

# CONTENTS

<b>Intentional Torts</b>	<b>3</b>
Battery	3
Assault	4
False Imprisonment	6
Trespass to Land	7
Trespass to Goods	10
Defences	12
<b>Other torts</b>	<b>14</b>
Nuisance	14
Defamation	16
<b>Negligence</b>	<b>18</b>
Duty of Care	19
Breach of Duty	23
Causation	24
Defences	26
Specific Negligence	28
<i>Medical</i>	28
<i>Mental harm</i>	29
<i>Public Authorities</i>	30
<i>Economic Loss</i>	30
Vicarious Liability	32
Non-delegable duty	33
<b>Remedies</b>	<b>34</b>

# - INTENTIONAL TORTS -

Common features for all intentional torts

- Intentional conduct
- Without lawful justification or consent
- Direct interference with the P
- Actionable *per se*. No evidence of damage or loss is required. P must only show that there was fault.
- Usually assault followed by battery, but not always. E.g. assault without battery (pointing gun at someone) or battery without assault (kissing sleeping person or hitting someone from behind).

## BATTERY

**Definition:** Battery is the intentional, reckless or negligent act of the D that brings about harm or offensive contact to the P's body (offensive contact - e.g. blowing smoke in face, spitting on).

**Elements:**

1. D intended the act (but not necessarily consequence).
2. The action immediately results in physical contact. Contact follows the act.  
[Scott v Shepherd](#); [Hutchins v Maughan](#)
3. Voluntary act – [Stokes v Carlson](#) (1951) – Hitting someone while having an epileptic fit is not voluntary
4. Positive and affirmative act – [Fagan v Metropolitan Police Commissioner](#)

[Scott v Shepherd](#) (1773) 2 Wm Bl 892

Principle: Consequential battery

Facts: Shepherd threw squib into marketplace. Willis threw, Ryal threw, exploded in Scott's face. Because W and R were acting under compulsive necessity to preserve own health, the chain or causation was unbroken and it was a continuation of Shepherd's act.

Held: Shepherd liable for battery.

[Hutchins v Maughan](#) [1947] VLR 131

Principle: Consequential battery

Facts: D laid poisoned bait on land and warned P. P's dogs entered property and ate poisoned bait, died.

Held: Damage was consequential, did not happen immediately.

[Fagan v Metropolitan Police Commissioner](#) [1969] 1 QB 439

Principle: Affirmative action

Facts: Man accidentally drove onto policeman's foot (passive action). When told to move, he refused (positive act).

Held: liable for battery.

**Other:**

- Neither party needs to be conscious of the battery occurring.
  - Kissing sleeping person
  - Shooting into long grass where person is concealed.
- If battery caused by neg act, P must prove fault. [Venning v Chin](#); [Williams v Milotin](#)
- Anger and hostility are not required [Rixon v Star City Casino](#)
- Everyday acceptable contact excepted [Rixon v Star City Casino](#)

[Venning v Chin](#) (1974) 10 SASR 299

Principle: Negligent battery

Facts: Woman hit by car

[Williams v Milotin](#) (1957) 97 CLR 465

Principle: Negligent battery

Facts: P hit on bicycle by D driving truck negligently

[Rixon v Star City Casino](#) [2001] 53 NSWLR 98

Principle: Hostility not required, everyday contact

Facts: Man tapped on shoulder, escorted, and taken into room by security. He alleged battery, assault, and false imprisonment.

Held: Sheller JA – anger not required for battery. No intent to cause fear of harm, no battery or assault.

False imprisonment upheld. “any touching of another person...may amount to battery”

## ASSAULT

**Definition:** Intentional or negligent threats that create an apprehension of imminent harm or offensive contact.

### Elements:

1. Positive act – can be act, gesture, or threat.
2. Act causes reasonable apprehension of imminent physical contact or interference. This can be an act, act + words, or words alone. There must be a direct and imminent threat. If there is reasonable opportunity for P to escape or seek help, this element is not satisfied. [NSW v Ibbett](#); [Chief Constable of Thames Valley Police v Hepburn](#); [Barton v Armstrong](#); [R v Ireland](#); [Zanker v Vartzokas](#).
3. Intention to cause apprehension. Whether the person intends to carry out the threat is irrelevant, only that they intend to cause apprehension. [Rixon v Star City Casino](#)

[NSW v Ibbett](#) [2006] HCA 57

Principle: Action constituting assault

Facts: Two officers pursued man to his home. One officer dived under closing garage door and pointed firearm at offender’s mother.

