

BATTERY

ELEMENTS OF TORT:

- Intention:
 - “for a battery there must be either an intention to harm or overt hostility” “it is the act and not the injury which must be intentional” “in battery there must be an intentional touching or contact in one form or another of the plaintiff by the defendant” (*Wilson v Pringle*)
 - Spitting at someone, although not involving actual force, was found to be a battery because it was intentional (*Moir v Police*)
 - Driving over legs by accident was not intentional, so there was no cause for battery (*Letang v Cooper*)
- Application of force:
 - “in battery there must be an intentional touching or contact in one form or another of the plaintiff by the defendant” (*Wilson v Pringle*)
 - “if a police officer, not exercising his power of arrest, nevertheless reinforces his request with the actual use of force... then his act in thereby detaining the other person will be unlawful”: grabbing the arm and preventing from walking away (*Collins v Wilcock*)
 - Spitting found to constitute the necessary force for battery (*Moir v Police*)
- Not generally accepted conduct in everyday life:
 - [not] “generally falling within a general exception embracing all physical contact which is generally acceptable in the ordinary conduct of daily life”: touching also cannot go beyond lawful authority (*Collins v Wilcock*)
 - The least touching of another in anger is battery; if two or more meet in a narrow passage, and without any violence or design of harm, that one touches the other gently, it is not battery. If any of them use violence against each other to force his way in a rude inordinate manner, it is a battery; or any struggle about the passage, to that degree as may do hurt, is a battery.” (*Cole v Turner*)
- Actionable per se:
 - The conduct is subject to a cause of action in itself, it is not necessary to prove that there has been damage or injury suffered.

ADDITIONAL CONSIDERATIONS:

- Hostility?
 - There must be intentional touching which is hostile. Hostility on the facts, may be imported from the circumstances (*Wilson v Pringle*)
 - If the battery is done violently/maliciously with force – aggravated damages will be increased: implication that violence/malice is not an element on its own (*Forde v Skinner*)
 - “A prank that gets out of hand, an over-friendly slap on the back, surgical treatments by a surgeon that mistakenly thinks that the patient has consented to it, all these things may transcend the bounds of lawfulness, without being characterised as hostile.” (*F v West*)
 - Test in *Collins* is not based on hostility, but whether the conduct is generally acceptable in everyday conduct.
- Directness?
 - Issue may be raised if the conduct is not direct yet still results in injury (stone thrown through a window for example) but:
 - Spitting involved no direct physical contact but still held to be a battery (*Moir v Police*)
 - Defendant still liable for battery through the use of a spring-gun trap, even though the harm is not direct (*Katko v Briney*)
- Remoteness?
 - If physical contact was intended, the fact that the magnitude of the injury exceeded all reasonable intended expectations should make no difference (*Bettel v Yim*)

