

## TORTS AGAINST THE PERSON

### Battery

The intentional unwanted touching of another

#### Key elements:

- ✓ Touching: the “least touching in anger” is sufficient to meet this
- ✓ Intention to do the act (not necessarily to cause consequential harm)
- ✓ Hostility ?
- ✓ Directness ?

#### Defences:

- ✓ Self-defence
- ✓ Consent

**Cole v Turner [1740]** → What is battery?

Touching another in anger is battery

- Must be some violence or design of harm, or 'forcing his way in a rude inordinate manner'
- Degree of harm is irrelevant

**Collins v Wilcock [1984]** → Modern explanation of battery

*A woman was walking with a known prostitute. In order to deter prostitution, police officers had the power to issue cautions by taking the name and addresses of suspected prostitutes. A police officer asked to talk to the woman, and when she refused they took hold of her. Battery?*

- Fundamental principle of battery: **every person's body is inviolate**. Any touching of another person, however slight, may amount to battery.

**Forde v Skinner and Others**

*Parish officers cut the hair of a young woman without consent to keep her pride in check.*

- Battery: invading someone's personal space without consent, any additional force/harm/malicious intent go to damages

#### Exceptions:

1. **Consent**: can be express or implied
2. **Exigencies of everyday life**: jostling in the supermarket or in the street etc.
  - Can be seen as implied consent, but common to treat those as falling within a general exception embracing all physical conduct generally accepted in the ordinary course of daily life

#### Intention

**Moir v Police**

*Moir spat at a police officer.*

Spitting at someone is universally acknowledged as a gesture of contempt and defiance → clearly intentional and malevolent, though not violent/forceful/causing injury

- **Essential element if the intent of the person**

**Letang v Cooper**

*Man unintentionally ran over a woman who was sunbathing and caused injury.*

- If a person does not inflict injury **intentionally**: then negligence

Hostility? → Not an ingredient

*Cole v Turner* mention anger; *Wilson v Humphrey* suggest there is no action in trespass unless there is intent to injure

- *Wilson v Pringle*
- *But F v West Berkshire HA*

### **Liability**

Traditionally at common law, the tortfeasor is **responsible for all damage that results from their acts**. ***Bettel v Yin***: it is in the dignitary interest, the right of the plaintiff to insist that the defendant keep his hand to himself... If a more serious harm befalls the plaintiff than was intended... the defendant must be the liability.

## Assault

Tort of intentionally doing an act that gives rise to a reasonable apprehension of immediate unwanted touching (battery).

### Elements:

- ✓ Intention
- ✓ Act
- ✓ Causing the plaintiff to reasonably apprehend the infliction of battery
- ✓ Act that gives rise to apprehension
- ✓ Ability to carry out threat ?
- ✓ Does the threatening battery have to be imminent ?
- ✓ Directness and indirectness ?
- ✓ Remoteness ?

### **Tuberville v Savage** → Reasonable apprehension

*Tuberville placed his hand on his sword and told Savage that "if it were not assize-time, I would not take such language from you."*

- Held not to be an assault because in this context it was interpreted to mean that a physical battery would not ensue
- Conditional words *may* exonerate assault

### **Richardson v Rix (1989)** → Reasonable apprehension

*Car crash between Richardson and Rix, Rix provided Richardson with some details but Richardson was not convinced that he had all the necessary information. He then followed Rix back to his car and grabbed his keys from the car's ignition. A fight between them ensued.*

- Assault committed intentionally if it creates a reasonable apprehension of imminent harmful/offensive bodily contact by the aggressor
  - Victim does not actually need to be scared though (*Brady*)
- The bodily contact must be **imminent**: *nb – could be imposing too harsh a threshold for certain situations e.g. domestic abuse cases*
- Taking keys out of ignition was not enough to cause reasonable apprehension that the respondent would be subjected to harmful/offensive physical conduct

### **Stephens v Myers** → Must be ability to carry out threat

*Stephens was chairing a parish meeting and voted Myers out of a room. Myers then threatened Stephens and advanced towards him, but was stopped before he was able to hit Stephens.*

- Not every threat will constitute an assault
- **Must be means of carrying a threat into effect**
- Suggests an unloaded gun would not be assault → **Brady suggests otherwise**

### **Brady v Schatzel; Ex parte Brady [1911]** → Present ability to carry out threat

*Schatzel pointed a rifle at Brady and threatened to shoot. However, the rifle was not loaded and Schatzel testified that he was not afraid.*

- Present ability to carry out threat? *Stephen v Myers* say it is needed
- *Brady* suggests it is not necessary:
  - Should be discouraging people from pointing guns regardless of whether they are loaded or unloaded

