

# TOPIC 2: BATTERY and SELF-DEFENCE

## Overview

### Battery definition

- a voluntary and positive (and/or intentional, reckless and/or negligent) act that directly causes offensive physical contact with another person.

### What is the interest protected by the tort of battery?

- Exists to protect the interest of bodily integrity and/or the right not to be touched

### Elements of Battery (onus of proof on plaintiff)

1. A positive and voluntary act
  - a. Positive Act (so not an omission)
  - b. Voluntary (not a reflex)
2. That Directly causes
  - a. A direct interference with the plaintiff's interests
3. Offensive
4. Physical Contact
5. With the plaintiff
6. Actionable per se

### Fault (Onus of Proof on Defendant)

7. Disprove fault

### Damages

8. Assessing Damages

## Exam Application

### Introduction

[The Defendant may be liable for the tort of battery if, on the balance of probabilities, the Plaintiff establishes that the Defendant committed a positive and voluntary act which directly caused offensive physical contact with the Plaintiff, and that such contact was intentional, reckless, or negligent, and occurred without lawful justification.]

<p><b>1. Positive and Voluntary act</b></p>	<p><b>YES PVA:</b>  [On the facts, D's conduct constitutes a positive and voluntary act, as their act of [<i>insert action e.g. punched</i>] was directed by the defendant's conscious mind.]</p> <ul style="list-style-type: none"> <li>• <b>Self-induced AND Delusional State:</b> if in a delusional state the act is still voluntary so long as it was directed by the defendant's conscious mind (<b>Fede v Gray</b>)</li> </ul> <p><b>NO PVA:</b>  [On the facts, D's conduct would not constitute a positive and voluntary act, because it was not directed by their conscious mind [e.g. <i>reflex, unconscious, passivity or a failure to act</i>].]</p> <p><b>HOSTILITY:</b> according to <b>Fede v Gray</b> hostility is not a requirement for voluntariness only that the act was directed by the conscious mind</p>
<p><b>2. Direct Interference</b></p>	<p><i>Battery requires a direct interference with the plaintiff's interest. There must be a direct link between the defendant's conduct and the contact with the plaintiff.</i></p> <p><b>Causation: PREFERRED APPLICATION</b></p> <ul style="list-style-type: none"> <li>• Was the defendant's action a direct cause of the contact with the plaintiff?</li> <li>• Was the defendant's action the only legal cause of the contact?</li> </ul> <p><b>YES CAUSATION: ONLY LEGAL CAUSE</b>  [On the facts, D's act of [<i>insert act</i>] was the only legal cause of the contact with the plaintiff. Therefore, D's act directly interfered with the plaintiff's interests.] <b>COME BACK TO</b></p> <p><b>YES CAUSATION: THIRD PARTY</b>  [While there was third party intervention in the form of [<i>insert intervention</i>], given the third party acted out of necessity and self-preservation in order to [<i>insert reason e.g. protect from fireworks</i>], D's act remains a direct interference because [<i>insert reason maybe 'but for'????</i>] (<b>Scott v Shepherd</b>) ]</p> <p><b>NO: NAI -&gt; Natural Forces</b>  [On the facts, D's act of [<i>insert act</i>] was not the sole legal cause of the contact with the plaintiff. The natural forces of [e.g. the tides or wind] causally contributed to the contact to the plaintiff (<b>Southport Corporation v Esso Petroleum Co Ltd</b>) and therefore causation was interrupted. Hence, D's act did not directly interfere with the plaintiff's interests.]</p> <p><b>ADDITIONAL CONSIDERATIONS:</b></p> <ul style="list-style-type: none"> <li>• In addition to causation, other approaches of determining directness have been contemplated.</li> <li>• <b>Temporal:</b> is there temporal immediacy between the conduct and the contact?</li> <li>• <b>Intention:</b> did the defendant intend to make contact with the plaintiff?</li> </ul>

