

Tort Law: Areas & Concepts to Focus

Topic 1: Trespass to the Person

- **Introduction to the torts of Trespass to the Person**
 - **Characteristics** of these torts:
 - Protect the inviolability of the individual
 - Protects interests of the person (rather than land, reputation, economic interests)
 - Intentional as opposed to negligent conduct
 - **Trespass to the Person covers:**
 - **Assault**
 - **Battery**
 - Defences to assault and battery
 - **False Imprisonment**
 - Defences
 - Place of **Trespass in Modern Law** of Tort
 - Rarely brought as a civil action because:
 - Criminal proceedings
 - Cost
 - Co-exists with Criminal Injuries Compensation Scheme
 - Dominance of tort of negligence
 - Important for the protection of individual rights:
 - bodily
 - integrity;
 - freedom of movement
- **Assault vs Battery**
 - Goff LJ in **Collins v Wilcock** [1984] 1 WLR 1172, 1177:
 - “An assault is an act which causes another person to apprehend the infliction of immediate, unlawful force on his person: a battery is the actual infliction of unlawful force on another person.”
- **Elements of Tort of Assault**
 - **Assault**
 - **Definition:** Act by the defendant in which the defendant intends to, and causes, the claimant reasonably to apprehend the direct and immediate application of force.
 - **Involves an Intentional Act:**
 - Def **intends** to cause the claimant to apprehend the application of direct and immediate force
 - **Requires Reasonable Fear:**
 - Cl **reasonably apprehends the direct and immediate** (imminent) **application of force.**
 - It is determined according to the cl's perceptions of the def's actions.
 - **Stephen v Myers 1840**
 - The claimant must have reasonably expected an immediate battery. defendant made a violent gesture at the plaintiff by waving a clenched fist, but was prevented from reaching him by the intervention of third parties. The defendant was liable for assault.

- The Cl **must believe that the threatened attack is possible** and will be carried out
 - **Thomas v NUM [1986] Ch 20**
 - During an organised strike by a miner's union, Cl wanted to work - went with a bus, threatened by crowd shouting and violent gestures - police stood between pickets & bus + bus protected miners - def incapable of causing damage, hence no assault offence made

- **What threats constitute an assault?**
 - **Mead's and Belt's case (1823) 1 Law 184, Holroyd J,**
 - 'no words or singing are equivalent to an assault'. Now words also may constitute assault.
 - **R v Ireland, R v Burstow [1998] AC 147, HL**
 - held that silent telephone calls may constitute an assault
 - **Tuberville v Savage (1669) 1 Mod 3**
 - Words accompanying a menacing gesture negative the inference,
 - **Read v Coker (1853) 13 CB 850**
 - Conditional threat

- **Torts of Battery**
 - **Battery**
 - Is the intentional and direct application of force to another person, which went beyond contact which is generally acceptable in the ordinary course of life
 - **Requires Intentional use of force:**
 - The defendant **must intend** the consequences of conduct which constitutes the tort - defendant foresees that their actions may result in relevant consequences, but goes ahead with the action
 - the **intention is relevant to the contact** (the direct application of force)
 - **Wilson v Pringle [1987] QB 237**
 - the intention as to contact is required, not an intention to bring harmful consequences
 - An intention to injure is not essential for action to trespass to the person
 - **Involves a Direct Application of Force**
 - **Application:** Any physical contact is sufficient:
 - does not require physical harm
 - does not require personal contact
 - Battery requires that force is **applied directly to the body of the cl as a result of the def's intentional act**. This req. of "**directness**" has been interpreted broadly by the courts:
 1. **Contact by a third party**
 - a. **Scott v Shepherd (1773) 2 Bl W 892** - face explosion via firework in marketplace
 - i. D: threw firework into crowded market. Thrown from one stand to another. Third party throwing it on - hitting victim in the eye.
 - ii. D: Liable despite 3rd party intervention
 2. **Contact made indirectly**
 - a. **Pursell v Horn (1838) 8 A & E 602;**
 - i. D: committed battery throwing quantities of boiling water over him

