Lecture # 11

Trespass to Person

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➢ Introduction to tort of trespass

- Trespass is an ancient set of wrongs which mainly deals with the **direct,** and usually **intentional, invasion of a claimant's interest either in person**, his land or his goods.
- The law of trespass today has much of its **origin in criminal law** where its function is deterrent than compensatory. For example an action will lie in trespass but not in negligence even if the claimant has suffered no damage. This shows its usefulness in **protecting civil rights** hence much of the law of **trespass is the basis of a civil liberties today**.
- Some cases of trespass can be filed under criminal law for example trespass to the person such as assault and battery. This occurs where a criminal offence has been committed. In such cases the courts have powers under the Powers of Criminal Courts (Sentencing) Act 2000, s.130 to make a compensation order.

▪ Meaning of term trespass

▪ Literal meaning

- The term trespass has been derived from a Latin word "transgression" meaning thereby to pass beyond or to transgress the law.

▪ Meaning in modern law

- Trespass is a voluntary wrongful act against the person of another or to do the disturbance of his possession of property against his will.

▪ Definition of trespass

- According to Merriam Webster Dictionary: "An unlawful act committed on the person, property or rights of another especially a wrongful entry on real property".

➢ Introduction: Trespass to person

- Trespass to the person means a **direct** or **an intentional interference** with a **person's body or liberty**.
- A trespass which was also a **breach of the King's peace**, however, fell within the jurisdiction of the King's courts, and in course of time the allegation that the trespass was committed with arms (By force and arms) came to be used as common form in order to preserve the jurisdictional propriety of an action brought in those courts, whether or not there was any truth in it.
- There are three main forms of trespass to a person, namely, **assault, battery** and **false imprisonment** and their common element is that the wrong must be committed by **"direct means".** Any direct invasion of a protected interest from a positive act was actionable subject to justification.
- If the invasion was indirect, though foreseeable, or if the invasion was from an omission as distinguished from a positive act, there could be no liability in trespass though the wrong-doer might have been liable in some other form of action.

- The principal use today of these torts relates not so much to the **recovery of compensation** but rather to the establishment of a right, or a recognition that the defendant acted unlawfully.
- These torts are **actionable without proof of damage** (or actionable per se), they can be used to protect civil rights, and also will **protect a person's dignity**, even if no physical injury has occurred (for example the taking of finger prints).
- Acts of trespass to the person are **generally crimes as well as torts**. Criminal proceedings may lead to compensation of the victim by the offender without a separate civil action, for since 1971 the criminal courts have had power to order an offender to pay compensation to his victim, and the court is now required to give reasons, on passing sentence, if it does not make a compensation order.
- The law has now become more complicated in the area of conduct covered by the trespass torts. For example, an adviser may have to consider civil liability under the Protection from Harassment Act 1997 which is in other respects much wider than trespass.
- The torts of assault and battery. Both are types of **trespass against the person**, and thus are intentional torts.
- Most people use "**assault" and "battery" interchangeably**, as if these terms refer to the same thing. Some criminal law statutes define assault to include battery. However, in civil law (i.e. non-criminal law) there is a technical difference, which you must learn. That is, in torts:
    - Battery must involve striking the person or body of someone else; but
    - Assault involves putting another person in fear of being struck—it does not need to involve actual striking.

What Constitutes Trespass to the Person?

- There are three main wrongs which fall under the umbrella of trespass to the person: assault, battery and false imprisonment.
- They are **intentional torts**, meaning they **cannot be committed by accident**.
- Although these descriptions sound like they are crimes, and indeed do share their names with some crimes, it is important to remember that these are civil wrongs and not criminal wrongs.
- A **person liable in tort for assault, battery or false imprisonment** will **not face a custodial sentence**. Instead, they will be **ordered to pay damages to their victim.**

Definition of trespass to person

- Wrongs affecting safety and freedom of the person are often termed as trespass to person.
- A person is said to have committed trespass to person when he is guilty of direct and forcible bodily interference with another without the latter's consent and such trespass is actionable at the suit of the latter whether or not he has sustained any actual damage.

Kinds of trespass to Person

1. Assault
2. Battery
3. False imprisonment

1. Assault

- **Introduction**
- In everyday language assault is taken to mean **physical contact**. But in tort, an assault occurs when a person **apprehends immediate** and unlawful physical contact.
- In common law, assault is the act of **creating apprehension** of an imminent harmful or offensive contact with a person.
- In other words, **fearing that you are about to be physically attacked** makes you the victim of an assault.
- It is also necessary that an **attack can actually take place**. If an **attack is impossible**, then despite a person's apprehension of physical contact there **can be no assault**. So a person waving a stick and chasing after another person who is driving away in a car would not be an assault.
- It is also generally thought that **words alone cannot constitute an assault**, but if accompanied by threatening behaviour the tort may have been committed.
- An assault is carried out by a threat of bodily harm coupled with an apparent, present ability to cause the harm. It is **both a crime and a tort** and, therefore, may result in either criminal and/or civil liability.
- Generally, the common law definition is the same in criminal and tort law. There is, however, an additional criminal law category of assault consisting of an attempted but **unsuccessful battery**. The term is often **confused with battery**, which **involves physical contact**.
- The specific meaning of assault varies between countries, but can refer to an act that causes another to **apprehend immediate** and **personal violence**, or in the more limited sense of a threat of violence caused by an immediate show of force.
- **Meaning of word Assault**
- The word "Assault" is derived from a Latin word "adsaltus" where "ad" means "upon" and "saltus" means "leap" and "adsaltus" means to leap upon. Hence the word "assault" means "a sudden attack".
- **Definition of Assault**
- **Assault is defined in Blackstone's Of Private Wrongs,**
- "An attempt to offer or beat another, without touching him: as if lifts up his cane, or his fist, in a threatening manner; or strikes at him, but misses him; this is an assault, insults, which Finch describes to be an unlawful setting upon one's person. This is also an inchoate violence, amounting considerably higher than bare threats; and therefore, though no actual suffering is proved, yet the party injured may have redress by action of trespass."
- Basically, an assault is an attempt or threat to cause harm to the other without any actual contact.
- **By Winfield:** Assault is an act of defendant which causes to the plaintiff reasonable apprehension of the infliction of battery on him by the defendant.
- Assault is an act which intentionally or recklessly causes another person to fear immediate and unlawful hurt or violence.

- Whoever makes any gesture or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who make that gesture or preparation is about to use criminal force to that person is said to commit an assault.
- **Illustration**
- A pointing at B an unloaded pistol would create fear and apprehension in B of injury to his body; it would be an assault by A against B.
- **Explanation of Assault**
- An assault is any **direct** and **intentional threat** made by a person that places the **plaintiff in reasonable apprehension of an imminent contact** with the plaintiff's person, either by the defendant or by some person or thing within the defendant's control.
- The essence of the wrong of assault is putting a man in **present fear of violence**, so that any act fitted to have that **effect on a reasonable man** may be an assault. But **mere verbal threat is no assault** nor is a threat consisting of gesture, unless there can be an **immediate intention and a present ability to carry it out.**
- Assault involves **making another person fearful** that an offence and unwanted contact are imminent (i.e. in immediate danger of happening).
- But, unlike battery, it involves **no element of actual contact with the other person**.
- Thus, the effect on the victim's mind created by the threat is the crux, not whether the defendant actually had the intention or means to follow it up. The intent required for the tort of assault is the desire to arouse an apprehension of physical contact, not necessarily an intention to inflict actual harm.
- In **Rixon v Star City Pty Ltd (2001) 53 NSWLR 98**, the plaintiff was an excluded gambler who had unlawfully returned to the casino to play roulette. Employees of the casino saw him and identified him as an excluded person. He was approached and accompanied to an "interview room" where he was required to remain until police arrived sometime later. Mr Rixon unsuccessfully sued for damages for assault, battery and false imprisonment. In relation to the assault issue, the facts were that a casino employee had placed his hand on the plaintiff's shoulder and, when he turned around, asked him: "Are you Brian Rixon?". These actions were central to the question as to whether Mr Rixon had been the victim of an assault and, in addition, a battery.
- Sheller JA (with whom Priestley and Heydon JJ agreed) stressed the distinction referred to in Fleming set out above. His Honour said that, on the facts of the case, the primary judge had been correct to find that the employee did not have the intention to create in Mr Rixon's mind the apprehension of imminent harmful conduct. Moreover, the employee's placement of his hand on the plaintiff's shoulder did not constitute a battery. On the false imprisonment claim, the court found that the Casino Control Act 1992 and its regulations justified the plaintiff's detention for a short period of time until the arrival of the police.
- In **State of New South Wales v Ibbett (2005) 65 NSWLR 168** the Court of Appeal upheld the trial judge's factual findings while increasing the damages awarded. The circumstances of the case were that two policemen gave chase to Mr Ibbett, in the township of Foster, suspecting that he may have been involved in a criminal offence. They pursued him to a house where he lived with his mother, Mrs

Ibbett. Without legal justification, one of the policemen entered the property and arrested Mr Ibbett. His mother came into the garage where these events occurred. The police officer produced a gun and pointed it at Mrs Ibbett saying, "Open the bloody door and let my mate in". Mrs Ibbett, who was an elderly woman, had never seen a gun before and was, not unnaturally, petrified.

- The trial judge held that both police officers had been on the property without unlawful justification and, additionally, the confrontation between the police officer and Mrs Ibbett was more than sufficient to justify the requirements of an immediate apprehension of harm on her part, so as to amount to an assault. The Court of Appeal agreed with the trial judge as later did the High Court.
- An assault is an act which intentionally causes another person to apprehend the infliction of immediate, unlawful, force on his person.
- **R v Meade and Belt (1823) 1 Lew. C.C. 184**
- **Facts:** The defendants surrounded the victim's house singing threatening and menacing songs.
- **Held:** No assault was committed.
- **Holroyd J** "no words or singing are equivalent to an assault"
- However, the House of Lords have more recently stated that an assault can be committed by the Court of Appeal in:
- **R v Constanza [1997] Crim LR 576**
- **Facts:** The defendant mounted a campaign of hate against an ex-work colleague over a period of 20 months. He sent over 800 threatening letters, would follow her home, wrote offensive word on her front door, drove past her house, and stole items from her washing line. As a result she suffered clinical depression. He was charged with ABH under s.47 OAPA 1861. The defendant contended that words alone could not amount to an assault and that the letters could not amount to an assault as there was no immediacy.
- **Held:** The defendant's conviction was upheld. The jury was entitled in the circumstances to find that immediacy was present and words can amount to an assault. Meade & Belt overruled.
- **The** claimant must have reasonably expected an immediate battery. It is much more authoritative that words will not constitute an assault if they are phrased in such a way that negatives any threat that the defendant is making.
- **Stephens v Myers (1830) 172 ER 735**
- **Facts:** In a turbulent parish council meeting, the meeting voted to have the defendant ejected. He refused, and advanced toward the chairman waving his clenched fist and saying he would rather throw him from the chair. He was stopped before getting within striking distance, but the chairman sued for assault.
- **Held:** The claim succeeded. **Tindal CJ said**: 'It is not every threat, when there is no actual personal violence, that constitutes an assault, there must, in all cases, be the means of carrying the threat into effect.'
- ## Apprehension of striking: the essence of assault
- The essence of assault is **putting a person in fear of being struck**. It is that person's apprehension of being struck which is important, rather than the aggressor's actual interference with the body or intention to do harm.

