

TORTS 70311

COMPREHENSIVE TEXTBOOK SUMAMRIES

TORT LAW

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Introduction to Torts And Trespass to Person

- **Elements to prove for the Action for Trespass**
 - All these elements must be proved:
 - Defendants intentional (or reckless or negligent) act
 - Directly caused
 - Interference with the plaintiff's person, goods or land
- **Intentional torts – Definition**
 - Deliberate transgression
 - Exists to protect an individual or property rights from unwanted interferences
- **Damages available:**
 - Compensation
 - Nominal – plaintiff succeeds in proving tort but he suffered no injury
 - Aggravated for injured feelings – deliberate conduct
 - Exemplary damages
 - See: *S33, Civil Liabilities Act* – restricts damages, doesn't apply to intent. injuries
 - **Loss of Damage**
 - Damages for trespass to the person may be awarded:
 - ❖ Physical injury
 - ❖ Insult
 - ❖ Injury to feelings
 - ❖ Indignity
 - ❖ Disgrace
 - ❖ Mental suffering
 - Damages may be awarded to compensate for injured feelings (**aggravated damages**) or;
 - **Exemplary damages**
 - ❖ **Exemplary damages**
 - ✚ To punish the plaintiff for their actions
 - ✚ Damages may be reduced due to a plaintiff's conduct e.g. *Provocation*
- **Defences to trespass to person:**
 - **Necessity**
 - **Consent by a competent person**
- **Directness of interference**
 - Trespass occurs when the defendant's act directly causes contact with the plaintiff's person, good or land
 - *Hutchins v Maughan* [1947] VLR 131 at 133:
 - Contact '*follows so immediately upon the act of the defendant that it may be termed part of that act*'
 - Consequential contact: '*when by reason of some obvious and visible intervening cause, it is regarded, not as part of the defendant's act but merely as a consequence of it*'
 - The interference with the Plaintiff's person, land or goods must be **DIRECT**. It must be PART of the defendant's act NOT MERELY A CONSEQUENCE of it.
 - *Reynolds v. Clark*
 - *Scott v. Shepherd*
 - **Continuation of the defendant's act**
 - TRESPASS: the defendant's act must set in motion an unbroken sequence of events
 - See: *Scott v Shepherd* (1773) 2 Wm BI 892
 - The defendant threw a firework in a crowded market place
 - It fell on Yate's stall and Willis, to prevent injury, picked up the firework and threw it on
 - It then landed on Ryall's stall and Ryall threw the firework on, again to prevent injury to himself
 - The firework hit the plaintiff in the face, exploded and blinded the plaintiff in one eye
 - The maj. Held that this contact was a direct interference with the plaintiff and the defendant was liable in trespass
 - Willis and Ryall were acting 'in the agony of the moment' in self-preservation as if they were part of an unbroken chain of events
 - **No intervening event**
 - IF there is an intervening event, the directness element disappears

