

# Topic 1: Introduction & Trespass to the Person

## Introduction of Tort

Definition → Act of omission by D, constituting an infringement of a legally recognized interest of P giving rise to a right of civil action for unliquidated damages.

### Types of Damages

- Unliquidated (Compensatory) damages → not fixed in amount in advance  
→ measured according to loss suffered by P
- Liquidated (Compensatory) damages → fixed sum damages (ie, claim on insurance policy)
- Nominal damages → P suffered no loss/harm (no real money value) – awarded for recognition of harm due to D's conduct
- Contemptuous damages → damages so small they indicate disapproval of action taken at all
- Aggravated damages → damages in excess of actual damage P suffered (humiliation, indignity, disgrace)
- Exemplary / Punitive damages → not related to loss suffered but used to punish D (superadded damages)
- Pecuniary damages → financial loss

### Aims of Tort Law

- To provide compensation to P for the damage they suffered as a result of the tort
- Loss distribution → shift losses from victims to perpetrators
- Compensation → through the award of pecuniary damages (place the victim in the position he was before tort was committed)
- Punishment → through exemplary or punitive damages (more secondary aim)

## Trespass in General

Trespass → intentional or negligent act of D which directly causes an injury to P, his land or goods of another without lawful justification

### Generic Elements of Trespass:

- Intentional or Negligent Act – interferes with the protected interest of P
- Injury must be caused Directly (Indirect = NOT Trespass)
- No lawful justification
- X Factor – specific element depending on nature of the trespass (eg, battery, assault, land, goods, etc....)
- Injury – breach of right, not necessarily actual damage
- Actionable per se = only need to prove injury caused (no need to prove damage/loss caused)

## Trespass to the Person

### 3 Key Areas:

- 1.) **Battery** – Protects the body (direct application of force)
- 2.) **Assault** – Protects the mental well being (real threat of force)
- 3.) **False Imprisonment** – Protects civil liberty

### Battery

- Elements of Battery:

#### a) Intentional or Negligent Act

- intention to harm is NOT required, only an intention to make contact. (Wilson v Pringle)
- **Intentional Act** = basic willful act + the consequences (whatever injury caused from the act)
- **Negligent Act (recklessness)** – actions of D knowing it may cause bodily contact
- Capacity → D capable to form intent if he/she understands nature of his act (No capacity restrictions)  
(whether they are 'Infants' – **Hart v AG of Tasmania** or 'Lunatics' – **Morris v Masden**)

#### b) Must cause Physical (Bodily) Contact or Interference

- If no contact = no battery
- The least touch of another can be battery – **Cole v Turner (1704) 87 ER 907**
- Hostility in act not relevant to prove battery – **Wilson v Pringle (1987) QB 237**
- Knowledge of contact by either D or P not necessary – **Collins v Wilcock [1894] 1 WLR 1172**

### **Rixon v Star City Casino [2001] NSWCA 265**

- Facts – Security guard grabbed R on shoulder, spun him around at casino as he was kicked out of casino but kept playing.
- Court – no battery (contact was to engage R's attention, not in excess)

### **Collins v Wilcock [1894] 1 WLR 1172**

- Facts – police officer holds D's arm with view to restrain her when D declines to answer questions and begins to walk away
- Court – battery (conduct of officer beyond scope of duty, she was not under arrest)

### **Wilson v Pringle (1987) QB 237**

- Facts – schoolboys, P fell and injure hip, D claim he pulled P's bag, in ordinary 'horseplay'
- Court – battery (act is intentional, does not matter whether injury was intentional or hostile)

### c) Must be caused Directly

- Court looks at various factors to determine whether directness is present:

#### (i) Injury must be Immediate

- Eg, if log thrown and hits someone → immediacy (direct) in trespass

if log thrown and lies on highway until someone drives pass and gets injured → act is indirect, action in case

- Not just immediate act, but chain of events directly cause contact – **Scott v Shepherd (1773)**

### **Scott v Shepherd (1773) 2 W BI 892**

- Facts – fireworks lid was thrown into crowded marketplace, thrown from person to person and exploded in Sc's hands

- Court – Shep initially lid fireworks set chain of unbroken events, thus directly caused Scott's injury, liable

#### (ii) Lack of Intervening Act

- Opposite of S v S (where possibly something else broke chain of events)

### **Hutchins v Maughan [1947] ALR 201**

- Facts – D forgot to inform P he placed dog food with poison, one of P's dogs ate it and died

- Court – if feed poison to dog (trespass) ; but if left as bait and dog ate it (indirect – NOT trespass)

### **Southport Corporation v Esso Petroleum Co Ltd [1954] 2 All ER**

- Facts – oil spilled (dumped) in the sea due to boat issues, due to tides drifted onto beach

- Court – Minority (if put oil in ocean and tide brings into beach = Direct Trespass)

- Majority (if oil poured into ocean, but due to force of nature (tide) intervened, it is uncontrollable, indirect)

- shows there can be an Intentional Act, but to do it Indirectly

### d) Must be without Lawful Justification (without Consent)

- Consent must be freely given by P if P understands nature of the act

- Sports → presumption of consent provided acts are within rules of game

- Medical → give consent to treatment by doctors.

