
INTENTIONAL TORTS TO THE PERSON

Chapter Synopsis

- I. Trespass to the person [12]
 - Battery [19]
 - Assault [35]
 - False imprisonment [48]
- II. Intentional infliction of emotional distress [61]
- III. Limitations and defences to intentional torts to the person [71]

I. Trespass to the person [12]

A. **Definition:** *Direct and intentional acts of interference by the defendant with the person of the plaintiff.*

B. *There are three modern torts to the person that flow from the ancient principles of trespass.*

- 1. Battery
- 2. Assault
- 3. False imprisonment
 - a. All three are crimes as well as torts. [13]
 - (1) Tort – does *not* require the mental element of *mens rea*.
 - (2) Criminal cases can often be used in tort as authority, but always note the different context of the decisions.

C. *Common characteristics: All three trespasses to the person have the following three common characteristics.* [14]

- 1. **Voluntary act by the defendant.**
 - a. Voluntary meaning under defendant's *conscious control*.
 - (1) **Example:** A person who strikes another while suffering an epileptic seizure did not act voluntarily, i.e. act with conscious control.

- (2) **Classic case:** *Scott v Shepherd* (1573) 96 ER 525. Persons in a busy market who were throwing fireworks away from themselves were not acting voluntarily because they were acting in self-defence after a person had thrown the fireworks toward them.
- b. The defendant's act must be *intentional* or *negligent*. [15]
- (1) It is not necessary for the plaintiff to prove that the defendant intended to injure the plaintiff.
 - (2) However, it is necessary to prove that the defendant intended the acts which led to the plaintiff's injury.
 - (3) **Example:** As a romantic gesture, if Tarzan swept Jane off her feet, but dropped her, causing Jane to break her wrist, Tarzan did not intend the injury, but he did intend the act.
- c. **No transferred intent:** The intent to commit a tort against one victim *cannot* be transferred to another victim. [16]
- (1) Historically, transferred intent applied to the five intentional torts of battery, assault, false imprisonment, trespass to chattels and trespass to land.
 - (2) Legal commentators appear to agree that transferred intent should *not* be applied in a civil case (although the concept is accepted in criminal law).
 - (3) **Note:** Negligence may apply. A person is always deemed to intend the natural and probable consequences of their actions.
 - (a) **Example:** Sally and Greg are in a crowded pub. Sally is annoyed with Greg and intends to throw her glass of red wine on him. If Sally misses and hits Danny with the wine, she has committed a battery to Danny although she did not intend to hit him with the wine.
2. **Direct injury to plaintiff.** See [3] for difference between direct/indirect. [17]
- a. Injury can be a mere *contact* or *impact* to plaintiff's person, property or rights (such as freedom).
 - b. **Actionable per se:** No proof of damages is required to maintain an action.
3. **Causation:** The injury to the plaintiff must be caused by the defendant's voluntary act or some force set in motion by the defendant's act. [18]

a. **Burden of proof**

- (1) The plaintiff must prove that the defendant's conduct caused the injury, contact or impact.
- (2) The onus then shifts to the defendant to prove that the injury, contact or impact was not intentional or negligent.

Battery

Definition: The direct application of physical contact upon the person of another without consent. *Dullaghan v Hillen* [1957] IR Jur Rep 10, 13. [19]

Required Elements of Battery [20]

- A. Voluntary act by the defendant
- B. Physical contact (or impact) to the plaintiff
- C. Intention or negligence
- D. Causation
- E. No consent

A. *Voluntary act by the defendant* [21]

1. Voluntary meaning under defendant's conscious control.
 - a. **Example:** A person who strikes another while suffering an epileptic seizure did not act voluntarily, i.e. act with conscious control.
 - b. **Classic case:** *Scott v Shepherd* (1573) 96 ER 525. See [14].
2. Force is *not* required. [22]
 - a. A hostile intent is *not* necessary for a battery.
 - (1) **Examples:** Caressing or kissing the plaintiff.
 - b. However, the least touching of another in anger is a battery. *Cole v Turner* (1704) 90 ER 958.
 - (1) **Examples:** Hitting, striking, pinching or spitting on the plaintiff.
3. Mere passive obstruction is not a battery. [23]
 - a. **Example:** John is standing in the doorway of the shop, and Mary wishes to enter the shop. John has not committed a battery even if Mary brushes against him.

B. *Physical contact (or impact) to the plaintiff* [24]

1. **No harm or injury required.**
 - a. The plaintiff is not required to suffer any harm or injury such as bruising, cuts or broken bones from the contact.

- b. The contact (or impact) is enough. *Rationale*: Battery protects bodily integrity.
2. **Physical contact** [25]
- a. Extends to *any* part of the plaintiff's body that is touched,
- b. Or to anything, which is *attached* to the plaintiff's body and practically, identified with it. **Examples**:
- (1) Removing an orange lily from a lady's coat by a policeman was held to be battery. *Humphries v Connor* [1864] 17 IR CLR 1 (QB 1864).
 - (2) Striking the horse plaintiff was riding *Dodwell v Burford*, (1669) 86 ER 703.
 - (3) Pulling out the chair upon which a person was going to sit.
 - (4) Grabbing a plate out of a person's hand or knocking a hat off the plaintiff's head. [26]
3. **Impact**: No actual contact between the defendant and the plaintiff is required.
- a. **Example**: If Fred hits Barney with a brick, Fred has committed a battery even though he did not actually touch Barney himself.

