

## WEEK 2: INTENTIONAL TORTS: PERSON, LAND AND CHATTELS

Trespass to the person (general elements of trespass + specific elements)

→ assault and battery used differently in criminal law

→ right to bodily integrity

Assault: threat or anticipation of **imminent contact**, **apprehension** of punch.  
Not necessary for action to follow.

- “reasonable apprehension of imminent contact”: defendant must have present and apparent ability of carrying out battery.
- *Zanker v Vartokas*: Reasonable apprehension of imminent contact → test is objective
  - Defendant offered to give plaintiff lift (missed bus) offered her sex while driving, refused offer, when asked to get out he kept driving, she tried to jump out of the car, defendant said “ill take you to my mates house and he will really fix you up”. Plaintiff jumped out. No fear of immediate violence (no assault), false imprisonment yes. On Appeal HELD: assault → fear relatively imminent violence, ‘**immediate and continuing fear**’ while in car. “fix up” must look at **context**, could be nice except circumstances offering sex.
  - *Barton v Armstrong* (1969, NSW): *Serious* threats on phone can put reasonable person in fear of later violence = violence  
→ Effect on **victims mind** is material factor, not whether the defendant actually had the intention to follow up

⇒ Feared going to come across employer

- *Hall v Fonceca* [1983] war 309: intention to use force or create apprehension re use of force
  - Def claimed he acted in self defence to assault during argument. Plaintiff appealed no assault as there was no intent. Must be intent on part of the assailant to either **use force** or **create an apprehension** of the use of force. Appeal dismissed.  
Has to be intent, negligence (lack of due care) is not sufficient

Battery: physical contact, punch itself

- Elements: **Positive** act, **direct** and **intentional** or **negligent** act. Unlawful touching/ **actual contact** without consent. Omission to act.
- *Fagan v Metropolitan Police Commission*: *accidentally drove over policeman's foot, when asked to move did not.*
- *Rixon v Star City* (2001) 53 NSWLR 98: P sued casino for unlawful arrest, false imprisonment, assault after excluded by order under Casino Control Act 1992 (NSW) by employee for 1.5 hrs before police arrived. Employee put hand on shoulder. Claimed stress/ anxiety. Held: no assault because no intent, no **battery** because no **hostile attitude** and defendant(casino) was acting within their power. No false imprisonment. Hostility or anger is not needed for battery.
  - *Cole v Turner*: *the least touching of another in anger is battery except for normal everyday contact*
  - *Wilson v Pringle*: *touching need not be hostile nor in anger*
  - *Collins v Wilcock*: *exceptions of everyday life*

False Imprisonment: direct act that intentionally deprives the plaintiff of his or her liberty without lawful jurisdiction.

- Human right of personal liberty = Art 9 ICCPR
- Damage/harm is not needed
- Defendant must cause imprisonment – themselves or by promoting others to carry out the imprisonment.
- Where there is no room for independent discretion, the person will not be liable. However the person who ordered them will be. *Rudduck v Taylor*, Minister for Immigration was responsible for false imprisonment not guards who detained person because minister had cancelled the visa and guards were acting pursuant to s 189 of *Migration Act 1958*.

Elements:

- Restraint must be total
  - *The Balmain New Ferry Co v Robertson (1906)*: paid penny and missed ferry argued should be entitled to leave without paying penny. Sign read “A fare of one penny must be paid on entering or leaving the wharf. No exception to this rule, whether passenger has travelled by the ferry or not”. Respondant was told he could not leave back onto street. Assault: did not have right to force his way out. Company was lawfully entitled to impose the condition and PI was free to pass out at any time in compliance (paying penny to get back in), he had only himself to blame for missing ferry and thus false imprisonment. HELD: entered wharf on free will, defendant (ferry) entitled to impose fair conditions wait for next ferry.
- Total restraint implies **absence of a reasonable means of escape** (link to Zanker case)
- Restraint may be total where D subjects P to her authority with no option to leave.
  - Doesn't need to be physical restraint → *Symes v Mahon [1922]*: P told he had to go with Police by warrant with train. Went voluntarily next day, bought own ticket, travelled in separate carriage to police. Case of mistaken identity. PI believed he had no reasonable way to escape (warrant, believed police would have arrested him) = False imprisonment. **Belief of no escape is enough**
  - *Murray v Ministry of Defence [1988]*: “law attached supreme importance to the liberty of the individual and if he suffers wrongful interference with that liberty it should remain actionable without proof of special damage. **Not necessary to be aware of imprisonment**. Plaintiff was not told he was under arrest until later (own house). “I think a person can be imprisoned while he is asleep, in a state of drunkenness, while he is unconscious and while he is a lunatic.” No false imprisonment because he didn't know he was arrested.
  - Cases where prisoners have been incarcerated longer than they needed to be due to miscalculated sentences or time already served has not been taken into account. Incarceration after

correct term of imprisonment is unlawful, it is irrelevant if prisoner was unaware of unlawful imprisonment.

- Negligent false imprisonment → action is brought in negligence and plaintiff must prove negligent detention caused an actual injury.

Action for the case of intentional harm:

Remedy for where injury was suffered as a result of the defendants actions and could be instituted in respect of both negligent and intentional acts.

⇒ For action of indirect infliction, must prove act whilst indirect was nevertheless intentional (Fault) and resulted in harm.

Fault:

Established providing "defendants act was so plainly calculated to produce some effect of the kind that was produced that an intention to produce it ought to imputed to the defendant". Irrelevant whether intended to cause the harm, a person is presumed to intend the natural consequences of their actions.

Defendant not liable where injury was "not a consequence which might reasonably have been anticipated or foresen".

- *Wilkinson v Downtown: practical joke leaving plaintiff in "violent shock" causing vomiting and more serious permanent physical consequences. Defendant has "willfully done an act calculated to cause physical harm to the plaintiff that is to say, to infringing her legal right to personal safety and has in fact thereby caused physical harm to her".*
- *Nationwide News v Naidu: Naidu bullied in work place leading to major depression and PTSD. "The acts were not mere negligence. They intended to demean, offend and injure". Reckless indifference satisfied test for intention.*