Trespass to the Person

COMMON ELEMENTS:

Actionable per se:

- No damage must be established, just that contact was made by the defendant.
- "The tort of … is actionable per se, meaning the tort is actionable when the interference happens without need for the plaintiff to establish damage."

Positive and Voluntary act:

- Per ***Innes v Wylie***, the defendant must have committed a **positive and voluntary act**, this element is satisfied as at the time of the act, this act was a positive voluntary act as part of the defendant's free will.
- An omission or passive act does not qualify as a PVA and does not constitute as trespass to a person as per ***Innes***. ('not a mere passivity or omission')

Directness:

- Directness is made out if an injury follows so immediately after an act of a defendant that it can termed part of the act *(**Hutchins v Maughan***)
- "Directness will/will not be made out as the outcome followed so immediately upon the defendant's actions that it can be deemed part of the act"

Novus Actus Intervenes (for directness)

- An injury won't be direct, but merely consequential, when by reason of some obvious and visible intervening cause, it is regarded, not as part of D's act, but merely a consequence of it. (***Hutchins v Maughan***)
- ***Reflexive or self-defence*** do not constitute as intervening acts as per ***Scott v Shephard***
- ***Natural forces/acts*** of god do constitute as an intervening act (***Southport Cooperations v Esso Petroleum Co***)
- Agency does not count as an intervening act: The fact that a tort is committed by a principal's agent does not disrupt the element of directness (***Coles Myers Ltd v Webster***)
- In ***Myer Stores v Soo,*** it was established that ***human actions*** constitute as an intervening act. Even that of the P.

Fault:

- The ***onus of proof*** (usually) falls onto the P in every course of action.
- However, the defendant must prove an ***absence of the fault*** element (the act was neither intentional or negligent)— this is a defence (***McHale***)
- ***Exception for highway cases*** where the P must prove the fault of the D (***Venning***)

Intention:

- P would argue that D intentionally … as they intended the outcome of … (***Rixon***)
- ***Actual intention:*** someone carrying out the act intending the exact outcome
- ***Implied intention:*** the D acting in a certain way, where a reasonable person in the place of the plaintiff would believe that a particular outcome were to follow; they would have deemed the outcome— the doctrine of substantial certainty. (***Garratt v Dailey***)

Negligence:

- P would argue that D is careless in their conduct and therefore negligently caused … (***Williams v Milotin***)
- Happens when the D undertakes the action with a level of care less of that of a reasonable person
- D's actions where they know that the outcome might occur from particular actions and takes them anyways are ***reckless***

It is likely/unlikely that the fault element would be made out in the form of intention/negligence…