

TTP: BATTERY

RULE: A voluntary and positive act of the D which directly and intentionally or negligently results in contact will be constitute a battery

SCRIPT: To prove battery, the P, ____, must prove all elements of the tort of battery except fault, on the BoP. The plaintiff ____ must prove that the D ‘s voluntary and positive act directly and intentionally or negligently resulted in contact with the P’s person (*Cole v Turner; Innes v Wylie*). The general rule (*Mchale v Watson; NSW v Ouhammi*) is that P bears the burden of proving all elements of the tort of trespass except for fault (intention or negligence). The burden falls on D to disprove fault on the balance of probabilities.

Exception for road accident cases (*Venning v Chin*) – P bears burden of proving all elements

<u>RULE</u>	<u>SCRIPT</u>
<p>Element 1: Bodily contact without consent</p>	<p>The P, ____, must prove that there was some form of bodily contact or touching, in order for battery to be made out, provided there was intention behind it (<i>Coles v Turner</i>). The least touching of another is sufficient (<i>Coles v Turner</i>).</p> <p>The D, ____, may argue that the conduct is “generally accepted in the ordinary conduct of daily life” (<i>Rixon v Star City</i>)</p> <p>The D may argue that he or she did not touch the P’s body, he/she only used [the object] to touch the P, but the P will raise that battery does not need to be ‘hand to hand’ (<i>Pursell v Horn</i>) and the force was transmitted from the body of the D and thus battery can be made out. Also, “the least touching of another person will constitute battery” (<i>Cole v Turner</i>) and [the act of the D] is arguably more than that.</p> <p>The D will also argue/it is unclear that [the D’s act] does not accompany a degree of hostility or anger since [facts], but the hostility is not a necessary element in battery (<i>In re F</i>).</p> <p>EXAMPLES:</p> <ul style="list-style-type: none"> • D angrily bumping someone out of the way (<i>Cole v Turner</i>) • D grabbed P by arm to stop them walking away (<i>Collins v Wilcock</i>) <p>IF SATISFIED: OTF, it is likely bodily contact without consent can be made out.</p>
<p>Element 2: Positive and voluntary act</p>	<p>OTF, P will be able to prove that the act of the D ____, in causing the trespass is positive and voluntary, rather than “passive” (<i>Innes v Wylie</i>). P will argue that the D consciously brought about the bodily movement which involved bodily contact to the P when they ____.</p>

TORT OF NEGLIGENCE

DoC and RF

RULES:

- DoC (general/special)
- Breach of duty
- Causation
- Remoteness
- Defences
- Limitations and Damages

SCRIPT: For the purposes of this exam, unless specified all legislation referred to is from the *Wrongs Act 1958*. The question is whether **D** owed **P** a duty of care, breached that duty, and caused **P** legally recognisable harm. In order to establish a tort in negligence, **P** must first show **D** owed them a DoC, hence the **P** must prove all elements of the DoC (*Bates v Gillham*). If there is no DoC, there is no negligence. First, the relationship between **P** and **D** must be considered.

<u>RULE</u>	<u>NOTES</u>	<u>SCRIPT</u>
<p>Established <u>OR</u></p>	<p>Established category:</p> <ul style="list-style-type: none"> • Doctor/patient (<i>Harriton v Stephans</i>) • Road users (<i>Chapman v Hearse</i>) • Manufacturer/consumer (<i>Grant v Australian Knitting Mills; Donoghue v Stevenson</i>) • Employer/employee (<i>Hamilton v Nuroof</i>) • Occupier/entrant (<i>Australian Safeway Stores v Zaluzna; Modbury Triangle Shopping Centre v Anzil</i>) <ul style="list-style-type: none"> ○ This is even if the people on the premises are trespassers (<i>Zaluzna</i>) <p>Established categories of no duty:</p> <ul style="list-style-type: none"> • Barrister/client (<i>D'Orta-Ekenaike v Victoria Legal Aid</i>) <ul style="list-style-type: none"> ○ BUT this exclusion does not apply to out court advice that does not affect the court's decision (e.g settlements) (<i>Attwells v Jackson Lalic Lawyers; Kendirjian v Lepore</i>) • Police and prosecutorial authorities (<i>Cran v NSW</i>) 	<p>If established: As the relationship between P and D is one of a [relationship], a duty of care arises under the established law category of [settled law category]. Thus, DoC is automatically proven.</p> <p>If not established: As the relationship between P and D is one of a [relationship], a duty of care does not arise under any established law categories. Thus, we must apply the reasonable foreseeability and salient features test to establish if there is a DoC owed to P.</p>
<p>Reasonable Foreseeability</p>	<ul style="list-style-type: none"> • It must be RF to a RP in the position of the D that careless conduct of any kind on the part of the D may result damage of some kind to the P or the 	<p>For D to be liable, it must be reasonably foreseeable, not far-fetched, or fanciful (<i>Sullivan</i>), to a reasonable person in D's position that</p>