C. *Intention or negligence* [27]

1. **Intent**
- a. It is not necessary for the plaintiff to prove that the defendant intended to injure or harm.
 - b. The plaintiff must show that the defendant intended the act(s) that constitute the battery.
2. **Negligence** [28]
- a. **Natural and probable consequences**: Everyone is deemed to intend the natural and probable consequences of their actions.
 - b. **Example**: If Kitty hits a customer while practising her golf swing in a crowded sports shop, the contact with the customer would be a natural and probable consequence of Kitty's actions. Kitty owes a duty of care to the customer to act as a reasonable person (see [335] *et seq*). It is not reasonable to swing a golf club in a crowded sports store. Kitty has acted negligently.

D. *Causation* [29]

1. Direct application.
The contact (or impact) to the plaintiff must have *directly* resulted from the defendant's act(s). *Leame v Bray* (1803) 3 East 593. See causation [530].

2. Note: The intention to do the act disposes of any question of remoteness of damages. *Quinn v Leathan* [1901] AC 495. See remoteness [558].
 - a. Proof of damages: Is not an issue because trespass is actionable per se.
3. Onus shifts: Once the plaintiff has proven a direct injury, i.e. contact or impact to the plaintiff's body, the onus or burden shifts onto the defendant to show that he did not act intentionally or negligently.

E. No consent (see defences [72]) [30]

1. **Express consent:** A verbal or written agreement to the physical contact.
 - a. **Example:** A written consent form for surgery to be performed.
2. **Implied consent:** A presumed agreement to the physical contact based on the plaintiff's acts.
 - a. **Example:** Rolling up sleeve and offering arm to doctor for blood to be drawn.
3. **Exceeding consent:** If consent, either express or implied, is exceeded, a battery occurs. [31]
 - a. **Example:** *Nash v Sheen* [1953] CLY 3726. The defendant hairdresser caused a skin complaint when she gave the plaintiff an unwanted hair dye when the plaintiff had requested a perm. The plaintiff's consent to physical contact had been exceeded, therefore the defendant was liable for battery.

Legal dilemma [32]

1. Practical jokes and other contacts of modern life have caused difficulties.
 - a. **Example:** It is technically a battery to slap someone's shoulder in congratulations or to bump into another on a crowded footpath.
2. **Implied consent fiction:** Some jurisdictions have skirted the problems associated with contacts of modern life by finding implied consent for the contact.
 - a. By going out onto a crowded footpath, a person by her conduct consents to the normal bumps and impacts of walking on a crowded footpath.
3. **English approach:** Appears to reject the implied consent fiction and appears to view such contacts as battery if the contact is **hostile.** [33]

- a. Leading case: *Wilson v Pringle* [1987] QB 237; [1986] 2 All ER 440. A schoolboy was injured when another boy pulled his shoulder bag roughly.
 - b. **Hostility requirement:** Was rejected by Lord Goff in *F v West Berkshire Health Authority* [1989] 2 All ER 545, 564.
4. **American approach:** Rejects the implied consent fiction. Battery in the US has been restricted to harmful or offensive contact. [34]
- a. Incidents of modern life, such as patting someone on the back, is not harmful or offensive, and thus not a battery in the US.
 - b. However, an unwanted kiss would be offensive.
 - c. Intentionally blowing cigar smoke into the plaintiff's face for the purpose of causing physical discomfort, humiliation and distress was found to be a battery. *Leichtman Communications v WLW Jacor*, 634 N.E.2d 697 (OH 1994).

Assault

Definition: An act by the defendant that places the plaintiff in reasonable apprehension of an immediate battery. *Dullaghan v Hillen* [1957] IR Jur Rep 10. [35]

Required elements of assault [36]

- A. Voluntary act by the defendant
- B. Apprehension by the plaintiff
- C. Intent or negligence
- D. Causation

A. *Voluntary act by the defendant* [37]

1. **Voluntary: Simply means under the defendant's conscious control.**
 - a. See [21].
 - b. **Assault example:** Mr Magoo is tired of pedestrians walking in the roadway instead of on the footpath. In an effort to teach Paul the pedestrian a lesson, Mr Magoo drives straight for Paul, only turning away at the last minute. Paul is frightened and thinks that he is going to be hit by the automobile. Mr Magoo performed a voluntary act, i.e. driving toward Paul. However, if Mr Magoo had passed out and his automobile

veered toward Paul, causing Paul to think that the automobile was going to hit him, Mr Magoo has not performed a voluntary act.

