

**Intentional Torts** - are actionable per se (you don't need to prove the harm)

## **Trespass to the Person**

### **Battery**

- 1) Intentional Voluntary Act
  - *Wilson v Pringle* (the act and not the injury has to be intentional)
- 2) Which Directly
- 3) Causes Contact with another
  - *Cole v Turner* "least touching of another in anger"
  - *Rixon v Star City* "doesn't matter if it is hostile or not, as long as it is unwanted and conduct generally acceptable in the ordinary conduct of life"
  - *Collins v Wilcock* "any touching of another person, however slight"

Has to be a positive act

- Can go from omission to positive act (*Fagan v Metropolitan Commissioner of Police*)

### **Assault**

- 1) An intentional voluntary act or threat
  - *Rixon v Star City*
  - *Barton v Armstrong* (mere words → "matter of circumstance")
  - *R v Burstow, R v Ireland* (silence on telephone may constitute an assault)
- 2) Directly causing
- 3) Plaintiff reasonably to apprehend
  - Being reasonable is an objective test
- 4) Imminent physical contact
  - *Zanker v Vartzokas* "a present fear of relatively immediate, imminent violence"

Conditional threats (look at the whole circumstances: *Rosza v Samuels*)

### **False Imprisonment**

- 1) Positive voluntary act
- 2) Directly causing
  - *Iqbal v Prison Officers*
  - *Coles Myer v Webster* "D must be active in promoting and causing imprisonment"
- 3) Total restraint on plaintiff's liberty
  - *Bird v Jones* "a prison need not have walls"
  - *Symes v Mahon, Watson v Marshall* (complete submission by P to D)
  - No reasonable means of escape (no FI as voluntarily submitted: *Balmain Ferry v Robertson, McFadzean v CMFEU*)

No authority for negligently committed FI

Plaintiff need not be aware (*Trevorrow, Myer Stores v Soo*)

Exemplary Damages (*Lamb v Cotogno*)

## **Intentional acts causing physical injuries or nervous shock**

"*Wilkinson v Downton*"

- 1) A wilful, deliberate act
- 2) Calculated to cause harm
  - *Carrier v Bonham* (need to show intention to cause harm)
  - *Nationwide News v Naidu*
- 3) Causing harm
  - *Wainwright v Home Office* (psychological/psychiatric harm i.e. needs to be more than mere distress/sorrow)

*Bird v Holbrook* (physical injury caused indirectly by intentional acts)

- Deliberate act
- Defendant intended injury
- Plaintiff suffered injury

# Torts Notes

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## Week 2

### Trespass to Person

- Specific Forms of Trespass on the Person
  - Elements of General Trespass and specific elements of particular type of trespass:
    - Assault (Apprehension of imminent contact)
    - Battery (Physical Contact)
    - False Imprisonment (Total Deprivation of Liberty)
- **Specific elements of assault**
  - Reasonable apprehension of imminent contact; the test is objective
  - (*Zanker v Vartzokas*)
  - 'intention to use force or create apprehension re use of force'
  - (*Hall v Fonceca*)
- *Zanker v Vartzokas* (1988) 34 A Crim R 11 (S/C SA) (SVW p 45)
  - PI accepted lift from Def stranger – refused offer of money for sex – Def speeded up when she asked to get out – opened door & threatened to jump – 'I am going to take you to my mate's house. He will really fix you up' – van doing 60 km/h – PI jumped – injured
  - *Zanker v Vartzokas* (cont)
  - Def charged with assault only – denied - conceded false imprisonment – magistrate found for Def because no fear of immediate violence on facts – PI appealed
  - White J (Supreme Court SA) → 'present fear of relatively immediate imminent violence' - 'immediate and continuing fear' while in car
  - 'gist of the offence of assault is putting a person into apprehension of impending physical contact': Taylor J *Barton*
  - 'The effect on the victim's mind is the material factor, and not whether the def actually had the intention or the means to follow it up': Taylor J *Barton*
  - Significant in *Zanker* that PI imprisoned in car – continuing fear
  - Held: appeal allowed – conviction for assault
  - Harm from jumping = 'occasioned' whether Def foresaw or not
  - 'if threat produces fear or apprehension of physical violence... the law is breached, although the victim does not know when that physical violence may be effected'
- *Barton v Armstrong* (1969, NSW) –

- held: serious threats by phone can put reasonable person in fear of later violence = assault, even tho PI does not know when – depends on circs
- *Hall v Fonceca* [1983] WAR 309 (S/C WA) (SVW p 50)
  - Action for battery – Def claimed acted in self defence to assault during argument – defence upheld at trial – PI appealed arguing no assault as no finding of intent
  - Smith & Kennedy JJ
  - Must be ‘intention on the part of the assailant either to use force or to create an apprehension of the use of force’ (SVW p 50)
  - Appeal dismissed
- **Specific elements of battery**
  - Positive act
  - Direct and intentional or negligent act
  - Touching/contact
- *Rixon v Star City* (2001) 53 NSWLR 98;
  - (SVW p 41)
  - PI patron sued casino for unlawful arrest, false imprisonment, assault
  - PI subject to exclusion order under *Casino Control Act 1992* (NSW) – detained by employee in interview room at casino 1 ½ hours before police arrived – stress/ anxiety
  - Trial judge – no assault because no intention – no battery because no hostile attitude - PI failed re false imprisonment and unlawful arrest because Def acting within power
- *Cole v Turner* Court of Appeal (Sheller JA) affirmed decision
  - ‘the least touching of another in anger is a battery’: *Cole v Turner* (1704) 6 Mod 149; 87 ER 907
  - Except for normal everyday contact : *Cole*
  - Touching need not be hostile (*Wilson v Pringle* [1987] QB 237) nor ‘in anger’ *Cole*
  - *Cole v Turner* Court of Appeal (Sheller JA) continued
  - ‘any touching of another’s body is, in the absence of lawful excuse, capable of amounting to a battery and a trespass’: *In re F (Mental Patient: Sterilisation)* [1990] 2 AC 1 at 73 per Lord Goff of Chiveley; *Collins v Wilcock*
  - *Collins v Wilcock* [1984] 1 WLR 1172, per Robert Goff LJ (later Lord Goff) – every person’s body is inviolate – principle of autonomy. Refer *Blackstone’s Commentaries* (1830) (SVW p 42)
  - Exception – ‘ exigencies of everyday life’ – implied consent to contact : *Collins* - or general exception