


Key:

 = optional statements of law, only apply when relevant to the facts

APPLY = apply the law to the facts

Red writing = authority from which statement of law has been obtained

Blue writing = facts of the case you can mention in your answer (markers love this!)

ASSAULT

1. Parties

2. Onus of Proof + Time Limitation

Since this **did not occur on a highway**, onus of proof is on P to prove the directness of this interference then shifts to D to disprove fault.

Since this occurred on a **highway**, onus of proof is on P to prove both the directness of this interference and the fault of D.


P has 3 years from ____ to bring an action as they suffered personal injury (LAA s11).


P has 6 years from ____ to bring an action as they suffered no personal injury (LAA s10).

3. Interference = Assault → “when one creates in another an apprehension of imminent harmful contact (s 245 Criminal Code)”

4.1 Was there a threat of imminent harmful contact?

The threat must be one implying imminent harm (**Zanker v Vartzokis**).

 Mere words can constitute an assault provided there is evidence of imminent harmful contact (**Slaveski v Victoria**).


 A conditional threat is an assault if the alternative is obedience to an unreasonable demand (**Police v Greaves**).

APPLY

4.2 Was there reasonable belief that the threat could be carried out?

The plaintiff must have reasonable belief that the defendant has the actual or present ability to carry out the threat (**Brady v Schatzel**).

 Plaintiff must be aware of the threat ∴ can't be asleep (**R v Phillips**).

 Apprehension does not equate to fear (**Brady v Schatzel**).

APPLY

4.3 Was the defendant at fault?

The defendant must be at fault, meaning that they intended to instil an apprehension of imminent harmful contact (**Rixon v Star City**).

APPLY

∴ This action would likely be (un)successful.

BATTERY

1. Parties

2. Onus of Proof + Time Limitation

Since this **did not occur on a highway**, onus of proof is on P to prove the directness of this interference then shifts to D to disprove fault.

Since this occurred on a **highway**, onus of proof is on P to prove both the directness of this interference and the fault of D.

P has 3 years from ____ to bring an action as they suffered personal injury (LAA s11).

P has 6 years from ____ to bring an action as they suffered no personal injury (LAA s10).

3. Interference = BATTERY → “unconsented and offensive physical contact, be it direct or indirect, is applied to one’s person (s 245 Criminal Code)”

4.1 Was there a direct application of force?

The force may be direct or indirect (s 245 Criminal Code).

The contact must be offensive and extend beyond what is accepted as an incident of everyday life (**Rixon v Star City**).

✎ The least touching of another in anger is battery (**Cole v Turner**).

APPLY

4.2 Was the contact done without the plaintiff’s consent?

The plaintiff must have neither expressly nor implicitly consented to the contact (**Horan v Ferguson**).

✎ In a situation where consent is implied, battery will occur if the contact extends beyond the scope of the implied consent (**Macnamara v Duncan**).

APPLY

4.3 Is the defendant at fault?

The defendant must be at fault, meaning that the interference was intentional or careless (**McHale v Watson**).

APPLY

∴ This action would likely be (un)successful.