# APPENDIX E: Summary of Law Examples

Examples 1 and 2 each show different ways to approach a Summary of the Law defining the rule for the crime of aggravated assault.

Examples 3, 4, and 5 each show different ways to approach a Summary of the Law defining the rule for the civil tort of battery. There is no statute with which to begin, so the rule must be carefully pulled out of each of the existing cases.

 Please look through all of the examples and notice what the writers do the same in terms of organization, structure, rule definition, and case spectrums.

 Please note that each example includes its word count. These examples might not be within the word limit for any given assignment. However, they are each designed to demonstrate overall structure, proper organization, and appropriate analysis.

# Example 1

Summary of Law

*word count: 1657*

In Georgia, there are multiple ways for a person to commit aggravated assault; to sustain a conviction for aggravated assault with a deadly weapon under O.C.G.A. § 16-5-21(a)(2), the State must prove that the defendant committed an assault with *either* a deadly weapon *or* with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury. Tyson v. State, 358 Ga.App. 329, 329(2) (2021) (emphasis added).

First, the crime of aggravated assault requires an assault. An assault occurs when the defendant “attempts to commit a violent injury to the person of another or commits an act which places another in reasonable apprehension of immediately receiving a violent injury.” Hambrick v. State, 174 Ga.App. 444, 444 (1985). It is the victim’s reasonable apprehension of injury from an assault by an offensive instrument that establishes aggravated assault, not the defendant’s intent. Crane v. State, 297 Ga.App. 880, 880 (2009). Where a defendant holding a claw hammer walks towards a victim during a confrontation, provoking the victim to defend himself with a baseball bat, the victim’s reasonable apprehension of injury from an assault by an offensive instrument establishes aggravated assault. Id. at 880. That the defendant claims he never intended to strike the victim is immaterial: in Durrance, a defendant who accelerated his truck directly towards pursuing officers argued that he never intended to strike the officers’ vehicles and was only trying to flee. Durrance v. State, 250 Ga.App. 185, 185 (2001). Unlike “aggravated assault with the intent to murder, rape, or rob,” said the court, “[a]ggravated assault committed by means of a deadly weapon or offensive instrument . . . does not require specific criminal intent”—the State need only prove “a general intent to injure.” Id. The court held that because the defendant intentionally crossed the centerline and sped toward officers, forcing them to drive off the road and into a ditch to avoid being hit, the defendant possessed the requisite criminal intent to commit aggravated assault. Id. at 185. Thus, an attempt to violently injure a victim or the commission of an act that makes a victim reasonably apprehensive of immediate violent injury satisfies the first element of aggravated assault, regardless of the defendant’s specific intent.

Second, aggravated assault requires a deadly weapon *or* the use of an object, device, or instrument. A dog could be considered an offensive instrument when a defendant commanded his pit bull to attack a deputy and previous encounters with police showed the defendant could control the dog. Braziel v. State, 320 Ga.App. 6, 6 (2013). Although hands and feet are not offensive instruments per se, they can become offensive instruments when used to strike a victim. Tyson, 358 Ga.App. at 329. Whether hands and feet qualify as offensive instruments depends on the manner and means of their use and the wounds inflicted. Dasher v. State, 258 Ga. 308, 308(1) (2009). Hands and feet can qualify as offensive instruments when a defendant beats a victim’s head and face with their hands. Tyson, 358 Ga.App. at 329. When a victim suffered abrasions and bruising “most probably” as the result of being punched and bruising and scraping “very characteristic” of being kicked with shod feet, hands and feet were considered offensive instruments. Dasher, 258 Ga. at 308.

Further, an object, device, or instrument that is not a deadly weapon per se must be used offensively against a person. The defendant need not strike a person with the instrument to establish offensive use. The court in Crane determined a defendant used a claw hammer offensively by holding it while walking toward his ex-wife’s father and yelling about his right to be on the property. 297 Ga.App. at 880. Similarly, in Reese, when a defendant threw a twelve-ounce glass beer bottle from close range at a police officer entering the defendant’s home with enough force that the bottle shattered upon impact with the doorway, even though the projectile did not strike or injure the officer, the court held the defendant used the “normally non-offensive non-deadly” beer bottle in an offensive manner. Reese v. State, 303 Ga.App. 871, 871 (2010).

