

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: *R v Williams*
 - 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)*
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Philosophy and the Law of Torts Gerald J. Postema, 2001-11-19 When accidents occur and people suffer injuries who ought to bear the loss Tort law offers a complex set of rules to answer this question but up to now philosophers have offered little by way of analysis of these rules In eight essays commissioned for this volume leading legal theorists examine the philosophical foundations of tort law Amongst the questions they address are the following how are the notions at the core of tort practice such as responsibility fault negligence due care and duty to repair to be understood Is an explanation based on a conception of justice feasible How are concerns of distributive and corrective justice related What amounts to an adequate explanation of tort law This collection will be of interest to professionals and advanced students working in philosophy of law social theory political theory and law as well as anyone seeking a better understanding of tort law *Tort Law Defences*

James Goudkamp, 2013-07-31 The law of torts recognises many defences to liability While some of these defences have been explored in detail scant attention has been given to the theoretical foundations of defences generally In particular no serious attempt has been made to explain how defences relate to each other or to the torts to which they pertain The goal of this book is to reduce the size of this substantial gap in our understanding of tort law The principal way in which it attempts to do so is by developing a taxonomy of defences The book shows that much can be learned about a given defence from the way in which it is classified This book has been awarded Joint Second Prize for the 2014 Society of Legal Scholars Peter Birks Prize for Outstanding Legal Scholarship **Great Debates in Tort Law** Jonathan Morgan, 2022-11-17 Exploring the key

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Bussani, 2021-02-26 This revised second edition of Comparative Tort Law Global Perspectives offers an updated and enriched framework for analysing and understanding the current state of tort law around the world Using a critical comparative methodology it covers not only the common tort law issues but also many jurisdictions often overlooked in the mainstream literature Contributions explore illuminating case studies from tort systems in Europe the US Latin America Asia and sub

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