

MPT 1 - Sample Answers Not Available

Sample Answers not Available

MPT 2 - Sample Answer # 1

Demand Letter

Dear Mr. Leffler,

I, Timothy Howard, represent Katie Miller against your client, Steve Trapp, in her claims for assault and battery against him. The purpose of this letter is to state the basis for my client's assault and battery claims against Steve Trapp and demand that Trapp pay compensatory and punitive damages to my client for her injuries and his behavior.

Ms. Miller is a college student who works as a blogger and reporter for Commentary on Rock and Roll, an online blog. She attended the recent Revengers concert at the Franklin City Arena as a reporter. Consequently, she had a press pass for the event. Until this incident, Ms. Miller was a huge fan of the Revengers and was understandably very excited to meet Steve Trapp, a musical icon and idol for her. She has followed every thing about his professional and personal life.

During the concert, Ms. Miller patiently waited for her chance to interview Trapp. After the concert ended, Ms. Miller, along with a group of other photographers and journalists, waited for Trapp offstage. She had her smart phone ready to interview him. She was holding on tightly to her phone because of the crowd of journalists around her. She was not in the front of the crowd. She was towards the center. As soon as he got off the stage, Nina Pender, another journalist, who was at the front of the crowd, moved in to take a picture with Trapp. He punched her, wrestled the camera out of her hand, and smashed it to the ground. Ms. Miller, who saw all this happen, was already horrified and scared. Trapp then looked directly at Ms. Miller and yelled, " Get out of my way you little punk, or I'll beat the hell out of you.' He then raised his hand as if to hit her. He then pulled Ms. Miller's phone out of her tightly clenched hands, dislocating Ms. Miller's shoulder, and smashed the phone to the ground. Although he plowed through several other journalists, he hurt no one else except Ms. Pender and Ms. Miller. Given that Ms. Miller was in the center of the crowd. Trapp had to get past at least a few journalists to get to Ms. Miller.

As a result of the incident, Ms. Miller was rushed to the hospital for her shoulder injury. She suffered unbelievable pain for four hours until the doctor was able to pop her shoulder back in. She had her arm in a sling for three days. Consequently, she has medical bills in the amount of \$5000, she missed a week of her part-time work which cost her \$100, and she had to buy a new phone for \$500. Steve Trapp did not show a bit of remorse after the incident. He immediately left for his vacation home in Xanadu, and has not even apologized for his offenses.

Steve Trapp is liable to Ms. Miller for assault and battery.

In Franklin, an actor is subject to liability for assault if he acts intending to cause a battery or imminent apprehension of a battery and the plaintiff is put in well-founded apprehension of an imminent battery. Trapp put Ms. Miller in a well-founded fear of battery. First, he punched Ms. Pender in front of Ms. Miller. Second, and more importantly, he yelled at her, telling her that if she did not get out of his way, he would beat the hell out of her. Because Ms. Miller had already seen Trapp do the same to Ms. Pender, she had a well-founded fear that Trapp would continue to do

the same to her. Trapp also intended to cause a battery, and in fact later did so. He raised his hand towards Ms. Miller as if to strike her. These facts are more egregious than the facts in Brown, where the court found that whether or not an assault had occurred was up to the jury to decide. In Brown, the defendant had only wagged a finger in the plaintiff's face and had threatened to "take her down, anytime, anywhere." Trapp's threat to Ms. Miller was much more clear and direct, and similar to the threat defendant had displayed in Holmes. Hence, a jury will easily determine that Trapp was liable for assault in this case. This claim will not be settled on summary judgment.

An actor is subject to liability for battery if he acts intending to cause a harmful or offensive contact, or an imminent apprehension of such a contact, and a harmful or offensive contact occurs. For a plaintiff to prevail on a battery claim, it is sufficient that the defendant intended to cause a contact that turned out to be harmful or offensive; the defendant does not need to intend that the contact result in harm or offense. Suzuki. Moreover, actual physical contact is not necessary to constitute a battery, so long as there is contact with clothing or an object closely identified with the body. Polk. Like the defendant in Polk who snatched the plate from the Doctor's hands, Steve Trapp pulled the phone out of Ms. Miller's tightly clenched hands. That clearly constitutes battery under Franklin law. Moreover, it is not necessary that Trapp intended the contact to be harmful or offensive. It is enough that it was so. When he pulled the phone out of Ms. Miller's hand, he dislocated her shoulder, like the defendant in Suzuki, who slapped the plaintiff, causing a harmful and offensive contact.

