

# Torts – Scaffold Notes/Authority

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## Intentional Torts

### Battery

The definition of battery is: direct interference with the person of the plaintiff, via an intentional or negligent act of the defendant, to which the plaintiff did not consent.

(Use facts to argue whether the act forms battery)

#### Quotes

- *Voluntary* –
  - Whether act was wrongfully wilful (Holmes v Mathers)
- *Intention* –
  - Must be positive act, cannot be mere omission (Innes v Wylie)
  - Intent to commit act, not to cause harm (McNamara v Duncan)
- *Directness* –
  - Injury 'follows so immediately upon the act of the defendant that it may be termed part of that act' (Hutchins v Maughan)
  - Must be immediate and non-consequential (Hutchins v Maughan)
- Physical Interference
  - Actionable per se
  - Some form of offensive contact outside the accepted contact of daily life (Collins v Wilcock)
- Lawful Justification
  - Consent must be freely given (Allen v New Mount Sinai Hospital)

### Assault

The definition of assault is: intentional voluntary act or threat that directly creates in another person a reasonable apprehension of imminent contact without lawful justification.

(Use facts to argue whether the act forms assault)

- *Voluntary* –
  - Whether act was wrongfully wilful (Holmes v Mathers)
- *Intention* –
  - Requires proof of an intention to create in another person an apprehension of imminent harmful contact (Rixon v Star City)
  - Not necessary to prove that defendant intends to carry out threat (ACN v Chetcuti)

- *Directness* –
  - Injury ‘follows so immediately upon the act of the defendant that it may be termed part of that act’ (Hutchins v Maughan)
  - Must be immediate and non-consequential (Hutchins v Maughan)
- *Apprehension of fear* -
  - P must have knowledge of the threat
  - Must be of imminent harmful conduct – does not necessarily relate to immediacy in terms of time (Zanker v Vartzokas)
  - Words – mere words do not constitute assault, but the circumstances the words were uttered (Barton v Armstrong)
  - Conditional threat – conditional threats can be accompanied by actions which amount to assault (Rosza v Samuels)
- Lawful Justification
  - Consent must be freely given (Allen v New Mount Sinai Hospital)

### **False Imprisonment**

The definition of false imprisonment is: an intentional voluntary act, which directly causes the total deprivation of another person’s liberty without lawful justification

(Use facts to argue whether the act forms false imprisonment)

- *Voluntary* –
  - Whether act was wrongfully wilful (Holmes v Mathers)
- *Intention* –
  - Must be positive act, cannot be mere omission (Innes v Wylie)
  - Intent to commit act, not to cause harm (McNamara v Duncan)
- *Directness* –
  - Injury ‘follows so immediately upon the act of the defendant that it may be termed part of that act’ (Hutchins v Maughan)
  - Must be immediate and non-consequential (Hutchins v Maughan)
- *Total deprivation of liberty* -
  - Prisons need not have walls (Burton v Davies and General accident fire)
  - Restraint must be total (R v Macquarie and budge)
  - Total restraint depends on reasonable means or escape
  - Duration of time is irrelevant to tort action (Murray v Ministry of defence)
  - Initially lawful detention may become unlawful (NASR v NSW)
  - Knowledge of Plaintiff at the moment of restraint is not essential (Murray v Ministry of Defence)

- *Lawful Justification*
  - Consent must be freely given (Allen v New Mount Sinai Hospital)

## Trespass to Land

The definition of trespass to land is: a voluntary intentional or negligent act that directly causes physical interference with a person's exclusive possession of land (without lawful justification)

(Use facts to argue whether the act forms trespass to land)

- *Positive Voluntary/Negligent Act-*
  - The act must be voluntary – a defendant does not commit an actionable trespass by going onto plaintiff's land involuntarily (Public transport Commission NSW v Perry)
- *Intention –*
  - Must be positive act, cannot be mere omission (Innes v Wylie)
  - Intent to commit act, not to cause harm (McNamara v Duncan)
- *Directness –*
  - Interference must be direct (Gregory v Piper)
  - Consequential trespass due to lack of intervening act (Southport v Esso Petroleum)
- *Title to sue*
  - Exclusive possession – 'as long as a person does not abandon his possession, possession... enables him to exclude from the land any person who does not have a better title' (Newington v Windeyer)
  - Wrongful possession – 'an estate gained by wrong is nevertheless an estate in fee simple' (Newington v Windeyer)
  - Licensee of Property – do not have exclusive possession of a property... no rights to land only a personal right
- *Nature of Land*
  - Extends only as far as reasonable necessary for the use and enjoyment of the land
  - Subsoil trespass by tunnelling – it is trespass to tunnel under land (Stoneman v Lyons)
  - Airspace trespass
    - Height of airspace is not unlimited... limited to such a height as was necessary for the ordinary use and enjoyment of the land and structures upon it (Bernstein of Leigh v Skyviews)
    - An interference is not necessary (LIP Investments v Howard Chia Investments)
- *Nature of the physical interference*