Leichtman v. WLW Jacor Communications, Inc., 634 N.E.2d 697 (Ohio App. 1 Dist. 1994)

π: Leichtmann (antismoking advocate)
Ξ: WLW Jacor Comm. (radio co.); Furman (host); Cunningham (owner)

PH: (1) π filed complaint based in battery (+ invasion of privacy, violate state health reg.)
(2) Ξ filed motion to dismiss that trial court granted
(3) Appellate ct. reversed dismissal on battery claim.

F: π, an antismoking advocate, appeared on Ξ’s radio talk show to discuss smoking and one of the company’s other talk show hosts blew cigar smoke repeatedly in his face.

I: Has π stated a battery claim based on these facts? In other words, can being “hit” with smoke ever constitute a battery?

H: Yes. Smoke is tangible enough to constitute an offensive contact and intentional nature of act falls w/in definition of battery.

Rules/Rationale: (p. 46) (1) battery = intending to and causing harmful or offensive contact (2) contact which is “offensive” to a “reasonable sense of personal dignity” is offensive contact (3) “offensive” means “disagreeable or nauseating or painful because of outrage to taste and sensibilities or affronting insultingness” (4) Smoke (as “particulate matter”) can make contact and, here, blowing smoke in π’s face could be sufficiently offensive to be a battery. The amount of damages can be negligible (even $1) and still be a battery.

Evaluation: Court does not address validity of c/a for “smoker’s battery” (substantial certainty exhaled smoke will contact a non-smoker) or issue of passive or secondary smoke. Case is limited to its facts (deliberate act by Furman). Facts plead sufficient to suggest respondeat superior liability although court notes success on claim requires employee act w/in scope of authority and facilitate/promote employer’s business.