Held: Reasonable apprehension in the P that she could be shot. D liable for assault.

[Chief Constable of Thames Valley Police v Hepburn](#) [2002] EWCA Civ 1841

Principle: Action constituting assault

Facts: Police officers entered public house, no warrant to arrest. Man flees, officer blocks door with outstretched baton to prevent person from leaving.

Held: Officer liable for assault.

[Barton v Armstrong](#) [1969] 2 NSWLR 451

Principle: Words constituting assault

Facts: Threats made over the phone to coerce someone into signing contract

Held: Nature of the calls was found to constitute assault

[R v Ireland](#) [1997] QB 114

Principle: Silence constituting assault

Facts: Man rang up women and remained silent when they picked up

Held: Silence can be just as threatening as actions. Assault

[Zanker v Vartzokas](#) (1988) 34 A Crim R 11

Principle: Reasonable apprehension of immediate harm

Facts: Young woman accepted lift from stranger. Propositioned her, became aggressive when she refused. Told her "I will take you to my mate's place, he will really fix you up." P did not know where 'mate's place' was, fearful, jumped from vehicle sustaining injury.

Held: Apprehension was continued because of imprisonment. Threats of harm were effectively imminent.

[Rixon v Star City Casino](#) [2001] 53 NSWLR 98

Principle: Hostility not required, everyday contact

Facts: Man tapped on shoulder, escorted, and taken into room by security. Alleged battery, assault, and false imprisonment.

Held: Sheller JA – No intent to cause fear of harm, no assault.

#### Other:

- Words can nullify threat [Tuberville v Savage](#)
- Lawful threats to cease illegal actions are not assault
  - Police to offender
  - Property owner to trespasser

[Tuberville v Savage](#) (1669)

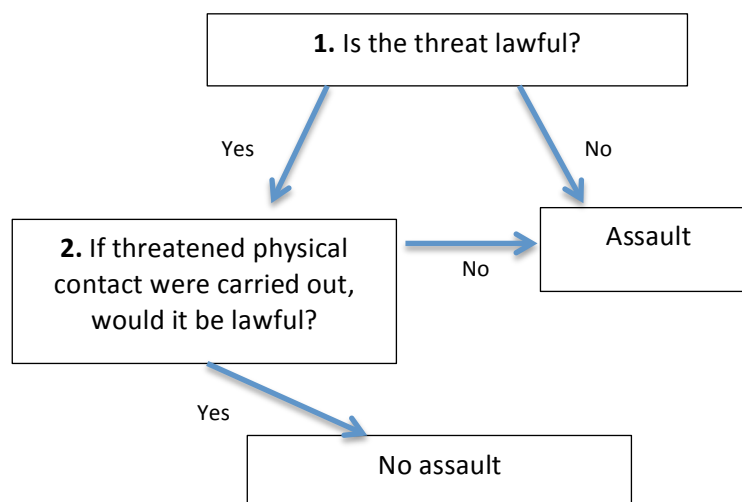
Principle: Words can nullify threat

Facts: Man insulted another. D laid a hand on his sword and said "If it were not Assize time I would not take such language from you".

Held: Threat would not be carried out because Judges in town. Not imminent. No assault.

#### Conditional threats

- Conditional threats can constitute assault [Roscza v Samuels](#); [Police v Greaves](#)



[Roscza v Samuels](#) [1969] SASR 205

Principle: Conditional threat

Facts: Man cut in taxi line, other yelled at him. He brandished kitchen knife and said "try it and I will cut you to bits".

Held: Assault, apprehension that threat may still be carried out.

[Police v Greaves](#) [1964] NZLR 295

Principle: Conditional threat

Facts: Police arrived at house. D pointed knife at officer and said "you come a step closer and you will get this straight through your guts".

Held: Assault, threat accompanied by action. Prevention of lawful duty.