

## Battery

### Elements:

- Physical contact that is harmful OR offensive (can be indirect contact)
- Intentional (the defendant intended to make contact)

### Defences:

- Consent (ex: sports game)
- Self-defence (ex: fending off mugger)
- Defence of others (ex: intervening in an attack)
- Defence of property (ex: fending off a home-invader)
- Legal authority (ex: police officer arresting a criminal)

## Physical Contact

**At a glance:** the tortfeasor must physically contact the plaintiff for a tort of battery.

**Garrat v. Dailey:** The tortfeasor was liable for pulling a chair out from under the plaintiff.

- Physical contact needn't be direct.

## Offensive

**At a glance:** an act is offensive if it is hostile or exceeds objectively acceptable standards of society.

**Collins v. Wilcock:** A police officer was guilty of battery for taking a woman by the arm to restrain her.

- The physical contact needn't be injurious, only offensive.

**Wilson v. Pringle:** A child accidentally injured another child by pulling a backpack from their shoulders. The child was not liable because the act was not offensive (no intent).

- Lack of offensiveness can serve as a defence.

## Consent

**At a glance:** Consent is a *full defence*, if proved on a balance of probabilities the tortfeasor is not liable. Failure to inform adequately is cause for negligence but not battery.

**Philips v. Nagy:** A doctor performed an invasive search on the plaintiff at the behest of the police and was found liable for battery. The plaintiff complied with the doctor's directions fully during the encounter.

- The absence of resistance is not consent.

**Norberg v Wynrib:** Norberg traded sexual favours for prescriptions from her doctor. Wynrib was liable despite Norberg's "consent."

- A power imbalance between parties can negate otherwise valid consent.

**Hopp v Lepp:** A doctor performed a surgery leaving the patient disabled. The patient sued claiming that they were not fully informed of the risks. The doctor was not liable.

- A doctor is not required to disclose every possible outcome of different courses of treatment for the patient to validly consent.

**Riebl v Hughes:** Hughes performed an operation on Riebl that left Riebl impotent and unable to work. Riebl claimed that had he known the risk of stroke he would not have consented, therefore his consent was invalid. The court found the doctor liable

- The court designed a modified objective test for consent in cases of medical malpractice: Would a reasonable person in the plaintiff's position have consented to the operation knowing the undisclosed risks?<sup>1</sup>

## Self-defence

**At a glance:** Full defence. A person may use **Reasonable** force to repel an attack or threat of attack. Factors in determining reasonableness are:

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<sup>1</sup>The battery claim was dismissed, the ruling was based on negligence.

- Nature of the attack (Gun or stick)
- Stature of the attacker (Russel or Caleb)
- Amount of force necessary to repel the attack (would the attacker give up after a quick shove)
- Use of a weapon (did the attacker have a knife or bare fists)
- Availability of alternatives to force (could you run away)

**Wackett v Calder:** Wackett swore at Calder and started shoving him, challenging him to a fight. Calder punched Wackett twice, breaking his cheekbone. Calder was not liable for battery.

- A person is not liable for battery if they use (not more than) enough force to stop an attack.

## Provocation

**At a glance:** Partial defence. Provocative behaviour is behaviour which causes the tortfeasor to lose control. The provocative behaviour must occur at the time or shortly before the tortious act.

## Defence of others

**At a glance:** Full defence. A person is justified in using reasonable force to protect a third person as long as they believe that person to be in *imminent* danger.

**Gambriell v Caparelli:** Caparelli heard her son screaming and saw the plaintiff on top of him. She hit the plaintiff to defend her son from the attack. Gambriell was not liable even though it turned out her son was in no danger and just playing.

- Defence of a third person does not require actual danger, only perceived danger.

## Assault

### Elements:

- Any action, statement, or threat that creates a reasonable apprehension of **IMMINENT** harm.
- The threat may be conditional or direct.