- ii. Liable despite indirect nature of contact
 - b. **R v Cotesworth (1704) 6 Mod Rep 172**
 - i. D: Spitting on someone
- 3. **Direct contact with the wrong person**
 - a. **Livingstone v MoD (1984)**
 - i. Soldier fired a rioter but missed and struck cl.
 - ii. doctrine of transferred malice - valid liability
- o **Level of Force**
 - Are all touchings battery? No precise level of force is established.
 - **Cole v Turner (1704)**
 - o held “the least of touching in anger is a battery”
 - **Collins v Wilcock (1984)**
 - o “anger” interpreted to mean that contact must be “hostile”
 - which was interpreted as “unlawful” acts
 - F v West Berkshire Health Authority [1989]
 - in the sense of being non-consensual
 - o Tort of battery = wide definition
 - **Distinguish battery** from legally unobjectionable conduct
 - o Courts exclude everyday situations touching (e.g. shopping, clubbing, bus)
- **Important CASE Law:**
 - o **Collins v Wilcock [1984] 1 WLR 1172 KEY CASE**

Case Type: criminal law case - but principles apply to civil law

Facts:

- convicted for assaulting a police officer in the execution of her duty
- seen by the officer with a prostitute soliciting in the street
- police went towards to them, defendant walked away
- one police officer followed
- defendant swore
- the officer took her hand to prevent her from moving on
- def. swore again & scratched her arm
- defendant arrested due to these events
 - o charged and convicted
- assaulting a police officer in the execution of her duty
- appeal - when the officer took hold of her arm to prevent her from moving her -

Issues:

- what is battery? was it a reasonable force to defend herself?
- The conduct of the police officer and grabbing hold of the offender’s arm in order to restrain her went beyond ordinary conduct, as she was not expressing her power to arrest at that moment
- Police officer’s battery

Principle:

- Every person’s body is inviolate, the touching of another, however, slight may amount to a battery.

- o **Exceptions (Collins v Wilcock; Applied in Goodenough v Chief Constable of Thames Valley [2020])**
 - Reasonable punishment of children
 - Lawful exercise of the power of arrest
 - Reasonable force used in self-defence
 - Implied consent
 - ‘physical contact which is generally acceptable in the ordinary conduct of daily

life'

- **Goodenough v Chief Constable of Thames Valley [2020] EWHC 695, [36]** - severe damage being pulled over - extraordinary touch
 - **Intentional Infliction of Harm by Indirect Means**
 - Originated in the case of **Wilkinson v Downton (1897)** - Mrs. Wilkinson told by Downton wrongly that husband had an accident. CI - mental breakdown & physical manifestations - Court - wilfully done act calculated to cause harm to P - foreseeability of consequences means intentional harm could be caused
 - Court: Def wilfully done an act calculated to cause harm to P.
 - to infringe her legal right to personal safety
 - thereby caused physical harm to her
 - a good cause of action there being no justification alleged for the act
 - In view of the judge, the act was intentional act to cause harm
 - Court - it is foreseeable in his action - it was a natural or possible consequence of his act
 - gave remedy for intentional harm by indirect means
 - Held: "A person who has wilfully done an act calculated to cause physical harm to the plaintiff- that is to say, to infringe her legal right to safety, and has in fact thereby caused physical harm to her" has provided a good cause of action (per Writ J.)
 - Approved in Janvier v Sweeney 1919
 - Purpose: Khorasandjian v Bush [1993] set:
 - Injunction preventing Def from 'harassing, pestering or communicating with Claimant'
 - Elements Clarified in James Rhodes v OPO (2015); Intentional
 1. Intention imputed: harm was the natural and probable consequence of the def's act
 2. Harm inflicted by indirect means
 3. Remedy for psychiatric harm
 - clarifies the elements of the rule in Wilkinson and Downton:
 - Three elements:
 - Conduct: words or conduct, directed to the claimant, for which there is no justification or reasonable excuse [74]
 - Mental: defendant intended to cause physical harm or severe distress which in facts results in physical harm/recognisable psychiatric illness [83]
 - Consequences: physical harm or recognised psychiatric illness [73]
- **Defences to assault and battery**
 - **Lawful Authority**
 - Certain interferences with the person are authorised by statute e.g. Police and Criminal Evidence Act 1984 which entitles the police to use reasonable force in furtherance of an arrest and the Mental Health Act 1984 which authorises the compulsory detention and treatment of those suffering from specified mental disorders.
 - **Self-defence**
 - **Use of reasonable force** in the defence self and of others
 - **Must be honest and reasonable** belief under imminent attack,
 - **Ashley v Chief Constable of Sussex Police [2008] UKHL 25**
 - in order for the defence to arise there must be an honest and reasonable belief that the defence of a self or another amounts to self-defence or another

