

Facts:

Daniel heard that his neighbor Fred intended to sell his home to a minority purchaser. Daniel told Fred that Fred and his family would be injured if he did so. Fred called the prospective purchaser and told him that he was taking the house off the market.

Questions:

1. Will Fred prevail against Daniel in a suit for assault?
2. Will Fred prevail against Daniel in a suit for intentional infliction of emotional distress?

Example Answer:

1. No. All intentional torts require a volitional act with intent (i.e., intent to do the act, knowledge with substantial certainty that the act will occur, or transferred intent) to cause the act, which was in fact is the actual cause and proximate cause of the injury to the plaintiff. To establish an intentional tort, the Plaintiff must prove a wrongful volitional act, done by the Defendant with intent, that causes injury to the Plaintiff. Assault is an act, intended to cause apprehension of an imminent harmful or offensive contact that directly or indirectly causes reasonable apprehension of such contact. The fact pattern states that Fred and his family will be injured, but does not state that this will be imminent. Daniel's statements merely constitute a threat of future contact rather than an imminent harmful or offensive contact. Generally, words are not enough to constitute an assault because they cannot create a reasonable apprehension of imminent harmful or offensive contact.

2. Yes, if Fred is able to show that he suffered severe emotional distress. Infliction of emotional distress (IIED) is extreme and outrageous conduct that, intentionally or recklessly, causes severe emotional distress. The fact pattern seems to indicate that Daniel's conduct was extreme and outrageous and/or reckless. For intentional torts, a Plaintiff can recover nominal, compensatory, and punitive damages. Daniel must proof his case by a preponderance of the evidence.