

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: *Stubbell v Sheford*
 - 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*
 - *Scott 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 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*
 - *Rixon 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: *McDonald v McMahon*
 - 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: *Consolidation v Administration Act 2000 (Vic)*
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Good Structure Torts Answer

Karen Dyer, Anil Balan



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