There is no defense of consent here. Ms. Miller may have consented to a certain amount of jostling as part of the concert, but Trapp's actions, yelling at her, threatening her, pulling the phone from her hands, dislocating her shoulder, were beyond the scope of that consent.

Thus, Ms. Miller is entitled to recover damages from Steve Trapp.

Under Franklin law, Ms. Miller is entitled to both compensatory and punitive damages. Suzuki. Compensatory damages would include her medical expenses, lost wages, and pain and suffering. Pain and suffering includes physical and mental pain. Id. Mental suffering includes compensation for insult and indignity, and can be inferred from proof of fright caused by sudden, unprovoked and unjustifiable battery. As already mentioned, Ms. Miller has incurred medical expenses and lost wages. She also suffered acute physical pain as a result of her dislocated shoulder, not to mention the embarrassment and mortification from being assaulted and battered in public by Trapp.

Ms. Miller is also entitled to recover punitive damages. Punitive damages in Franklin are awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. Polk. There are three factors to consider when awarding punitive damages. First, the character of the defendant's act, namely whether it is of the sort that calls for deterrence and punishment. Steve Trapp's actions after the concert definitely call for deterrence. The public does not want celebrities to be able to hit and assault their fans and others in their immediate vicinity just by virtue of their celebrity status. Second, courts consider the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause. Trapp caused significant harm to Ms. Miller's body and mind. Third, courts consider the wealth of the defendant. Steve Trapp is clearly a rich man, considering that he owns a 15 room vacation home on an island resort.

For the reasons stated above, my client is entitled to \$_____ in compensatory damages and \$_____ in punitive damages.

Please respond to this letter by __/__/2016 and send with your response the appropriate damages. Failure to respond by __/__/2016 will result in my client filing a formal lawsuit against your client, Steve Trapp.

Sincerely,
Timothy Howard, Esq .

Memorandum to Timothy Howard from Examinee re Damages

Compensatory damages:

Medical expenses: \$5000, Phone replacement: \$500, Lost wages \$100, Pain and suffering: \$25,000

In assault and battery claims, a winning plaintiff is automatically entitled to compensatory damages. These include medical expenses, lost wages, and pain and suffering. Pain and suffering can be mental and physical. Ms. Miller has medical expenses, lost wages and had to pay money to replace her phone. All of that is a fixed dollar amount, immediately recoverable. Ms. Miller suffered physical pain: she dislocated her shoulder and was in acute pain for 4 hours. Her arm was in a cast for 3 days. There is no fixed formula to calculate pain and suffering. However, jury verdicts are a good indication of what is reasonable. This case is like Cook where plaintiff was pushed to the floor, defendant yelled at him, and eventually plaintiff's arm was broken. Defendant there, like Trapp, had a history of violence. The court there awarded \$50,000 in pain and suffering, compared to the \$10,000 in medical expenses. Here, Ms. Miller's arm is not broken, and hence the case is not so severe. Given the jury verdict in Cook, we should ask for \$25,000 in pain and suffering.

Punitive damages.

The US Supreme Court has held that punitive damages are left to the discretion of the trier of fact and are considered reasonable if they don't exceed a single-digit ratio from compensatory damages. Franklin courts look to three factors in analyzing punitive damages. These factors are discussed and analyzed in the demand letter. Please refer to that. Given that we are asking for compensatory damages in the amount of \$30,600, and jury verdicts in Franklin or punitive damages that have been granted, see Cook and Alma, had a ratio of 2, we can ask for punitive damages in the amount of \$61,200.

MPT 2 - Sample Answer # 2

1. Demand Letter

We represent Katie Miller. The purpose of this letter is to demand that your client, Steve Trapp, compensate Miller for the assault and battery he committed against her.

On February 16, 2016, Ms. Miller attended a Avengers concert hoping to get an interview with Mr. Trapp. Miller eagerly awaited Trapp when the concert ended. However, rather than getting the interview she anticipated, Ms. Miller received a dislocated shoulder.

When Trapp walked off the stage, Trapp immediately became violent. As has been well documented, your client punched Nina Pender in the face, wrested a camera from her hands and smashed the camera on the ground. He then yelled, "Get out of my way, you little punk, or I'll beat the hell out of you." He then raised his arm as if he was going to hit Ms. Miller. Instead, Trapp attempted to grab Miller's phone out of her hand and smash it to the ground. However, because Miller held tightly to the phone, the force of Trapp's grab dislocated her shoulder. As a result of this injury, Miller had to go to the hospital and suffered extensive pain. She has incurred \$5,000 in medical bills, had her arm in a sling for three days, missed a week of work and had to replace her phone.

