

## Torts Scaffold - Table of Contents

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## INTENTIONAL TORTS

### BATTERY

#### PLAINTIFF V DEFENDANT – BATTERY

#### INTRODUCTION

- Plaintiff is taking an action against Defendant for battery.
- Excluded by **CLA S 3B(1)(a)** the provisions of the **CLA 2002 (NSW)** will not apply.
- 3B(2)(g) Part 7 - No action for criminal activity or self-defence

#### ELEMENTS OF BATTERY

1. **An intentional voluntary act by a person**
  - a) D must have intended or had reckless disregard (McNamara)
  - b) Must be a positive act, cannot be a mere omission to act - [Innes \(1844\)](#)
  - c) However, an omission to act can become positive (Fagan)
2. **Which directly**
  - a) Immediacy – ‘*follow so immediately upon the act*’ - [Hutchins v Maughan \(1947\)](#)
  - b) Physical contact is not required - [Scott v Shepard \(1773\)](#)
  - c) Causation – ‘*But for*’ test – [March v Stramare Pty Ltd \(1991\)](#)
  - d) Includes continuation of an act - [Scott v Shephard \(1773\)](#)
3. **Causes contact with the body of another**
  - a) Need not be physical – [R v Cotesworth \(1704\)](#)
  - b) Need not be hostile – still unwanted contact - [Collins v Wilcock \[1984\]](#)
  - c) In excess of contact used in everyday life - [Rixon v Star City Pty Ltd \[2001\]](#)
  - d) Includes spitting ([Cotesworth \(1704\)](#)), use of weapon ([Fisher \(1967\)](#)), taking something from hand of another, throwing water ([Pursell \(1838\)](#)), shining light ([Kaye \(1991\)](#))

#### CONCLUSION

- Liable/not liable for Battery (and paying damages to the Plaintiff).

## ASSAULT

### PLAINTIFF V DEFENDANT - ASSAULT

## INTRODUCTION

- Plaintiff is taking an action against Defendant for assault.
- Excluded by **CLA S 3B(1)(a)** the provisions of the **CLA 2002 (NSW)** will not apply.

## ELEMENTS OF ASSAULT

1. **Intentional voluntary act or threat by D**
  - a) Proof of an intention to cause an apprehension of imminent harmful contact - *Rixon v Star City Pty Ltd (2001)*
  - b) It is not necessary to prove that the defendant intends to carry out the threat - *ACN 087 528 774 Pty Ltd v Chetcuti [2008]*
  - c) If D's act is accidental or without fault = no assault - Stanley (1891)
  - d) Recklessness may constitute intent - Morris (1952)
2. **Directly creates in another person (the plaintiff)**
  - a) Causation – 'But for' test – *March v Stramare Pty Ltd (1991)*
  - b) **Conditional threat:** Not assault unless accompanied with actions - *Rozsa v Samuels [1969]*
  - c) **Silence:** Silence over the phone may constitute assault - *R v Ireland [1998]*
  - d) **Mere words:** Mere words are not assault – consider circumstances - *Barton v Armstrong [1969]*
3. **Plaintiff to Reasonably Apprehend**
  - a) OBJECTIVE TEST - A reasonable person must have apprehended violence – *NSW v Ibbett (2006)*
  - b) Unless the person is exceptionally timid – eggshell-skull rule - *MacPherson v Beath (1975); Dulieu v White & Sons [1901]*
  - c) Regardless of ability to succeed.
  - d) Fear is irrelevant
  - e) D does not have to be in close range to P - *Stephens v Myers (1830)*
  - f) Silence can constitute assault in some circumstances i.e. over the phone - *R v Ireland [1998]*
4. **Imminent Physical Bodily Contact**
  - a) Does not relate to immediacy in terms of time – may be of future violence - *Zanker v Vartzokas (1988)*
  - b) If fear remains present & continuing in plaintiff, it may be assault - *Barton v Armstrong [1969]*

### NOT AN ELEMENT BUT A SIDE NOTE: CONDITIONAL THREATS

- Generally, conditional threats are not actionable as they deter the notion of imminence
- Words may contradict actions - *Tuberville Savage*

- However, conditional threats can be accompanied by actions which amount to assault - [Roza v Samuels](#)

## CONCLUSION

- Liable/not liable for Assault (and paying damages to the Plaintiff).

## FALSE IMPRISONMENT

### PLAINTIFF V DEFENDANT – FALSE IMPRISONMENT

## INTRODUCTION

- Plaintiff is taking an action against Defendant for false imprisonment.
- Excluded by **CLA S 3B(1)(a)** the provisions of the **CLA 2002 (NSW)** will not apply.

