

Table of Contents

<u>Introduction to Torts</u>	Error! Bookmark not defined.
<u>Remedies and Damages</u>	Error! Bookmark not defined.
<u>Trespass to the Person</u>	4
Battery	7
Assault	10
False Imprisonment	13
<u>Trespass to Land</u>	Error! Bookmark not defined.
Title to sue	Error! Bookmark not defined.
Nature of land	Error! Bookmark not defined.
Nature of the Physical Interference	Error! Bookmark not defined.
Trespass authorised by law	Error! Bookmark not defined.
Continuing trespass	Error! Bookmark not defined.
Trespass and privacy	Error! Bookmark not defined.
<u>Trespass to Goods</u>	Error! Bookmark not defined.
Elements	Error! Bookmark not defined.
<u>Defences to Intentional Torts</u>	Error! Bookmark not defined.
Defence of the Person and of Property	Error! Bookmark not defined.
Self-Defence of the Person	Error! Bookmark not defined.
Defence of another person	Error! Bookmark not defined.
Defence of own property	Error! Bookmark not defined.
Defence of another's property	Error! Bookmark not defined.
Unlawful Conduct	Error! Bookmark not defined.
Consent	Error! Bookmark not defined.
Necessity	Error! Bookmark not defined.
Provocation	Error! Bookmark not defined.
Children	Error! Bookmark not defined.
Mistake and Negligence	Error! Bookmark not defined.
Self-Help	Error! Bookmark not defined.
Lawful Authority	Error! Bookmark not defined.
<u>The cause of action in <i>Wilkinson v Downton</i></u>	Error! Bookmark not defined.
<u>The Lawyer's Duty to the Client and Advocates' Immunity</u>	Error! Bookmark not defined.
The Role of Public Policy in regards to Duty of Care	Error! Bookmark not defined.
<u>Introduction to Negligence</u>	Error! Bookmark not defined.
Duty of Care	Error! Bookmark not defined.
Categories of Duty of Care	Error! Bookmark not defined.
Atypical plaintiffs	Error! Bookmark not defined.
Unborn children	Error! Bookmark not defined.
Wrongful birth	Error! Bookmark not defined.

Wrongful life	Error! Bookmark not defined.
Illegal activity.....	Error! Bookmark not defined.
Economic loss	Error! Bookmark not defined.
Negligent misstatements causing pure economic loss	Error! Bookmark not defined.
Rescuers	Error! Bookmark not defined.
The disabled	Error! Bookmark not defined.
Occupiers.....	Error! Bookmark not defined.
Principal and Independent Contractor.....	Error! Bookmark not defined.
Recreational activities	Error! Bookmark not defined.
Intoxication	Error! Bookmark not defined.
Omissions	Error! Bookmark not defined.
Product liability	Error! Bookmark not defined.
Mental harm/psychiatric injury.....	Error! Bookmark not defined.
Consequential mental harm	Error! Bookmark not defined.
Breach of Duty	Error! Bookmark not defined.
Proof of Breach	Error! Bookmark not defined.
Scope of liability: Causation	Error! Bookmark not defined.
Scope of Liability: Remoteness of Damage	Error! Bookmark not defined.
Proof.....	Error! Bookmark not defined.
<u>Defences to Negligence</u>	Error! Bookmark not defined.
Contributory Negligence	Error! Bookmark not defined.
Proving contributory negligence	Error! Bookmark not defined.
Volenti Non Fit Injuria.....	Error! Bookmark not defined.
<u>Statutory defences from CLA</u>	Error! Bookmark not defined.
Intoxication	Error! Bookmark not defined.
Obvious risks	Error! Bookmark not defined.
Inherent risks	Error! Bookmark not defined.
Dangerous recreational activities.....	Error! Bookmark not defined.
Criminals/Illegality	Error! Bookmark not defined.
Good Samaritans or rescuers	Error! Bookmark not defined.
<u>Pure Economic Loss</u>	Error! Bookmark not defined.
Policy considerations.....	Error! Bookmark not defined.
Negligent acts causing pure economic loss	Error! Bookmark not defined.
Salient features approach	Error! Bookmark not defined.
<u>Negligent misstatements</u>	Error! Bookmark not defined.
<u>Statutory Authorities</u>	Error! Bookmark not defined.
Establishing a duty	Error! Bookmark not defined.
Relevant factors	Error! Bookmark not defined.
Negligent acts.....	Error! Bookmark not defined.
Road Authorities	Error! Bookmark not defined.
Special statutory powers	Error! Bookmark not defined.

