

Intentional Torts

- Actionable per se (no proof of actual damage needed) (Entick v Carrington)
- ONUS OF PROOF IS ON D (Except for Highway Cases (Venning v Chin))

Battery (Trespass to the person)

1. **A positive voluntary (Public Transport Commission of NSW v Perry) intentional (Wilson v Pringle) or negligent/reckless (Williams v Milotin) act of D**
 - D is deemed capable of forming intent if he/she understands the nature of his/her act
 - Excludes Infants (McHale v Watson) but not Lunatics (Morris v Marsden)
 - involuntary acts are not battery (e.g. epilepsy – Public Transport Commission of NSW v Perry)
2. **Which directly** (Scott v Shepherd)
3. **Causes a *physical interference*** (Cole v Turner [least touching of another in anger is battery], Collins v Wilcock [holding D's arm to restrain is battery] but placing hand on P's shoulder to attract attention is not (Rixon v Star City Casino)) with the body of P
4. **Without lawful justification**
 - no consent, includes lawful act of law enforcers (Wilson v Marshall)
 - implied consent exists where there is jostling in crowded places, handshakes or tapping to gain attention etc. (no more force than is reasonably necessary)

Assault (Trespass to the person)

1. **The intentional (Cranston v Consolidated Meat) or negligent act (Williams v Milotin) or threat of D**
 - words can constitute assault depending on the circumstances (Barton v Armstrong)
 - silence on the phone may constitute assault (R v Ireland; R v Burstow)
2. **Which directly** (Scott v Shepherd)
3. **Places P in *reasonable apprehension of imminent physical contact* with his/her person or of someone under their control.**
 - apprehension must be reasonable; the test is objective (MacPherson v Beath – but where D knows P to be timid and plays on the fact will also constitute assault)
 - interference must be imminent (Zanker v Vartzokas – jumping out of moving van to escape)
 - However, conditional threats may constitute assault (Rozsa v Samuels)

False Imprisonment (Trespass to the person)

1. **Positive voluntary intentional** (Cowell v Corrective Services – a mistaken belief that lawful is lawful is no defence. No malicious intent required) **act of D**
→ no authority for negligently committed F.I.
2. **Which directly** (Ruddock v Taylor – ‘actively sought the result’)
3. **Causes *total restraint of P’s liberty*** (Bird v Jones)
→ must be *total restraint* - absence of reasonable means of escape.
→ (McFadzean v Construction Forestry Mining) anti-protestors blocking exits to forest = Not F.I. as they could walk 1.5km through dense forest constituting a reasonable means of escape)
→ also exists where D subjects P to his/her authority with no option to leave (Symes v Mahon)
→ P need not to be aware of F.I. at the time (Meering v Graham White Aviation)
→ no F.I. if P voluntarily submits to a form of restraint (Balmain New Ferry Co v Robertson)
→ initial lawful detention may become unlawful if for ‘unreasonably long time’ (Nasr v NSW)

Trespass to Land → CONSIDER NUISANCE AS WELL!!!!

1. **Voluntary** (Smith v Stone) **intentional or negligent act of D** (League Against Cruel Sports v Scott)
→ Mistake is not a defence
 2. **Which directly interferes** (Southport Corp v Esso Petroleum)
→ Must constitute *physical interference* with the land (Bathurst City Council v Saban)
e.g. actual entry, D directly causes object to be placed on land, trespass by licensee
→ continuing trespass (Konskier v Goodman)
 3. **With P’s *exclusive possession of land to the exclusion of all others*** (Newington v Windeyer)
→ Land includes the actual soil/dirt, structures/plants on it and airspace above it (Bernstein v Skyviews)
→ trespass protects possession not ownership of land (Star Energy v Bocardo)
→ P must have *exclusive possession* (physical holding of land not title/ownership). It may be immediate or constructive.
- Licensee:
→ one who has P’s permission to enter/use land or implied license – if D enters land for purposes different from that which P gave a license, D is trespassing (Cowell v Rosehill Racecourse, TCN Channel Nine v Anning)