

Battery

The tort of battery is committed by D's positive and voluntary act that directly and intentionally or negligently brings about a harmful or offensive contact with the person of another

	Element	Definition
1.	D's act	<p>A. Positive act – not mere omission or passivity (<i>Innes v Wylie</i>)</p> <p>B. Voluntary – D must <u>consciously</u> bring about the bodily movement which results in the contact with the P</p>
2.	Directness	<p>Whether D's act, on its own, was sufficient to bring about the contact to the P? (<i>Hutchins v Maughan</i>)</p> <p>Was the D's act <u>on its own</u> sufficient to bring about:</p> <ul style="list-style-type: none"> Battery – contact with the person
	Intervening Acts	<p>A. Human actions (<i>Hutchins v Maughan</i>) Including actions of the P; except those taken reflexively and in self-defence (<i>Scott v Shepherd</i>)</p> <p>A. Natural forces (<i>Southport Corporation v Esso Petroleum Co</i>)</p>
3.	Burden of Proof	<p>P bears the burden to prove on the balance of probabilities all of the elements, other than fault. D bears the burden of proving that the trespassory act was NOT intentional or negligent (<i>McHale v Watson</i>)</p> <p><u>Exception:</u> Highway cases – P must prove fault on the part of D (<i>Venning v Chin</i>)</p>
	Fault	<p>A. Actual intention (<i>Williams v Milotin</i>)</p> <p>B. Deemed intention (<i>Williams v Milotin</i>) A reasonable person in the D's position would believe that a particular result was <u>substantially certain</u> to follow</p> <p>C. Recklessness Did the trespass occur, due to the recklessness of the D?</p> <p>D. Negligence The person, in undertaking the relevant actions, acted with less care than the care with which a reasonable person would have acted in the circumstances</p>
4.	Contact	<p>A. "The least touching of another" will constitute a battery (<i>Cole v Turner</i>)</p> <p>B. Can be via an instrument</p> <p>C. No need hostility (<i>Rixon v Star City</i>) Mere touching to get attention (i.e.) placing hand on someone's shoulder</p> <p>D. Implied consent (<i>Collins v Wilcock</i>) Consent to everything touching (i.e.) getting on a bus</p>



		<p>E. Exigencies of life – ordinary conduct Touching is <u>not</u> a battery if it is generally acceptable in the ordinary conduct of daily life (<i>Collins v Wilcock</i>)</p>
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