<u>Omissions</u>	Error! Bookmark not defined.
Third parties	Error! Bookmark not defined.
Landowners and escape of fire	Error! Bookmark not defined.
Duty to control children	Error! Bookmark not defined.
Duty to rescue	Error! Bookmark not defined.
Duty to protect	Error! Bookmark not defined.
<u>Strict liability - vicarious liability</u>	Error! Bookmark not defined.
Common law	Error! Bookmark not defined.
Statute	Error! Bookmark not defined.
<u>Contribution amongst tortfeasors</u>	Error! Bookmark not defined.
<u>Solidary Liability</u>	Error! Bookmark not defined.
Joint tortfeasors	Error! Bookmark not defined.
Concurrent tortfeasors	Error! Bookmark not defined.
<u>Proportionate liability</u>	Error! Bookmark not defined.
<u>Independent contractors</u>	Error! Bookmark not defined.
<u>Non-delegable duties of care</u>	Error! Bookmark not defined.
Common law	Error! Bookmark not defined.
Statutory	Error! Bookmark not defined.
<u>Workers Compensation</u>	Error! Bookmark not defined.
Workers Compensation scheme	Error! Bookmark not defined.
Common Law Schemes	Error! Bookmark not defined.
<u>Motor Vehicles Compensation</u>	Error! Bookmark not defined.
Procedure for all claims	Error! Bookmark not defined.
<u>Nuisance</u>	Error! Bookmark not defined.
Private nuisance	Error! Bookmark not defined.
Public nuisance	Error! Bookmark not defined.
<u>Defences to nuisance</u>	Error! Bookmark not defined.
Prescription	Error! Bookmark not defined.
Consent	Error! Bookmark not defined.
Fault of the defendant	Error! Bookmark not defined.
Statutory authorisation	Error! Bookmark not defined.
<u>Death</u>	Error! Bookmark not defined.
Elements	Error! Bookmark not defined.

Trespass to the Person

'Intentional torts' protect an individual's person or property rights from unwanted interference by others. Trespass is the intentional or negligent act of the defendant, which directly causes injury to the plaintiff or their property without lawful justification.

Three types of intentional trespass to the person

1. Battery
2. Assault
3. False imprisonment

Onus of proof

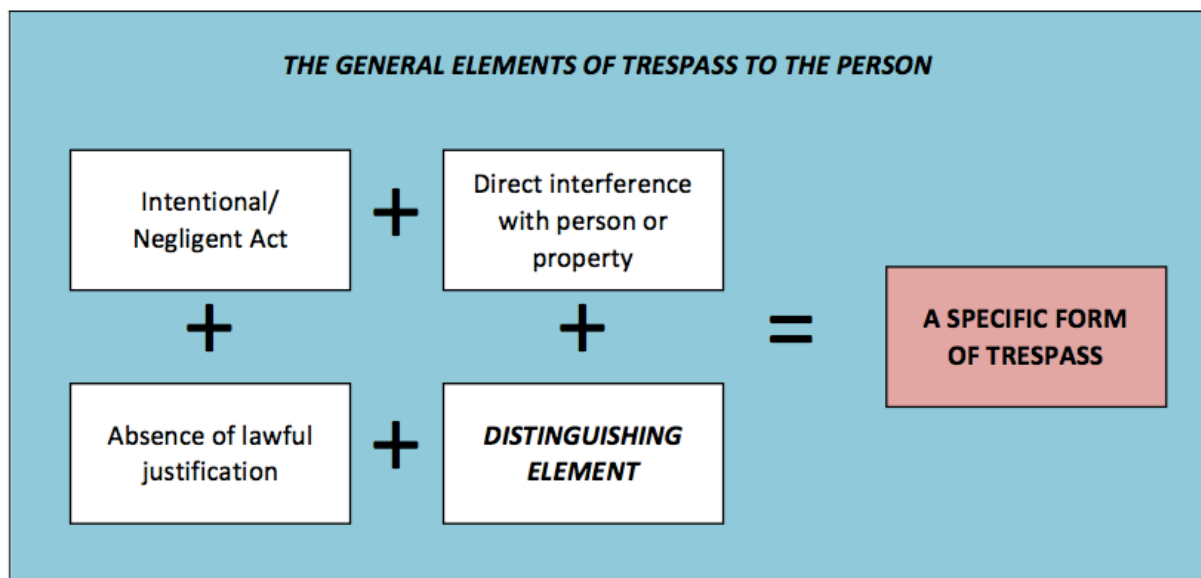
The onus of proof is always on the plaintiff to prove all elements, which then shifts to the defendant to show the tort is neither intentional, nor negligent

Exception: in highway cases, the onus of proof is wholly on the plaintiff

- *Venning v Chin (1974)*; "in trespass for injury on the highway the onus is on the plaintiff to prove either intention or negligence on the part of the defendant"

Elements common to all Trespass Torts

1. A positive voluntary intentional or negligent act (fault)
2. Which directly injures or interferes with the plaintiff (person, property or land)
3. With no lawful justification