- **Hence Fleming has written:** *Since the gist of assault lies in the apprehension of impending contact the effect on the victim's mind created by the threat is the crux, not whether the defendant actually had the intention or the means to follow it up. The intent required for the tort of assault is the desire to arouse apprehension of physical conduct, not necessarily to inflict actual harm.*

Reasonable apprehension

- This requirement means that an assault cannot be proved if the **plaintiff is not aware of the threat**. Moreover, the **apprehension must be a reasonable** one. Thus, if an unloaded gun or a toy pistol is pointed at the plaintiff, the defendant will not be liable where the plaintiff knows or has reason to believe that the gun is not loaded or is a toy:
- **Logdon v DPP [1976] Crim LR 121**
- **Facts:** The defendant pointed an imitation gun at a woman in jest. She was terrified. The defendant then told her it wasn't real.
- **Held:** An assault had been committed as the victim had apprehended immediate unlawful personal violence and the defendant was reckless as to whether she would apprehend such violence.
- The **victim's fear** that the threat is likely to be carried out must be reasonable. This partly depends on a subjective test which looks at the victim's view of the situation.
- In **R v St George** the judge said that it is an assault to point a weapon at a person though not loaded, but so near that if loaded, it might do injury. However, if the victim knew that the gun was unloaded, any fear would be regarded as unreasonable.
- The threat must be **capable of being carried out at the time it is made**. In cases of telephone threats, the House of Lords in R v. Ireland indicated that the fear should be that the assailant would be likely to turn up 'within a minute or two'
- **R v Ireland [1997] 3 WLR 534 House of Lords**
- **Facts:** The defendant made a series of silent telephone calls over three months to three different women. He was convicted under s.47 Offences against the Person Act 1861. He appealed contending that silence cannot amount to an assault and that psychiatric injury is not bodily harm.
- **Held:** His conviction was upheld. Silence can amount to an assault and psychiatric injury can amount to bodily harm.
- **Lord Steyn:** "It is to assault in the form of an act causing the victim to fear an immediate application of force to her that I must turn. Counsel argued that as a matter of law an assault can never be committed by words alone and therefore it cannot be committed by silence. The premise depends on the slenderest authority, namely, an observation by Holroyd J. to a jury that "no words or singing are equivalent to an assault": Meade's and Belt's case 1 (1823) 1 Lew. C.C. 184. The proposition that a gesture may amount to an assault, but that words can never suffice, is unrealistic and indefensible. A thing said is also a thing done. There is no reason why something said should be incapable of causing an apprehension of immediate personal violence, e.g. a man accosting a woman in a dark alley saying "come with me or I will stab you." I would, therefore, reject the proposition that an assault can never be committed by words."
- "The proposition that the Victorian legislator when enacting sections 18, 20 and 47 of the Act 1861, would not have had in mind psychiatric illness is no doubt correct. Psychiatry was in its infancy in 1861.

But the subjective intention of the draftsman is immaterial. The only relevant enquiry is as to the sense of the words in the context in which they are used. Moreover the Act of 1861 is a statute of the "always speaking" type: the statute must be interpreted in the light of the best current scientific appreciation of the link between the body and psychiatric injury. For these reasons I would, therefore, reject the challenge to the correctness of Chan-Fook [1994] 1 W.L.R. 689. In my view the ruling in that case was based on principled and cogent reasoning and it marked a sound and essential clarification of the law. I would hold that "bodily harm" in sections 18, 20 and 47 must be interpreted so as to include recognizable psychiatric illness."

- **Examples:**
- To throw water at a person is an assault but if any drops fall upon him it is battery.
- Pulling a chair as a practical joke from somebody who is about to sit on it is an assault until he reaches the floor because as he is falling he reasonably expects that the withdrawal of the chair will result in harm to him. When he hits the floor and gets hurt, then it is a battery.
- **Propositions**
- Abusive and threatening emails and text messages are the most recognized growing forms of assault. This area of law must be looked into since it is a prominent channel being used to commit assault.
- **Conduct constituting a threat**
- Although threats that amount to an assault normally encompass words, they will not always do so. For example, actions may suffice if they place the plaintiff in **reasonable apprehension** of receiving a battery. As to words, in **Barton v Armstrong [1969] 2 NSWR 451** a politician made threats over the telephone and these were held to be capable of constituting an assault. Given the explosion of modern methods of media communication, there is no reason why threats made in emails, text messages or on Facebook (so long as they satisfy the legal test) could not qualify. Importantly, the reasonable apprehension must relate to an imminent attack.
- **Note:** the requirement is for an imminent (about to occur) battery, not an immediate one.
- **When does a threat of striking constitute assault?**
- **Threat but not assault**
- Suppose that a woman is standing on one side of a wide river and you are standing on the other side. The woman raises her fist at you in a threatening way. She has not committed an assault because of her distance from you. There is a threat but it is not immediate.
- **Threat that is assault**
- On the other hand, suppose that the woman produces a gun and points it at you. That is assault because there is a real possibility that she can carry out her threat.
- Suppose that the circumstances of example above were somewhat different. The woman waves her fist threateningly, and the river is fairly narrow and has a bridge over it, or a boat is moored on her side of the river. In those circumstances, she might mean that she is coming across to give you a thrashing. Is that assault?

- **Thomas -v- National Union of Mineworkers (South Wales Area); ChD 1985**
- Threats made by pickets to those miners who sought to go to work were not an assault because the pickets had no capacity to put into effect their threats of violence whilst they were held back from the vehicles which the working miners were within. The plaintiffs were, however, entitled to enjoy their right to use the highway to go to work without unreasonable harassment and that picketing by 50 to 70 striking miners shouting abuse was a tortious interference with that right. The actions of the striking miners were therefore actionable in nuisance.
- **Now** suppose that the woman on the other side of the river produces a gun. The evidence later shows that the gun was a toy gun or perhaps a real gun with no bullets in it. You did not know this fact when you were standing by the river. Has the woman committed an assault?
- **R v St. George (1840) 9 C & P 483**
- **Facts:** St. George had an argument with Mr Durant and took out a gun. Before he could shoot another person prevented him from shooting.
- **Held:** Assault. The person was in fear that he would be shot by the gun.
- **Blake v Barnard (1840) 9 C & P 626**
- A man put his gun at the head of another and said, 'Be quiet or I blow your brain out'.
- No assault. If the person did what he is told nothing would happen.
- **Consider** another combination of events. The woman waves her fist, and there is a bridge across the river that she starts to run across while still waving her fist at you. But a group of tourists on the bridge see what is happening and stop the aggressor. Would her behaviour be an assault?
- **Stephens v Myers (1830) 4 C & P 349**
- A person wanted to hit another. A third man took his arm and thus stopped him hitting the other person.
- Assault. The person was in fear of being hit.

Conditional threats

- Threatening actions can constitute an assault. But not all threats will do so. Sometimes the person does a threatening action in such a way or with such **accompanying words** that we must see the threat as conditional—that is, the person would only carry it out under certain circumstances.
- **Suppose** that a salesman comes to your door and asks you to buy some of his company's products. You are not at all interested in what he has to say as you are tired of being pestered by people like him. You say to him, "You are on my property. I do not want you here. You people are a nuisance. Go away." The salesman does not leave but continues to try to talk to you. You say to him, "You have 10 seconds to get out my front gate or I will punch you in the mouth (belt you in the ear / scramble your brains / break every bone in your body etc.)".
- The language used in example above certainly shows that you have issued a threat. But the question is: **Does that threat constitute an assault?**
- Conduct amounts to something which threatens the use of unlawful force. In addition to physical action, threats can also be conveyed verbally unlike in the past when threatening words could not amount to an assault. This has been attributed to by the rise of new means of communication e.g.

telephone and email. Where a verbal threat by these means can weigh the same as a gesture supported by threatening words which can however have the opposite effect by making it clear that the assailant does not intend to carry out the threat.

- **Tuberville v Savage (1669) 1 Mod Rep 3**
- **Facts:** Tuberville put his hand upon his sword and said 'If it were not assize-time, I would not take such language from you.' Savage sued Tuberville for assault. (Note that an assize is a circuit court.)
- **Issue:** What are the elements of the tort of assault?
- **Holding and Rule:** To be liable for assault at least one of the following must be present:
- 1. an act intending to cause harmful control to another person, or imminent apprehension, or
- 2. a third person put in apprehension if he believes the person can do damage. An assault exists even if the other party can defend against the action and the action is not inevitable. Mere threats of future harm are insufficient.
- In this case the court held that the declaration of Tuberville was that he would not assault Savage at that point in time. To commit an assault there must be intention followed by an act. An assault is present if the fear is reasonable. The court held that in this case there was clearly no intention of assault.
- **Notes:** Threats of future harm are insufficient to establish assault. Conditional threats may suffice where the defendant has no privilege to assert them.
- In **Read v Coker (1853)** the Claimant was told to leave the premises where he conducted his business. He refused and the Defendant collected some workmen who stood near the Claimant with their sleeves rolled up and told him that they would break his neck if he didn't leave. He did leave and later brought a successful claim for assault as there was a threat of violence and the means to carry it out. However, not every conditional threat will be an assault.
- The question of whether there was an apprehension of force is necessarily linked to how realistic the threat is, but the former cannot be solely governed by the latter. A threat may not be very realistic (i.e. I'm going to rent that car and run you over) but it may still create an apprehension of immediate force. Another example would be where one points an unloaded gun at a Claimant (which the Claimant doesn't know is unloaded); this would be an assault: R v St George (1840). A common sense balance needs to be struck depending on the facts of the case.
- **Smith v Chief Constable of Woking (1983) 76 Cr App R 234**
- **Facts:** The defendant peered through the window of a young woman's home late at night. He had entered the garden and went up to the window and peered through a gap in the curtain. The woman saw him and screamed but he did not move but kept staring she phoned the police. He was charged with an offence under the Vagrancy Act 1864 which required proof of an assault. He was convicted and appealed contending that the prosecution had failed to establish the victim had apprehended immediate unlawful personal violence. He accepted that she was frightened but that she could not have been frightened of personal violence as he was outside the house and she was inside.
- **Held:** Conviction upheld
- **Kerr LJ:** "In the present case the defendant intended to frighten Miss Mooney and Miss Mooney was frightened. As it seems to me, there is no need for a finding that what she was frightened of, which she

probably could not analyse at that moment, was some innominate terror of some potential violence. It was clearly a situation where the basis of the fear which was instilled in her was that she did not know what the defendant was going to do next, but that, whatever he might be going to do next, and sufficiently immediately for the purposes of the offence, was something of a violent nature. In effect, as it seems to me, it was wholly open to the justices to infer that her state of mind was not only that of terror, which they did find, but terror of some immediate violence. In those circumstances, it seems to me that they were perfectly entitled to convict the defendant who had gone there, as they found, with the intention of frightening her and causing her to fear some act of immediate violence, and therefore with the intention of committing an assault upon her: Accordingly, I would dismiss this appeal."