- **Intentional Torts to the Person**
 - 3 intentional torts:
 1. **Battery: law protects the body**
 2. **Assault: law protects mental wellbeing**
 3. **False imprisonment: law protects liberty**
- **1. Battery**
 - **Elements to prove battery:**
 1. **An intentional voluntary act by a person**
 2. **Which directly**
 3. **Causes contact with the body of another**
 - **Definition:** direct and intentional act by a person which causes contact with the body of another
 - Occurs when force is used - can be slight
 - Can't be a mere omission to act – must be intentional
 - Omission to act can become a positive act – thus, constituting battery
 - **Example:** *Fagan v Metropolitan Commissioner of Police [1969]*
 - Act taken place without lawful justification and without consent
 - **Contact with the body**
 - Not every unwanted contact will be sufficient
 - *Positive and affirmative act*
 - Not an everyday occurrence
 - Hostility not a requirement
- **2. Assault**
 - **Definition:** any direct threat which intentionally or negligently creates in another an apprehension of imminent, harmful or offensive contact
 - Plaintiff must have knowledge of the threat
 - Apprehension in the plaintiff that imminent contact is about to take place
 - **Elements to prove assault**
 1. **An intentional voluntary act or threat by the defendant**
 2. **Which directly creates in another person**
 3. **A reasonable apprehension of imminent contact with that person's body**
 - Act must take place without lawful justification and without consent
 - **See:** *ACN 087 528 774 Pty Ltd (formerly Connex Trains Melbourne Pty Ltd) v Chetcuti [2008]*:
 - Full description of the elements of tort of assault:
 1. *A threat by the defendant, by words or conduct, to inflict harmful or offensive contact upon the plaintiff forthwith. It is enough if the threat is to make contact to the body of the plaintiff without the plaintiff's consent or without any legal justification*
 2. *A subjective intention on the part of the defendant that the threat will create in the mind of the plaintiff an apprehension that the threat will be carried out forthwith. It is not necessary to prove that the defendant in fact intends to carry out the threat*
 3. *The threat must in fact create in the mind of the plaintiff an apprehension that the threat will be carried out forthwith. It is not necessary for the plaintiff to fear the threat, in the sense of being frightened by it. It is enough if the plaintiff apprehends that the threat will be carried out without his or her consent.*
 4. *The apprehension in the mind of the plaintiff must be objectively reasonable*
 - **Words can constitute a threat**
 - Words can assist in proving that there is a threat where conduct is insufficient
 - Silence may constitute an assault
 - **See:** *R v Ireland [1998] AC 147*
 - ❖ Defendant made silent telephone calls over three months to three different women
 - ❖ He was convicted
 - ❖ He appealed
 - ❖ Argued that silence cannot amount to an assault and that psychiatric injury is not bodily harm.
 - ❖ His conviction was upheld
 - ❖ Silence can amount to assault & psychiatric injury can amount to bodily harm

- **Apprehension must be of imminent harmful contact**
 - *Zanker v Vartzokas (1988) 34 A Crim R 11*
 - Young women got into the def. van after he offered a lift home
 - When he started to offer her money for sexual favours, she asked to be let out
 - He accelerated and refused to let her out
 - *'I am going to take you to my mate's house. He will really fix you up'*
 - Threat was seen as imminent even though it was one of future violence, as the violence threatened would occur immediately at the end of the period of imprisonment
 - *Barton v Armstrong [1969] 2 NSW 451*
 - Required immediacy or imminence of the feared physical violence to constitute assault
 - Armstrong, over the phone, threatened to take Barton's life if he didn't sign a deed.
 - While Armstrong gave no indication as to when this threat was to be carried out, the court nevertheless saw the threatened harm as imminent
 - Taylor J: *'if the threat produces the fear or apprehension of physical violence then I am of the opinion that the law is breached, although the victim doesn't know when that physical violence may be effected'*
- **Conditional Threats**
 - Conditional threats can constitute an assault
 - Court will look at the whole of the circumstances
 - **Objective test:** is it reasonable for the plaintiff to anticipate imminent force if he disobeys?
 - Where the actions of the defendant are used to manipulate the plaintiff, this may be an assault
- **3. False Imprisonment**
 - Remedy available where personal liberty has been unlawfully restrained
 - No requirement that the imprisonment be carried out in bad faith
 - E.g. def. may believe he or she is acting for the best of reasons in imprisoning the claimant
 - Such belief is no defence to the action
 - **Elements of false imprisonment**
 1. A positive voluntary act of the defendant
 2. Directly causing
 3. The total deprivation of the liberty of the plaintiff
 - Act must take place without lawful justification and without consent
 - **Directness and intention**
 - No authority for negligent false imprisonment
 - *Iqbal v Prison Officers Association [2010] 2 WLR 1054*
 - The claimant, a prisoner, alleged false imprisonment.
 - Plaintiff was a prisoner serving a 15 year sentence
 - He was permitted to be outside his cell daily for 6 hours to work and exercise
 - The prison officers had taken unlawful strike action leaving him to be confined within his cell and unable to be involved in his normal activities.
 - During strike: governor ordered the confining of the prisoners within their cells.
 - The Association appealed against a finding that it was liable.
 - Court held: Judge was wrong to hold that any prison officers were liable for the tort of false imprisonment in this case.
 - ❖ Mere failure of the prison officers to work at the Prison, while it may have been a breach of their employment contracts, involved no positive action
 - ❖ That failure wasn't the direct cause of the claimant being confined to his cell.
 - **Policy**
 - Courts will in appropriate cases consider matters of public policy in deciding whether a cause of action in trespass will be awarded
 - See: *Haskins v Commonwealth (2011) 279 ALR 434*

TORT LAW