- if an individual believes that it was honest, then self-defence can:
- Use of force, but **must be necessary**
- **Case Law:**
 - **Cross v Kirkby [2000] EWCA Civ 426**
 - def was being attacked by cl by **baseball bat**
 - def wanted to remove himself from injury
 - been unsuccessful in removing himself
 - claimant took the baseball bat and hit the def fracturing the def head
 - whether it was necessary or reasonable?
 - consider circumstances as the def has seen
 - Court: evidence available: being hit by baseball bat - was under threat of serious injury
 - attempt to walk away
 - he has used the moment - it was a heavy one in the circumstances the use of force and amount of force necessary and reasonable
 - **Gilchrist v Chief Constable of Greater Manchester Police [2019] EWHC 1233**
 - the police responded to an individual to be angry - covered in blood m, could communicate with them
 - the **use of CS gas and a taser on the individual was considered necessary and reasonable** as they believed to be reasonable
 - the brother said he was autistic - acting protectively - further use of CS gas or taser was not necessary or reasonable
 - **Goodenough v Chief Constable of Thames Valley [2020] EWHC 695: use of force was 'reasonable and proportionate in the circumstances' [54] -** smashed face pooling car over by police chase
- **Parental Authority**
 - Use of force by parents to chastise a child is debated - cited as involving HR possibility of contravention of art.3 of ECHR - freedom and inhumane treatment
 - A v UK 1998 2FLR 959 ECHR
 - Force against a child can constitute battery if force is disproportionate to behaviour or the child doesn't understand its purpose.
- **Consent**
 - e.g. if person gave consent to be hit - battery claim will be defeated
 - consent may be expressed or implied
 - must be given freely by a person with the mental capacity to do so
 - to chose to give or withhold consent
 - defence saw most use of is consent
 - defence to false imprisonment
 - used most to trespass to the person to contact that may amount to battery
 - SPORT: Contact within the rules of the game
 - across different sports - different touching permit will be allowed
 - where contact is part of the game - contestants give consent to that contact
 - if it goes beyond that - there is no consent and it would amount to battery
 - Context seen across courts seen most often in:
 - MEDICAL EXAMINATION/SURGERY: prima facie amount to a battery, no tort committed if a valid consent given to the

procedure.

- To be valid must be freely given; not obtained by fraud, force or undue influence.