- **Limitations to ability to assert private rights**
- There are limits to how much you can assert private rights. If a superior legal authority is involved, it can overtake your private rights.
- You will need to get used to the way that we constantly make a distinction between things which are **legal** and things which are not.
- Suppose that two police officers come to Mr Singh's door with a warrant to search the property. Mr Singh says, "Get the hell off my property or I will kill you."
- That is clearly an assault.
- **Recent changes in approach**
- However, the question of whether **words can be an assault** has been contentious for a long time, and the courts appear to be changing their approach to it. Think about it for a moment. People can use words in very threatening ways. Words can create fearful situations, perhaps even more than actions.
- In some decisions this century, the courts have held that words alone constitute assault. In Australia, in **Barton v Armstrong [1969] 2 NSWLR 451**, the court held that words spoken in a phone conversation constituted an assault. According to the court, the words spoken created the appropriate apprehension in the mind of the plaintiff, so it was not possible to regard them as "mere words".
- **R v Wilson [1955] 1 All ER 744**
- The defendant shouted 'get out the knives' a physical fight developed and the defendant was charged under s.47 Offences against the Person Act OAPA 1861. Lord Goddard stated that the words would by themselves amount to an assault. The case was actually decided on the physical aspects which demonstrated a battery was present and thus the comments relating to words were merely obiter dicta.

Essential elements of Assault

- **Preparation or gesture**
- That there was some gesture or preparation which constituted a threat of force.
- **Reasonable apprehension**
- That the gesture or preparation was such as to cause a reasonable apprehension of force.
- **Culpability**
- A state of guilt. That there was a present ostensible ability on the defendant's part to carry out the threat into execution immediately.

Salient features of Assault

- **Show of force**
- Assault is only a show of force and use of actual or physical force is not necessary and only the threat to use force with intension is considered as an assault.
- **Apprehension of immediate violence**
- In assault a reasonable apprehension of immediate personal violence is an essential requirement and in the absence of fear of immediate personal violence, there is no assault, e.g. a threat to inflict harm at sometimes in the future.
- **Reasonable belief**
- Along-with the reasonable apprehension of use of force, the plaintiff must also have reasonable belief that the defendant is capable enough to carry out his threat.
- **Oral threat or mere words**
- Oral threat or mere words do not amount an assault as the use of immediate force is absent.
- **Nature**
- As assault is treated both as tort and crime.

Simple versus Aggravated Assault

- The criminal laws of many states classify assaults as either simple or aggravated assaults, according to the **gravity of the harm that occurs** -- or is likely to occur if the assaulter follows through and attacks the victim.
- **Aggravated assault is a felony** (A serious crime such as murder) that may involve an assault committed with a weapon or with the intent to commit a serious crime such as rape.
- As an alternative to classifying assaults as either simple or aggravated, some states recognize the different levels of harm that assaults can cause by classifying them as first (most serious), second, or third degree (less serious) assaults.
- Aggravated Assault Case Example: Alyssa is walking alone late at night when a man suddenly jumps in front of her and drags her into the bushes. The man strikes Alyssa a couple of times and begins to rip at her clothes. Fortunately, Alyssa strikes the attacker with a rock and runs away to safety. The attacker is guilty of aggravated assault because the circumstances indicate that he assaulted Alyssa with the intent of raping her.
- In **Stephen v Myers (1830),** the Claimant was a chairman at a meeting sat at a table where the Defendant was sat. There were six or seven people between the Claimant and Defendant. The Defendant was disruptive and a motion was passed that he should leave the room. The Defendant said he would rather pull the chairman out of his chair and immediately advanced with his fist clenched towards the Claimant but was stopped by the man sat next to the chairman. It seemed that his intention was to hit the Claimant. The Defendant argued that there was no assault as he had no power to carry out his threat as there were people in between. The court said that not every threat is an assault. There needs to be a means of carrying that threat into effect: it must a realistic threat of personal violence. The judge directed the jury (as juries were still in use at the time) that if the Defendant could have reached the chairman and hit him there was an assault. But if the Defendant did

not have the intention of hitting the Claimant or it was not realistic that he could reach the Claimant, then there is no assault. The jury found for the Claimant.

- **R v Ireland; R v Burstow [1998],** an important House of Lords case, was concerned with the criminal definition of assault. The court considered whether an assault could be committed by silence over the telephone. The court said that an assault can be committed by words without any menacing physical actions. Even though the caller over a telephone cannot present a direct physical threat to the victim (and so it might be said that they cannot realistically carry out their threat) it may be possible that where the caller says "I will be at your door in a minute or two" there will be an assault as this is direct enough. The question is does the act cause the victim to fear the immediate apprehension of force. Where you have a silent caller they intend their silence to cause fear and they are so understood. It may be fear that the caller will be at the door imminently. If so there is an assault. The Defendant was using his silence as a means of conveying the message to the victims and he intended to do so.
- In **Thomas v NUM [1986]** it was held that striking miners (Laborer who works in a mine) had not committed an assault against miners who continued to work by picketing the roads to the mines and shouting abuse at them as the miners were in vehicles and the picketers were held back.

2. Battery

- **Introduction**
- If the **physical contact that is apprehended in an assault** actually **takes place**, then the **tort of battery has been committed.** It is not necessary for the physical contact to cause any injury or permanent damage to the victim, or even be intended to do so. The **only intention required** is that of **making physical contact.** It is also not necessary for the tortfeasor, that is, the wrongdoer, to **actually touch the victim,** so battery may be committed by throwing **stones at someone** or spitting on them.
- But it is not every threat, when there is no actual personal violence that constitutes an assault; there must, in all cases, be the means of carrying the threat into effect.
- **With respect to battery**, assault can be defined as an act of the defendant which causes the claimant **reasonable apprehension of the infliction of a battery on him by the defendant.** Thus, Battery occurs where there is contact with the person of another, and assault is used to cover cases where the claimant apprehends contact. There is a widespread belief that battery is hitting or striking someone else. In a way, this view is partly right.
- **Meaning of Battery**
- Battery means “any unlawful touching of another without justification or excuse”.
- **Definition of Battery**
- Battery is the actual application of unlawful force to another person whether directly or indirectly.
- **According to Winfield:** Battery is the intentional use of force to another person without legal justification.
- “Whoever intentionally uses force to any person, without that person’s consent in order to the committing of any offence or intending by the use of such force to cause or knowing it be likely that by

the use of such force he will cause injury, fear or annoyance to the person to whom the force is used is said to use criminal force to that other or in other commits battery".

- **According to case law: Railways v/s Till, 1837:** "Battery requires actual contract with the body of another person so a seizing and laying hold of person so as to restrain him, spitting in the face, throwing over a chair, throwing water over a person, striking a horse so that it bolts and throws its rider, taking a person by the collar, are all held to amount to battery".

- **Explanation**

- Battery consists in **touching another's person** hostility or against his will, however slightly. It is **actual application of force** to the person of another, done **without justification**, in a rude, angry, insolent or revengeful manner.
- In other words, the intentional application of the force to the person of another without lawful justification, however trivial the amount or nature of force may be, constitutes the wrong of battery.

- **Degree of force to constitute battery**

- Where any person uses force against any other person **without any lawful justification** it's constitute battery. It is **not relevant how little or greater the force is employed**.

- **Essential elements of battery**

- In an action for battery, the plaintiff must prove that;

- **Use of force**

- In battery use of force is must and without use of force a battery can never be constituted. The plaintiff has to prove the use of force to him. The amount of force used is immaterial, so the least touching of another in anger is considered as battery. In this tort, any physical contact with a person's body or the clothes they are wearing can be sufficient to amount to force; there is no requirement for violence or physical harm. This means as stated above, that in the right circumstances, a kiss can be a battery, as can giving someone medical treatment that is designed to save their life. The essence of the tort is a belief that we all have a fundamental right to 'bodily integrity' or, to put it more simply, to be 'let alone' by others.

- **Intention**

- The plaintiff has also to prove that the use of force was intentional. So any involuntary act cannot be considered as battery. In battery, use of force is intentional, e.g. if a person hits another intentionally to hurt, it is a battery, but if the incident happened accidentally, then it will not be a battery.

- **Justification**

- In battery, intentional use of force is without lawful justification. The force used was without any lawful justification. So if force is used as permitted or authorized under law, then it will not be considered as a battery.

- **Amount of force**

- In battery, the amount of force is irrelevant. So even the least touching without consent of another is considered as a battery.

- **Application of force**
- In a battery, the application of unlawful force can either be direct or indirect. For example to throw a stone on someone is a direct; but to put a stone on the way that someone will be obstructed is an indirect.
- **DDP v K [1990] (Acid)**
- Even though the acid wasn't directly thrown in the defendant's face, an action in battery was still found.
- The courts have interpreted 'directness' flexibly, and there is more likely to be a claim if there is a shorter period of time between the act and the infliction of force.
- **Apprehension**
- In battery reasonable apprehension of the use of force is not an essential requirement. So even a below from behind can constitute a battery.
- **Words do not amount to battery**
- Words do not amount to battery because the intentional unlawful application of force is absent.
- **An extra element**
- From the above discussion you will realize that an enormous amount of perfectly ordinary everyday behaviour would appear to fit the definition of battery: jostling someone as you get on a train; touching someone's arm to get their attention; or putting an arm round someone to comfort them, for example.
- Most of us would agree that these forms of contact are usually acceptable, whereas punching someone or shooting at them is usually not.
- In between, however, there are areas where two parties may disagree on what is and is not acceptable: the uninvited kiss at the office party may seem like a friendly gesture to the person giving it, but an unwanted intrusion to the person receiving it, for example.
- Equally, most of us would want the right to prevent doctors from giving us medical treatment we did not want, even if they believed it was in our best interests.
- For this reason, the courts have tried to pin down what it is that decides whether a particular application of direct force is a battery, or normal everyday contact.
- In early cases, it was suggested that jostling in a crowed and similar types of contact were not trespass because each of us gives implied consent to that kind of contact when we go about life in places where there are other people.
- **Wilson v Pringle [1987]**
- Schoolboys playing in the corridor- one got injured. The defendant argued that it was not an actionable battery as there was no hostility/intention to injure.
- **It was held** that the claim would fail if the defendant could demonstrate that the touching was generally acceptable in the ordinary conduct of daily life.
- In normal language, we would take this to mean whether the defendant had some kind of aggressive or harmful intent, which might have been quite a useful definition, but the court went on to say that by hostility, they did not actually mean ill-will. What they did mean was rather less clear.