On the other hand, striking with the instrument—without more—is not sufficient to establish offensive use, as shown in Banks where the court found no inconsistency between a jury verdict declaring a defendant guilty of aggravated assault for striking a police officer with a ceramic statute and acquitting the defendant of another aggravated assault count for striking a woman with the same statue in a way that was not likely to produce death or great bodily injury. Banks v. State, 169 Ga.App. 571, 571 (1984). Similarly, in Ware, the court found that a defendant who struck her husband in the face with the “non-business end” of a box cutter had not used the instrument offensively. Ware v. State, 289 Ga.App. 860, 860 (2008).

Ultimately, offensive use may depend on the capabilities of the instrument as used by the defendant. For instance, the court in LaPann v. State, 191 Ga.App. 499, 499 (1989), found offensive use where a defendant, wielding a sixteen-inch long by three-quarter-inch wide by one-and-one-half inch thick piece of firewood, drew back and delivered forceful blows to his daughter’s leg, shoulder, and head. And, the court in Weaver found that pepper spray—“‘a device typically chosen for self-defense precisely because it injures and incapacitates attackers’”—was used offensively by a defendant who called the victim over to his car before making him from a foot away. 325 Ga.App. at 51 (citation omitted). The court in Hambrick found offensive use when the defendant used a pocket knife to cut stockings containing cash-filled snuff cans from around his wife’s elderly step-grandfather’s neck because the defendant used the pocket knife “directly [like a knife] to take the money from the victim’s person.” 174 Ga.App. at 444. Conversely, the court in Ware found the defendant did not use a box cutter offensively when she stabbed at her husband’s face with the “non-working end” because the defendant never exposed the blade or threatened the husband with an exposed blade. 289 Ga.App. at 860.

Finally, aggravated assault requires the offensive use of the instrument to be likely to cause or actually does result in serious bodily injury. Whether an offensive instrument is likely to produce serious bodily injury depends on the manner and means of the instrument’s use. Banks, 169 Ga.App. at 571. Bruises and lacerations show that the offensive use of an instrument was likely to cause serious bodily injury. In Talley v. State, 137 Ga.App. 548, 548 (1976), the court did not know the number of blows the defendant struck or the size, weight, or shape of the lamp the defendant used. Still, the court found that bruises and severe lacerations to the victim’s ear established that the defendant used the lamp as an offensive instrument likely to result in serious bodily injury. Id. The court in Tyson held that visible injuries to the victim’s head and face showed the defendant’s use of hands and feet was likely to result in serious bodily injury. 358 Ga.App. at 329. In Hambrick, the defendant cut the victim’s finger when the victim attempted to stop the defendant from using a pocket knife to take the victim’s money and the court reasoned that the pocket knife, “though rather small,” could inflict the types of injuries generally produced by knives and was thus used “in a manner likely to produce death or great bodily injury.” 17 Ga.App. at 444.

Whether an offensive instrument actually does result in serious bodily injury depends on the extent of the wounds inflicted by the instrument. The court in Ware found no serious bodily injury resulting from a single hit to the defendant’s husband’s face with an unexposed box cutter that inflicted only a minor facial cut and an injury to the inside of his mouth. 289 Ga.App. at 860(2). Conversely, injuries requiring hospitalization indicate that serious bodily injury resulted, such as in LaPann, where the court found that a blow inflicted by the defendant with a piece of firewood that glanced off his daughter’s arm and left a gash to her head requiring ten sutures to close resulted in serious bodily injury. 191 Ga.App. at 499. The defendant in Tyson caused serious bodily injury to his pregnant girlfriend by use of his hands and feet that resulted in causing her to bleed down both her legs, requiring examination and treatment at a hospital. Tyson, 358 Ga.App. at 329.