- We also should consider from the victim's POV: would still suffer the same emotional harm/threat to dignity
- Criminal law references present ability – making the person *believe* you have the present ability to carry out a threat

**Police v Greaves [1964]** → **Conditional threat**

*Graves threatened police officers with a knife and a threat that he would stab them if they entered his house. The threat was conditional on entry, so if the police officer did not enter the house, is it still assault?*

- Assault defined in s 2 of the Crimes Act 1961: "The act of intentionally applying or threatening to apply force to the person of another, if the person making the threat, has or has caused the other to believe on reasonable grounds that he had the present ability to effect his purpose."
- If all these elements are met = assault (**regardless of whether conditional or not**)
- Threat inherently usually offers a condition or alternative e.g. "Your money or your life"
- The very essence of a threat is to overcome or intimidate the will of another: e.g. here, the menacing attitude caused the police to retire

**R v Kerr [1987]** → **Awareness of threat**

*Complainant sunbathing in her backyard, neighbour came into the garden and held an axe over her. The daughter saw and screamed - waking the Mother, but allowing time for the neighbour to quickly drop the axe so that the complainant did not see the neighbour with axe in hand.*

- **Can be no assault where the person does not know that he/she is being threatened**
- i.e. if asleep or has back to the person = no assault

## False Imprisonment

Intentionally doing an act that restricts the freedom of movement of the plaintiff.

### Elements

- ✓ Intention
- ✓ Infliction of restraint
- ✓ Total restraint
- ✓ Without consent or other justification
- ✓ Knowledge of restraint?

### **Bird v Jones** → **Total restraint**

*Plaintiff was walking along a footpath, but part of it had been blocked off for a regatta. The plaintiff insisted on continuing along the footpath, but the defendant and two policemen pulled him back from doing so and told him to go on a different route.*

- False imprisonment is a loss of freedom, and use of restraint by a **will or power or by external force**
- **Does not need to be in a physically confined space**
- Plaintiff must be prevented from leaving a place
- It is not false imprisonment if merely obstructing the passage of direction, still leaving the plaintiff at liberty to go any direction he pleases
- Must be **total restraint**
- **Psychological constraint may be sufficient:** if one man compels another to stay in any given place against his will, he imprisons that other just as much as if he locked him up in a room
- **Imprisonment is the total restraint of the liberty of a person, not the partial obstruction of a right to go in a particular direction = not false imprisonment.**

*NB:* Lord Denman's dissent suggested that there was a total deprivation of liberty as the plaintiff could not lawfully exercise his liberty by walking in a certain direction, and this should amount to false imprisonment.

- i.e. the boundaries/means of escape should not matter – if prevented from what you have a right to do, it is irrelevant that you can still do something else

### Awareness of restraint as an element

Conflicting views: *Meering* and *Murray vs. Herring v Boyle*

As all UK precedent – what should NZ follow?

- ✓ If you do not know you are being imprisoned but also not going anywhere, then freedom of movement isn't really impacted?
  - Hypothetical example of being imprisoned in a 5-star resort
- ✓ But even if not exercising this right, it should be protected
- ✓ Dean Williams: baby and lunatic should still be protected – i.e. if imprisoned for many years without having the mental capacity to understand, should still have a claim
- ✓ Lack of knowledge seems a technical argument/loophole in the law
- ✓ Law should discourage false imprisonment: i.e. **Linden** and deterrence point

### **Meering v Grahame-White Aviation Co Ltd** → **Awareness of restraint**

*Meering worked for an aviation works and was accused of stealing parts. He went to a meeting at the defendant's office to discuss this, and people were stationed outside to stop him from leaving (though he did not know this).*

- Can still be imprisoned without knowledge of it e.g. when asleep, drunk, unconscious or a 'lunatic'
- Whether a plaintiff knows they are imprisoned or not, still amount to false imprisonment

- If you take liberty seriously: remedy against people being imprisoned without knowledge
- This level of awareness goes to damages rather than establishing whether imprisoned
- “Stone walls do not a prison make”: any restraint within defined bounds may be an imprisonment

**Held:** that awareness does not matter

**Murray v Ministry of Defence [1998]** → **Awareness of restraint**

Soldiers went to Murray's house at 7am to arrest her for affiliation with the IRA. Lance-Corporal Davies remained with the plaintiff between 7 - 7.30am while she got dressed, and other family members were gathered and kept in their living room while this was underway. The arrest was then made at 7.30am. From 7 - 7.30am when he was under restraint but not arrest, did this amount to false imprisonment?