- **Re F (Mental Patient Sterilisation) [1990]**
- 'treatment by a surgeon who mistakenly thinks a patient consented/an over-friendly slap on the back/ a prank that gets out of hand.- all of these things may transcend the bounds of lawfulness, without being hostile.
- THEREFORE, hostility is not necessary for the requirement of unlawful force.
- **Regina -v- Broadmoor Special Hospital Authority**
- A hospital admitting a patient under the Mental Health Act has the power to search the patient. Each hospital's policy, however, remains individually assessable for Wednesbury unreasonableness.

Culpability

- The general question here is: when does the law treat some action as culpable (i.e. legally wrong) and when does it not? Culpability means that a person must bear legal responsibility for the action (or possibly inaction) in question. A culpable person exposes himself or herself to liability. If a person is culpable for a tort, he or she is a tortfeasor.
- **Case law as basis for determining culpability**
- Issues of culpability are at the centre of questions about torts and crime and many other areas of law as well. Culpability sounds like a very simple idea. But, how do you determine it? You look to see whether there is an established legal wrong known to the legal system, and identify the principles that establish these wrongs. Statutes (i.e. Acts of Parliament) declare some actions or inactions to be wrong. More commonly (and especially in tort law as we have already indicated) actions or failures to act are legal wrongs because evolved case law has declared them to be so. In relation to basic principles of battery, it is definitely the cases rather than the statutes that provide the relevant source of law.
- In addition to telling us that striking or touching another person is a legal wrong, the cases show:
  - that battery is an intentional tort, i.e. that intention is an element which a plaintiff must prove in order for an action against the striker to be successful;
  - when it is excusable or permissible to strike another; and
  - When the striker might have a good defence to an action for battery.

The legal concept of battery

- The discussion above raises some important issues. What **form of contact** ought to be sufficient to amount to battery? Should people be excused in cases where the contact was slight and does no physical harm? Should necessity be a defence? Can I be legally culpable if the other party consented to the contact? What if the contact was the result of a mistake?
- Also, in our discussion above we did not mention self-defence. If I acted to save myself or someone near me from an imminent attack, surely I should be excused from liability? Obviously, yes. However, consider the following example.
- "I did it in self-defence"—a confession and an excuse
- Suppose one person was walking with a dog, some boys came and dog beaten by them. Person in defense yelled out for help and tried to save the dog.

- The principle is incorporated into the law relating to both battery and assault. That is, legitimate defence of yourself, other persons and your property against attack should excuse you from wrongdoing.
- However, there must be limits to how much this defence can excuse your behaviour. Why? Because without limits, a person could overreact to almost any degree, and still the courts would excuse that behaviour on the ground of self-defence. So the principle which must accompany the principle of self-defence is that the defence must only be such as was both necessary and appropriate to repel the attack.

The technical elements in battery

- Battery is constituted by the intentional and unjustifiable contact made by one person with the bodily person of another without the latter's consent.
- As we have said before, battery is an **intentional tort.** If it is intentional, that implies an action **other than accidental touching**. It also implies that it is not an action which is the product of ordinary negligence—although note that negligence is also a tort and such an act of negligence might give rise to a separate cause of action if injury is involved.

Element of intention

- Thus the **plaintiff must prove intention** as one element in a successful action for battery. That is, the plaintiff must show that the aggressor either desired the contact or knew that the action in question would most likely lead to the contact.
- There is authority to say that the plaintiff might establish intention if the aggressor recklessly undertook a course of action which led to contact. Intention could not be established if the aggressor merely intended to frighten the plaintiff and made contact accidentally. However, if the aggressor intended only to frighten and undertook a course of conduct which was highly risky or highly likely to produce contact, that would be sufficient to amount to intention.
- **Letang -v- Cooper; CA 15-Jun-1964**
- Facts: The plaintiff, injured in an accident, pleaded trespass to the person, which was not a breach of duty within the proviso to the section, in order to achieve the advantages of a six-year limitation period.
- **Held:** Trespass is strictly speaking not a cause of action but a form of action. It was the form anciently used for a variety of different kinds of claim which had as their common element the fact that the damage was caused directly rather than indirectly; if the damage was indirect, the appropriate form of action was the action on the case. A negligent trespass to the person could only be pursued in negligence and not in trespass. A cause of action was defined: 'a cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.' (Diplock LJ)
- **Lord Denning MR** said that the cause of action of trespass to the person was limited to intended acts, and that when the act was not intended the plaintiff's cause of action lay in negligence. He referred to the Tucker report which parliament had not adopted: 'In this very case, Parliament did not reduce the period to two years. It made it three years. It did not make any exception of 'trespass to the person' or

the rest. It used words of general import; and it is those words we have to construe, without reference to the words of the Committee.' 'Breach of duty' in the section meant any breach of duty: 'Our whole law of tort today proceeds on the footing that there is a duty owed by every man not to injure his neighbour in a way forbidden by law. Negligence is a breach of such a duty. So is nuisance. So is trespass to the person. So is false imprisonment, malicious prosecution or defamation of character.'

- **Diplock LJ said** that the cause of action in trespass included both intended and unintended acts. The expression 'breach of duty' in section 2 of the 1939 Act, as amended, included both intended and unintended trespass. 'A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.'

- **Other elements which may be relevant to liability**

- Note that the **only intention which a plaintiff needs to establish** is that the aggressor intended to make contact. Battery does not require any intention to do harm or to inflict wounding onto the other person. The law deems that the contact itself is injury (legal injury). Hence a person can sue even though he or she has **not experienced substantial injury or loss**.
- Note that the following elements of the case may also be relevant to the question of liability in battery:
  - the **kind of conduct**
  - the social context in which the behaviour occurs
  - the **relationship between the parties**
  - The **means of contact**. It could be, striking with a closed or open fist, kissing, spitting at a person, throwing an object which strikes a person, a hug, a headlock, cutting a piece of hair, a stiff-arm tackle, stroking a person's hair, sticking a knife into a person, or shooting someone with a gun. The courts may hold that any one of these actions is battery.

- **Elements which are not relevant to liability**

- The following elements are not relevant to the question of liability in battery:
- **The degree of force of the contact—** the court in **Cole v Turner** recognized this when it said that "the least touching of another in anger is battery";
- **Holding/Rule:** The lightest angry touch constitutes battery. A gentle touch made in close quarters with no ill intention is not a battery. A forceful or reckless touch, in close quarters is a battery.
  - Intentional touching of another in an unreasonable and violent manner is considered battery.
  - The touching of another in anger constitutes battery.
  - If there is no violence or no intent to touch, there is no battery.
- **The extent of injury or loss —** in the battery cases, it is **not necessary** to show that the **plaintiff suffered any real injury or loss**, because trespass is actionable per se (by itself).
- In a way the law is attempting to discourage acts of this kind rather than to compensate for loss. Although other torts have a more compensatory basis, the existence of this trespass policy weakens the claim that the purpose of the law of torts is merely to provide compensation for loss as a result of legal wrongs.

- **Wilson v Pringle [1986] 2 All ER 440**
- **Facts:** D a schoolboy, in fun seized the bag over C's shoulder, causing him injury, and C sued for the tort of assault.
- **Held:** C must establish an intentional and hostile touching of one person by another, though not necessarily intent to injure. A claimant who cannot prove hostility on the defendant's part is likely to fail, because in a crowded world people must be considered to take upon themselves some risk of injury from the lawful acts of others.
- C lost

No liability for ordinary human interaction

- The law accepts that there may be contact which is excused as a part of the **ordinary course of human society.** For example, if someone tries to attract your attention by tapping you on the shoulder, then there is no battery.
- **Now let us look at the tort of assault, which is similar to battery in many ways.**

Comparison Assault Vs Battery

- **A battery includes** an assault which briefly stated is an overt act evidencing an immediate intention to commit a battery. It is mainly distinguishable from in an assault in the fact that **physical contact** is necessary to accomplish it.
- It does not matter whether the force is applied directly to the human body itself or to anything coming in contact with it. Thus, to throw water at a person is an assault; if any drops fall upon him it is a battery. Battery requires actual contact with the body of another person so a seizing and laying hold of a person so as to restrain him; spitting on the face, taking a person by the collar, are all held to amount to battery.
- **An assault** is an attempt or a threat to do a corporeal hurt to another, coupled with an apparent present liability and intention to do the act. Battery is the intentional and direct application of physical force to another person. Actual contact is not necessary in an assault, though it is in a battery. But it is not every threat, when there is no actual personal violence that constitutes an assault; there must, in all cases, be the means of carrying the threat into effect. With respect to battery, assault can be defined as an act of the defendant which causes the claimant reasonable apprehension of the infliction of a battery on him by the defendant. Thus, Battery occurs where there is contact with the person of another, and assault is used to cover cases where the claimant apprehends contact.
- The intention as well as the act makes an assault. Therefore, if one strikes another upon the hand, or arm, or breast in discourse, it is no assault, there being no intention to assault; but if one , intending to assault, strikes at another and misses him, this is an assault; so if he holds up his hand against another, in a threatening manner, and says nothing, it is an assault.
- Mere words do not amount to an assault. But the words which the party threatening uses at the time may either give gestures such a meaning as may make them amount to an assault, or, on the other hand, may prevent them from being an assault. Assault of course requires no contact because its essence is conduct which leads the claimant to apprehend the application of force.