2. **Words as the voluntary act** [38]
- a. **General rule:** Words alone, no matter how harsh, lying, insulting and provocative, can never amount to an assault.
- (1) ‘Sticks and stones may break your bones, but words will never harm you...no matter how harsh, lying, insulting, and provocative they may be...’, Fawsitt J. in *Dullaghan v Hillen* [1957] IR Jur Rep 10.
- b. **Exception:** In a particular context, words alone may be an assault if the words induce a reasonable apprehension of an immediate battery. *Dullaghan v Hillen* [1957] IR Jur Rep 10.
- (1) **Example of exception:** In a dark, secluded alley a man whispers to a young girl, ‘Don’t move or I’ll hurt you!’
- c. **Circumstances:** Under certain circumstances, words alone may render some conduct harmless that would otherwise constitute an assault. [39]
- (1) **Classic case:** *Tuberville v Savage* [1669] 86 ER 684. Defendant, with his hand on his sword, said to the plaintiff: ‘[i]f it were not Assize time, I would not take such language from you.’ (In earlier times, courts only sat at infrequent intervals, referred to as Assize time. In other words, the defendant was saying that because the courts were in session, he would ignore your remarks.) Held not to be an assault.
3. **Silence as the voluntary act** [40]
- a. Legal commentators are divided over whether repeated harassing *silent phone calls* can amount to an assault.
- b. In two criminal cases, *R. v Ireland*; *R. v Burstow* [1998] AC 147, the defendant’s silence was found to be capable of being a criminal assault. The defendant made repeated silent harassing phone calls to his victim.
- (1) These decisions have been criticised, as they do not fit nicely within the required elements of the tort of assault, i.e. how could a person be in reasonable apprehension of an immediate battery by a silent phone call if that person is home alone behind a locked door?
- (2) To deal with stalking and harassment that did not fit into criminal assault or the tort of assault, many jurisdictions have enacted anti-stalking and anti-harassment legislation.

- c. **Irish approach:** Section 10 of the Non-Fatal Offences Against the Person Act 1997 makes it a criminal offence to by any means, including the telephone, harass another by persistently following, watching, pestering, besetting or communicating with the victim.
 - d. **English approach:** Protection from Harassment Act 1997.
 - (1) Introduced the tort of harassment into English law.
 - (2) Section 1 prohibits a person from pursuing a course of conduct that he or she knows or should know amounts to harassment of another.
4. **Passive obstruction** [41]
- a. **General rule:** Mere passive obstruction is *not* an assault.
 - (1) **Example:** *Innes v Wylie* (1844) 1 Car and K 257. A police officer stood still and barred the plaintiff's way. Held not to be an assault.
 - b. **Exception to general rule:** If the defendant takes active steps to block or obstruct the plaintiff, this may be an assault.
 - (1) **Example:** *Bruce v Dyer* (1966) OR 705 (Canadian). A driver parked his vehicle on the roadway to block another driver. This was held to be an assault.

B. Apprehension by the plaintiff [42]

- 1. **Assault**
 - a. Said to be a *touching* of the *mind*, not the body.
 - b. *Protects* against purely mental disturbances.
 - c. No contact or impact to the plaintiff's person is required.
 - (1) An assault may occur without a battery.
 - (2) A battery may occur without an assault.
- 2. **Apprehension** [43]
 - a. Is *not* fear.
 - (1) Reasonable apprehension does *not* require the plaintiff to be in fear. The plaintiff must realise or perceive that a battery is imminent.
 - b. Must be reasonable.
 - (1) A reasonable person would have the belief that a battery was imminent based upon the defendant's act(s) and the surrounding circumstances.
- 3. **Imminent battery required** [44]
 - a. Threats of future harm are generally *not* considered an assault.
 - (1) **Example:** *Thomas v National Union of Mineworkers* [1985] 2 All ER. The plaintiff, a miner, refused to join his

co-workers on strike. The plaintiff was brought to the pit on a bus through the picket lines. The striking miners made violent gestures to the occupants of the bus. These gestures of violence were held not to be an assault. The police held back the striking miners and the plaintiff was on the bus, therefore the plaintiff had no reasonable grounds that an immediate violent act was going to occur.

C. *Intent or negligence* [45]

1. **Intent** see [15].

a. **General rule:** An assault is *not* dependent on the defendant's intentions:

(1) Toward the plaintiff, or

(a) **Example:** Henry is throwing stones at his enemy Malachi while Malachi is talking to Sue. If Sue is placed in a reasonable apprehension of an immediate battery (being hit by a stone), Henry has committed an assault to Sue even though he did not intend to do so and had no quarrel with her.

(2) To carry out his threat.

(a) **Example:** If Conor points a gun in a threatening manner at Michael, it does not matter whether the gun is loaded or even able to fire; an assault has occurred if Michael is in reasonable apprehension of being shot. However, there would be no assault if Michael also knew that the gun was not loaded. *R. v St. George* (1840) C and P 483.

2. **Negligence** [46]

a. Natural and probable consequences: Everyone is deemed to intend the natural and probable consequences of their actions, so if the defendant negligently acts so as to cause the plaintiff to believe that a battery is imminent, he is liable for an assault.

D. *Causation* [47]

1. **The plaintiff's reasonable apprehension must have *directly* resulted from the defendant's act(s).** See [29].

2. Onus shifts: Once the plaintiff has proven a direct injury (the act(s) of the defendant placed the plaintiff in a reasonable apprehension of an immediate battery), the onus shifts onto the defendant to show that he did not act intentionally or negligently.

False Imprisonment

Definition: The unlawful and total restraint of the personal liberty of another. *Dullaghan v Hillen* [1957] Ir Jur 10. [48]

Street's definition: Any act by the defendant which directly or intentionally or negligently causes the confinement of the plaintiff within an area delimited by the defendant. (Definition preferred by most legal commentators.)

