

Consent

Friday, 24 April 2015

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CONSENT

- If the plaintiff consented to the act
 - P subjectively agreed to interference
 - Evidence
 - Onus falls on D to prove consent
- Consent - express or implied
 - Silence can imply consent
- Trespass must fall within the scope consented to
 - Example: consent to be in room for 50 minutes, not 5 hours
 - The consent subjectively desired by P

Consent is all about agreement

Consent must be genuine and voluntary

Vitiating factors:

- Fraud
 - Nature and quality of the act
 - Must be pertinent to the act - goes to the heart. Being misled = no consent to actual act
- Duress
 - Threat of physical force
 - Difference in power status
 - Emotional/economic duress

[Latter v Bradell]

- Maid and employer
- Maid got pregnant
- Employer made a doctor check if she really was pregnant
- Sued for battery (procuring)

HELD

- Minority good law: that there was no consent
- Maid was afraid of losing her job if she refused
- Economic duress

[Aldridge v Booth]

- Employer propositioned the woman for sex

- She would lose her job if she refused

HELD

- Economic duress
- No genuine consent

Consent in sport:

- Only if the act was not illegal in terms of the game's rules
- Difference between exercising skill in the spirit of the game and intentionally injuring someone

[McNamara v Duncan]

- High level contact sport, AFL
- After P lost possession of the ball, D ran up and elbowed the P in the head
- The force was so great that the P was unconscious for 10 days, suffered a skull fracture and has a minor permanent disability

D argued:

- This was a battery but his defence was that the P consented to the contact
- Impliedly consent to a whole range of battery and interferences that go beyond the game - that a little bit of foul play is agreed to

HELD

- Foul play is not agreed to
- Only consent to rules of the game - common kinds of interferences fall into this scope
- Something clearly foul play is not consented to
- Would be a battery regardless of intentional or carelessly done - not about maliciousness - this is clearly beyond an ordinary interference and is therefore a wrong
- May be applicable to a wider context

CONSENT AND MEDICAL PROCEDURES

[Chatterson v Gerson]

- Consent if the patient has been informed broadly of the nature of the intended procedure
- Not necessary to inform them of risks involved

- P was in a lot of pain due to an operation

- She consults a specialist in chronic pain
- D gave an injection to her
- P consents
- P suffers more from the injection
- P sues in battery, arguing that she was not told of the risks

HELD

- Consent is real - she was informed in broad terms of the nature of the intended procedure
- Here, she knew that the interference would involve an injection to alleviate pain
- Does not require further knowledge about the implications and risks
- Shallow consent is sufficient

[Rogers v Whitaker]

- Eye operation
- P was blind in one eye since childhood
- Undertook operation
- Became blind in both eyes

HELD

- Nature was informed
- Negligence requires DEEP, informed consent
- Sufficient if you are made aware of the nature of the interference - what is physically involved

Example: go to doctor, say that the injection will do x and they fail to tell you about the side effects --> there was consent (P argue that they did not know of the side effects and therefore there was no genuine consent)

Negligence	Trespass
Deeper, more informed consent	Shallow consent/level of informed

CONSENT - MINORS

[Marion's Case]

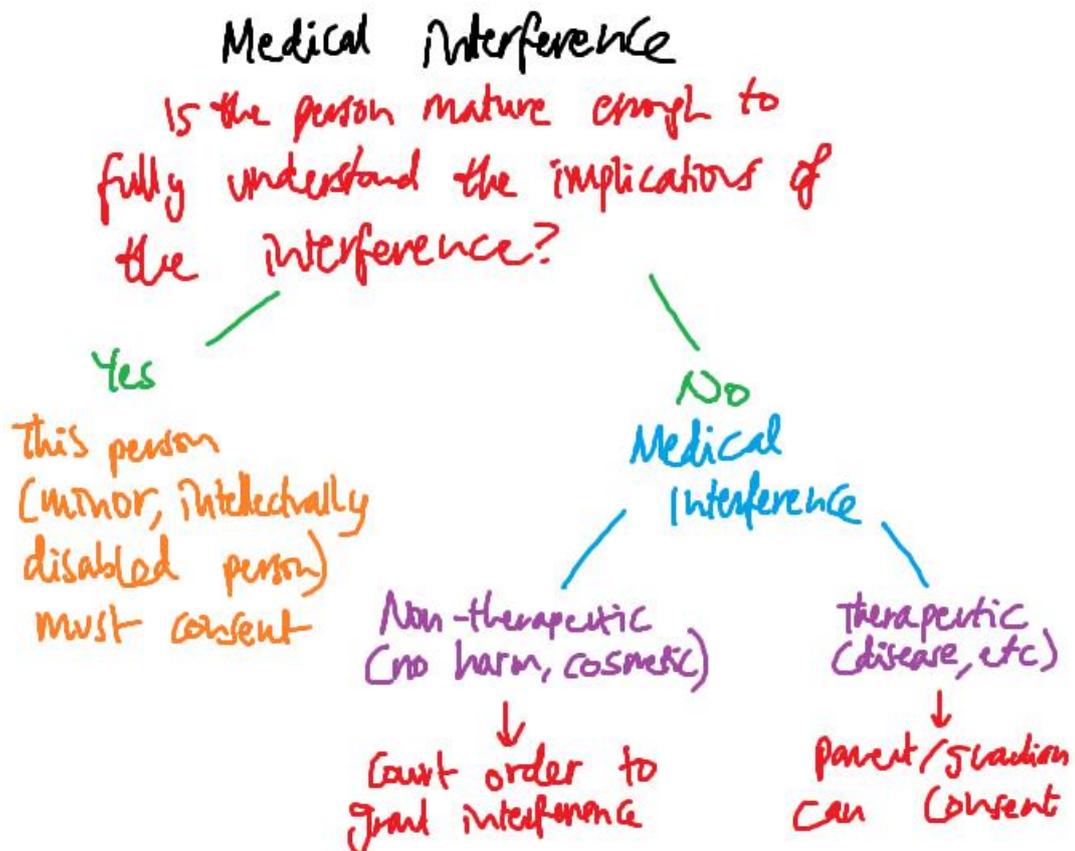
- Depends on level of maturity

- Capable of consent: achieves a sufficient understanding and intelligence to fully understand what is proposed
- If they are unable to consent on their own behalves (immature) then a parent or guardian can

- Sterilising young, intellectually disabled women
- Women's parents were consenting to these procedures

HELD

- No specific age of when a parent consents for a child
- Depends on maturity
- **Whoever is proposing to interfere: whether the person (not limited to minors) have reached the level of understanding and intelligence to enable them to understand fully what is proposed**
- Not yet reached maturity: parent/guardian can only give consent to therapeutic intervention
- Non-therapeutic - not a disease - must get a court order



REVOCAION OF CONSENT

- Unambiguous
- Communicated to D [Cowell]
- May be irrevocable if withdrawn during a dangerous or inconvenient time
- Can revoke consent before the interference

[Cowell]

- D was on a racecourse land
- Consent was revoked and no longer wanted P on the land

HELD

- Yes, consent can be revoked
- Must be unambiguous and clearly communicated to D
- Communication must be effective

Critical period

- Revocation is not operative during the critical period (when it is inconvenient or dangerous if revocation were to take place)
- Example: want to get off train, communicate this to driver - dangerous/inconvenient to allow them to get off immediately
- Consider legality