- In the majority of cases an assault precedes a battery, but there are cases the other way around like a blow from behind inflicted by an unseen assailant. It was said before that some bodily movement was required for an assault and that threatening words alone were not actionable, which was rejected by the House of Lords in R. vs. Ireland. Hence, threats on the telephone may be an assault provided the claimant has reason to believe that they may be carried out in the sufficiently near future to qualify as "immediate". The House of Lords have more recently stated that an assault can be committed by words alone in R v Ireland [1997] 4 All ER 225, and the Court of Appeal in R v Constanza [1997] Crim LR 576.
- **R v Ireland [1997] 3 WLR 534 House of Lords**
- The defendant made a series of silent telephone calls over three months to three different women. He was convicted under s.47 Offences against the Person Act 1861. He appealed contending that silence cannot amount to an assault and that psychiatric injury is not bodily harm.
- **Held:** His conviction was upheld. Silence can amount to an assault and psychiatric injury can amount to bodily harm.
- Lord Steyn: "It is to assault in the form of an act causing the victim to fear an immediate application of force to her that I must turn. Counsel argued that as a matter of law an assault can never be committed by words alone and therefore it cannot be committed by silence. The premise depends on the slenderest authority, namely, an observation by Holroyd J. to a jury that "no words or singing are equivalent to an assault": Meade's and Belt's case 1 (1823) 1 Lew. C.C. 184. The proposition that a gesture may amount to an assault, but that words can never suffice, is unrealistic and indefensible. A thing said is also a thing done. There is no reason why something said should be incapable of causing an apprehension of immediate personal violence, e.g. a man accosting a woman in a dark alley saying "come with me or I will stab you." I would, therefore, reject the proposition that an assault can never be committed by words."
- "The proposition that the Victorian legislator when enacting sections 18, 20 and 47 of the Act 1861, would not have had in mind psychiatric illness is no doubt correct. Psychiatry was in its infancy in 1861. But the subjective intention of the draftsman is immaterial. The only relevant enquiry is as to the sense of the words in the context in which they are used. Moreover the Act of 1861 is a statute of the "always speaking" type: the statute must be interpreted in the light of the best current scientific appreciation of the link between the body and psychiatric injury. For these reasons I would, therefore, reject the challenge to the correctness of Chan-Fook [1994] 1 W.L.R. 689. In my view the ruling in that case was based on principled and cogent reasoning and it marked a sound and essential clarification of the law. I would hold that "bodily harm" in sections 18, 20 and 47 must be interpreted so as to include recognizable psychiatric illness."
- **R v Constanza [1997] Crim LR 576**
- The defendant mounted a campaign of hate against an ex-work colleague over a period of 20 months. He sent over 800 threatening letters, would follow her home, wrote offensive word on her front door, drove past her house, and stole items from her washing line. As a result she suffered clinical depression. He was charged with ABH under s.47 OAPA 1861. The defendant contended that words

alone could not amount to an assault and that the letters could not amount to an assault as there was no immediacy.

- **Held:** The defendant's conviction was upheld.
- The juries were entitled in the circumstances to find that immediacy was present and words can amount to an assault. Meade & Belt overruled.

3. False Imprisonment

- **Introduction**
- False imprisonment is the **unlawful restraint of a person** which restricts that **person's freedom of movement.** The victim need not be physically restrained from moving. It is sufficient if they are prevented from choosing to go where they please, even if only for a short time.
- This includes being intimidated or ordered to stay somewhere. A person can also be restrained even if they have a means of escape but it is unreasonable for them to take it, for example, if they have no clothes or they are in a first floor room with only a window as a way out. False imprisonment can also be committed if the victim is unaware that they are being restrained, but it must be a fact that they are being restrained.
- False imprisonment is **actionable per se** and must result from the direct act of the defendant. It is a restraint of a person in a bound area **without justification or consent**. False imprisonment may sound like a person being dangerously restrained against their will and at risk of being seriously injured or killed. In a way, it is, but also can describe other situations which aren't so very dangerous sounding.
- Both the threat of being physically restrained and actually being physically restrained are false imprisonment.
- In a facility setting, such as a nursing home or a hospital, not allowing someone to leave the building is also false imprisonment. If someone wrongfully prevents someone else from leaving a room, a vehicle, or a building when that person wants to leave, this is false imprisonment. This can apply to family members if the person desiring to leave is an adult. Years ago when **"deprogramming**" (attempt to force a person to abandon allegiance to a religious, political, economic, or social group. Methods and practices may involve kidnapping and coercion) was in style, several parents and family members were prosecuted for false imprisonment for confining adult children. Spouses have no legal right to confine each other either.
- **Austin and Another -v- Commissioner of Police of the Metropolis; HL 28-Jan-2009**
- **Facts:** The claimants had been present during a demonstration policed by the respondent. They appealed against dismissal of their claims for false imprisonment having been prevented from leaving Oxford Circus for over seven hours. The claimants appealed against rejection of their claims on human rights law.
- **Held:** The appeal failed. Whether there is a deprivation of liberty, as opposed to a restriction of movement, is a matter of degree and intensity. Account must be taken of a whole range of factors, including the specific situation of the individual and the context in which the restriction of liberty occurs. the court should adopt a pragmatic approach taking account of all the circumstances. Crowd

control measures resorted to for public order and public safety reasons had to take account of the rights of the individuals and the interests of the community. Such measures fell outside the ambit of Article 5 provided that they were not arbitrary in that they were resorted to in good faith, were proportionate and enforced for no longer than was reasonably necessary. They constituted a restriction of liberty, not a deprivation of it. The police had been engaged in an unusually difficult exercise of crowd control which had as its aim the avoidance of personal injuries and damage to property and the dispersal as quickly as possible of a crowd bent on violence and impeding the police. The police had acted reasonably and properly to prevent serious disorder and violence. The restriction of the claimants' liberty had not been an arbitrary deprivation of liberty and Article 5 was not applicable.

- **Lord Neuberger said:** 'The police are under a duty to keep the peace when a riot is threatened, and to take reasonable steps to prevent serious public disorder, especially if it involves violence to individuals and property. Any sensible person living in a modern democracy would reasonably expect to be confined, or at least accept that it was proper that she could be confined, within a limited space by the police, in some circumstances. Thus, if a deranged or drunk person was on the loose with a gun in a building, the police would be entitled, indeed expected, to ensure that, possibly for many hours, members of the public were confined to where they were, even if it was in a pretty small room with a number of other people. Equally, where there are groups of supporters of opposing teams at a football match, the police routinely, and obviously properly, ensure that, in order to avoid violence and mayhem, the two groups are kept apart; this often involves confining one or both of the groups within a relatively small space for a not insignificant period. Or if there is an accident on a motorway, it is common, and again proper, for the police to require drivers and passengers to remain in their stationary motor vehicles, often for more than an hour or two. In all such cases, the police would be confining individuals for their own protection and to prevent violence to people or property.
- So, too, as I see it, where there is a demonstration, particularly one attended by a justified expectation of substantial disorder and violence, the police must be expected, indeed sometimes required, to take steps to ensure that such disorder and violence do not occur, or, at least, are confined to a minimum. Such steps must often involve restraining the movement of the demonstrators, and sometimes of those members of the public unintentionally caught up in the demonstration. In some instances, that must involve people being confined to a relatively small space for some time.
- In such cases, it seems to me unrealistic to contend that article 5 can come into play at all, provided, and it is a very important proviso, that the actions of the police are proportionate and reasonable, and any confinement is restricted to a reasonable minimum, as to discomfort and as to time, as is necessary for the relevant purpose, namely the prevention of serious public disorder and violence.'
- **Grainger -v- Hill; CexC 1838**
- **Facts:** D1 and D2 lent C £80 repayable in 1837, secured by a mortgage on C's vessel. C was to be free to continue to use the vessel in the interim but the law forbade its use if he were to cease to hold its register. In 1836 the Ds became concerned about the strength of their security. They resolved to put pressure on C to make early repayment. In an action for assumpsit they falsely claimed that the loan was already repayable. They swore an affidavit of debt, which entitled them, without judicial authority,

to cause to be sued out of court a writ of capias ad respondendum directed at C. This obliged the local sheriff to capture C with a view to his being brought before the court and made to respond. The sheriff indicated to C that the Ds would be content for him not to be arrested if he were to surrender the vessel's register. He did so. He soon repaid the loan but in the interim the absence of the register had required his vessel to forego four voyages to Caen.

- **Held:** The plaintiff had used the threat of arrest of the defendants in proceedings for recovery of a debt to achieve the ulterior purpose of obtaining possession of a certain ship's register.
- **Held:** The court upheld the judgment for C in his action on the case. The judges, led by Tindal CJ, held that the tort committed by the Ds was not malicious prosecution but abuse of the process of the law to effect an object not within the scope of the process which they had initiated, namely to "extort" the register, to which they had no right, from C or to obtain it from him by "duress". To allow a defendant to order a plaintiff's otherwise lawful claim to be stayed as an abuse of process, he has to show that the plaintiff has an ulterior motive, that he seeks a collateral advantage for himself beyond what the law offers, and is reaching out "to affect an object not within the scope of the process". There is a tort of abuse of process for which it is not necessary to prove malice or want of reasonable and probable cause or that the proceedings have been terminated, let alone in favour of the plaintiff.
- **Murray -v- Ministry of Defence; HL 25-May-1988**
- **Facts:** The plaintiff complained that she had been wrongfully arrested by a soldier, since he had not given a proper reason for her detention.
- **Held:** The House accepted the existence of an implied power in a statute which would be necessary to ensure the safe and effective exercise of an express power. An unconscious or drugged person can be said to have been detained.
- **Lord Griffiths said** '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.'
- **Regina -v- Bournewood Community and Mental Health NHS Trust, Ex parte L; CA 2-Dec-1997**
- **Facts:** The applicant was severely autistic, and unable to consent to medical treatment. He had been admitted voluntary to a mental hospital and detained under common law powers. The Hospital trust appealed a finding that his detention had been unlawful.
- **Held:** He had in fact been detained: 'We do not consider that the judge was correct to conclude that L was 'free to leave'. We think that it is plain that, had he attempted to leave the hospital, those in charge of him would not have permitted him to do so.' and 'In our judgment a person is detained in law if those who have control over the premises in which he is have the intention that he shall not be permitted to leave those premises and have the ability to prevent him from leaving. We have concluded that this was and is the position of L.' The 1983 Act created a complete regime which excluded the application of the common law doctrine of necessity. The judgment was sustained.

Definition of false imprisonment

- False imprisonment is the total restraint of the liberty for however short a time without lawful justification.
- False imprisonment is illegal arrest, actual detention and complete loss of freedom.

- **Meaning**
- False imprisonment; the word ‘false' means ‘erroneous' or ‘wrong'. It is a tort of strict liability and the plaintiff has not to prove fault on the part of the defendant. Imprisonment means putting someone in prison or in jail.
- **Essential ingredients of false imprisonment**
- To constitute this wrong, two things are necessary.
- 1. The **total restraint of the liberty of a person**. The detention of the person may be either:
  - (a) actual, that is, physical, e.g. laying hands upon a person; or
  - (b) Constructive, that is, by mere show of authority, e.g. by any officer telling anyone that he is wanted and making him accompany
- 2. The **detention must be unlawful**. The period for which the detention continues is immaterial. But it must not be lawful. “Every confinement of the person is an imprisonment, whether it is in a common prison, or in a private house, or in the stocks, or even by forcibly detaining one in the public streets.
- The imprisonment of a total restraint for some period however short, upon the liberty of another.
- Without lawful and sufficient cause or excuse. Such a restraint maybe either physical or by a mere show of authority.
- **Knowledge of the claimant**
- False imprisonment can also occur even if the **victim is unaware** of it at the time. According to Lord Atkin, a person can be imprisoned while he is asleep, in a state of drunkenness, while unconscious or while he is a lunatic.
- In the case of **Merring V Grahame-white aviation co ltd**,-the claimant was brought to his employer’s office to be interviewed in connection with theft. Two guards had been stationed outside to prevent him from leaving and when the claimant found out, he brought an action for false imprisonment. Lord **Atkin said,”** it appears to me that a person could be imprisoned without his knowledge……..it is quite unnecessary to go on to show that in fact the man knew that he was imprisoned” the defendants were therefore held liable for false imprisonment.
- However, if a person is unaware that he has been falsely imprisoned and has suffered no harm, he can normally expect to cover not more than nominal damages.
- **THE RULE IN WILKINSON v DOWNTON**
- The rule in Wilkinson v Downton relates to the intentional infliction of harm. This is not actually a trespass to the person but a separate analogous tort. See:
- **Wilkinson v Downton [1897] 2 QB 57**
- **Facts:** As a practical joke, Downton (D) told Wilkinson (P) that her husband had been seriously injured in an accident and was lying in a ditch with broken bones. Downton told Wilkinson that she was to bring two pillows to help carry him home. The effect of Downton’s statement was a violent shock to her nervous system resulting in weeks of suffering and incapacity. Wilkinson brought suit for damages resulting from her injuries and the jury returned a verdict in her favor. The defendant appealed on the grounds that the damage caused was merely nervous shock and therefore Wilkinson had no cause of action.