1: *Positive, voluntary, intentional or negligent act (fault)*

- Fault is essential; **there is no trespass without fault**
- The tort must have been an intentional/deliberate act, aggression or negligent act which directly caused contact

- **Williams v Milotin (1957)**
 - o **Facts:** Cyclist hit by a truck
 - o **Held:** that negligence can be considered battery. Once the contact occurs, the onus to prove that there was no intent/negligence falls to D as to whether there was “a neglect or want of due caution in the person who did the injury, although there was no design to injure”
- **Holmes v Mather (1875)**
 - o **Facts:** out of control horses injured the plaintiff
 - o **Held:** no tort was found, as the defendant’s servant tried their best to keep the horses away
- **McHale v Watson (1964)**
 - o **Facts:** children (12 year olds) were playing tag when Watson threw a sharpened metal rod at a piece of wood, which then bounced off and hit McHale in the eye, causing permanent blindness. McHale sued for damages and was unsuccessful in the lower court.
 - o **Held:** appeal dismissed as Watson was acting as a normal 12 year boy and should not be assessed according to the same standards as adults
- **Stanley v Powell [1891]**
 - o **Facts:** Powell as a member of a shooting party and fired at a pheasant but the pellet from his gun bounced off a tree and accidentally wounded Stanley, another member of the party
 - o **Held:** Powell not liable

2: Directness

The interference with the plaintiff’s person, land or good must be **direct**, and part of D’s act, **not merely a consequence** of it

- **Immediacy - Reynolds v Clarke (1925)**
 - o **Facts:** man threw a log onto a highway
 - o **Held:** was **not direct**
 - Direct = a log being thrown onto a highway and hitting someone on the way
 - Consequential = a log lying on the highway, later injuring someone who drove into it
- **Non-consequential – Hutchins v Maughan (1947)**
 - o **Facts:** defendant put poison baits on their property. The plaintiff bought their dog to the land, who then died after consuming the bait
 - o **Held:** no trespass action occurred.
 - A trespass occurs when it “follow so immediately upon the act of the defendant that it may be termed part of the act; it is consequential on the other hand, 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”
 - o For it to be a trespassory act, the defendant would have had to feed it to the dog
- **Lack of intervening act – Southport Corporation v Esso Petroleum (1956)**
 - o **Facts:** oil tanker ran into rough sea which made it run aground on a coastal wall. They discharged 400 tonnes of oil to save the crew and vessel and to light the load. This polluted the Southport coastline
 - o **Held:** Southport claimed damages as the deposit constituted a nuisance and/or trespass/negligence
- **Physical contact need not be physical – Scott v Shepard (1773)**

- **Facts:** fireworks were thrown into a marketplace by Shepard. Continued to be tossed around a few people before exploding in Scott's face, causing him to lose an eye
- **Held:** for the directness to be satisfied, the damage must be a natural and probable consequence of the defendant's act. The defendants that continued to toss the squid were ruled to have acted in the "agony of the moment". Shepard was fully liable. If the injury is consequential, it not a trespass of tort.

3: Injury or interference

- Injury = a breach of right, not necessarily actual damage
- **Actionable per se** – no proof of damage required, it is enough that the wrong occurred

