

TRESPASS TO THE PERSON

Protects physical integrity and personal dignity

Common Elements
Actionable Per Se P does not have to show that they suffered any loss or injury as a result of the interference to bring a trespass to the person action Loss or damages will be taken into account when awarding damages
Positive and Voluntary Act D must make a positive act, not merely an omission or passive act per Innes v Wylie D's act must also be voluntary, they must consciously bring about the bodily movement or action per Morris v Marsden Automatic or reflexive actions are involuntary per Smith v Stone
Interference with Plaintiff Interference with the plaintiff is a direct consequence of the D's voluntary act per Hutchins v Maughan
Directness The injury must be direct and not merely consequential Immediacy to establish directness per Reynolds v Clarke An injury is direct if it follows so immediately upon the act of the D without intervention per Hutchins v Maughan Interventions Intervening natural force per Southport Corporation v Esso Petroleum Co or intervening human act per Hutchins v Maughan breaks the chain of directness Human actions by a third party taken reflexively or in self-defence will not break the chain either per Scott v Shepherd Agency The fact that a tort is committed by a principals agent does not disrupt the element of directness in respect of the principal who cause and procured the wrongful act per Coles Myer v Webster

Fault

Trespass is only actionable if committed intentionally/recklessly or negligently *per Williams v Milotin*

Intentional (subjective)

- D wilfully and deliberately intended the interference itself, not the result of their conduct
- Motive is irrelevant *per Murray v McMurchy*

Reckless (subjective) *per R v Ireland*

- D consciously disregarded the consequences of their action which were so likely that they should have been foreseen but the substantial risks flowing from the act was consciously disregarded *per Nationwide News Pty Ltd v Naidu*

Negligent (objective)

- D acted with less care than the care with which a reasonable person would have acted in the circumstances

Onus

The plaintiff is required to prove that the trespassory act occurred

By establishing the first 3 elements, their prima facie case is made

The onus shifts to the D to prove they were not at fault *per McHale v Watson*

The D has to prove that their interference was not intentional, reckless, or negligent

- Exception to Highway cases (car accidents)

Battery

As above

The least touching of another *per Rixon v Star City*