When permanent injury or death occurs, it establishes that the offensive use of an instrument resulted in serious bodily injury. In Braziel, the defendant’s offensive use of his attack dog against a deputy resulted in serious bodily injury when the pit bull left a permanent hole in the deputy’s leg. 320 Ga.App. at 6. When the defendants kicked the victim’s head, turning it violently enough to tear the artery at the base of the brain and killing the victim, the court found the defendants’ feet were used offensively. Dasher, 258 Ga. at 308. Still, serious bodily injury can be found when the offensive use of an instrument produces extreme physical pain, even if only temporary, such as when the defendant’s use of pepper spray resulted in serious bodily injury by causing the victim to suffer a burning sensation in his eyes and face, a great deal of pain, and temporary blindness. Weaver, 325 Ga.App. at 51.

Therefore aggravated assault is a criminal offense that requires the State to prove: (1) the defendant committed an assault, and (2) the defendant did so with a deadly weapon *or* by using an object, device, or instrument offensively in a manner that is likely to or actually does result in serious bodily injury.

# Example 2

Summary of Law

*word count: 1653*

The use of any item, if used in an offensive manner that is likely to or does cause serious bodily harm, may be sufficient to sustain a conviction for aggravated assault. Under O.C.G.A. § 16-51-21(a)(2) (2020), the state must show the defendant committed an assault with a deadly weapon or by using an instrument (1) in an offensive manner (2) likely to cause or actually results in serious bodily harm. Crane v. State, 297 Ga.App. 880, 880 (2009). To find serious bodily harm, courts consider if the wounds inflicted by an instrument are sufficient to infer the defendant’s offensive use of the instrument was *likely* to cause great bodily harm or *actually resulted in* great bodily harm where evidence shows more than minor injuries. Watson v. State, 301 Ga. App. 824, 826 (2009).

First, the State must show the defendant committed an assault. An assault occurs when a defendant “attempts to commit a violent injury to the person of another or commits an act which places another in reasonable apprehension of immediately receiving a violent injury.” Hambrick v. State, 174 Ga.App. 444, 444 ((1985). It is not the defendant’s intent to injure that establishes aggravated assault, but rather the victim's reasonable apprehension of injury by an offensive instrument. Crane, 297 Ga.App. at 880. In Crane, the defendant claimed he did not intend to hit the victim when he walked toward the victim while yelling and holding a claw hammer in one hand and a screwdriver in the other. 297 Ga.App. at 880(2). The court found the evidence sufficient for the jury to conclude the defendant committed an assault because the victim reasonably apprehended injury and defended himself with a baseball bat based on his fear that the defendant was going to strike him. Id. Similarly, In Durrance v. State, 250 Ga.App. 185, 185 (2001), the defendant argued he was trying to flee the scene and never intended to strike the officers’ vehicles. The court held that, while *specific* intent to injure the officers was not required, the evidence that the defendant accelerated towards the officers and crossed the centerline while speeding was “sufficient to enable any rational trier of fact to find beyond a reasonable doubt that he possessed the requisite criminal intent to commit aggravated assault.” Id. Conversely, in Cruz v. State, 364 Ga.App 96, 100 (2022), the defendant intentionally took a Taser from a police officer and during a struggle for possession of the Taser, pointed it at him. The court found that there could be no assault to predicate a charge of aggravated assault because the taser was accidentally pointed at the police officer as a result of the struggle, not the defendant’s intention.