4: No lawful justification

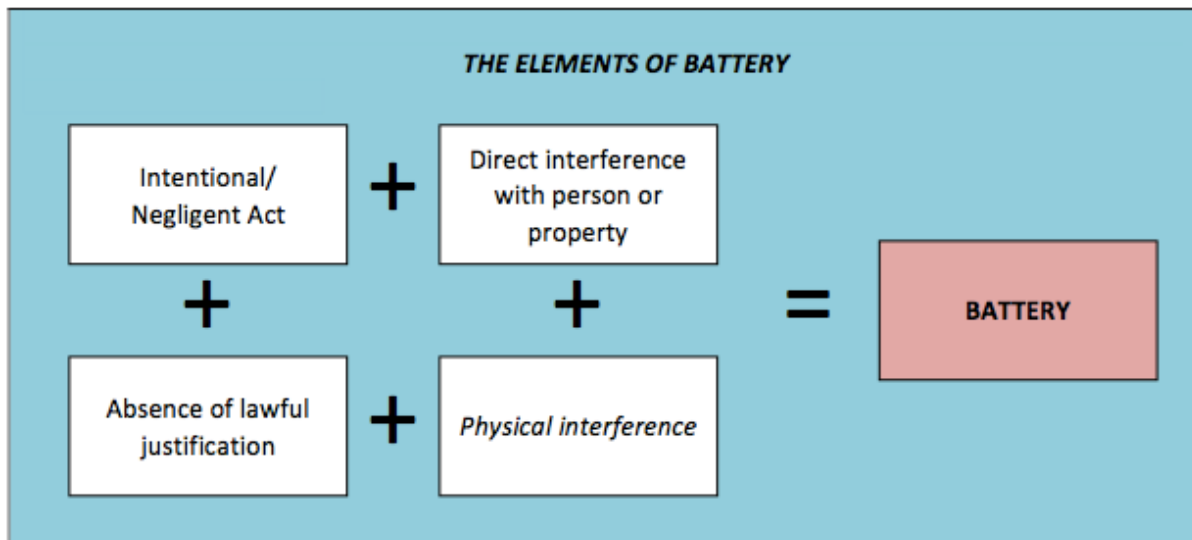
Defences

1. Necessity
 - E.g. in the case of medical emergency where a patient's life is at risk and the obtaining of consent is not possible
 - *Hunter New England Area Health Service v A (2009)*
2. Consent
3. Self-defence
 - Reasonable acts of self defence against unlawful acts are not actionable
 - *Fontin v Katapodis (1962)*

Battery

A battery occurs when the defendant deliberately and directly causes physical contact to occur to the person of the plaintiff without the plaintiff's consent or other legal justification (*Secretary, Department of Health and Community Services v JWB (Marion's Case)* (1992))

- Physical interference is the distinguishing element
- You do not have to intend to cause harm, only intend to carry out the offence



Onus of Proof

In cases of battery, the onus of proof is always on the plaintiff to prove elements on the balance of probabilities. Once the elements of battery are proven, the onus then shifts to the defendant to show lawful justification.

Elements

1: Intention (deliberate/negligent act)

- Must be a **positive act** – cannot be a mere omission to act or a passive act; *Innes v Wylie* (1844)
 - o Held: policeman not liable for battery when he stood “entirely passive like a door or a wall put to prevent the plaintiff from entering the room”
- But, an **omission** to act can become a positive act; *Fagan v Metro Police Commissioner* (1969)
 - o **Facts:** D accidentally stopped his car on P's foot but didn't drive off the foot when asked
 - o **Held:** The original act was not intentional or negligent – was accidental and therefore not battery. However, not getting off the foot was battery
- There must be an **intent** to commit the act, not necessarily to cause the harm; *McNamara v Duncan* (1971)
 - o **Facts:** D intentionally hit P after ball was passed in AFL game
 - o **Held:** D liable to trespass even though the court did not consider that D intended to harm P. He meant to strike P, but did not necessarily intend to injure D

- *Wilson v Pringle* (1987); “It is the act and not the injury which must be intentional. An intention to injure is not essential to an action for trespass to the person”
- The act **need not be hostile** – the act is unwanted contact, whether hostile or not; *Rixon and Star City Casino* [2001]
 - **Facts:** P was subject to an exclusion order from D’s casino. D’s employee placed his hand on P’s shoulder and took him to a room where he was detained
 - **Held:** any bodily contact may amount to battery regardless of whether there is anger or hostility. However, the conduct of the employee was to engage P’s attention and was generally acceptable in everyday life. Also, the *Casino Control Act 1997* allowed the operator of the casino to detain.
- Act **must be intentional, negligent or with reckless disregard**; *National Coal Board v JE Evans & Co* (1951)
 - **Held:** D’s damage of P’s underground cable when digging with a mechanical excavator was not found liable in trespass as there was no intent or negligence in damaging the cable – “where the defendant was entirely without fault, he would have a good defence to an action in trespass”

2: Physical interference

- D’s act must cause physical contact with P’s body; *Carter v Walker* (2010)
- Harm is irrelevant
- The positive act must introduce some form of offensive contact outside the accepted usages and accidental contacts of daily life
- Exceptions exist if:
 - The act happens in everyday social interactions; *Rixon v Star City* [2001]
 - The act was necessary in the circumstances
 - The act was within the scope of duty; *Collins v Willcock* [1984]
 - Facts: police officer holds P’s arm with intention of restraining her when she declined to answer questions and began to walk away
 - Held: Battery. In circumstances short of arresting her, the police officer went outside the scope of their duty
- Acts which constitute physical interference include;
 - Contact with P’s clothes; *Fagan v Commissioner of Metropolitan Police* [1969]
 - Putting arms around P; *Hutchinson v Fitzpatrick* [2009]
 - Throwing person off chair by touching the chair only; *Hopper v Reeve* (1817)
 - Throwing a squib into a crowd; *Scott v Shepard* (1773)
 - Pouring beer on someone’s head; *Cooper v Mulcahy* [2013]
 - Spitting in someone’s face; *R v Cotesworth* (1704); *Majindi v NT*
 - Cutting hair without consent; *Forse v Skinner*; *Coffey v QLD*
 - Performing a non-therapeutic medical procedure without consent; *Murray v McMurchy* [1949]

3: Directness

- The physical act must be direct and not consequential
 - This means the interference on P must be immediate upon D’s act
- Occurs when the injury “follows so immediately upon the act of the defendant that it may be terms part of the act” – *Hutchins v Maughan* [1947]
- Refer to *Reynolds v Clarke* (1725) and *Scott v Shephard* (1773) above
- *Scott v Shepherd* (1773)

