**12.02 BATTERY — ELEMENTS**

[Plaintiff] claims that [defendant] committed a battery against [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. The [defendant’s] act[s] resulted in a harmful or offensive touching of the plaintiff; 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 Instruction 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.]

**Use Note**

This instruction should be used in battery cases. Instruction 12.09 (Assault or Battery – Recovery) should also be given.

The third element should be given whenever the plaintiff's consent is at issue.

The instruction suggests that the trial court should more fully define "touching" (Instruction 12.03A), "offensive touching" (Instruction 12.03B), and "intent" (Instruction 12.03C). When these issues are not contested or the factual context is straight‑forward, the refinements of the definitions may not be necessary.

The bracketed material in the final paragraph provides a modification when the defendant asserts an affirmative defense.

**Comment**

Instruction 12.02 is consistent with the Restatement (Second) of Torts § 18 and *Taylor v. Johnston*, 985 P.2d 460, 464 (Alaska 1999).