

THE TORT OF BATTERY

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Definition of The Tort of Battery

According to **Salmond & Heuston** p.125, battery is defined as

“the application of force to the person of another without lawful justification”.

Goff LJ in ***Collins vs Wilcock*** states that:

Battery is the actual infliction of unlawful force on another person.

He said that touching would amount to battery if it doesn’t fall within the realm of normal touching experienced in conduct of everyday life.

Ingredients of The Tort of Battery

1. Intention: For one to be liable for battery, the touching has to be intentional irrespective of the fact that it was not meant to cause injury. If the touching was not intentional it would be categorized as negligence.

In the case of ***Marube vs Nyamuro CA No.8 1983***, the appellant, an infant, sued through his father for battery suffered when the respondent was flogging him with a rope which hit his right eye causing him to lose that eye. According to testimony of the appellant and other pupils, the injury suffered was a result of the deliberate act of the respondent.

The defense of the respondent was that it was a mistake and he didn’t intend to hit the appellant on the eye. The court held that flogging the claimant was intentional irrespective of whether or not harm was intended. And since harm resulted from this, he would be liable. Thus, damages of 30,000 sh were awarded.

It should be noted that if the tortfeasor intends to hit someone but he misses and it touches someone else, the principle of transferred malice would be considered in order to place liability on him.

In the case of ***Livingstone vs Ministry of Defence 1984 356 NICA***, a soldier in Northern Ireland fired a baton round at a rioter. The round missed the rioter and hit the claimant. The principle of transferred malice was applied and the soldier was held liable.

2. It Must Be Direct: To be liable for battery, the injury must be as a direct result of the intentional act of the tortfeasor.

In ***Scott vs Shepherd 1773 WM 1892***, Shepherd threw a lighted squib into the market and it landed on the stall of a ginger bread seller. Willis picked it up and threw it away, it landed on Ryal’s stall, who picked it up and threw it away. It struck the claimant in the face and blinded him in one eye.

The court held that the injury was a result of the action of defendant and he was held liable for battery.

In ***Gibbons vs Pepper (1695) 1LD RAYM 38***, the defendant whipped a horse so that it bolted and ran down the claimant. It was held that the injury suffered by the plaintiff was a direct result of the defendant’s action. He was thus held liable for battery.

It should be noted that the force applied does not have to be personal contact. For instance in ***Pursell vs Horn (1838) 8 A&E 602***, the claimant went to the saloon to get a permanent wave. However, at the salon, D threw water on the plaintiff. The defendant was held liable.

SOURCES

1. Lecture delivered by Dr. Bashir Omipidan on Nigerian Law of Torts
2. Salmond and Heuston on the Law of Torts