

TORTS A
Laws1113
Semester 1 2015

IRAC

Issue (s)

Relevant law

- will aid time management

Application

- Proper, reasoned analysis of the circumstances, in the context of the relevant law.
- Don't just restate the facts. Don't just restate law. Instead weave relevant law into the facts in order to form analysis.
- Also need to evaluate the strengths of the various arguments.
- MUST address counter argument

Conclusion

Tort: law of civil wrongs not amounting to a breach of contract

In a criminal matter the state / R prosecutes, otherwise the plaintiff prosecutes

Tort Theory:

- Queen is head of state who acts on the guidance of her prime minister
- Constitution dictates whether commonwealth of state can make law
- Acts from parliament e.g. legislation/statutory law like Civil liability act, criminal code, fair work act
- Common law based on the prior rulings of judges e.g. contract law
 - Tort law relates to common law
- Two main types of tort is **trespass** and **action on the case**
 - Trespass includes battery, assault, trespass to goods, trespass to land (direct, and don't have to prove damage)
 - Action on the case refers to negligence (where you owe someone a duty of care, breach that and cause some damage – must prove this damage)
 - *Main distinction is whether injury was sustained directly or indirectly*
 - *Reynolds v Clarke (1726) 93 ER 747 at 748 → "If a man throws a log into the highway, and in that act it hits me; I may maintain trespass, because it is an immediate wrong; but if as it lies there I tumble over it, and receive an injury, I must bring an action upon the case."*
 - Trespass actions are said to be actionable per se, means plaintiff does not need to prove damages (just that it happened) in negligence the plaintiff must prove he or she suffered damages
 - *Barnett v Chelsea →* English got sick from tea, went to hospital but doctor told them to go away and see GP but man subsequently died (had arsenic in his tea). His widow sued for negligence, as he breached duty of care (hospital agreed duty of care was owed and was indeed breached) but hospital found from toxicologists that he would have died anyway as his poisoning was too advanced. Consequently negligence was not found.

BATTERY

Elements

1. Direct
 - **Reynolds v Clarke:** has to be immediate, not consequential
 - Can include involuntary actions caused by your action or indirect actions made out of necessity as a result of your action
2. Intentional
 - **Battiatto v Lagana:** Moynihan J at 235 'the direct intentional imposition of any unwanted physical contact on another person constitutes the tort of battery. There is not requirement to prove the contact causes or threatened any physical harm'
 - **Gray v Barr:** must be an act the defendant intended to do, no need to have intended the consequences, especially if they were reasonably foreseeable
3. Positive
 - **Innes v Wylie:** cannot be a passive inaction, but a failure to act where a duty of care is present
4. Application of Force
 - **Cole v Turner:** the slightest touching in anger can amount to a battery

Other Relevant Cases

- **Collins v Willcock:** excludes the contact expected in everyday life
- **MacNamara v Duncan:** by playing contact sport there is an implied level of consent to bodily contact, however if some contact is contrary to the rules of the sport the consent is no longer valid (as no consent was given to actions outside the rules of the game)
- **Marion's Case:** consent is allowed for minors if acting in their best interest, e.g. sterilisation of mentally incapacitated child (defence)