

October 25, 2016

Law 580: Torts

Section 2

**Oral Argument # 4**

In-class exercise for November 3, 2016

We are in a jurisdiction in which the *only* relevant authority is the material in the casebook on pages 601-676. For the purpose of this oral argument exercise, you should assume that any statutes that appear in the Casebook within that page range are statutes adopted by neighboring jurisdictions rather than your jurisdiction.

Celesta filed suit against both Harry and Calvin for battery. Harry settled for an undisclosed sum. The case against Calvin went to trial. The evidence introduced at trial tended to show the following facts:

Harry and Calvin, both teenagers, attended a party at Ashley's house. Ashley had invited Harry, but she had not invited Calvin. Calvin crashed the party. When Harry saw Calvin, he walked towards him. Calvin believed that Harry was about to attack him, so he punched Harry in order to protect himself. Harry punched Calvin back, and the fight escalated from there. Ashley's mother, Celesta, saw the fight and was worried that the boys would hurt each other. She yelled at the boys to stop, but they didn't stop. Celesta then tried to intervene by stepping between the boys and trying to block them from punching each other. Harry punched her in the face and Calvin punched her in the back of the head. Celesta suffered a concussion and a broken nose. Both boys admitted that they were trying to punch each other, but claimed that they didn't realize that Celesta had gotten between them.

The trial court instructed the jury as follows:

A battery is the willful or intentional touching of a person against that person's will.

An assault is an intentional and unlawful threat or offer to do bodily injury to a person made under circumstances which creates in in that person a well-founded fear of imminent peril.

A person who is assaulted may use such reasonable force as may be, or reasonably appears at the time to be, necessary to protect himself or herself from bodily harm in repelling the assault. A person who uses reasonable force to protect himself or herself from bodily harm is not liable for either assault or battery for that use of force.

If a person voluntarily engaged in a fight with another person for the sake of fighting and not as a means of self-defense, then that person may not recover for an assault or battery unless the defendant beat the plaintiff excessively or used unreasonable force.

The jury returned a verdict in favor of Calvin. The trial court entered judgment on the verdict. Celesta appeals.

The oral argument will be held in class on Thursday, November 3. Counsel for Appellant Celesta will have twelve minutes to argue that the Court of Appeals should reverse the trial court's judgment and remand the case for a new trial. Counsel may, if they choose, reserve up to two minutes of that time for rebuttal. After Appellant's argument, counsel for Appellee Calvin will have twelve minutes to argue in favor of affirming the trial court's decision. Counsel will be questioned by a designated Court of Appeals.

After the argument, each court of appeals, including the designated court, will write an opinion, no more than 250 words long, affirming or reversing the trial court's determination and explaining the reasoning underlying its decision. Dissenting or concurring opinions are permitted only so long as the total number of words in a Court's opinions does not exceed 250. Each court must upload a copy of its decision to the folder in Canvas before 5:00 pm on November 3.

Counsel for Appellant:	Biles
Counsel for Appellee:	Crouser
Designated Court of Appeals:	Ervin
Remaining Courts of Appeals:	Rollins Maroulis Henderson