

Business strategies: New challenges

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 actions. 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 Dawson*; 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 Dawson*
 - But consent must be given freely and without fraud or duress: *A v M'Leane*
 - Sports have implied consent unless it is outside the rules of the game: *McNairne v Dawson*
 - 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 Wharfedale*
 - In case of incompetent persons, guardian can give consent: *Commonwealth Administration Act 2006 (Vic)*
- CO MODULE NEXT PAGE

Good Structure Torts Answer

Patrick Vollmar

A red circular graphic with a gradient, appearing as a semi-circle or a partial circle, located to the right of the author's name.

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Table of Contents Good Structure Torts Answer

1. Understanding the eBook Good Structure Torts Answer
 - The Rise of Digital Reading Good Structure Torts Answer
 - Advantages of eBooks Over Traditional Books
2. Identifying Good Structure Torts Answer
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Good Structure Torts Answer
 - User-Friendly Interface
4. Exploring eBook Recommendations from Good Structure Torts Answer
 - Personalized Recommendations
 - Good Structure Torts Answer User Reviews and Ratings
 - Good Structure Torts Answer and Bestseller Lists
5. Accessing Good Structure Torts Answer Free and Paid eBooks

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- Good Structure Torts Answer Budget-Friendly Options
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 - Interactive Elements Good Structure Torts Answer
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 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Good Structure Torts Answer
- 9. Balancing eBooks and Physical Books Good Structure Torts Answer
 - Benefits of a Digital Library
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- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Good Structure Torts Answer
 - Setting Reading Goals Good Structure Torts Answer
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Good Structure Torts Answer
 - Fact-Checking eBook Content of Good Structure Torts Answer
 - Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development

- Exploring Educational eBooks

14. Embracing eBook Trends

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- Interactive and Gamified eBooks

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