Required elements of false imprisonment [49]

- A. Voluntary act by the defendant
- B. Confinement of the plaintiff
- C. Causation
- D. No consent

A. Voluntary act by the defendant [50]

1. **Voluntary:** Meaning under the defendant's conscious control. See [21] and [37].
2. **Acts** may include the defendant:
 - a. *Constraining* the plaintiff;
 - b. *Compelling* the plaintiff to go to a particular place;
 - c. *Confining* the plaintiff; or
 - d. *Detaining* the plaintiff against his or her will.
3. **Physical contact** with the plaintiff's person is *not* required. [51]
4. **Words** alone may be a sufficient act for false imprisonment. [52]

Examples:

- a. Threats of force: 'If you leave that chair I'll make you sorry you were ever born.'
 - b. Asserting authority: 'You are under arrest. Don't move.'
5. **No act** [53]

Failure to release: If the plaintiff becomes imprisoned on the defendant's land, there is *no* false imprisonment if the defendant did not place or induce the plaintiff to become imprisoned.

B. Confinement of the plaintiff [54]

1. **Requires total restraint of the plaintiff.**
 - a. The inability of the plaintiff to go in *any* direction.
 - (1) Including back the way the plaintiff came.
 - (2) However, if the plaintiff is only prevented from going in

a certain direction, i.e. north, this is not a total restraint.
Bird v Jones (1845) 115 ER 668.

2. Does *not* require the plaintiff to risk: [55]
 - a. Injury; *Sayers v Harlow UDC* (1958) 1 WLR 623;
 - b. Humiliation; or
 - c. Property damage.
 - (1) **Example:** Brutus stood in the only door into Oliveoil's office and demanded a kiss or he would not allow her to leave the office. The office is located on the third floor of the Spinach Exchange Building. Oliveoil is falsely imprisoned because she is totally restrained. The law does not require her to endure a humiliation (Brutus's kiss) to escape or to risk injury or damage to her clothing by climbing out the window onto an adjoining roof. [56]
3. **Overt surveillance** is *not* a detention. *Kane v Gov of Mountjoy Prison* [1988] IR 757 (SC). So long as the person is free to go where she or he wants.
4. **Imprisonment** [57]
 - a. A sentence of imprisonment is *not* a false imprisonment.
 - b. Continuation of imprisonment: A person who helps to continue a wrongful detention commits false imprisonment. This is true even if the person is not responsible for the original detention.
5. **Consciousness of confinement** is not required. [58]
 - a. False imprisonment may take place without the plaintiff being aware of being confined.
 - b. **Examples:**
 - (1) A sleeping or unconscious person.
 - (2) A child.
 - (3) A mentally handicapped person.

C. Causation [59]

1. The defendant's act(s) must be the cause of the plaintiff's false imprisonment. See causation [29].
2. Onus shifts: Once the plaintiff shows that the act(s) of the defendant caused the plaintiff to be confined, then the onus shifts onto the defendant to prove that he did not act intentionally or negligently.

D. No consent (see defences [72]).

[60]

II. Intentional infliction of emotional distress

Definition: Conduct by the defendant that intentionally or recklessly inflicts severe emotional distress to the plaintiff. [61]

Birth of Tort [62]

1. *Wilkinson v Downton* [1895-9] All ER 267. The defendant told the plaintiff that her husband had been seriously injured in a road accident. He further told the plaintiff that her husband wanted to come home. The plaintiff sent a servant and her son to bring the injured man home. Later, she learned that the story was not true. The story had been intended as a practical joke. The plaintiff suffered trauma to the extent that she suffered serious physical injury with lasting effects.

a. The defendant in *Wilkinson v Downton* had not committed a recognised trespass to the plaintiff's person (battery, assault, false imprisonment).

2. Distinguished from trespass. [63]

a. Intentional infliction of emotional distress flows from the ancient principles of trespass to the case rather than trespass.

b. **Proof of injury** is necessary to maintain a cause of action, therefore intentional infliction of emotional distress is *not* actionable per se.

Required elements of intentional infliction of emotional distress [64]

- A. Voluntary act by the defendant
- B. Severe emotional distress to the plaintiff
- C. Intent or recklessness
- D. Causation

A. Voluntary act by the defendant [65]

1. **Voluntary:** Means under the defendant's conscious control. See [21] and [37].

a. **Words:** Unlike assault, words may be sufficient as the required voluntary act.

b. **Example:** *Janvier v Sweeney* [1919] 2KB 316. The plaintiff was deceived by a private investigator who misrepresented

himself as being a policeman. He threatened the plaintiff with criminal proceedings if she did not give him letters that were kept in the house where she worked as a servant. This caused the plaintiff to become ill with ‘shock, neurasthenia, and shingles’. The Court allowed her claim for intentional infliction of emotional distress.

B. Severe emotional distress to the plaintiff [66]

1. **Proof of injury** to the plaintiff is required.
 - a. Plaintiff *must* suffer severe emotional distress.
 - b. No physical manifestation of the emotional distress is required.
 - (1) **Traditionally:** A physical injury was required to ensure against fraud.
 - (2) **Modern approach:** In most jurisdictions, a demonstrable physical injury is not required. **Rationale:** There is now a better understanding of mental diseases and illness. Fraud is less of an issue. See nervous shock [482].

