

INTENTIONAL TORTS

Elements of Trespass

Elements
<p>A positive, voluntary act</p> <ol style="list-style-type: none"> 1. Intentional deliberate act or (Australia - Williams v Milotin) a negligent act directly causing interference 2. No trespass without fault: <i>Holmes v. Mather</i>;
<p>Which directly</p> <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>
<p>Interferes with the Plaintiff (person, land, goods)</p>
<p>Is actionable PER SE: Damage is <u>not</u> part of the cause of action</p>

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) act 2. Directly causing 3. Physical bodily contact/interference with the P: <i>Cole v Turner</i>, <i>Rixon v Star City</i>
<p>Without lawful justification (defence) OR consent of the plaintiff: RIXON V STAR CITY</p>

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)**
- **Morris 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	RIXON V STAR
2. Directly causing	
3. the plaintiff <u>reasonably to apprehend</u>	
4. <u>Imminent physical</u> bodily contact	

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 Vartzokas (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”.

BATTERY

***Rixon v. Star City Casino* [2001]**

Event: D tries to eject P, and in doing so, grabs his arm.

Judgment: For defendant. D used a reasonable amount of force for the context of the situation.

***Stanley v. Powell* [1891]**

Event: D shot at bird, deflects off tree, injures P.

Judgment: For defendant.

Relevance: **Intention** - an accident may lead to trespass if no negligence or lack of due caution.

***Scott v. Shepherd* (1773)**

Event: D throws firecracker thrown into stall; subsequently thrown on before exploding and injuring P.

Judgment: For plaintiff.

Relevance: Original throw was still deemed to be direct interference; the following throws were part of an unbroken chain of events.

***Collins v. Wilcock* [1984]**

Event: D (policewoman) grabs P (prostitute) by arm to gain attention - not to arrest.

Judgment: For plaintiff.

Relevance: Deemed that D used an unreasonable amount of force for the context of the situation.

***Hutchins v. Maughan* [1947]**

Event: D laid poisonous baits on unfenced land where P's dogs ate them and died.

Judgment: For defendant.

Relevance: P had to bring dogs onto property, which was deemed an intervening act.

ASSAULT

***Rozsa v. Samuels* [1969]**

Event: P (outside of taxi) threatens to punch D (taxi driver). D gets knife from under seat and makes conditional threat to P.

Judgment: For plaintiff.

Relevance: There was reasonable apprehension and an imminent threat of force even though the conditional threat was made. Also D had other options, such as driving away or locking his door.

***Zanker v. Vartzokas* (1988)**

Event: D gets into P's van, where P subsequently sped to a friend's house while threatening sexual activity.

Judgment: For plaintiff.

Relevance: Even though the threat was for future violence, the Court held that it was assault because it would occur at the end of D's imprisonment and the fear was kept in D for the entire journey.

FALSE IMPRISONMENT

***Bird v Jones* (1845)**

P was prevented for approximately half an hour from going forwards along a path by two policemen who were positioned by D.

The Court held this was not false imprisonment as it was not total restraint - P could have gone in another direction, such as backwards.

***Meering v Grahame-White Aviation Co* (1919)**

P went to employer's office to answer questions in respect of thefts. He remained in the office for a long time, and was unaware that there detectives outside the room to prevent him from leaving.

This was held to be false imprisonment.

***Burton v Davies* [1953]; *Zanker v Vartzokas* (1988)**

Unwilling passengers were held to be unlawfully imprisoned when the only means of escape was to jump from D's moving car.

Trespass to Land

Elements/Rule
<ol style="list-style-type: none"> 1. <u>An intentional or negligent act</u> <ul style="list-style-type: none"> • Must be voluntary - Public Transport Commission of NSW v Perry 2. <u>Directly causing</u> <ul style="list-style-type: none"> • Must be direct not consequential: Southport Corp v Esso Petroleum 3. Interference with the P's exclusive possession of land <ul style="list-style-type: none"> • Act must constitute a physical interference with land; Bathurst City Council v Saban • Might be: <ul style="list-style-type: none"> - Actual entry by D (a person) onto P's land - Unauthorised contact caused by throwing/placing something on someone's land. League Against Cruel Sports Ltd v. Scott - Continuing Trespass: remains on property after being asked to leave Konskier v Goodman - Grantee of an interest in land may sue if their interest is interfered with Mason v Clarke
Actionable per se ie no requirement of damage