 Next, the state must show the defendant committed the assault with a deadly weapon or any object, device, or instrument used offensively against a person *and* in such a manner likely to or actually resulting in death or serious bodily injury. First, if the instrument is not a deadly weapon *per se*, the state must show that the offensive circumstances under which the instrument was used made it likely to result in serious bodily injury. Ware v. State, 289 Ga.App. 860, 860 (2008) (citation omitted). Whether an instrument is considered an offensive instrument depends on the manner and means of the instrument’s use and the wounds inflicted. Dasher, 258 Ga. at 308(1). Targeting the victim’s head or face typically indicates offensive use of an instrument, such as spraying the victim in the face with mace, Weaver v. State, 325 Ga.App. 51, 51 (2013), or hitting the victim in the head with a lamp, Talley v. State, 137 Ga.App. 548, 548 (1976). Hands and feet were also deemed offensive instruments where the defendants repeatedly punched and kicked the victim’s head and face, causing the victim to lose consciousness and eventually die. Dasher, 258 Ga. at 308(1).

However, even where resulting injury occurs, striking with the instrument alone is neither dispositive of an offensive use nor necessary. In Banks v. State, 169 Ga.App. 571, 571(1) (1984), a ceramic statue was deemed an offensive instrument when the defendant used it to strike an officer in a manner that the jury determined was likely to cause death or great bodily injury, but *not* when the defendant used it to strike another victim in a manner that the jury found was *not* likely to produce death or great bodily injury. Similarly, in Ware, the defendant’s use of a box cutter was not offensive despite the resulting cuts to the victim’s face and mouth because the defendant only used the “non-business end” of the cutter. 289 Ga.App. at 860(2). Additionally, offensive use has been found without any striking where the defendant walked toward the victim while yelling and holding a claw hammer and a screwdriver, Crane, 297 Ga.App. at 880(2), and where a defendant threw a glass bottle from close range with enough force to shatter against a door, despite missing the victim, Reese v. State, 303 Ga.App. 871, 871(1) (2010).

Besides the manner of the instrument’s use, offensive use may depend on the instrument’s capabilities as used by the defendant. This depends not on the nature of the instrument itself but “on its capacity and the manner of its use to inflict serious bodily harm.” LaPann v. State, 191 Ga.App. 499, 499(1) (1989). In LaPann, the defendant’s use of a firewood log to beat his daughter in the leg and shoulder was offensive where he “drew back from each blow and delivered it with force.” Id. A defendant’s use of mace against a victim after calling the victim over to the defendant’s car was offensive because mace is an object of “self-defense precisely because it injures and incapacitates attackers” and “presents a serious *potential* risk of physical injury.” Weaver, 325 Ga.App. at 51(2) (emphasis added) (quoting United States v. Mosley, 635 F.3d 859, 864(II) (6th Cir.2011)). In Hambrick, the jury could have found that the defendant’s use of a pocketknife to take money off the victim’s body was offensive as “arguably *capable of* inflicting the types of injuries which generally can be produced by knives, including death or great bodily injury.” 174 Ga.App. at 444(1) (emphasis added).

In contrast, even where a defendant used a box cutter by stabbing it at the victim’s face causing minor cuts, this was insufficient to establish offensive use because there was no evidence that the blade was ever exposed or that the defendant ever threatened the victim with an exposed blade. Ware, 289 Ga.App. at 860(2). In sum, an instrument’s offensive use can typically be established when the victim’s head or face is targeted, though striking the victim is not necessary and offensive use may turn on the manner and means of which the instrument was used and the wounds inflicted.

