

TRESPASS TO THE PERSON

Negligence	Battery
Intention not a requirement	Intention needed <i>"When the injury is not inflicted intentionally, but negligently, I would say that the only cause of action is negligence and not trespass. If it were trespass, it would be actionable without proof of damage; and that is not the law today"</i> <i>Letang</i>
Harm required	Actionable per se
Duty of care question required here	Do not have to show a breach or lack of reasonable care

Historic distinctions: *Letang v Cooper*

- trespass – immediate wrong (e.g. throwing a log onto a highway and hitting a car)
- case – consequence constitutes the wrong (e.g. throwing the log onto the highway and someone tumbles)

NOWADAYS:

- trespass – is an intentional act
- negligence – any unintentional acts

Battery

1. Intention

- There must be intention to act *Katko v Briney*
- When you are forced/ coerced into doing something it is not intentional – there must be an act that is voluntary. *Letang v Cooper*
- Negligent misconduct is not a battery. *Letang v Cooper*
- The act and not the result must be intentional. Intention to injure is not essential (trespass itself is the offence) *Wilson v Pringle*
 - Does not matter what the result is and does not matter how much touching there is *Cole v Turner*
- Focus on the motives of the dft. – what did they intend to do by their action *Ford v Skinner and Others*
 - BUT battery does not intend on the motive, if your motive was good, this not negate your intention *Letang v Cooper*

2. Application of force (battery must have touching, assault does not)

- "the least touching of another in anger is a battery - if people meet "without violence... touches gently, it is no battery" *Cole v Turner*
- Certain degree of force used not necessary *Moir v Police*
- Fundamental principle that your body should not be invaded (injury and any form of physical molestation) *Collins v Wilcock*
 - Every persons' body is inviolate *F v West Berkshire*
- Where an act initially had no intention, but continuing application of force has intention there can be battery *Fagan*
 - Omission to act cannot constitute a battery *Fagan*
- Battery unless the dft. makes some positive/ affirmative act

3. Actionable per se *Richardson v Rix*

* Intentional physical force, applied to the body of the victim which is deemed offensive in a reasonable sense & no physical harm needed to be intended or resulted *Richardson v Rix*

4. Implied consent?

- a. Generally accepted conduct expected in daily life
- b. Exigencies of everyday life are not actionable in battery *Collins v Wilcock, F v West Berkshire*
- c. A touch to engage attention is acceptable but restraint is not no matter the motivation *Collins v Wilcock*
- d. To give implied consent (for presumably more significant 'touch') you must first be able to give express consent *F v West Berkshire*

5. Hostility (???)

- a. There must be 'intent to harm, or overt hostility' – a deliberate (threat) touching, and also hostile behaviour *Wilson v Pringle*
 - i. Uncertainty on this point

6. Directness (???)

- a. Can be direct or indirect – persons taking action through another object can constitute a battery *Fagan & Katko*
- b. Denning argues that instead of dividing action in trespass in direct or consequential damage we must simply focus on intention *Letang v Cooper*
 - i. If a man throws a log of wood carelessly onto a highway and it either hits OR lands where a person stumbles over it – it is *negligence*
 - ii. Suggestion that an act may not have to be direct, just intentional

7. Remoteness

- a. You will be liable for all the consequences of the action that you intended to take – not just those that were RF *Bettel v Yim*
 - i. Remoteness and foreseeability is not an ingredient
 - ii. Protects the dignitary interest of the right of the ptf. to insist dft. will just keep their hands to themselves
 - iii. Test from Wagon Mound no.1 does not apply (harm must be RF)

8. Exceptions/ defences

- a. Actions in self-defence that may be deliberate are not actionable *Wilson v Pringle*
- b. Principle of necessity (also falls under consent) *F v West Berkshire*
 - i. Justification of an action that would be battery
 - ii. When it is not practicable to communicate with the assisted persons the action taken must be such that a RP would do, acting in the best interests of the person.
 - iii. "action privileged by emergency" "to preserve the life, health or well-being" e.g. medical treatment

9. Remedies (where injury or harm may become relevant)

- a. The result (injury/harm/damage) is only relevant in determining damages (*Katko*)

Assault

Crimes Act 1961 *Intentionally or attempting to apply force to another directly or indirectly or threatening by act or gesture causing the other to believe they had reasonable grounds to effect his purpose is assault.*

1. Intention

- a. Must be intention for the act to ensue *Tuberville*
- b. Where the person making the treat made it clear that he had no present intention of carrying out his threat, there is no assault *Tuberville*
 - i. BUT conditional threats can still constitute assault if the action could be carried out. Although apprehension of harm has decreased, certain intent and ability to carry out the action is still present *Police v Greaves; See Crimes Act s (2)*
- c. The act does not have to be carried out – the threat is enough *Brady*
 - i. Every person is assumed to intend the consequences of their act *Brady*

2. Reasonable apprehension of infliction of harm

- a. Standards of reasonableness are not subjective
 - i. RP of ordinary sensibilities *Brady v Schatzel*
 - ii. Fear is not a requirement, as otherwise assault would depend on a persons timidity/ courageousness *Richardson*
- b. Assault is complete when causing apprehension of harm (which could reasonably occur), whether or not the threat is carried out *Richardson, Steven v Myers*
- c. Any act causing another person to apprehend immediate and unlawful personal violence *Fagan*

3. Ability to carry out the threat

- a. The threatened act **must only be possible**; the act does not need to be done *Richardson, Steven*
 - i. CF WITH *Richardson (1989, Aus)*: A person must *reasonably believe that the threat could be carried out* – **whether or not it could be or is is irrelevant** – “apparent” ability to effect the act *Brady (1911)*
 - ii. CF – NZ more in line with *Brady* - An assault arises where the plaintiff has reasonable cause to believe the defendant could carry out the action *Police v Greaves (1964, NZ)*

4. Imminent threat or harm?

- a. *Richardson (Aus)* requires “intentionally creating in the victim a reasonable apprehension of imminent harmful or bodily contact by the aggressor
 - ii. But, there is a question of what ‘imminent’ is – today, tomorrow, next week?

