

2004 ASSAULT

An assault occurred if:

1. (Defendant) intended to cause physical harm to (plaintiff); and
2. (Defendant) acted to cause (plaintiff) to reasonably believe (defendant) had the present intent and ability to harm (plaintiff).

The requirement that (defendant) intended to cause bodily harm means that (defendant) had the mental purpose to cause bodily harm to (plaintiff) (or another person) or was aware that his or her conduct was practically certain to cause bodily harm to (plaintiff) (or another person).

[Burden of Proof, Wis JI-Civil 205]

COMMENT

This instruction and comment were first approved in 1972. They were revised in 2009.

As originally approved, the instruction stated that the intent necessary to commit an assault was either an intent to physically injure the plaintiff or an intent to put the plaintiff in fear that physical harm was to be committed upon the plaintiff. This element departed from Wisconsin case law having its origin in 1896 which held that an intent to physically harm was required to establish an assault. Degenhardt v. Heller, 93 Wis. 662, 68 N.W. 411 (1896). The holding in Degenhardt has been criticized. 1940 Wis. Law Review 103; 1955 Wis. Law Review 6. See also Prosser, Torts, p. 40-41; Restatement, Second, Torts, § 21, p. 37.

While the Committee believes intent to cause apprehension or fear should be sufficient to establish an intent, as it is in many states, Wisconsin case law supporting this position does not currently exist. Therefore, the Committee withdrew the original version of the assault instruction and replaced it with the version above which includes the requisite intent to cause physical harm as provided in Degenhardt.

For intentional infliction of emotional distress, see Wis JI-Civil 2725.