C. Intent or recklessness [67]

1. **Intent:** The defendant must have intended to cause severe emotional distress to the plaintiff.
2. **Recklessness:** The defendant must have acted in disregard of a high probability that his actions would cause severe emotional distress to the plaintiff.

D. Causation [68]

1. The defendant’s act(s) *must* be the cause of the plaintiff’s injury. See [29] and [530].
2. No onus shift: Intentional infliction of emotional distress is not actionable per se, therefore the plaintiff must prove that the defendant acted intentionally or negligently. The burden of proof does not shift onto the defendant.

No Irish cases reported

1. **English approach** [69]
 - a. McMahon believes that the tort may have been usurped by the statutory tort of harassment.
2. **American approach** [70]

- a. Tort applies to intentional or reckless infliction of emotional distress through extreme or outrageous conduct.
- b. *Extreme or outrageous conduct required.*
 - (1) No objective standard, but mere rude or offensive behaviour is not sufficient. Restatement 2d, section 46 describes it as exceeding all bounds of decent behaviour.
 - (2) **Example:** *B.N. v K.K.* (1988) 538 A.2d 1175 (Maryland). The defendant doctor had sexual relations with his nurse, knowing that he had an active case of herpes. The defendant, as a doctor, was aware that the disease was painful and incurable. The defendant was found liable to the plaintiff for the intentional infliction of emotional distress. Note: The plaintiff could not plead battery because she had consented to the contact.

III. Limitations and defences to intentional torts to the person

[71]

Limitations of actions

1. The Statute of Limitations 1957 (as amended) sets forth the time limits within which all tort actions must be brought or the actions become statute barred. See [605] *et seq.*
2. Note – the intentional torts have a six-year time period.
3. The Supreme Court in *Devlin v Roche* [2002] 2 IR 360 held that even where there are personal injuries, the six-year time period applies, rather than the personal injury time period, in cases involving trespass to the person. See [608].

Defences to intentional torts to the person

- A. Consent
- B. Necessity
- C. Inevitable accident
- D. Parental authority
- E. Statutory authority
- F. Defence of self and/or property

A. Consent

[72]

1. **General rule:** The plaintiff's consent to the defendant's contact or conduct renders the contact or conduct lawful.

a. **Examples:**

- (1) *Hegarty v Shine* (1878) 4 LR Ir 288. No battery was found to have been committed against a woman who had been infected with a venereal disease by her partner. The woman had consented to sexual relations with her partner.
- (2) *R. v Linekar* [1995] 3 All ER 69. The defendant agreed to pay a prostitute £25 for sex. After, he refused to pay her. The defendant was charged with rape because the prostitute had consented to the contact for the promise of payment. **Held:** No rape. The prostitute had consented to the act.

2. **May be expressed or implied.** [73]

a. **Express consent:** A verbal or written agreement to the physical contact or actions of the defendant.

(1) **Examples:**

- (a) (Verbal) 'Please cut my hair.'
- (b) (Written) Signing a consent for surgery form.

b. **Implied consent:** Consent is implied by the plaintiff's conduct or act(s).

- (1) **Example:** Sitting in a barber's chair implies consent to a haircut. [74]

(2) **Test for implied consent** is objective.

- (a) **Reasonable:** From the plaintiff's conduct, was it reasonable for the defendant to think that the plaintiff was consenting?

3. **Invalid consent** is consent obtained by fraud or deceit. [75]

a. **Exception:** The general rule regarding the defence of consent will *not* apply if the defendant obtained the plaintiff's consent by fraud or deceit.

- (1) *R. v Case* (1850) 1 Den CC 580. A man told a young girl that the sexual acts that he perpetrated upon her was a surgical operation.
- (2) *R. v Flattery* (1877) 2 QBD 410. A young girl was told that sexual acts would cure her asthma.
- (3) *R. v Williams* (1922) All ER Rep 433. A young girl was told by her singing teacher that his acts (sex) would improve her singing voice by making an air passage.

b. **Note:** To invalidate the plaintiff's consent, the defendant's fraud or deceit *must* go to the nature of the act.

Examples: [76]

- (1) **Not to the act:** Joey tells Monica that his name is Chandler, and later he asks Monica for a kiss. If Monica consents to the kiss, i.e. the act, Joey's fraud or deceit, i.e. lying about his name, does not invalidate Monica's consent to the kiss.
- (2) **To the act:** However, the fraud or deceit would go to the nature of the act if Joey asked Monica if he could whisper a secret in her ear, but when she leaned toward him he grabbed and kissed her. Joey's deceit, i.e. lying about his act, invalidates Monica's consent (to allow Joey to whisper in her ear).

4. Involuntary consent [77]

- a. **Undue influence** may occur where there is an imbalance of power between the parties, rendering the consent involuntary.
- b. **Example:** *Norberg v Wyannib* (1993) 2 LRC 409 (Canadian). A doctor was engaging in sexual conduct with a patient in exchange for drugs for her addiction. The court held that her consent to the doctor's acts was not voluntary, and therefore invalid.

