

**Trespass To the Person**  
**Assault, Battery & False Imprisonment.**

| <b>Main Principles</b>   |  |
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| <p>Protect &amp; vindicate the basic rights of citizens against deliberate (even well meaning) invasion whether or not damage is caused.</p> | <p><b><u>Cannot be liable for an omission.</u></b><br/>Omissions not sufficient (<i>Innes v Wylie</i>)<br/><i>'not doing is no trespass'</i> (Milsom)</p>  |
| <p style="text-align: center;"><b><u>Not a Breach of Duty at all</u></b><br/>Unlike Negligence</p>   | <p><b><u>Level of Fault Required: Must prove Intention.</u></b><br/>Intention only relates to the act (not the consequence)</p> <p>Carelessness or negligence alone will not suffice.<br/><i>Letang v Cooper</i><br/><i>Stubbings v Webb</i><br/><i>A v Hoare.</i></p> <p>However – problematic - <i>Iqbal v Prison Officers Association</i></p> |
| <p style="text-align: center;"><b><u>Onus of proof – on claimant</u></b><br/><i>(Fowler v Lanning)</i></p>                                   | <p><b><u>Limitation Period – 6 years</u></b><br/>from the tortious act.<br/><i>Stubbings v Webb</i></p> <p>Overtured – Courts can now relax the limitation period<br/><i>A v Hoare</i></p>   |

| <b>Assault</b><br><b>Apprehension of a direct &amp; imminent battery</b>   | <b>Battery</b><br><b>Unlawful touching of Another.</b>   |
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| <p>Can have assault without battery <i>Stephen v Myers</i></p> <p>Can be done silently <i>R v Ireland</i></p> <p>Claimant must reasonably believe there is an imminent battery</p> | <p><b>Degree of Force Doesn't matter</b><br/><i>presumably an unwanted kiss may constitute a battery??</i><br/><i>Collins v Wilcock</i></p> <p>Can be done Indirectly</p> <p><b>Additional Element – Later Disapproved by Goff</b><br/>The touching must be 'hostile' (<i>Wilson v Pringle</i>)<br/><i>but what constitutes hostility?</i></p> |
| <p><b>Must go well beyond anything that could be regarded as acceptable in everyday life.</b></p>  |  |

| <b>False Imprisonment.</b>   |
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| <p><b>(1) Detention of a person.</b><br/><b>(2) Detention must be unlawful.</b></p>  |
| <p>Must be a complete Imprisonment (<i>Bird v Jones</i>)</p> <p>Can be committed indirectly (<i>Davidson</i>)<br/>Must be more than the giving of mere info.</p> <p>Victim is unaware they are being imprisoned?<br/>Still liable.</p> <p>Level of fault required – unclear?<br/><i>Iqbal v Prison Officers Association.</i><br/>Lord Smith – Intention.<br/>Ladyship – Recklessness will suffice.</p> |

| <b>The Rule in <i>Wilkinson v Downton</i></b>  |
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| <p>Intentional infliction of emotional distress<br/>an indirect consequence of the defendants act.</p> |
| <p>Unclear. No Application in modern Law.</p>  |

Despite 1 successful application (*Bush*)  
**Hoffman** defined the rule to make it practically impossible to use again.  
 'Wilkinson v Downton has nothing to do with trespass to the person'  
 (*Wainwright v Home Office*)

**Harassment**

**Protection from Harassment Act 1997:**  
*originally made to deal with stalking  
 but in practice been used for work place bullying etc.*

**s.1 – Level of Fault** – unreasonable course of conduct & you know or ought to know this is harassment.

**s.2 – 'ought to know'** – if a reasonable person would think so

**s.7 Must be 'Oppressive & Unacceptable'**  
 (*Majowski v Guy's & St Thomas's*) & (*Veakins v Kier Islington*)

**2 Elements:**

**(1) targeted at an individual.**  
**(2) must be calculated to produce the consequence in s.7**

**Can be Vicariously Liable.**  
*Majowski*

**Conduct Must be 'Rather Serious'??**  
*Ferguson v British Gas*

**Does not have to be of criminal nature**  
*Veakins v Kier Islington*

**Damages for Harassment:**  
 foreseeability of the loss/damage/harm is not necessary.  
*Jones v Brown*

| <b>**Defences** Justifying the Act.</b>  |   |   |
|--|---|---|
| <p><b>(1) Ex turpi causa non oritur actio:</b><br/> <b>The illegality Defence</b><br/>           'an action in law cannot be founded on an illegal or immoral act'<br/><br/>           when C is injured whilst doing something illegal/immoral – should they get compensation??<br/><br/>           quite a vague principle.<br/><br/> <i>Murphy v Culhane.</i></p> | <p><b>(2) Lawful Arrest &amp; Detention</b><br/>           Cannot arrest if someone has not paid.<br/> <i>Sunbolff v Alford</i><br/><br/> <b>PACE 1984</b><br/>           non-police officers may lawfully arrest someone actually committing or reasonably suspected of committing an indictable offence<br/><br/>           Prisoners cannot be unlawfully detained – as they are already lawfully detained.<br/> <i>Hague v Parkhurst Prison</i></p> | <p><b>(3) Consent</b><br/>           Consent must be real.<br/><br/>           Problems may arise where consent is withdrawn<br/> <i>Re MB</i><br/><br/>           Doctors – only need to explain the operation in 'Broad Terms'.<br/> <i>Chatterton v Gerson</i></p> |
| <p><b>(4) Necessity</b><br/> <i>(Usually Medical Contexts)</i><br/><br/>           Can only be a defence if the patient has lost the capacity to make the decision themselves.<br/> <i>F v West Berkshire Health Authority</i><br/><br/>           Even a temporary loss of capacity will be enough<br/> <i>Re MB</i></p>  | <p><b>(5) Self-Defence or Defence of Others</b><br/><br/>           Defendant can use Reasonable Force (but must be proportionate)<br/> <i>Cockcroft v Smith</i><br/><br/>           Cannot be Sometime after<br/><br/>           If Mistaken – can only use Self-Defence if it was a Reasonable Mistake.<br/> <i>Ashley v Chief Constable of Sussex</i></p>  | <p><b>(6) Contributory Negligence</b><br/>           Not a defence for the tort of Assault &amp; Battery<br/> <i>Co-op Group v Pritchard</i></p>  |