

INTENTIONAL TORTS

Elements of Trespass

Elements
A positive, voluntary act <ol style="list-style-type: none">1. Intentional deliberate act or (Australia - Williams v Milotin) a negligent act directly causing interference2. No trespass without fault: <i>Holmes v. Mather</i>;
Which directly <ol style="list-style-type: none">1. "follows so immediately upon the act of the D that it may be termed part of the act" (<i>Hutchins v Maughan</i>[1947] Dog ate baits HELD intervening act)2. Does not require physical contact between D/P (<i>Scott v Shepherd</i> => threw firework HELD unbroken chain of events)3. Must be DIRECT not merely a CONSEQUENCE of it. <i>Reynolds v. Clark</i>; <i>Scott v Shepherd</i>
Interferes with the Plaintiff (person, land, goods)
Is actionable PER SE: Damage is <u>not</u> part of the cause of action

Burden of Proof: P must establish the facts constitute the elements of trespass, onus falls to D to establish that the trespass was not intentional, negligent or was involuntary

Standard of Proof: On the balance of probabilities

availability of an injunction as a possible remedy in the case of intentional torts

Battery

Elements/Rule from McHALE
<ol style="list-style-type: none">1. A positive Voluntary intentional (deliberate or negligent) act2. Directly causing3. Physical bodily contact/interference with the P: <i>Cole v Turner</i>, <i>Rixon v Star City</i>
Without lawful justification (defence) OR consent of the plaintiff: RIXON V STAR CITY

I. Positive Voluntary Intentional (deliberate or negligent) act

- As a mere omission cannot amount to an assault, a positive act is required → **Fagan**
- "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. It is the mere trespass by itself which is the offence." **Wilson v Pringle per Croom-Johnson LJ; Sibley v Milutinovic (1990)**
- **Morriss v Marsden 1952** - when D understands the nature and quality of act, can be held liable, the "knowledge of wrongdoing is an immaterial averment" i.e. incapacity.

A. Hostility???

- *Cole v Turner* (1704) "The least touching of another in anger" is battery.
- *Collins v Wilcock* (1984) "unwanted contact" beyond scope of duty as police, hold arm
- *Rixon v Star City Pty Ltd* "absence of anger or hostile attitude.... not a basis for concluding that there was no battery".... "conduct... generally acceptable in the ordinary conduct of daily life"

II. Directly Causing (See trespass table)

III. Contact with the Body

- Unwanted or offensive contact outside accepted usages and accidental contacts of daily life
- **Marion's case (1992)** per Brennan J at [6]: Blackstone "every man's person (is) sacred".
- Spitting in someone's face => **R v Cotesworth**
- May be an act short of touching **Fisher v Carrousel Motor Hotel Inc** boiling water
- May not be conscious of contact at the time it occurs **Chatterton v Gerson**
- Battery can be inflicted through a medium/weapon/instrument controlled by acts of D (**Fagan**)

A. Implied Consent

- "Most of the physical contacts of ordinary life are ... impliedly consented to by all who move in society and so expose themselves to the risk of bodily contact....Among such forms of contact ... is touching a person for the purpose of engaging his attention...using no greater degree of physical contact than is reasonably necessary in the circumstances..." **Collins v Wilcock**

Assault

Elements

1. A voluntary intentional (deliberate or negligent) act
2. Directly causing
3. the plaintiff reasonably to apprehend
4. Imminent physical bodily contact

RIXON V STAR

I. Voluntary Intentional (deliberate or negligent) act

- “Proof of assault requires proof of an intention to create in another person an apprehension of imminent harmful or offensive contact...proof of the assault does not require proof of an intention to follow it up or carry it through” at *Rixon v Star City*
- Subjective intention by D that threat will create apprehension in mind of P

II. Plaintiff to reasonably apprehend

- Objective test: Would reasonable person fear harm i.e. where P’s fear is unreasonable, and D has no knowledge of this timidity, and then D will not have mens rea. *Macpherson v Brown*
- Must be of Imminent bodily contact *Zanker v Vartzokas* “A present fear of relatively immediate, imminent violence was instilled in her mind...and that fear was kept alive...by continuing progress with her a prisoner...”

III. Imminent Unlawful Contact

- Conduct required may be threatening acts, words or both
- Spoken words in threatening circumstances (distinct from ‘mere words’): *Barton v Armstrong*
- Silence in threatening circumstances: *R v Ireland [1997]* *R v Burstow*
- False imprisonment with continuing threat of injury: *Zanker v Vartokas (1988)*

A. Conditional Threats “If...”

- *Tuberville v Savage* wasn’t *Rosza v Samuels* was, reasonable force (practical alternative, proportionate/excessive response) punch v knife = excessive force

FALSE IMPRISONMENT

Elements

1. A positive Voluntary act (can be psychological - *Symes v McMahon*)
2. Directly causing
3. Total restraint of the plaintiff’s liberty

I. Intention (no neg authority)

- The act which must be intended is the imprisonment. No malicious intent is required. A mistaken belief that the imprisonment is lawful is no defence.
- *Cowell v Corrective Services Commission* a case of a failure to release a prisoner on the correct date at the conclusion of his sentence, because of mis-calculation of remissions.

II. Total Deprivation of liberty***

- *Bird v Jones* “A prison may have boundary tangible or though real, still in the conception only; but a boundary it must have, and by that boundary, party imprisoned must be prevented from passing... include notion of restraint within some limits defined by a power exterior to our own. Per Coleridge J.

III. Complete Submission by P to the Authority of D

- *Watson v Marshall & Cade*; *Symes v Mahon*

IV. No reasonable Means of Escape

- *Bird v Jones*; *R v Macquarie & Budge (jumped overboard of boat)*; *Burton v Davies*

V. Voluntary Cases

- In general, there is NO IMPRISONMENT where P voluntarily submits to a form of restraint:
 - *Herd v Weardale Steel*: (industrial relations) *Balmain New Ferry v Robertson* (contract)

VI. Directness

- *Coles Myer v Webster/Thompson* D must be “active in promoting and causing” imprisonment of P.
- *Ruddock v Taylor* D “actively sought result” and “manifested an intention that there imprisonment”

VII. P’s knowledge of Imprisonment

- P need not be aware of imprisonment at the time the tort is committed: *Murray v Ministry of Defence*
- Duration: *Nasr v NSW* initially lawful detention may become unlawful if for “unreasonably long time”.