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# Trespass to the Person and Related Torts



# Reading

- Week 1: McBride and Bagshaw 2.1-2.3, *Collins v Wilcock* [1984] 1 WLR 1172, *Bici v MOD* [2004] EWHC 786, *Iqbal v Prison Officers Association* [2010] QB 732.
- Week 2: McBride and Bagshaw 22.1-22.2, *O v Rhodes* [2016] AC 219.
- *Sir Elly Kadoorie & Sons Ltd v Bradley* [2024] HKCA 747.
- *F v West Berkshire Health Authority* [1990] 2 AC 1.
- *Ashley v Chief Constable of Sussex* [2008] 1 AC 962.
- *A-G v Kong Chung Shing* [1980] HKLR 533.

# Introduction

- This lecture is concerned with intentional torts to the person.
- We will cover a group of torts known as trespass to the person.
- Two related torts (the rule in *Wilkinson v Downton* and harassment).
- Defences to these torts.

# Trespass to the Person

- The ancient torts of battery, assault and false imprisonment are collectively known as trespass to the person.
- Contrast trespass and the action on the case.
- The trespass torts protect an individual's right to bodily integrity and liberty.
- They have three elements in common:
  1. They are committed *intentionally*;
  2. They involve *direct and immediate* interferences with the claimant;
  3. They are *actionable per se*.

# Related Torts

In this lecture we will also be considering:

- The rule in *Wilkinson v Downton*.
- The Protection from Harassment Act 1997.

These torts do not have the same common elements as the trespass torts but do involve intentional interferences with the person.

# Trespass to the person and the criminal law

- There is an overlap between the trespass torts and the criminal law.
- A tort action is not a collateral attack on an acquittal in a criminal trial (*Ashley v Chief Constable of Sussex* [2008] 1 AC 962).
- Section 38 of the Offences Against the Person Ordinance (Cap.212) s 38: private prosecution prevents a civil action for assault.
- Criminals may not always be worth suing!
- Alternative to tort law: Criminal and Law Enforcement Injuries Compensation Scheme (CLEIC).

# Trespass and rights

There is some overlap between trespass to the person and the Bill of Rights.

- Art 5 – liberty and security of the person
- Art 8 – liberty of movement.

‘The starting point is that every resident is entitled to freedom of the person. Anyone who seeks to interfere with that freedom can only do so with proper legal justification. This was well-established at common law and is now laid down in Article 28 of the Basic Law.’ *Wong Weng Chi v The Secretary for Justice* [2020] HKDC 412 at [19] per Lee Siu Ho DJ.

People may bring claims in trespass ‘for vindicatory purposes even though substantial damages cannot be established.’ *Yu Kai Yui v Chong Chi Fai* [2017] HKEC 236 at [17] per Simon Ho DJ.



# Battery







# Battery

‘The actual infliction of unlawful force on another person’ – *Collins v Wilcock* [1984] 1 WLR 1172 at 1177 per Robert Goff LJ.

This definition (and others by Goff LJ) was endorsed in *Wong Weng Chi v The Secretary for Justice* [2020] HKDC 412 per Lee Siu Ho DJ.

# Intention

- D's action must be voluntary.
- The object of the intention is the *physical contact* not the resultant damage (if any). See *Wilson v Pringle* [1987] QB 237 and *Williams v Humphrey* (unreported).

# Intention

- Recklessness is sufficient (*Bici v Ministry of Defence* [2004] EWHC 786).
- Transferred malice? (*Livingstone v Ministry of Defence* [1984] NILR 356, *Bici*). C.f. the interpretation of 'directness'.
- Intent and omissions: *Fagan v Commissioner of the Police of the Metropolis* [1969] 1 QB 439.

# Negligent trespass?

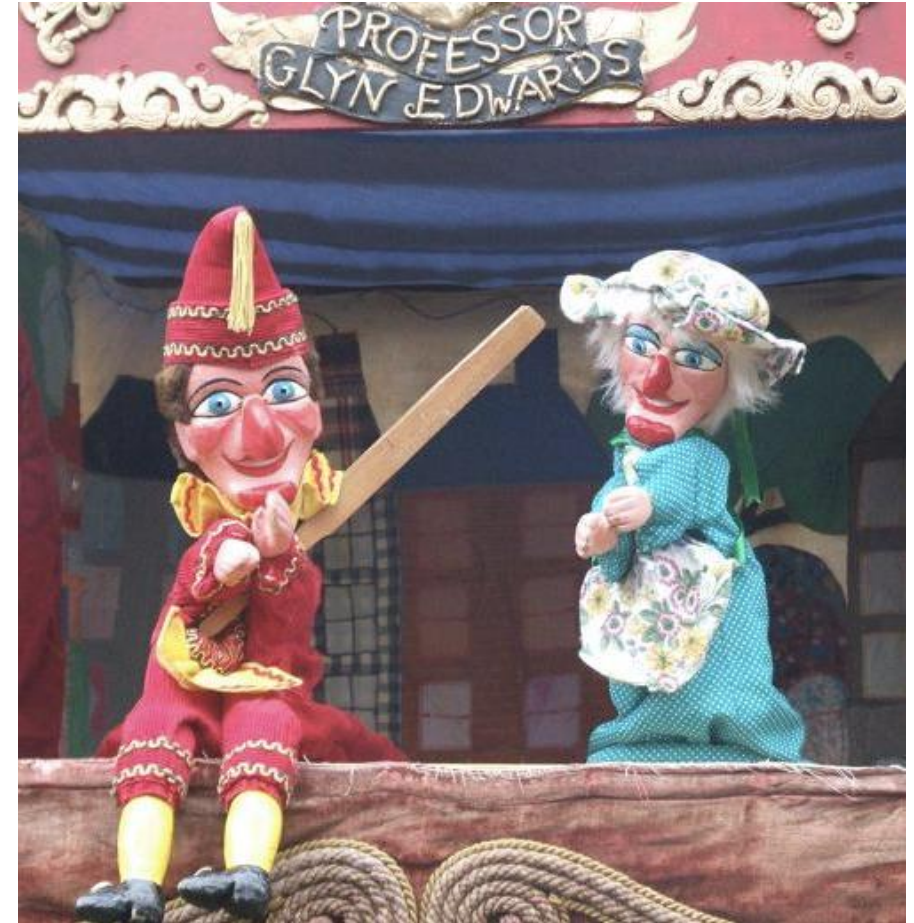
- The distinction between trespass and negligence used to be based on *directness* but now appears to be based upon *intention*.
- *Fowler v Lanning* [1959] 1 QB 426.
- *Letang v Cooper* [1965] 1 QB 232.





