

## TRESPASS & INTENTIONAL TORTS

<b>Trespass to Person: Assault</b>	
Plaintiff v Defendant (assault)	
<b>Definition</b>	The tort of Assault is a threat made by D that causes P to reasonably apprehend imminent harm made without justification. <i>Barton v Armstrong [1969]</i>
<b>Conduct / Direct Threat</b>	The facts of the threat in the case.
<b>Cause P to reasonably apprehend imminent/ immediate harm</b>	<ul style="list-style-type: none"> <li>• Objectivity test (reasonable person) <i>Zanker v Vartzokas</i></li> <li>• Threat must be 'present and continuing' for it to be imminent. <i>Tuberville v Savage</i></li> <li>• Mention whether threat was conditional</li> <li>• Must be positive, direct and intentional threat. Means of carrying out the threat <i>Stephen v Myers</i></li> </ul>
<b>Fault (intentional or negligent/reckless)</b>	<ul style="list-style-type: none"> <li>• Intentional: D intended to commit act that comprised trespass, intent to commit trespass is not necessary. <i>Hall v Fonceca</i></li> </ul>
Summarise issues of liability	
<b>Defences</b>	See page 5
<b>Remedies</b>	See page 5
<b>Conclusion</b>	Likely case scenario of court findings

<b>Trespass to Person: Battery</b>	
Plaintiff v Defendant (battery)	
<b>Definition</b>	The tort of battery occurs when a direct act by D causes direct physical interference to P without consent or legal justification, battery is actionable per se.. <i>Barton v Armstrong [1969]</i>
<b>Conduct / Direct Act</b>	The facts of the act in the case.
<b>Causing bodily contact/ interference</b>	<ul style="list-style-type: none"> <li>• Interference or harm must be directly caused by the act of D [<i>Scott v Shepherd</i>] and not consequential.</li> <li>• Direct contact can be made through an instrument <i>Darby v DDP</i> "an instrument through which battery could be committed".</li> <li>• Contact must be active (positive act) not passive (omission) <i>Innes v Wylie</i>.</li> <li>• Must be some physical contact to count as battery, not merely witnessing contact <i>Carter v Walker</i></li> </ul>
<b>Consent</b>	<ul style="list-style-type: none"> <li>• P must prove they did not consent to contact <i>Freeman Home Office (No 2)</i></li> <li>• Implied consent to physical contact depends on the surroundings and circumstances. "all physical contact constitutes battery with the exception for physical contact that is generally acceptable in ordinary conduct of everyday life" per Goff LJ: <i>Collins v Wilcock</i></li> <li>• Breaches are when the conduct goes beyond the limitations and rules of implied consent <i>Giumelli v Johnson</i> anything beyond implied consent is battery.</li> <li>• Consent <i>Marion's case</i></li> </ul>

<b>Fault</b>	<ul style="list-style-type: none"> <li>• Intentional: D intended to commit act that comprised trespass, intent to commit trespass is not necessary. Act must be voluntary <i>Gray v Barr</i></li> <li>• Reckless: D did not intend to cause contact but ignored the apparent risk of the act that resulted in the direct interference.</li> </ul>
Summarise issues of liability	
<b>Defences</b>	See page 5
<b>Remedies</b>	See page 5
<b>Conclusion</b>	Likely case scenario of court findings

<b>Trespass to Person: False Imprisonment</b>	
Plaintiff v Defendant (false imprisonment)	
<b>Definition</b>	The tort of false imprisonment is an act by D that totally deprives P of their liberty without consent or justification, it is actionable per se.
<b>Conduct / Direct Act</b>	The facts of the act in the case.
<b>Total deprivation of liberty</b>	<ul style="list-style-type: none"> <li>• Complete deprivation of liberty <i>Myers Store v Soo</i></li> <li>• P must have no means of reasonable escape [<i>Bird v Jones</i> [<i>McFadxean v CFMEU</i>]</li> <li>• Physical contact is not always essential if P is under complete submission of D [<i>Symes v Mahon</i>]</li> <li>• Must be a direct positive act or inaction when duty is owed [<i>Herd v Weardale</i>]</li> </ul>
<b>Without lawful justification</b>	<ul style="list-style-type: none"> <li>• Must be without consent or lawful justification [<i>White v South Australia</i>]</li> <li>• FI if restraint goes beyond the time allowed with lawful justification [<i>Cowell v Corrective Services Commission of NSW</i>]</li> <li>• Arrest without warrant or explanation [<i>NSW v Riley</i>]</li> </ul>
<b>Fault</b>	<ul style="list-style-type: none"> <li>• Intentional: D directly, intended to commit act that comprised of trespass, intent to commit trespass is not necessary. Act must be voluntary. <i>Herd v Weardale</i></li> <li>• Reckless: D did not intend to cause contact but ignored the apparent risk of the act that resulted in the direct interference.</li> </ul>
Summarise issues of liability	
<b>Defences</b>	See page 5
<b>Remedies</b>	See page 5
<b>Conclusion</b>	Likely case scenario of court findings

