

## ***Topic 5: Non-fatal non-sexual offences against the person***

### 5.1 Civil and criminal trespass to the person: introduction and overview

- **Do statute law first, then common law if need and a defence would always want a criminal and civil action to get money as well**
- Basic principles:
  - o Assault = any attempt to offer with force and violence to do a corporal hurt to another/ threat of physical interference (created expectation that going to physically hurt you, have to see it coming)
  - o Battery – actual physical contact, injury actually inflicted
  - o Battery and assault differ based on interference, most cases go hand in hand but some just one
- If it was merely accidental and undesigned or lawful: no assault or battery in the law
- **Civil: Trespass to the person: Tort of battery and tort of assault**
- **Criminal: Assault (physical interference) – use of force and assault (non-physical interference) – threat**
- Statutes and cases use assault to cover both assault and battery
  - Assault and battery are both causes of action in the law of torts and (summary) criminal offences under criminal law
    - As a victim/plaintiff for you to decide what you want to do – police or seek civil remedy or co-exist
    - In torts – causes of action, no crime
    - Crime – legal wrong that is followed by criminal prosecution and if found guilty, punishment
    - What's a tort – injury or wrong which the law will address, usually through remedies – monetary compensation usually
    - In tort law battery and assault are wrongs
  - Civil law and criminal law in this area respond to the same harm and largely share the same definition

|                     | LAW OF TORTS   | CRIMINAL LAW   |
|---------------------|--|--|
| - Wrong             | - <u>Cause of action:</u><br>Trespass to the person: assault and battery | - <u>Prosecution of offence:</u><br>- Common law assault<br>- Offences against the person (Crimes Act)   |
| - Parties           | - Plaintiff and Defendant  | - Prosecutor (the Crown) and Defendant/the Accused   |
| - Burden of Proof   | - <u>Cause of action:</u><br>Plaintiff<br>- <u>Defences:</u><br>Defence  | - <u>Elements of offence:</u><br>Prosecution/Crown<br>- <u>Defences:</u> Raised by Defence; negated by Prosecution.                                    |
| - Standard of Proof | - Balance of Probabilities (BoP)   | - Beyond Reasonable Doubt (BRD)  |
| - Proceedings       | - Civil action – plaintiff driven  | - Criminal trial – Police/DPP on behalf of State decide which offences to prosecute, you cant make the police bring it to caught, there is discretion. |
| - Outcome           | - Judgment for OR against the Pl.  | - Conviction OR acquittal  |
| - Order             | - Remedy (damages)   | - Conviction is followed by sentence   |

## 5.2 The civil law response: the torts of assault and battery

- The civil law response
  - o **The tort of battery**
    - Positive voluntary act causing direct physical interference with the plaintiff (Scott v Shepherd)
      - IE: direct act of the defendant, which intentionally (or recklessly) cause physical contact with the body of the plaintiff (injured party) without the consent of the plaintiff.
    - Threshold: beyond what is 'socially acceptable' or normal (*Rixon*)
      - Outlawed from casino, went to casino, casino employee came to him and put his hand on his shoulder, sued them for battery cause he interfered with his body. He didn't win – NSW coa – to attract attention this is generally acceptable behaviour, has to go beyond what is considered generally acceptable

- Tapping on back – ordinary daily actions, we accept that someone will do that, doesn't constitute a battery
- Relevance of fault (*Williams v Milotin*, *McHale v Watson*, *Venning v Chin Chin*)
  - Relevant to trespass to person and assault and battery
  - In case of battery have a few cases that elaborate on what that means, usually intentional battery as with *Rixon*
  - Plaintiff has to prove the facts causing the damage, P had to prove had been an application of force on her body.
  - Then for the defendant to prove that he neither intended the battery or was negligent about it. (*McHale*)
  - Exception: (*Venning*)
    - In trespass for injury on the highway, the onus is on the plaintiff to prove either intention or negligence on the part of the defendant
  - *Williams*:
    - Negligent trespass possibility as well as intentional,
    - Negligence for civil law: person acts with less care than the care than a reasonable person would in the circumstances