

**2005.5 BATTERY: OFFENSIVE CONTACT**

A battery occurred if:

1. (Defendant) intentionally caused offensive contact with (plaintiff); and
2. (Plaintiff) did not consent to the contact.

A contact is "offensive" if a reasonable person in (plaintiff)'s situation would have been offended by the contact. [An offensive contact is one that offends a reasonable sense of personal dignity.]

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

**COMMENT**

This instruction was originally approved in 1962 and numbered 2010. It was revised and renumbered Wis JI-Civil 2005.5 in 2010. The comment was updated in 2015.

In Voith v. Buser, 83 Wis.2d 540, 266 N.W.2d 304 (1978), the trial court, after the jury had deliberated for over an hour, reread the original instruction, dealing with bodily harm battery, Wisconsin Jury Instruction-Civil 2005. It then, for the first time, read an instruction involving an offensive bodily contact battery. The supreme court held that it was error to give the additional battery instruction, because the plaintiff's case was in no way based on the theory of offensive bodily contact, but rather on a theory of causing bodily harm.

For trial issues involving the element of consent (where the plaintiff was a child under sixteen) see Brekken v. Knopf, Appeal No. 2013AP1900 (per curiam) and Beul v. ASSE International, Inc., 233 F.3d 441 (7<sup>th</sup> Cir. 2000).