CASE:	FACTS:	HELD:	SIGNIFICANCE:
<i>Cole v Turner</i> [1704] King's Bench	-	"1. That the least touching of another in anger is a battery. 2. IF two or more meet in a narrow passage, and without any violence or design of harm, the one touches the other gently, it is no battery, 3 if any of them use violence against the other, to force his way in a rude inordinate manner, it is a battery."	Even the slightest touch is battery if it has hostile intentions.
<i>Forde v Skinner</i> [1830] Circuit	The plaintiff had her hair cut and arm bruised without consent	"... it is altogether unauthorised by law, and is a wrongful act, if done without the consent of the party."	Legal acts which require physical touch are battery if there is no consent
<i>Letang v Cooper</i> [1965]	Defendant accidentally drove over the plaintiff's legs.	"If one man intentionally applies force directly to another, the plaintiff has a cause of action in assault and battery, or, if you so please to describe it, in trespass to the person... if he does not inflict injury intentionally, but only unintentionally, the plaintiff has no cause of action today in trespass."	Application of force must be intentional
<i>Collins v Wilcock</i> [1984] NZ Court of Appeal	Police officer chased after a woman and grabbed her arm, attempting to detain her.	"every person's body is inviolate. It has long been established that any touching of another person, however slight, may amount to a battery." "consent is a defence to battery, and most of the physical contacts of ordinary life are not actionable because they are impliedly consented to by all." "in each case, the test must be whether the physical contact so persisted in has in the circumstances gone beyond generally acceptable standards of conduct; and the answer to that question will depend on the facts of the particular case."	Most ordinary touch is not battery – implied consent from conduct in social activities that come with risk of normal contact. Consent is a defence. The test is whether the physical contact has gone beyond what is generally acceptable in society.
<i>Fagan v Commissioner of Metropolitan Police</i> [1969] Queen's Bench	Appellant drove over the police officers foot accidentally, but then intentionally did not drive off for several minutes.	Criminal assault = battery... where an assault involves a battery, it matters not, in our judgement, whether the battery is inflicted directly by the body of the offender or through the medium of some weapon or instrument controlled by the action of the offender... to constitute the offence of assault some intentional act must have been performed: a mere omission to act cannot amount to assault."	Criminal assault involves battery. Battery can be inflicted by the body of the person or by a medium controlled by the person. Omission to act is not an assault. Continuing battery = continuing assault.
<i>Bettel v Yim</i> [1978] Ontario County Court	Bettel was shaken by Yim, causing unintended extensive injuries.	The logical test is whether the defendant was guilty of deliberate, intentional and unlawful violence. If he was, and a more serious harm befalls the plaintiff than what was intended by the defendant, the defendant, and not the innocent plaintiff, must bear the responsibility for the unintended result... the negligence test of 'foreseeability' to limit, or eliminate, liability should not be imported into intentional torts.	Defendant is liable for all damage resulting from an intentional unlawful act of violence, regardless if any of that damage is intentional.

<i>Moir v Police</i> [1986] High Court Christchurch	Man spat on police officer, charged with criminal assault.	“The physical act of spitting was, in my view, clearly intentional and malevolent. It is sound law... and part of the definition that a threat which is completely devoid of any physical transference could be an assault... the degree of force used is not an ingredient necessary to be proved.”	Battery is not reliant on the degree of force used or the resulting physical injury, although this may contribute to aggravated damages.
<i>Wilson v Pringle</i> [1987] Court of Appeal UK	Two schoolboys – one pulled a bag off the other’s shoulder as ‘horseplay’. The boy fell and was injured as a result.	<i>T v S</i> is authority that there must be not only a deliberate threat (in an assault) or a deliberate touching (in battery) but also hostile behaviour. There are many examples in everyday life where an intended contact or touch is not actionable in trespass... it may be evinced by anger, by words or by gesture. Sometimes the very act of battery will speak for itself, as where someone uses a weapon on another... Where the immediate act of touching does not itself demonstrate hostility, the plaintiff should plead the facts which are said to do so.”	Confirms that there must be hostility to make an intended touch an assault. Battery itself can show hostility, or the use of a weapon. Hostility can be deduced from conduct and is a matter of fact enquiry and circumstance.

ASSAULT

ELEMENTS OF TORT:

- Intention:
 - “the intention as well as the act makes an assault” (*Tuberville v Savage*)
 - Assault is committed by intentionally creating in the victim a reasonable apprehension of imminent harmful or offensive bodily contact by the aggressor (*Richardson v Rix*)
- Act:
 - The intention as well as the act makes an assault (*Tuberville*)
 - Mere words do not constitute an assault, but in the context it may be enough – they may give meaning to an act and both, taken together, may constitute an assault (*Holcombe v Whittaker*)
- Reasonable apprehension of battery:
 - The assault is complete upon the causing of the apprehension whether or not the perceived threat ensues (*Richardson v Rix*)
 - An objective/reasonable person test (*Tuberville v Savage*)
 - When the offence is complete
 - The essential matter is whether the person has the present ability to affect his purpose of threatening (*R v Kerr*)
 - Can be a conditional threat (*Holcombe v Whittaker, Police v Greaves*)
 - Not necessary that the victim actually be afraid (because of the objective test (*Brady v Schatzel, Richardson v Rix*))
 - Victim must be aware of the assault/threat – otherwise no reasonable apprehension e.g. sleeping/back turned (*R v Kerr*)
- Actionable per se:
 - The conduct is subject to a cause of action in itself – not necessary to prove there has been damage or injury suffered

ADDITIONAL CONSIDERATIONS:

- Ability to carry out the threat?