## ELEMENTS OF FALSE IMPRISONMENT

1. **Positive Voluntary Act of the Defendant**
  - a) The act which must be intended is the imprisonment – *mens rea* irrelevant.
2. **Directly Causing**
  - a) A direct result of the defendant's actions, irrespective of intent.
  - b) Causation – 'But for' test – [March v Stramare Pty Ltd \(1991\)](#)
3. **Total deprivation of Plaintiff's Liberty**
  - a) **No reasonable means of escape:** whether a risk is reasonable depends on the risk attached to it - [R v Macquarie and Budge \(1875\)](#)
  - b) **Duration** - Even a short period, total restriction of freedom of movement - [Murray \(1988\)](#)
  - c) **Boundary** - visible, tangible, movable or fixed boundary - [Bird \(1845\)](#)
  - d) **No need for physical confinement:** Imprisoned via submission to power - [Symes v Mahon \[1922\]](#)
  - e) **Depends on knowledge:** Plaintiff need not be aware of the deprivation – [Murray v Ministry of Defence \[1988\]](#)

**\*You do not need to show damages to be successful in a false imprisonment claim**

**\* Duration of the imprisonment is irrelevant to tort action but may be relevant in determining damages - [Murray v Ministry of Defense \[1988\]](#)**

**\* Initially lawful detention may become unlawful - [Nasr v New South Wales](#)**

## CONCLUSION

- Liable/not liable for False Imprisonment (and paying damages to the Plaintiff).

## TRESPASS TO LAND

### PLAINTIFF V DEFENDANT – TRESPASS TO LAND

## INTRODUCTION

- Plaintiff is taking an action against Defendant for trespass to land.
- Excluded by **CLA S 3B(1)(a)** the provisions of the **CLA 2002 (NSW)** will not apply.

**Actionable Per Se** - Actionable without proof of damage as tort is solely about physically intrusion - [Dunmont v Miller \(1873\)](#)

## ELEMENTS OF TRESPASS TO LAND

1. **Positive Voluntary Act of the Defendant**
  - a) No trespass if the act was involuntary, e.g. carried onto land or having a seizure - [Public Transport Commission of NSW v Perry \(1977\)](#)
2. **Which directly interferes**
  - a) The interference must directly result from the act, it cannot be consequential - [Southport Corporation v Esso Petroleum \[1954\]](#)
  - b) Need not be physical – intruding airspace ([LJP Investments \(1989\)](#)) or below ground ([Stoneman v Lyons \(1975\)](#)) is trespass
  - c) Physical entry is not a requirement; solely D which subsequently interfered to P's land - [Davies v Bannison \(1927\)](#)
3. **With the Plaintiff's exclusive possession of land**
  - a) Plaintiff does not need a legal title to the land but must have exclusive possession of the land **UNLESS** the defendant has a legal right to exclusive possession - [Newington v Windeyer \(1985\)](#)
  - b) A licensee (a person who is licensed to be on a property) cannot sue in trespass - [Georgeski v Owners Corporation \(2004\)](#)

## TRESPASS AB INITIO – trespass from the moment of entry OR Continuing Trespass:

### 1. Trespass by licensee (Express)

- a) If the licensee exceeds the provisions of the license – do something outside the purpose for which permission is granted - [Singh v Smithenbecker \(1923\)](#)

### 2. Implied licenses to enter premises

- a) If an occupier revokes a license and provides notice to leave the licensee must leave within a reasonable amount of time - [Cowell v Rosehill Racecourse Co Ltd \(1937\)](#)
- b) an Implied license cannot be retracted by one co-owner where two are present - [Wilson v New South Wales \(2010\)](#)
- c) No physical sign, gate or lock may provide an implied licence to enter - [Hailday \(1984\)](#)

- d) Implied license is limited to exercise of authorised activities; once outside this scope, implied license is revoked - [Wilesee \(1986\)](#)

### **3. Trespass and entry authorised by Law**

- a) Not trespass if making an arrest but unless authorized by law to remain, must leave when requested to do so - [Kuru v NSW \(2008\)](#)
- b) Not trespass if a private property is entered for lawful communication - [Halliday v Nevill \(1984\)](#)
- c) Where the plaintiff had argued that the state had illegally obtained information via bugs that had been placed inside the premise, as there was no license given to the police to enter the premise in the first place. - [Coco v R \(1994\)](#)