

### Business strategies: How Wal-Mart

## References

- To succeed in an action for battery the Plaintiff must prove on Balance of probabilities that:
    - D caused some form of "physical interference" with his/her person.
    - The interference was direct;
    - The act was intentional or negligent; and
    - There was no "consent" of lawful justification for such conduct.
  - (i) Direct application of physical force
    - Any unwanted contact, no matter how trivial is battery: *Collins v Wilcock*
    - Need not be hostile or done in anger: *Coll v Turner*
    - Not limited to bodily contact: *Sherwell v Bradford*
    - Interference followed so closely by D's act that it could be considered part of the act (can be an unbroken series of consequences): *Scott v Shepherd*
    - *Smith v Shepherd*: D threw lighted gun powder squibs at market, in a series of throwing by others to avoid injury it hit P in the face and took out his eye. Held: injury was direct result of D's action. D was liable in battery
    - Act of D must be active and not passive (e.g. blocking a door entirely passively or like a wall would not constitute battery): *Irwin v Hyde*
  - (ii) Fault
    - There is no liability unless the act is done intentionally or negligently: *Coll v Turner*
    - D must bring about the action consciously which result in battery: *McNairne v Duncanson*; In this case court held that P did not consent to blow struck by D when he had let go off the ball in AFL match
    - Knowledge of contact is not essential: *Murray v Ministry*
    - *Stone v Star City Casino*: D placed hand on P shoulder to get his attention – no battery
  - (iii) Consent
    - If P has consented to the act, then there is no battery: *McNairne v Ministry*
    - But consent must be given freely and without fraud or duress: *R v Williams*
    - Sports have implied consent unless it is outside the rules of the game: *McNairne v Duncanson*
    - Conduct part of everyday life is no battery: *Collins v Wilcock*
    - In medical emergency, it is permissible to give medical treatment without consent, "subject to knowledge of any refusal by patient": *Reper v Whistler*
    - In case of incompetent persons, guardian can give consent: *Commonwealth Administration Act 2006 (Vic)*
- CO MODULE NEXT PAGE

# Good Structure Torts Answer

**M Woodhall**



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