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## Structure

In prose:

1. Who is the plaintiff and defendant
2. What is the tort
3. Elements of the tort
4. Apply facts to prove/disprove elements
5. Cite cases- only write about in detail where facts are on point otherwise can just reference
6. Conclusion

### **Negligence Structure 3-4:**

#### Elements:

- Duty of care
- Breach of duty
- Causation
- Remoteness of damage, Eggshell skull cases
- Defences to negligence

#### Particular fact situations and exceptions:

- Particular duty areas: unusual plaintiffs, unborn children, mental harm, rescuers
- Pure economic loss, negligent mis-statement
- Liability of Statutory Authorities
- Defective structures
- Omissions
- Vicarious liability, Independent contractors, Duties to employees,
- Concurrent liability
- Statutory regimes in NSW- workers compensation, motor accidents
- Death Claims

## Intentional Torts

### Trespass to the Person

- Limitation period- 3 years to bring an action after injury is discovered. Minors: time doesn't run until reach of age.
- Have to intent the act, but not necessarily the injury.
- All intentional torts require the elements of intention and directness.

#### INTENTION:

- Fault is an essential element of trespass; if there is no intentional act or negligence, there can be no trespass.
- Actionable per se= It is sufficient that a person intends to commit the act – there is no requirement to intend to harm or injure.
- Recklessness is where the consequences of the defendant's acts are not certain but the defendant is so indifferent to the consequences of their act that the result must, or should, have been foreseen (Stewart and Stuhmcke).
- Negligence is subject to the reasonable person test.

### Battery

#### Elements:

##### 1. Positive voluntary act

##### 2. Directly causes

##### 3. (Unlawful) contact with plaintiff

→ contact can be minimal, key is unwanted contact- ie lacked *consent*.

- Onus always on the defendant.
- **Highway cases exception**= anything that happens on the road. Onus is on the plaintiff
- In Australia negligent trespass was included after *Williams v Milotin* (1957).

##### 2. Directness-

- **Reynolds v Clark (1726)**: eg of need for directness- if log was thrown onto highway and someone trips over it immediately, then directness is present. If log thrown and someone in an hour walks by and trips on it, it is not direct and no battery will be present.
- **Scott v. Shepherd (1773)**: F- D throws firecracker thrown into stall; subsequently thrown on before exploding and injuring P. Held- For plaintiff. Original throw was still deemed to be direct interference; the following throws were part of an unbroken chain of events.
- **Hutchins v. Maughan [1947]**: F- D laid poisonous baits on unfenced land where P's dogs ate them and died. Held- For defendant. P had to bring dogs onto property, which was deemed an intervening act.

##### 3. Contact-

- **Rixon v. Star City Casino [2001]**: F- D tries to eject P, and in doing so, grabs his arm. Held- For defendant. It was deemed that D used a reasonable amount of force for the context of the situation. Unwanted contact only is necessary to fulfil element, no hostility required. Bouncers had lawful authority to touch him and turn out an excluded person, so no battery because contact was lawful.
- **Royal Alexandra Hospital v Joseph**: F- Joseph was Jehovah's Witness, he had cancer, needed a blood transfusion. Joseph was 16- a minor. Court gave hospital permission to have blood transfusion → without court's permission it would have amounted to battery.
- **Collins v. Wilcock [1984]**: F- D (policewoman) grabs P (prostitute) by arm to gain attention – not to arrest. Held- For plaintiff. It was deemed that D used an unreasonable amount of force for the context of the situation.

##### Consent-

- **Giumelli v Johnston (1991)**: F- D raises elbow violently to P during a game of AFL. Held- There was battery, no consent. Players consent to force in sport but it must be within the

rules of the game. Thus they cannot be deemed to consent to forceful and deliberate contact outside the rules.

## Assault

### Elements:

#### 1. Positive voluntary act

#### 2. Directly causes

#### 3. Apprehension of imminent contact

→ imminence a particular issue.

→ Plaintiff must reasonably apprehend: ie reasonable person test, cannot be unusually sensitive.

