

BATTERY

Battery is a “voluntary and positive act by the D which directly, and intentionally or negligently, results in contact with the plaintiff’s person without lawful excuse.”

Cole v Turner- least touching of another is sufficient.

Collins v Wilcock (per Lord Goff)- “The fundamental principle, plain and incontestable, is that every person’s body is inviolate ... any touching of another person, however slight, may amount to a battery”.

****Problem with prohibiting every slight touching is that in everyday life, on trains and trams we brush past people and therefore each and every contact will constitute a battery.**** *Implied consent- people who move about in society impliedly consent to sorts of inflictions of force which occur in everyday life.*

No longer a requirement that the infliction of force to be hostile or done in anger to constitute battery. (Rixon v Star City)

Exigencies of Life Exception

Exception in respect of “physical contact” which is generally acceptable in the ordinary conduct of daily life (Collins v Wilcock per Lord Goff);

Some caselaw examples:

Collins v Wilcock – police officer briefly grasping P’s arm to restrain/speak with her;

Rixon v Star City – security officer placing hand on P’s shoulder.

i.e. to get the attention of another.

Innes v Wylie- battery must be voluntary and positive act not merely passive “like a door or a wall”.

Cole v Turner- Holt CJ- least touching of another is sufficient.

Collins v Wilcock- Lord Goff – every person’s body is inviolate, and that any touching of another person, however slight, may amount to battery. ‘the law cannot draw a line between different degrees of violence, and therefore totally prohibits the first and lowest stage of it’.

Rixon v Star City-

Facts:

P was an excluded person from a casino but was seen playing roulette.

Employee approached the P, told him he was an excluded person and required him to go to an interview room where he was detained for more than an hour until police officers arrived.

They took him to a police station and charged him.

Held (Sheller JA):

...battery....

Touching doesn't have to be hostile for it to be a battery. There is no longer a requirement that the infliction of force be done in anger or in a hostile way.

Lord Goff in *Collins v Wilcock* held that: among such forms of conduct, long held to be acceptable is touching a person for the purposes of engaging his attention, though no one is allowed to use greater force than is required in the circumstances for that purpose.

But a distinction is drawn between a touch to draw a man's attention, which is generally acceptable, and a physical restraint, which is not.

Contact must be generally acceptable in everyday life.

It also could not be said that the conduct was outside the exigencies of life but rather was generally acceptable in the ordinary conduct of daily life.

Conduct of the employee was done to engage the attention of Rixon and was generally acceptable in the ordinary conduct of daily life.

ASSAULT

- A "voluntary and positive act by the D which directly, and intentionally or negligently, causes the P reasonably to apprehend imminent contact with their person, without lawful excuse".
- Act of the D must cause P to reasonably apprehend imminent contact with their person, without lawful excuse.

Elements

- Actionable Per Se;
- A "V&P act" of D (the threat);
- Directness;
- Fault (intention or negligence); The D must disprove fault or they didn't act in a manner that was substantially certain to cause apprehension.
- Reasonable apprehension by P of Imminent Contact with her person; (P must apprehend the conduct and expect imminent contact)

If you can establish that they expected contact and it was reasonable, you must establish that it was imminent contact.

Imminent contact extends to situations of continuing danger where there was a continuing present threat.

Battery VS Assault

Assault requires no physical contact with P, and is dependent upon effect of D's action P's mind;

Assault often precedes battery;

"Assault" used where no contact made

Apprehension

Q: What does the law mean by “apprehension” of contact?

A: An expectation of contact – an assault is a threat that produces in the P threatened a reasonable expectation of physical contact; (expectation of infliction of unlawful contact)

Rixon

Held:

....assault....

Assault consists in intentionally creating in another person an apprehension of imminent harmful or offensive contact...since the gist of assault lies in the apprehension of impending contact, the effect on the victim’s mind created by the threat is the crux, not whether the D actually had the intention or the means to follow it up. The intent required for assault is the desire to arouse apprehension of physical contact, not necessarily to inflict actual harm.

PROOF OF AN ASSAULT REQUIRES PROOF OF AN INTENTION TO CREATE IN ANOTHER PERSON AN APPREHENSION OF IMMINENT HARMFUL CONTACT.

Employee lacked the requisite intention in relation to assault.

Placing of the employee’s hand on Rixon’s shoulder without using any degree of force and said “are you Brian Rixon?” → employee had no intention of creating in Rixon an apprehension of imminent harmful or offensive conduct.