	<p>class of persons to which the P belongs (<i>Chapman v Hearse</i>)</p> <ul style="list-style-type: none"> • It must be RF, that if the D did not take reasonable care, there would be a risk that the P would be harmed that was not ‘far-fetched or fanciful’ (<i>Sullivan v Moody</i>) • It is not necessary that the precise sequence of events is RF (<i>Chapman v Hearse</i>) 	<p>careless conduct of any kind may result in harm of some kind (<i>Chapman</i>) to P or to a class of persons to which P belongs (<i>Donoghue</i>). It must be fair and just that a duty should be imposed on D. On the facts, [facts].</p> <p>The D may contend that he/she did not foresee the precise sequence of events, however, as per <i>Chapman v Hearse</i>, it is not necessary that the precise sequence of events is RF. It is only necessary that a RP in the position of D would RF that careless conduct of any kind would cause harm of some kind from the general activity (<i>Chapman v Hearse</i>).</p>
<ul style="list-style-type: none"> • Vulnerability (RF) 	<ul style="list-style-type: none"> • Where the act is incapable of injuring an ordinary person, <u>no duty arises simply because a person who is abnormally susceptible may be affected</u> (<i>Levi v Colgate-Palmolive</i>) • If the D knows that a particular abnormal person is likely to be affected by their action, they may have a duty to take special precautions to avoid injury to that person. However, the mere fact that an abnormal person exists in the community does not alter the general standards to which one most conform (<i>Levi v Colgate- Palmolive</i>) • Even if someone has susceptibility to injury, so that a careless act that would not harm someone else may harm them (e.g a blind person), it does not necessarily follow that the risk of them being harmed will be unforeseeable (<i>Haley v London Electricity Board</i>). 	<p>However, where the act is incapable of injuring an ordinary person, no duty arises simply because a person who is abnormally susceptible may be affected (<i>Levi v Colgate-Palmolive</i>). D will try to argue that P was vulnerable because he was [facts]. P will try to argue that a lot of case law has to do with vulnerability related to ongoing sensitivity, for example allergy, and this is quite different in the present case. D was simply [facts].</p> <p>There is no suggestion here that P is abnormally susceptible (<i>Levi v Colgate-Palmolive</i>).</p>
<p>SCRIPT: Therefore, on balance, it is likely the RF is/is not made out.</p>		

SPECIAL DUTY SITUATIONS

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- Pure Mental Harm
- Pure Economic Loss

PURE MENTAL HARM

RULES:

- P may recover damages from injury arising wholly or in part from mental or nervous shock as per **s 23 of WA**.
- Pure mental harm (PHM) occurs when the D's act causes harm to a 3rd party and the P witnesses incident that causes the harm (or learns about it and suffer psychiatric injury as a result).

SCRIPT: P may recover damages from injury arising wholly or in part from mental or nervous shock as per **s 23 of WA**. The issue is whether P can recover damages for pure mental harm resulting from D's conduct that injured or endangered V, per **s 23**.

<u>RULE</u>	<u>NOTES</u>	<u>SCRIPT</u>
Definition	<ul style="list-style-type: none"> • What is mental harm? <ul style="list-style-type: none"> ○ Mental harm is a psychological or psychiatric injury i.e. a recognised psychiatric injury (s 67 WA) • The degree of mental harm • PMH <ul style="list-style-type: none"> ○ PMH is mental harm other than consequential mental harm, where consequential mental harm is mental harm that is consequential to an injury (s 67 WA). It affects the 3rd party first and it turns out the P suffered mental harm. 	<p>On the facts, the P suffered [e.g. PTSD], which is a recognised psychiatric illness, and not mere emotional upset. This satisfies the definition of 'mental harm' under s 67.</p> <p>The D will never owe the P a DoC in respect of activities that merely upset the P, no matter how serious (s 67 WA)</p>
Direct or indirect?	<ul style="list-style-type: none"> • Direct = places someone in danger = consequential harm (X) • Indirect = the P suffers mental harm due to witnessing or learning of another being killed, injured or put in danger • That's what we want to make out this element 	<p>The harm suffered by P is pure mental harm within the meaning of s 67, as it did not result from any physical injury to P, but rather from [witnessing/learning of] the harm to V.</p>
S 73 hurdle requirement	<ul style="list-style-type: none"> • If the pure mental harm is indirect, then P is NOT 	<p>Witness: P may argue they were a witness 'at the scene' of the victim being [killed/injured/put in danger]</p>

<p>(indirect only)</p>	<p>ENTITLED to recovery of damages unless:</p> <ul style="list-style-type: none"> • When the P suffers mental harm as the consequence of the third party being killed, injured or put in danger, then consider s 73 of WA hurdle requirement • The P is not entitled to recover damages for PMH unless: <ul style="list-style-type: none"> ○ The P witnessed at the scene the victim being killed, injured or put in danger (s 73(2)(a) WA) (<i>Wicks v the State Rail Authority of NSW</i>); or ○ The P is or was in a close relationship with the victim (s 73(2)(b) WA) • Victim being killed, injured or put in danger: <ul style="list-style-type: none"> ○ Court accepts that victims being injured/put in danger occurs over an extended period (<i>Wicks v the State Rail Authority of NSW</i>) 	<p>under s 73(2)(a), as they [describe – e.g. arrived shortly after and saw V injured]. While D may contend that P only saw the aftermath, courts have taken a broad view, where injury or danger is ongoing, witnessing the aftermath may still satisfy the threshold (<i>Wicks v State Rail Authority</i>).</p> <p>Close relationship: P may argue that they were in a ‘close relationship’ with V (s 73(2)(b)), based on [e.g. being V’s parent/child/partner]. Courts assess the quality of the relationship, not just legal status (<i>Gifford v Strang Patrick Stevedoring</i>). On the facts, this element is likely to be satisfied.</p> <p>It is assumed for the purposes of s 73(3) that V would have been entitled to recover against D had they not died or been injured.</p>
<p>SCRIPT: As the P suffered a recognised psychiatric illness (s 67), the harm was pure (s 67), and the threshold under s 73 is satisfied, we must now determine if D owed P a DoC.</p>		