 Next, to establish aggravated assault the state must show the defendant’s offensive use of the instrument was likely to cause or actually did result in serious bodily injury. Watson, 301 Ga. App. at 826. To determine if an offensive instrument is *likely to cause* serious bodily harm, “the jury [may] infer the ‘serious injury-producing character of the instrument in question from the nature and the extent of the injury,’ along with all the facts and circumstances'' such as the manner and means by which the instrument was used. Dasher, 258 Ga. at 308. In Talley, the testimony of a girl who saw the defendant “hitting [the victim] on the head with the lamp” plus the medical testimony and photographs of severe lacerations and bruises was sufficient to show the defendant’s use of the lamp was likely to cause serious bodily injury. 137 Ga.App. at 548. The evidence of the victim’s physical injuries was enough even where the state did not submit evidence of the lamp’s size or weight, the amount of force used by the defendant, or what part of the lamp inflicted the victim’s injuries. Id. Similarly, in Tyson v. State, a witness testified that she saw the defendant “beat the tar out of the victim” and described the incident as “one of the worst things she had ever witnessed.” 358 Ga.App. 329, 329 (2021). Together with the pregnant victim’s own testimony that the defendant “pushed her from his truck … and kicked her in the stomach,” causing her to “bleed down both of her legs,” evidence was sufficient to establish that the defendant’s use of his hands and feet was likely to cause serious bodily harm. Id. Additionally, temporary debilitating injuries may also qualify the defendant’s use of an instrument as likely to cause serious bodily harm, such as in Harwell v. State, 231 Ga.App. 154 (1998), where the court held that the defendant’s use of a stun gun to administer temporary shock at least presented a jury question as to whether it was likely to cause serious bodily harm. And, in Weaver, the defendant’s use of mace was sufficient to show it was likely to cause serious bodily harm where the victim suffered a burning sensation in his eyes and face, was in a great deal of pain, and was temporarily blinded. 325 Ga.App. at 51.

However, courts have found evidence to be insufficient to establish aggravated assault where the victim’s injuries are minor; for example, even where the defendant stabbed at the victim’s face with the round end of a box cutter, the resulting minor cuts on the victim’s face and mouth were not considered serious bodily injuries. Ware, 289 Ga.App. at 860(2).

In conclusion, aggravated assault is established where the defendant commits an assault with a deadly weapon or by using an instrument in an offensive manner likely to cause or actually resulting in serious bodily harm.

# Example 3

Summary of Law

*word count: 792*

In Georgia, a civil battery occurs when there is a touching of another without consent, with the intent to make harmful, insulting, or provoking contact. Kohler v. Van Pataghem, 330 Ga.App. 230, 234 (2014). This rule can be broken down into three parts: (1) touching, (2) intent, and (3) lack of consent.

First, the civil tort of battery requires a touching. Id. A touching can be established through bodily contact. Ellison v. Peterson, 294 Ga.App. 814 (2008). In Ellison, the court found contact sufficient to support a claim for battery when “the manager ‘placed [Ellison] in a semi headlock position[,] and began shaking’... .” 294 Ga.App. at 816. The court reasoned that “[i]n the interest of one's right of inviolability of one's person, any unlawful touching is a physical injury to the person and is actionable.” Id. The touching can also be slight, as in Jarrett v. Butts, 190 Ga.App. 703, 704 (1989) where the court found contact sufficient for battery when a teacher touched a student’s hair. Again the court reasoned that because any unlawful touching is an actionable injury, “even the minimal touching alleged in this case can support a cause of action for … battery.” Id. at 705.

Contact can also be made with an object or substance other than the offender’s body that then makes contact with the individual complaining of the harm. Lawson v. Bloodworth, 313 Ga.App. 616, 618 (2012). Examples of a touching with an object other than the offender’s body include throwing a chair into another’s legs, Lawson, 313 Ga.App. at 618, spitting on another, Kohler v. Van Peteghem, 330 Ga.App. 230, 236-37 (2014), playing loud noise over a telephone, Hendricks v. Harper, 193 Ga.App. 264, 265 (1989), and blowing smoke at another, Richardson v. Hennly, 209 Ga.App. 868, 871 (1993). As the court in Lawson explained, “An unlawful touching of a person's body is actionable even if the unlawful touching is indirect, as by throwing an object or substance at the person.” 313 Ga.App. at 618.

