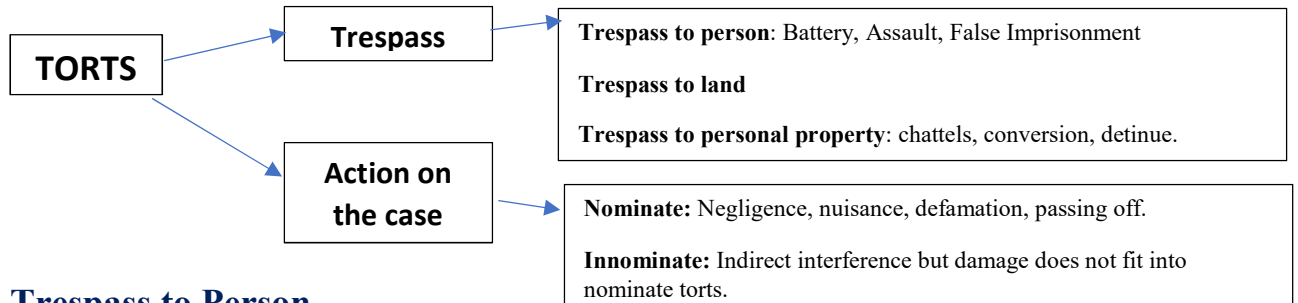


TORTS Semester 1 -Complete Summary

Types of Civil Wrongs in Torts

Torts allows a person who has been privately wronged to seek compensation or some other remedy through the court system.

It's based upon common law and supplemented by legislation.



Trespass to Person

1) Identify parties. 2) Jurisdiction. 3) Onus of proof. 4) Time limit. 5) State interference.

* **Highway**- Onus on plaintiff throughout.

* **Non-highway**- Onus on plaintiff to prove direct interference, defendant disproves fault.

***LOAA**- (Personal injury: 3yrs s11) (No injury- 6 yrs. s10).

Battery- Elements

- 1) Direct/indirect interference: The application of force to the plaintiff's person is the immediate result of an intentional act or reasonably foreseeable; s 245 *Criminal Code Act 1899* (Qld).
To be actionable it must be outside of the scope of everyday interactions; *Rixon v Star City Pty Ltd* (2001).
- 2) No consent: Interference was committed in the absence of express or implied lawful consent; *McNamara v Duncan* (1971); s 245 *Criminal Code Act 1899* (Qld).
- 3) Fault: Must be voluntary, intentional or negligent action. Knowledge isn't required for it to be actionable; *Carter v Walker* (2010).

Assault- Elements

- 1) Threat to apply force: Threat of immanent harm to the person of the plaintiff by gesture, actions and/or words; s 245 *Criminal Code Act 1899* (Qld). Words alone may amount to an assault.
- 2) Actual or apparent ability: The defendant must have the apparent or actual ability to carry out the threat; s 245 *Criminal Code Act 1899* (Qld), *Brady v Schatzel [1911]*.
- 3) Fault: Defendant intended to cause apprehension in the mind of the plaintiff; *Brady v Schatzel [1911]*. May have been recklessly caused. The plaintiff must be aware of the threat.

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False Imprisonment- Elements

- 1) Direct interference with liberty: The immediate result of the defendant's action restricts the plaintiff's liberty; *Myer Stores Ltd v Soo* [1991]. Must be actively promoted. Knowledge of false imprisonment at the material time is not required.
- 2) Total restraint: All directions are restrained with no reasonable means of escape; *Myer Stores Ltd v Soo* [1991]. Need not be physical; plaintiff can be under a sense of authority; *Myer Stores Ltd v Soo* [1991]. Lawful arrest doesn't give rise to an action.
- 3) Fault: Intentional or negligent act by the defendant.

Trespass to Land

1) Identify parties. 2) Jurisdiction. 3) Onus of proof. 4) Time limit. 5) State interference.