## Imminent Threat

**At a glance:** A threat is imminent if a reasonable person would perceive that they were about to suffer harm.

**Mainland Sawmills Ltd. v USW Union Local:** Workers at the sawmill initiated a strike. When some workers still attempted to come in for work, the strikers told them they would not be hurt if they did not cross the picket line. The striking workers were liable for assault.

- A threat can be negative: "I won't hurt you if.."

**Stephens v Myers:** Stephens and Myers got into a quarrel at a church meeting. Myers threatened to pull Stephens out of his chair and started advancing. Myers was stopped by the church warden. Myers was guilty of assault.

- It does not matter if something intervenes to stop a threat from being carried out.

**Herman v Graves:** Graves chased down and tailgated Herman in a fit of road rage. Graves got too close and accidentally hit Herman. Graves was guilty of assault.

- Intent is not a defence. As long as the conduct creates a fear of harm it is assault.

## The Rule in Rylands v Fletcher

### Elements:

- The defendant used land in a non-natural way AND
- The harm resulted from something escaping from the defendant's land

### Defences:

- Plaintiff at fault (the thing escaped because of the plaintiff).

- Vis major/act of God (a hurricane).

**At a glance:** Anyone who uses keeps something on their land that is unnatural is liable if it escapes, regardless of fault.

**Rylands v Fletcher:** Rylands hired contractors to build a reservoir on his land. The contractors followed protocol without making a mistake. The reservoir leaked and then exploded into an underground mineshaft, flooding Fletcher's land. Rylands was liable.

- This case established the no-fault tort of the same name.

**Rickards v Lothian:** A third person plugged the sinks in the defendant's bathrooms on the fourth floor of a building. The plaintiff's second story shop was flooded. The defendant was not liable.

- The rule in Rylands does not apply to natural use of land (public bathrooms are natural for a public building).

**Read v J. Lyons & Co:** Plaintiff was inspecting a munitions factory owned by the defendant. A shell exploded, injuring the plaintiff. The defendant was not liable.

- Something must escape from the defendant's land for the rule in Rylands to apply.

## Vicarious Liability

### Elements:

- An employer is liable for torts which were committed by an employee AND
- Committed in the course of employment

### Tests for whether tortfeasor is an employer:

- Control test (did the supposed employer have control over the person who committed the tort)
- Organization/integration test (is the person who committed the tort an integral part of the defendant's organization/company)
- Ownership of tools
- Chance of profit

- Risk of loss

**At a glance:** A defendant is liable for torts committed by employees in the course of their employment, whether or not the defendant exercised reasonable care.

**Morris v C.W. Martin & Sons:** The plaintiff paid Martin & Sons to clean her mink stole. The employee charged with cleaning the item stole it instead. Martin & Sons was liable.

- Vicarious liability applies when something is done against the wishes/interests/orders of the employer. (Salmond test: unauthorized way of doing authorized work).

**British Columbia Ferry Corporation v Inverclyde Security Service:** The defendant was hired to provide security for plaintiff's property. The defendant's employee set fire to the property while working as a security guard. The security company was liable

- Strict liability applies to negligence and intentional torts

**Bazley v Curry:** This is most important case. Curry was an employee of The Children's foundation, a non-profit providing care for troubled kids. Curry sexually assaulted children including Bazley. The court reasoned from the policy objective that vicarious liability should spread risk and deter harm. Children's foundation was liable.

- Test for vicarious liability: Enterprise risk (does the enterprise create a risk of the tort committed). Strong connection (does the tort committed have a strong connection to the tort committed). The test includes the following factors.
- Opportunity of employee to commit wrong
- Extent to which the wrong furthers the employers aims
- Extent to which the tort was related to relationship set up by employer (intimate, confrontational).
- Extent of power given to employee
- Vulnerability of victim

**Jacobbi v Griffiths:** Griffiths worked as a program director for a boys and girls club. He used his position to lure the plaintiffs to his home for

sex. The club was not liable. The court differentiated the case from *Bazley* on the following factors:

- Assault took place at Griffith's home
- Griffiths was not given the same amount of power over the children

**Blackwater v Plint:** The plaintiff was a child at a church-run residential school. The church allowed employees to live in the same residence as the children. An employee sexually assaulted one of the children. The school was liable.

