

Intentional injuries to the person

- Deals with trespass to the person, which has 3 forms: assault, battery and false imprisonment.
- Each is an individual tort in its own right.
- The torts are actionable 'per se'. (The claimant does not need to have suffered any loss or damage as a result of the tort).
- Unlike the elements of the torts of assault and battery in criminal law in which the standard of proof is 'beyond reasonable doubt', the claimant in tort must prove his/her case on a balance of probabilities.
- The rule in *Wilkinson v Downton* – Where a defendant has deliberately but indirectly caused physical harm to the claimant. Although, not a trespass to the person, it may be actionable, if they have wilfully done an act calculated to harm the plaintiff.

Trespass and case

- Trespass is one of the oldest forms of tort in the UK.
- One of the requirements of it, was that it had to be direct. (Direct interference with the person or property of the claimant).
- The term 'direct' has been interpreted broadly by the courts as in the cases of Scott v Shepherd (1773) 2 W B1 892 and DPP v K (1990) 1 WLR 1067.
- In practice, trespass is now regarded as having an intentional interference (although possibly if direct). See the speeches of Lord Diplock in Letang v Cooper (1964) 2 All ER 929, where he compared negligence and trespass. When the interference was direct and unintentional, it would be an action in negligence and would require proof of damage but equally, if it were called trespass, it would still require proof of negligence and damage.
- **The present rule** – In Stubbings v Webb (1993) 1 All ER 322, the house of Lords ruled that where section 11 of the Limitation Act 1980 referred to negligence, nuisance or breach of duty, this did not include trespass to the person, hence reinforcing the distinction between trespass and negligence. Negligence is not actionable per se.

Trespass to the person - Assault

- A person commits an assault if he intentionally causes another to apprehend the application of immediate unlawful force on his person. See *Letang v Cooper*.
- There will still be an assault, even if the claimant is courageous and is not frightened by the threat.
- However, where the claimant has no reasonable belief that the defendant has the present ability to effect his purpose, there will be no assault. See *Thomas v NUM (1986)*, but it will depend upon the facts of each case. See *Smith v Chief Superintendent of Woking Police Station (1983)*
- Other examples of assault include, where a defendant attempted to land a blow on the claimant but was intercepted by a third party. See *Stephens v Myers (1830)*, taking a photograph of a person will not amount to assault, pointing a loaded gun at a person would amount to assault and the law is the same, even if the gun is unloaded, unless the claimant knows it is unloaded. See *Blake v Barnard (1840)*.
- The claimant's state of mind is relevant here, and so assault cannot take place if the claimant is asleep or gestures are being made behind the latter's back.
- **Omissions** – There will be no assault if merely standing in the way of the plaintiff, to prevent him from entering a room. See *Innes v Wylie (1844)*
- **Words** – Words may negate what otherwise might be an assault. See the case of *Turberville v Savage (1669)*. It would now seem from the recent decision of the House of Lords in *Ireland v Burstow (1998) AC 147*, that words alone (and in some circumstances silence) can constitute an assault where the victim apprehends the possibility of imminent force.

Trespass to the person - Battery

- Battery which can take place without an assault is ‘the intentional and direct application of force to another person, without lawful justification. Personal contact is unnecessary.
- **Force** – The least touching of a person in anger amounts to battery. See *Cole v Turner* (1704), wrongly taking a person’s fingerprints can amount to battery. See *Callis v Gunn* (1964). Throwing water at a person although not at the plaintiff’s clothes, amounts to battery. See *Pursell v Horn* (1838). Attacking a plaintiff and indirectly causing harm to a third party amounts to battery in respect of the victim (3rd party). See *Haystead v Chief Constable of Derbyshire* (2000).
- **Act** – Like assault, for there to be a battery, there must be a voluntary action by the defendant. Battery cannot be committed by omission. See *Fagan v MPC* (1969). However this case can be distinguished from the criminal law case of *DPP v Santna V Bermudez* (2003) – But for Tort law purposes, this case should only be used for guidance only. For the defendant to be guilty of battery, it must be proved on a balance of probabilities that the latter intended to bring about contact. Ordinary touching in the course of daily life is not battery. See *Wilson v Pringle* (1986). If the contact is intentional and direct, a mistaken belief that it is lawful is irrelevant. See *Poland v John Parr and sons* (1927)