5. Consent to medical treatment [78]

- a. **General rule:** It is a battery to perform any medical treatment or procedures on a patient *without* the patient's consent. *Walsh v Family Planning Services Ltd* [1992] 1 IR 469. (SC) *obiter*.
 - (1) **Example:** *Potts v N.W. Regional Health Authority* (1983) (unrep. Eng.). The plaintiff was given a long-acting contraceptive without her consent. Held to be a battery.
- b. **Informed consent** occurs where a patient consented to treatment but: [79]
 - (1) His *consent was exceeded, or*
 - (2) He was *not fully advised* of the risks of the treatment.
 - (a) **Negligence is the proper tort** (not battery). *Walsh v Family Planning Services Ltd* [1992] 1 IR 469. *obiter*
 - (b) See [365] *et seq.*

c. Consent of minor patient [80]

- (1) **Non-Fatal Offences Against the Person Act 1997, section 23** enables minors aged 16 or older to legally consent to any surgical, medical or dental treatment.

d. Right to refuse treatment [81]

- (1) **Nutrition:** An adult of sound mind has a specific right

to refuse food and water. *Sec. of State for the Home Dept. v Robb* [1995] Fam 12.

- (2) **Medical treatment:** An adult of sound mind has the right to refuse medical treatment, even if her foetus would die. *St. George's Healthcare NHS Trust v S.* [1999] Fam 26.
- (a) **Note:** *St. George's* is an English case, therefore Article 40.3.3 regarding the right to life did not apply.

6. Sporting events [82]

a. Players

- (1) **General rule:** Players *consent* to physical contact inherent in the particular sport.
- (a) *Simms v Leigh Rugby Football Club* [1969] 2 All ER 923. The plaintiff suffered a broken leg when tackled and thrown against the wall. The game had been played according to the rules and the defence of consent was held to be valid.
- (2) **Exception to general rule:** A player's consent may be *invalidated* by flagrant, intentional breaches of the game rules resulting in physical injury to the player. *McNamara v Duncan* (1971) 26 ALR 584. [83]
- (a) *Smolden v Whitworth* [1996] unrep. CA. The defence of consent did not apply where the referee was sued under negligence for failing to apply anti-injury rules in a rugby match.

7. Spectators [84]

- a. **General rule:** Spectators voluntarily assume the risk of harm caused by players, so long as the harm does not result from intentional or reckless behaviour. *Wooldrige v Summer* [1963] 2 QB 43.

B. Necessity [85]

1. **Definition:** The intentional commission of a tortious act to prevent some greater evil where there is no reasonable alternative.
- a. Legal commentators wonder if the defence is still valid today.
- b. McMahon notes that the cases are very old, controversial or not on point.
2. **Reasonable alternative** [86]
- a. *Lynch v Fitzgerald* [1938] IR 382 (SC). The plaintiff claimed damages for the death of his son who was killed by the police when they fired into a mob. It was held that necessity was not

a good defence, since shooting could only be a *last resort* to protect lives or property.

C. Inevitable accident [87]

1. **Definition:** An inevitable accident is defined as when the consequences complained of as a wrong were not intended by the defendant and could not have been foreseen and avoided by the exercise of reasonable care and skill. *McBride v Stitt* [1944] NI 7, 10.
2. A person will not be liable for an event over which he had *no* control, and could not have avoided using even the highest skill and care.
 - a. **Example:** *Stanley v Powell* (1891) 1 QB 86. A bullet ricocheted off of a tree and injured the plaintiff. The injury was held to have been an inevitable accident.
3. **Note:** Many legal commentators believe that inevitable accident has no useful function, 'and it is doubtful whether much advantage is gained by the continued use of the phrase'. (Winfield)

D. Parental authority [88]

1. **General rule:** Parents may exercise *reasonable* restraint or chastisement on their children without committing intentional torts to the person.
 - a. **Example:** If a parent disciplines a child by sending the child to his room for a period of time, the parent has not committed false imprisonment.
 - b. **Exception to general rule:** Art. 3 of the European Convention.
 - (1) *A v United Kingdom* [1998] 2 FLR 959. The European Court of Human Rights (ECHR) found that English law violated Art. 3 of the European Convention that prohibits torture, inhumane or degrading treatment or punishment. **Facts:** The stepfather of a nine-year-old hit the boy several times with a garden cane, causing bruises. He was charged with causing actual bodily harm to the boy, but a jury acquitted him. The boy appealed to the ECHR, arguing that the English law failed to protect him.
2. **Loco parentis:** Acting as a substitute parent, i.e. a guardian or teacher. [89]

- a. **General rule:** A person acting in *loco parentis* may exercise reasonable disciplinary measures.
- b. **Exception to general rule: Non-Fatal Offences Against the**

Person Act 1997, section 24 abolished the criminal immunity teachers had for physical punishment of students.

