

TRESPASS TO THE PERSON: BATTERY, ASSAULT AND FALSE IMPRISONMENT

1. BATTERY

INTRODUCTION

Definition = a voluntary and positive act of the defendant which directly and intentionally or negligently results in contact with the plaintiff's person

Element 1: Positive and voluntary act

D's act of _____ was a conscious and willed act and it was not '**Not a mere passivity or omission**' and "**PASSIVE LIKE THE DOOR**" (*Innes v Wylie*) as it was clear OTF that D was not under duress and nothing indicated otherwise.

NOTE: D need not have intended to bring about the results to satisfy this element, D need only intend the action

Element 2: Contact

- **Manner of contact:** T, C & H "**the transmission of a force to the body of person will constitute battery**"
- **Degree of force:** need only be nominal **Holt CJ** in **Cole v Turner**, the least touching of others will constitute battery. **Collins v Wilcock**
 - No need for the infliction of force to be attended by hostility or anger in order for their to be battery **Lord Goff in In re F**
 - **Exception:** (People who move about in society impliedly consent to the sorts of inflictions of force that occur in everyday life) "**physical contact which is generally acceptable in the ordinary conduct of daily life**" "**Lord Goff in Collins v Wilcock and In re F**). Whether the contact in question is generally acceptable in the ordinary conduct of daily life "**must be considered in the context of the incident in dispute**".

Element 3: Directness

- Conduct must be direct, '**so immediately upon the act of the defendant that it may be termed as part of the act**' (*Hutchins v Maughan*)
- An intervening act can break the directness

c) Negligence calculus

- **Objective test:** D is not negligent unless, in the circumstances, a reasonable person would have taken precautions (*s 48(1)(c) Wrongs Act*)
- **FILL IN THE GAPS** In determining whether a reasonable person would have taken precautions, the following factors will be considered by a court (*s 48(2) Wrongs Act*):
 - **A) Probability of risk occurring**
 - It is very probable that a harm would occur as the act of _____ would result in _____ and that it is common sense that people are much more likely to _____ if _____. This would indicate that a reasonable person would have taken greater degree of care.
 - **The greater the probability of harm occurring, the greater degree of care a reasonable person would take (*Roads and Traffic Authority of NSW v Dederer*)**
 - **'There must not only be a reasonable possibility of its happening but also of injury being caused' (*Bolton v Stone*)**
 - **B) Gravity of consequences** –
 - The consequences, including P's _____, are serious. P would argue that it can be foreseen that if the risk of _____ eventuates, there will be serious harm, which would also support the notion that D falls short of care.
 - **The greater the seriousness of harm if the risk eventuates, the greater degree of care a reasonable person would take (*Paris v Stepney Borough Council*)**
 - **Court must account for whatever knowledge D had of P's particular susceptibility to risk (*Paris v Stepney Borough Council*)**
 - **Practicality of avoiding the risk** -
 - D is likely to be held liable for fall short of SoC because the cost of taking precautions is low in that he could have _____ to easily prevent that risk from eventuating (*Romeo*).
 - However, D could argue that it was not easy to avoid the risk because _____. He could also say that he did not have the power to _____-as it would result in _____.
 - **Where the cost of taking precautions is very expensive to prevent a risk that is unlikely to eventuate, the defendant is less likely to be held liable in negligence (*Romeo*)**
 - **The greater the burden involved in taking the relevant precautions, the less likely it is that the reasonable person would have taken such precautions (*Graham Barclay Oysters v Ryan; Romeo v Conservation Commission of the NT*)**
 - **Importance of social utility** – *Munro v Southern Dairies Ltd*
 - D may argue that he was only _____ (e.g. helping out) and _____. However, P would flag that D's act of _____ does not serve any important purpose and '_____' does not really benefit the public if it is balanced against the risk of _____ (*Watt*) therefore D should be liable (*Roman Catholic Church*)
 - **You must balance the risk against the end to be achieved ... the saving of life and limb justifies a considerable risk' (*Watt v Hertfordshire Council*)**

Limitation of Acts	No claim	<ul style="list-style-type: none"> • The time in which P can bring action begins from the date that the harm occurred • Negligence action is usually limited to six years (Limitation of Actions Act s 5(1)) • For personal injury, the limit is three years (Limitation of Actions Act s 5(1AA)) • In case of a progressive disease/ injury, time accrues from the date on which P discovered the injury (Limitation of Actions Act s 5(1A)) • May be extended in some case e.g. P was disabled (Limitation of Actions Act s 23)
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CONCLUDE: How successful will D be in establishing any relevant defence ?

Defences templates

Contributory negligence

D may use this partial defence (WA. S 26(1)) to argue that he should not be fully responsible.

Duty

He would use the same analysis to hold P liable for a part of the harm (WA s 62(1)) and argue that a reasonable would have _____.

Breach

P owes a DoC to herself and was supposed to take 'reasonable care' but she did not (Wrongs Act s 26(1)). Hence, D would establish that P was 'contributorily negligent in failing to take precautions herself' thereby breach is made out.

Causation

P did suffer damage partly 'as the result of her own carelessness' (WA s 26(1)) and contributed to the harm occurring. It is likely that can make out contributory negligence as P materially contributing to their own harm by refusing to rest and failing to wear her ankle support.

Apportionment

Apportionment of damages must be 'just and equitable' and reflect analysis (wrongs Act s 26(1)(b)). Since P is partly responsible, it may be fair that liable is shared between P and D where D is liable for _____-of the harm and the damage P has to pay will be reduced by _____.

Voluntary assumption of risk (Volenti)