Lec1:

Lec2:

PQ:

**Martin v Steve**

**BATTERY**

Martin may bring an action in battery against Steve.

Battery was defined by Robert Goff LJ in Collins v Wilcock as ‘the actual infliction of unlawful force on another person’. As mentioned above, it also has intention and directness requirements.

Intention

* Martin will need to establish that Steve intended to make physical contact with him.
* D must intend the physical contact with P(Wilson v Pringle).
* Intended to hit Kenny?
* Recklessness is sufficient. Bici v Ministry of Defence [2004] EWHC 786. D was reckless as to whether he would hit P.
* Furthermore, the same case said that the doctrine of transferred malice would apply to battery. This is also supported Livingstone.
* Therefore, intention may be established here as D's intention to hit Kenny may be transferred to P.
* Intention is likely to be established.

Directness

Given the law's generous interpretation of directness in cases such as Scott, there is no question of this being considered indirect.

Force/Physical contact

1. Force? Any physical contact is sufficient. Cole v Turner.

2. Unlawful? Debate about whether hostility is required or whether merely force beyond what is expected in everyday life see Wilson and Re F etc. In any event, this would meet either requirement.

D would be liable in battery.

**ASSULT**

Martin may also bring an action against Steve in the tort of 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

Issue – did D intend to assault P

D must intend for P to apprehend the a battery (have intended personally to put [P] in fear of imminent violence').

Unlike battery - intention cannot be established by recklessness in assault. *Bici v MOD* [2004] EWHC 786

**Gary v Steve**

**ASSAULT**

Gary may bring a claim in the tort of assault. Definition - see above.

An act?

Waved fists and shouted '"Your days are numbered, Gary. I know exactly where you live".

Overt conduct Mbasogo v Logo Ltd.

Debate about words alone sufficient (see Meade's v Belt's Case, Rv Ireland).

Pong Seong Teresa v Chan Norman [2014] 5 HKLRD 60 per DJ Linda Chan SC: vile language, gesturing aggressively and spray painting incidents.

Gesturing can be an assault.

Waving Fists and shouting.

The law of intention is discussed above. Here we are going to discuss whether P apprehend a battery.

Immediate

‘I know where you live’ – Implies later when at home rather than now

‘Days are numbered’ – not immediate

Probably not be immediate. Words might negate the assault – Tuberville v Savage – implies will happen later.

Busy traffic prevent reasonable apprehension of immediate violence. *Thomas v NUM* [1986] 1 Ch 20

Arguably distinguishable – police prevention. Busy road – traffic might clear quite quickly. Might not precent reasonable apprehension of immediate violence.

Chan Chun Choi v Kwong Wang Pok [2021] HKCFI 700

Steve v Duncan

Steve may bring a claim in false imprisonment against Duncan.

'[The 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). D might have intended to lock the door but no knowledge of P's presence in the room.
* Recklessness may suffice (Iqbal)? What time this happened.

Positive act?

Direct cause?

Imprisonment? Definition R (Jalloh) v Secretary of State for the Home Department [2020] UKSC 4 at [24] per Lady Hale.

The restraint of C's freedom of movement must be total: Bird v Jones (1845) 7 QB 742.

Escape route? Jumping out of first floor window. Debate whether this is total? Reasonable?

Robinson v Balmain New Ferry Co Ltd.

Probably not.

Lec 4:

Definition:

John’s emphasis on “substantial and unreasonable” and the distinction between 1.land 2. Use of land and 3. enjoyment. Cited by UKSC but not HKCFI.

*Leung Tsang Hung v Incorporated Owners of Kwok Wing House* (2007) 10 HKCFAR 480

*Jalla v Shell International Trading and Shipping Co Ltd* [2023] UKSC 16 [citing me, among others]:

*Fearn v Board of Trustees of Tate Gallery* [2023] UKSC 4

Art Gallery. Viewing platform on the top floor, handful meters from other resident whose walls are mainly made of glass. On the southside of the viewing platform, visitors to the Gallery can see directly into the flats of the Appellants. Cases why the UKSC review the definition of private nuisance.

**Substantial**

*Walter v Selfe* (1851) 4 De G & Sm 315

Brick maker. Smell from the process of making bricks, post disturbance to the claimant.

Must be materially interfering with ordinary comfort physically of human existence.

*Fearn v Board of Trustees of Tate Gallery* [2023] UKSC 4

To answer the question of whether there has been a substantial interference, the courts have highlighted a few factors that help identify when one has occurred.

1. Only consider what reasonable ordinary people with ordinary sensitivity would regard substantial.

**Unusual Sensitivity of the Claimant**

*Robinson v Kilvert* (1889) 41 Ch D 88

A lives above B. A has heating set. B uses the premises to store special paper which does not take warm condition well.

*Hunter v Canary Wharf* [1997] 2 All ER 426

The tower constructed is very close o the primary television transmitter of the BBC, interfered with the television reception of a group of residents of the Isle of Dogs.