- Re T [1992] 4 All ER 649 - Jehovah blood transfusion case

- Intentional infliction of force - battery - touching may be involved in medical treatment - that come within the scope of the treatment - patient must give consent before the procedure
 - consent must be given freely
 - cases concerning medical examination and treatment - constitute of mainly doctors seeking advice of the courts - whether an act would be battery or not (that there is consent)

- **Competent Adult**

- **An NHS Foundation Trust v P [2014] EWHC 1650** - the suicidal paracetamol 17yrs girl refusing life-saving treatment - ECHR art. 2 overruled capacity of the under-aged
- **Airedale NHS Trust v Bland [1993] 1 All ER 821, 860:** - removing life support case (no health improvement)
 - 'it is unlawful, so as to constitute .. a tort ... to administer medical treatment to an adult, who is conscious and of sound mind, without his consent....'
- Respect for autonomy:
 - **Re MB [1997] Fam Law 542, Butler-Sloss LJ reiterated:** The needle fearing emergency of woman to administer anaesthetic
 - the general principle: '[a] mentally competent patient has an absolute right to refuse to consent to medical treatment for any reason, rational or irrational, or for no reason at all, even where that decision may lead to his or her own death.'
- if no mental capacity to make decisions: **The mental Capacity Act 2005**
 - Decisions about patients who lack capacity (ss.2, 3) made according to their best interests are made on their behalf,
 - dementia
 - learning disability
 - in comma

(6) s 4 He must consider, so far as is reasonably ascertainable—

- (a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),
- (b) the beliefs and values that would be likely to influence his decision if he had capacity, and
- (c) the other factors that he would be likely to consider if he were able to do so.

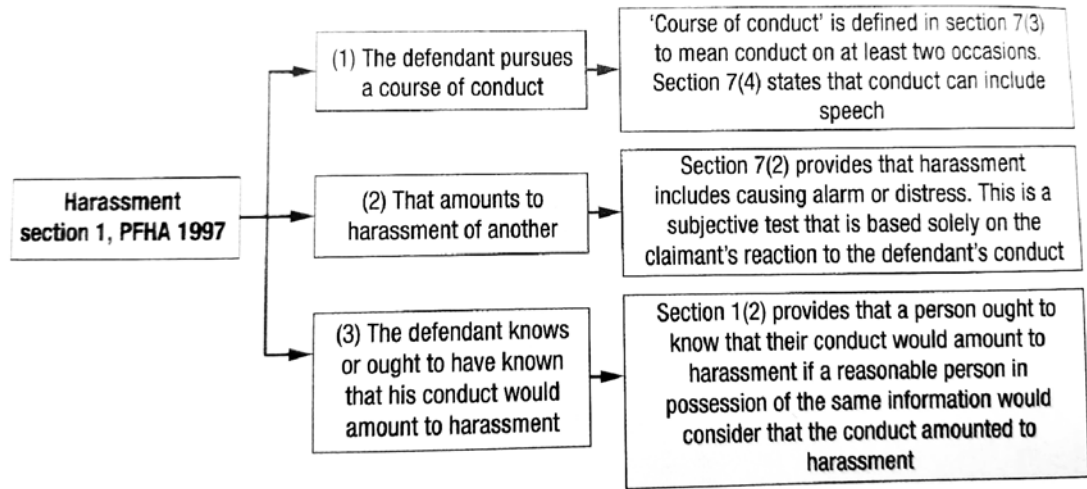
- **Necessity**

- Sometimes interference is needed to protect someone from more greater evil e.g. grabbing someone not to fall from cliff
- Used also as mean of authorising treatment of those lacking capacity under the MCA 2005
 - e.g. sterilisation of woman who was involved in sexual relationship with another patient F v West Berkshire HA 1990

- **Torts of False Imprisonment**

- **Definition: False** - Wrongful **Imprisonment** - deprivation of freedom of movement
 - Intentional infliction of bodily restraint which is not expressly or impliedly authorised by law
- **Elements** to consider:

1. Restraint
 2. Intention
- Restraint:
 - Complete restraint within defined bounds:
 - must be complete is not satisfied if:
 - The claimant can leave by another route
 - A reasonable means of escape
 - Bird v Jones (1845); - Partial Obstruction Bridge Case - total restriction needed
 - Hick v Young (2015) - CL completely restrained in a taxi
 - Austin v Metropolitan Police Commissioner (2009)
 - Prison Officers Association v Iqbal (2010) - CI prisoner confined in cell for 6 h during which he had the right to be out, No false imprisonment - it requires a positive act.
 - Knowledge
 - CI doesn't need to know of restraint during the time of restraint. Relevant only for damages.
 - Murray v Ministry of Defence (1998)
 - CI house was searched in her presence and she was arrested 30 min later. unclear if she was aware that she was not free to leave during the period prior her arrest
 - HoL - no req. for victim to be aware of denial of liberty - if person is unaware and falsely imprisoned, suffered no harm - no more than nominal damages are awarded
 - **Defences to False Imprisonment**
 - **Lawful Imprisonment**
 - Complete defence:
 - R v Deputy Governor of Parkhurst Prison (1991) -
 - Detention for longer amounts to false imprisonment
 - R v Governor of Brockhill Prison - past lawful sentence detained for longer - entitled to damages held court
 - **Multiple Offences - Torts**
 - A single set of events can involve more than a single tort
 - Commissioner of Police for the Metropolis v ZH [2013]
 - Autistic 16 yrs CI by poolside - approached by police bc fixed by the pool - touched, jumped inside, removed by lifeguards, restrained by poolside, detained for 25 min
 - Assault - prior touching
 - Battery - touching beyond ordinarily acceptable
 - False Imprisonment - Detained in van and restrained by poolside
 - **Harassment**
 - Prior to enactment of the Protection from Harassment Act 1997 - Wilkinson v Downton was one of the various means to impose tortious liability on those who caused distress and anxiety to others.
 - new Act = lack of need for creative use of other torts
 - **Protection from Harassment Act 1997**
 - **Definition**
 - **Harassment** is defined as the pursuit of a **course of conduct** that the **defendant knows or ought to know amounts to harassment of another**



■ Sections

- s 3 provides civil remedies creating a statutory tort of harassment
 - s 2 provides for remedies criminal offence of harassment
 - 2 Formulation of the statutory tort of the 1997 Act:
 - both formulations require def to enter into a course of conduct which amounts to harassment
1. Committed when def enters into 'a course of conduct which amounts to harassment which def knows or ought to know amounts to harassment',
 - requires a course of conduct
 - s 1(1); requires at least 2 occasions s 7(3)(a)
 2. OR def pursues a course of conduct harassing two or more persons by which he intends to persuade any person not to do something he is entitled
 - or required to do or to do something he is not under an obligation to do s 1(1A);
 - requires conduct on at least one occasion in relation to (to or more persons) each person s 7(3)(b)

■ TESTS

- **Subjective test**, Def knows conduct amounts to harassment
- **Objective test**, Def ought to know act amounts to harassment
 - if a **reasonable person** in d's position would think the course of conduct amounted to harassment s 1(2)
- **Roberts v Bank of Scotland [2013]** EWCA Civ 882 over 500 telephone call to CI by bank to talk about debts.

■ Used against Protestors

- **Huntingdon Life Services v Stop Huntingdon Animal Cruelty & Others [2003]** EWHC 1967 QB;
 - Animal Testing
- **Bayer plc and others v Shook & others [2004]** EWHC 332;
 - Genetically modified crops
- **Heathrow Airport Ltd and another v Garman [2007]** EWHC 1957
 - against the development of a further runway at Heathrow
- **Levi v Bates [2015]** EWCA Civ 206: (further insight on statutory tort) campaign of harassment against claimant's husband. 'harassment extends beyond the targeted individual only to those other persons.

■ Against Harassment at work

- **Majrowski v Guy's and St Thomas's NHS Trust [2005]** EWCA Civ 251 - employer liable for harassment between his employees

■ Cases

- **Wainwright v Home Office [2003]** REMEDY FOR NEGLIGENCE - PRISON SON STRIP SEARCH - NO intentional infliction of harm by indirect means,