

Torts To The Person

Battery

*“A **voluntary and positive** act of the defendant which **directly and intentionally** or **negligently** results in **contact with the plaintiff’s person** without **lawful excuse**”*

An Act of the Defendant:

Voluntary:

Was the act of the Defendant a **willed act**?

- Look at whether the act was a **conscious decision**
- If the act was **reflexive** or done **unconsciously**, then there is **no willed act** and hence **no voluntariness**

Positive:

Was the act of the Defendant an act that **aided the trespass in a positive direction**?

- The Defendant must have **positively** and **purposely acted**
- Anything else such as **accidental** or **intentional omission** **cannot** be counted as a **positive act**

Directness:

*“An injury is said to be direct when it **follows so immediately upon the act of the defendant that it may be termed part of that act.**”*

Herring CJ in *Hutchins v Maughan*

Intervening Acts as a Defence:

1. Human actions such as choosing a certain path that will lead to battery can constitute an intervening act

Myers v Soo

2. Reflexive actions and those taken in self-defence can also constitute as an intervening act

Scott v Shepherd

3. Natural forces also constitute an intervening act when it is the sole reason an act resulted in a battery

Southport Corporation v Esso Petroleum Co

Fault:

“The defendant must have **intended, or have been careless with regard to, the outcome of his actions not just the actions themselves.**”

Meaning of Intention:

1. Actual Intention
2. **Doctrine of Substantial Certainty:** If a **reasonable person** in the Defendant’s position would believe that **a particular result was substantially certain to follow**, then the Defendant **is deemed to have had intention**
3. **Recklessness:** A person that knows that an **outcome might ensure** from particular actions, and **goes ahead to undertake those actions** anyway, is **deemed to have had intention**

Meaning of Negligence

Where the person, in undertaking the relevant actions, acted with **less care than the care with which a reasonable person would have acted in the circumstances**

Unlawful or Prohibited Contact with a Person:

The transmission of **any force to the body of a person** will constitute battery.

“The **least touching of another** is sufficient”

Coles v Turner

“The fundamental principle, plain and incontestable, is that every person’s body is inviolate. ...**any touching of another person, however slight, may amount to a battery**”

Lord Goff in *Collins v Wilcock*

“There is **no need for the infliction of force to be attended by hostility or anger** to constitute battery”

Lord Goff in *Re F (Mental Patient: Sterilisation)*

Battery can also include indirect transmission of forces such as setting traps.

Exigencies of Life Defence:

There is a general exception in respect of “**physical contact which is generally acceptable in the ordinary conduct of daily life**” as a defence to counts of battery

Lord Goff in *Collins v Wilcock*

1. Police officer grabbing the arms of someone without lawfully arresting those people counts as battery, due to the fact that it was physical restraint. Also highlights that police are treated as normal citizens until they execute their authoritative powers

Collins v Wilcock

2. Security officer placing hand on person to simply ask a question does not count as battery, as it is a generally accepted ordinary conduct not only in his workplace but also life in general

Rixon v Star City Council

Assault

*“A **voluntary and positive** act of the defendant which **directly and intentionally** or **negligently** causes the plaintiff to **reasonably apprehend imminent physical contact** without **lawful excuse**”*

An Act of the Defendant:

Voluntary:

Was the act of the Defendant a **willed act**?

- Look at whether the act was a **conscious decision**
- If the act was **reflexive** or done **unconsciously**, then there is **no willed act** and hence **no voluntariness**

Positive:

Was the act of the Defendant an act that **aided the trespass in a positive direction**?

- The Defendant must have **positively** and **purposely acted**
- Anything else such as **accidental** or **intentional omission cannot** be counted as a **positive act**

Words and Acts:

The use of words in can render a conduct that would otherwise be threatening unthreatening, and also the reverse

1. Acting in a threatening manner, but then saying words that effectively mean you won't harm them for a particular reason, suffices in negating the threatening act

Tuberville v Savage

Directness:

The threat must be to make **direct** contact, and not to make **indirect** contact

“An injury is said to be direct when it follows so immediately upon the act of the defendant that it may be termed part of that act.”

Herring CJ in *Hutchins v Maughan*

Intervening Acts as a Defence:

1. Human actions such as choosing a certain path that will lead to assault can constitute an intervening act

Myers v Soo

2. Reflexive actions and those taken in self-defence can also constitute as an intervening act

Scott v Shepherd

3. Natural forces also constitute an intervening act when it is the sole reason an act resulted in a assault

Southport Corporation v Esso Petroleum Co

Conditional Threats:

Conditional threats are only lawful if:

1. The condition precedent is one to which the threatener has a legal claim of right?
2. If the physical conduct that is threatened were carried out to assert the claim of right, would it be lawful?

Rozsa v Samuels

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“The defendant must have **intended, or have been careless with regard to, the outcome of his actions not just the actions themselves.**”

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Meaning of Negligence

Where the person, in undertaking the relevant actions, acted with **less care than the care with which a reasonable person would have acted in the circumstances**

Apprehension of Imminent Contact:

There must be a **reasonable apprehension** of **imminent contact**.

Reasonable Apprehension:

1. Look at the **actual** or **apparent present ability** of the Defendant in carrying out the threat; if there is minimal ability, then the apprehension cannot be said to be reasonable. Note that **this is just from the plaintiff's view**, and **not from a reasonable person's** point of view

Imminent Contact:

2. Continuing apprehension is a possibility that refreshes the fear of imminent contact, but only if the Defendant can exercise certain powers over the plaintiff

Zanker v Vartzokas