- **Issue:** Can outrageous conduct that causes physical harm or mental distress give rise to a cause of action?
- **Holding and Rule:** Yes. A party may seek recovery for outrageous conduct that causes physical harm or mental distress. In this case Downton willfully performed the act which caused harm to the plaintiff. The court held that there was little doubt that Downton's actions would harm Wilkinson and it therefore must be assumed that he intended to produce these effects.
- The Court of Appeal upheld this rule in Janvier v Sweeney [1919] 2 KB 316.
- **Janvier v Sweeney [1919] 2 KB 316**
- False words and threats calculated to cause, uttered with the knowledge that they are likely to cause, and actually causing physical injury to the person to whom they are uttered are actionable.
- The defendants were two private detectives. One of them was designing to inspect certain letters, to which he believed the plaintiff, a maid servant, had means of access. He instructed the other defendant, who was his assistant, to induce the plaintiff to show him the letters, telling him that the plaintiff would be remunerated for this service. The assistant endeavoured to persuade the plaintiff by false statements and threats, as the result of which the plaintiff fell ill from a nervous shock.
- In an action by the plaintiff against the defendants for damages:-
- Held, that the assistant was acting within the scope of his employment and that both the defendants were liable. Wilkinson v. Downton [1897] 2 Q. B. 57 approved.
- **The character of the D's act**
- There must be total or complete restraint such that there is no means of escape, if there is reasonable means of escape, the restraint cannot amount to false imprisonment. False imprisonment can also occur even if the victim is not aware at the time. **Meering v. Grahams-White Aviation Co. Ltd**.
- False imprisonment need not be in a prison, however, how large the area of confinement can be largely depends on the circumstances so that the boundaries of the area of confinement must have been fixed by the defendant as stated by **Lord Coleridge J in Bird v. Jones**;
- 'Some confusion seems…… to arise from confounding imprisonment of the body with mere loss of freedom…. Imprisonment…. Includes the notion of restraint within some limits defined by a will or power exterior to our own.'
- **Lord Denning however gave a dissenting judgment;**
- 'As long as I am prevented from doing what I have a right to do, of what importance is it that I am permitted to do something else?… If I am locked in a room, I am not imprisoned because I might affect my escape through a window, or because I might find an exit dangerous or inconvenient to myself, as by wading through water…..?'
- If the means of escape causes a risk of personal injury or if it is otherwise unreasonable for the victim to escape, then liability for false imprisonment arises. However the barriers to the means of escape need not be physical e.g. in a case where a commissioner in Lunacy wrongfully used his authority to dissuade the claimant from leaving his office, he was liable for false imprisonment.
- Once a restraint has been affected by an assertion of authority then it is enough for liability for false imprisonment to emerge e.g. restraint on movement in the street by a threat of force that intimidates a person to compliance without touching the victim is false imprisonment.

- Once there is lawful detention then changes in the conditions of his detention will not render the detention unlawful e.g. in the case of prisoners being detained in unsanitary cells, this cannot be termed as false imprisonment.

- **Defendant's state of mind**

- In this tort, the D must intend to do an act which will substantially affect the confinement. However there is no need to prove malice because even where the D confines the claimant in good faith, he is still liable for the intentional confinement of the claimant.
- In **R v. Governor of Brockhill Prison**, – in this case a prisoner governor who calculated the claimant's day of release in accordance with the law as understood at the time of her conviction was **held liable** when a subsequent change of the law meant that the prisoner should have been released 59 days earlier. An honest mistake whether negligently made or not as to the right to continue detention does not excuse a trespass to the person.
- In a similar case **Quinland v. Governor of Swalesdale Prison**- there was a judicial error that increased the sentence by three months longer than it ought to have been causing the claimant to be detained longer than it should have been. The C.A. stated that since the prisoner was unduly detained by virtue of a court order, there would be no remedy other than the **correction of the arithmetical error** that had been made in adding together the various periods of confinement attributable to the various offences of which the claimant had been convicted. Negligence should be enough to result to liability for false imprisonment for example where a person locks a door while being negligently unaware of the presence of somebody in the room.
- **Quinland -v- Governor of H M Prison Swaleside & Others C.A.**
- **The issues:** False imprisonment – liability of the Court – Order wrongly drawn up.
- **The facts:** The Claimant sued the Governor of HM Prison Swaleside and the Lord Chancellor's Department for false imprisonment. He was sentenced to be imprisoned for 2 years, 3 months. The Court Clerk mistakenly drew up the Order for 2 years 6 months. The Registrar of Criminal Appeals failed to correct the error despite a Direction by a Judge considering an Application for Appeal. He had subsequently appealed for leave to appeal against the conviction. That Application had been dismissed but in the course of its dismissal, the Court of Appeal highlighted the error and urged it to be checked. Thereafter, the Criminal Court of Appeal failed to act on it urgently which resulted in the Claimant serving 6 weeks longer than he needed to. The Claimant issued a claim for false imprisonment which was struck out by the District Judge. The Claimant appealed.
- **The decision:** The Crown Proceedings Act 1947 rendered the Crown subject to liability in tort except that Section 2(v) excluded liability in respect of a person "whilst discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he had in connection with the execution of Judicial process". The Lord Chancellor's Department submitted that these were matters for which it had immunity.
- The Court of Appeal agreed and the Appeal failed

- **Explanation**
- False imprisonment is a form of wrongful restraint. It is to keep a **person within certain limits**, out of which he wishes to go, and has a right to go. Therefore, it is no imprisonment if a person is prevented from going in one or more of several directions in which he has a right to go, so long as it is open to him to go, as far as he pleases, in some other direction. Similarly there can be no false imprisonment when a desire to produce has never existed, nor can a confinement be wrongful if it was consented to by the person affected.
- **Example:** The plaintiff, a miner, descended a coal mine at 9:30 am for the purpose of working therein. He was entitled to be raised to the surface at the conclusion of his shift at 4 pm on arriving at the bottom of the mine he was ordered to do certain work which he wrongfully refused to do and at 1pm he requested to be taken to the surface in a lift until 1:30 pm although it had been available for the carriage of men to the surface from 1:10 pm and in consequences he was detained in the mine against his will for twenty minutes. The court held that it was no false imprisonment on the principle of 'Volenti non-fit injuria'.

Essentials for an action for false imprisonment

Deprivation of liberty/Restraint on personal liberty

- The deprivation of the plaintiff's liberty must be complete that is to say; the restraint must be such as to limit his freedom of motion in all directions. E.g. a person in an office is told that if he came out of that office he will be killed. It is a restraint on personal liberty.

Cause of the imprisonment

- The imprisonment must be caused by a deliberate act, and not just by carelessness.
- **Sayers v. Harlow 1958 Urban District Council**
- A woman tried to escape out of a toilet, but when she tried to get out through the window, she fell down.
- No false imprisonment. The escape was dangerous, it was not intentional.

Unlawful detention

- The detention must be unlawful. Thus, if it is made in pursuance of power vested in the defendant by law, no action lies.
- The imprisonment must be unlawful, so a criminal who is lawfully convicted and kept in prison as decreed by a court has no case against the prison service for false imprisonment.
- However, if that same prisoner were to be trapped in his or her cell by another prisoner, they may have a claim against that person.
- Where a person is carrying out a lawful arrest, no false imprisonment is committed, even if the person arrested has done nothing wrong. This applies whether the claimant is a police officer or an ordinary citizen.
- In order for an arrest to be lawful, the person making the arrest must follow the procedure set down by law, most of which is set out in PACE 1984.

- **Conditional detention**
- It is not necessarily false imprisonment to impose a reasonable condition on someone before you allow them to leave.
- **Robinson v. Balmain Ferry 1910 Privy Council**
- The defendant had a ticket office. They charged one penny when you entered the ferry.
- Solicitor R wanted to leave the ferry. He had already paid one penny but he was asked to pay again when he left in Balmain.
- **No false imprisonment**. Contract, the conditions were reasonable and known to the plaintiff. His freedom of action was not restricted to every side. Persuasive precedent.
- **Sunbolf v. Alford 1838**
- Customers refused to pay. The boss of the restaurant locked them, thus preventing them from leaving.
- Case of false imprisonment. You cannot lock someone up because of not-paying.
- **Total restraint**
- There must be a total restraint and not a partial one. If the victim/plaintiff has ways of escape open to him, it is no false imprisonment.
- **Bird v. Jones, 7 Ad. & El. (N.S.) 742, 115 Eng. Rep. 688 (1845)**
- **Facts:** Part of a public road had been closed for spectators of a boat race. Bird (P) wanted to enter but he was prevented by Jones (D) and other policemen because he had not paid the admission fee. Bird was able to enter the enclosure by other means but was unable to go where he wanted to go. The policemen refused access to where he wanted to go but allowed him to remain where he was and would have allowed him to leave. P remained within the enclosure and refused to leave. Bird sued Jones for false imprisonment.
- **Issue:** Can a party be liable for false imprisonment if he only partially restricts the movement of another such that a way out is available?
- **Holding and Rule:** No. P could have left but chose not to. D did not totally restrict his movements. D merely did not allow P to go where he wanted to go.
- **Disposition:** Case dismissed.
- **Dissent:** Even if one only partially contains another party and prevents him from going where he wants, this is enough for an action for false imprisonment.
- **Time period**
- The period for which the detention continues is immaterial. But, for an action to lie, the detention must be by the defendant or by his order.
- Defenses to an action for false imprisonment
- To avoid liability, the defendant must show that,
- **Lawful arrest**
- Any lawful arrest made in accordance with the **police and criminal evidence act 1984** cannot amount to false imprisonment. Any private citizen making citizen's arrest should be wary as a private citizen has protection if an arrest able offence has actually been or is being committed by the person arrested

and the police have been involved. A police officer does not lose the protection even where the arrest is mistaken provided that it was reasonable.

