

LAW5003: Principles of Torts

Trimester 2 2025 Monash Uni JD

TRESPASS TO THE PERSON

Battery and assault are two forms of trespass to the person in tort law. An assault is an act by which a person intentionally or perhaps recklessly causes another person to apprehend the immediate infliction of unlawful force upon their person; a battery is the direct unlawful physical application of force.

BATTERY

CAUSE OF ACTION

The elements of battery include;

- a *positive act*;
- *direct application of force*
- *unlawful touching or offensive contact*
- *fault of the defendant*.

[Define Battery] Battery is the intentional offensive or unlawful contact with another person's body without consent. As trespass to the person is actionable per se, the plaintiff need not have suffered any injury to prevail.

[Insert what is the relevant bodily contact on the facts]

[To find battery] For battery to be made out, the following elements must be satisfied, that the conduct must be a positive and voluntary act, directly causing unlawful or offensive contact, involving fault through [intention, recklessness, or negligence].

Element	Write:
Positive and Voluntary Act	<p>[Insert Act]</p> <p>[ATF] This was a voluntary positive act, directed by defendant's own conscious mind, and was not an omission or passive act. (<i>Fagan</i>)</p>

Interference	<p>Any unwanted contact, however slight, may amount to unlawful or offensive touching as the interference element of battery. <i>(Collins)</i></p> <p>[ATF]</p>
Directness (can be through instrument <i>(Fagan)</i>)	<p>[Contact] was a direct result of [the act by D]. <i>(Hutchins, Scott)</i></p> <p>Herring CJ in <i>Hutchins v Maughan</i> ‘to constitute a trespass ... the injury should ... be direct and not merely consequential. An injury is said to be direct when <i>it follows so immediately upon the act of the defendant that it may be termed part of that act</i>; it is consequential on the other hand when by reason of some obvious and visible intervening cause, it is regarded, not as part of the defendant’s act, but merely as a consequence of it.”</p> <p>[Intervening Acts]</p> <p>→ Natural forces <i>Esso (shipping oil)</i> natural forces can constitute an independent act.</p> <p>→ Acts taken reflexively or in self-defence <i>Scott (fireworks)</i> Although human acts can be intervening acts, they are not likely to be if they are undertaken reflexively or in self-defence.</p> <p>→ Human Actions <i>(Myer)</i></p> <p>It is about determining whether the injury flows so immediately from D’s act that it might properly be deemed part of the act rather than merely consequential upon it. It could be asked in terms of whether D’s act on its own brought about the injury or whether there was an intervening act.</p>
Fault	<p>[Defendant] must disprove fault in intention, recklessness or negligence. <i>(McHale, Ouhammi)</i></p> <p>[Intention] For intention to be made out, it must be proved that the defendant intended the interference by wilfully intending to apply force and touching [the plaintiff]. <i>(Williams, Collins)</i> The defendant does not</p>

	<p>need to intend to cause harm as battery is a tort that is actionable per se. <i>(Collins, Carter)</i></p> <p>[ATF]</p> <p>[Recklessness] Reckless indifference can establish fault, where there is a conscious disregard of the consequence of the conduct or, lack of care or reckless indifference for the foreseeable physical interference. <i>(R v Ireland)</i></p> <p>[ATF] It is reasonably foreseeable that [conduct] could lead to [injury/collision with P]. A reasonable person [in the position of the D] would believe that a particular result/the collision was substantially certain to follow.</p> <p>[Negligence] Fault in negligent battery still requires directness. Negligence requires [the defendant] to have acted with less care than a reasonable person would have acted with in the circumstances.</p>
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DEFENCES

1. Consent

D will have a defence against an act which would constitute [a trespass to the person] if D can prove, OBP, that P has consented to [that act].

Per *Marion's Case*, consent must be obtained from the person who has legal authority to consent and relate to the specific act in question.

1.1 Form and Scope of Consent

Express Consent: D will argue that P expressly consented to the act by [piece of writing, orally that expressly consents to act eg/ medical procedure]. D will argue that D's conduct fell within the scope of that which is consented to since [reasons] (*McNamara v Duncan*).

Scope: However, P will argue that simply because they consented to some degree/kind of [trespass to their person] doesn't mean they consented to all kinds of trespass to their person.

- Sport: P gave consent to the level of battery resulting from actions falling within the rules and usages of the sport (*McNamara v Duncan*).
- Medical Cases:
 - *in the case of a consent given to a medical procedure, the consent would be real (for the purposes of the tort of battery) if the patient has been informed in broad terms of the nature of the procedure which was intended (Chatterton v Gerson)*
 - *It was not necessary, in order for consent, in this context to be genuine, that the defendant have outlined the risks involved in the procedure (Chatterton v Gerson)*
 - *In medical procedures, for consent to be valid, patient must be advised in broad terms of the nature of procedure to be performed (but not the risk) (Rogers v Whitaker)*

Implied Consent: D will argue that P's actions of [actions] implied that they consented to the trespassory act. D will argue that D's conduct fell within the scope of that which is consented to since [reasons] (*McNamara v Duncan*).

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1.2 Consent must be genuine – real (voluntary) and not vitiated

1.2.1 Voluntary Consent (Don't include authorities)