

## INTENTIONAL: INJURIES TO THE PERSON

### 7.0 Introduction

This chapter deals with trespass to the person, which has three forms; assault, battery and false imprisonment. Each of these is an individual tort in its own right requiring proof of a direct and deliberate act on the part of the defendant. The Word 'trespass' can be found in the lord's Prayer... "forgive us our trespasses"- and there it retains its general meaning of wrongdoing. These torts are actionable 'per se'. That is, the claimant does not need to have suffered any loss or damage as a result of the tort. A person is entitled to autonomy and bodily integrity and it is this right which is protected. As Lord Porter, referring to false imprisonment, said in the case of *John Lewis & Co. v Tims [1952] 1 All ER 1203*

*'.....[when] the liberty of the subject is at stake questions as to the damage sustained become of little importance.'*

The elements of the tort of assault and battery are very similar to these which make up the crimes of assault and battery. In fact, civil actions in respect of these torts are not numerous; they are frequently dealt with by the criminal court. Note the difference in the standard of proof. That required in a civil action for trespass to the person is that the claimant must prove his or her case 'on a balance of probabilities' whereas in a criminal prosecution the standard of proof is 'beyond reasonable doubt'.

All trespasses are said to share certain characteristics but this generalization must be checked against the definition of each form of trespass.

- (1) A trespass is committed by a direct and immediate interference with protected interest of the claimant (bodily security, land or goods).
- (2) A trespass is actionable per se (without proof of damage).
- (3) The act that constitute the trespass is committed intentionally. This is the aspect of trespass which must be considered carefully in relation to the different forms of trespass.

### 7.1 Trespass

An action in trespass derives from the ancient writ of trespass, one of the requirements of which was that the defendant's act had to be direct, i.e. direct interference with the person or property of the claimant (plaintiff). Nevertheless, the term 'direct' has, at times, been interpreted broadly by the courts.

For example in the case of *Scott v Shepherd (1773) 2 W B1 892*, the court was prepared to extend the definition of direct injury to give Scott a remedy. The defendant had thrown a lighted squib (a firework) into the market place. It first landed on A's stall. B in order to prevent damage picked it up and threw it, and it landed on C's stall. C, again to prevent damage, picked it up and threw it where it struck Scott in the face and went off putting out one of his eyes. In *DPP v K [1990] 1 WLR 1067* a boy had poured some concentrated sulphuric acid into a hand-dryer, intending to remove it later on. Before he did so the dryer was used by another boy who was injured by the acid. Here the force was considered sufficiently immediate and direct. This case has since been overruled on another point but it remains good law in respect of 'directness'.

### 7.1.1 Common features of trespass to the person actions

These intentional torts have several features in common.

- (1) The first and most important feature is the requirement of intention. This has not always been the case- it was once possible to commit a tort negligently. In **Letang v Cooper[1965]**, however, the Court of Appeal found that the development of the law of negligence had been such that it was now the case that if the act causing damage was intentional then any action lay in trespass, whereas if the act was done negligently the appropriate claim was in the tort of negligence. Note that it is the act to which the intention relates and not the damage. The intention requirement was considered in **Black v Galloway [2004]**. A group of boys were playing with bark chipping, throwing them at each other. A chip thrown by the defendant injured the claimant in the eye. The Court of Appeal found that there was no intention to injure and that the degree of recklessness involved was insufficient to constitute battery. Therefore, any claim for damages would need to be framed in negligence.
- (2) These torts are all actionable per se. This means that the claimant does not have to prove actual damage to himself or to his property. The claimant's interest in his personal security is regarded as being sufficiently important to warrant protection even in the absence of actual damage.
- (3) To constitute a trespass, the defendant's act must be direct. For example if I throw a log and it hits you, this is trespass. If I throw a log and it lands on the road and you later trip over it, this may be actionable in negligence but it is not trespass because it is not direct. Some acts where the defendant clearly intended to cause harm may therefore fall outside trespass; for example, if the defendant were to put a spike on the road intending that the claimant would be injured when he rode his motorbike along the road, the indirectness of the defendant's action would preclude trespass.
- (4) The test for remoteness of damage, if caused, is not foreseeability of type of damage but the old **Re "polemis" [1921]** rule that the defendant is liable for all the direct consequences of his intentional act.
- (5) Although trespass to the person does not require the claimant to prove damage has been caused, there will be many cases in which personal injury has been suffered by the victim of an intentional tort such as battery. Following **A v Hoare [2008]** the same limitation period now applied to a claimant who had suffered personal injuries irrespective of whether the action is argued as trespass to the person or negligence. This case hit the national headlines when A sued the man who had been sexually abused many years before. Hoare had been imprisoned for his crime but he won millions of pounds in the National Lottery and became a defendant worth pursuing through the courts. **A v Hoare** is one of the rare examples in which the House of Lords overruled its previous ruling in **Stubblings v Webb[1993]** where the House of Lords held 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, reinforcing the importance of a distinction between trespass and negligence.