- **Facts:** Firework was thrown in marketplace, tossed by person to other, then again, then finally exploded and injured D
- **Held:** For directness to be satisfied, the damage must be the **natural and probable consequence** of D's act. The Ds were ruled to have acted in the 'agony of the moment'

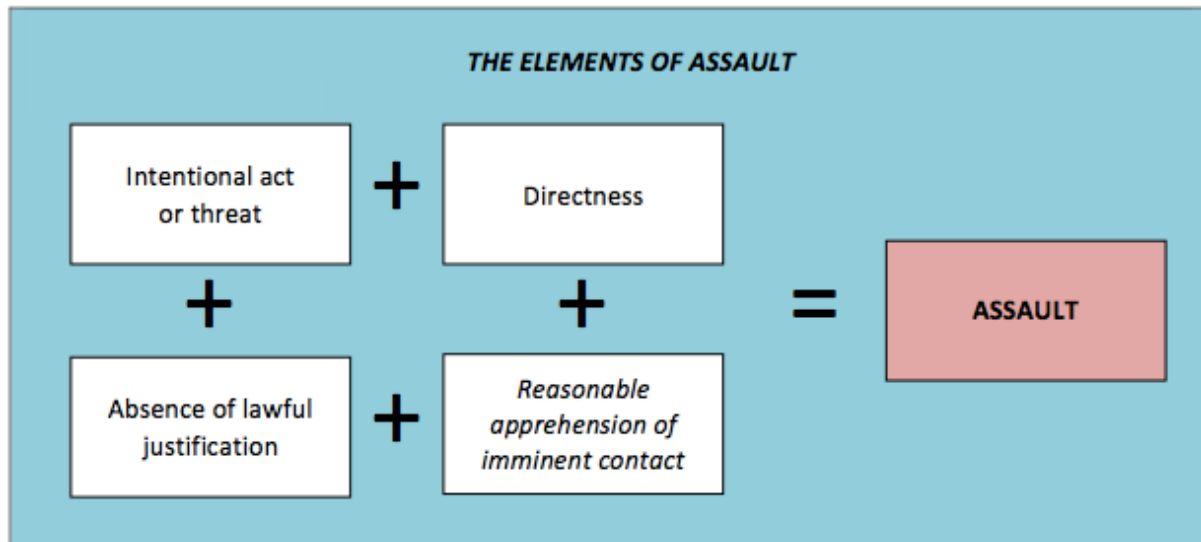
4: Absence of Lawful justification

- Consent is lawful justification and is usually given as a defence
 - Consent must be freely given by P if P was able to understand the nature of the act;
Allen v New Mount Sinai Hospital (1980)
- Lawful justification includes the lawful act of law enforcement officers

Assault

Assault is an intentional voluntary act or threat by the defendant, which directly creates in another person (P) a reasonable apprehension of imminent contact with that person's body without lawful justification.

- Reasonable apprehension of imminent contact is the distinguishing element
 - o In most cases, assault will be immediately before battery
- The plaintiff must **have known of the threat**
- The plaintiff **does not need to experience fear**



Onus of proof

The onus of proof is always on the plaintiff. Once the elements of assault are proven, the onus then shifts to the defendant to show lawful justification.

Elements

1: *Intentional act or threat*

- “Proof of an assault requires proof of an intention to create in another person an apprehension of imminent harmful or offensive contact” – *Rixon v Star City* (2001) applied in *Cranston v Consolidated Meat Group* [2008]
 - o **Facts:** P was arguing with D. During the argument, P said “fuck off” and gestured his knife in the direction from which P had come from
 - o **Held:** D did not wave the knife in a threatening manner and the knife was never dangerously close to P
- It is not necessary to prove that the defendant intends to carry out the threat; *ACN 087 528 774 v Chetcuti* [2008]