Title to Sue

To maintain an action in trespass, P must establish actual exclusive possession of the land, to the exclusion of all others **Newington**. Not necessary title/ownership, Contractual Licensee NOT possession: **Cowell**

Concept of Land

Land includes the actual dirt/soil, structures/fixtures/plants on it and the airspace above it

The rights of person in possession of land extends only to height or depth as is reasonably necessary for the use and enjoyment of the land. **Bernstein of Leigh v. Skyviews & General Ltd**

License to enter/Trespass by licensee

- Entry to properties can be granted under license – either explicitly or implicitly (implied permission).
 1. **Express permission**: trespass can still occur by way of the licensee undertaking acts outside of the license (*trespass pro tanto*). **Bond v Kelly**
 2. **Implied license** to enter premises:
 - “Where path leading to the entrance of ordinary suburban dwelling house, left unobstructed/gate unlocked and there is no indication that entry by visitors is forbidden or unauthorised, the law will imply a licence of any member of the public to go to the entrance of the dwelling for the purpose of lawful communication with any person in the house.” **Halliday v Neville**
 - Refusal to leave when licence revoked **Cowell v Rosehill Racecourse Co Ltd**
 - **TCN Channel Nine v Henry Alfred**: implied licence was limited to enter the land to request permission to film. Did not enter the land for that purpose...wholly outside any implied licence.
 - Must leave as soon as practicable if license has been revoked **Cowell**
 - Entered for purpose outside licence trespassing **Lincoln**

Police powers of Entry

- **Plenty v Dillon** established that entry onto premises without a warrant is allowed: to prevent murder; if arrestable offence has been/about to be committed & person followed into house; following an offender running away from an affray.
- Unless authorized by law, police officers have no special right of entry into any premises without consent of the person in possession of the land. **Halliday v Neville**.
- Unless authorised by law to remain, Police officers must leave premises within a reasonable time when requested to do so. **Kuru v NSW**
- A police officer serving a summons must obtain the consent of the party in possession of the land before entry **Plenty v. Dillon**

Trespass and privacy: **ABC v Lenah Game Meats** No privacy tort at present, openness to development, confined to personal

TRESPASS TO LAND

Smith v. Stone (1647)

Event: D was forcefully carried onto P's property.

Judgment: For defendant.

Relevance: D's actions were not voluntary.

League Against Cruel Sports Ltd v. Scott [1986]

Event: D allowed their animals onto P's land.

Judgment: For plaintiff.

Relevance: Trespass exists even though D wasn't on the land.

Kanskier v. B Goodman Ltd [1928]

Event: D (builder) did not remove debris from P's property after having a reasonable amount of time to do so.

Judgment: For plaintiff.

Relevance: Continuing trespass.

Newington v. Windeyer (1985)

Event: D owns two properties that back onto land not owned, and begins to use it. P objects as they use and treat the land as their own.

Judgment: For plaintiff.

Relevance: P had exclusive possession over the land.

Bernstein of Leigh v. Skyviews & General Ltd [1978]

Event: D took an aerial photograph of P's house from an aeroplane.

Judgment: For defendant.

Relevance: P's rights did not extend to an unlimited height, and the height to which an ordinary use and enjoyment of the land was not interfered with.

LJP Investments Pty Ltd v. Howard Chia Investments Pty Ltd (1989)

Event: D's scaffolding (on D's property) protruded into P's airspace.

Judgment: For plaintiff.

Relevance: Even though the scaffolding did not interfere with P's use of property, the Court ruled that it may interfere with an ordinary use of the land and was therefore trespass.

Bond v. Kelly (1873)

Event: D was granted a license to cut timber by P, however D took more timber than was allowed in the license.

Judgment: For plaintiff.

Relevance: Trespass existed because terms of license were exceeded.

Halliday v. Nevill [1969]

Event: D (police officers) entered the driveway P (disqualified driver) to arrest him.

Judgment: For defendant.

Relevance: The court found that there was implied license for the police officers to enter as there was no sign/lock etc. suggesting they otherwise shouldn't.

Mason v. Clarke [1955]

Event: D, the tenant, damaged rabbits on his property. P had a *profit a prendre* in relation to rabbits.

Judgment: For plaintiff.

Relevance: Grantee of an interest in land may sue in trespass.

Plenty v. Dillon (1991)

Event: D (police officer) served summons to a person on a property where any license to enter had been revoked by P.

Judgment: For plaintiff.

Relevance: Entry by police did not under any defence to trespass, implied license had been revoked.