**12.01 ASSAULT — ELEMENTS**

[Plaintiff] claims that [defendant] assaulted [him][her]. To establish this claim, [plaintiff] must prove that all of the following three things are more likely true than not true:

1. [Defendant] either acted with the intent to touch the plaintiff in a harmful or offensive way, or with the intent to make the plaintiff believe [he][she] was about to be touched in a harmful or offensive way;

2. [Plaintiff] reasonably believed [he][she] was about to be touched in a harmful or offensive way because of something [defendant] said or did; and

 3. [Plaintiff] did not [consent] [cause [defendant] reasonably to believe that the plaintiff had consented] to the acts of [defendant].

[I will now explain more fully some of the terms I have just used. (Insert Instructions 12.03A, B, C and D as appropriate.)]

If you decide all three of these things are more likely true than not true, [you must next decide whether the law gives the defendant a defense. I will tell you about possible defenses in a moment.][you must return a verdict for the plaintiff on this claim.]

**Comment**

Instruction 12.01 on the elements of assault is consistent with sections 21 and 29 of the Restatement (Second) of Torts. If the defendant acts intending to cause a harmful or offensive contact with the plaintiff, and if the plaintiff is put in imminent apprehension of such a contact, the defendant is liable for an assault even though the defendant acted with no feeling of hostility or ill will or enmity toward the plaintiff. *Taylor v. Johnston*, 985 P.2d 460, 464 (Alaska 1999).

An assault must put another in apprehension of an imminent harmful or offensive touching. A threat of touching sometime in the future is not an assault. Restatement (Second) of Torts § 29. In a case in which there is a contested issue about the imminence of the touching, a further instruction on that issue may be appropriate.

Lack of consent is an essential element of any claim for assault. Restatement (Second) of Torts § 13 cmt. d.