During our phone conversation of February 22, you denied that Trapp had committed assault or battery and claimed that even if Trapp had committed assault or battery, Miller had consented by being at the concert. Your contentions are unfounded and I will explain why.

Assault Claim

As I am sure you are aware, a person is liable for assault if he acts intending to cause a battery or imminent apprehension of a battery and the plaintiff is put in well-founded apprehension of an imminent battery. *Brown*. What you do not appear to have considered is the effect of your client's words on Miller's ability to prove assault. While words standing alone cannot constitute an assault, words can give meaning to an act. *Brown*. For example, in *Holmes*, the Court took into account the fact that the defendant had made repeated threats to beat the plaintiff in finding that assault had occurred. Similarly, in *Brown*, the Court took into account threats the defendant had made against plaintiff even though no contact had occurred. You are ignoring that fact that, immediately before he approached Miller, Trapp yelled, "Get out of my way, you little punk, or I'll beat the hell out of you." Words could not much more clearly place a person in a well-founded apprehension of an imminent battery. Especially when those words are combined with the fact that your client had just punched another reporter in the face, Miller unquestionably had a well-founded apprehension of imminent battery. You cannot deny your client committed an assault upon Miller.

Battery Claim

As I am sure you are also aware, a person is liable for the tort of battery if he acts intending to cause a harmful or offensive contact, or an imminent apprehension of such a contact, and a harmful or offensive contact results. *Horton*. During our phone conversation, you claimed that Trapp did not have the requisite intent to commit battery (i.e. he did not intend to harm Miller). However, you have incorrectly analyzed the requisite intent for battery. The issue is not whether Trapp intended to harm Miller but, rather, whether Trapp intended to cause a contact that turned out to be harmful or offensive. If you review *Horton*, you will find that it is irrelevant whether a defendant intended that a plaintiff be harmed or offended. It only matters that the defendant intended to cause contact. *Horton*. Further, in *Polk*, the Court held that actual physical contact is not required to constitute battery. *Polk*. Snatching an object from a person's hand is sufficient to establish a claim for battery. *Id.* Knocking or snatching anything from plaintiff's hand or touching

anything connected with his person, when done in an offensive manner, is sufficient to constitute an offensive touching. *Id.* Many witnesses in the crowd can confirm that your client proceeded aggressively against Miller and violently attempted to take her phone from her hand. A recount of the incident has been reported in various periodicals. There is no question that your client intended to make contact with Miller, which is sufficient to provide the requisite intent for battery.

During our phone conversation, you also asserted that, even if Trapp committed battery, he has the defense that Miller consented by attending the concert. While it may be true that Miller consented to some level of physical contact by attending the concert, she certainly did not consent to the type of intentionally violent contact committed by your client. I recommend you refer to *Horton* when considering this issue. In that case, the court acknowledged that a student had consented to physical contact by his karate instructor in connection with the discipline required for the class. However, the court did not permit consent to legitimate in-class contact to carry over to non-legitimate physical contact related to a personal interaction outside of class. *Id.* Similarly, even if Miller impliedly consented to the type of contact that occurs in a crowd at a concert, she did not consent to the intentional violent contact by Trapp after the concert. Your reliance on the defense of consent is misplaced.

Damages

For the intentional torts of assault and battery, a plaintiff may seek two kinds of damages: compensatory and punitive. *Horton*. Compensatory damages are mandatory. *Polk*. As you are undoubtedly aware, compensatory damages may include medical expenses, lost wages, and pain and suffering. Pain and suffering includes physical pain as well as mental suffering, such as insult and indignity, hurt feelings and fright. *Horton*. As explained above, Ms. Miller has incurred \$5,000 in medical bills, had her arm in a sling for three days, missed a week of work and had to replace her phone. She is entitled to recover for all of these damages. In addition to her pain and suffering related to her dislocated shoulder, Ms. Miller has also experienced mental anguish related to being attacked in front of her peers and being terrified by the words and acts of Trapp. Undoubtedly, a jury would award Miller significant damages for such pain and suffering.

