

Assault

Assault is committed by directly and intentionally (or negligently) creating in another person an apprehension of imminent harmful or offensive contact.

Elements

1. Directness
2. Creation of a reasonable apprehension
 - a. Knowledge -
 - i. R v Phillips
 - b. Conduct -
 - i. Barton v Armstrong; Tuberville v Savage; Police v Greaves
 - c. Apparent ability to carry out the threat - Stephens v Myers; Brady v Shatzel
 - d. Imminent harmful or offensive physical contact -
 - i. Barton v Armstrong; Zanker v Vartzokas
3. Intentionally or negligently -
 - a. Rixon v Star City; Rozsa v Samuels
4. Without lawful justification

Hutchins v Maughan; Scott v Shepard

Held: An act is direct if D's interference with P falls so immediately or closely after the act it can be deemed part of the act.

It is consequential when, by reason of some obvious or visible intervening cause, it is regarded, not part of the D's act, but merely a consequence of it

R v Phillips:

Held: Plaintiff must have knowledge of the threat at the time it is made. The knowledge by the defendant of the existence of the plaintiff is not a necessary requirement

Barton v Armstrong:

Facts: High profile politician phoned and made threats over the phone.

Held: Threats can be made by words and/or gestures. Depends on the circumstances and objective reasonable person test. Imminent harm does not mean immediate, it means impending harm

Tuberville v Savage

Facts: two men got into an old fashion fight over a woman. T took offense of what S said, so he moved to put his hand on

his sword. He said "were it not assize time I would not take such words from you"

Held: Neutralizing or negating threats made by positive acts are not assault

Police v Greaves:

Facts: the police were chasing Greaves. At which point he said "if you take one step closer, I'm going to cut you".

Held: Conditional threats can be an assault if it still creates a reasonable apprehension of imminent harm

Stephens v Myers:

Facts: parish council meeting

Held: It is not an assault if D has not ability to carry out the threat.

Zanker v Vartzokas

Facts: girl in van, guy offers sexual favours

Held: If the threat produces the apprehension of physical harm, although the victim does not know when the harm may be affect, it is still an assault. Imminent means impending.

Brady v Shatzel

Facts: empty gun threat

Held: If D's threat, creates an apprehension of imminent harm in P, even if D's threat is empty it is still an assault.

Rixon v Star City

Facts: casino case with guy getting kicked out

Held: Assault requires a proof of intention. D must have intended to create an apprehension of imminent harm in P.

McHale v Watson:

Held: For an action in trespass there must at least be negligence

- All trespass actions require a level of fault

Battery

Battery is committed by directly and intentionally (or negligently) bringing about a harmful or offensive contact with another person without consent

Elements:

1. Was the contact direct?
2. Was there interference with physical integrity of P
 - a. Knowledge -
 - i. Murray v McMurchy
 - b. Harmful or offensive conduct -
 - i. Cole v Turner; Collins v Wilcox; Rixon v Star City
3. Was the contact intentional or negligent - Gibbons v Pepper; Wilson v Pringles; Re F
4. Is there any defence for D's conduct
 - a. Consent
 - b. Involuntariness
 - c. Self Defence
 - d. Marion's Case; McNamara v Duncan; R v Brown; Bain v Altoft

Hutchins v Maughan

Held: An act is direct if D's interference with P falls so immediately or closely after the act it can be deemed part of the act.

It is consequential when, by reason of some obvious or visible intervening cause, it is regarded, not part of the D's act, but merely a consequence of it

Scott v Shepard:

Held: Directness does not have to be instantaneous. Chain of effects together will be sufficient

Innes v Wylie - The contact must be active not passive

- A defendant is entirely passive like a door or wall put to prevent the plaintiff from entering the room and simply obstructs the entrance of the plaintiff then no battery has been committed.
- The transmission of any force to the body of the plaintiff will constitute a battery
- Actual bodily contact, contact with the clothing or with an object closely identified with the body of the plaintiff will be suffice to constitute contact for battery

Murray v McMurchy

Facts: a surgeon did something during surgery that the women did not consent to.

Held: The plaintiff needs not to know of the contact at the time of the interference, but he will need to show evidence of contact

Key issue is whether you have consented to the contact

Rixon v Star City; Collins v Wilcox

Implied consent – is the general exception embracing all physical contact which is generally acceptable in the ordinary conduct of daily life – question of fact
Just had to intend the act, not the consequence of that act

Re F (Mental Patient: Sterilisation)

Facts: doctors wanted to sterilise a mentally disabled women, for her own safety. There were no emergencies to do this, she was only young

Held: In Battery what is required is **intentional contact** not an intention to do harm

What if the defendant can foresee a risk of contact but does not necessarily desire contact with anyone?

- Objective reasonability test
- Where a reasonable man in the defendant's position would believe that a particular result was substantially certain to follow, he will be dealt as though he had intended it

The offence must be **intentional and voluntary**

- Voluntary means the defendant must consciously bring about the bodily movement for which he is being held liable
- Though an impaired or clouded consciousness will, it seems, suffice. Acts done in a state of automatism are regarded as involuntary
- Simply the defendant must mean to do it

McHale v Watson:

Held: For an action in trespass there must at least be negligence

- All trespass actions require a level of fault

Gibbons v Pepper

Held: If A takes the hand of B and with it strikes C, A is the trespasser and not B.

Marion's Case

Held: Defendant has the onus of establishing consent of the plaintiff, in order to discharge the plaintiff's facts

McNamara v Duncan

Facts: AFL match

Held: Depends on the context of the game. Important to distinction between violence that is deliberate and violence that is part of the nature of the game (game play).

R v Brown

Facts: an organised ring of men, got younger men (receivers) and inflicted pain on them, in which both groups of men enjoyed and consented to.

Held: You cannot consent to criminal acts, in order to protect law and society

Bain v Altoft

Facts: Pub fight and lots of banter. As a result A breaks the ankle of B. A claimed that they all were consenting to damages

Held: You cannot consent to harm and then claim for damages if you get hurt.

False Imprisonment

False Imprisonment is committed by direct and intentional total restraint of the freedom of movement of the plaintiff by the defendant, without legal authority

Elements:

1. **Directness –**
 - a. **Coles Myer v Webster; Cubillo v Commonwealth**
2. **Intentionally or negligently –**
 - a. **McHale v Watson; Cowell v Corrective Services**
3. **Total restraint of freedom – Bird v Jones**
 - a. **Knowledge –**
 - i. **Murray v Ministry of Defence; SA v Lampard - Trev**
 - b. **Reasonable means of escape –**
 - i. **Zanker v Vartzokas; R v Macquarie; Burton v Davies; MacFadzean case**
 - c. **Psychological restraint –**
 - i. **Symes v Mahon; Myers v Soo; R v Garrett**
4. **Defences**
 - a. **Balmain Ferry v Robertson; Herd v Weardale Steel; Bahner v Marwest Hotel; Gold v Healco Services**

Ruddock v Taylor – nature of the interest

Held: Liberty is a fundamental principle of Australian constitutional law that the executive may not interfere with the liberty of an individual without valid authorisation

Coles Myer v Webster

Facts: P was restrained by police for being falsely accused of fraud. The manager called the police to investigate them. P was arrested and eventually released due to lack of evidence

Held: Actively promoting and manifesting an intention to restrain can be deemed as direct, as long as the other party is not acting independently (?).

Cubillo v Commonwealth of Australia

Facts: stolen generation

Held: A person who is active in promoting and causing the imprisonment is jointly and severally liable with the person who affects the imprisonment.

McHale v Watson

For an action in trespass there must at least be negligence

