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Trespass to the person

Common Features	
Define	Trespass is a generic term that encompasses civil wrongs concerned with interferences with a person or property
PVA	D's action must have been a positive act not a mere inaction or failure to do something, as this will not normally constitute trespass to person (Innes v Wylie)
Actional per se	There is no need to show the P suffered injury or harm
Voluntary Act	The [act] undertaken must have been done with D's free will and will not encompass actions where the D is unconscious or unable to control their bodily movements
Directness	The plaintiff must prove that the interfering [act] was immediate and not merely consequential interference as Chief Justice Herring explained, 'to constitute trespass.. It is not enough that the injury should be forcible, it must be also direct and not merely consequential'. Immediacy - Hutchins v Maughan: an injury is said to be direct when it follows so immediately upon the act of the D that it may be termed as part of that act Intervening act - Scott v Shepard: acts done reflectively or in self preservation do not constitute intervening actions so directness is preserved. When two intermediates do not act as free agents but rather 'under compulsion necessary for their own safety and self preservation', the defendant will be liable. - Southport Corporation v Esso Petroleum Company Ltd: natural forces (tide) may interfere with the immediacy of the act, and in some cases, interfere directness - Hutchins v Maughan: an action is consequential when by reason of some obvious and visible intervening cause, it is regarded, not as part of the D's act, but merely a consequence of it - Stanley v Powell: Pellet bouncing off a tree and accidentally wounding plaintiff is not trespass
Fault	The unlawful interference with the plaintiff must be undertaken internationally, recklessly, or negligently. This does not require that the defendant intended the consequence, they just need to intend the act. - Intention: motive of the defendant, defendant should know the consequences of the act were to happen - Recklessness: consequences were so likely that the defendant should have foreseen them, but consciously disregarded any substantial risk. Spigelman CJ (Nationwide News Pt Ltd v Naiduo) "a test of reckless indifference to a result will … satisfy the requirements of intention'". - Negligence: D acted with less care than a reasonable person would in the same situation, this is a sufficient state of mind to satisfy fault for trespass P must prove every element EXCEPT fault. Because fault is presumed in trespass, the

	burden falls on the D to disprove fault on the BOP (McChale v Watson; Williams v Millotin). Exception High way cases.
Onus of proof	The plaintiff bears the burden of providing all elements of the tort of trespass to the person, on the balance of probabilities, except fault (McHale v Watson). In trespass, this means showing that the defendant directly interfered with the person or property. NOTE: does not apply to road accidents, plaintiff must prove D's fault (Venning and Chin)
Aims	Trespass aims to protect fundamental interests that should not be violated like physical and mental integrity, autonomy, personal dignity. It is the violation of these interests, that is itself wrong.

Battery
 	
- **Definition**
- **PVA and APS**
- **Elements**
  ● **The manner of contact**
  ● **Degree of force**
  ● **Consent**
- **Fault and directness**	

Define	In order for the D to be liable for battery, P must prove that D committed a positive voluntary act of the which directly and either intentionally or negligently results in unlawful or offensive contact with the plaintiff. P must prove all elements of trespass to the person except fault; the burden falls on the D to disprove fault on BOP (McHale v Watson).
PVA	The D may argue that the P was not injured or damaged and thus the act will not constitute batter. However, the P will raise that battery is actional per se and does not require injury. D's [act] was an affirmative act constituting a positive voluntary act that was not a mere passivity or omission like a "door to a wall" (Innes v Wylie). Additionally, his act was voluntary as it was a conscious and willed act (Morris). There is nothing that suggests that the D's action was involuntary, so this element will be satisfied.
Directness	Battery requires that the interference with the plaintiff's person is direct and followed so immediately upon the PVA of the D that it may be termed part of the act (Hutchins v Maughan). Here, the contact with the plaintiff's person was/not the immediate result of the defendant's action. Acts done reflexively/natural forces (refer to relevant case) do not break directness because (refer to facts). - Scott v Shepard: acts done **reflectively** or in self preservation do not constitute intervening actions so directness is preserved. When two intermediates do not act as free agents but rather 'under compulsion necessary for their own safety and self preservation', the defendant will be liable. - Southport Corporation v Esso Petroleum Company Ltd: **natural forces** (tide) may interfere with the immediacy of the act, and in some cases, interfere

