

# SCAFFOLD/CASE LIST

## CONTENTS

1. BATTERY
2. ASSAULT
3. TRESPASS TO LAND / NUISANCE
4. NEGLIGENCE

## **Battery**

- Identify the main issue and talk about that.
- Damages available.
- Defences available.

### **1. A positive voluntary intentional (deliberate or negligent) act (*Morris v Marden*)**

- *direct and voluntary* – *Morris v Marden schizophrenic case*
- Can be deliberate – *MacNamara v Duncan* (AFL case)
- Can be reckless – *McHale v Watson* (12 year old injuring girl case)
- Can be negligent – *Williams v Milotin* → concurrent litigation, however better for plaintiff to be outside of act.

### **2. directly causing (*Scott v Shepherd*)**

- *Scott v Shepherd* (1773) → Defendant threw a lighted squib into a market place. Fell onto one man's stall who then chucked it away to avoid injury, landed on a second man's stall, he threw it away again and then it hit the plaintiff in the eye and blinded him → Could hold him liable for battery, said that it was a direct consequence of the plaintiff's action.

### **3. physical bodily contact /interference with the P (*Rixon v Star Casino*)**

- Was everyday contact within the realm of social interaction → implied consent (*Rixon v Star City Casino*)
- *Fagan* → continuing act.

### **4. without consent of the P: Consent is a matter for defence in Australia (*Rixon v Star Casino*)**

- inside or outside scope of ordinary social interaction.

### **5. Defences**

#### Consent

- *Secretary, Department of Health and Community Services v JWB and SMB* --> Consent is a claim of leave and license and onus is on defendant to prove that consent existed.
- *Medical Consent* → Reasonably adequate; *Rogers v Whittaker*
- *Marion's case* → bodily autonomy and integrity.

### Elements:

#### 1. Consent must be real and freely and voluntarily given (genuine)

- P must have knowledge sufficient to enable them to understand the inference to which they are consenting to: (*Chatterson v Gerson*)

#### 2. P must have the capacity to consent (come from a competent person)

- Minor capable of giving consent when achieved sufficient understanding (*Marion*)

#### 4. Must have knowledge

- *Papadimitropoulos v R (1957)* → spoke no English agreed to marry Defendant. → consented to sexual intercourse → marriage not valid → consent was given.

#### 3. D must not exceed the P's consent (must be in relation to act complained of)

- Consent to one act does not necessarily authorise another act of a different type (*McNamara v Duncan*).

#### 4. Consent must be lawful

- Cannot consent to unlawful acts

### Necessity

The defence of necessity may be available if interference with the goods was reasonably necessary to protect goods or persons from the threat of real and imminent harm.

- Actual situation of ***imminent danger*** or what seems to be so to a reasonable person; and
- The action taken must be reasonably necessary to protect life or property
- (*Southwark London Borough Council v Williams*)
- *NSW v McMaster* → shot a victim of home invasion running towards police officer. → held to be necessity and self defence.

### Self Defence

- May rely on SD under S52 of the CLA.
- S52(1) For unlawful conduct + s52(2) if person believes conduct is necessary to defend/prevent deprivation/protect property (own or someone else's)/prevent crim trespass and it is reasonable response in circumstances.
- *Norton v Hoare (1913)* → approved use of self defence in relation to written attack on character of defendant and his newspaper
- *Croucher v Cachia (2016)* → held unlawful contact in ss 52 and 53 of CLA to include conduct that is merely tortious