

Historical Background

1. Trespass and the action on the case

a) Direct/indirect injury

Scott v Shepherd (*firework*)

De Grey CJ – the blame lights upon the first thrower; W and R were not free agents, but acting under a compulsive necessity for their safety

Opposition – Blackstone J – example with a log of timber on the highway - where the injury is immediate (direct), an action for trespass will lie, where the injury is consequential (indirect), it must be an action on the case

Hutchings v Maugham (*dogs*)

In applying the settled distinction between trespass and case, an interference with the plaintiff will be direct when it follows so immediately in terms of causation upon the defendant's acts to be part of that act.

Dogs dies as a result of picking up poisonous baits laid by the D on unfenced land, where the D grazed his horses. The police magistrate laid the case as trespass, but it was contended by the D that it is action on the case, as the damage was consequential, as the baits were laid before the P arrived on the vicinity.

b) Rule in Williams v Holland

Williams v Holland (*son&daughter*)

Where the P is injured by the D's direct (or immediate) act, the plaintiff may elect to bring an action on the case (rather than trespass) provided that the D's act is negligent. However, where the D's act is both direct and intentional, the only cause of action available to the P is trespass.

D drove improperly and carelessly, he ran and struck the horse and cart of the P, breaking cart into pieces and injuring heavily P's son and daughter. Should that be trespass due to direct injury? The injury was direct, but brought about due to carelessness and negligence = must be action on the case.

Williams v Miotin (*bicycle struck by car*)

The principle in Williams and Holland is part of Australian Law.

P sustained personal injuries due to being struck by the car while riding his bicycle in the street. D claimed that the case was barred by s36 of the Limitation of Actions Act 1936-1948 (SA), the court opposed. P claims D's negligence. Trespass or Case? Had the damage been caused indirectly or mediately by the defendant or by his servant (to be distinguished from violence immediately caused by the defendant's own act) the action should be brought as an action on the case. - SC

The essential ingredients in an action of negligence for personal injuries include the special or particular damage (it is the gist of an action) and the want of due care, and trespass to the person includes neither. In the absence of intention of some kind or want of due care, a violation occurring in the course of traffic in a thoroughfare is not actionable as a trespass.

2. Fault in trespass

Weaver v Ward (soldiers)

There is no liability in trespass where the trespassory act was committed without fault by the defendant.

The P was shot and wounded by the D during a military training exercise. P brought an action of trespass of assault and battery.

As if a man take my hand and strike you, or P ran across his piece when it was discharging, the D has committed no negligence to give occasion to the hurt.

3. Onus of proof of fault

Venning v Chin (crossing road, struck by car)

As a general rule, in trespass the onus of proof is on the D to disprove fault. However, in trespass for injury caused in a highway accident, the onus is on the P to prove fault on the part of the D.

There is no liability for trespass for the use of force against the person which is neither intentional nor negligent.

Platt v Nutt (domestic upheaval, front door, hand)

Onus of proof of the trespassory act is an issue distinct from onus of proof of fault. The plaintiff in trespass must prove that the defendant committed trespassory act of which the plaintiff complains.

Trespass to the person

1. Battery

a) Direct/forcible interference

Cole v Turner

The least touching of another person in anger is battery.

In Re F [1990] (*mental, sterilisation*)

The principle of necessity may justify medical or surgical treatment, which otherwise would constitute trespass to the person, when the patient is incapable of giving his or her consent by reason or lack of consciousness in an emergency situation or mental disability. However, application of this principle is accompanied by stringent safeguards requiring that the proposed treatment be in the best interests of the patient in order to preserve his or her life, health or well-being.

The principle of necessity connotes the circumstances have arisen in which there is a necessity for the agent to act on his principal's instructions so to do. There must be (1) necessity to act when it is not practicable to communicate with the assisted person, but also (2) the action taken must be such as a reasonable person could in all circumstances take, acting in the best interests of the assisted person.

Rixon v Star City (*shoulder, casino*)

Physical contact which is generally acceptable in the ordinary conduct of daily life does not constitute battery. Assault requires an intention to create in another person an apprehension of immediate harmful or offensive contact.

Most of the physical contact in ordinary life are not actionable because they are impliedly consented to by all who move society. Such cases are regarded as examples of implied consent, it is more common nowadays to treat them as falling within a general exception. Proof of assault requires proof of an intention to create in another person an apprehension of imminent harmful or offensive contact.