## 7.2 Trespass to the Person

### 7.2.1 Assault

A person commits an assault if he intentionally causes another reasonably to apprehend the application of immediate unlawful force on his person. Note that it is apprehension which is required and not fear. The claimant does not have to be 'afraid': it is enough that he reasonably apprehended the contact. It follows that it is irrelevant that the claimant is courageous and is not frightened by the threat or that he could easily defeat the defendant's attack.

For example, assault can be committed by the adoption of a threatening body posture, with or without spoken threats. There must be both the menace of imminent contact and the apparent ability to carry out the threat. Thus, the act of shaking a fist at someone passing by on a train would not constitute an assault.

It follows that it is irrelevant that the claimant is courageous and is not frightened by the threat or that he could easily defeat the defendant's attack.

However where the claimant has no reasonable belief that the defendant has the present ability to effect his purpose, there will be no assault. For example, In **Thomas v Num (South Wales Area) [1986] Ch 20** trade union pickets who made violent threats and gestures were held back by a police cordon and those who wanted to work went through the gates inside buses. It was held that words and gestures, however threatening, would not be an assault if they could not be put to immediate effect as a central feature of assault was that the threat apprehended must be of immediate force.

This would ordinarily depend upon the facts of each case and in **Smith v Chief Superintendent of Woking Police Station [1983] 76 Crim App Rep 234** it was held that it was an assault to stand outside the plaintiff's window and stare in, while she was dressed in nothing but a pink nightie, with intent to frighten her and causing her to apprehend contact.

In **Stephen v Myers (1830) 4 C & P 349** it was held that if a defendant attempted to land a blow on the claimant which was intercepted by a third party this could still amount to an assault. Here, the defendant, whose ejection from a parish meeting had been moved and received, advanced to unseat the claimant (who was the chairman) but was intercepted by the churchwarden. The defendant was found to have committed an assault. Lord Tindal CJ said:

*'.....though he was not near enough at the time to have struck him, yet if he was advancing with the intent, I think it amounts to an assault in law.,*

Where a claimant knows that any threat will not be carried out there can be no assault as there will have been no reasonable apprehension of contact. **Tubervell v Savage (1969) 1 Mod Rep 3**

### **7.2.2 Battery**

Battery is the intentional and direct application of force to another person without lawful justification. The defendant must make some physical contact with the body of the claimant. The force can be applied with an instrument and does not have to be with the defendant's own body. Any contact will suffice provided that it is both active and voluntary, so to punch a person or steal an unwanted kiss may be a battery provided that the other requirements are satisfied. No battery will be committed by a person who passively obstructs a doorway so that another bumps into him.

Even if the force used is trivial, the least touching of a person in anger is battery. See *Cole v Turner* [1704] held that the “the least touching of another in anger” was actionable as trespass to the person.

In *Callis v Gunn* [1964] 1QB 495 it was held that wrongly taking a person’s finger prints could be a battery. Throwing water at the claimant- although not at clothes she is wearing – is a battery.