Second, the defendant must have touched the plaintiff with the intent to make harmful, insulting, or provoking contact. Hendricks, 193 Ga.App. 264, 265 (1989). “Clearly, the act of intentionally causing actual physical harm to another is civilly actionable as a battery.” Id. For example, the court in Ellison found facts sufficient to establish a claim for battery when a fast-food manager put a customer into a “semi-headlock position” and shook her. Ellison, 294 Ga.App. at 815. Similarly, in Richardson, the court found a viable battery claim where a manager had intentionally blown smoke in an employee’s face “knowing it would cause her to suffer.” 209 Ga.App. at 870. Conversely, the court in Rose v. Braciszewski, 220 Ga.App. 1, 1 (2009), found there was not an intentional touch by the defendants when they set fires on their property to burn waste resulting in smoke from the fires drifting into the plaintiffs’ nearby home. The court held that because the defendants did not cause the smoke to come in contact with the plaintiff, nor did they have “knowledge that their actions were substantially certain to cause such contact,” the defendants did not satisfy the intentional touching element, and therefore they did not commit a battery. Id. at 3.

Finally, battery requires a lack of consent; if the touch is invited, there cannot be a battery. Harvey v. Speight, 178 Ga.App. 812, 813 (1986). In Harvey, the court found that there was consent to touch the plaintiff because he asked if the defendant “do you want to see” inside his jacket and then pulled his jacket open, which the plaintiff admitted was an invitation to the defendant to search. Id. at 813. Similarly, in Houston v. Holley, 208 Ga. App. 235, 239 (1993), the court found that there was consent sufficient to negate a battery claim where a child at daycare was only touched when being put in time out, which fell in the normal course of activities for a childcare center. The court reasoned that any touching that occurred was contracted for when the child’s parents placed their child in this daycare. Id. Conversely, where the touching is unauthorized, an action for battery can be sustained. Hendricks, 193 Ga.App. at 265. For example, in Jarret v. Butts, 190 Ga. App. 703, 705 (1989), the court found that facts showing a student who consented to have her photograph taken but did not consent to being touched and posed by the teacher-photographer was enough to survive summary judgment.

In conclusion, a battery claim requires the plaintiff to show there was a touching without

consent done with the intent to cause harmful, insulting, provoking, or offensive contact.

# Example 4

Summary of Law

*word count: 1048*

In Georgia, to establish a civil claim for battery, the plaintiff must show that the defendant intentionally touched them without consent in an offensive manner with *either* the intent to cause harm *or* to cause insult or offense, or both. Vasquez v. Smith, 259 Ga.App. 79, 82 (2003). This rule can be broken down into three elements: (1) touching, (2) intent, and (3) lack of consent. Id.

First, the civil tort of battery requires a touch. A touching can be established through bodily contact, Ellison v. Peterson, 294 Ga. App. 814, 816 (2008), or through contact with an object other than the offender’s body that then makes contact with the individual complaining of the harm, Lawson v. Bloodworth, 313 Ga.App. 616, 618 (2012). Touching through bodily contact includes putting someone in a headlock, Ellison 294 Ga.App. at 816, or pulling someone’s arms behind their back, Greenfield v. Cunard, 110 Ga.App. 572, 572-73 (1964). Examples of a touching with an object other than the offender’s body include a chair, Lawson, 313 Ga.App. at 618, spit, Kohler v. Van Peteghem, 330 Ga.App. 230, 236-37 (2014), a noisy phone, Hendricks v. Harper, 193 Ga.App. 264, 265 (1989), and smoke, Richardson v. Hennly, 209 Ga.App. 868, 871 (1993). As the court in Lawson explained, “An unlawful touching of a person's body is actionable even if the unlawful touching is indirect, as by throwing an object or substance at the person.”