- Either he acted under a lawfully executed warrant, issued by a component tribunal, or
- That is act was one of those which are justified with a warrant.
- **Note:** To constitute false imprisonment, limits of prison are irrelevant, it may be narrow or wide, boundaries may be tangible or in conception only but there should be some boundary which that person cannot leave except by prison break.

Detention for medical purposes

- The lawful detention of persons suffering from **mental disorder** is provided for in the **Mental Health Act 1983,** but must be in accordance with the provisions and if the contrary happens then there is false imprisonment. In cases where a person is ill and in need of treatment but the illness does not meet the criteria for compulsory detention.
- **The rule in Wilkinson v. Downtown**
- The rule applies to intentional infliction of physical harm other than trespass to the person. In this case the claimant was told by the Defendant, who knew it to be untrue, that her husband had been seriously injured in an accident. Believing this, she suffered nervous shock resulting in serious physical illness, and was held to have a cause of action. Wright J held: the practical joker in the case itself was liable on basis that he had 'willfully done an act calculated to cause physical harm to plaintiff basing on the Protection from Harassment Act 1997.
- Since this is not a form of trespass the claimant must prove actual loss. And liability is imposed;
  - Where a person intentionally or recklessly inflicts emotional distress upon another.
  - The defendant's conduct is extreme and outrageous.
  - The harm intended is severe
  - The actual resulting emotional harm is also severe
- Hence the principle is treated as a separate complementally form of liability covering cases of intentionally but indirectly caused physical harm.
- In **Kariuki v. East African Industries Ltd** and another the plaintiff an employee of the first defendant was arrested and later charged with the offence of stealing, being a servant, contrary to section 281 of the penal code. His arrest was as a result of investigations done by the first and the second defendant, who were also employees. The plaintiff was remanded for over three months following an order of the court and after trial he was acquitted of the charge. He instituted a suit in the High Court alleging wrongful arrest, false imprisonment and malicious prosecution by the defendants. The court held that a person instituting legal proceedings before a court against another is not liable for the tort of false imprisonment where the imprisonment is as a result of a court order hence the defendants could not be liable for false imprisonment, however the plaintiff was awarded general damages amounting to 1000 shillings.
- In the case of **Gitau v. Attorney General,** the plaintiff commenced proceedings against the Attorney General on behalf of the police department for assault, battery, malicious prosecution and false imprisonment. He had been arrested and charged with the offence of being drunk and disorderly to which he pleaded not guilty and was admitted to bail. When the case came up for trial, the magistrate

dismissed the same without calling on the defence. The plaintiff complained that while in custody he had been denied the chance to speak to his wife, held incommunicado for 30 hours at the police custody, no change of clothes, a mug of tea and a piece of loaf in the morning was his food for the whole day and a mat as his bedding.

- The plaintiff was wrongfully arrested since he was not drunk as he was collecting cigarettes from his car. For wrongful arrest and subjection to humiliation and fright ordeal, he was awarded Kshs (shilling). 250,000 damages for false imprisonment and a further Kshs. 10,000 exemplary damage.

➢ Defences To Trespass To Person

▪ Consent

- If the plaintiff gives **consent to the action**, that may be a defence for the defendant. However, the **consent must be real**. That is, it must be an informed consent, the person must give it **voluntarily,** consent must be genuine and the defendant must have acted in a way which remained within the scope of the consent which the plaintiff actually gave.
- However, the person does not need to explicitly state the consent in order for the consent to be effective. It may be possible to imply that consent from the circumstances in which the persons are involved. E.g., sports people, the kinds of behaviour which a sports player consents to will differ depending on the nature of the sport. By participating in karate, judo, kick boxing and boxing, people by implication consent to contact and aggression as an integral part of the sport. Compared with players of other contact sports such as rugby, they may consent to more contact or perhaps a different form of contact and threatening behaviour. Even so, rules still define legitimate contact and the acceptable occasions for making it, and these rules are relevant in determining the scope of the consent.
- For example, suppose a person is limbering up in a karate class before the contest has begun. One of the other class members comes up behind her and kicks her. That is battery. A second example is where a person willingly undergoes operative surgery, and thus consents to surgical procedures which might be battery without that consent. But note that the important issue in this context is the scope of what is consented to. Consent to one form of operative procedure does not license the surgeon to carry out any operative procedure.
- **Herd -v- Weardale Steel Coal & Coke Co Ltd; CA 1913**
- The court granted the appeal against the success of a false imprisonment claim by an employee of a coal-mining company, whose complaint was based on his employers' refusal to comply with his request to take him to the surface, after he had wrongfully refused to do work, until more than two hours after his request had been made.
- **Buckley LJ said** that as to the contention that the employee had a claim in contract, he rejected it on the basis that, while there was an implied term that the employee would be brought to the surface, it had not been breached, since the plaintiff had been brought to the surface by the end of his shift.
- As to the claim for false imprisonment: 'What kept [the plaintiff] from getting to the surface was not any act which the defendants did, but the fact that he was at the bottom of a deep shaft, and there

was no means of getting out other than the particular means which belonged to his employers and over which the plaintiff had contractual rights and which at that moment were not in operation.'

- If there had been an hour's delay in conveying him to the surface at the end of his shift, merely on the grounds of the employer's convenience, the employee 'would be entitled to damages for breach of contract'. He then asked 'would there be any false imprisonment?' and answered: 'In my opinion, there would not. The master has not imprisoned the man. He has not enabled him to get out as the under the contract he ought to have done, but he has done no act compelling him to remain there . . to my mind [the employers] did not imprison [the employee] because they did not keep him [in the mine]; they only abstained from giving him facilities for getting away.'
- **Hamilton LJ said:** 'I say nothing as to how the case would have stood if force had been threatened to the plaintiff. . The fact is that he remained at the bottom of the shaft simply because the power was not turned on at the top of the shaft to raise the cage. Could that be held to have been an imprisonment?'
- ## Superior Lawful Authority
- Certain persons have **legal authority** to exercise force and to threaten the use of force on other persons. Usually such **authority is granted for the purposes of public peace and order**.
- **Police officers**, and citizens under certain circumstances, have authority to exercise force against others. Hotel owners are entitled to eject people from their premises under certain conditions. If owners or proper occupiers of land are faced with a trespasser, they can use reasonable force to eject the trespasser from the land under certain conditions. The law has also often held that parents have **legitimate authority to apply force against children to discipline them**. It also extended such authority to persons in loco parentis (i.e. who stand "in the place of parents") such as guardians and school teachers. But in many jurisdictions today, neither parents nor persons in loco parentis have such authority.
- ## Mistake
- **Unavoidable mistake** (accident) can amount to a defence when the mistake negates the required element of intention—or, in other words, when the person did not intend the consequences of his or her act. So, for example, a person had no intention of coming into contact with another person but accidentally did so, and then there is no battery.
- Say a police officer mistakenly believes that a felony has been committed and the officer arrests a person whom he/she reasonably believes to have committed the felony. The mistake would excuse the officer from battery or false imprisonment. This was decided in **Beckwith v Philby (1827) 6 B & C 635**; 108 ER 585.
- However, it is no defence to say that the intended consequences of the act were somehow innocent or had a legal effect that was different from the effect which the defendant assumed. For example, suppose a shopkeeper strikes a child on the assumption that the act is within her lawful authority. The shopkeeper clearly intended the consequences but she is mistaken about the legal effect of the act and her legal right to do it. She did not intend to do something that was unlawful perhaps. But that sort of mistake is no defence to battery or assault or, indeed, to any form of trespass. Or suppose that a police

officer has a valid arrest warrant but arrests the wrong person. The mistake will be no defence because the officer actually intended to apprehend the person in question.

- Unfortunately the position is rather confused because of the seemingly artificial distinctions between mistake and accident. Unavoidable mistakes often appear as innocent as do the production of accidental (unintended) results. Hence whilst the distinction still appears as a result of the historical development of tort it often appears to have little justification as a matter of policy.

Self-Defence

- If a person **uses legitimate force to repel an attack either against himself** or others or against his property, that is a defence to assault and battery. The action of self-defence must only be such as is appropriate to repel the attack; it must not be excessive. If an attacker is unarmed, it would be excessive action to repel the attack by shooting him or her. It would also be unreasonable and excessive to kick an attacker after you have knocked him or her unconscious.
- **Lane v Holloway [1967] 3 WLR 1003 Court of Appeal**
- **Facts:** The Claimant, a retired gardener, was injured by Defendant in a fight. The Defendant, aged 23, owned a cafe close to where the Claimant lived. The cafe was frequented by youths late at night. The Claimant objected to the behaviour of the youths and the relations between the two neighbours were strained. One night the Claimant shouted abuse at the Defendant's wife from outside their house. The Defendant, who was in bed at the time got up and went outside in his night gown. The Claimant, thinking he was about to be hit, punched the Defendant. The Defendant then struck the Claimant in the eye. As a result of the punch the Claimant received 18 stitches and required surgery. The Claimant brought an action for damages. The trial judge found the Defendant liable but reduced the damages on the grounds that the Defendant had been provoked into the action and therefore awarded the Claimant £75 rather than £300. The Claimant appealed on the reduction of damages and the Defendant appealed contending that ex turpi causa precluded recovery.
- **Held:** The Claimant's appeal was successful. There was no ground for reducing damages for provocative conduct. The Defendant's cross appeal was unsuccessful. The Defendant's actions were out of all proportion to those of the Claimant.
- **Lord Denning MR:** The first question is: Was there an assault by Mr. Holloway for which damages are recoverable in a civil court? I am quite clearly of opinion that there was. It has been argued before us that no action lies because this was an unlawful fight: that both of them were concerned in illegality; and therefore there can be no cause of action in respect of it. **Ex turpi causa oritur non actio**. To that I entirely demur. Even if the fight started by being unlawful, I think that one of them can sue the other for damages for a subsequent injury if it was inflicted by a weapon or savage blow out of all proportion to the occasion. I agree that in an ordinary fight with fists there is no cause of action to either of them for any injury suffered. The reason is that each of the participants in a fight voluntarily takes upon himself the risk of incidental injuries to himself. Volenti non fit injuria. But he does not take on himself the risk of a savage blow out of all proportion to the occasion. The man who strikes a blow of such severity is liable in damages unless he can prove accident or self-defence.
- **Salmon LJ:** It must have been a savage blow, that the plaintiff must have smashed his fist with great force into the eye of this man 40 years older than he was, after coming up to him in a threatening

manner and having received no more than a slight punch on the shoulder. To say in circumstances such as those that ex turpi causa non oritur actio is a defence seems to me to be quite absurd. Academically of course one can see the argument, but one must look at it, I think, from a practical point of view. To say that this old gentleman was engaged jointly with the defendant in a criminal venture is a step which, like the learned Judge, I feel wholly unable to take.