E. Statutory authority [90]

1. Some statutes authorise acts that would otherwise be the commission of an intentional tort to the person.
2. **Lawful arrest**
 - a. **Criminal Law Act 1997, section 4:** Arrest without a warrant.
 - (1) Reasonable cause: Where the police have reasonable cause to suspect an arrestable offence has been committed, they may arrest without a warrant any person reasonably believed to be guilty.
 - (2) Arrestable offence: An offence that is punishable for five or more years' imprisonment.
 - (3) **Citizen's arrest:** Any person has the right to arrest another person for any arrestable offence where: [91]
 - (a) The arresting person has reasonable cause to believe the person arrested is in the act of committing an arrestable offence.
 - (b) An actual crime must have been committed.
 - (c) The arresting person must reasonably suspect that the person arrested was avoiding or likely to avoid arrest by the police.
 - (d) Any person arrested by a citizen must be transferred to the police.
 - b. **Non-Fatal Offences Against the Person Act 1997, section 19(1)** allows the use of reasonable force by an individual to make a lawful arrest.
 - (1) **NFOAPA 1997, section 19(3):** Whether or not the arrest is lawful will be judged according to the circumstances as the person making the arrest believed them to be.
3. **Lawful detention** [92]
 - a. A sentence of imprisonment is *not* a false imprisonment.
 - b. Medical exams and tests
 - (1) Health Act 1947, section 38 authorises the detention and isolation of persons believed to be the probable source of infectious diseases.
 - (2) Medical Treatment Act 1945 authorises the protective confinement of mentally ill persons.
 - (3) Mental Health Act 2001 authorises the involuntary admission of mentally ill persons to approved treatment

centres. [93]

- c. **Protective custody (unlawful):** The protective custody for non-medical purposes, such as for a child witness, is not lawful even where it was argued that the child's life was in danger. *Connors v Pearson* [1921] 2 IR 51.

F. Defence of self and/or property [94]

1. Self-defence

- a. **Common law:** A person may use *reasonable force* to protect himself or to protect another person.

(1) The degree of force must be balanced against the seriousness of the attack.

(2) **Example:** *Ross v Curtin* (1989) unrep. (HC). A shopkeeper awoke one night when three men broke into his premises to rob him. When confronted, the three men advanced toward the shopkeeper. He fired a warning shot into the air, but one of the intruders was struck in the head by the shot. It was held that the shopkeeper had acted reasonably in the circumstances to defend himself.

- b. **Criminal statutory reform** [95]

(1) **Non-Fatal Offences Against the Person Act 1997**, sections 18–20 mostly restate the common law.

(a) **Example:** Section 18(1). *Justifiable use of force:* Provides that the only *reasonable force* may be used for the protection of oneself or another from injury, assault or detention that is caused by a criminal act.

(b) **Note:** NFOAPA 1997 does *not* apply to fatalities, only to non-fatal offences. Thus, if the defendant defends himself or another person and kills the attacker, the defendant must rely upon the common law.

(2) **NFOAPA 1997, section 18(1)(b)** allows a person to use reasonable force to protect himself or herself from a trespass to his or her person.

(3) **NFOAPA 1997, section 18(e)** allows the use of reasonable force to prevent a crime or a breach of the peace.

2. Defence of property [96]

a. Land

(1) **Common law**

(a) **Right to eject trespassers:** An occupier may use no more force than is reasonably necessary to evict a

trespasser. *Green v Goddard* (1798) 91 ER 540.

Example: *MacKnight v Extravision* (1991) unrep. CC. The plaintiff was preventing the defendants' access to their premises. The defendants were entitled to lay hands on the plaintiff to move him aside. When this failed, they sought the help of a boxer to remove the plaintiff. Excessive force was used, rendering the plaintiff unable to work for several weeks.

- (b) If the entrant's entry was *without force* he *must* be requested to leave before force may be used. *Green v Goddard* (1798) 91 ER 540.

(2) **Criminal statutory reform** [97]

- (a) **Criminal Justice (Public Order) Act 1994, section 13(1)** provides that an occupier may, after a reasonable time, using reasonable force, eject the person who fails or refuses to leave.
- (b) **NFOAPA 1997, section 18(1)(c)** allows a person to use reasonable force to protect his or her property. Section 18(1)(d) allows the use of reasonable force to protect the property of another.
 - (1) Under section 1 of the Act, property is defined as property of a tangible nature, whether real or person, including money.

b. **Chattels** [98]

- (1) **Common law:** A person could use *reasonable force* to defend one's chattels or the chattels of another.
 - (a) Chattels are generally goods and personal property such as furniture, jewellery, pets, livestock and vehicles.
 - (b) **Example:** A person could use reasonable force to stop a pickpocket from taking his watch. [99]
- (2) **Criminal Statutory Reform: NFOAPA 1997** restates the common law.
 - (a) NFOAPA 1997, section 18 (1)(c) allows a person to use reasonable force to protect his or her property.
 - (b) Section 18(1)(d) allows the use of reasonable force to protect the property of another.
 - (c) Under section 1 of the NFOAPA 1997, property is defined as property of a tangible nature, whether real or person, including money.