Battery requires that the touch be offensive. An offensive touching is "one which proceeds from anger, rudeness, or lust." Vasquez v. Smith, 259 Ga.App. 1, 3 (2003). The test for offensive touching is whether it “would be offensive to an ordinary person not unduly sensitive as to his dignity” Id. In Everett v. Goodloe, 268 Ga.App. 536, 544 (2004), the court found there was no offensive touching where, while the plaintiff claimed the defendant sexually assaulted her multiple times, her journal and emails contradicted this claim. The court specifically pointed out a passage from her journal that stated, “At least I’ve gotten rid of that sucking on my lip kiss. I hated it. Why do I want them totally under my spell? It’s the only way I feel safe. . . . The weight is heavy as shown by this relationship with John.” Id. at 542. The court also included an email to the defendant in which the plaintiff stated, “I miss your dear company and hope that you will be comfortable in renewing our friendship on a friendship basis.” Id. at 543. In the court’s view, these statements indicated that the touching was consensual and that it was only later that the plaintiff decided she did not agree to be touched. Id. at 544. On the other hand, there was potentially an offensive touching in Hendricks v. Harper, 193 Ga. App. 264, 265 (1989), where the defendant tricked the plaintiff into putting a phone up to his ear that was emitting a loud noise because the court held that a jury could find that the defendant’s actions proceeded from rudeness and were therefore offensive.

Second, the contact must be intentional, which means the defendant touched the plaintiff on purpose or meant to perform the act to have the result. Cite. The court in Ellison found there was an intentional touching by a fast-food manager when she purposefully put a customer into a “semi-headlock position” and shook her. Ellison, 294 Ga.App. at 816. Because the defendant intended to touch the plaintiff, even if she did not intend the touching to be offensive, the intentional touching element is satisfied. Conversely, the court in Rose v. Braciszewski, 220 Ga.App. 1, 1 (2009), found there was not an intentional touch by the defendants when they set fires on their property to burn waste resulting in smoke from the fires drifting into the plaintiffs’ nearby home. The court held that because the defendants did not cause the smoke to come in contact with the plaintiff, nor did they have “knowledge that their actions were substantially certain to cause such contact,” the defendants did not satisfy the intentional touching element, and therefore they did not commit a battery. Id. at 3.

Battery requires *either* an intent to cause harm *or* to cause insult, offense, or both. A court will find that intent to cause harm exists when there is physical violence or harm to the victim, but will not distinguish between degrees of violence. Greenfield v. Cunard, 110 Ga.App. 572, 574-75 (1964). In Greenfield, the defendants painfully pulled the plaintiff’s arms behind his back. Id. at 572-73. Because this physically harmed the plaintiff, the court found that there was intent to cause harm sufficient to establish a battery. Id. at 574. Additionally, plaintiffs can also establish a claim for battery by showing that the defendant had the intent to cause insult or offense, such as in Vasquez, where the court held that the defendant’s purposeful pushing into the plaintiff on multiple occasions was sufficient to establish a battery, even if the defendant did not mean to hurt the plaintiff. 259 Ga.App. at 82.

Third, battery requires a lack of consent; if the touch is invited, there cannot be a battery. Harvey v. Speight, 178 Ga.App. 812, 813 (1986). In Harvey, the court found that there was consent to touch the plaintiff where he asked the defendant “do you want to see” inside his jacket and then pulled his jacket open, which meant the plaintiff invited the defendant to search. Id. at 813. Similarly, in Houston v. Holley, 208 Ga. App. 235, 239 (1993), the court found that there was consent sufficient to negate a battery claim where a child at daycare was only touched when being put in time out, which fell in the normal course of activities for a childcare center. The court reasoned that any touching that occurred was contracted for when the child’s parents placed their child in this daycare. Houston, 208 Ga.App. at 239.

To conclude, battery is an intentional tort that must be established through a showing that there was a touching that was intentional, there was an intent to cause harm *or* an intent to cause insult or offense, and that there was no consent to the touching.

# Example 5

SUMMARY OF LAW

*word count: 836*

 To prove a civil battery occurred such that the defendant can be held liable, the plaintiff must demonstrate that the defendant (1) touched him or her in an offensive manner, (2) with either the intent to cause harm, or to cause insult or offense, or both, and (3) there was no consent to the touching. Vasquez v. Smith, 259 Ga.App. 79, 82 (2003).

