

Torts exam

Actionable per se – Trespass actions (battery, assault & false imprisonment) are this, plaintiff does not have to prove that they suffered any loss or damage

Onus of proof: Non-highway – Onus on plaintiff to prove direct interference and defendant prove they not at fault.

Highway: Onus on plaintiff to prove direct interference and prove fault of defendant

Battery cases:

Mchale v Watson – no battery because of child's age

Rixon v Star City – no battery because part of everyday life

Trespass to the person

(Battery) Assault: A person who strikes, touches, moves, or applies force of any kind to, either directly or indirectly, without the other person's consent is said to assault that other person (criminal code s245)

Does not require anger or hostility

Elements:

1. Direct or indirect application of force (6) Carter v Walker

- Unwelcome physical contact with plaintiff
- Need not be person to person
- Direct interference: immediate result of the defendant's act
- May be an unbroken series of consequences.
- Exception - Bodily contact as an incidence of every day life (Rixon v Star City Pty Ltd)
- Knowledge of the interference is not necessary (Law v Visser).

2. Without the plaintiff's consent (3)

- If the contact is lawful and consented to there is no battery (McNamara v Duncan)
- Consent may be express or implied
- Can be invalidated if fraud or duress or lack of capacity.

3. Defendant at fault (4)

- Must be voluntary
- Intentional or negligent
- Need not intend to cause harm or injury
- Interference was intentional or done with a lack of due care