	directness - Stanley v Powell: Pellet bouncing off a tree and accidentally wounding plaintiff is not trespass - Haystead: Indirect force constitutes battery, defendant hit mother in face which caused her to drop child and hit his head on floor - Darby v DPP NSW: dogs can be used as instruments through which battery is committed, eg: dog handler allowed guard dog nudging P's genital area P will argue that the harm flowed directly from the D's [act] with not intervening acts. **<u>IF INTERVENING</u>** D will argue that [intervening cause] did break the chain of causation because [intervening event] was obvious and visible such that it is regarded, not as part of their act, but merely a consequence of it (Hutchins v Maughan). Therefore directness will not be made out.
Bodily contact	The plaintiff will argue that "battery does not need to be 'hand to hand'" (Pursell v Horn) but rather the "transmission of any force to the body of a person". In this case, the defendant's actions, however slight, may amount to battery as "the least touching of another person will constitute battery (Cole v Turner). However the D will point out that that touch that is "generally acceptable in the ordinary conduct of daily life" is not considered battery (Collins v Wilcock). This is because it has been acknowledged that people who move about in society implicitly consent to sorts of inflictions of force that occur in everyday life (Lord Goff). D will argue that their [act] was part of the exigencies of everyday life and therefore should not be legally actionable. The court will examine the individual circumstances [whether conduct falls within every exigencies of life]. There was bodily contact where D [act] as this does not fall within the scope of exigencies of everyday life exception. This element will not be satisfied.
No requirement of hostility	The D will argue that the D's [act] does not accompany a degree of hostility or anger since [facts] however the absence of anger or hostile attitude by the defendant touching another is not a satisfactory basis for concluding that the touching was not a battery (Rixon v Star City).
Consent	If the D can show that the P consented to the trespass, then they may not be found liable. Defendant bears the onus to prove that consent was present (Cole v Turner).
Fault of the D	In Australia trespass may be intentional or negligent (Williams v Milotin). Here, the burden of proof is on the D to prove that they were not at fault (McHale v Watson). [if highway, refer to extensive notes]. Here, the D clearly had [intention/negligence] because:

	- Intention: the D has a willful intent to apply force to the P. The P will argue that even if the D did not intend to cause harm, they had the requisite intent to deliberately apply force to the P. - Deem intention: if the D acts in a manner that a reasonable person in their position would deem is likely to cause a certain outcome, they will be taken to have intended this outcome. - Recklessness: The D had a reckless indifference or disregard as the plaintiff suffering the application of force. - Negligence: the D undertakes the relevant actions with a level of care that is less than the reasonable person would take. Would a reasonable person foresee that [act] might cause P harm. Therefore the battery will be made out. **<u>No intention</u>** Based on the facts, the D did not actually intend the contact as D merely wished to [other intention]. Additionally, their act did not fall below the standard of care that a reasonable person would take, therefore the fault element will not be made out. If fault cannot be established on BOP, there will be no battery.
Assault - Def, APS, PVA Apprehension - Imminence - Apprehension of harmful contact - The role of words - Fault, directness	
Define	In order for D to be liable for assault, P must prove that the D committed a positive and voluntary act which directly and either intentionally or negligently places the plaintiff in reasonable apprehension of imminent harmful or offensive conduct. P must prove all elements except fault, the burden for fault falls to the D to disprove on BOP (McHale v Watson). P need not actually fear contact, **<u>only expect it.</u>** [if they didn't know it was happening, no assault].
Positive and voluntary	D's [action] was a positive voluntary act of the defendant that was conscious and not a mere passivity or omission (Innes v Wylie)
Actionanable per se	Assault is actional per se
Reasonable apprehension	A threat is an assault that produces in the P a reasonable expectation of imminent physical force. **<u>Reasonableness</u>** Apprehension will be deemed reasonable if the plaintiff believes the defendant has the means to carry the threat of force into immediate effect (Stephens v Myers). The court might consider whether a reasonable person in the same situation as the plaintiff would apprehend imminent contact, present or apparent ability of the defendant. The