<b>Trespass to Land</b>	
Plaintiff v Defendant (trespass to land)	
<b>Definition</b>	The tort of trespass to land is an act by the defendant that causes direct physical interference with the land under exclusive possession of the plaintiff.
<b>Conduct / Direct Act</b>	The facts of the act in the case.

<b>Title to sue</b>	<ul style="list-style-type: none"> <li>• P must have exclusive possession of land at time of trespass</li> <li>• Ownership is not required to sue (eg. Landlord entering premises without tenants permission <i>Gifford v Dent</i> - legal title is the legal ownership and right to exclusive possession (EP). But the EP can be delegated to tenants upon a lease agreement.</li> </ul> <p>Evidence of Exclusive Possession:</p> <ul style="list-style-type: none"> <li>• Exclusion of others from the land <i>Rodrigues v Ufton</i></li> <li>• Tenants <i>Gifford v Dent</i></li> <li>• Former inhabitants do not have EP <i>Bropho v WA</i></li> <li>• Maintenance of the land <i>Newington v Windeyer</i></li> </ul>
<b>Direct Interference with Land (Terrestrial)</b>  <b>OR</b>	<p>Interference must be direct: <i>Southport v Esso Petroleum</i></p> <ul style="list-style-type: none"> <li>• Entering: <i>Halliday v Nevill</i></li> <li>• Remaining on land: <i>TCN Channel Nine Pty Anning</i></li> <li>• Causing an object to make direct contact with P's land: <i>Watson v Cowen</i></li> </ul>
<b>Direct Interference with Land (Airspace)</b> <b>OR</b>	<p>Owners right to airspace is at height which is necessary for ordinary use and enjoyment of land and structures: <i>Bernstien v Skynews</i></p>
<b>Direct Interference with Land (Beneath soil)</b>	<p>Trespass can occur in the soil or subsoil even if it does not interfere with ordinary and reasonable use of land <i>Board SA v Star Energy</i></p> <p>*Statutory exceptions for public work eg, tunnels and roads</p>
<b>Consent / License</b>	<p>Consent or license can be revoked or breached, onus to prove license is on D.</p> <ul style="list-style-type: none"> <li>• Implied license: <i>Halliday v Nevil</i></li> <li>• Revoked license: <i>Kuru v NSW</i></li> <li>• D must have reasonable time to leave after license is revoked <i>Covell v Rosehill</i></li> <li>• Unlocked gate does not imply license to enter: <i>TCN Channel Nine Pty Ltd v Anning</i></li> </ul> <p>*Police have power to enter premises to prevent breach of peace, but have no power to remain or enter premise to investigate whether breach of peace has occurred</p>
<b>Fault</b>	<ul style="list-style-type: none"> <li>• Intentional: D intended to commit act that compromised trespass, intent to commit trespass is not necessary. Interference must be voluntary <i>League against Cruel Sports v Scott</i></li> <li>• Reckless: D did not intend to cause contact but ignored the apparent risk of the act that resulted in the direct interference</li> </ul>
Summarise issues of liability	
<b>Defences</b>	See page 5
<b>Remedies</b>	<ul style="list-style-type: none"> <li>• Vindication damages to acknowledge P's right to possession <i>Plenty v Dillon</i></li> <li>• Reinstatement and Diminution of land value costs <i>Evans v Balog</i></li> <li>• Consequential loss: harm intended or natural consequence of tortious act <i>TCN Channel Nine Pty v Anning</i></li> <li>• Aggravated or exemplary <i>NSW v Ibbett</i></li> <li>• Injunctions to prevent a threatened trespass <i>Seven Network Ltd v ABC</i></li> </ul>
<b>Conclusion</b>	Likely case scenario of court findings