- On the facts, she would have known she was being arrested or detained, and therefore this issue of awareness did not have to arise **and therefore the comments are obiter as awareness wasn't actually needing to be discussed on the facts**
- Plaintiff was under restraint from the moment she was identified; that Davies stayed with her while she was getting changed: therefore - she must have realised she was under restraint and not free to leave
- Special reasons in this case for not telling the plaintiff that she was under arrest was due to the risks of arresting someone with involvement in the IRA and to avoid them raising alarm

**False imprisonment** - note only **obiter** (as had already been arrested)

- CA relied on **Herring v Boyle**: where principal refused a mother to take her son home for the holidays because she hadn't paid school fees and **Court said that false imprisonment could not have arisen because the boy did not have knowledge of the restraint**
- So awareness was not an element of false imprisonment
- Prouser in the Restatement: draws two examples of baby and lunatic and how Restatement has changed **to being conscious or harmed by imprisonment**

**Robinson v Balmain New Ferry Ltd** → **Reasonable conditions**

Robinson purchased a one-penny ferry ticket from Sydney to Balmain, but decided to leave and was charged an extra penny (there were signs saying that they charged 1 penny to enter or leave the wharf). Robinson refused to pay and was prevented from leaving.

- Claim for false imprisonment will fail where the defendant is simply exercising a right they have which is rooted in contract with the plaintiff
- Asking for extra penny was merely imposition of a reasonable condition the company was entitled to impose, not false imprisonment
- **Defendants entitled to impose reasonable conditions on plaintiffs that may restrain their liberty**

**Herd v Weardale Steele, Coal and Coke Co** → **Reasonable conditions**

Herd worked as a hewer, went down the mine at 9.30am for a shift until 4pm. He refused to do work due to safety grounds and asked to be taken up at 11am. The carriage to take him up was available from 1.10pm but his employer refused to take him up until 1.30pm in order to punish him.

- **Not false imprisonment to hold a man to conditions he accepted when he went down the mine**
  - Workman to be brought up at the end of his shift
  - No refusal to bring him up at 4pm, but refusal to bring him up at the 1.10pm  
= **Not false imprisonment**

- Would be different if personal safety was at risk i.e. if they were ill
  - What if there was genuine concern over health and safety? (E.g. Pike River Mine) – perhaps this would be seen as analogous

**Intentional infliction of emotional harm (IIEH)**

## Elements

- ✓ Subjective actual intention
  - Can be imputed
  - Calculated
- ✓ Recognisable psychiatric illness

## Recognisable psychiatric illness vs. nervous shock vs. emotional distress

Best term to use is "recognisable psychiatric harm" (*Van Sooss*)

- IIEH: implies that it covers nervous shock as opposed to recognisable psychiatric harm (something less long-term, not diagnosable, milder)

## **Wilkinson v Downton [1897] → Imputed intention**

*Defendant told the plaintiff that her husband had been in a serious accident and she had to go to him, as a practical joke. This caused the plaintiff violent shock, vomiting and other serious physical consequences causing long-term suffering and incapacity.*

## Test for imputed intention

Here, the actual intention was for the purpose of a practical joke (not intended to cause emotional harm)

**Was the defendant's act so plainly calculated to produce some effect of the kind that actually occurred (i.e. violent shock) that intention to produce it should be imputed on the defendant?**

- ✓ i.e. was the harm so foreseeable that the defendant knew/ought to have known the consequences of his actions?
- ✓ Person has to be of an ordinary state of health and mind: i.e. eggshell skull rule

**Can infer intent if outcome is so obvious.**

**Question of remoteness** → Is the impact or harm too remote?

*Victorian Railways Commissioners v Coultas*: mental shock (i.e. shock caused by fright) is too remote to recover

- This was treated as a question in *Pugh v London*
- *Bell v Great Northern Ry Co of Ireland*: Irish Exchequer Division refused to follow
- Disproved in the SC of New York

Court did not follow this, found it **not to be too remote**

## **Rhodes v OPO [2015] UKSC 32, [2016] AC 219 → Refines Wilkinson v Downton**

*A man decided to write his autobiography. In this, he went into graphic detail about significant abuse he received as a child. The writer's child is in question. The mother and this child live in the USA. Mother gets wind of forthcoming book and graphic description of the childhood of the father. Child suffered from Asperger's - more vulnerable than other children. Mother feared that if he read this passage, he would suffer badly. Effectively wanted book to be published, less this passage.*

## Three elements to IIEH:

1. Conduct directed at the claimant for which there was no reasonable excuse
  2. Mental element (intention of alleged tortfeasor): an intention to cause physical harm, illness, severe distress
  3. Consequence: physical harm or recognisable psychiatric illness
- *Wilkinson* survives in the modern era, but it limited: **not subsumed within negligence.**
  - 'Intention' is a matter of fact, can be established by the plaintiff.
  - Sufficient that he intended to cause severe distress resulting in a recognisable illness
  - Interesting: this tort is not 'actionable per se' as you do need to show damage