2: *Directness*

See above

3: Reasonable apprehension of imminent physical interference

- Objective test: would a reasonable person have or could have apprehended violence
 - o Fear is irrelevant
 - o The threat must be **sufficient to have been able to raise apprehension in the mind of a reasonable person**
 - Except when D knows the P is **timid** and **manipulates that facts** – *Macpherson v Beath* (1975)
 - “If the defendant intentionally puts in fear of immediate violence an exceptionally timid person known to him to be so then the unreasonableness of the fear may not prevent conviction”
- P must have knowledge of the threat
- There must be an **intention to cause apprehension** in the plaintiff that battery is about to occur – *Brady v Schatzel; ex parte Brady* [1911]
- D does not have to be in close range to P
 - o *Stephens v Myers* (1830); D walked in direction of the chairman once told to leave the meeting with clenched fist = assault
 - o *New South Wales v Ibbett* (2006); Police pointed gun at elderly mother of the suspect to open garage door and let his ‘mate’ (police officer) in = assault
- Whether D goes through with the threat is irrelevant
- **Apprehension must be of imminent harmful conduct** – does not necessarily relate to immediacy in terms of time; *Zanker v Vartzokas* (1988)
 - o Facts: P got in D’s van. D asked for sex and P refused. D accelerated and said he will take her back to a mate’s place to “fix you up”
 - o Held: imminent even though it was of future violence; “in the continuing present, by continuing progress, with her as prisoner, towards the house where feared sexual violence was to occur”
- If fear remains present in P, it may constitute assault; *Barton v Armstrong* [1969]
 - o Facts: D threatened to take D’s life over the telephone if D did not sign a deed
 - o Held: “his original words uttered in those circumstances constituted an assault ... namely because her fear was a continuing fear induced by his original words in a situation where he remained in a position of dominance”

Words may constitute a threat

- Mere words do not constitute assault, but the circumstances in which the words were uttered may; *Barton v Armstrong* [1969]
- However, “there is no reason why something said should be incapable of causing an apprehension of immediate personal violence” – Lord Steyn
- Silence (depending on the circumstances) may constitute assault – particularly over the telephone; *R v Ireland* [1998]
 - o Facts: D made a large number of phone calls to three women and remained silent when they answered. All women suffered psychological damage

Conditional threats

- Conditional threats are generally not actionable as they deter from the notion of ‘imminence’
- Words may contradict actions; *Tuberville v Savage* (1669)
 - o **Facts:** D had an argument with P, placed his hand on his sword and said “if it were not assize time, I would not take such language from you”

- **Held:** not assault. The words uttered by D stated that he would not fight P as the judges were in town, thus prevented assault
- However, conditional threats can be accompanied by actions which amount to assault; *Rozsa v Samuels* [1969]
 - **Facts:** D pulled a knife from under the dashboard and said “I’ll cut you to bits if you try it” after being threatened by P
 - **Held:** assault as D had other options which he could have considered including locking his cab doors or moving away
- *Police v Greaves* [1964]
 - **Facts:** G came to the door of his house with a carving knife and threatened the constable if he moved forward. P retreated
 - **Held:** even though the threat was conditional on the policeman moving forward, there **was** an assault due to the ‘menacing attitude of the respondent’

4: Absence of lawful justification

Damages

Stands alone in tort law as a means of securing compensation in damages for conduct against the person which does not cause any physical interference

- Damages are likely to reflect the lack of actual damage
- *Stephen v Myers* (1830); jury found case in favour of plaintiff, was awarded damages of one shilling

Nominal damages may be awarded if there is little damage

Compensational damages if there is some damage

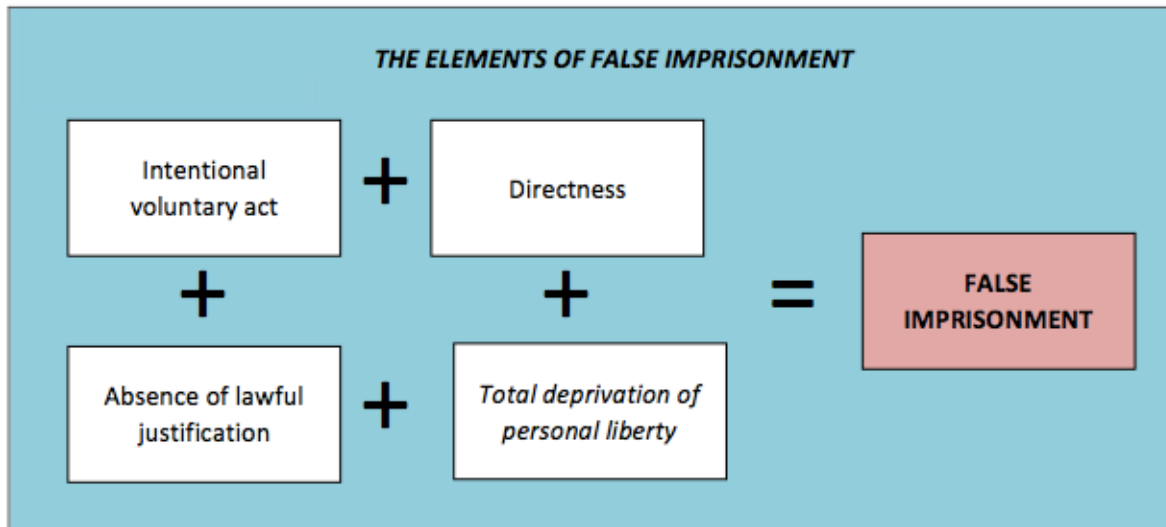
Aggravated or exemplary damages if the damage is very large

