

Session: Intentional Torts

Topic: Assault and Battery

Recommended time: 1 hour 40 Minutes

Score: 60 Marks

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Facts

Hougen and Bobbie have always had a frosty relationship. Although they both attended the same college in St. Albert, Alberta about ten years ago, there was no love lost between the duo. The origin of their dislike for each other started when Rachelle, Hougen's girlfriend in college dumped him. Hougen suspected that Bobbie had spread some false narratives about him to Rachelle, and he swore never to forgive both of them. Thus, both boys never saw eye to eye while in college.

Last year, Hougen ran into Bobbie at Sunridge Mall in Calgary City, and to his utter bewilderment, he saw Bobbie and Rachelle together entering a car, with Rachelle holding a little girl of about two years. Hougen couldn't believe his eyes and decided to follow the car, just to be sure of what he saw. At a traffic stop, Hougen drove straight to Bobbie's side and stared straight into their car. Rachelle saw him and, shocked, she quickly looked away while Bobbie stared right back at Hougen. As the lights turned green, Hougen wound down his glass and gave the middle finger, mouthing what seemed to Bobbie like the word 'bitch'.

Furious, Bobbie raced after Hougen and caught up with him at another intersection. Bobbie alighted from his car and approached Hougen with clenched fists, banging on Hougen's hood and shouting obscenity at him, demanding for Hougen to come out of the car. Hougen opened the door, exited the car and leaned back on the body, standing with arms akimbo and asking, with a wry smile: "What you *gonna* do?"

"I'm *gonna* beat the hell *outta ya*," shouted Bobbie, moving right up chest to chest with Hougen who then pushed him back, saying, "Oh okay. Let's settle this once and for all." Bobbie lunged at Hougen, headbutting him. Hougen was dazzled for a moment and felt dizzy. Before he could

recover, Bobbie head-butted him again, striking him several times on the face with the car keys in his palm and kicking him in the groin repeatedly. The car keys gave Hougen a cut on his forehead and blood trickled into his eyes, blinding him. Blinded and bloodied, Hougen was helpless and could not return the blows; he merely held on to Bobbie's shirt who continued to kick and hit him. Rachelle called 911 and a police patrol van showed up a few minutes later. Bobbie was arrested while an ambulance took Hougen to the hospital. When questioned, Bobbie claimed that it was Hougen who provoked him by calling his wife a bitch and by his gesture; that he only acted in self-defence because Hougen made the first contact, and that the injuries suffered by Hougen were with his consent because he consented to the fist fight.

Hougen has approached you on the possibility of a civil action against Bobbie. From the facts of the case, what action(s) in intentional torts may be available to Hougen for the physical injuries suffered? Is he likely to succeed in the action(s) in the light of the defences put forward by Bobbie?

Notes:

This case deals with assault and battery, and the defences of provocation, consent and self-defence.

Please note that your examiner will hardly expressly tell you what head of torts your question deals with. It is for you to discern it from the facts, state the heads and analyze them accordingly. Unless otherwise instructed, you are advised to state all the available torts.

Secondly, note that in this case, your examiner has indicated that your answer must relate to the "physical injuries suffered," which means you must restrict your answers specifically to assault and battery, and not concern yourself with trespass to chattel even though the facts also support that tort.

Note also that different principles apply to the tort of assault and battery as well as to the available defences. Take note of how we have applied these principles in dealing with both defences in our answer.