Abnormally sensitive buildings can be distinguished: *Fearn*  
 “it is the utility of the actual land, including the buildings actually constructed on it, for which   
 the law of private nuisance provides protection - not for some hypothetical building of   
 ‘average’ or ‘ordinary’ construction and design”. (Lord Leggatt)

**Location of Claimant’s Premises**

Substantial interference is a Context dependent phenomenon which we have to consider the location…

*Sturges v Bridgman* (1879) 11 Ch D 852

Wating area of the Clinic that P occupied extended to the D’s premises, where there is noisy machinery.

“What would be a nuisance in Belgrave Square would not necessarily be so in Bermondsey”. (Thesiger LJ)

*Thompson-Schwab v Costaki* [1956] 1 All ER 652

Prostitiution. “the test [is] … whether what is being done interferes with the plaintiffs in the comfortable and convenient enjoyment of their land, regard being had … to the character .. of the neighbourhood”. (Evershed MR)

NB Locality is not relevant in cases of property damage.  
 \* *St Helens Smelting Co v Tipping* (1865) 11 HL 642

Property damaged by industrial emission.  
 \* *ACL Electronics (HK) Ltd v Bulmer* Ltd [1992] 1 HKC 133

Typoon took the emission away. The C and D does not have to be neighbors.

**Unreasonable**

**Seriousness** illuminates the question of **unreasonableness**

(a) Duration  
The longer an interference = more serious = more unreasonable.  
Matania v National Provincial Bank [1936] 2 All ER 633  
 “the law, in judging what constitutes a nuisance, does take into account both the object and duration of that which is said to constitute the nuisance”. (Slesser LJ) – not something demanded, but something taken into account.  
(b) Character of the Harm  
It is generally more difficult to justify physical damage to C’s land than amenity nuisance.  
St Helens Smelting Co v Tipping (supra): locality has no exculpatory value in property damage cases.

**Character of the Defendant’s User**  
Fearn (above) [Now the leading authority on what a reasonable user entails.]  
 “The two conditions of [reasonable user are whether] … the acts complained of were (i) necessary for the common and ordinary use and occupation of land, and (ii) ‘conveniently done’ - that is to say, done with proper consideration for the interests of neighbouring occupiers”.

e.g. Having washing machine satisfy limb1,while washing clothes at 4a.m and making rackle would fail on limb2.

(a) D’s malicious activities

Though liability in nuisance is technically strict, the malice in D’s user can be a material consideration since if D’s user is malicious, he can never justify the interference thereby caused.   
Hollywood Silver Fox v Emmett [1936] 2 KB 468  
Pong Seong Teresa v Chan Norman [2014] 6 HKC 515  
 “Where noise is created deliberately and maliciously for the purposes of causing annoyance, its mala fides character alone would render it an actionable nuisance even if it would otherwise have been legitimate”. (Linda Chan SC)

(b) Locality in which D’s activities occurJust as C’s location is relevant to the question “what can we reasonably expect C to put up with?” so, too, is D’s location relevant to the issue of “what is it acceptable for D to do?”  
Ball v Ray (1873) 8 Ch App 467

(c) Fault on D’s Part?  
  
The Wagon Mound (No 2) [1967] 1 AC 617  
“Nuisance .. [covers] a wide variety of tortious acts or omissions and in many negligence in the narrow sense is not essential. An occupier may incur liability for the [e]mission of noxious fumes or noise although he has used the utmost care in building and using his premises ... [But] although negligence may not be necessary, fault of some kind is almost always necessary and fault generally involves foreseeability”. (Lord Reid)

Seems inconsistent, the only way to make sense of it is to interpret negligence in a narrow sense where there is internal fault of commencing a conduct no matter how carefuly in the way that you behave.

Lau Chun Wing Rod v Incorporated Owners of Po On Building [2006] HKCU 1364  
“It is settled law that the exercise of care and skill by a competent contractor or every effort made by the Defendant to prevent a nuisance afford no defence”. (Wong J)  
  
Tin Kin Ka Clara v Chan Koon Cheong [2015] HKCU 1029  
 “to prove nuisance in a seepage case … a plaintiff must show, besides the seepage … that (i) the defendants actually or constructively knew that the water originated from their premises; and (ii) remedial action was not taken within a reasonable time”. (Li J).

In case of water leek, the local court seems to hold that you can only be liable if you knowingly neglect the water leek problem. Seems to be inconsistent of the general understanding of the tort of private nuisance. In problem question, apply, but in essay question, invoke to critique.

**(d) The practicability of avoiding an interference**   
If D could have taken simple steps to avoid disturbing C, the fact that D does not take those steps may be taken by the courts to support a finding of unreasonable interference.  
  
*Leeman v Montagu* [1936] 2 All ER 1677

Farmer A has chicken and roosteres. Farmer could avoid the disturbance by having his henhouse away from the boundary(B) and ist simple and quite practicable for A to do so.

Defence

Difference in classification between criminal law and tort.

Partial defence vs. total defence in crim. Excuses vs. justification in crim.

Justification

Tort does not recognize justification of private necessity as a defence.

A argument of fairness. It is not fair for A to bear the full cost of protecting B’s private interests.

Excuses

**Consent and Volenti Non Fit Iniuria**

Consent to the risk not the outcome of the risk.