As with assault, it has long been said that for there to be a battery there must be a voluntary action by the defendant. Battery (like assault) could not be committed by omission. In *Fagan v MPC* [1969] 1QB 439 the defendant accidentally drove his car on to a policeman’s foot but, despite repeated requests, refused to remove it. It was held that there was an assault but not merely by omission. The defendant’s conduct, from accidentally driving on to the policeman’s foot to refusing to move, was a continuing act. He was still ‘acting’ at the time he formed the necessary intention for battery, i.e. when he refused to remove the car.

The claimant must apprehend actual contact and nothing less. Taking a photograph of a person, for example, is not an assault. Pointing a loaded gun at a person would amount to an assault and the law is probably the same if the gun is unloaded unless the person at whom the gun is pointed knows it is unloaded. There is dictum which indicates that this would not be assault- *Blake v Banard* (1840)- but in a criminal case of the same year (*Rv St. George* (1840)) it was stated that it would be an assault. This is generally felt to be the correct view.

### 7.2.3 False Imprisonment.

False imprisonment is the intentional deprivation of the claimant’s freedom of movement from a particular place for any time, however short unless expressly or impliedly authorised by law.

The claimant must prove that he or 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.

False imprisonment is actionable *per se*. In *Murray v Ministry of Defence* [1988] 1 WLR 692 Lord Griffiths commented (*obiter*) that:

*‘.....the law attaches supreme importance to the liberty of the individual and if he suffers a wrongful interference with that liberty it should remain actionable even without proof of special damage’*

False imprisonment must involve complete restriction on the claimant’s freedom of movement. In *Birds v Jones* (1845) 7 QB 742 the defendant had partially fenced off a public footway on Hammersmith Bridge in London. Bird climbed over the fence to use the footway but was prevented from using it and told to climb back over the fence and cross the bridge outside the fence. It was held that this was not false imprisonment. The defendant had not imposed complete restriction on Bird’s freedom of movement.

NB: imprisonment may be anywhere from which the claimant does not have a reasonable means of escape, such as a room in a house, a coalmine, a bridge and possibly, even a public lavatory.

In *Robinson v Balmain Ferry Co. Ltd* [1910] AC 295 the claimant paid one penny to enter a wharf in order to catch a ferry but then realised that there was a 20- minute wait for the next ferry. There was a charge of one penny for leaving the wharf- stipulated on a notice above the turnstile- and the

defendants refused to let him leave until he had paid the charge. The Privy Council held that there was no false imprisonment.

The importance the law attached to the liberty of the individual is illustrated by the fact that where the claimant is too ill to move, an action in false imprisonment will still lie. Further, it would seem that it is unnecessary that the claimant was aware of the false imprisonment. In *Meeting v Grahame-White Aviation* (1919) 122 LT 44 it was held that the claimant who was unaware he was detained had been falsely imprisoned. The claimant was suspected of theft at work and was asked to wait in the manager's office. Two security guards had orders to prevent him from leaving if he attempted to. The claimant was unaware of this.

Atkin LJ said:

*' it appears to me that a person could be imprisoned without his knowing. I think a person can be imprisoned while he is asleep, while he is in a state of drunkenness, while he is unconscious, and while he is a lunatic..... of course the damages might be diminished and would be affected by the question whether he was conscious of it or not.'*

In *R v Governor of Brockhill Prison ex parte Evans* (No 2) [2002] 33 WLR 843 the House of Lords held that where a prisoner was detained for extra days because the term of imprisonment was wrongly calculated she was entitled to damages for false imprisonment even though the error in calculation was due to a judicial decision which changed the basis of the calculation and the governor of the prison was not at fault.

#### 7.2.4 The rule in *Wilkinson v Downton*

There is a principle in English law that, if the defendant intentionally and without justification causes physical harm to the claimant, he is liable, whether or not his action can be classified as trespass.

In *Wilkinson v Downton* [1897] the defendant, as a practical joke, told the claimant that her husband had been in an accident and had broken both legs. The claimant was awarded damages for the nervous shock which she suffered as a result.

According to Wright J the defendant had:

*'..... willfully done an act calculated to cause harm to the claimant- that is to infringe her legal right to personal safety, and in fact thereby caused physical harm to her. That proposition without more appears to me to state a good cause of action.....'*

#### 7.2.5 Defences

Consent