Chapter 1 Questions

1. Conor told the drunken man that was annoying him in the pub, 'If it weren't for your grey hair, I would tear your heart out.' Name the tort.
2. Goliath the Giant noticed David approaching, swinging his slingshot, preparing to fight Goliath. Goliath was not afraid. Name the tort.
3. Sam Spade, a private detective, followed Veronica everywhere she went for two weeks. Veronica became afraid and refused to leave her home. Name the tort.
4. Anthony's girlfriend, Bertha, was angry when she learned that Anthony was seeing another woman. Bertha cornered Anthony in the local pub and sat on his lap until he agreed to give up his other woman. Name the torts.
5. Peter seduced Anne by telling her that he is a millionaire. Peter is an unemployed actor, and Anne states that she would not have consented to sex with Peter had she known the truth. Will Anne's consent to the sexual conduct be a valid defence for Peter if Anne sues him for battery?
6. Captain Blackbeard agreed to take Grainne in his rowboat, named the QE 1/2, across the River Suir. Once Grainne got into the rowboat, Blackbeard rowed to the middle of the river and told Grainne to 'put out or get out'.
 - (a) Has Blackbeard committed a battery?
 - (b) If Grainne is a strong swimmer, is this a case of false imprisonment?
7. Little Rotten Ralphie was being very naughty in school. His teacher told him to stand in the corner, where he continued to make rude noises. The teacher raised a book as if he was going to hit Rotten Ralphie with it, but decided not to do so. Later, the other students told Rotten Ralphie about the book.
 - (a) Has Ralphie been falsely imprisoned?
 - (b) Did the teacher commit an assault when he raised the book?
8. Oliver, an osteopath, was treating Sinead, a keen sportswoman, for whiplash. Oliver told Sinead that he could cure her condition by 'nerve block tests' which consisted of Oliver spanking Sinead very hard on the buttocks. Sinead agreed to the treatment and attended several sessions until her coach noticed her severe bruising and called the authorities. Medical experts believe that Oliver was spanking Sinead for his own sexual excitement. Sinead is humiliated and seriously upset.

- (a) Will Sinead's consent to the treatment be a good defence for Oliver if Sinead brings an action for battery against Oliver?
 - (b) What other trespass to the person, if any, could Sinead bring against Oliver?
9. Helen was seated next to an elderly gentleman on a transatlantic flight. Helen reminded the elderly gent of his dearly departed wife, Jo. During the flight they both fell asleep. However, Helen was rudely awakened when the elderly gent groped her, murmuring in his sleep, 'Oh Jo!' Can Helen maintain a cause of action for battery against the elderly gentleman if she was asleep when he touched her?
10. Lulu saved until she could afford to have plastic surgery. She went to Dr Quack and he agreed to operate to repair her nose, which had been broken in a field hockey accident. While Dr Quack was operating, he decided to try out a new technique for removing lines from around the eyes. Although her nose turned out perfect, Lulu is upset that she has two black eyes. Can Lulu bring an action for battery against Dr Quack?
11. When Santa tried to slide down Liam's chimney on Christmas Eve, he got stuck. Santa could not go up, nor could he go down. Has Liam falsely imprisoned Santa?
12. Mike snatched an elderly lady's handbag from her arm and ran away. Ken saw the incident and chased Mike. As Mike was trying to escape over a wall, Ken caught him by the leg. Mike lost his grip and fell onto Bob, an innocent bystander.
 - (a) Identify all the possible intentional torts to the person in the problem.
 - (b) Are there any valid defences to these torts?
13. Ronan wanted to win a 'reality' video contest, so he placed a baby in a pram, then had one friend push the pram into the path of a car driven by another friend. Ronan filmed the reaction of the shocked onlookers. Unfortunately, Mrs O'Grady suffered a heart attack after seeing the car strike the pram.
 - (a) Can Mrs O'Grady maintain an action for assault against Ronan and his friends?
 - (b) Can Mrs O'Grady maintain an action for any other tort against Ronan?
14. Liz was out celebrating her birthday and had a little too much to drink. She went into the toilet and fell asleep. When Steve was closing the pub, he entered the toilets to turn off the lights, but did not check the stalls. When Liz awoke at 4 am she was locked into

- the empty pub. Name the tort, if any.
15. Silly Millie was chasing butterflies when she fell into Finbar's unused slurry pit. Luckily, Millie was not injured in the fall, but because of the height of the pit she could not get out. Finbar is tired of Silly Millie entering his land and protesting against the live export of cattle, so when he saw her in his old slurry pit, he just smiled and continued on his way to town. Will Millie be able to maintain an action for false imprisonment against Finbar?
 16. Eve was a great distance away from Adam when she threw an apple at Adam and hit him. Eve is shocked that she hit Adam, and experts are in agreement that it was highly unlikely that Eve could hit Adam at that distance with an apple. Can Adam maintain an action for battery against Eve under the circumstances?
 17. Kate was absentmindedly tossing pebbles into the river, and Spenser was sailing by in his boat. Because he was watching Kate, Spenser sailed his boat into a piling and was injured when he hit his head against the wheelhouse. Spenser wants to sue Kate for battery.
 - (a) Was Kate performing a voluntary act?
 - (b) Was there a physical impact or contact with Spenser?
 - (c) Did Kate intend her acts of tossing pebbles or did she perform the act negligently?
 - (d) Was the contact or impact to Spenser causally linked to Kate's acts?
 18. On 23 June 2006 Lloyd was attacked and beaten as he walked home late from the pub. Lloyd managed to pull his attacker's cap from his head. On 1 July 2008 the police notified Lloyd that a local man arrested on another attack was the owner of the cap Lloyd had taken from his attacker. On 1 August 2009 the local man pleaded guilty to criminally assaulting Lloyd. Lloyd had suffered extensive dental injuries from the attack.
 - (a) On 1 December 2010 Lloyd wants to know if he can bring a tort action against his attacker to recover his dental bills.
 - (b) If so, what type of tort action should Lloyd bring?