Intentional injuries to the person – False imprisonment

- False imprisonment is the intentional deprivation of the claimants freedom of movement from a particular place for any time, however short unless expressly or impliedly authorised by the law.
- The claimant must prove that he/she was intentionally denied freedom of movement but where a defendant claims that the restraint was lawful the burden is on the defendant to justify this.
- It is actionable per se.
- It must involve complete restriction on the claimants freedom of movement. See *Bird v Jones* (1845)
- The restraint must be total, although if there is an escape route, it will still be considered false imprisonment, if the escape route is not a reasonable one. See *Sayers v Harlow Urban District Council* (1958)
- Where a person has imposed conditions on the means of egress from premises to which the other has agreed it may not amount to false imprisonment. e.g where a person has boarded a train, it will not be false imprisonment to ensure that the passenger remains on the train until the train stops at the next station. See *Robinson v Balmain Ferry Co. Ltd.* (1910) and *Herd v Weardale Steel, Coal and Coke Ltd.* (1915)
- The restraint must be actual rather than potential. See *R v Bournewood Community and Mental Health NHS Trust ex parte L* (1998)
- The restraint must be direct. See *Sayers v Harlow Urban District Council* (1958)
- The liberty of the individual is very important, and so it would seem unnecessary that the claimant was aware of the false imprisonment. See *Meering v Grahame – White Aviation* (1919). Even if the defendant is too ill to move, it will still be considered false imprisonment. See *Grainger v Hill* (1838). Miscalculation of a prison term causing the claimant to stay longer in prison amounts to false imprisonment. See *R V Governor of Brockhill Prison ex parte Evans* (2000).

Intentionally causing nervous shock

- Known as the rule in *Wilkinson v Downton* (1867).
- Although it is an intentional tort, unlike trespass, it is not actionable per se. Actual damage will need to be proved by the claimant. Mrs Wilkinson in the above case was falsely informed by the defendant that her husband's both legs had been broken. She suffered nervous shock on this false report, and was ill for several weeks.
- This is a tort that is little relied upon, as the courts are sometimes reluctant to extend the rule in *Wilkinson v Downton*, as seen in the recent cases of *Khorasandjian v Bush* (1993) and *Wainwright v Home Office* (2003)

Defences

- **Consent** – Where a person consents to what would otherwise be a trespass to the person, then no such tort will be committed.
- **Implied consent** – Holding your arm out for an injection amounts to consent. It has also been held that people impliedly consent to social contact e.g being jostled in a crowd. See *Wilson v Pringle*. Consent however must be real, and cannot be obtained by fraud or duress as in the case of *R v Williams (1923)* where the defendant was guilty of rape for he had deceived the plaintiff that sexual intercourse with him would improve her singing. See also *Appleton v Garrett*.
- **Capacity** – Consent will not be vitiated by the claimant's age, provided the claimant understands the nature of the act. See *Gillick v West Norfolk Health Authority (1986)*. But there is legislation that negatives this in criminal law, for example the Sexual Offences Act 2003 and the Tattooing of Minors Act 1969. However, a person may lack the capacity to consent, as in *T v T (1988)*, where the parent of a 19 year old woman was granted a declaration in relation to the termination of a pregnancy. Where a person does have the capacity to consent, but does not give it, then a case for battery will lie. This also applies in medical situations, where a patient does not consent, but a doctor carries out a medical procedure. It is irrelevant whether the intention of the doctor is good willed or not. See *Chester v Afshar (2004)* – the speech of Lord Steyn. However, an action in the tort will not be entertained where the claimant gives consent, but claims he was not aware of the risks associated with the treatment. See *Chatterton v Gerson (1981)*

Defences continued

- **Public Policy** – So far as criminal law is concerned, consent may be vitiated on public policy grounds where bodily harm was likely or intended. See the case of Lane v Holloway (1968) – although self defence, the blow on a drunken old man was such that consent could not apply.

Self defence

This is a complete defence, provided the force used by the defendant was both necessary and reasonable in the circumstances.

- **Necessary** – It must be necessary to use the force. Where a defendant mistakenly believes defensive force to be necessary, there will still be a defence, provided such defence is necessary. See Bici (2003).
- **Reasonable force** – The force must be reasonable and proportionate to the harm threatened. See Lane v Holloway (1968)
- **Necessity** – This is a very limited defence, and the courts have been reluctant to allow it to succeed. But in Leigh v Gladstone (1909), it was accepted as a way of defence to force feed a suffragette on hunger strike.
- **Provocation** – It has been held that this is not a defence to trespass. See Lane v Holloway (1968)