insolent, or angry manner ^{offensive}
- Intent: courts decide when danger is foreseeable risk v sub certainty
 - The mere knowledge of a risk-short of substantial certainty-is not intent.
 - Act in belief or consciousness that act is causing appreciable risk of harm to another may be negligent-not intentional
 - If risk is great may be reckless or wanton-not intentional
 - Intent to bring about a result which will invade interests of another in a way the law forbids (no concern with intent to harm)
- Absent expression to contrary, consent is assumed to ordinary acts, customary & reasonably necessary to common intercourse of life
 - Time, place, circumstances & relations btwn parties will affect contacts unpermitted character ^{these matters crowded stair, fire drill, teacher}

Application:

- Ev had to support inference not only that π intentionally touched Δ , but did so in a rude, insolent, or angry manner (in a way the law forbids)
- Conditions at the stairway, during the fire drill could expect a certain amount of contact inevitable
- π had a responsibility to her students to keep them moving

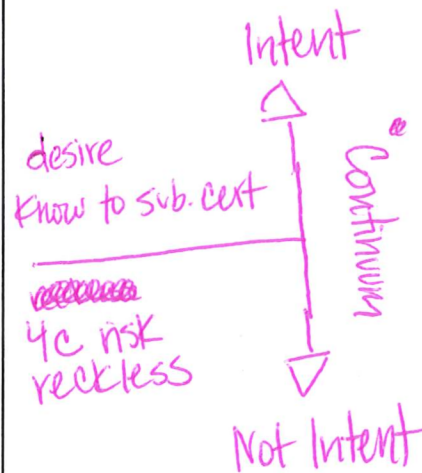
Conclusion:

- Δ failed to show TC abused discretion in refusing battery instruction

4 diff accounts:

Crt adopts:

- Δ placed fingertips on Π shoulder
- Turned her 90° toward exit
- During crowded fire drill



offensive: what would be offensive to ordinary person not unduly sensitive to personal dignity

b/c of time, place, circs & rship
 ≠ offensive to ord. person