

# DEFENCES TO ASSAULT AND BATTERY

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## Why the Torts of Assault and Battery Have Similar Defences

The torts of assault and battery are very similar in a lot of respects. They are both direct physical trespass to the person of another. For instance when a battery is committed against the complainant, it also includes the tort of assault. This is due to the fact that before the actual infliction of unlawful force, the claimant was put in apprehension (assault). This would not occur only in instances in which battery occurs without the initial knowledge of the victim. Due to this, a defence to assault could also serve as a defence to battery. It is due to this that they are considered together in order to discuss their defences.

## Defences to Assault and Battery

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### 1. Lawful Authority:

A person who is purported to commit battery or assault under lawful authority cannot be held liable. Police officers are authorised by the statute to use force if it is necessary in carrying out their duty. However, their actions should be within the confines prescribed by the law. See: ***Collins vs Wilcock 3 All ER.Â*** In this case, a policewoman gripped the claimant's arm when questioning her. It was held that doing so amounted to battery since it was beyond reasonable force to be used in such situations and thus, beyond the scope of her powers.

The **Mental health act** of many countries empowers people treating those with mental disorder to use necessary means to treat those who have been compulsorily detained for mental issues. Treatment in these situations are usually without the consent of the patient.

### 2. Consent:

If a claimant has consented to the assault or battery inflicted on him, his action for battery or assault cannot succeed. This is encapsulated in the maxim *âœœviolenti non fit injuriaâœœ*. Thus, a person who participates in a contact sport cannot complain of assault or battery if he suffers injury which is permissible within the rules of the game. See: ***Simms vs Leigh Rugby Football Club (1969) 2 All ER 923***. In this case, the claimant, a visiting rugby player, was tackled and as a result hit the wall, breaking his leg. It was held that as a rugby player he had already consented to rough tackles and thus, the defendants were not liable.

It should be noted that in medical treatment, the consent must be real. This means that the patient must understand what it is he is consenting to.

### 3. Necessity:

Where it is necessary to prevent harm, trespass to persons can be allowed. It can also be used in medical cases to justify the treatment of a person who lacks capacity. See the case of ***F vs West Berkshire Health Authority 2 AC 1(1990).Â*** In this case, the F was a 36 year old woman who due to her mental condition, had the capacity of a small child. She formed a sexual relationship with a male patient which if leading to pregnancy, would be disastrous to her mental health. She was thus sterilized, with the consent of her mother. It was held that in this case, the sterilization was lawful since it was a necessity.

### 4. Parental Authority:

A parent would not be held liable for battery or assault for inflicting punishment on their child. Provided that the force used is a reasonable one and it is proportionate to the wrong committed by the child. The Child must also understand the reason for his punishment.

### 5. Self Defence:

In order to defend himself, a person is entitled to use reasonable force on his assailant. However, the force used must be proportionate to the threat posed. In ***Cockcroft vs Smith (1705) 11 MOD 43***, there was an argument between a lawyer and a clerk in court. The clerk pointed his fingers towards the lawyer's eyes and the lawyer bit off the finger. It was held that the action was not proportionate to the threat posed and he was held liable.

## SOURCES

1. Lecture delivered by Dr. Bashir Omipidan on Nigerian Law of Torts