# Directness

- *Reynolds v Clarke* (1725) 1 Stra 634: being hit by a log/ tripping over a log left in the street.
- *Dodwell v Burford* (1670) 1 Mod Rep 24: hitting horse.
- *Scott v Shepherd* (1773) 96 ER 525: lighted squib case.
- Note the criminal law cases of *DPP v K* [1990] 1 WLR 1067 and *Haystead v CC of Derbyshire* [2000] 3 All ER 890.



# Force/Physical Contact

- Any contact with the body of the claimant (or his clothing) is sufficient to amount to a battery.
- *Cole v Turner* (1704) 6 Mod 149 per Holt CJ: 'The *least touching of another* in anger is a battery.'
- Hitting C with a rifle or other instrument – *Lavery v MOD* [1984] NI 99.
- Throwing a bucket of water over C – *Pursell v Horn* (1838) 8 AD & El 602.
- Bomb – *Breslin v McKevitt (The Omagh Bombing Case)* [2011] NICA 33.
- Shooting – *Bici*.
- The unwanted kiss (*R v Chief Constable of Devon and Cornwall ex p Central Electricity Generating Board* [1982] QB 458 per Lord Denning).
- C.f. *Kaye v Robertson* [1991] FSR 62



# Actionable per se

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- P does not have to suffer any injuries.
- *Re F (mental patient: sterilisation)* [1990] 2 AC 1: D can be liable in battery even if he/she improves P's health.
- Remoteness: D is liable for all direct consequences, even if unforeseeable (*Wong Kwai Fun v Li Fung* [1994] 1 HKC 549).

# ‘Unlawful force: hostility?’

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- *Cole v Turner* (1704) 6 Mod 149 per Holt CJ: ‘The least touching of another *in anger* is a battery.’
- *Collins v Wilcock*: ‘general exception embracing all physical contact which is generally acceptable in the ordinary conduct of everyday life.’
- *Wilson v Pringle*: hostility is required but hostility ‘cannot be equated with ill-will or malevolence.’
- *Re F (mental patient: sterilisation)* [1990] 2 AC 1: hostility is not required.
- *Flint v Tittensor* [2015] 1 WLR 4370: follows *Wilson* (but no mention of Lord Goff’s *dicta*).
- *Saeed v Secretary for Justice* [2015] 1 HKLRD 1030: hostility is not equated with ill-will ‘but evidence is required of an act contrary to the claimant’s right to freedom from unwarranted physical contact.’
- Either way, battery requires something more than ordinary physical contact.





# Assault



# Assault

‘An act which causes another person to apprehend the infliction of immediate, unlawful force on his person’ - *Collins v Wilcock* [1984] 1 WLR 1172 at 1177 per Robert Goff LJ.



# Intention

- Intention: D must intend for P to apprehend the a battery (have 'intended personally to put [P] in fear of imminent violence'). Recklessness is not sufficient (*Bici*).

# An act

- It requires an overt act/conduct by D (*Mbasogo v Logo Ltd* (No 1) [2007] QB 846, *Hepburn v CC of Thames Valley Police* [2002] EWCA Civ 184).
- The act/conduct must cause C to 'apprehend' a battery (i.e. expect/think a battery is going to occur).

# Assault by words alone?

- *Meade's v Belt's Case* (1823) 1 Lewin 184 per Holroyd J: 'no words or singing are equivalent to an assault.'
- *R v Ireland* [1998] AC 147 per Lord Steyn: 'The proposition that a gesture may amount to an assault, but that words can never suffice, is unrealistic and indefensible.' (Silent phone calls).
- *Wong Kwai Fun v Li Fung* [1994] HKLY 688 per Woo J: C.f. annoying statements v threats of violence outside someone's home could be.
- *Wong Wai Hing v Hui Wei Lee* [2000] HKEC 329 per Sakhrani J: threats by debt collection agencies constituted an assault.
- *Pong Seong Teresa v Chan Norman* [2014] 5 HKLRD 60 per DJ Linda Chan SC: vile language, gesturing aggressively and spray painting incidents.



# Reasonable apprehension

- An objective test (*Pong Seong Teresa v Chan Norman*).
- D must have capacity to carry out the threat (*Mbasogo*)
- Words can negate an assault (*Tuberville v Savage* (1669) 1 Mod 3).
- Conditional threats do not necessarily negate an assault (*Read v Coker* (1853) 13 CB 850).





