

Trespass to person: Assault	Apprehension of imminent harmful conduct (Zanker) Positive and voluntary act (Innes v Wylie) Directness (Hutchins) Fault (Williams) Defence / Remedy
Trespass to person: Battery	Physical contact/interference (Coles ; Collins) Positive and voluntary act (Innes) Directness (Hutchins) Fault (McHale) Defence / Remedy
Trespass to person: False Imprisonment	Total restraint of liberty (Bird) Positive and voluntary act (Innes) Directness (Coles Myer) Fault Defence / Remedy
Trespass to Land	Standing to sue (Newington) Positive and voluntary act (Konskier) Directness Fault (League Against Cruel Sport) Interfered with exclusive possession of land (Lavender) Defences / Remedies
Private nuisance	Right to sue (Hunter) Type of nuisance: Material/Non-material Capacity to be sued (Fennell) Defence (Lester-Trevers - statutory duty) / Remedies
Negligence: Harm suffered	Physical injury PI Pure Economic Loss PEL (Caltex Oil) Pure Mental Harm PMH (s 72(1)) Consequential Mental Harm CMH
Negligence: Duty of Care DOC	Recognised (Donoghue) Reasonable Foreseeability RF + Salient Features SF
Negligence: Breach DOC	Standard of care (s 48(1)(c)) Foreseeability (s 48(1)(a)) Not insignificant risk (s 48(1)(b)) Negligence calculus (s 48(1)(c)) Failure to warn (s 60)
Negligence: Causation	Factual causation (s 51(1)(a)) Scope of liability (s 51(1)(b))
Negligence: Remoteness	Reasonable Foreseeability (Wagonmound 2) <ul style="list-style-type: none"> • CMH (s 74(1)) • Indirect PMH (s 73(2)) Type of harm (Metrolink test)
Negligence: Defences	Contributory Negligence CN (s 26) Volenti (s 54 & 55) Illegality (s 14G) Volunteers (s 37) / Good Samaritans (s 31B) Limitations of Actions Act 1958 VIC
Negligence: Damages	Compensatory Joint liability Proportionate liability
Negligence: Vicarious Liability VL	Employee (Hollis) Salmond test Lepore test

Trespass to persons - Assault

Apprehension of imminent harmful or offensive contact

P could bring an action in tort of assault against D. To establish this tort, P has the burden to prove that there was an apprehension of imminent harmful or offensive contact amounting to assault

1. Actionable per se - No actual injury needed

- Threat by D
- Apprehension of imminent harmful or offensive conduct (**Zanker**)
- Reasonable belief that D can carry out threat
 - Knowledge of threat (**R v Phillips**)
 - Actual/perceived ability to carry out threat (**Zanker**)
 - Objectively reasonable
 - Even if conditional threat (**Rozsa**)
 - Mere words? (**Barton**)

2. Positive & voluntary act (**Tuberville** - words in combination with acts)

- Involuntary act does not satisfy this element (**Morris**)
- Positive act vs passive conduct/omission (**Innes v Wylie**)

3. Direct (not merely consequential)

- On its own sufficient to bring about apprehension
- Immediacy (**Hutchins** - *Bate* - direct when follows so immediately....termed part of that act)
- Mere consequence (**Southport** - oil intentionally dumped, tide took it to foreshore. Not direct enough)
- Intervening act?
 - 1) Human actions, including P's actions (**Hutchins**)
 - 2) Exceptions in reflex for self-defence. No intervening act (**Scott** - *Squib* - if act is done under compulsory need for safety then not free agent; **Platt v Nutt**)
 - 3) Natural forces (**Southport**)

4. Fault ("D has the burden to prove that he/she did not intend/was not negligent in creating apprehension in the mind of P, or that the act was lawful") (**McHale v Watson** – Windeyer J)

- Intent – (**Rozsa**)
- Recklessness – (**R v Bailiff**)
- No intention of some kind or want of due care, a violation....is not actionable as a trespass - (**Williams v Milotin**)

(5. Defences next page)

5. Defences

Consent

- Voluntary involvement (majority in **Latter**)
 - Involuntary involvement (minority in **Latter**)
 - economic/emotional duress vitiates consent (**Latter**; **Aldridge**)
- D's act was within the scope of consent
 - Trespass must fall within scope of consent (**McNamara** - Outside of scope)
- Express or implied
- Subjective test: actual consent only
- Minors cannot consent (**Marion's case** - unless they 'achieve sufficient understanding and intelligence to enable them to understand fully what is proposed')
 - Non-therapeutic procedures before achieved capacity must be made by the court, in light of best interest of child
- Medical practice if the patient has been informed in broad terms. Not necessary in trespass to person that D outlined risks (**Chatterton**)
- Refusal of consent (**Rossiter** - right to autonomy. Underpins informed consent)
- Revocation must be unambiguous and communicated to D
 - May be irrevocable for a 'critical period'

Self-defence

- Threat of imminent harm to D
 - Honest & reasonable belief in threat (**Ashley**)
- D believed on reasonable grounds that it was necessary (**Fontin**)
- Defence of others
 - Objective test: reasonable belief that it was necessary (**Goss**)
- Threat (**Rozsa**; **Samuels**)
 - Could D avoid threat without force?
 - Proportionality of degree of force relative to threat

Necessity - Did D believe on reasonable grounds that it was necessary to do what they did?

- Real & imminent danger
 - If not imminent, then not necessary (**Southwark London** - squatters "if hunger were once allowed to be excuse for stealing" - floodgates)
- D's conduct was necessary to protect people/goods/property from danger
- Necessity viewed at the time of action (**Cope**)
- Necessity was not due to D's act/fault/negligence in the first place (**Rigby**)
- Assessed by reference to what was known at time - lightly consider what harm is likely to be caused by defensive action that if said action not taken (**Proudman**)
- Medical treatment necessary IF person cannot consent (**Murray**)
 - Refusal of treatment certificate (**s 5 Medical Treatment Act 1988**)
 - Violation of certification - medical trespass (**s 6**)

6. Remedies

- Damages (exemplary, compensatory, nominal)
- NOTE: With compensatory damages, if there's nothing to compensate for, claim for nominal or exemplary damages