Punitive damages are also available in civil assault and battery cases. *Horton*. Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. Punitive damages are awarded, in part, to deter the defendant and others from similar conduct in the future. *Polk*. In awarding punitive damages, the trier of fact can properly consider (a) the character of the defendant's act, namely whether it is the sort that calls for deterrence and punishment, (b) the nature and extent of harm to the plaintiff that the defendant caused or intended to cause, and (c) the wealth of the defendant. *Id.* Punitive damages are quite justifiable in this matter. Your client's conduct was outrageous. Without provocation he harmed not only my client but another reporter, and he did so with no apparent remorse. If your client is not stopped, this will likely happen to other innocent reporters. Given your client's past criminal history, a court is particularly likely to find that punitive damages are necessary for deterrence purposes. In addition to harming our client, your client injured another reporter, which just shows your client's proclivity for violence and disregard for the dignity of others. Your client is also very wealthy, which is bad for you with respect to punitive. Thus, the court not only is likely to find that punitive damages are proper, but that they should be extremely high. If you check recent jury awards for pain and suffering and punitive damages, some have been extremely high.

We hereby demand that Mr. Trapp pay \$_____ in damages no later than March 1, 2016. If Mr. Trapp fails to comply with this demand by such date, Ms. Miller is prepared to exercise all remedies available to her, including litigating claims against Mr. Trapp

Sincerely,

2. MEMORANDUM

The purpose of this memorandum is to provide a recommendation regarding the specific amounts of damages for each category of damages and rationale for these amounts.

Compensatory Damages

First, Ms. Miller should recover her actual medical expenses and other out-of-pocket expenses. These include her \$5,000 in medical bills, the \$100 she lost by missing a week of work and the \$500 to replace her phone.

Second, Ms. Miller should recover for her pain and suffering, which should include not only her pain and suffering from her shoulder injury but also the pain and suffering of the humiliation she incurred in connection with being attacked in front of her peers. Pain and suffering includes physical pain as well as mental suffering such as insult and indignity, hurt feelings and fright caused by battery. Horton. Based upon a review of recent jury awards in battery cases, pain and suffering damages have ranged from \$40,000 to \$400,000. Ms. Miller's situation is very similar to two cases in which \$40,000 and \$50,000 in pain and suffering damages were awarded. Thus, this range appears appropriate.

Punitive Damages

In awarding punitive damages, the trier of fact can properly consider (a) the character of the defendant's act, namely whether it is the sort that calls for deterrence and punishment, (b) the nature and extent of harm to the plaintiff that the defendant caused or intended to cause, and (c) the wealth of the defendant. Polk. I believe we can strongly argue that Trapp is likely to continue the same sort of conduct if he is not deterred by punitive damages. As a successful rock singer, he is very wealthy. Thus, substantial punitive damages may be awarded.

As you may be aware, the other person injured at the concert, Pender, is seeking \$5 million in damages. Recent jury awards of punitive damages have ranged from \$300,000 to \$1,000,000. However, I also note that in a case very similar to Ms. Miller's case, punitive damages were denied. I believe we can distinguish from the facts in that case because the defendant mascot grabbed the plaintiff from the crowd in an attempt to pull the plaintiff onto the floor to participate in an entertainment routine. That is not the sort of egregious, violent, wrongful behavior exhibited by Trapp. Thus, given recent punitive damages awards and the wealth of Trapp, we may be able to obtain punitive damages up to as much as \$1,000,000.

However, we are limited in the amount of punitive damages. Few awards exceeding a single-digit ratio between punitive and compensatory damages will satisfy due process. State Farm. Given my recommended range of compensatory damages above of between roughly \$45,600 to \$55,600, punitive damages likely cannot exceed approximately \$500,000. I recommend we request roughly that amount.

MPT 2 - Sample Answer # 3

(1) Demand Letter

****Confidential Settlement Communication****

Dear Mr. Leffler,

This firm, as you know, has been retained to represent Katie Miller with respect to severe injuries she recently received as a result of Steve Trapp's outrageous and unacceptable conduct at the Franklin City Arena. We understand you represent Mr. Trapp and, therefore, we direct to you, this confidential settlement demand to your client, which is time-limited.

Ms. Miller is a college student and local reporter/blogger regarding the music scene; more than that, she was a large fan of your clients band, the Revengers. She was so excited to meet and interview your client as she eagerly awaited for him backstage. When the band walked offstage after the second encore, Mr. Trapp punched the first reporter in the nose and yelled at our client "get out of my way, you little punk, or I'll beat the hell out of you". Thereafter, Mr. Trapp raised his arm to hit Ms. Miller, grabbed her phone out of her hand so hard that her shoulder was dislocated and required emergency medical treatment at the hospital. Of course, the best part is — all of this was recorded by the other reporters who were present backstage. It is our understanding that the reporter Mr. Trapp punched is cooperating with law enforcement in their investigating your client and that she is prepared to file suit against your client seeking \$5 million in damages. Your client's behavior will not be tolerated in Franklin City, which combined with Mr. Trapp's track record (illegal drugs, assault/batter) will not be well-taken by a local jury. At the very least, your client assaulted Ms. Miller.

As you know, an actor is subject to liability for assault if he acts intending to cause a battery or imminent apprehension of a battery and the other person is put in well founded apprehension of an imminent battery. Here, your client's threats ("I'll beat the hell out of you"), combined with the fact that he had just punched another person moments before, creating a fear of impending batter in Ms. Miller's mind, thereby constituting assault. *Holmes v. Nash* (Fr. Sup. Ct. 1970), *Brown v. Orr* (Fr. Ct. Of App. (2000)).

We anticipate that you will argue that your client did nothing to cause Ms. Miller to fear he would harm her; however, we believe when the jury sees the video of your client punching the other reporter and angrily screaming at Ms. Miller that he'll beat the hell out of her, a jury will find her fear caused by his actions.

In addition to assault, your client battered Ms. Miller to the point he dislocated her shoulder when he grabbed her phone out of her hand. We anticipate your client will argue (1) he doesn't recall touching her, (2) any touching was accidental, (3) Ms. Miller "consented" to the touching, and (4) Mr. Trapp did not intend to harm her. None of these defenses will excuse your client's actions or the damages he caused.

Here, your client will be found liable for battery. Whether your client recalls touching our client or not is not dispositive. There were several witnesses, some of whom recorded the event, which will be shown to the jury. Snatching an object from ones hand has long been recognized by the Supreme Court as constituting a battery. See *Polk v. Eugene* (Fr. Sup. Ct 2004); *Riley v. Adams* (Fr. Sup Ct. 1960). Here, the touching was not accidental - your client snatched the phone out of her hand and smashed it on the ground, just as he had done to the reporter who Mr. Trapp brutally punched moments before. Further and likewise, your client's "consent" argument/defense is without merit. While Ms. Miller may have consented to a certain amount of touching due to the close crowd at the concert of the gaggle of reporters waiting for your client, there is nothing that

indicates Ms. Miller consented to having her phone snatched from her hands or her shoulder dislocated. Finally, it is enough that your client intended to grab/snatch the phone, which turned out to be harmful and offensive and dislocated Ms. Miller's shoulder – it is of no import that your client did not intend to dislocate her shoulder. Horton v. Suzuki (Fr. Ct. Of Appeal 2009).

Our client has suffered compensatory damages, including medical expenses, lost wages and pain and suffering. In addition, your client must be stopped from repeating this outrageous conduct.

Therefore, we hereby demand your client pay \$ _____ to resolve our client's claims.

This demand will remain open for 14 days from the date of this letter, aft which time our client has authorized us to pursue all of her available legal remedies for the damages your client caused.

Sincerely,
Timothy Howard

(2) Memo Re: Damages

For intentional torts, such as assault and battery, there are generally two types of recoverable damages for Ms. Miller: (1) compensatory, and (2) punitive. Compensatory damages include medical expenses, lost wages and pain and suffering/non-economic). Punitive damages are available to "punish" the tortfeasor. Horton v. Suzuki (Fr. Ct. Of App. 2009). Punitive damages are discretionary, unlike compensatory damages, which are mandatory. Polk v. Eugene (Fr. Sup. Ct. 2004). Factors to be considered by trier of fact in awarding punitive damages includes (a) character of the defendant's acts; (b) nature and extent of the harm to the plaintiff that the defendant caused or intended to cause; and (c) wealth of the defendant. Polk v. Eugene.

Below is a summary of recommended damage amounts and the rationale for each; with respect to what one can reasonably expect to recover at trial:

(1) Compensatory: \$5,600

(a) Medical expenses: \$5,000

Rationale: Ms. Miller's medical bills to date are \$5,000, although it is unknown whether this will increase as she recovers.

(b) Lost wages: \$100

Rationale: Ms. Miller's lost wages to date are \$100

(c) Specials: \$500

Rationale: Ms. Miller's I-phone was smashed and destroyed by Mr. Trapp.

(2) Pain and Suffering: \$21,000

Rationale: Based on the jury verdicts, the range of non-economic, pain and suffering damages is between 3 and 5 times economic damages. Since Ms. Miller has \$5,600 in economic damages, it is estimated that her pain and suffering is \$16,800 - \$28,000 (\$5,600 X 3-5). \$21,000 is a middle value.

(3) Punitive: \$50,000

Rationale: Based on jury verdicts and State Farm v. Campbell and the 3 factors (wealth, intent, character of acts), the estimated punitive is 9 x compensatory, or approximately \$50,000.