

# THE TORT OF ASSAULT

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## Definitions of The Tort of Assault

There have been various definition proffered for the tort of assault. According to **Winfield and Jolowicz** p.71, assault is defined as

“an act of the defendant which causes the claimant reasonable apprehension of the infliction of battery on him.”

Gold LJ in ***Collins vs Wilcock 1984 All ER 374*** defines assault as

“an act which causes another person to apprehend infliction of immediate and unlawful force on his person.”

For instance, Mr A points a loaded gun at B. In such a case, by pointing a gun at Mr B, Mr A has put him in immediate fear of battery.

## Ingredients of the Tort of Assault

**1. It must be direct and intentional:** What this means is that in order to establish the tort of assault, it has to be proved that the action of the tortfeasor was directed towards the claimant and it was intentionally done. A case for assault cannot arise if a gun is pointed at another party instead of the claimant.

**2. Conduct:** The conduct amounts to action coupled with threatening words that creates the atmosphere of assault. In the past, mere threatening words were not regarded as assault as it was followed with no action/conduct. Today, due to the advent of advanced technology like telephones, emails and social network, the issuing of threats via these means have come to be considered as assault.

There could be instances where the threatening words coupled with the action could have the opposite effect of implying that there would be no assault.

In the case of ***Turberville vs Savage (1669) 1 MOD REP at 3***, Turberville put his hand on his sword and said “if it were not assize time, I would not take such language from you”. Savage later sued for assault. The court held that to prove a case for assault, at least one of the following ingredients must be present:

- An act intending to cause harm to another person.
- The other person put in apprehension if he believes the person can do damage.

An assault exists even if the other person can defend himself in such situation. Mere threats of future harm is thus not sufficient for assault.

Thus, the court held that by Turberville’s action and words, he meant that he would not assault Savage at that point.

**3. Reasonable Fear:** For there to be an assault, the fear of the victim must be a reasonable one. To measure this, a subjective test is done to examine the victim’s state of mind at that time. In the case of ***R vs St George 1840 9 C&P 483***, the judge said:

It is an assault to point a weapon at a person, though not loaded but so near that if loaded, it might do injury. However, if the victim knew that the gun was unloaded, any fear would be regarded as unreasonable. The threat must be capable of being carried out at the point it is made.

In cases of telephone threats, the house of Lords has held in the case of ***R vs Ireland*** that it would amount to an assault if the fear of the claimant was that the assailant would turn up in a minute or two.

If the defendant was prevented from carrying out the threat, it would still be regarded as assault if he was advancing with that intent. This was the decision of the court in the case of ***Stevens vs Myers (1830) 4 C&P 349***. In this case, the defendant was advancing with a clenched fist towards the claimant but was prevented from hitting the claimant due to the intervention of third parties. it was held that there was assault.

A different decision was reached by the court in another case of ***Thomas vs National Union of Mine Workers(South Wales Area) 1985 2 All E.R 1***. In this case, the claimant who went to work despite a miners strike had threats shouted at him by other miners. However, the other miners were restrained by the police and the claimant was in a bus. The court held that considering the situation, there was no reasonable fear of the defendants carrying out their action at that point.

## SOURCES

1. Lecture delivered by Dr. Bashir Omipidan on Nigerian Law of Torts
2. Winfield and Jolowicz on Torts