- **Ashley and Another -v- Chief Constable of Sussex Police; HL 23-Apr-2008**
- **Facts:** The claimants sought to bring an action for damages after a family member was shot by the police. At the time he was naked. The police officer had been acquitted by a criminal court of murder. The chief constable now appealed a finding that he might nevertheless be liable in a civil court.
- **Held:** To defend a criminal assault it was necessary only to show a genuine belief that the defendant was about to be attacked. In a civil claim, the defendant had to show that his belief was both honest and reasonable. The defendant had done everything but admit an unlawful assault, but the claimant was entitled to have heard his claim to establish his liability. A claim for vindicatory damages did survive the deceased under the 1934 Act.
- **Lord Scott said:** 'Although the principal aim of an award of compensatory damages is to compensate the claimant for loss suffered, there is no reason in principle why an award of compensatory damages should not also fulfil a vindicatory purpose. But it is difficult to see how compensatory damages can could ever fulfil a vindicatory purpose in a case of alleged assault where liability for the assault were denied and a trial of that issue never took place.'

Necessity

- Suppose that it is **necessary to apply force to another person in order to save that person's life**. For example, a lifeguard might have to knock out a swimmer who is in danger, in order to be able to bring the swimmer back to shore. Necessity would be a defence in such cases. Of course, in many cases there is a fine line between necessary action and assault or battery.
- For example, in emergency surgical procedures the answer might depend on whether the emergency was real. In a case where the patient's life would be immediately threatened if the surgeon did not carry out the procedure, then the necessity for action overrides any other requirement of consent. But suppose that the patient's life is not in immediate danger, and the surgeon could have finished the current procedure and then sought the consent of the patient, thereby postponing the operation until shortly afterwards. In those circumstances, if the surgeon still performs the additional procedure without consent, perhaps because it is convenient to herself or to her employers, then those actions are not a matter of necessity and so necessity cannot be a defence.
- Necessity might apply in cases where it relates to a need to defend your own interests or your own health, just as it might apply with respect to the need to protect the interests of others. In such cases, there is clearly an overlap with the defence of self-defence.

Parental authority

- The law has also often held that **parents have legitimate authority to apply force against children to discipline them.** It also extended such authority to persons in loco parentis (i.e. who stand "in the place

of parents") such as guardians and school teachers. But in many jurisdictions today, neither parents nor persons in loco parentis have such authority.

- A parent will not be liable for assault or battery for inflicting punishment on a child if the force used is reasonable and is proportionate to the wrong committed by the child. The child must understand the purpose of **punishment which must be proportionate to the wrong committed by the child.**
- Force may be used for chastisement or correction of a pupil, child, apprentice, provided the force is not excessive or unreasonable.

Involuntariness and duress

- Where one person forces another to take some action, then the involuntariness of that action might negate the required element of intention, as the following examples illustrate.
  - Suppose someone takes hold of your hand and forces you to strike another. That is not battery, because it was involuntary, i.e. it was not the product of your intentional act.
  - Suppose you receive threats that force you to take some action which you do not really want to do. In this case, you have acted under duress. The threat overtakes your will.
- In former times, duress was not a defence to any form of trespass. But as jurisdictions have adopted an approach that treats trespass primarily as an intentional (rather than a direct) tort, it is now very likely that the courts will hold that duress is a defence.

Use of force or threats to recover property

- If your **personal property has been stolen**, you are **entitled to use reasonable force to recover** that property. It seems that you have this right even though some time may have lapsed between the time when the person took your property and the time when you try to recover it.
- **Example: Use of reasonable force**
- Suppose that Talica has taken your book. You know of this but you take no action to recover it immediately. One month later you see her in the street with the book in her possession. She looks as if she is going to run away after you say to her that you want your book back. You take her arm and remove the book from it. Provided that the force used was no more than reasonable in the circumstances then you have a defence despite your failure to take action to recover earlier.
- This position is similar to that in relation to a trespasser on land, discussed earlier. A person who is entitled to possession can use reasonable force to eject a trespasser. However not all forcible ejectment is permissible.

Limitation period

- A limitation period is the period of time within which a party to a contract must bring a claim. The Limitation Act, passed in 1980, specifies the limitation periods which applies in relation to what it terms 'simple contracts' and deeds. The Limitation Act allows actions for breach of contract and tort, such as negligence, to be brought within a period of six years under a simple contract and twelve years if the contract is executed as a more formal deed. Under English law, a 'simple' contract is one which is executed with one signature only. A deed is a contract or document executed with higher formalities than a single signature - for example, a contract that must be signed by two directors on behalf of a company.

- Unless otherwise stipulated, these time periods begin either on the date on which the breach of contract occurred, or the date the negligent act or omission occurred. This is known as the date of accrual. The limitation period does not run from the date of the contract itself. It is common to refer to actions which fall outside of these statutory time limits as being 'time barred'.
- **Stubbings -v- Webb and Another; HL 10-Feb-1993**
- **Facts:** In claims for damages for child abuse at a children's home made out of the six year time limit time were effectively time barred, with no discretion for the court to extend that limit. The damage occurred at the time when the child left the home. A woman suffered child abuse and claimed as an adult. The limitation period for non-accidental personal injuries arising from complaints of rape or of indecent assault is six years (section 2).
- **Held:** The damage arising from injuries deliberately inflicted arose at the time, or if the victim was a child, at the age of majority. The time did not begin to run only when the claimant became aware of a causal connection between her damage and the injuries. An action for damages for deliberate assault or trespass to the person was not an 'action for damages for negligence, nuisance or breach of duty' in respect of personal injuries within the meaning of section 11(1) of the 1980 Act. Such an assault or trespass was not a breach of duty within the meaning of the section. It followed that, on the one hand, the limitation period was six years and, on the other hand, the court had no discretion under section 33 to extend the six year period.

Provocation is not a defence

- It is no defence to assault and battery to claim that the plaintiff provoked the attack. The plaintiff might have uttered words that were very insulting to the defendant. He or she might have abused the defendant's family or the defendant personally, but the courts do not accept that such provocation is an excuse for the commission of legal assault or battery on the plaintiff.

Impact on claim to damages

- However, provocative behaviour might affect any damages which the plaintiff can recover, which in these cases can be:
- compensatory damages, i.e. covering actual loss or injury; or
- Exemplary or punitive damages, which are very similar to a criminal, fine but not exactly the same.
- The usual proposition is that if provocation is proved, it will reduce exemplary damages, but not compensatory damages.

To prevent a forcible entry

- The lawful owner or his servant by his command may justify an assault in order to re-possess him of land or goods which are wrongfully in the possession of another, provided that no unnecessary violence is being used.

Leave and license

- A man cannot complain of harm to the chances of which he exposed himself with knowledge of the risk and of his free will.

Preservation of public peace

- A person who disturbs a public worship or meeting may, by reasonable force, be removed.

- Other defenses
- For serving legal process and inevitable accident are also good defenses to an action for assault or battery.

The role of trespass to the person today

- Trespass to the person has now lost most of its significance in personal injury litigation.
- There are three main reasons for this; the existence of the criminal Injuries Compensation Scheme; the power of the criminal courts to grant compensation orders against defendants, which often remove the need for a civil action, and the development of negligence, which has become the principal vehicle for litigation concerning personal injury with the approval of the courts.
- **Sidaway -v- Board of Governors of the Bethlem Royal Hospital and the Maudsley Hospital; HL 21-Feb-1985**
- **Facts:** The plaintiff alleged negligence in the failure by a surgeon to disclose or explain to her the risks inherent in the operation which he had advised.
- **Held:** 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.
- However, where a patient does not ask as to the risks, Lord Diplock said: "we are concerned here with volunteering unsought information about risks of the proposed treatment failing to achieve the result sought or making the patient's physical or mental condition worse rather than better. The only effect that mention of risks can have on the patient's mind, if it has any at all, can be in the direction of deterring the patient from undergoing the treatment which in the expert opinion of the doctor it is in the patient's interest to undergo. To decide what risks the existence of which a patient should be voluntarily warned and the terms in which such warning, if any, should be given, having regard to the effect that the warning may have, is as much an exercise of professional skill and judgment as any other part of the doctor's comprehensive duty of care to the individual patient, and expert medical evidence on this matter should be treated in just the same way. The Bolam test should be applied." and "a doctor's duty of care, whether he be general practitioner or consulting surgeon or physician is owed to that patient and none other, idiosyncrasies and all." ."
- **Lord Scarman:** "Damage is the gist of the action of negligence

Conclusion

- I would like to conclude by stating the reason for selecting this topic. The reason I chose this topic is because I feel this is a very common tort that takes place in day-to-day life of the people, especially labourers and hence, there is a need to make the people aware of this tort and seek justice. The tort of false imprisonment is one of the most severe forms of human rights violations especially in a nation like India that holds the writ of Habeas Corpus as the "heart and soul" of its Constitution. The assault and battery cases need to be taken more seriously by the courts and should be given a speedy judgement. Since the people have a psyche of the courts taking long time to give a judgement, they prefer to chuck the assault or battery that they suffered from and thus, don't initiate to file a case. Appropriate compensation has to be given to the damages the claimant faced.

➢ Class activity

- Teacher information on basic principles and definitions.
- Learners make a mind map based on the three torts (assault, battery, and false imprisonment), identifying key cases and the most applicable defences in each situation.
- Multiple-choice quiz based on scenarios to choose most appropriate tort.
- Debate – Should patient autonomy take precedence over the need for medical treatment?
- Moral issues in law – use medical or sporting cases as a stimulus such as in Re F, Re T or Simms and Condon v Basi.
- Essay – To what extent is the boundary between law and morality blurred in trespass to the person.
- Research task – learners read the article and conduct their own research on the 'Cardiff Three' case outlined in the website opposite. Learners make a presentation to explain the case and whether you agree with the views of the writer of the article.
- Learners read the article in the website opposite. Working as a team learners put forward the arguments they might use if they were making or defending this case.
- Discussion – Did the Supreme Court make the right decision in this case? – Learners should give reasons for their answer.
- Revision task – Learners write their own problem question. Learners construct a hypothetical set of facts which also gives rise to the possibility of the use of defences and ask other learners in the group to give their own analysis of how the law will be applied.
- Exam questions – both essay and hypothetical problem/case study questions can help learners to develop their skills.

➢ Questions from past papers

- **Q1.** 'Trespass to the person is no longer a significant tort.' Critically assess the extent to which this view can be substantiated. **[May/June 2005]**
- **Q2.** Critically analyse the protection offered by the tort of trespass to the person and its impact on personal freedom. **[October/November 2007]**
- **Q3.** Harm suffered by the willing participant in any situation is not actionable in tort. Referring to case law, analyse the extent to which the defence of *volenti fit injuria (to a willing person, no injury is done)* operates as a defence to actions brought in the torts of negligence and trespass to the person. **[October/November 2009]**
- **Q4.** The tort of trespass to the person is no longer of any real legal significance because potential claims for compensation are now more than adequately provided for elsewhere within the law. Discuss, using specific examples, the extent to which you consider this view justified. **[May/June 2010]**