# Direct and immediate

- P must expect an immediate assault.
- *Thomas v NUM* [1986] 1 Ch 20.
- *Stephens v Myers* (1830) 4 Car & P 349.
- *Chan Chun Choi v Kwong Wang Pok* [2021] HKCFI 700

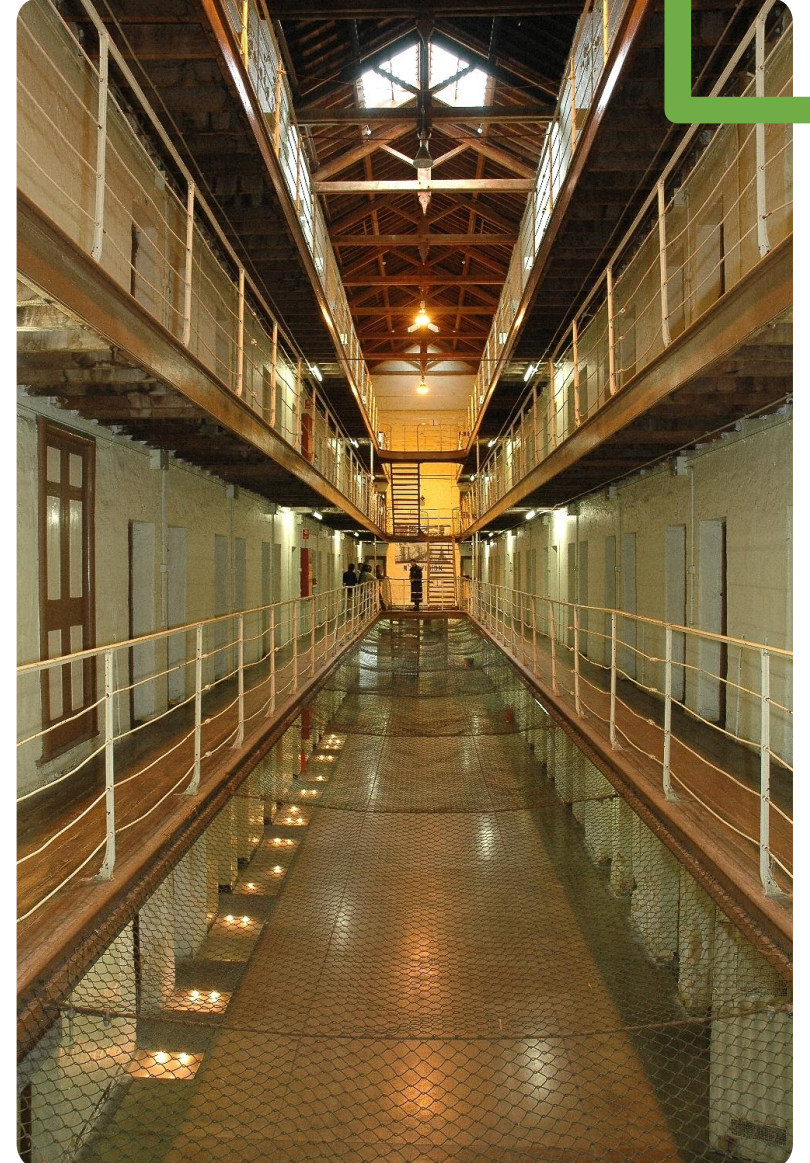


# Actionable per se

- Assault is concerned with the *apprehension* of a battery. There does not need to be any physical contact (*Stephens v Myers* (1830) 4 C&P 350).
- C does not have to suffer any injury.
- C does not have to be fearful/scared.



# False imprisonment



# False Imprisonment

‘[T]he unlawful imposition of constraint upon another’s freedom of movement from a particular place’ – *Collins v Wilcock* [1984] 1 WLR 1172 at 1177 per Robert Goff LJ.

*R (on the application of Lumba) v Secretary of State for the Home Department* [2012] 1 AC 245 at [65] per Lord Dyson: ‘All that a claimant has to prove...is that he was directly and intentionally imprisoned by the defendant, whereupon the burden shifts to the defendant to show that there was lawful justification for doing so.’



# Intention

- This tort requires an intention to perform the act *and* deprive C of his liberty (*Iqbal v Prison Officers Association* [2010] QB 732).
- Recklessness may suffice (*Iqbal*)





# A positive act

- D is not liable if all they did was abstain from providing C with the means of escaping that constraint (*Herd v Weardale Steel, Coal and Coke Company* [1915] AC 67).
- Where D is under a duty to C e.g. a duty arising under a contract (*Iqbal* per Lord Neuberger)
- Where a prison authority commits a 'public law error' – see *Governor of Brockhill Prison ex p Evans* [2001] 2 AC 19. C.f. *McCreaner v MOJ* [2015] 1 WLR 354



# Directness

- D's act must be the direct cause of C's imprisonment (*Davidson v CC for North Wales [1994] 2 All ER 597*).
- Merely providing the occasion for the constraint is not enough (*Iqbal*)



# Imprisonment

- ‘The essence of imprisonment is being made to stay in a particular place by another person. The methods which might be used to keep a person there are many and various. They could be physical barriers, such as locks and bars. They could be physical people, such as guards who would physically prevent the person leaving if he tried to do so. They could also be threats, whether of force or of legal process...The point is that the person is obliged to stay where he is ordered to stay whether he wants to do so or not.’ *R (Jalloh) v Secretary of State for the Home Department* [2020] UKSC 4 at [24] per Lady Hale.
- The constraint need not be physical (*Alleyne v Commissioner of Police of the Metropolis*).
- A large area is capable of being an area of constraint (*Austin v Commissioner of Police for the Metropolis*).



# Imprisonment

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- The restraint of C's freedom of movement must be total: *Bird v Jones* (1845) 7 QB 742.
- D can place reasonable conditions on C's exit: *Robinson v Balmain New Ferry Co Ltd.* [1910] AC 295.



# Actionable per se

Must D be aware of the constraint?

Old law: C must be aware of the constraint. See *Herring v Boyle* (1834) 1 Cr M & R 377.

*C.f. Meering v Grahame-White Aviation* (1919) 122 LT 44 at 53-54 per Atkin LJ.

Confirmed by Lord Griffiths in *Murray v Ministry of Defence* [1988] 1 WLR 692 and Lord Dyson in *Lumba*.

See also *R v Bournemouth Community and Mental Health NHS Trust, Ex p L* [1999] 1 AC 458 and *Attorney General v Chan Yuen Lung* [1989] HKCFI 282.