First, battery requires a touching. A touching need not be direct bodily contact; rather, an unlawful touching may be actionable even if the touching was indirect, “as by the precipitation upon the body of a person of any material substance.” Hendricks v. Harper, 193 Ga.App. 264, 265 (1989). Touchings have been found where the defendant put the plaintiff in a headlock, Ellison v. Peterson, 294 Ga. App. 814, 816 (2008), and where the defendant pulled the plaintiff’s arms behind his back, Greenfield v. Cunard, 110 Ga.App. 572, 574-75 (1964). The court in Hendricks found a touching to have occurred when the defendant tricked the plaintiff into placing a telephone up to his ear when the phone was playing a “high frequency/high-intensity tone[.]” 193 Ga.App. at 264. When a defendant deliberately touches another, the intentional touching elements are satisfied, such as in Richardson v. Hennly, 209 Ga. App. 868, 871 (2003), where the court found that smoke from a pipe is sufficiently material to be a touching within the meaning of battery. The court reasoned that a battery can occur when “the defendant sets a force in motion which ultimately produces the result.” Id. at 871. Conversely, there was no intent when smoke from burning waste accidentally ended up in a neighbor’s home. Rose v. Braciszewski, 220 Ga.App. 1, 1 (2009).

Second, the alleged tortfeasor must have committed the touching with intent to cause harm, or to cause insult or offense, or both. Rose, 220 Ga.App. at 1. A court will find a harmful touching when there is physical violence or harm, or an insulting or provoking touching. Greenfield, 110 Ga.App. at 574-75. The intensity or violence of the physical touch is not relevant; the court in Greenfield found that a person commits a battery so long as there is a physically harmful contact. Id. at 575. Similarly, though there was no intent to cause harm, there was intent to cause insult or offense when the defendant tricked the plaintiff into placing the blaring phone up to his ear. Hendricks 193 Ga.App. at 265. There was also intent to cause both harm and insult in Vasquez when the defendant slammed her body into the plaintiff’s multiple times. 259 Ga.App. at 80-81. On the other hand, this element was not satisfied when the defendant asked the plaintiff if he had stolen anything and examined the plaintiff’s person to make sure he had not. Harvey v. Speight, 178 Ga.App. 812, 813 (1986). This element was also not satisfied when a daycare provider was doing her contractually obligated duties when placing the child in timeout. Houston v. Holley, 208 Ga.App. 235, 239 (1993).

Intent to touch must be clear, however. In Kohler v. Van Peteghem, 330 Ga.App. 230, 237 (2014), for instance, intent was unclear. There, the parties were in an argument and the court was uncertain whether spit flying from the defendant’s mouth that landed on the plaintiff was indeed intentional. Id. at 235-36. Because the facts presented did not clearly indicate the touching was intentional, the court in Kohler refused to uphold the battery verdict based on the spitting. Id. at 237. Similarly, in Lawson v. Bloodsworth, 313 Ga. App. 616, 617 (2012), it was not a definitive intentional touch when a teacher pushed a chair and claimed the chair made a “bad bounce” toward the student.

Third, the plaintiff must not have consented to the touching. Harvey v. Speight, 178 Ga.App. 812, 813 (1986). There, the plaintiff invited the touching by asking the defendant “do you want to see” inside his jacket; when the defendant did look, there was no battery because the plaintiff permitted the defendant, through his actions, to look inside the jacket. Id. at 813. Similarly, when parents placed their unruly child in daycare and the child was touched when being placed in timeout, the court determined the touching was consensual because the child’s parents “contracted for” this sort of touching. Houston, 208 Ga.App. at 239 (1993).

 Lack of consent can be seen in Ellison, 294 Ga. App. at 816, where the court found no consent when the defendant placed the plaintiff in a headlock, and in Richardson, 209 Ga.App. at 871, where the court found there was no consent when the defendant smoked next to the plaintiff.

 At bottom, each element must be present for a civil action to lie for battery: (1) A touching in an offensive manner, (2) with either the intent to cause harm, or to cause insult or offense, or both, and (3) there was no consent to the touching.