Private Nuisance - **Definition** - **Can the P sue** - **Can the D be sued** - **Unreasonable interference (physical damage/damage to sensibilities)** - **Defences and remedies**	
Define	P may also sue in private nuisance. Private nuisance aims to protect individuals from an 'unlawful interference with the plaintiff's use and enjoyment of land' (Sturges v Bridgman). In this case, P's use and enjoyment of _____.
Right to sue	A person with an **exclusive right to possession of land** will have a right to sue in private nuisance (Hunter; Oldham v Lawson). On the facts, it does not appear contentious that the P has right to the land. IF CONTENTIOUS - **Leasee:** As the P is leasing the land, they have immediate possession over land and do not need to prove they own the land (Masters v Brent London Borough Council 1978) - **A licensee:** As the P is licensee they have no standing to sue (eg. guests, members of the tenant's family) as this tort is concerned with someone's use and enjoyment of THEIR land (Maloney v Laskey; Oldham v Lawson). - **Reversionary interest:** The P may be able to bring action in nuisance even though they don't have a right to exclusive possession of the land. This is because they have reversionary interest, and the nuisance hurts their reversion. This refers to interest they currently do not have, but will revert to after a specified period of time or upon the occurrence of a particular event that hurts their reversion. Eg. **owner** of property that has been leased **after lease is finished.**
Can the D be sued	The D can be sued for nuisance as they are - The creator of the nuisance as they have a form of direct control over [the activity] that created the nuisance (Fennell v Robson Excavations). - The person who authorises the nuisance (tenancy relationships) by expressly authorising it (Smith v Scott) - Adopting or containing nuisance as even though P did not create the nuisance, they knew it existed and did not remedy it (Sedleigh-Denfield v O'Callaghan). **Analogise:** plaintiff may analogise to Hargrave v Goldman where whilst the plaintiff did not create the nuisance of the fire themselves, they **did not fully** put it out and therefore did not take reasonable steps to bring the nuisance to an end. The interference with P's use and enjoyment of the land must result from physical damage to the P's land or damage to their sensibilities.
Unreasonable interference	**1. Material damage to property**

Here, the [nuisance] causes actual damage to the plaintiff's land by [material damage]. Such physical damage clearly exceeds the threshold of mere **'trivial' damage**. Thus, the interference with the plaintiff's use and enjoyment of their land will be **unreasonable** (St Helens Smelting Co - 'locality irrelevant') .

Once non-trivial material damage is established, the burden is the defendant to establish that the activity was reasonable (Corbett v Pallas)

2. Discomfort or damage to sensibilities

On the facts, the [nuisance] did cause the plaintiff discomfort. The court will determine if the interference is "unreasonable" and "substantial" (Hunt leather Ppty Ltd v Transport for NSW) based on weighing a range of indicia in the circumstance.

Factors include:

Unreasonable interference	- Must establish that defendants conduct was objectively unreasonable according to the ordinary usage of people lying in that particular society (Sedleigh- Denfield v O'Callaghan) - **Noises necessary for the common and ordinary use** of the occupation of land and houses and done with proper consideration for the interest of neighbouring occupiers' is not unreasonable (Southwark London Borough Council v Tanner) - Defendant still liable for nuisance **even if they took all reasonable steps** to mitigate nuisance (Bonnici v Ku-ring-gai Municipal Council)
Triviality	- Substantial harm requirement is not an objective quantification, but rather a range of minimum harms that can fluctuate depending on the circumstances (Dynamic Flooring Pty Ltd v Carter)
Locality	- The less appropriate the act is, given the locality, the more likely the interference is unreasonable (Sturges v Brigman). Is there a residential area? Did the P know that before moving in? **Analogise:** plaintiff may analogise to Sturges v Brigman where it was held that stench of mushrooms in a rural-residential area constitute nuisance.. **Distinguish:** defendant may distinguish Sturges v Brigman on the basis that alleged nuisance is occurring in an industrial area, rather than a rural-residential neighbourhood as held in Sturges.