False Imprisonment

False imprisonment is an intentional voluntary act, which directly causes the total deprivation of another person's liberty and thereby confines him or her to a delimited area without lawful justification

- Total restraint of personal liberty is the distinguishing element
- You do not need to show actual damage to succeed in false imprisonment claims

It is committed when “one person directly subjects another to total deprivation of freedom of movement without lawful justification” – Gray J in *Trevorrow v SA (no 5)* (2007)



Onus of proof

In false imprisonment cases, the onus of proof is always on the plaintiff. Once the elements of false imprisonment are proven, the onus then shifts to the defendant to show lawful justification

Elements

1: Directness and intention

- Same as battery and assault
- Does not have to be in bad faith; D may believe he or she is acting for the best of reasons in imprisoning P – such a belief is **no defence** to the action
 - “Lack of fault, in the sense of absence of bad faith, is irrelevant to the existence of the wrong... This is because the focus of this civil wrong is on the vindication of liberty and reparation to the victim, rather than upon the presence or absence of moral wrongdoing on part of the defendant” – Kirby J at 140 in *Ruddock v Taylor* (2005)
- Issues relating to **directness**;
 - *Iqbal v Prison Officers Association* [2010]
 - Facts: prisoner locked in cell for 24 hours due to prison officer strike
 - Held: no false imprisonment as the union had not been directly responsible for the prisoner being locked in his cell – they had done no positive act
 - *Watson v Marshall* (1971)

- Whether through action or inaction, P must prove D personally or through delegation directly participated in P's false imprisonment
- There is no current authority for **negligent** false imprisonment. However, relevant obiter dicta appears in Jacob J's ruling in *Caltex Oil (Australia) v The Dredge* (1976)
 - **Held:** P may recover financial loss in negligence where D's negligence has caused P to be 'immobilised'

2: Total deprivation of liberty

- Imprisonment does not mean being falsely incarcerated in a correctional centre
- Prisons need not have walls
 - For example, driving a car too fast to allow a passenger to alight is wrongful imprisonment; *Burton v Davies and General Accident Fire Life Insurance Corp* [1953]
- **Restraint must be total;** *R v Macquarie and Budge* (1975)
 - Facts: P set boat at full-speed, swimming was not an option as it was too hazardous
 - Held: false imprisonment. P had no means of escape afforded to him
- There must be **no reasonable means of escape** – *Dickenson v Waters*
- Total restraint depends on **reasonable means of escape**
 - *Bird v Jones* (1845)
 - **Facts:** P prevented for around half an hour from going forwards along a footway by 2 policeman
 - **Held:** not false imprisonment as it was not total restraint – P could have gone in another direction
 - *Balmain Ferry v Robertson* (1906)
 - **Facts:** man refused to pay one penny to leave the wharf after missing his ferry
 - **Held:** no false imprisonment as P had other routes of escape known to him, and he knew of the condition to exit upon entry
- *McFadzean v CFMEU* (2007)
 - A false imprisonment can be constituted if the means of escape is unreasonable, for instance, involving risk to life or a limb. Any other notional means of escape can result in rejecting the plaintiff's case
- *South Australia v Lampard-Trevorrow* [2010]
 - **Facts:** 13 months old Aboriginal boy was hospitalised due to gastro. Got better then was taken to a foster family without the consent of his biological family. Was a stolen generation child
 - **Held:** the family did not restrain him as he was allowed to do anything other children his age did and they cared for him like a normal family. Court appreciated force of argument, but allowing this case to succeed would have opened the floodgates for the whole stolen generation
- Depends on **risk** – *Burton v Davies and General Accident* [1953]
 - **Facts:** P was driving a car too fast to allow a passenger to alight
 - **Held:** whether or not escape is reasonable depends upon the risk attached to it. This was wrongful imprisonment
- **Danger involved** – *R v Macquarie and Budge* (1875)
 - **Facts:** M owed a bank money. The bank's rep tried to repossession M's yacht, but M and his employer, B, were uncooperative. While the rep was on the boat, M turned the vessel to full speed and the boat left the harbour with R
 - **Held:** The rep was falsely imprisoned. He did not know how to function the boat and means of swimming was not a safe or adequate means of escape
- Depends on **knowledge** – *Robinson v Balmain New Ferry Co* (1906)

