

Assault

1. an *intentional* (or negligent) act or threat of the defendant,
2. which *directly* causes,
3. *reasonable apprehension* in the plaintiff of an *imminent physical interference or contact* with their person (or a person under their control),
4. done without *lawful justification*

Directness has the same meaning as it does in battery. But it has to so closely follow the defendants act that it can be part of the act. This act or threat must be intentional, that is the defendant must intend to create a reasonable apprehension in the mind of the plaintiff and that is a subjective issue (the mind of the plaintiff). Not necessary to prove the defendant actually intended to carry out the threat. Could be a gesture or act, doesn't have to be verbal. We must apply a common knowledge approach to a threat, there has to be a possibility.

1. Direct Act or Threat of Physical Interference by the Defendant

1.2 Means to carry out the threatened contact

Stephens v Myers (1830) 4 C & P 349, 172 ER 735

Resolved at meeting that the defendant would be removed from the hall, defendant said he will pull the plaintiff from the chair. Approached the plaintiff with clenched fists, before he got there, church warden stopped him.

HELD: "It is not every threat when there is no actual personal violence that constitutes an assault, there must, in all cases, be the means of carrying that threat into effect". Jury found for the plaintiff, as the threat was likely to be carried out. Awarded 10cents damage.

R v St George (1840) 9 C & P 483, 173 ER 921

Defendant pointed an unloaded gun. Any pistol, whether loaded or not, is a threat, if the plaintiff believes that it is loaded. Reckless conduct may be enough.

1.3 Words as Threats

Mere words without an act or gesture is enough, providing that they intended to cause an imminent physical interference or contact with their person.

Barton v Armstrong [1969] 2 NSW 451

High profile politician threatened the plaintiff to sign deals. Some of the threats made over the phone. HELD the threats over the phone could give rise to a reasonable apprehension, even if they were not in the vicinity. They were not mere words, they constituted distinct threatening acts. Looked to the circumstances, it was quite realistic.

1.4 Conditional Threats

Tuberville v Savage [1669] 1 Mod 3, 86 ER 684

Statement was made as T put his hand on his sword after savage made fun of him. "If it was not a zize time I would not take such words from you". Savage attacked and T lost an eye, T brought action against S. S said it was a zize as there was no action which could be brought so no assault. A conditional threat, not capable of constituting an assault does not apply.

Police v Greaves [1964] NZLR 295

Police officer exercising his duties. Defendant threatened police officer with knife, police man either stop carrying out his duty or be stabbed. It was held that the defendants words were enough to constitute an assault. But the plaintiff needs to be aware of the threat. The apprehension must also be a reasonable one.

1.5 Reasonable Apprehension of Imminent Physical Interference

Barton v Armstrong [1969] 2 NSW 451

Relies on the threats being made. Even if the apprehension was to occur sometime in the future.

Zanker v Vartzokas (1988) 34 A Crim R 11

Plaintiff and defendant in a car together. Defendant said he will take you to friends house and fix you up. The threat was imminent, as defendant continued towards the house. Circumstances of the case must be taken into account. It must also follow immediately. Circumstances were she was not able to move, she did not have a suitable option of escaping.