

Judicial Council Of California Civil Jury Instruction 1306

Judicial Council Of California Civil Jury Instructions September 2019 Update
By the Judicial Council of California Advisory Committee on Civil Jury Instructions
Assault and Battery

1306 Sexual Battery—Essential Factual Elements

[*Name of plaintiff*] claims that [*name of defendant*] committed a sexual battery. To establish this claim, [*name of plaintiff*] must prove the following:

1. [(a) That [*name of defendant*] intended to cause a harmful [or offensive] contact with [*name of plaintiff*]'s [sexual organ/anus/groin/buttocks/ [or] breast], and a sexually offensive contact with [*name of plaintiff*] resulted, either directly or indirectly;]

[OR]

[(b) That [*name of defendant*] intended to cause a harmful [or offensive] contact with [*name of plaintiff*] by use of [*name of defendant*]'s [sexual organ/anus/groin/buttocks/ [or] breast], and a sexually offensive contact with [*name of plaintiff*] resulted, either directly or indirectly;]

[OR]

[(c) That [*name of defendant*] caused an imminent fear of a harmful [or offensive] contact with [[*name of plaintiff*]'s [sexual organ/anus/groin/buttocks/ [or] breast]/ [or] [*name of plaintiff*] by use of [*name of defendant*]'s [sexual organ/anus/groin/buttocks/ [or] breast]], and a sexually offensive contact with [*name of plaintiff*] resulted, either directly or indirectly;]

AND

2. That [*name of plaintiff*] did not consent to the touching; and

3. That [*name of plaintiff*] was harmed [or offended] by [*name of defendant*]'s conduct.

["Offensive contact" means contact that offends a reasonable sense of personal dignity.]

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Directions for Use

Omit any of the options for element 1 that are not supported by the evidence. If more than one are at issue, include the word “OR” between them.

Give the bracketed words “or offensive” in element 1 and “or offended” in element 3 and include the optional last sentence if the offensive nature of the conduct is at issue. In most cases, it will be clear whether the alleged conduct was offensive. The offensive nature of the conduct will most likely not be at issue if the conduct was clearly harmful.

For a definition of “intent,” see [CACI No. 1320, Intent](#).

Sources and Authority

- Sexual Battery. [Civil Code section 1708.5](#).
- Consent as Defense. [Civil Code section 3515](#).
- “A cause of action for sexual battery under [Civil Code section 1708.5](#) requires the batterer intend to cause a ‘harmful or offensive’ contact and the batteree suffer a ‘sexually offensive contact.’ Moreover, the section is interpreted to require that the batteree did not consent to the contact.” ([Angie M. v. Superior Court \(1995\) 37 Cal.App.4th 1217, 1225 \[44 Cal.Rptr.2d 197\]](#), internal citation omitted.)
- “The element of lack of consent to the particular contact is an essential element of battery.” ([Rains v. Superior Court \(1984\) 150 Cal.App.3d 933, 938 \[198 Cal.Rptr. 249\]](#).)
- “As a general rule, one who consents to a touching cannot recover in an action for battery. ... However, it is well-recognized a person may place conditions on the consent. If the actor exceeds the terms or conditions of the consent, the consent does not protect the actor from liability for the excessive act.” ([Ashcraft v. King \(1991\) 228 Cal.App.3d 604, 609–610 \[278 Cal.Rptr. 900\]](#).)

Secondary Sources

[5 Witkin, Summary of California Law \(10th ed. 2005\) Torts, §§ 381–416](#)

3 Levy et al., California Torts, Ch. 41, *Assault and Battery*, § 41.01[3]
(Matthew Bender)

6 California Forms of Pleading and Practice, Ch. 58, *Assault and Battery*, §§
58.27, 58.55 (Matthew Bender)

2 California Points and Authorities, Ch. 21, *Assault and Battery*, § 21.27
(Matthew Bender)

[1 California Civil Practice: Torts §§ 12:7–12:9, 12:36–12:39](#) (Thomson
Reuters)

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