

# **Torts Exam Guideline Summaries**

## **Trespass & Intentional Torts**

Trespass to Person: Assault

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Trespass to Person: Battery

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Trespass to Person: False Imprisonment

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Trespass to Land

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Action on the Case

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## **Negligence**

Definition of Negligence

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Concurrent Liability

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DOC- Non-Economic Loss

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DOC- Pure Economic Loss

Pg. 19

DOC- Pure Mental Harm

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Breach

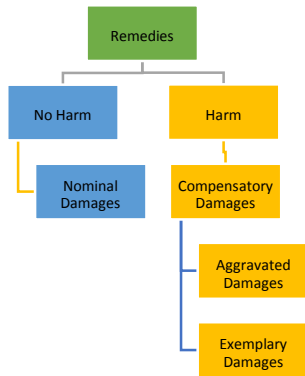
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Damage

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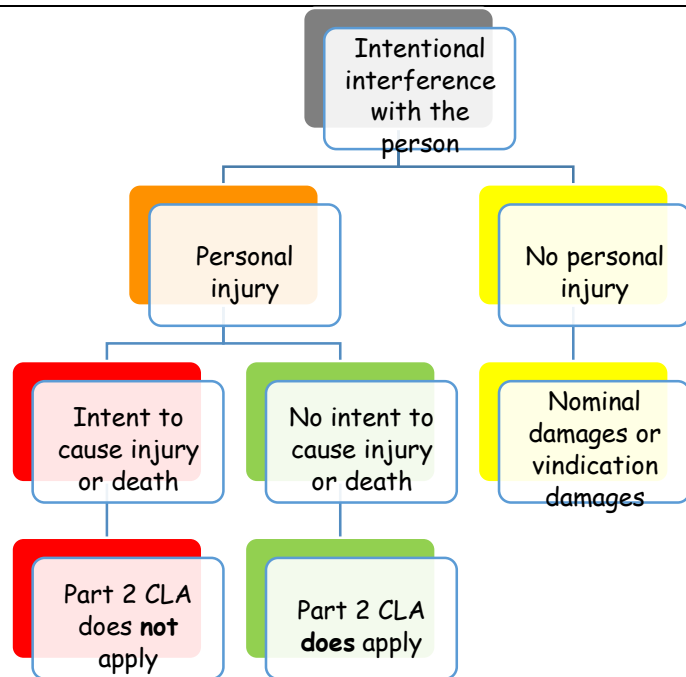
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<b>Trespass to Person: False Imprisonment</b>	
<b>Headings</b>	<b>Description</b>
<b>Plaintiff v Defendant (False Imprisonment)</b>	
Definition	<p>Brief definition of Tort:</p> <p>The tort of false imprisonment is an act by D that totally deprives P of their liberty without consent or justification, it is actionable per se.</p>
<b>Conduct/Direct Act</b>	- The facts of the act in the case.
<b>Total deprivation of liberty</b>	<ul style="list-style-type: none"> <li>• Complete deprivation of liberty <i>Myers Store v Soo</i></li> <li>• P must have no means of reasonable escape <i>[Bird v Jones]</i> <i>[McFadzean v CFMEU]</i></li> <li>• Physical contact is not always essential if P is under complete submission of D <i>[Symes v Mahon]</i></li> <li>• must be a direct positive act or inaction when duty is owed <i>[Herd v Weardale]</i></li> </ul>
<b>Without lawful justification</b>	<ul style="list-style-type: none"> <li>• Must be without consent or lawful justification <i>[White v South Australia]</i>.</li> <li>• FI if restraint goes beyond the time allowed with lawful justification <i>[Cowell v Corrective Services Commission of NSW]</i></li> <li>• Arrest without warrant or explanation. <i>[NSW v Riley]</i></li> </ul>
<b>Fault (intentional or negligent/reckless)</b>	<ul style="list-style-type: none"> <li>• Intentional: D directly, intended to commit act that comprised of trespass, intent to commit trespass is not necessary. Act must be voluntary. <i>Herd v Weardale</i></li> <li>• Reckless: D did not intend to cause contact but ignored the apparent risk of the act that resulted in the direct interference.</li> </ul>
Summarise issues of liability	

<p><b>Defences</b> (Self defence, Necessity, Consent, Inevitable accident, Criminality, Provocation)</p>	<p>□ <b>Self defence: Statutory</b> (CLA 2002 s52) or common law.  <b>CLA s52-</b> (1) where conduct of P was unlawful  (2) (a)If conduct of D was necessary to defend themselves or others (b)prevent or stop deprivation of liberty of themselves or others (c)protect property from interference (d)prevent criminal trespass to land  <u>Conduct must be REASONABLE response</u></p>
	<p><b>Common Law:</b> when CLA does not apply, <u>D must have reasonable apprehension of affliction of physical force</u> to themselves or others. Must not exceed what is reasonable necessary for protection. <i>Fontin v Katapodis</i></p> <ul style="list-style-type: none"> <li>• <b>Necessity:</b> D acted to prevent harm to person or property, act must be reasonable in circumstances. <i>Southwark London Borough Council v Williams</i></li> <li>• <b>Consent(express or implied):</b> P must prove interference was without or exceeded consent <i>McNamara v Duncan</i>. Must be real consent and freely given <i>Chatterton v Gerson</i>. Capacity to consent (mental incapacity, drunk, asleep, next of kin cannot give consent) <i>Malette v Shulman</i>. Implied consent depends on circumstances (acceptable ordinary conduct of everyday life <i>Collins v Wilcock</i>).</li> <li>• <b>Inevitable Accident:</b> an act that was not intended and could not have been avoided by exercise of reasonable care and skill <i>Public Transport Commissioner v Perry</i>. Occurs when conduct fails to satisfy fault element, neither intentional or reckless.</li> <li>• <b>Criminality:</b> <b>CLA 2002 s54</b> Criminals cannot be awarded damages.</li> </ul> <p><b>Provocation (partial only):</b> will only result in reduction of any award damages <i>Fontin v Katapodis</i></p>
<p><b>Remedies</b> (Nominal or Compensatory + Aggravated or Exemplary)</p>	<ul style="list-style-type: none"> <li>• Note how CLA 2002 (pt 2) limits the amount of damages you can get.</li> <li>• <b>No harm = Nominal</b> (acknowledgement of infringement on P's right)</li> </ul>



□ **Harm = Compensatory** (compensate P and attempt to place them in the position they were in before assault)

**Aggravated**=to acknowledge damage to the integrity of P.  
**Exemplary**=Only in cases where conduct of D is outrageous or discreditable, attempts to penalise and acts as deterrent for other people)



**Conclusion**

- The likely case scenario of court findings.