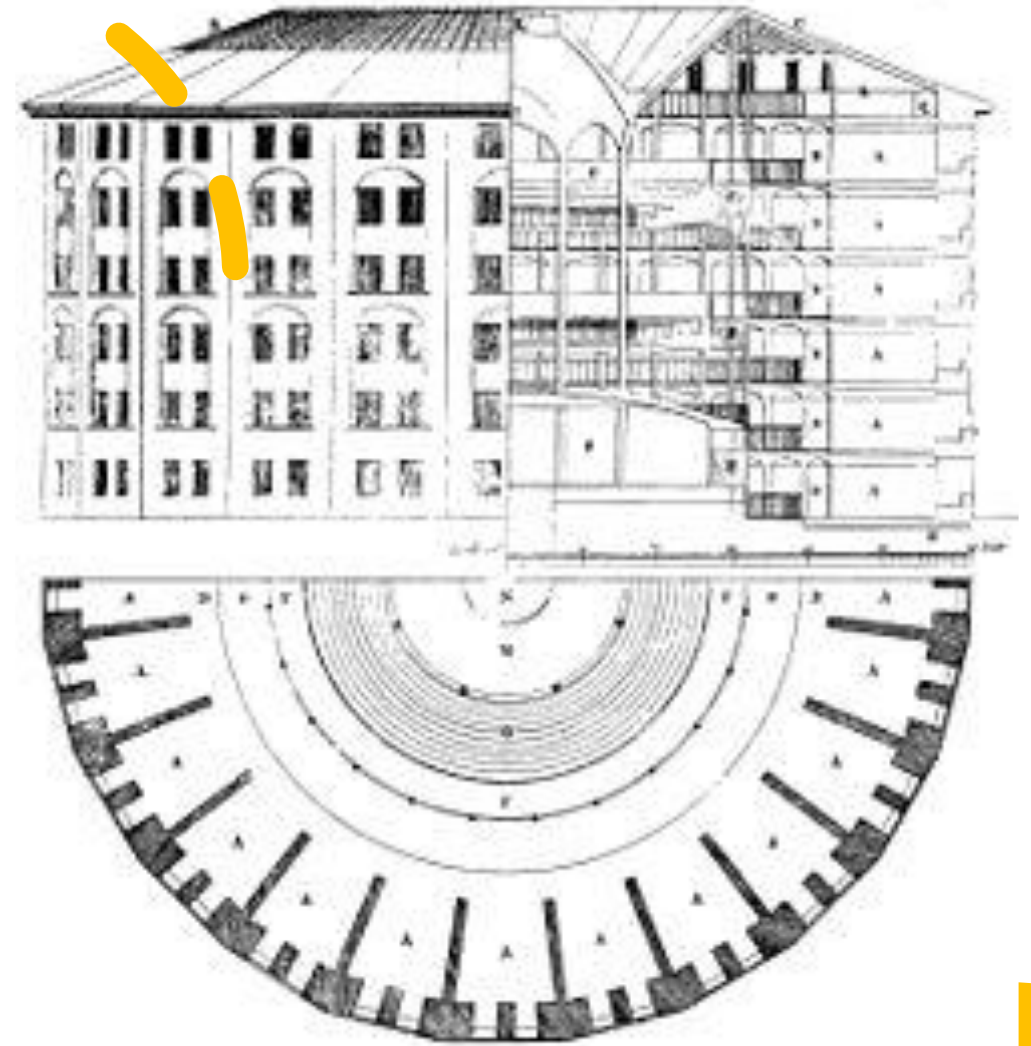
# Actionable per se

It does not matter that C would have been constrained anyway but for D's act

See *Lumba* at [71] per Lord Dyson:

*'If the power could and would have been lawfully exercised, that is a powerful reason for concluding that the detainee has suffered no loss and is entitled to no more than nominal damages. But that is not a reason for holding that the tort has not been committed.'*

(P may only receive nominal damages in such circumstances).



# Question

Steve, a well-known local thug was out walking last weekend when he noticed his old enemy, Gary, on the other side of the road. Steve was unable to cross the road because of the heavy volume of traffic. Yet he did manage to attract Gary's attention by waving his fists in the air and shouting: "Your days are numbered, Gary. I know exactly where you live". Worried by this, Gary ran away.

Later that day, in the park, Steve met another old enemy of his: Kenny. Steve ran towards Kenny and swung a punch at him. Kenny ducked, and the blow struck Kenny's friend, Martin, on the jaw. Steve ran away to the Duncan's factory where he works as a part-time caretaker. He went into the staff common room which is on the first floor. He sat down in a big armchair and soon fell asleep. While he was asleep, Duncan, the owner locked the door to the common room thinking that no-one was using it and that it ought to be locked for the night. Steve did not wake up until he heard the common room door being unlocked by Duncan the next morning. Realising he had been locked in, Steve was glad he had not woken up during the night given that the only way out would have been through a sash window that is located about 3 meters above the ground.

Discuss the liability in tort of Steve and Duncan.

# The rule in *Wilkinson* *v Downton*

Or, the tort of ‘intentional  
infliction of harm’



# The Rule in *Wilkinson v Downton* [1897] 2 QB 57

- Not a trespass tort – action on the case.
- Where D has ‘wilfully done an act calculated to cause physical harm to the plaintiff — that is to say, to infringe her legal right to personal safety, and has in fact thereby caused physical harm to her’ –per Wright J.

# A chequered history

- *Janvier v Sweeney* [1919] 2 KB 316.
- *Khorasandjian v Bush* [1993] QB 727.
- *Wong Kwai Fun v Li Fung* [1994] HKLY 688.
- *Wong v Parkside Health NHS Trust* [2003] 3 All ER 932.
- *Wainwright v Home Office* [2004] 2 AC 406.

# *O v Rhodes* [2016] AC 219

The tort has three elements:

1. **A conduct element;**
2. **A mental element;**
3. **A consequence element.**



# The conduct element

- *Rhodes* per Lady Hale and Lord Toulson: 'The conduct element requires words or conduct directed towards the claimant for which there is no justification or reasonable excuse, and the burden of proof is on the claimant.'



