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Intentional Torts

Trespass to the Person

- Actionable *per se* without proof of actual harm
- All damage flowing from the tort is recoverable, not just that which was foreseeable
- Intention or negligence as to the act constituting the trespass must be present – *McHale v Watson* (1964) 111 CLR 384 – only an intention to touch the person/cross the border is sufficient, not an intention to cause harm – defendant must disprove negligence
- *Venning v Chin* (1947) 10 SASR 299 – highway accidents are an exception to the above rule – onus is on the plaintiff to prove either intention or negligence
- *Williams v Milotin* (1957) 97 CLR 465 – both an action for trespass by negligence and negligence itself are available, one may be used if the limitation period is exceeded for the other
- *Civil Liability Act* 2002 s 3B – “Civil liability excluded from Act (a)... in respect of an intentional act that is done by the person with intent to cause injury or death or that is sexual assault or other sexual misconduct”
- Contributory negligence is not available in an action for intentional trespass
- *Dale v Fox* [2012] TASSC 84 (7 Dec 2012) per Evans J – the plaintiff must demonstrate that the defendant voluntarily did the act which led to the battery – Dale sued Fox for shooting him with a shotgun, but it was shown that Fox didn't mean to press the trigger

Battery:

- *Slaveski v Victoria* [2010] VSC 441 (1 Oct 2010) – “Battery is an act that directly and intentionally (or negligently) causes offensive physical contact with another's person”
- *Battista v Cooper* (1976) 14 SASR 225 – Bray CJ held that they could be liability for “nervous shock” in the tort of battery where someone so close to the person physically assaulted had suffered such a shock – held that in such a case the element of “directness” was not satisfied in relation to the relative
- *Boughey v The Queen* (1986) 161 CLR 10 – touching does not have to be hostile to amount to battery
- *Secretary, Dept of Health and Community Services v JWB* (1992) 175 CLR 218 at 310-311 – “the onus is on the defendant to prove consent... the essential element of the tort is intentional or reckless, direct act of... contact with the body of the plaintiff”
- *Dean v Phung* [2010] NSWCA 223 – dental malpractice led to damages for battery and exemplary damages – consented to dental procedures but not what was administered
- *Rixon v Star City Pty Ltd* [2001] NSWCA 265 – quoted Goff LJ in *McDonald v Parnell* [2007] FCA 1903 at [99] on “exigencies of life” are a matter of “implied consent” - note that the ‘exigencies of life’ mean that whenever we walk around in a crowded place there is the chance that someone will bump into us accidentally

Assault:

- *Rixon v Star City Pty Ltd* [2001] NSWCA 265 – “Assault is an overt act indicating an immediate intention to commit a battery, coupled with the capacity of carrying that intention into effect”
- *NSW v Ibbett* [2006] HCA 57 – a police officer who raced into the garage where Mrs Ibbett's son had parked and pointed his gun at her had committed an assault
- *Zanker v Vartzokas* (1988) 34 A Crim R 11 – how imminent does the threat have to be? – assault claim was successful because plaintiff was put in threat of imminent violence
- *Barton v Armstrong* [1969] 2 NSW 451 – Taylor J's comments – words alone can amount to an assault

Negligence

1. Duty
2. Breach
3. Causation

Duty of Care

- *Dixon v Bell* (1816) 5 M & S 198 – a loaded gun was given to a young servant to clean and discharged, injuring the plaintiff – injury was not direct, no prior relationship but liability was imposed on the basis of the inherently dangerous nature of the gun – was D guilty of negligence in entrusting such an instrument to such an agent
- *Langridge v Levy* (1837) 2 M & W 519 – defective gun sold and while there was no direct contract between the seller and the son, liability was found because there had been deceit – the seller had said the gun was reliable and it wasn't
- *Winterbottom v Wright* (1842) 10 M & W 109 – attempt to “put the brakes on” an increasing area of liability – between the injured driver and the coach manufacturer there was no contract, no special relationship, no dangerous things there involved and there was no fraud or deceit
- *George v Skivington* (1869) LR 5 Exch 1 – toxic hair product caused harm to purchaser's wife – duty to use ordinary and reasonable care and skill in compounding an article, independent of any contractual relationship
- *Heaven v Pender* (1883) 11 QBD 503 – “occupier” and “invitee” come under a sufficient “special relationship” to impose liability for harm incurred on the premises – Brett MR laid down broad principles that strongly influenced *Donoghue v Stevenson* regarding harm to those one would recognise their actions might cause harm to
- *Donoghue v Stevenson* [1932] AC 562 – neighbour principle “persons who are so closely and directly affected by my act that I ought reasonable to have them in contemplation as being so affected when I am directing my minds to the acts or omission which are called in question – manufacturers who intend their products to reach and be used by the ultimate consumer in the form they left the manufacturer's possession, with no reasonable intermittent examination, will be liable for any defect or harm incurred – extends to articles of common household use used by persons other the ultimate consumer – Dissent of Lord Buckmaster “If one step, why not fifty?”
- *Perre v Apand Pty Ltd* [1999] HCA 36 per McHugh J (currently approved “incremental” approach)
 - Does the relationship fall within an established category?
 - If not, was the harm suffered a reasonably foreseeable result of the defendant's acts or omissions?
 - If so, consider analogous cases
 - Taking into account ‘salient features’ as listed in *Caltex Refineries (Qld) Pty Ltd v Stavar* [2009] NSWCA 258 by Basten JA and Alsop P
- Easier to impose liability where the plaintiff and defendant were in a pre-existing relationship of some sort
- *Bryan v Maloney* (1995) 182 CLR 609 – ‘the existence... of a contractual relationship between builder and client did not preclude the existence either of a relationship of proximity between them in relation to that work or of a consequent duty of care under the ordinary law of negligence’
- *Sullivan v Moody* [2001] HCA 59 – proximity is not a universal formula – no duty of care towards a person under investigation where there is a conflicting duty to those the accused may harm (was in this case a child abuser vs protection of children)