

Torts  
**Wallace v. Rosen**  
765 N.E.2d 192 (2002)

## Keyword Subject

Battery, Negligence

## Facts

The defendant (Rosen), a teacher at Northwest High School in Indianapolis, was responding to a fire drill that was happening when classes were in session. While escorting students out of the building in accordance with the fire drill procedure, defendant noticed several people at the top of a flight of stairs talking with one another. He walked up to them and called on them to "move it" and, when they did not hear him, touched plaintiff on the back to get their attention. At this point, plaintiff slipped and fell down the stairs and accused defendant of battery for "pushing" her.

## Procedural History

Trial Court: In favor of defendant

Appeal: In favor of defendant (Affirmed)

## Issue

Did the trial judge err in instructing the jury that "battery is the knowing or intentional touching of one person by another in a rude, insolent, or angry manner" and that "a battery may be recklessly committed where one acts in reckless disregard of consequences?"

## Holding: No; Judgement affirmed

## Principle

Absent expression to the contrary, consent is assumed to all those ordinary contacts which are customary and reasonably necessary to the common intercourse of life

## Reasoning

The "mere knowledge and appreciation of a risk—something short of substantial certainty—is not intent. The defendant who acts in the belief or consciousness that the act is causing an appreciable risk of harm to another may be negligent, and if the risk is great the conduct may be characterized as reckless or wanton, but it is not an intentional wrong."

## Separate Opinions

## Notes