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Trespass Against the Person- False Imprisonment

1) Define false imprisonment and the tortious act
   - A positive and voluntary act by D, done intentionally or negligently, which directly causes a total restraint to P without legal authority
   - P does not need to prove that he suffered any actual/tangible damage to have a cause of action → Actionable per se
     - Social reputation damage, insult, emotional well-being

2) Positive, Voluntary Act
   - Innes v Wylie: A positive act is not a mere passivity or omission
   - Voluntary: D must consciously bring about the bodily movement which results in contact with P (remember: D not need have intended to bring about the results, just intend the action)

3) Total Restraint
   - There must be a total restraint of P's liberty, for however short a time, and not a partial obstruction of his will (Bird v Jones).
     - Tortious confinement can occur anywhere→ the area of confinement must have a boundary and that boundary must be fixed by D
   - If P agrees to surrender his liberty when entering **a contract**, P cannot claim total restraint – consent to the restraint and VNFI (Balmain New Ferry Co v Robertson; Herd v Weardale Steel Coke and Coal Co)
     - There is no tort when there is no duty to provide a means of exit/egress (Herd)
   - It is not imprisonment if there were alternative, **reasonable means of escape** (egress) (McFadzean v CFMEU)
     - Reasonably obvious, safe or practical?
     - Practicable: P's capacity, distance/time and legality?

     Was egress reasonable? CONSIDER 4 FACTORS:
     - Threat or danger to the self
     - Threat or danger to property
     - Distance and time of escape
     - Legality of escape

     ** there can be false imprisonment if there are notional means of escape, if these are unreasonable – i.e. risk to life or limb

   - The **nature** of the restraint can be physical or psychological
     - Physical: (Bird v Jones)
       - Physical place of detention or physical force applied to P
       - Total restraint, no reasonable alternative egress
       - Knowledge here not necessary (Meering v Grahame- White Aviation; McFadzean)
     - Psychological: (Symes v Mahon)
       - P completely submits himself to D's control/power or assertion of authority, reasonably thinking he had no way of escape
       - P knows; because they have submitted (South Australia v Lampard-Trevorrow)

Trespass to Land

1) Define trespass to land and what has happened OTF

- Trespass to land is a PVA where D directly and intentionally/negligently enters or remains on, or causing some object to come into contact with, land in possession of another, without consent of person or other legal excuse
- Actionable per se
- May be:
    - Entry without express or implied consent from P. (There is implied consent that allows people to enter to proceed to the door to conduct business)
    - Entry under licence and/or revocation of licence
    - Continuing trespass
        - Terminate license, you stay on land beyond reasonable departure time → trespass
        - Owner may refuse to admit someone without giving reason
- Tenant may sue an unauthorised intruder, even if that person is the landlord
- Protect P's interest in maintaining the right to exclusive possession of their place of residence, free from uninvited physical intrusion by strangers… protection of possession of property (NSW v Ibbett)
- There is no liability where the act is committed by third person if the evidence doesn't show that D personally took part in it/authorised it, even if the trespass may have been committed in D's interest/D received some benefit from it.
- No tort if the land/premises are not physically entered or interfered with → *nuisance*

2) What is Land? Interference with P's exclusive possession

- Interference involves the slightest physical crossing of the boundary of P's land (League against Cruel Sports v Scott)
- **Airspace** above the land, 'restricted until such a height, which would allow an ordinary use and enjoyment of land' (Bernstein v Skyviews)
- Test for how much airspace: whether the incursion interferes with P's actual use of land (airspace) at the time, and whether the incursion was at such a height 'that it may interfere with any ordinary uses of the land which P may see fit to undertake (LJP Investments v Howard Chia)→ scaffolding into another airspace = trespass
    - Airspace: trespass for a structure to intrude into the airspace whether it be fixed, movable, permanent or temporary, and whether it intrudes only to a minor extent or a considerable height
    - Projectile to pass through airspace as would interfere with ordinary use and enjoyment is trespass (transient passage above that height isn't) (Bernstein v Skyviews)

- Includes the ‘strata beneath land’ → minerals underground; even where does not or could not interfere with the ordinary reasonable use of the land (Bocardo SA v Star Energy UK Onshore)
- Buildings or structures affixed to the land
- Vegetation on the land

  General rule → trespass will be made out on the basis of direct interference with ordinary use and enjoyment of land