- Law Enforcement Officers → their act or duty is for lawful justification

## Assault

- Elements of Assault:

### a) Intentional Act or Threat of D

- **Threat** → words, acts or both (mere words alone generally not actionable)

**Barton v Armstrong (1969)** → threats made over the phone which instill fear are not 'mere words'

→ conditional threats (also generally not actionable)

### **Rozsa v Samuels (1969)**

- Facts- taxi driver threat to hurt another with knife if he tried to punch him

- Court – conditional threat is assault (threats accompanied by action)

### **Tuberville v Savage (1669) 1 Mod Rep 3**

- Court – conditional threat not assault (words override the actual conduct – to not fight)

### **Police v Greaves [1964] NZLR 295**

- Court – “if you don't get off property, I will kill you” while holding gun not enough for assault for conditional threat

- **Intention** - intend the consequences of the act (not doing the act itself) → intend to cause apprehension in the P that a battery is about to occur

- If act was accidental or without fault → no action (**Stanley v Powell [1891] 1 QB 86**)

### b) Must be Direct

- Assault must be caused by a direct act of D (also includes chain of events – continuous)

### c) Must place P in Reasonable Apprehension

- Test is *objective* (whether reasonable person in same situation would have been apprehend to conduct – ie, worried, afraid)

### d) Physical interference must be Imminent

- **Barton v Armstrong** → phone call was imminent (even though D gave no sign when threat is to be carried out)

- **Zanker v Vartzokas (1988) 34 A Crim R 11**

- Facts – P jumps out of moving van to escape from D's unwanted lift

- Court - 'I'll take you to my mates house, He will really fix you up' threat was imminent and P was fearful of the violence that was to be carried out. She was in immediate and continuing fear.

## **False Imprisonment**

- Elements of False Imprisonment:

**a) Intentional or Negligent Act**

**b) Directness**

**c) Must be without Lawful Justification / Consent (wrongful total restraint)**

**d) AND, Must be Total Restraint**

- Total Restraint → no reasonable means of escape (or escape route)

### **Bird v Jones (1845) 7 QB 742**

- Facts – P could not cross bridge coz pedestrians lined bridge to watch event.

- Court – not total restraint, only partial obstruction (could have used other side of bridge, or another bridge)

### **Burton v Davies [1953] St R QD 26**

- Facts – P (female) accepted lift but D made sexual advances but refused to let her go until later

- Court – Total Restraint (no reasonable means to get out of moving car without injuring themselves)

- Total Restraint still exists if – D subjects P to his authority with no option to leave.

### **Symes v Mahon [1992] SASR 447**

- Facts – D (police) told M there's a warrant for his arrest and would need to travel to Adelaide via train to clear it up. On train separately, even allowed him to stay in hotel. However, arrested wrong person.

- Court – FI (total restraint) as P completely submitted to control of D thinking there's no escape

### **Myer Stores v Soo [1991] 2 VR 597**

- Facts – Security guard and 2 cops approached Soo in store, accused him of shoplifting, detained him for 1 hr, questioned him, then brought him to police station for more questions.

- Court – FI (total) when detained in store, but not FI in police station as he voluntarily went to answer Qs.

## **Other Factors Relating to False Imprisonment**

### **Voluntary Constraint**

- When a person voluntarily submits to form of restraint → NOT False Imprisonment

### **Robertson v Balmain New Ferry Co (1906) 4 CLR**

- Facts – Refused to pay to leave turn stiles at Balmain wharf on basis he did not travel on the ferry.

- Court – D voluntarily submits to restraint by refusing to pay

### **Herd v Wertdale (1915)**

- Facts – P was miner who wanted to leave due to conditions but refused until shift ended

- Court – NOT FI because contract stipulated agreement to remain underground. Voluntarily requested to work in mine.

- When restraint not voluntarily accepted but still confined → YES, it is False Imprisonment

### **Bahner v Marwest Hotels Co Ltd (1970) 6 DLR (3<sup>rd</sup>) 322**

- Facts – P was sold bottle of wine just before told they were about to close. P didn't drink nor want to pay. Hotel said 'if you don't pay, you don't leave.' Hotel called cops who arrested and questioned him. Police thinks he's drunk and put him in cell.

- Court – FI due to confinement. Police acted independently when put him in cell, seized to be agent, therefore liable.

### **Words (not Physical Restraint)**

- Does not require physical force or contact.

- Words where D intends to detain P OR recklessly gives P impression and cause P to believe detainment is possible

- Reasonable belief that he had no reasonable way to escape. (see Symes v Mahon above)

### **Knowledge**

- Knowledge of P at the moment of restraint NOT ESSENTIAL.

### **Meering v Graham White Aviation Co. (1919) 122 LT 44**

- Facts – P requested in employer's office to give evidence of theft, and detectives given orders to not let him out.

- Court – FI (P need not be aware his liberty was to be deprived).

### **Murray v Ministry of Defense [1987] NILR 219**

- Facts – P detained on suspicion of IRA involvement, search conducted and not allowed to leave. (arrested)

- Court – Regulations protected the police, no FI, even though Obiters from judges said this was FI