

Trespass to Person

Battery

1 What is Battery?

1. Occurs when the defendant directly and deliberately causes physical contact to occur to the person of the plaintiff without the plaintiffs consent or other legal justification.
 - a. *Department of Health and Community Services v JWB (1992)*
2. Plaintiff bears the onus of establishing the balance of probabilities the first 3 requirements below.
3. The defendant bears the onus of proving the requisite state of mind was lacking.

2 How to prove battery?

1. **There must be an inference - physical contact - with the plaintiffs body**
 - a. Must cause physical contact
 - i. **Clothing is enough** - Contact with the plaintiffs clothes is sufficient (*Fagan v Metropolitan Police*)
 - ii. **Throwing a Squib** – at someone (*Scott v Shepherd*)
 - iii. **Spitting in Someones face** – (*R v Cotesworth*)
 - iv. **Cutting someones hair without consent** – *Forde v Skinner*
 - v. **Removing a chair from a person sitting in it** – *Hopper v Reeve*
2. **This inference was a direct & positive act and not consequential**
 - a. Inference is direct, not consequential; the inference must be immediate on the plaintiffs act
 - i. **Directness:** consequence of act must be immediate and inevitable – *Hutchins v Maughan (dogs eating poison baits); Southport v Esso*.
 - a. **Not voluntary or immediate** -
 - i. ‘where the injury is immediate, an action of trespass is available; where it is only consequential, it must be an action on the case’ (*Hutchins v Maughan*)
 - ii. **Positive Act** – The act must be a positive act with application towards the plaintiff.
 - i. **Obstruction** – Not enough to cause battery (*Campbell v Samuels*)
 - ii. **Cannot be a reflex or omission** – *Stokes v Carlson*
 - iii. **Course of Ordinary Life** – direct, positive, physical contact will not amount to battery when it has occurred in the course of everyday life. (*Re F Mental Patient: Sterilisation*)
 - a. ‘jostling in a street or some other crowded place, social contact, at parties and such like is an example of ‘exigency of everyday life’

b. Affirmed by High Court in *Department of Health and Community Services v JWB (1992)*

- iii. **Hostile Act** – Unclear whether the act is required to be hostile.
 - i. **Anger** – *Touching a person in anger is battery (Holt CJ in Cole v Turner)*
 - ii. *Rixon v Star City* – *Tapping person on shoulder is within everyday life and is not deemed hostile*
 - iii. *Collins v Wilcock* – *Grabbing person on the arm to stop them walking away is battery and not accepted in everyday life*
- iv. **Consequential Act** – Where the act is consequential, then it is not direct.
 - i. *Hutchins v Maughan* – *If you throw a log on the highway and it hits a person, then the act is direct. If you throw a log on the highway and it doesn't hit someone, but later someone trips on it – then there is no claim as it is not direct.*
 - ii. *Consequential* - If there are other acts necessary for the interference to occur, then it is not direct.

3. **The defendant had the requisite state of mind – the act of inference was voluntary and intentional or voluntary and negligent.**

- a. Act must be intentional or negligent
 - i. **Not Intentional** – If the act is not intentional, it must be negligent to amount to a battery.
 - 1. *Williams v Milotin* – Truck driver seriously injured a cyclist – wasn't intentional.
 - a. *Decision* - HCA ruled negligent driving and battery.
 - ii. **Not Negligent** – If the act is not negligent, then the act must have been deliberate and wilful – 'the defendant meant to do it'
 - 1. *McNamara v Duncan* – *Plaintiff received punch in the head when playing football. Argued not intentional.*
 - a. *Decision* - Irrelevant that the defendant did not intend the consequences, act was intentional.
 - iii. **Consequences Irrelevant** – It does not matter that the defendant did not intend the consequences of their act, only that the act was intended.
 - 1. *Refer to MacNamara v Duncan case*

b. **Act must be voluntary**

- i. Act done in automatism is not voluntary (*Roberts v Ramsbottom*)
- ii. *Weaver v Ward* - If A takes B hands and strikes C with it, B is not liable for battery to C because B act was not voluntary.
 - 1. A would be liable for battery on C as A's act is both voluntary and intentional.

4. No defense available to defendant

- a. Defence must be proved by the plaintiff – *Marions Case*
- b. Consent & Necessity, Self-Defense
- c. **REFER TO DEFENCES**

Assault

1 What is Assault?

1. Occurs when the defendant deliberately causes the plaintiff to apprehend immediate physical contact (*Rixon v Star City*)
 - a. i.e. *Hit in head from behind* – is a battery but not an assault as the defendant is not in fear or apprehension
2. Plaintiff bears the onus of establishing on the balance of probabilities the first two requirements below.
3. Defendant bears the onus of providing that they themselves lack the requisite state of mind.

2 How to prove assault?

1. **There was an apprehension of immediate physical contact with the body of the plaintiff**
 - a. Must have an *apprehension of physical contact* by the defendant
 - i. **Direct Link** – there must be a direct link between the threat of the tortfeasor and the plaintiff and the plaintiff no longer feeling secure.
 - ii. **Mere Words** – Are typically not enough (*Thomas v National Union of Mineworkers*) but can be if repeatedly threaten and abuse (*Barton v Armstrong*)
 - iii. **Lawful Force** – If force is permitted by law then not assault (*Read v Coker, Police v Greaves*)
 - iv. **Conditional Threat - Roza v Samuels** – A conditional threat can still be assault but you have to completely neutralise the threat – otherwise *Tuberville v Savage* - ‘if it were not assize-time I would take such language from you’
2. **The defendant had a requisite state of mind; that is, their apprehension was reasonable**
 - a. Act must be intentional or negligent
 - i. **Not Intentional** – If the act is not intentional, it must be negligent to amount to an assault.
 1. *Williams v Milotin* – Truck driver seriously injured a cyclist – wasn’t intentional.
 - a. *Decision* - HCA ruled negligent.

- ii. **Not Negligent** – If the act is not negligent, then the act must have been deliberate and wilful – ‘the defendant meant to do it’
 - 1. *MacNamara v Duncan* – Plaintiff received punch in the head when playing football. Argued not intentional.
 - a. *Decision* - Irrelevant that the defendant did not intend the consequences, act was intentional.