

Chapter 8: Intentional Torts Extra Questions

Question 1

Moesha lived next door to Jasmin and Jose. One morning she noticed tiles from Jasmin and Jose's roof were in her garden. Tiles from their roof had fallen into her garden before and Moesha felt quite exasperated by this, but did not have time to speak to her neighbours to complain as she was in a hurry to get to the college where she worked.

During the break at work, Moesha heard two students, Firoz and Mohammad, arguing loudly. As she approached them, Firoz pushed his fingers towards Mohammad's eyes. Mohammad bit Firoz's finger and it started bleeding. Firoz screamed and said: "if it were not for the fact Moesha is coming, I would kick your head in".

Moesha grabbed both students by the ear. She locked Firoz in the meeting room, and Mohammad in the Harvard theatre for two hours whilst she talked to the rest of staff to determine what to do about the students' behaviour.

Discuss the possible liability of each of the parties.

Answer guidance

You will need to break down all of the incidents in the second paragraph to determine whether assault/battery has taken place and consider whether Firoz being locked up amounts to false imprisonment.

The neighbours have committed tort of trespass to land. This is a continuing trespass *Holmes v Wilson* (1839) 10A & E 503, *Hey v Moorhouse* (1839) 6 Bing NC 52.

Firoz and Mohammad: Assault - This arises where the D causes another to apprehend the infliction of immediate unlawful force; the C needs to be put in fear of imminent attack. Words can probably amount to an assault: As in *R v Wilson* [1955] 1 WLR 493 where the person said 'get out knives'. But his later words negate an assault. Words can negative an assault: *Tuberville v Savage* [1669] EWHC KB J25. The two were arguing and the D placed his hand on his sword and said 'if it were not assize time I would not take such language from you'.

Firoz and Mohammad: Battery - This is the direct application of force to a person without that person's consent. The case of *Wilson v Pringle* [1986] 2 All ER 440 introduced the concept of a 'hostile touching'. Was an assault by Mohammad but could be argued was self-defence when saw Firoz's fingers coming towards his eyes. Anyone is entitled to use reasonable force in self-defence or to protect others. The force used must be proportionate to the danger.

The D must demonstrate that it was reasonable to defend himself and that the force that was used to defend himself was reasonable – *Cockcroft v Smith* [1705] 11 Mod 43: there was a fight between a lawyer and a clerk in court. The clerk thrust his fingers towards the lawyer's eyes and the lawyer bit off the clerk's finger! This was held not to be proportionate to the

threat. Whether or not proportionate is a question of fact. The defence can also be utilised in response to a threatened attack – *Dale v Wood* (1822) 7 Moore C.P. 33.

Moesha, Firoz and Mohammad - ears

Battery - This is the direct application of force to a person without that person's consent. The case of *Wilson v Pringle* [1986] 2 All ER 440 introduced the concept of a 'hostile touching'.

Moesha, Firoz and Mohammad – false imprisonment

Occurs when a person is unlawfully restrained (whether by arrest, confinement or otherwise) or prevented from leaving any place.

It is the unlawful constraint on a person's freedom of movement. The restraint must be total. If there is a reasonable means of escape, this requirement is not fulfilled - *Bird v Jones* [1845] 7 QB 742. Ultimately this is a question of fact however, there must be total restraint of the C not merely a partial restriction on his movement regardless of the inconvenience caused – *Bird v Jones*. Therefore, while a person's path may be blocked, if they have the ability to turn around and go another way it will not amount to false imprisonment.

Question 2

Solomon says he will hit Sheila on Thursday next week if she does not write his tort essay for him. Sheila is worried and upset all week as Solomon hoped she would be. On the relevant Thursday Sheila has a terrible journey to University as she travels in the rush hour and other passengers push into her. At university she sees Solomon asleep in the seminar room and locks him in there for the afternoon. In fact Solomon stays asleep all the time the door is locked. Solomon later apologises to Sheila for his past behaviour and invites her to his house for dinner.

Whilst she is there, Sheila finds a key to his locked library and snoops around. Solomon later tells her he has been having problems with his neighbour's young sons, who constantly kick footballs in to his garden. They have recently broken the window in his garden shed.

Discuss.

Answer guidance

There are a number of incidents here that might give rise to liability so you need to break this down by the facts.