<p><b>3. Offensive</b></p>	<p><b>CIRCUMSTANTIAL CONSIDERATIONS:</b>  [On the facts, [<i>insert specific social circumstance and why it would or would not be acceptable to do what D did</i>] ]</p> <p><b>CONCLUSION</b>  [Therefore, D's conduct of [<i>insert conduct</i>] would be considered offensive as it goes beyond what is generally acceptable in the ordinary conduct of daily life (<b>Rixon v Star City</b>).]</p>
<p><b>4. Physical Contact</b></p> <p><b>5. With the Plaintiff</b></p>	<p>[For battery to be established, physical contact with the plaintiff must have occurred (<b>Carter v Walker</b>)]</p> <p><b>D touches P directly:</b> [On the facts, physical contact with the plaintiff has occurred in the form of [<i>insert contact made and how</i>].]</p> <p><b>OR</b></p> <p><b>If through a medium:</b> [Even though the defendant did not physically touch the plaintiff themselves, their use of [<i>insert weapon or firework</i>] still amounts to physical contact (<b>Scott v Shepherd</b>) ]</p>
<p><b>6. Actionable Per Se</b></p>	<p><b>IF NO HARM SUFFERED</b></p> <p>[On the facts, the Plaintiff has not demonstrated damage, as [<i>insert lack of damage e.g. no physical injury was suffered</i>]. Nevertheless, because battery is actionable per se, the Defendant may still be liable provided their positive and voluntary act resulted in offensive physical contact with the Plaintiff.]</p>
<p><b>7. Fault</b></p> <p>Utterly without fault test</p> <p><u>AND</u></p> <p>Fault-based standard</p>	<p><b>1. UTTERLY WITHOUT FAULT test</b></p> <p>[The defendant may argue they are utterly without fault on the basis that their contact with the plaintiff was either involuntary or the result of an inevitable accident (<b>Weaver v Ward</b>).]</p> <p>[On the facts, [<i>insert why it was or was not an inevitable accident or involuntary</i>].]</p> <ul style="list-style-type: none"> <li>● <b>Involuntary:</b> <ul style="list-style-type: none"> <li>○ “Directed by a conscious mind (<b>Fede v Gray</b>)”</li> <li>○ Very high threshold - Usually assumed by courts</li> <li>○ Self-induced hallucination = voluntary (<b>Fede v Gray</b>)</li> <li>○ Sleep walking, automatism = involuntary</li> </ul> </li> <li>● <b>Inevitable accident:</b> <ul style="list-style-type: none"> <li>○ The exercise of ordinary care and caution on the defendant's part could not possibly have prevented the physical contact (<b>Weaver v Ward</b>)</li> </ul> </li> <li>● <b>Consider:</b> <ul style="list-style-type: none"> <li>○ <i>Was it directed by D's conscious mind?</i></li> <li>○ <i>Was the act beyond D's control?</i></li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ <i>Could a reasonable person have avoided it?</i></li> <li>○ <i>Was there any intention, recklessness, or negligence?</i></li> <li>○ <i>Was the contact caused solely by an external factor?</i></li> </ul> <p>[Therefore, the utterly without fault test [is/isn't] likely to succeed as the defendant's action [was/not] an inevitable accident OR involuntary.]</p> <p><b>2. FAULT-BASED standard</b></p> <p><b>Intentional:</b></p> <ul style="list-style-type: none"> <li>● [D [did/didn't] intend for their act to result in offensive physical contact with P as they [insert action/thought/dialogue]. Therefore, intention [is/isn't] likely to be satisfied.]</li> </ul> <p><b>Reckless:</b></p> <ul style="list-style-type: none"> <li>● [D [should or could not] have foreseen the possibility that their act of [insert act] would result in offensive physical contact with P as [insert reason] ]</li> </ul> <p><b>Negligent:</b></p> <ul style="list-style-type: none"> <li>● [D [did/didn't] owe a duty of care to P and was negligent as to the possibility their act would result in offensive physical contact with P.]</li> </ul>
<p><b>8. Damages</b></p>	<p>What damages are the court likely to find?</p> <ul style="list-style-type: none"> <li>● Compensatory (tangible harms) <ul style="list-style-type: none"> <li>○ Economical -&gt; economically quantifiable (e.g. medical bills)</li> <li>○ Non-economical -&gt; not economically quantifiable but still tangible (e.g. physical pain)</li> </ul> </li> <li>● Aggravated (e.g. hurt to feelings)</li> <li>● Nominal (acknowledge legal wrong when no harm suffered)</li> <li>● Exemplary (egregious wrong doing -&gt; punish)</li> </ul>
<p><b>9. Conclusion</b></p>	<p><b>YES LIABLE:</b> [On the balance of probabilities, the court is likely to find the D liable for the tort of battery as all elements have been established.]</p> <p><b>NOT LIABLE:</b> [On the balance of probabilities, the court is not likely to find the D liable for the tort of battery as [insert unsatisfied element e.g. fault] was not established.]</p>