- Held: The rep was not falsely imprisoned as he had the alternatives of catching the ferry or paying the penny and knew of the conditions of entry
- **Knowledge** – the deprivation of liberty must be **against the will** of P, however, P **need not be aware** of the deprivation at the time – *Murray v Minister of Defence* [1988]
 - *Meering v Ghrama-White Aviation Co* (1919)
 - **Facts:** P went to D's office to answer questions in respect of thefts. He was in the office for a long time unaware detectives were outside to prevent him from leaving
 - **Held:** although unaware, he was still falsely imprisoned
 - *Hart v Herron* (1984)
 - **Facts:** P was detained by D and given treatment, which he claimed he did not consent to. P could not remember the treatment, as it included deep sleep therapy and electroconvulsive treatment
 - **Held:** P was falsely imprisoned despite lack of memory
- **Duration** – regardless of time period - *Murray v Minister of Defence* [1988]
 - **Facts:** P was getting dressed between 7 and 7/30am. Police arrived at her house 7am but told P of the intention to arrest her at 7/30
 - **Held:** the short time period is **irrelevant**, however may affect damages received
- **Duration** – progression from lawful to unlawful – *Nasr v NSW* [2007]
 - **Facts:** Mr N and D Nasr were arrested by the police at 6.30 and held for 6.5 hours
 - **Held:** considering the time at night and the ability of police to process the arrest, the incarceration period was unlawful

3: Absence of lawful justification

Police offer rights as per LEPR

Symes v Mahon [1922]

- **Facts:** a police officer sought the attendance of a Mr McMahon at a meeting to discuss child support obligations and mistook Mr Mahon or McMahon. P was not formally arrested, but compelled by notice to travel from home to Adelaide for a meeting. He willingly submitted to the authority of Symes and boarded the same train.
- The court recognised the importance of a psychological barrier to escape; P submitted willingly to D's power as it seemed a better option than formal arrest.
- Court's recognised an implied form of arrest affected without physical force
- **Held:** false imprisonment as P thought he had to comply with the officer's directions
- "Where there has been no application of physical force to the person alleging imprisonment, there must be evidence of complete submission by him to the control of the other party... reasonably thinking that he had no way of escape which could be reasonably taken"

Herd v Weardale Steel, Coal and Coke Co [1915]

- **Facts:** several miners went down a mine lift to work, which they realised was unsafe so asked the lift to come back down to pick them up. Their employer refused to send a lift until their contracted shift had ended 5 hours later (but ended up sending it back down earlier). The miners were originally sued in the County Court for breach of their employment contract.
- **Held:** Weardale was not liable, based on the grounds that the claimants had willingly entered the mine and that they were only obliged to take them to the surface at the end of their shift. This changed the law by adding that an employer can legitimately refrain an employee from leaving if they are working within contracted hours

Myer Stores Ltd v Soo [1991]

- **Facts:** Soo was requested to come with security officers for questioning as they believed he was a shoplifter. P believed he had no choice but to go. P was detained incorrectly
- **Held:** P was totally restrained as he believed if he didn't follow requests, physical force would be applied

Duration of false imprisonment

- Duration of time is irrelevant to tort action but may be relevant in determining damages; *Murray v Ministry of Defence [1988]*
 - o P not allowed to leave home for 30 minutes as there was an intention to arrest her at 7:30
- Initially lawful detention may become unlawful; *Nasr v NSW [2007]*
 - o **Facts:** P was arrested by police and taken to Burwood Police Station and detained for around 6.5 hours
 - o **Held:** no false imprisonment. NSW Court of Appeal found that given the circumstances of the case and the police's ability to process an arrest at the busy time, 6.5 hours was a reasonable timeframe

Voluntary deprivation (consent/legal justification)

Generally, there is no false imprisonment where one voluntarily submits to a form of restraint including terms of entry; *Balmain v Robertson (1906)*

Absence of knowledge of deprivation

Knowledge of P at the moment of restraint is not essential; *Murray v Ministry of Defence [1988]*

Hart v Herron (1984); P detained by D and given treatment including deep sleep therapy and electroconvulsive treatment which was not consented = false imprisonment

Non-physical

The coercion that causes the false imprisonment **need not be physical**

- Psychological intimidation will suffice
- This can occur where D **intends** to detain P, or **recklessly** gives P that impression and P believes that he is being detained reasonably

Symes v Mahon [1922]

- **Facts:** a man was held to be falsely imprisoned when he accompanied police to town on a train even though he paid the fare and sat in a separate compartment
- **Held:** the man, who was told of a warrant for his arrest, had submitted to D's power based on the **reasonable belief he had no way of escaping**

Omission

Cowell v Corrective Services Commissioner of NSW

- **Facts:** Cowell was not released from prison when he should have been
- **Held:** false imprisonment may also occur by omission, in this case **failing to release a prisoner**

- Corrective services can still be liable for false imprisonment even if they do not know that confinement is wrong

Participation in arrest

Watson v Marshal

- **Held:** P must prove that D personally participated in P's false imprisonment

Dickenson v Waters (1931)

- **Facts:** D was liable for a constable's detention of P because it was extremely unlikely that the constable would have arrested P
- **Held:** participation does not include the situation where a D provides information to the police which leads to a police arrest. It will be false imprisonment where the police do not use any independent discretion and indicate that there will be no arrest unless D signs a charge sheet