Solomon's threat:

D causes another to apprehend the infliction of immediate unlawful force; the C needs to be put in fear of imminent attack.

Words can probably amount to an assault: *As in R v Wilson* [1955] 1 WLR 493 where the person said 'get out knives'.

Words can negate an assault: *Tuberville v Savage* [1669] EWHC KB J25, where D placed his hand on his sword and said 'if it were not assize time I would not take such language from you'.

Certainly she apprehends the infliction of unlawful force – the question here is: was it an immediate threat?

Consider principle of *Wilkinson v Downton* [1897] 2 QB 57 cover the situation not only where the harassment caused the victim physical or psychological illness, but also where there was merely a risk that the cumulative effect of the harassment could result in such illness.

Sheila's journey:

Battery - This is the direct application of force to a person without that person's consent.

Collins v Wilcock [1984] 3 All ER 375 suggested that an application of force to another person that is 'generally acceptable in the conduct of daily life' will not amount to a battery.

Sheila locking Solomon in:

False imprisonment: person is unlawfully restrained, or prevented from leaving any place.

Unlawful constraint on a person's freedom of movement - Restraint must be total: *Bird v Jones* [1845] 7 QB 742.

It is a question of fact - Knowledge of detention is not necessary: *Meering v Graham - White Aviation Co Ltd* [1920] 122 L.T.44.

Sheila snooping around:

The question is whether or not this is trespass.

Trespass to land is an unjustifiable interference with the *possession* of land.

Always involves a direct act. Direct physical and unlawful interference with land that is in the possession of another.

Land includes soil, buildings on the soil and the airspace (within limits) above as well as the subsoil below.

Sam's problems with his neighbours:

Beckwith v Shordike [1767] 4 Burr 2092: Directly causing an object to enter onto another's land amounts to trespass. Act complained of must be direct and immediate.

An involuntary trespass is not actionable. So if they did not intend to be there or were thrown there as per: *Smith v Stone* (1647) Sty 65.

Here the question is does throwing a ball onto land amounts to trespass?

There is also damage: *Holmes v Wilson* (1839) 10A & E 503.

Question 3

How far do you agree that the tort of trespass to the person is adequate to protect bodily integrity?

Answer guidance

The focus in your answer needs to be on trespass to the person rather than on trespass to land.

The tort of trespass exists to protect our rights of control over our bodies and over our land and possessions.

The tort of trespass is of ancient origin, existing long before the tort of negligence. No need to prove that the touching harmed us. Unlike the law of negligence, trespass is actionable per se (without proof of damage).

Necessity is a defence to trespass, but it may not be a defence to another tort such as negligence (*Rigby v Chief Constable of Northamptonshire* [1985] 2 All ER 985).

Students should identify and define the torts within the area – assault, battery, false imprisonment and trespass to land. Students should recognise that trespass is actionable per se and is designed to protect our interest in bodily integrity and our rights to decide who goes on to our land. Students can use case law to show how the torts protect this e.g. *Wilson v Pringle* [1986] 2 All ER 440, *Wilkinson v Downton* [1897] 2 QB 57, *Bird v Jones* [1845] 7 QB 742 etc.

Question 4

Critically discuss if, and how, the tort of trespass achieves its aims.

Answer guidance

Students should first identify functions of trespass: Indemnification for loss, Deterrence of anti-social conduct, efficient loss distribution within society, and protection of the integrity of the victim as to his person and property. Then define the torts within the area – assault, battery, false imprisonment and trespass to land. Students should recognise that trespass is actionable per se and is designed to protect our interest in bodily integrity and our rights to decide who goes on to our land. Students can use case law to show how the torts protect this.

Definition of the tort of trespass to land, discussion as to how land is defined and effect on compensation e.g. Civil Aviation Act 1982. The distinction between lawful and unlawful entry, need for an interest in land to claim. Refer to the remedies and removal of trespasser by reasonable force, its effectiveness as a deterrent or means of compensation and need for a superior interest in law, and the fact difficult to assess damages and the limits on injunctions (if granted). Refer to relevant cases and statutes e.g. *Kelson v Imperial Tobacco* [1957] 2 QB 334, *Bernstein v Skyviews and General Ltd* [1978] QB 479, *Smith v Stone* (1647) Sty 65, Protection from Eviction Act 1977 etc.