

# Torts Law Summary Notes

## TRESPASS:

- ❖ Direct action – happened immediately in point of causation.
- ❖ Trespass is actionable alone – no need to prove any damage suffered.
- ❖ D must prove that harm was neither intended nor negligent.

## ACTION ON THE CASE:

- ❖ Consequential action as a result of Ds conduct.
- ❖ P has to prove damage has been suffered by the D.

*Hutchins v Maughan*

## TRESPASS TO THE PERSON

### BATTERY:

- ❖ “A direct and intentional/negligent act by the defendant causing unlawful bodily contact with the plaintiff.”
- ❖ Direct and intentional/negligent act by the defendant – *Hutchins v Maughan*
- ❖ Positive act – *Fagan v Metropolitan Police Commissioner*
  - Intention to do the act not cause the harm – difference between an act and omission.
  - P to prove act direct and interference complained of has occurred as result of positive act as opposed to omission.
- ❖ Unlawful bodily contact – *Brian Rixon v Star City*
  - Touching which is a part of everyday life is inevitable and does not found for battery.
  - Touching does not need to be hostile in nature to found a battery.
- ❖ If a person consents to being touched there is no battery.

### ASSAULT:

- ❖ “A direct and intentional act which creates in the plaintiff, a reasonable apprehension of imminent harm.”

#### Intentional act:

- *Hall v Fonceca* – for a defendant to be liable for assault they must intend to use force against the P or create apprehension of force in their mind.
- *Barton v Armstrong* :
  - Phone threat put reasonable person in fear of later physical violence although victim does not know when it will happen – effect on victims mind.
  - Assault could occur where D threaten physical harm to P unless they do what D requires them to do.

#### Reasonable apprehension of imminent harm:

- Determined according to circumstances – acts or words may constitute threats considered enough to create reasonable apprehension of imminent harm.
- D must have present and apparent ability of carrying out battery.
- *Bradley v Schatzel* (woman pointed unloaded gun at officer)
  - Creates fear because of apparent ability to carry out harm = real v fake gun → apparent means of carrying out harm.
  - Officer not scared – reasonable person would be fearful.
- *Zanker v Vartzokas* (woman jumped out of moving vehicle)
  - Zelling J: fear of physical harm did not need to be immediate.
  - Fear of relatively immediate imminent violence was instilled in Ps mind from time threat “my mates going to really fix you up” uttered → fear kept alive in her mind about the thought sexual violence would occur.

### FALSE IMPRISONMENT:

- ❖ False imprisonment could only apply where there was unjustified solitary confinement.
- ❖ There can be a negligent false imprisonment but there are no Australian cases to support it.

- ❖ "A direct and intentional/negligent act by the defendant that totally deprives the plaintiff of his/her liberty without lawful justification."
- ❖ Direct act by the defendant – *Dickenson v Waters*
  - Defendant must cause imprisonment by own actions or actively promoting others to carry out imprisonment.
  - Will not lie against a person who is enacting the law ie. A police officer arresting.
- ❖ Total imprisonment
  - *Bird v Jones* (Bridge)
    - Must be detention that prevents free movement in all directions, not merely an obstruction of movement.
  - *Balmain New Ferry v Robertson* (refused to pay penny to leave)
    - Defendant entered into contract – he agreed to pay a penny to leave.
    - Whether there is total detention depends on reasonable means of escape.
    - Means of escape not reasonable if person believes they are lawfully detained or will be physically detained.
- ❖ Without lawful justification
  - *Symes v Mahon*
    - Plaintiff can be imprisoned without physical boundaries.
    - P submitted to D's authority and felt he had to go with him.
- ❖ *Murray v Ministry of Defence* – No need to be aware of liberty to claim false imprisonment
  - Can recover no more than nominal damages.

### ACTION ON THE CASE FOR INTENTIONAL HARM

- ❖ P must prove that act, whilst indirect, was intentional and resulted in harm.
  - P MUST PROVE DAMAGE.
- ❖ Current authority is the emotional injury must be recognisable psychiatric condition.
- ❖ "Indirect, intentional infliction of harm."
- ❖ Indirect – *Hutchins v Maughan*
- ❖ Intentional (fault)
  - Intention on the part of D must be established.
  - *Bird v Holbrook* – intended to cause harm.
  - *Wilkinson v Downton* – Intention equated with whether D had "wilfully done an act calculated to cause physical harm to the P"
    - Calculated ambiguous: can mean subjective, conscious desire to bring about specific result or objective overwhelmingly likely to occur.
  - *Nationwide News Pty Ltd v Naidu* – Substantial certainty of harm.
  - *Carrier v Bonham* – likely to have effect.
- ❖ Harm
  - *TN Channel Nine Pty Ltd v Anning* – natural and probable consequence of tort.