

# TRESPASSES

LWB147 - TORTS A  
End of Semester Exam

## **CONTENT**

- Onus, Time Limits & Jurisdiction
- Trespass to Person:
  - Battery
  - Assault
  - False Imprisonment
- Trespass to Land
- Trespass to Personal Property
  - Trespass to Chattels
  - Conversion
  - Detinue
- OVERALL DEFENCES

## ONUS:

<b>Highway</b>	Plaintiff to prove both direct interference and fault: <b>Lord v Nominal Defendant</b>
<b>Non-Highway</b>	Plaintiff to prove on balance of probabilities there was a direct interference, defendant to disprove fault: <b>McHale v Watson</b>

## TIME LIMITATION:

3 years if is physical damage: **s11 Limitations of Actions Act (Qld)**

6 years if no physical damage: **s10(1)(a) Limitations of Actions Act (Qld)**

PERSONAL PROPERTY		
<b>Conversion</b>	Date of conversion	
<b>Detinue</b>	From after demand and refusal	<b>Ming Kuei Property Investments Pty Ltd v Hampton</b>
<b>MORE THAN 1</b>	Barred at 6 years from first act	<b>LAA (Qld) s12(1)</b>

## JURISDICTION:

Queensland common law and statutes will apply.

# BATTERY

Direct or indirect application of force causing physical contact with the plaintiff's person, and the defendant must be at fault: **s245 Criminal Code; McNamara v Duncan**

ELEMENTS (Pursuant to s245 Criminal Code)			
1	Direct or indirect application of force	Physical contact with plaintiff's person	<b>Carter v Walker</b>
2	Consent	If lawful and consented no action	<b>McNamara v Duncan</b>
3	Fault	Voluntary, intentional or negligent	<b>Cole v Turner</b>

## 1. DIRECT OR INDIRECT APPLICATION OF FORCE

Physical contact with the plaintiff's person: **Carter v Walker** (*witnessing police attack case*)

Needn't be person to person (e.g. hitting with cricket bat):	<b>R v Cotesworth</b>
Offensive contact with the plaintiff's person	<b>Slaveski v Victoria</b>
Includes applying heat, light, electrical force, gas, odour, or other things intended to provide discomfort:	<b>s245(2) Criminal Code</b>
Hostility/Anger isn't required	<b>Bouhey v R</b>

### EXCLUDES

Passive contact/obstruction (being nudged when walking/blocking doorway)	<b>Innes v Wylie</b>
Merely touching someone to gain their attention isn't battery if no force used	<b>Rixon v Star City Casino</b>
All physical contact that is generally acceptable in the ordinary conduct of daily life	<b>Re F (Mental Patient: Sterilisation)</b>

### EXAMPLES

To strike a horse so it throws its rider	<b>Dodwell v Burford</b>
To throw a firework that is passed on by several parties until hitting a person	<b>Scott v Shepherd</b>
Pull a chair from a person so they fall to the floor	<b>Hopper v Reeve; Andrew v Garrett</b>
Punching a woman holding a child, who was dropped and injured	<b>Haystead v Chief Constable of Derbyshire</b>

## 2. CONSENT

If contact is lawful and consented to there is no action in battery	<b>McNamara v Duncan</b>
Consent may be express or implied by circumstances	<b>Giumelli v Johnston; McNamara v Duncan</b>

### Valid consent: R v Williams (Singing tutor sex)

- Given freely
- Without Fraud; and
- The interference is what the plaintiff is consenting to

### EXAMPLES

Contact generally acceptable in the ordinary conduct of daily life	<b>Re F (Mental Patient: Sterilisation)</b>
Participating in contact sport is implied consent within rules of game (actions outside aren't consented to)	<b>McNamara v Duncan</b>
Cutting a person's hair or without their consent	<b>Forde v Skinner</b>

### OTHER NOTES - NEED VERIFICATION

In emergency, its permissible for treatment to be given without consent	<b>Rogers v Whitaker</b>
Consent to one procedure doesn't mean consent to others unless implicit	<b>McDonald v Ludwig</b>
Signed form is not conclusive in medical procedures	<b>Chatterton v Gerson</b>
Person isn't competent to give valid consent, guardian may consent	<b>Guardianship and Administration Act 2000 (Qld)</b>

## 3. FAULT

Interference was voluntary, defendant intended the impact or caused it negligently: **Cole v Turner**

Plaintiff need not know of the contact	<b>Murray v McMurchy</b> (Consent to C-Section, not tubal ligation)
Defendant need not know of the contact	<b>Law v Visser</b> (intended to run over stick, actually man)
Intending to strike someone and hits plaintiff, still at fault	<b>Livingstone v Ministry of Defence</b>
<b>Voluntary:</b> must be directed by the defendant's conscious mind	<b>Morris v Marsden</b>

## DEFENCES. CONCLUDE.

# ASSAULT

Any act of the defendant which directly and either intentionally or negligently causes the plaintiff immediately to apprehend a contact with his/her person: **s245 Criminal Code; Brady v Schatzel**

ELEMENTS (Pursuant to s245 Criminal Code)		
1	Threat of imminent/direct contact	Can be minor delay but not in distant future. Mere words can amount to assault. <b>R v Gabriel</b> <b>Barton v Armstrong</b>
2	Belief/Apprehension of ability to carry out	Belief/expectation force about to be applied <b>Brady v Schatzel</b>
3	Fault	Intentional or careless <b>Rixon v Star City Casino</b>

## 1. THREAT OF IMMINENT/DIRECT CONTACT

Imminent: Can be some delay but not a threat to harm at some distant time in future: **R v Gabriel**  
Mere words can amount to assault: **Barton v Armstrong**

### EXAMPLES OF IMMINENT THREATS

Threat delivered over a phone call	<b>R v Gabriel</b>
In car being threatened as to what would happen when got to destination	<b>Zanker v Vartzokis</b>

### EXAMPLES OF MERE WORDS

Silence may constitute assault if causes apprehension of imminent unlawful contact	<b>R v Ireland</b> (repeat silent phone calls)
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## 2. BELIEF/APPREHENSION OF ABILITY TO CARRY OUT THREAT

Belief/expectation that force is about to be applied to their person: **Brady v Schatzel**

Plaintiff must be aware of the threat	<b>R v Phillips</b> (unconscious)
Plaintiff need not be afraid	<b>Brady v Schatzel</b>
Conditional threat is assault (if you come closer i'll stab you)	<b>Police v Greaves</b>

### MUST HAVE ACTUAL OR APPARENT ABILITY TO CARRY OUT THREAT

Actual (e.g. threatening to throw someone off a chair)	<b>Stevens v Meyers</b>
Apparent (e.g. thinks he has means to shoot but doesn't, gun empty)	<b>Brady v Schatzel</b>

## 3. FAULT

Defendant must have intended to create the apprehension of harm in the plaintiff's mind, or been careless (e.g. waving gun around): **Rixon v Star City Casino**

At fault even when threat isn't intended to be carried out	<b>McClellan v Symons</b>
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## DEFENCES. CONCLUDE.