- “Not every threat constitutes an assault, there must be means of carrying that threat into effect (*Myers*)
- BUT in *Brady*, found guilty for assault even though the gun was not loaded as it still had an apparent ability to affect.
- Factual enquiry: comes back to whether the reasonable person would apprehend the threats. Apparent (not actual) threats uphold the tort more than a narrow interpretation of just actual threats.
- Imminent?
 - “Reasonable apprehension of imminent harmful or offensive bodily contact” (*Richardson v Rix*) “The claimant must have reasonably expected an immediate battery to constitute assault, if no battery ensues” (*Stephens v Myers*)
 - Assault and battery are already very close so the time limit is required to make sure that the tort is not too wide.
 - Inevitability – not requiring imminence would allow scenarios like domestic violence
- Conditional threats?
 - If it weren’t assize time (*Tuberville v Savage*) – slightly emptier threat
 - Conditional threats do suffice (*Police v Greaves*) – the fact that a conditional threat provides an alternative still presents an intentional threat and a present ability to carry it out, much more intense threat also – comes back to the RP test
 - Conditional threats suffice again (*Holcombe v Whittaker*)

CASE:	FACTS:	HELD:	SIGNIFICANCE:
<i>Tuberville v Savage</i> [1669] Kings Bench	Tuberville placed a hand on Savage’s sword with a threat.	“The intention as well as the act makes an assault” (“were it not assize time”/if the town wasn’t crawling with law enforcement)	Intention to act is required
<i>Stephens v Myers</i> [1830] Kings Bench	Myers threatened Stephens and advanced toward him. He was pulled away before any contact ensues.	The claimant must have reasonably expected an immediate battery to constitute assault, if no contact ensues.	Threat of action must be immediate
<i>Brady v Schatzel</i> [1911] Queensland Supreme Court	Brady appeared to point a loaded rifle at Schatzel, accompanied with a conditional threat. Schatzel was not afraid, and the rifle was actually not loaded.	It is an assault to present a pistol at all, whether loaded or not, if the person pointed at believes the weapon to be loaded, and is thereby put in fear or alarm... it is not material that the person should be put in fear.	Pointing a gun is always assault, regardless of whether it is loaded. Victim does not have to be afraid.
<i>Police v Greaves</i> [1964] Court of Appeal NZ	Police received a complaint that Greaves had attacked a neighbour. Approached house and met Greaves who had a knife at the door and threatened the officer	Threat of violence along with stopping someone proceeding from doing anything they are lawfully allowed to do is an assault.	Conditional threats still constitute an assault, as stopping someone from doing anything they are legally entitled to do combined with a threat is assault.

	with stabbing if he came closer.		
Holcombe v Whittaker [1975] Alabama Supreme Court	A marriage fell apart, and husband made threatening phone calls to the wife. Her flat was broken into (maybe not by him) and he threatened to kill her for taking him to court.	An assault consists of an intentional, unlawful offer to touch the person of another in a rude or angry manner under such circumstances as to create in the mind of the party alleging the assault a well-founded fear of an imminent battery, coupled with the apparent present ability to effectuate the attempt, if not prevented. While the words standing alone cannot constitute an assault, they may give meaning to an act and both, taken together, may constitute an assault.	Assault is compiled of an intentional threat to touch another with hostile intent in a manner to create apprehension of battery, and the ability to effectuate the threat if not stopped.
R v Kerr [1987] NZ Court of Appeal	Mr Kerr approached his sunbathing neighbour and picked up the axe she was using to prevent her hat blowing away. She then woke up and was alarmed, despite never seeing the axe in his hand herself.	There can be no assault where a person does not know that he is being threatened, as would be the case where he is asleep or has his back to the person threatening him. It is otherwise a battery because in that case there is the actual application of unlawful force by the aggressor to the victim.	The victim must be aware of the threat to constitute an assault
Richardson v Rix [1989] NSW Supreme Court	R and R collided on the road. They exchanged details, but before Rix could leave, Richardson chased him and pulled the keys out of his ignition to stop him.	Assault is committed by intentionally creating in the victim a reasonable apprehension of imminent harmful or offensive bodily contact by the aggressor.	It is not necessary that the victim actually be afraid. The assault is complete upon the causing of the apprehension whether or not the perceived threat ensues.

