

# Torts Case Notes

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## 1. Trespass to Land

Bernstein of Leigh (Baron) v Skyviews & General Ltd – Queen’s Bench	
Issue	Flying over land – trespass?
Facts	Skyviews flew over Bernstein’s home, took a photo. Skyviews tried to sell the photo to Bernstein, who sued for trespass into his airspace.
Held	Flying over the land did not constitute trespass
Reasoning	Balance rights of owner and rights of general public Owner’s right to airspace cannot be infinite, would lead to imbalance
Ratio	An owner’s right to their airspace is limited to a certain height that is necessary for ordinary use and enjoyment.

Bocardo SA v Star Energy UK – UK Supreme Court	
Issue	Drilling under land – trespass?
Facts	Star drilled 3 pipelines under Bocardo’s land. Petrol was owned by the UK government. Bocardo sues for trespass because did not seek his consent before drilling.
Held	Drilling under land did constitute trespass
Reasoning	The government only owned the petrol, not the surrounding land.
Ratio	Intrusion into the subsoil constitutes trespass even if it does not interfere with the ordinary and reasonable use (or potential use) of the plaintiff’s land.

Halliday v Nevill – HCA	
Issue	Police officer arresting on open driveway – trespass?
Facts	Police officer arrests a man on the driveway of another person's home. The officer did not seek owner's permission before entering and making an arrest.
Held	Did not constitute a trespass
Reasoning	An open, unobstructed driveway does not indicate that entry is forbidden. This gave officer and implied license to enter.
Ratio	A police officer making an arrest on someone's open driveway is not a trespasser.

## 2. Trespass to the person

Rixon v Star City – NSW Court of Appeal	
Issue	Tapping on shoulder – battery?
Facts	Rixon plays at Casino even though there was an exclusion order against him. Casino employee put a hand on his shoulder when asking him to identify himself, Rixon sues for battery.
Held	Did not constitute a battery
Reasoning	Shoulder tap is a generally acceptable way of gaining someone's attention in normal life Presence/absence of hostile attitude is not relevant when assessing whether something is battery
Ratio	Ordinarily acceptable behaviour in everyday life is not battery

Giumelli v Johnston – WA Supreme Court	
Issue	Battery in sport – consent?
Facts	Parties are AFL players on opposing teams, they collided in a permitted 'hip and shoulder' bump. However, immediately before the collision, the defendant raised his elbow into the plaintiff's cheekbone, which is against the rules.
Held	The raised elbow did constitute battery
Reasoning	Player of AFL does not consent to the application of force outside of the rules of the game
Ratio	In instances of sport, players are only assumed to consent to applications of force that are within the rules of the sport

Connex Trains v Chetcuti – VIC County Court	
Issue	Intention and assault
Facts	Chetcuti instigated altercation with 2 ticket inspectors, then spat in the face of one inspector before fleeing. Inspectors chased the plaintiff, plaintiff fell and fractured his wrist, plaintiff sued the employer for assault
Held	Did not constitute a battery
Reasoning	Defendants did not have subjective intention to create apprehension in the plaintiff's mind, the apprehension suggested by the trial judge (fear of imminent physical harm) was not objectively reasonable
Ratio	The defendant does not need to intend to carry out the threat of violence in order for there to be an assault, but they need to have the means of carrying out the threat The plaintiff needs to reasonably believe that the threat is imminent and will be immediately carried out