***LOAA**- (Always 6yrs- s10): Regardless of physical damage or no damage.

Elements

- 1) Title to sue: Exclusive possession of the land at the time of interference. Legally recognised right to the enjoyment and use of the land; *Newington v Windeyer* (1985).
- 2) Direct interference with land: Immediate consequence of defendant's actions interferes with the land; either physical property or transient; *Lord Bernstein of Leigh v Skyviews & General Ltd* [1978]. Must interfere with what is necessary for the reasonable use and enjoyment of the land.
- 3) Unauthorised: Without lawful authority or licence. Outside the scope of express or implied consent. Must leave within a reasonable period of consent being revoked; *Halliday v Nevill* (1984), *TCN Channel Nine Pty Ltd v Anning* (2002).
- 4) Fault: Voluntary or careless action; *TCN Channel Nine Pty Ltd v Anning* (2002).

**Trespass ab initio*- Defendant enters with lawful authority (not express or implied) and commits an act outside of their authority then it is unauthorised from the initial entry.

Defences to Trespass

If the defendant is unable to deny fault, they still may escape liability if on the balance of probabilities, it can be established that one of the available complete defences applies.

- 1) **Consent**: May be express or implied; *Halliday v Nevill*.
May exceed the scope of the consent.
Can be revoked or withdrawn by the plaintiff at any time; *Anning*.
Cannot be obtained through duress or fraud.
Age/ mental capacity to provide consent is considered.
- 2) **Necessity**: Necessary for the preservation of life or human safety, property protection; *Rigby v Chief Constable of Northamptonshire* [1985].
Must be an imminent threat of grave harm
Reasonable apparent necessity for undertaking the tortious act

TORTS Semester 1 -Complete Summary

No fault for creating the imminent harm

- 3) **Self-defence and defence of another:** Justified by the need to avert a threat of harm. *Criminal Code Act 1899 (Qld) s 271.*

Self-defence: Harm must rise from the plaintiff's actions as a threat to the defendant.

Prove the force used was reasonable and proportionate to the threat.

Defence of another: Used proportionate and reasonable force against the plaintiff to protect a third party. *Criminal Code Act 1899 (Qld) s 273.*

- 4) **Provocation:** Only applies to trespass to person actions. This applies when the actions of the plaintiff induce the defendant to lose self-control. In Queensland, it's a complete defence under s 269 *Criminal Code Act 1899 (Qld).*

Must prove they were provoked to lose self-control.

Acted before their passion had cooled.

The force used was proportionate to the provocation.

Not intended or likely to cause death or grievous bodily harm.

Remedies for Trespass to person or land

A remedy is a right which may be enforced or the infringement of a right that may be prevented or compensated. Most commonly, compensatory or an injunction.

Trespass is actionable per se, therefore, no proof of loss or damage is required.

Trespass to person

- 1) **Nominal:** Token amount of money even if no loss was suffered.
- 2) **Compensatory:** If damage was suffered, it seeks to place the plaintiff back in their original position.
- 3) **Aggravated:** If the plaintiff's feelings were damaged, humiliated or stressed; *Myer Stores Ltd v Soo*.
- 4) **Exemplary/punitive:** Punishes the defendant and deters others from that action.

*If personal injury is sustained, the plaintiff cannot claim compensatory and aggravated or exemplary damages unless it resulted from unlawful intention to cause injury or unlawful sexual misconduct; *Civil Liability Act 2003 (Qld) s 52.*

Trespass to land

Remedies are **damages and injunctions**. Nominal damages may apply even if no damage is sustained to the property; *TCN Channel Nine Pty Ltd v Anning*.

Compensatory damages are awarded in the sum of the cost of reinstatement or decrease in property value (dependant on which is less).

Exemplary/aggravated damages are rare but can be awarded; *TCN Channel Nine Pty Ltd v Anning*.

To award an injunction it must be proven that damages are insufficient (if the trespass is ongoing). If an injunction does not place a great burden on the defendant, this argument is stronger.