# The mental element

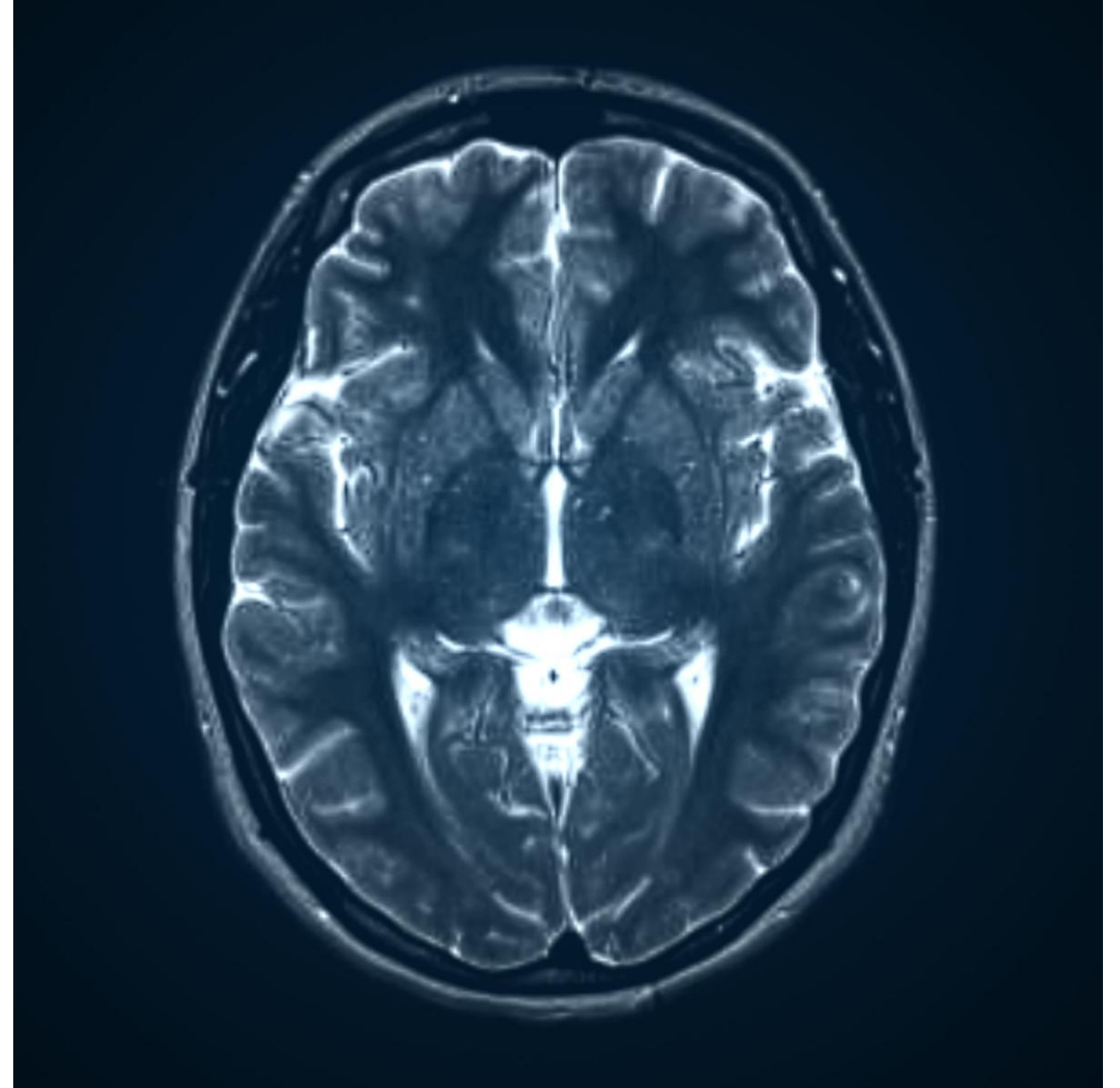
- D's intent can be one of two types: (1) wilfully intending to cause the requisite injury to C by his act; or (2) deliberately acting in a way that calculated to cause C the requisite injury.
- Where C's injury is a recognisable psychiatric injury, then it is sufficient if D deliberately acts in a way that was calculated to cause C severe distress which in fact resulted in that psychiatric injury.
- Intent is not imputed.
- Recklessness is insufficient.
- *C v WH* [2015] EWHC 2687: sexual gratification still satisfied the mental element as it was obvious it would cause harm.
- *Brayshaw v Apsley Surgery* [2018] EWHC 3286: religious proselyting was not sufficient for the mental element. 'All the evidence suggests that the intention of the second defendant, misguided as it may have been, was the claimant's well-being and the improvement of her spiritual (and therefore mental) health.'



# The consequence element

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- P must have suffered from a physical harm or a recognized psychiatric injury.



# The tort of harassment

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# Harassment

- Traditionally, there was no tort of harassment (though other torts could be used in response to harassing conduct).
- English law responded with the Protection from Harassment Act 1997, whereby D would commit a tort (and criminal offence) for knowingly engaging in a course of conduct that amounted to harassment.
- Hong Kong SAR has no equivalent legislation, despite being recommended by the Law Reform Commission of Hong Kong's Stalking Report.



# The tort of harassment: does it exist?

- *Wong Tai Wai v Hong Kong SAR Government* [2004] HKEC 1093: “...it is arguable that a tort of harassment per se...exists at common law’ (per A Cheung J).
- *Lau Tat Wai v Yip Lai Kuen Joey* [2013] 2 HKLRD 1197: ‘I am unable to see any reason why there should not be a tort of harassment to protect the people of Hong Kong who live in a small place and in a world where technological advances occur in leaps and bounds. It means that, eg, intrusion on privacy is difficult to prevent and it is hard for the victim to escape the harassment’ (per Anthony Chan J).

