

TORTS

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Intentional torts

_____ lunged at _____. These facts give rise to assault and battery.

- Trespass to person and land are **actionable per se**, without proof of damage

Elements of trespass generally: (Marion's Case) (1992)

1. A positive voluntary (intentional/reckless/negligent) act
 - a) Intentional/deliberate act or negligent act directly causing interference
 - Williams v Milotin - child hit by negligent truck driving
 - b) No trespass without fault (intentional or reckless or negligent nature of D)
 - SMH: **Holmes v Mather**; Stanley v Powell; McHale v Watson
 - Trespass to person is strict liability and no ill-will needed, 'moral blameworthiness' - Ruddock v Taylor
 - **ONUS of proof of fault on defendant except in highway cases**
 - McHale v Watson;
 - Venning v Chin (ambiguous of what is highway - uni road?)
2. Which DIRECTLY
 - a) **Must be direct and not merely of consequence**
 - Reynolds v Clark (negligence - log analogy); Scott v Shepherd
 - b) Must be part of the act and not just immediately following. P or someone may break the chain.
 - (Hutchins v Maughan - Dog ate baits HELD intervening act) !
 - c) Does not require physical contact between D/P (Scott v Shepherd => threw firework HELD unbroken chain of events)

3. Interferes with the plaintiff (person, land or goods)
4. Is actionable PER SE - damage is not an element of trespass

Cases:

Stanley v Powell, Holmes v Mather, Mchale v Watson, Scott v Shepherd

Weaver v Ward; Morriss v Marsden - D 'catatonic schizophrenic and certifiable lunatic' attacked the injured plaintiff charged assault and battery. trespass. (intention does not need D's knowledge)

McNamara v Duncan - intentional striking of plaintiff, did not need to mean to cause him harm. Striking the D was intentional 'meant to do it'. Breached.

Recklessness - consequences uncertain, but likely results should have been foreseen by the defendant and ignores that risk. **Vallance v The Queen** (1961).

- Reckless is D should have known of risk, negligence is measuring up to standard of what a reasonable person would have done

Objective test needed (McHale v Watson) - reference must be made to what a reasonable person would have done.

Negligent Trespass:

- Can be negligent trespass to person **NSW v Knight**
- Williams v Milotin - trespass to battery may be committed by a negligent act
 - Running down of cyclists and pedestrian cases
- Extended to passengers in car accidents - **Parsons v Partridge**
- McHale v Watson
- Platt v Nutt (NSWCA)

Battery:

In this case, there had been an intentional application by A without B's consent.

1. A positive Voluntary intentional (deliberate or negligent) act!
2. Directly causing!
3. Physical bodily **contact**/interference with the P: Cole v Turner, Rixon v Star City

“grabbed” indicates act, intention and directness all in one, also perhaps hostility
Negligent battery is a more efficient answer than negligence - which would require a full consideration of s 5B and s 5D and defences (at least contributory negligence)

McHale test:

1. A positive voluntary intentional (deliberate or negligent) act
 - Can be a mere omission to act → Fagan
 - Wilson v Pringle: It is the act (contact), not the injury, which must be intentional.
 - Morriss v Marsden - schizophrenic can still have intention, don't need knowledge of wrongdoing.
 - Deliberate striking during AFL - McNamara v Duncan

- A. Hostility not needed: Rixon v Star City
 - Cole v Turner “The least touching of another in anger” is battery, but if two meet in a narrow area, and touch gently not battery.
 - Hostility is necessary Wilson v Pringle / not necessary Collins v Wilcock

2. Directly causing... Reynolds v Clark (negligence - log analogy); Scott v Shepherd
3. Physical bodily contact / interference with the plaintiff
 - **Unwanted or offensive contact** outside accepted usages and accidental contacts of daily life: Marion's case
 - Spitting in someone's face => R v Cotesworth
 - Collins v Wilcock - ANY touching however slight could be battery'
 - May be an act short of touching (taking something from P's hand): Fisher v Carrousel; Pursell v Horn (threw boiling water, scalding him)
 - Unwanted photo of patient in hospital (shining light in someone's eyes could be battery even if there was no damage to eyesight -) Kaye v Robertson
 - P may not be conscious of contact at the time Chatterton v Gerson
 - Can be inflicted through a medium/weapon controlled by acts of D (**Fagan**)

- A. Implied consent: **Collins v Wilcock**
 - Everyday life exposes people to the risk of bodily contact
 - Engaging attention is fine Rixon v Star City - only reasonably necessary Hutchinson v Fitzpatrick - crash-tackling

Assault:
