

---

## BATTERY

[Plaintiff] v [Def] for battery – [act] (eg. punching him)

Battery is an intentional or negligent act which causes direct physical contact with the plaintiff without consent or lawful excuse (*Criminal Code 1899 Qld (CC) s 245(1)*; *Scott v Shephard*)

- **Intentional or negligent act (fault) (Cole v Turner):**
  - [Def] did / did not intentionally / negligently [act] and therefore is / is not at fault.
  - If relevant:
    - Not necessary to prove that the def intended to cause contact with the plaintiff, just that they meant to do the action involved (*McNamara v Duncan*)
- **Direct physical contact (interference):**
  - [Def], through [act] has / has not caused direct physical contact with [plaintiff] in form of...
  - If relevant:
    - There is no need for contact to be hostile (*Re F – surgical op without consent*)
    - The court doesn't care about little things (*De minimus non curat lex*)
- **Without consent or lawful excuse:**
  - [Plaintiff] has / has not consented to [act].
    - If relevant: [Plaintiff] has consented to contact within (eg) the rules of the game but not to the contact that was inflicted, the [act] (*McNamara v Duncan*).
    - The courts generally recognise implied consent to everyday physical contact.
  - **Eg.** [Def] does have a lawful excuse as (eg.) he is a policeman acting within his lawful duty.
- **DEFENCES: ONLY IF RELEVANT...** Otherwise: [def] will have no defence for [act] [plaintiff].
  - Consent / Lawful excuse: Yes / No as above.
  - Necessity: [Def's] [act] [plaintiff] was necessary for the preservation of life / human safety / protection of property and will be justified (*Proudman v Allen*)
  - Self-Defence: To successfully argue this defence, the defendant must prove the force used against the plaintiff was reasonable and proportionate to the threat to their own person (*Fontin v Katapodis*). Here, this is likely / not likely to be the case as...
  - Provocation: Exists where the plaintiff induced the defendant to lose self-control (s 269 CC; *White v Connolly*)
  - Legislative defences: police powers of arrest, lawful arrest...
- **REMEDIES:** Exemplary, punitive or aggravated damages can be awarded. (CLA s 52)
  - [Plaintiff] will likely succeed in a battery claim and will be entitled to compensatory damages for the damage suffered.
  - [Plaintiff] will likely succeed in a battery claim and will be entitled to nominal damages as no damage was suffered.
  - [Plaintiff] will not likely succeed in a battery claim as ... and will not be entitled to damages.

---

## ASSAULT

[Plaintiff] v [Def] for assault – [act] (eg. Threatening to hit him)

Assault is an act which produces a reasonable apprehension that imminent direct physical force will be inflicted on the plaintiff (*Criminal Code 1899 Qld s 245(1)*; *Brady v Schatzel*)

- **Act (fault):**

- Words alone may be sufficient if they constitute a real threat (*Barton v Armstrong*).
- Here, [def's name] has stated (or alternative verb) he will [act] [plaintiff].
- Conditional threat may still amount to an assault if it requires obedience to an unacceptable command (*Police v Greaves*).

- **Produces reasonable apprehension:**

- Here, [def's name] does / does not have a real or apparent ability to carry out [act upon plaintiff] (*Brady v Shatzel*). Therefore, a reasonable person would / would not be apprehensive (*Brady v Shatzel*).
  - ... and it is irrelevant that [plaintiff] is / is not apprehensive as it is an objective test (*Brady v Schatzel*)

- **Of imminent direct physical force:**

- [Def's] threat to [act upon plaintiff] is / is not able to be carried out immediately or in the immediate future as [reason] (*Zanker v Vartzokas*).

- **DEFENCES: ONLY IF RELEVANT...** Otherwise: [def] will have no defence for [act] [plaintiff].

- Self-Defence: To successfully argue this defence, the defendant must prove the force used against the plaintiff was reasonable and proportionate to the threat to their own person (*Fontin v Katapodis*). Here, this is likely / not likely to be the case as...

- **REMEDIES:**

- [Plaintiff] will likely succeed in an assault claim and will be entitled to compensatory damages for the damage suffered.
- [Plaintiff] will likely succeed in an assault claim and will be entitled to nominal damages as no damage was suffered.
- [Plaintiff] will not likely succeed in an assault claim as ... and will not be entitled to damages.
- Exemplary, punitive or aggravated damages can be awarded (*Civil Liability Act 2003 (Qld) s 52*)

---

## FALSE IMPRISONMENT

[Plaintiff] v [Def] for false imprisonment – [act] (eg. Keeping him in van)

False imprisonment is a direct and complete deprivation of a person's liberty without consent or lawful excuse (*Myer Stores v Soo*).

- **Direct and complete deprivation of liberty:**

- Here, by [act], [def] has / has not directly and completely deprived [plaintiff] of their liberty.
- If relevant:
  - Restraint can be psychological (*Symes v Mahon*)
  - There must be no reasonable means of escape (*R v Macquarie* – sharks, couldn't jump)
  - Restraint must be total in all directions (*Bird v Jones*)

- **Without consent or lawful excuse:**

- Here, [plaintiff] has not consented to being restrained, nor does [def] have any lawful excuse, therefore, [def] will not have any defence to this false imprisonment claim.
- OR, if relevant:
  - Here, [plaintiff] has agreed to being restrained in all directions by (eg.) getting on the bus (restrained between stops...) and therefore has consented (*Balmain New Ferry Co v Robertson*).
  - Here, [Def] does have a lawful excuse as he is a policeman acting within his lawful duty.

- **DEFENCES:**

- Consent / Lawful excuse: Yes / No as above

- **REMEDIES:**

- [Plaintiff] will likely succeed in a false imprisonment claim and will be entitled to compensatory damages for the damage suffered.
- [Plaintiff] will likely succeed in a false imprisonment claim and will be entitled to nominal damages as no damage was suffered.
- [Plaintiff] will not likely succeed in a false imprisonment claim as ... and will not be entitled to damages.
- Exemplary, punitive or aggravated damages can be awarded (*Civil Liability Act 2003 (Qld) s 52*)

---

## TRESPASS TO LAND

[Plaintiff] v [Def] for trespass to land – [act] (eg. throwing rocks onto land)

Trespass to land is a direct and intentional or negligent interference with land in the exclusive possession of another without consent or lawful excuse (*Entick v Carrington*).

- **Title to sue:**

To be able to sue, [plaintiff] must have exclusive possession. As [plaintiff] is the owner / lessee of the property in question, he has exclusive possession and therefore has title to sue.

- If relevant: As [plaintiff] is a mere licensee, he will not have title to sue (*Malone v Laskey*)
  - Licensee: person given permission to stay on land
- EXCEPTIONS: A person with a right in the form of an easement or a profit a prendre may be entitled to sue in trespass (*Mason v Clarke*).

- **Land:**

Land includes anything attached to the land, as well as the area below and above the land as is necessary for the ordinary use and enjoyment of the land (*Elwes v Brigg Gas Co*; *Bernstein v Skyviews*). Here, the [property / pool / garden etc] constitutes land.

- Note: crane impinging (*Graham v KD Morris*), billboard 23cm (*Kelson v Imperial Tobacco*)

- **Direct interference:**

[Def's] act of [act] will amount to a direct interference.

If relevant: ... can amount to a direct interference

- A transient interference (*Davies v Bennison* (bullet passing through airspace)).
- Leaving a material object on the land (*Konskier v B Goodman*).
- Placing or throwing any material object onto the land (*Westripp v Baldock* (ladder); *Beckwith v Shordike* (dog)).
- Entering upon land without consent (*Amstad v BCC & Ward*).
- Remaining on the land after an express or implied license to remain on the land has been withdrawn (*Halliday v Nevill*).
- Remaining on the land after a warrant has expired (*Myer Stores v Soo*).

- **Voluntary Act:**

Here, there is nothing to suggest that [def] acted involuntarily in [act].

- OR: There is no liability for an involuntary act (*Police Commission of NSW v Perry*).