# The tort of harassment: does it exist?

- *Pong Seong Teresa v Chan Norman* [2014] 5 HKLRD 60: DJ Linda Chan SC believed herself bound by an unreported HKCA decision to hold that there was no tort of harassment in HK.
- *Lin Man Yuan v Kin Ming Holdings International Ltd* [2015] HKEC 1012: David Lok J supported the recognition of a tort of harassment.
- *X and Y v Z* [2024] HKCFI 826: Coleman J believed the tort existed.
- *Sir Elly Kadoorie & Sons Ltd v Bradley* [2024] HKCA 747: Chow JA in the CA: 'It is not in dispute that the tort of harassment is a recognised tort under common law in Hong Kong.'



# Elements of the tort

*Sir Elly Kadoorie v Bradley* per Chow JA.

'In summary, in the present state of the development of the tort of harassment in Hong Kong, in order to make out a cause of action in this tort, the victim of harassment has to show that:

- 1) the harasser, directly or through third parties, has, by a course of sufficiently repetitive, unreasonable and oppressive conduct, caused, and which he ought reasonably to know would cause, worry, alarm, emotional distress or annoyance to the victim;
- 2) the conduct complained of must, objectively, amount to harassment (in the ordinary sense of that word);
- 3) the harasser either intends to cause harm or injury to the victim by his harassing conduct, or is reckless as to whether the victim would suffer harm or injury as a result of the harassing conduct; and
- 4) to complete the tort, the victim must have suffered actual damage caused by the harassment. For this purpose, physical harm, including anxiety, distress, (a fortiori) recognised psychiatric illness, and financial loss would suffice.'

Standing: debatable whether a corporate entity can claim in its own right (as opposed to on behalf of its officers and employees).

# Question

Sue broke off her relationship with Gregory about a month ago. Gregory found this hard to accept. At first, he thought he would win her back. He got a fashionable haircut, wore his best clothes to work and, for several days in a row, went to buy his lunch in the café where Sue works. Sue made a point of never serving him, so Gregory rang her one night when he was drunk to tell Sue that he'd commit suicide if she didn't take him back. Sue just switched off her phone. The next day, Gregory stopped her in the street and said, "Sue we have to work this out". Sue carried on walking and Gregory shouted after her: "Sue, I have a knife". Sue got straight on a bus and went home, terrified.

Sue now seeks your legal advice in relation to how hurtful she is finding Gregory's behaviour. She wants to know the options open to her.

Advise her.

# Defences to trespass to the person

# Consent



# Consent

- No action in trespass will succeed if P consented to the interference.
  - Is consent a defence or is 'absence of consent' part of the cause of action?
  - Part of the cause of action: *Freeman v Home Office* (No 2) [1984] 2 WLR 130.
  - A defence: *Collins v Wilcock*, *Chatterton v Gerson* [1981] 1 All ER 257.
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# Consent

- Consent can be express or implied, oral or written.
- Implied consent: *Chan Kin Bun v Wong Sze Ming* [2006] 3 HKLRD 208, *Tso Yung v Cheng Yeung Hing* [2003] HKEC 253.





# Consent

The requirements for a valid consent (see *Re T* (Adult: Refusal of Treatment)):

- That P is competent to give consent;
  - That P's consent is given voluntarily; and
  - P is given sufficient information about the touching.
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# P must be competent to consent

*Re F (mental patient: sterilisation)* [1990] 2 AC 1 at 55 per Lord Brandon:

‘At common law a doctor cannot lawfully operate on an adult patient of sound mind, or give them any other treatment involving the application of physical force however small (“other treatment”), without their consent. If a doctor were to operate on such patients, or give them other treatment, without their consent, he would commit the actionable tort of trespass to the person.’

# P must be competent to consent

*Re C* [1994] 1 WLR 290 per Thorpe J:  
'first, comprehending and retaining  
treatment information, second, believing it  
and, third, weighing it in the balance to  
arrive at choice.'

Mental Health Ordinance (Cap 136),  
section 59ZB:

'A mentally incapacitated person is  
incapable of giving such consent if that  
person is incapable of understanding the  
general nature and effect of the treatment  
or special treatment.'

# P must be competent to consent

Parents can consent on behalf of children.

Children can consent to treatment if they are sufficient maturity and intelligence to understand the proposed treatment (*Gillick v West Norfolk AHA* [1986] AC 112).

Refusal of consent by the child or the parent(s) can be overruled by the courts if treatment is in the child's best interests (*Re W* [1993] Fam 64).



# The consent must be voluntary

- Consent will not be voluntary if it is a result of undue influence – see *Re T (Adult: Refusal of Treatment)* [1993] Fam 95.
- P's consent must not be induced by fraud, misrepresentation or duress.
- *R v Williams* [1923] 1 KB 340: singing teacher sexually assaulted pupil ('breathing exercises'). C.f. *Wang Xi v Lee Pok Hok Andrew* [2012] 1 HKLRD 1134.
- *Chan Wai Hung v HKSAR* (2003) 3 HKCFAR 287: indecent assault ('first aid demonstration').
- *Cheng Man Chi v Tam Kai Tai* [2009] HKEC 205: wrongful removal of P's teeth for cosmetic reasons involved misrepresentation/fraud so no real consent.

# The consent must be sufficiently informed

- For a successful defence to trespass, P need only be informed in broad terms of the nature of the procedure which is intended. See *Chatterton v Gerson* [1981] 1 All ER 257, 265 per Bristow J.
- *Tai Kut Sing v Choi Chun Kwan* [2002] HKCFI 446: claim in battery failed. P had willingly submitted to the treatment without making any enquiries. P 'had given "carte blanche" to the defendant to treat him in whatever way he considered necessary.'

# Necessity

# Necessity

- If P cannot give a valid consent then treatment can be given in their best interests.
- *Re F (mental patient: sterilisation)* [1990] 2 AC 1 per Lord Brandon:
- 'In my opinion, the solution to the problem which the common law provides is that a doctor can lawfully operate on, or give other treatment to, adult patients who are incapable, for one reason or another, of consenting to his doing so, provided that the operation or other treatment concerned is in the best interests of such patients. The operation or other treatment will be in their best interests if, but only if, it is carried out in order to either save their lives, or to ensure improvement or prevent deterioration in their physical or mental health.'
- *Pile v Chief Constable of Merseyside* [2020] EWHC 2472.

