

INTRODUCTION TO TORTS:

TRESPASS TO THE PERSON:

BATTERY:

- Act of interference:
- Direct v indirect act:
- Defendant's state of mind:
- Actionable per se:

ASSAULT:

- Apprehension of imminent physical contact:
- Defendant's state of mind:
- Plaintiff's state of mind:

FALSE IMPRISONMENT:

- Total deprivation of liberty:
- DEFENCES FOR Trespass To Person

TRESPASS TO LAND:

- Definition:
- Does the Plaintiff have right to sue?
- Voluntary Act:
- Directly:
- Intentionally / Negligently:
- Interference may involve:

NUISANCE:

- Private Nuisance:
- Unreasonable Interference:
- The interference is with an interest capable of protection:
- The Plaintiff's Title to Sue:
- The Defendant's Liability:
- Public Nuisance:
- Unreasonable interference affecting the public:
- The plaintiff has title to sue:
- The defendant's liability:
- Defences:
- Statutory authorisation:
- Contributory negligence:
- Prescription:

VICARIOUS LIABILITY:

- Employer - Employee Relationship:
- Non-Delegable Duties:
- The Scope of non-delegable duties:
- Employer - Employee:
- Occupier of Land & neighbours:
- School Authority/Student Relationship:
- Occupiers/Landlords:

BREACH OF STATUTORY DUTY

- Elements the plaintiff must establish:
- Rights, duties and enforceable actions:
- Intention of Parliament and need for existence of civil remedy:
- Plaintiff must be a person within the protection of the statute:

- Harm suffered by the plaintiff was the kind the statute intended to prevent:
- Defendant must be in breach of the duty:
- Damage that the plaintiff has suffered must be because of the defendant's breach:
- Defences:
- Volenti non fit injuria:
- Contributory negligence:
- Statutory defence:
- Relevant legislation:

DEFAMATION:

- Limitation on who can sue:
- Libel and slander:
- Elements of defamation:
- Defences:
- Justification:
- Privilege:
- Reports of proceedings are public concern:

DEFENCES AND REMEDIES:

- Self-help based defences:
- Permission based defences:
- Fault -based defences:
- Remedies:
- Common-law damages:
- When will damages be awarded:
- General characteristics of damages in tort:
- Damages to personal injury:
- Economic loss:
- Compensatory damages for harm to property:

Equitable damages:

- Nonjudicial remedies:

INTRODUCTION TO TORTS:

The word 'Tort' is short for the Latin term 'Tortus' meaning 'wrong' or 'injury'. In a more contemporary context, a tort is an act or an omission by a defendant, which infringes the legal interests, and/or right of a plaintiff may. Importantly, the act of omission must be actionable to the extent that the plaintiff may pursue an action in tort.

Different definition of torts:

- Guido Calabresi defines torts as the law's response to 'breaches in noncriminal, often non-contractual interpersonal relationships.'

- Percy Winfield declared in his law of torts that “All injuries done to another person are torts, unless there is some justification recognised by law.”
- The High Court of Australia in **John Pfeiffer Pty Ltd v Rogerson (2000)** noted that: “The terms ‘torts’ is used ... to denote not merely civil wrongs known to the common law but also acts or omissions which by statute are rendered wrongful in the sense that a civil action lies to recover damages occasioned thereby.”

The relevant conduct of the defendant may be undertaken intentionally, negligently or in circumstances involving strict liability where the plaintiff need not prove fault on the part of the defendant. Such conduct must ultimately be established by the plaintiff to have been wrongful. Whether or not a defendant’s conduct will be considered as such will be determined by the court by measuring the defendant’s conduct against normative standards of behaviour. A defendant’s conduct will be deemed wrongful where a failure to act in accordance with normative standards of behaviour occasions an injury to the plaintiff’s interests. For instance, it is a normative standard of civilised society that one person may not interfere with another’s body without the latter’s consent or justification.

Tort Law can be divided into three main categories:

1. Trespass.
2. Action on the case.
3. Statutory torts.

The broad primary characteristics of torts are that there be:

- Wrongful conduct (by way of act or omission failure to fulfill legal obligation).
- Infringement of a person’s right.
- An available action for damages.

The main object of tort law is to compensate plaintiff’s for damages for loss suffered as a result of a wrongful conduct, The compensation of damages has been described as the main function of tort law. As per Crennan J in *Harrington v Stephens* (2006): “The general purpose of an award of damages in tort law is to place the plaintiff in the same position as if they had not suffered the tort concerned (at least to the extent that money can achieve such a purpose).”

TRESPASS:

TRESPASS TO THE PERSON:

Trespass to the person is a direct and usually intentional tort which involves interference to a person. There are typically three types of trespass to a person including:

1. Battery
2. Assault
3. False imprisonment

Battery involves an interference of contact, assault involves an interference of apprehension of contact and false imprisonment involves the interference of deprivation of liberty. Battery and assault in torts differ from criminal cases, they are civil suits whereby individuals are sued from battery and assault.

Types of Trespass	Elements
Battery	<ul style="list-style-type: none">• An act of the Defendant<ul style="list-style-type: none">○ Voluntary○ Positive• Directly• Fault (Intentionally or Negligently)• Prohibited contact with the Plaintiff's body

Assault	<ul style="list-style-type: none"> • An act of the Defendant (the threat) <ul style="list-style-type: none"> ○ Voluntary ○ Positive • Directly • Fault (Intentionally or Negligently) • Reasonable apprehension by Plaintiff of imminent contact with the person
False Imprisonment	<ul style="list-style-type: none"> • An act of the defendant <ul style="list-style-type: none"> ○ Voluntary ○ Positive • Directly • Fault (Intentionally and Negligently) • Total restraint of the Plaintiff.

The plaintiff has to prove all the elements of Battery, Assault or False Imprisonment except fault, which the defendant has to prove. The defendant has to prove every element of the defenses of consent, self-defense, necessity, inevitable accident or arrest. The plaintiff will seek a remedy – injunction or damages.

BATTERY:

A battery occurs when the defendant directly and deliberately caused physical contact to occur to the person of the plaintiff’s consent or other legal justifications. The authority for this being; *Department of Health and Community Services v JWB (Marion’s Case) 1992*.

The defendant would have committed a battery if by a voluntary and direct act that intentionally or negligently caused bodily contact with the plaintiff without lawful justification.

In the law of torts assault it where the defend puts the person in fear of imminent harm but doesn’t touch them or cause them harm. A Battery involves an inference of contact.

The basis of the trespass of battery is **contact** with the person. There is no need for direct hand-to-hand contact as “the transmission of any force to the body of a person will constitute battery” (*Trindade/Cane*). The “least touching of another” in sufficient (*Coles v Wilcock / Coles v Turner*). There is also no need for contact to be attended by hostility or anger (*Collins v Wilcock / Rixon v Star City*).

The burden of proof with regard to fault is generally on the defendant (*McHale v Watson*) except in highway cases where the burden falls in the Plaintiff (*Venning v Chin*).

To make out an action in battery the following must be established:

1. There was an act of interference in the form of physical contact with the plaintiff's body.
2. The interference, the physical contact was direct upon the defendant's act and was a positive act.
3. The defendant had the requisite state of mind; that is, the act of interference was voluntary and intentional, or voluntary and negligent.