

## TRESPASS TO THE PERSON

### ASSAULT

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An assault is an act which causes another person to apprehend the infliction of immediate, unlawful, force on his person.

It was said in *R v Meade and Belt* (1823) 1 Lew CC 184, that '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 words alone in *R v Ireland* [1997] 4 All ER 225, and the Court of Appeal in *R v Constanza* [1997] Crim LR 576.

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. See:

*Tuberville v Savage* (1669) 86 ER 684

The claimant must have reasonably expected an immediate battery. Thus in *Stephens v Myers* (1830) 172 ER 735, the defendant made a violent gesture at the plaintiff by waving a clenched fist, but was prevented from reaching him by the intervention of third parties. The defendant was liable for assault. For a contrasting case see:

*Thomas v NUM* [1985] 2 All ER 1

### BATTERY

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A battery is the actual infliction of unlawful force on another person. It was stated in *Cole v Turner* (1704): 'The least touching of another in anger is a battery'. However, such a widely drawn principle must inevitably be subject to exceptions:

*Collins v Wilcock* [1984] 1 WLR 1172

Controversially, the Court of Appeal said that there must be a 'hostile touching':

*Wilson v Pringle* [1986] 2 All ER 440

Is 'hostility' a necessary element of battery? In *Re F* [1990] 2 AC 1 (at p 73), Lord Goff said that he doubted whether it is correct to say that the touching must be hostile, and further: 'the suggested qualification is difficult to reconcile with the principle that any touching of another's body is, in the absence of lawful excuse, capable of amounting to a battery and a trespass.' In *R v Brown* [1993] 2 All ER 75, the House of Lords said that if an act was unlawful it was hostile.

If a person intentionally applies force directly to another, the claimant has a cause of action in trespass. However, if a person does not inflict injury intentionally, but only unintentionally, the claimant only has a claim in negligence. See:

*Letang v Cooper* [1964] 2 All ER 929

The defendant's act must cause direct damage, but see:

*Scott v Shepherd* (1773) 2 B1 R892

## FALSE IMPRISONMENT

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False imprisonment is the unlawful imposition of constraint upon another's freedom of movement from a particular place.

This tort protects a person from restraint and does not give a person absolute freedom of movement. Thus, if there is a reasonable escape route there will be no false imprisonment. See:

*Bird v Jones* (1845) 7 QB 742

*Robinson v Balmain New Ferry* [1910] AC 295

Can a person be falsely imprisoned without his knowledge? Yes, according to the Court of Appeal and the House of Lords in, respectively:

*Meering v Graham-White Aviation Co Ltd* (1920) 122 LT 44

*Murray v Ministry of Defence* [1988] 2 All ER 521

However, Lord Griffiths did state in the latter case: 'If a person is unaware that he has been falsely imprisoned and has suffered no harm, he can normally expect to recover no more than nominal damages ...'.

Can an omission to release a person constitute false imprisonment? Not according to the House of Lords, at least where a person has consented to some degree of constraint on their movement. See:

*Heard v Weardale Steel, Coal & Coke Co* [1915] AC 67

## THE RULE IN WILKINSON v DOWNTON

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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

The Court of Appeal upheld this rule in *Janvier v Sweeney* [1919] 2 KB 316.

## DEFENCES

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### CONSENT

Consent may be given expressly by words or be implied from conduct.

A person is deemed to consent to a reasonable degree of physical contact as a result of social interaction (see *Collins v Wilcock*, above).

Those who take part in sports also consent to a reasonable degree of physical contact during the course of play, ie within the rules, even to the risk of being unintentionally injured. However, there can be no consent to deliberate acts of violence (*R v Billingham* [1978] Crim LR 553).

What is meant by 'informed consent' and does English law recognise such a doctrine? Informed consent is the notion that consent is not valid unless all the risks of a surgical procedure have been explained. A person may not

bring an action, in trespass or negligence, on the ground that they had not been informed of the potential consequences. See:

*Chatterton v Gerson* [1981] 1 All ER 257

The following case rejected the doctrine of informed consent:

*Sidaway v Governors of the Bethlehem Royal Hospital* [1985] 1 All ER 643

The issue in trespass is whether the patient consented to what was being done, and the issue in negligence is whether the patient should have been informed of the risks.

Every adult has the right to refuse medical treatment even if it will result in permanent injury or even death. However, a person may be deprived of his capacity to decide either by long term mental incapacity or temporary factors such as unconsciousness or confusion or the effects of fatigue, shock, pain or drugs. In such a case, it is the duty of the doctors to treat him in whatever way they consider, in the exercise of their clinical judgment, to be in his best interests (Lord Donaldson MR, *Re T* [1992] 4 All ER 649). Relevant cases on capacity include:

*In re F (Mental Patient: Sterilisation)* [1989] 2 All ER 545  
*Re T* [1992] 4 All ER 649

## LAWFUL ARREST

The powers of arrest, exercisable by a constable or a private citizen, are contained in the Police and Criminal Evidence Act 1984. An arrested person must be told, as soon as is practicable, that he is under arrest; and the grounds for the arrest (s28). Private citizens making an arrest must, as soon as is reasonable, hand the arrested person over to the police. Only reasonable force may be used to effect an arrest.

Also note that in *Albert v Lavin* [1981] 3 All ER 878, Lord Diplock stated: "... every citizen in whose presence a breach of the peace is being, or reasonably appears to be about to be, committed has the right to take reasonable steps to make the person who is breaking or threatening to break the peace refrain from doing so; and those reasonable steps in appropriate cases will include detaining him against his will ..."

The police must not act unlawfully. See:

*Collins v Wilcock* [1984] 1 WLR 1172

## SELF DEFENCE

It has long been an established rule of the common law that a person may use reasonable force to defend himself, another person, or his property from attack. What is reasonable force is a question of fact in each case.

A person may make a mistake as to their right to self defence. In such a situation, the criminal law allows a defendant to be judged on the facts as he honestly believed them to be: *R v Williams (Gladstone)* (1984) Cr App R 276 and *Beckford v R* [1988] AC 130.

## NECESSITY

In *Re F* (above), a case concerning when medical treatment can be justified when given without consent, Lord Goff having explained public necessity and private necessity stated:

“There is, however, a third group of cases, which is also properly described as founded upon the principle of necessity and which is more pertinent to the resolution of the problem in the present case. These cases are concerned with action taken as a matter of necessity to assist another person without his consent. To give a simple example, a man who seizes another and forcibly drags him from the path of an oncoming vehicle, thereby saving him from injury or even death, commits no wrong. But there are many emanations of this principle, to be found scattered through the books”.

Lord Goff went on to say that the present case was concerned with action taken to preserve the life, health or well-being of another who is unable to consent to it. The basic requirements, applicable in these cases of necessity, were “not only (1) must there be a necessity to act when it is not practicable to communicate with the assisted person, but also (2) the action taken must be such as a reasonable person would in all circumstances take, acting in the best interests of the assisted person”.

## PROVOCATION

The authority on provocation and contributory negligence is:

*Lane v Holloway* [1967] 3 All ER 129