# Necessity

Mental Health Ordinance (Cap 136) sections 59ZA and B, state that, in situations where no Guardian has been appointed, medical treatment can be undertaken only in the best interests of the patient to:

- (a) save the life of the mentally incapacitated person;
- (b) prevent damage or deterioration to the physical or mental health and well-being of that person; or
- (c) bring about an improvement in the physical or mental health and well-being of that person.

Treatment of an irreversible or controversial treatment 'special treatment' requires the court's consent (s 59ZG)



# Necessity

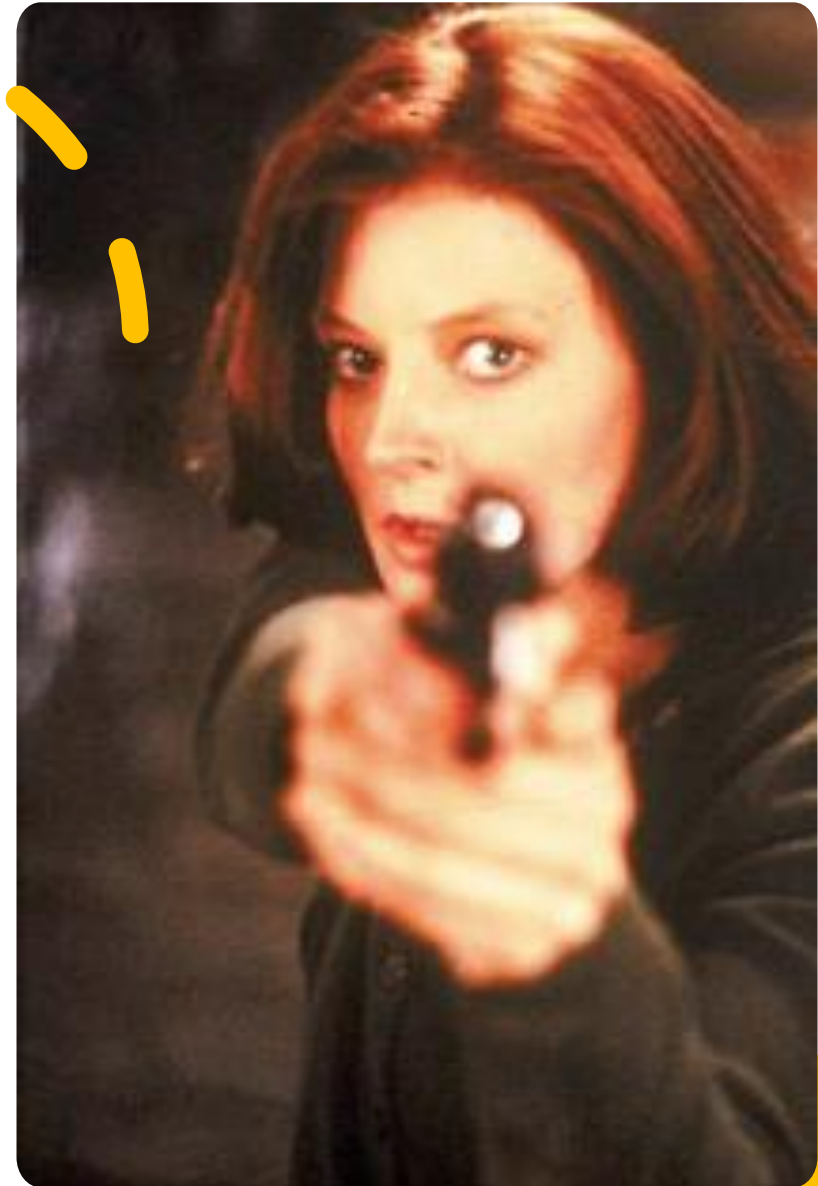
- *Re C (A Minor: Wardship: Medical Treatment)* [1993] 1 HKLR 60: court authorised life-saving treatment (with a 50/50 chance of success) after parental refusal.
- *Hospital Authority v C* [2003] 1 HKC 245: W, pregnant and in a coma. HA wanted authorisation to perform a caesarean. H, relying on a spiritual guide, wanted to delay the caesarean. The court authorised the caesarean.
- *Attorney General v Chan Yuen Lung* [1989] HKCFI 282: P chained up in care home. Remitted to trial. The force must be proportionate.

# Self-defence and defence of others

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# Self-defence and defence of others

- *Ashley v Chief Constable of Sussex* [2008] 1 AC 962 per Lord Scott.  
‘[E]very person has the right in principle not to be subjected to physical harm by the intentional actions of another person. But every person has the right also to protect himself by using reasonable force to repel an attack or prevent imminent attack.’
- D must honestly and *reasonably* believe that he or she was under attack.
- The use of force must be proportionate and reasonable. See *Cockcroft v Smith* (1705) 2 Salk 642, *Lane v Holloway* [1968] 1 QB 379, *Chen Yung Hui v Lam Shing* [1988] HKEC 8, *Cross v Kirkby*, *The Times*, April 5, 2000 and *McCarthy v CC of Merseyside Police* [2016] EWCA Civ 1257.



# Lawful arrest

# Lawful arrest

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- Both police and private citizens have the right to take reasonable steps to detain someone to prevent an imminent breach of the peace (*R (Laporte) v Chief Constable of Gloucestershire* [2007] 2 AC 105).
- *HKSAR v Chan Kwai Hung* [2010] HKCU 1577.



# Police arrests

- *Wong Weng Chi v The Secretary for Justice* [2020] HKDC 412:
- ‘A police officer may subject another to restraint when he lawfully exercises his power of arrest. But, putting that and other statutory powers aside, police officer has no greater rights than ordinary citizen. If, taking into account the nature of his duty, his use of physical contact in the face of non-cooperation persists beyond generally acceptable standards of conduct, his action will become unlawful; and if he restrains a man, for example by gripping his arm or his shoulder, then his action will also be unlawful, unless he is lawfully exercising his power of arrest.’