DEFENCES TO INTENTIONAL TORTS

CASE:	FACTS:	HELD:	SIGNIFICANCE:
Cockcroft v Smith [1705]	During a scuffle, Cockcroft ran his finger towards Smith's eyes, who bit a joint off his finger.	"If a man strike another, who does not immediately resent it, but takes his opportunity, and then sometime after falls upon him and beats him, son assault is a good plea; neither ought a man, in case of a small assault, give a violent or unsuitable return"	Self-Defence: must be proportional to the act
Ashley v Chief Constable of Sussex Police [2008] House of Lords	During a police raid at 4am, a police officer shot and killed a naked, unarmed man in his bedroom.	The law governing self defence is: the necessity to take action in response to an attack or imminent attack must be judged on the facts as the defendant honestly believed them to be, whether or not he was mistaken, but, if he made a mistake of fact, he can rely on the fact only if it was	Self-Defence: someone can act in self-defence based on a mistake, but only if the mistake would have been made by a reasonable person under these circumstances.

		one which was reasonable for him to have made.” Criminal and civil requirements of assaults SHOULD be different (different consequences/impacts on life). HoL believed law SHOULD be: in order to establish the relevant necessity the defendant must establish that there was in fact an imminent and real risk of attack” but this is only obiter	
<i>Katko v Briney</i> [1971] Supreme Court of Iowa	An owner set up a spring gun trap in his boarded up house to stop trespassers. Someone broke in and was shot and injured.	The nature of a spring gun trap means that the injury is still the direct consequence (not eventual), which is acceptable under batter. The law places a higher value on human life than on the right to defend property. Land owners cannot do indirectly by mechanical device anything which they could not do directly and immediately.	Defence of Property: direct consequences which are intended by the person constitute battery. Defence of property only allows for sufficient force to be used to stop the trespass – not force likely/intended to cause bodily harm or death. Spring guns cannot be used for defence of property.
<i>Southwark London Borough Council v Williams</i> [1971] UK Court of Appeal	Two homeless families squatted in an empty social housing, and were charged with trespass to land.	There is authority saying that in the case of great and imminent danger, in order to preserve human life, the law will permit of an encroachment on private property. However, this has to have a very very high standard otherwise the tort would become too wide and anyone could excuse trespass.	Necessity: in the case of great and imminent danger, in order to preserve life, the law permits an encroachment on private property. The does not apply to the hungry or homeless – VERY high standard.
<i>F v West</i> [1990] House of Lords	Whether the sterilisation of a person who is mentally incapacitated and unable to give lawful consent is legal.	The performance of a medical operation on a person without his or her consent is unlawful (battery). Consent can be a defence to physical interference, although some consent is not enough and some interference is lawful without consent (normal stuff). Battery can occur without having hostile intent. Medical treatment does not fall within the exception of generally acceptable conduct in ordinary circumstances. Necessity previously only concerned defence of property for public safety or the necessity to take action to assist another person without their consent. Previously this would require an emergency. Necessity includes but is not limited to an emergency.	Necessity: not only must there be a necessity to act when it is not practicable to communicate with the assisted person, but also the action taken must be such as a reasonable person would in all the circumstances take, acting in the best interests of the assisted person. Intervention cannot be justified when another more appropriate person is available and willing, or when it is contrary to the known wishes of the person, to the extent that they are rationally capable of such a wish. Necessity in an emergency is limited to medical treatment and can only include what is required for the patient to get to a position where they can give consent. Where the state of affairs is permanent/semi-permanent, the doctor must act in the best

			interests of his plaintiff, just as if he had received the patient's consent to do so.
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