5. Directness?

6. Remoteness

- a. You will be liable for all the consequences of the action that you intended to take – not just those that were RF *Bettel v Yim*
- b. NOT WM RF

7. Defences

8. Remedies (where injury or harm may become relevant)

- b. The result (injury/harm/damage) is only relevant in determining damages (*Katko*)

Assault	Battery
Can just be a threat with reasonable apprehension of harm	Involves actually physical contact, no apprehension
- In criminal law, battery and assault are defined as the same thing but in tort law they are different.	

False Imprisonment

1. Intention

- a. If one man compels another to stay in any given place against his will, he imprisons him – clear intention *Bird v Jones*

2. Infliction of restraint *Bird v Jones*

- a. Must be more than a mere loss of power – there must be some limits defined by a will or power exterior to our own (a boundary which prevents the party from passing Coleridge J)
- b. Must be total restraint on the liberty of a person
- c. Could be compelling some one to go in a given direction, but not when the dft. is “leaving the ptf. at liberty to stay where he is or go in any other direction” Pattenon J
- d. The ptf. does not need to be touched/ manhandled – it could be mental or psychological

3. Actionable per se *Bird v Jones*

- a. Any damage that has resulted will be relevant in awarding remedies
- b. Law attaches importance to liberty and if this is interfered with, even without special damaged, there is an action *Murray obiter*

4. Consent

- a. If one agrees to reasonable conditions upon entering and exiting of a place, if you fail to meet these conditions you are not imprisoned *Robinson*
- b. Formal words of arrest can be spoken after the fact under certain circumstances *Murray*
- c. The entrance into a place on terms and contractual relations holds bearing on the circumstances *Herd*

5. Knowledge

- a. It is possible for a person to be imprisoned in law without knowing or appreciating it *Meering*
- b. In *Murray*, it was decided the woman should have, by inference had knowledge of her arrest
 - i. In obiter it was also said that it was possible for a person to be imprisoned without their knowledge *Murray* as in *Meering*
- c. CF to 1834, *Herring* - restraint has not occurred if you did not know about it

6. Time

- a. Restrained: Length of time held imprisoned is irrelevant *Bird v Jones*

7. Area?

- a. Size in which imprisonment occurs is irrelevant *Bird v Jones*
 - i. Public places could still be a prison
- b. Prison is not just a defined ‘stone wall’ – it could be created by other means e.g. locking people in or restricting them in some way *Meering*

8. Jurisdiction

- a. Lawful justification is a defence to imprisonment
 - i. e.g. arrest by police

9. No defence that the dfts. acted honestly and on reasonable grounds

Intentional Infliction of Emotional Harm

Wilkinson (1897) was prior to *Donoghue (1932)* which is why damages can be recovered under IIED before negligence was developed in *Donoghue*.

1. Conduct must be “directed” at the claimant (1)
 - a. Words or conduct directed to the claimant for which there was no justification or reasonable excuse *Wilkinson*
 - b. Burden of proof rests on the claimant *Rhodes*
 - c. Being part of the general public is not specific enough *Rhodes*
 - i. What does directed mean?
2. Conduct must have been deceptive, threatening, abusive *Wilkinson*
 - a. Reality cannot be the above *Rhodes*
3. Intention (mental element of *Wilkinson* (2))
 - a. Intention of the dft. does not have to be express – it can be inferred and imputed
 - i. Subjective intention as actual intention may not have been to cause harm *Wilkinson*
 - b. Intention to cause severe distress
 - i. Do not have to intend recognisable psychiatric harm *Wilkinson*
 - ii. Mere distress is not enough *Rhodes*
 - c. Must show real intention to cause damage – we cannot use imputed intention, rather it must be gathered on the facts *Rhodes*
 - i. Cf to *Wilkinson: Rhodes* raises the threshold to prove intention - inferred RATHER THAN imputed
4. ‘...so plainly calculated’ to have an effect *Wilkinson*
5. Consequence (3)
 - a. Damage in the form of recognisable psychiatric harm is necessary, not actionable per se *Wilkinson*
 - i. (e.g. weight loss (x) vs. intolerable vomiting and hair whitening (yes))
 - b. There are issues in regard to future psychiatric harm – you cannot infer intended harm when the harm has not occurred, the chain of causation would be convoluted
 - i. (Would require him getting the book, reading it etc.) → THE WILKINSON TORT COULD NOT BE EXTENDED

Damages

Nominal	- An award of damages, but extremely small –an acknowledgment that there has been some infringement of your person
General compensatory (remembering ACC)	- Your rights have been infringed, but you might have been hit but not harmed in any way which will require attention
Special (actual quantifiable loss)	- Tangible harm, actual and quantifiable losses (ACC usually step in here)
Aggravated	- Compensatory when harm has been done to feelings/ humiliation without any injury
Vindictory	- Vindicating you for the breach of your rights - Similar to what might be covered under general damages but nothing to do with broken nose/ having to go to the doctor etc. rather it concerns a breach of rights
Exemplary	- In situations where the damage that has occurred to you is outrageous enough to attract exemplary - Designed to punish, not a compensator