# Police arrests under warrant

- Magistrates Ordinance (Cap 227) s 31: magistrates have the power to issue a warrant.
- Police Force Ordinance (Cap 232), s 53: police power to arrest with warrant.
- Many other Ordinances give power to arrest with a warrant.



# Police arrests without a warrant

Police Force Ordinance Cap 232 section 50

(1) It shall be lawful for any police officer to apprehend any person who he reasonably believes will be charged with or whom he reasonably suspects of being guilty of—

(a) any offence for which the sentence is fixed by law or for which a person may (on a first conviction for that offence) be sentenced to imprisonment; or

(b) any offence, if it appears to the police officer that service of a summons is impracticable because—

(i) the name of the person is unknown to, and cannot readily be ascertained by, the police officer;

(ii) the police officer has reasonable grounds for doubting whether a name given by the person as his name is his real name;

(iii) the person has failed to give a satisfactory address for service; or

(iv) the police officer has reasonable grounds for doubting whether an address given by the person is a satisfactory address for service.

(1A) A police officer may exercise the power to apprehend a person under subsection (1) without any warrant for that purpose and whether or not he has seen any offence committed.

(1B) It shall be lawful for any police officer to apprehend any person whom he reasonably suspects of being liable to deportation from Hong Kong.

(2) If any person who may lawfully be apprehended under subsection (1) or (1B) forcibly resists the endeavour to arrest him or attempts to evade the arrest, a police officer or other person may use all means necessary to effect the arrest.

(3) If any police officer has reason to believe that any person to be arrested has entered into or is in any place the person residing in or in charge of such place shall on demand of that police officer allow him free ingress thereto and afford all reasonable facilities for search therein.

# Lawful arrest

- *Attorney General v Kong Chung-Shing* [1980] HKCA 102: Respondent not acting in a suspicious manner and so had not resisted a police officer in the execution of his duty.
- *Crawley v A-G* [1986] HKLY 954: arrest was lawful but handcuffing was disproportionate.
- *Yeung May Wan & Others v HKSAR* (2005) 8 HKCFAR 137.
- *Leung Kwok Hung v Secretary for Justice* [2009] 4 HKLRD 247.
- *Law Chi Man v Commissioner of Police* [2022] HKDC 1231: manouvre and handcuffing were proportionate.

# Arrests by private citizens

- Criminal Procedure Ordinance (Cap 221).
- 'Any person may arrest without warrant any person whom he may reasonably suspect of being guilty of an arrestable offence' (s 101(2)).
- 'Every person who arrests any person under any of the provisions herein contained shall (if the person making the arrest is not himself a police officer) deliver the person so arrested, and the property, if any, taken possession of by him, to some police officer in order that he may be conveyed as soon as reasonably may be before a magistrate, to be by him dealt with according to law, or himself convey him before a magistrate, as soon as reasonably may be, for that purpose' (s 101(5)).

# Prevention and detection of crime

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# Defences to Trespass: Prevention of Crime

- Police Force Ordinance e.g. s 10, s 54.
- *Wong Tze Yam v Commissioner of Police (No 2)* [2011] 3 HKLRD 369.



# Non-defences to trespass to the person

# Non-Defences to Trespass to the Person

- Provocation is not a defence: *Lane v Holloway* [1968] 1 QB 379.
- Contributory negligence under the Law Amendment and Reform (Consolidation) Ordinance (Cap 23) is not usually seen as applying to trespass see *Co-Operative Group Ltd v Pritchard* [2012] QB 320 (c.f. *Murphy v Culhane* [1977] QB 94, *Ng Ching Ying v Lee Siu Yeung* [2001] HKLRD (Yrbk) 646).

# Question

Michael was trying to burgle a first floor flat. Michael was seen by Peter, and Peter ran to the base of the building hurling threats at Michael, whom he knew to be a local criminal. Timothy heard the noise and assumed Peter was going to beat up Michael when he heard him yell “Michael, I’m going to put you in hospital”. Worried what Peter (a huge man) might do, Timothy struck Peter from behind with his hockey stick. Timothy then sat on Peter’s back while he was unconscious, and called the police. In the meantime, Michael thanked Timothy for his intervention and went home. When the police arrived, they realised Peter had a fractured skull. He had also lost so much blood he that he was given a blood transfusion by Dr Jenny at the hospital. When Peter recovered consciousness, the police discovered the truth and told Peter everything: that Timothy had hit him, that they were now looking for Michael (identified from Timothy’s description) and that Jenny had saved his life. Peter is deeply disturbed, in part because he would never have consented to a blood transfusion as he is Jehovah’s witness.

The police just warned Timothy about his reckless intervention. Timothy later identified Michael’s address and sent him a series of anonymous letters saying that he plans to get even one day. Then, last week, the two men met at the market and Timothy approached Michael saying “You got my letters, I suppose?”. Fearful that Timothy was about to attack him, Michael struck Timothy a mighty blow breaking his jaw. Carl, a shopper, grabbed Michael, called the police and had him arrested.

Advise the various parties of any actions they may bring in tort, and of any possible defences.

# Further reading

- Allen Beever, 'What Does Tort Law Protect?' (2015) 27 SAcLJ 626.
- Christine Beuermann, 'Are the Torts of Trespass to the Person Obsolete? Part 1: Historical Development' (2017) 25 Tort Law Review 103 and 'Part 2: Continued Evolution' (2017) 26 Tort Law Review 6.
- Rachael Mulheron, 'Modernising the Tort of *Wilkinson v Downton*' [2023] [1] Journal of Personal Injury Law 13.
- FA Trindade, 'Intentional Torts: Some Thoughts on Assault and Battery' (1982) 2 OJLS 211.