Steve and Kenneth may face liability in a group of torts known as trespass to the person. These torts - battery, assault and false imprisonment - have the common elements of being intentional and involving direct and immediate interferences with the plaintiff. They are also actionable *per se*, which means no additional harm or loss needs to be established.

**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*).
* A potential problem is that D intended to hit Kenny rather than P. However, this need not prevent intention from being established.
* Recklessness is sufficient. See *Bici v Ministry of Defence* [2004] EWHC 786. D might have been 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 direct.

Unlawful force/physical contact

Physical force?

Any physical contact is sufficient *Cole v Turner.*

Unlawful? There is a debate relating to 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 and so would be considered unlawful.

D would be liable in battery.

ASSAULT

Martin may also bring an action against Steven 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 a battery (have ‘intended personally to put [P] in fear of imminent violence’). *Bici*

Unlike battery – intention cannot be established by recklessness or transferred malice in assault (see *Bici*).

Intention element lacking – D intended to punch Kenny.

No intention = no assault.

**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, R v 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 on intention was discussed above. Here it is likely that Steve intended to put P in fear.

D has apprehended (expected) violence – ran away – but is it a reasonable apprehension of immediate violence?

Busy traffic prevent reasonable apprehension of immediate violence? *Thomas v NUM*.

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

‘I know where you live’ – implies later when at hone rather than now.

‘Days are numbered’ – not immediate.

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

Potentially no assault.

**Kenny v Steve**

Assault – see above for the law. *Stephens v Myers* analogy/

**Steve v Duncan**

‘[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). D might have intended to lock the door but no knowledge of P’s presence in the room.
* Recklessness may suffice (Iqbal)? Was this reckless?

Positive act? Yes, locking door.

Direct cause? Met.

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.

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

Does not need to be aware.

Would not have left the room? *Lumba –* does not matter for establishing liability – no causation requirement as actionable per se.