

INTENTIONAL TORTS

s3B exclusion

Exemplary, nominal, aggravated damages

TRESPASS TO PERSON

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TRESPASS TO LAND

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(Remember s 42 statutory authority)

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INTENTIONAL TORTS

TRESPASS TO PERSON

Onus of proof on P to prove facts and then shifts to D to prove lack of fault.

ASSAULT

s3B exclusion

ACTIONABLE PER SE (NO DAMAGE) !

1. Voluntary intentional (or negligent) act
2. Directly causing
3. Ps reasonable apprehension (OBJECTIVE)
4. Imminent physical bodily contact

Zanker v Vartokas

1. VOLUNTARY INTENTIONAL ACT

- Words can constitute
 - ❖ **Barton v Armstrong**: D Armstrong (powerful) threatened over phone to take Barton's life if he didn't sign dead. Liable.
 - ❖ **Rosza v Samuels**: P taxi driver threatened to punch D taxi driver. D gets knife and makes conditional threat to P 'I'll cut you to bits if you try it'. D had other options. Liable.
- Silence
 - ❖ **R v Ireland**: Silent night time calls sufficed.

2. DIRECTLY CAUSING

- Can be **continuation** of act
 - ❖ **Scott v Shepherd**: D threw lighted squib into marketplace, passed along, blinded P. Liable.
- Followed **so immediately** upon the act that it may be deemed part of the act
 - ❖ **Hutchins v Maughan**: D laid poisoned bait on ground. P warned of baits. Ps dogs ate the bait. Held harm was consequential as laying of baits didn't cause harm, it was the dogs' eating.

3. PS REASONABLE APPREHENSION (OBJECTIVE)

- Must have knowledge of threat
- **Reasonable person test**
- Unless D knows P is exceptionally timid and used this
 - ❖ **MacPherson v Beath**
- Pointing gun even when not loaded
 - ❖ **Brady v Schatzel**

4. IMMEDIATE PHYSICAL BODILY CONTACT

- Doesn't necessarily relate to immediacy in time → **continuing fear**
 - ❖ **Zanker v Vartokas**: P gets into Ds van, D accelerated and threatened sexual activity at friend's house, P tries to escape. Violence imminent as it would occur immediately at end of imprisonment. Liable.

- ❖ **Barton v Armstrong:** D Armstrong threatened over phone to take Barton's life if he didn't sign dead. No indication as to when he would carry it out. Held imminent.

Conditional threat → assault when associated with imminent force

- ❖ **Rosza v Samuels:** P taxi driver threatens to punch D taxi driver. D gets knife and makes conditional threat to P 'I'll cut you to bits if you try it'. D had other options. Liable.

BATTERY

s3B exclusion

ACTIONABLE PER SE (NO DAMAGE) !

1. **Voluntary intentional (or negligent) act**
2. **Directly causing**
3. **Physical bodily contact**
4. **Without consent of P**

Scott v Shepherd

1. VOLUNTARY INTENTIONAL ACT

- Must be a positive act not an omission **Can be negligent**
 - ❖ **McHale v Watson:** Boy D threw piece of steel at tree when girl P was hit causing blindness.
- Can be reckless
 - ❖ **Williams v Milotin:** Truck driver hit boy on bicycle.

2. DIRECTLY CAUSING

- Can be continuation of act
 - ❖ **Scott v Shepherd:** D threw lighted squib into marketplace, passed along, blinded P. Liable.
- Followed so immediately upon the act that it may be deemed part of the act
 - ❖ **Hutchins v Maughan:** D laid poisoned bait on ground. P warned of baits. P's dogs ate the bait. Held harm was consequential as laying of baits didn't cause harm, it was the dogs eating.

3. PHYSICAL BODILY CONTACT

- Outside realms of everyday contact
 - ❖ **Collins v Wilcock:** D policewoman grabbed P prostitute by arm to gain attention. D used an unreasonable amount of force for contact of situation. Liable.
- Hostility irrelevant
 - ❖ **Rixon v Star City:** Worker tapped Rixon on shoulder and spun him around to tell him that he was an excluded person. No battery because he was merely trying to get attention. Not liable.
- Can be through an object
 - ❖ **Scott v Shepherd:** Lighted squib

4. WITHOUT CONSENT OF P

Defence to be pleaded and proven by D (Marion's case)

- ❖ **Giumelli v Johnston:** D raised elbow violently into P during AFL game. Did not consent to unusually forceful and deliberate contact that falls outside rules.
- Without knowledge