

ASSAULT — SUB-ISSUES

| Sub-issue | Case | Key Facts | Ratio / Principle + Judge Quote | Exam Trigger Phrase |
|--|--|---|---|---|
| 1. Positive act vs omission? Was the trespassory act a positive act, or merely a failure to act? | <i>Fagan v Metropolitan Police Commissioner</i> [1969] <i>Ines v Wylie</i> (1990) | Fagan: D accidentally drove car onto officer's foot, then refused to move it when asked. Ines: Police officer stood passively still in a doorway, blocking P's exit. | Fagan: Refusing to remove the car = a continuing positive act. The ongoing interference grounds the trespass. "a battery can be committed when an act is complete..." — James J, Fagan Ines: Standing still = omission only. No positive act; trespass not made out. | ✓ YES "[D's act] constitutes a positive act (Fagan) — not a mere omission." ✗ NO "D merely stood still — passivity cannot ground trespass (Ines v Wylie)." |
| 2. Was the threat direct or indirect? Did harm flow immediately from D's act, or was there an independent intervening act? | <i>Scott v Shepherd</i> (1773) <i>Hutchins v Maughan</i> [1947] | Scott: D threw lit firecracker into crowded market. Two bystanders instinctively threw it away before it exploded, blinding P. Hutchins: D warned P about poisoned baits on land. P voluntarily led dogs onto land; they died. | Scott: Intermediate actors responding involuntarily do NOT break the chain of directness — harm still flows directly from D's act. "the natural and probable consequence of the act done by the defendant." — Blackstone J, <i>Scott v Shepherd</i> Hutchins: P's own voluntary choice to enter = independent intervening act → harm was indirect. Must sue in negligence. | ✓ DIRECT "Intermediaries acted involuntarily — directness preserved (Scott v Shepherd)." ✗ INDIRECT "P's deliberate act broke the chain of directness (Hutchins v Maughan)." |
| 3a. Was P's apprehension reasonable? Did D appear to have means and intention? | <i>Zanker v Vartzokas</i> (1988) | Zanker: D picked up hitchhiker P, then said he'd take P to a "mate's place" where he would be "fixed up." P was trapped in the car. | Assault is made out where P reasonably believed D had the present ability and intention to carry out the threat, even without contact. Zanker: Threat of future violence was sufficiently immediate — P was trapped and could not escape. | ✓ YES "It reasonably appeared D had the means and intention to carry out the threat." ✗ NO "D lacked the present means to execute the threat — no reasonable apprehension." |
| 3b. Was the threat conditional? Could the condition be fulfilled? | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 3c. Were the threats "mere words"? Can words alone, without a physical gesture, constitute assault? | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

| | | | | |
|--|------------|------------|------------|------------|
| | | | [REDACTED] | [REDACTED] |
| 4. Was contact sufficiently imminent? Ongoing threat? Was there delay between the making of the threat and when it might be carried out? | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 5. Was physical contact anticipated? Did P apprehend physical contact specifically, or only non-physical harm? | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 6. Can D disprove fault? Can D show no intention, recklessness, or negligence in causing P's apprehension? Or is there lawful justification? | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

DEFENCES — SUB-ISSUES

| Sub-issue | Case | Key Facts | Ratio / Principle + Judge Quote | Exam Trigger Phrase |
|---|--|--|---|---|
| DEFENCE 1 — CONSENT | | | | |
| <p>Was consent express or implied? Did D's conduct exceed the scope of what P agreed to?</p> | <p><i>McNamara v Duncan</i> (1971) 26 ALR 584</p> <p>(Exigencies of Daily Life – Assault)</p> | <p>During an Australian rules football match, D deliberately elbowed P in the head after the ball had moved away — well outside the normal play of the game.</p> | <p>Implied consent from participation in sport extends ONLY to ordinary and accepted incidents of the game. Deliberate or excessive contact outside the game's ordinary incidents is not covered.</p> <p><i>"consent to the ordinary risks and incidents of a game does not extend to deliberate acts of violence."</i></p> <p>— Fox J, <i>McNamara v Duncan</i></p> | <p>✓ IMPLIED CONSENT "By participating, P impliedly consented to ordinary contact in that context."</p> <p>✗ EXCEEDED "D's conduct went beyond what P impliedly consented to — defence fails (<i>McNamara v Duncan</i>)."</p> |
| <p>Was consent real, informed and freely given? Did P understand the nature and material risks of what they agreed to?</p> | <p><i>Rogers v Whitaker</i> (1992) 175 CLR 479</p> <p>(Battery)</p> | <p>P asked many questions before eye surgery. Surgeon failed to disclose a 1-in-14,000 risk the surgery could damage her other (good) eye — which it did.</p> | <p>Consent is not effective unless P is informed of the nature and material risks of what they are agreeing to. Consent without full disclosure is not true consent.</p> <p><i>"the patient's right to make decisions about his or her own body."</i></p> <p>— Mason CJ et al, <i>Rogers v Whitaker</i></p> | <p>✗ NOT INFORMED "P's consent was not real — not informed of material risk (<i>Rogers v Whitaker</i>)."</p> <p>✓ VALID "P gave informed, voluntary consent to the specific contact — defence succeeds."</p> |
| <p>Was consent express or implied? Was it exceeded? Did D's conduct go beyond what P agreed to?</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> |

| | | | | |
|---|-------------------------------------|-------------------|-------------------------------------|-------------------------------------|
| | <p>[REDACTED]</p> <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> | |
| <p>Was consent real, informed and freely given? Was P aware of the nature and material risks of what they agreed to?</p> | <p>[REDACTED]</p> <p>[REDACTED]</p> | <p>[REDACTED]</p> | | <p>[REDACTED]</p> <p>[REDACTED]</p> |
| <p>Marion's Case Freedom on Consent</p> | <p>[REDACTED]</p> <p>[REDACTED]</p> | <p>[REDACTED]</p> | <p>[REDACTED]</p> <p>[REDACTED]</p> | <p>[REDACTED]</p> |

| | | | | |
|--|--|------------|------------|--|
| | | [REDACTED] | [REDACTED] | |
|--|--|------------|------------|--|

[REDACTED]

| | | | | |
|--|--|--|------------|------------|
| Was D's act necessary to prevent serious harm? Was it reasonable and proportionate? | | | [REDACTED] | [REDACTED] |
|--|--|--|------------|------------|