- Government policy of residential schools cannot be a cause for legal action, but negligence in carrying it can be.

**EB v Order of the Oblates:** The plaintiff was a child at a church-run residential school. The Oblates did not allow the employees to live in the same residence as the children. The children were accompanied by at least one other adult when with the employee who committed sexual assault. The Oblates were not liable.

- Case differentiated from *Blackwater* because the Oblates took more steps to mitigate risk, though they ultimately failed.

- Absolute privilege applies to contexts such as: Lawyer and client, Political speeches, communications between government officials, communication between spouses.
- Qualified privilege applies to situations where the person communicating and the person receiving the communication have a moral interest in frank communication (ex: parent telling daughter that intended spouse uses drugs)
- Fair comment (based on truth, on a topic of public interest)
- Responsible publication (applies to responsibly published news stories)

**At a glance:** A defendant is liable when the words they say damage a person's reputation in the eyes of right-thinking members of society **AND** the statement refers to the plaintiff **AND** the statement is actually published.

**Hay v Platinum Equities inc:** The defendant sent a complaint about forged documents from Hay's office to the ICAA (the regulators of accountants). Hay claimed that the complaint was defamatory. Platinum was not liable.

- Absolute privilege applied. The board must be allowed to hear complaints in the public interest.

## Defamation

### Elements:

- Impugned communication objectively reduces respect or esteem for the plaintiff in the eyes of right-thinking members of society **AND**
- Impugned speech refers to the plaintiff **AND**
- Impugned speech was communicated to at least one person (other than the plaintiff)

### Defences:

- Apology or retraction (only mitigates damages, partial defence)
- Justification/truth (the impugned speech can be objectively proven)
- Consent (plaintiff consented to publication)

### Fair comment

**At a glance:** Full defence based on an objective test. For this defence to apply a statement must be:

- On a matter of public interest (subjective)
- Based on fact (objective)
- Recognizable as a comment
- An opinion a person could honestly express
- not motivated by malice

**Vander Zalm v Times Publishers:** Zalm was the human resources minister of BC. Zalm derided welfare recipients in the course of his duties. Times published a cartoon of Zalm pulling the wings off of flying ants and smiling. Trial judge found the implication of the cartoon could not reasonably be inferred from the facts. BCCA reversed. The publisher was not liable.

- An inference from the facts needn't be reasonable, only based on the facts in substance.

**WIC Radio Ltd. v Simpson:** Simpson was a socially conservative activist opposing introduction of LGBT curriculum into schools. Meyer, a liberal radio host, compared Simpson to the KKK and neo-Nazis. Simpson claimed that the comparison implied that she condoned violence against gays. WIC radio was not liable.

- The test for fair comment is objective: Is the opinion one that ANY person could honestly express based on the facts (even if it's ridiculous). It does not matter whether the appellant themselves honestly believes the comment they make.

**Awan v Levant:** Awan was an outspoken Muslim lawyer who criticized islamophobia. Ezra Levant did not like Awan's critiques because of Israel or something (unimportant). Ezra wrote multiple articles on his blog in response to Awan calling him a liar. Levant was liable for defamation.

- A statement is not a fair comment if it is a stated as a fact. The judge stated fair comment may have applied if the term "liar" was prefaced with "in my opinion."

## Fair publication

**At a glance:** The press is not liable for slander if the published statement is on a matter of public interest AND responsibly published (fact checking and basic due diligence).

**Grant v Torstar Corp:** Grant sought government approval for buying Crown land for a private golf course. At public meeting, Grant's neighbours expressed dissatisfaction with the proposed golf course and a belief that Grant's political donations would get him the approval anyway. The Toronto Star published an article restating those opinions. Toronto Start was not liable.

- Fair publication applies because the Toronto star did due diligence in digging into Grant's history of political donations and interviewing neighbours.