Exception- D know P to be exceptionally timid and purposely exploits this.

#### Imminence-

- *Zanker v Vartzokas*: F- girl accepts life from A. He asks for sexual favours in exchange for money, she refuses. Says 'I'll take you to my mate's house, he'll fix you up.' She jumps out of the car. Held- Effect on V's mind of inducement of fear more important than ability or intention of A. False Imprisonment and assault can both be present if elements there. Fear present through the false imprisonment- means threat didn't have to be imminent because threat of violence was at unknown time in the future but enough characteristics as assault as fear continued due to false imprisonment.

**Conditional Threat**= if a threat that is made on condition it may not be assault because of imminence. If conditional threat made with clear threat of imminent force then will be assault (usually words and action). Also look at whether A had a right to impose the condition (if did not then unlawful and will be assault).

- *Tuberville v Savage*: conditional threat (future threat no intent to follow through with threat until/if condition met) F- D attempted to justify an assault upon P as being in self-defence when it was proved that P had placed his hand upon his sword saying 'Were it not assize time I would not take such language from you.' HELD- words indicated that P did not intend to use his sword to attack in spite of the gesture and D unable to rely on self-defence.
- *Rozsa v Samuels [1969]*: F- taxi drivers. Appellant cut queue. Drummond got out, threatened to punch him in the head. Appellant got out knife said would cut Drummond to bits. Drummond pushed him back and closed the door. Held- A's response was unjustified reaction to Drummond because it was excessive. As a result it was assault because he threatened more force than was necessary for self-defence.
- *Barton v Armstrong*: F- silent phone calls, coupled with threat to life by his boss. Threat cause reasonable apprehension of fear. Imminence of that fear was sufficient to fulfil elements of assault. Fact that boss and has position of power relevant. Held- allowed conditional threat on words alone because spoken in threatening circumstance. An exception to words and action.

## False Imprisonment

**Elements:** unlawful detention of a person

#### 1. Positive voluntary act

#### 2. Directly causes

#### 3. Total restraint

→ total restraint a particular issue.

- *Balmain Ferry v Robertson (1906)*: F- to get off the ferry wharf had to pay a penny. Robertson had just missed the ferry and wanted to leave, refused to pay the penny to leave. Held- was no total restraint for eg could have swum away.
- *Meering v Graham White Aviation (1919)*: F- though employee was guilty of stealing things at work. Brought him in for questioning at the office. Man stood behind him at the door to

- prevent escape. Held- even though didn't have knowledge of the imprisonment until let go FI can still apply. Whether he was actually guilty or not was irrelevant.
- ***Symes v Mahon [1992]***: F- police thought there was a warrant out for the arrest of the plaintiff. In fact was wrong person. Was told to meet the next day at train station to travel to Adelaide- plaintiff had to miss on his river cruise trip to comply. When travelling by same train police officer and pl didn't travel in same cart. When got to Adelaide allowed to go to hotel. Told specifically that not under arrest, just for questioning. Held- still total restraint because felt obligation to go with an authority or consequences would be bad. Therefore liable for false imprisonment. Psychological false imprisonment rather than entirely physical.
  - ***Bird v Jones (1845)***: F- plaintiff couldn't cross bridge because people blocking the way in order to watch boat race. Held- no total restraint because there were other bridges available to cross.
  - ***Herd v Weardale***: F- under contract to work in a mine, he wanted to go out and protest, they wouldn't let him. Held- no total restraint because under contract.
  - ***Myer Stores v Soo***: F- took pl to office twice for shop lifting. The first time was false imprisonment but the second time he went with them voluntarily and was not false imprisonment.
  - ***Trevorrow v State of South Australia (No 5) [2007]***: Trevorrow 1<sup>st</sup> Aborigine of the stolen generation to get damages for false imprisonment as there was no legal authority to remove him from his family. But only because proper procedure of Stolen Generation did not take place- other similar cases may not stand up as a result. F- Taken to hospital for stomach pains. Mother was told they would keep him for observation. When he was healed instead they took him to a foster home. Mother kept ringing was told he was still in observation until they told her he had died.