

## 1 Trespass to the Person

- Battery
- Assault
- False imprisonment

Common elements:

- They are actionable per se
    - You do not need to prove harm
  - Action of defendant must be **positive** and **voluntary**
  - **Fault:** there must be intention or negligence regarding the outcome of an act
    - Burden on D to disprove intention or negligence (*McHale*)
    - This is because sovereignty of person is so important (*Platt v Nutt*)
- Except in highway cases, where P bears burden (*Venning v Chen*)

P bears burden to prove all other elements

<b>Battery</b>	P has to prove, on balance, that D's <b>positive and voluntary</b> act <b>directly</b> and <b>intentionally or negligently</b> brought about harmful or offensive <b>contact</b> with P. It is actionable per se.	
	<b>Positive and voluntary</b>	<ul style="list-style-type: none"> <li>• <u>Positive</u>: not mere passivity (<i>Innes v Wylie</i>)           <ul style="list-style-type: none"> <li>○ Sometimes failure to act (omission) may be regarded as a positive act</li> </ul> </li> <li>• <u>Voluntary</u>: D must bring about the bodily movement which results in the contact with P           <ul style="list-style-type: none"> <li>○ E.g. Is not asleep/having a medical episode/bumped by someone else</li> </ul> </li> </ul> <p>D did not have to intend to bring about the results of the conduct</p>
	D's act of ... was (not) a positive and voluntary act, demonstrated by D's ... ( <i>Platt v Nutt</i> )	
	<b>Directness</b>	<ul style="list-style-type: none"> <li>• Was D's act, on its own, sufficient to bring about the injury (contact) to P?</li> </ul> <p>D's act of ... was direct, demonstrated by ... (<i>Hutchins v Maughan</i>)</p> <ul style="list-style-type: none"> <li>○ "In direct injuries, the D is charged in an action of trespass with having done the act complained of; in consequential injuries he is charged with having done something else, by reason of which the thing complained of has come about." (<b>Herring CJ</b>)</li> </ul> <p>It was consequential because: "P himself had to intervene by coming to the land and bringing his dogs thereon".</p>
	<b>Intervening acts</b>	<ul style="list-style-type: none"> <li>• Natural forces can constitute an intervening act (<i>Southport v Esso</i>)           <ul style="list-style-type: none"> <li>○ E.g. Tide, fire</li> </ul> </li> <li>• Human acts can be intervening acts, but will not be if they are done in self-defence or reflexively (<i>Scott v Shepard</i>)           <ul style="list-style-type: none"> <li>○ Lighted squib thrown into marketplace – thrown on two more times before exploding: person who originally threw the squib still liable</li> </ul> </li> </ul> <p>"The terror impressed upon Willis and Ryal excited self-defence, and deprived them of the power of recollection. What they did therefore</p>

			was the inevitable consequence of the D's unlawful act" (per <b>Gound J</b> ).
	<b>Fault</b>	Objective test ( <i>Williams v Milotin</i> )	<ol style="list-style-type: none"> <li>1. <b>Actual intention</b>: intentionally doing an act which a reasonable person would determine substantially certain to cause direct interference – regardless of whether the actual interference was intended or not; <b>or</b></li> <li>2. <b>Deemed intention</b>: recklessly doing an act that a reasonable person would believe that a particular result was substantially certain to follow; <b>or</b></li> <li>3. <b>Negligence</b>: performing an action with less care than a reasonable person would have taken in the circumstances</li> </ol> <p>NB: Burden of proof on D to disprove fault (<i>McHale</i>) except highway cases where the P must prove D was at fault (<i>Venning v Chen</i>)</p>
	<b>Contact</b>	<ul style="list-style-type: none"> <li>• Can be through physical conduct or an instrument (e.g. weapon/stick/spitting etc) (<i>R v Cotesworth</i>)</li> <li>• Allowing dog to repeatedly nudge someone can amount to battery (<i>Darby v DPP</i>)</li> <li>• Least touching sufficient (<i>Collins v Wilcock</i>) <ul style="list-style-type: none"> <li>○ "any touching of another person may amount to battery"</li> </ul> </li> <li>• Hostility is relevant: <ul style="list-style-type: none"> <li>○ "the least touching of another in anger is a battery" (<i>Cole v Turner</i>)</li> <li>○ <b>BUT</b> hostility is not required (<i>Rixon v Star City</i>). <ul style="list-style-type: none"> <li>▪ "A prank that gets out of hand, an over-friendly slap on the back, or surgical treatment by a surgeon who mistakenly thinks the patient has consented" (<b>Per Lord Goff</b> in <i>Re F</i>)</li> </ul> </li> </ul> </li> </ul> <p>Law of battery makes allowances for "physical contact which is generally acceptable in the ordinary conduct of daily life" (<i>Collins v Wilcock</i>)</p>	
	On the facts, D would (not) be liable for battery.		

### 3 Negligence

Under **s43** of the **Wrongs Act**, negligence means a failure to exercise reasonable care. To establish negligence P must prove, on the balance of probabilities, that his/her [harm] was caused by a breach of the duty of care owed by D.

The first step in establishing negligence requires P to prove that D owed them a DoC.

#### Duty of Care

P must prove there was a legal duty on the part of D to take reasonable care of the P.

<b>Does a DoC exist?</b>	<ol style="list-style-type: none"> <li>1. Settled law that a DoC <u>does</u> exist;</li> <li>2. Settled law that a DoC does <u>not</u> exist;</li> <li>3. No settled law on whether DoC exists. Apply the legal tests to see if a DoC is owed</li> </ol>
<b>Settled law</b>	<b>DoC:</b> <ul style="list-style-type: none"> <li>• Manufacturer and consumer</li> <li>• Employer and employee</li> </ul>

		<ul style="list-style-type: none"> <li>• Occupier and entrant</li> <li>• Doctor and patient (<i>Rogers v Whitaker</i>)</li> <li>• Teacher/school authority and pupil (<i>NSW v Lepore</i>)</li> <li>• Users of a highway</li> </ul> <p><b>No DoC:</b></p> <ul style="list-style-type: none"> <li>• Immunity for barristers and solicitors (<i>D'Orta-Ekenaike v Victorian Legal Aid</i> confirmed in <i>Attwells v Jackson Lalic Lawyers</i>)</li> </ul> <p>Parents where there has been no positive act (<i>Robertson v Swincer</i>)</p>
<p>As there is no settled DoC in this case, P must establish the risk of harm was reasonably foreseeable, having regard to the relevant salient features (<i>Sullivan v Moody</i>)</p>		