# Trespass to the Person and Related Torts

## 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: (conduct requirement + mental state requirement)

1. They are committed *intentionally*;
2. They involve *direct and immediate* interferences with the claimant;
3. They are actionable per se.

## Related Torts (do not have the same elements as trespass, but involve intentional interferences with person.)

The rule in *Wilkinson v. Downton*

The Protection from Harassment Act 1997

## Trespass and Rights (BOR and BL) 侵权法与人权保护部分的重叠

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]

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

‘The actual infliction of unlawful force on another person’ – *Collins v Wilcock* [1984]; endorse in *Wong Weng Chi v The Secretary for Justice* [2020] 需要对他人实际实施非法侵犯

*Collins v Wilcock* [1984]: 警察怀疑女子涉嫌卖淫，为阻止逃跑抓住胳膊，女子抓伤警察，法院裁定警察缺乏约束女子的合法性，行为超出职权范围，因此不存在袭警问题。

## Intention – Voluntariness

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] and *Williams v Humphrey* (unreported). 对身体接触有故意即可

‘…in a battery there must be an **intentional touching or contact** in one form or another of the plaintiff by the defendant. That touching must be proved to be a **hostile touching**’ 存在恶意

**Hostility** must be a question of fact which cannot be equated with ‘ill-will or malevolence’ or solely from ‘expressed intention’. See *Wilson v Pringle* [1987]

Recklessness is sufficient (*Bici v Ministry of Defence* [2004]: 士兵开枪造成两人死亡，不符合intentionally, 但存在recklessness)

Transferred malice? 士兵打击暴徒，但是打击错误，也满足intention (*Livingstone v Ministry of Defence* [1984]: *it was possible for a claim of battery to be based on facts where the Claimant was not the intended target. Assuming that the force used was not justified, the soldier has* ***committed a battery against both***. C.f. the interpretation of ‘directness’.

Intent and omissions: *Fagan v Commissioner of the Police of the Metropolis* [1969] 上诉人拒绝将车从警察的脚上移开。It was held that Fagan’s crime was not the refusal to move the car but that having driven on to the foot of the officer and decided not to cease the act, he had **established a continual act of battery.**

## Negligent Trespass?

The distinction between trespass and negligence used to be based on directness but now appears to be based upon intention. 现在区分侵权和过失侵权一般基于intention

*Fowler v Lanning* [1959]:  trespass to the person does not lie if claimant has been injured, even though the direct consequence of the defendant act, was caused unintentionally without negligence on the defendant’s part. 如果D的行为不是故意，也不存在过失，即使是directness也无法起诉。

*Letang v Cooper* [1965]: 在停车场晒太阳时脚被车伤到，where the damage was caused by an action which was not intentional, then the proper action is one in negligence and not in trespass to the person.  由于是negligence, 所以action不能是trespass to the person. ——In terms of the law, the judgement of the court meant that a distinction was established between the torts of negligence and the trespass to the person based on intent. In effect, this meant that the law on trespass to the person has been narrowed. 区分了过失侵权和故意侵权，缩小了对人故意侵权的法律范围。

## Directness

*Reynolds v Clarke* (1725): being hit by a log/ tripping over a log left in the street— “*If a man throws a log into the highway and it hits someone, this is trespass. But if a man throws a log into the highway and someone trips over it later, this is not trespass but an action on the case.*” 如果扔木头直接砸伤人，则构成battery; 如果只是导致人绊倒，则不构成battery但成为诉因。

*Dodwell v Burford* (1670) 1 Mod Rep 24: 被告踢了原告正在骑的马，马受惊导致原告摔下来受伤。It is battery to strike the horse on which the claimant is riding. Physical contact does not have to be direct. 法院裁定被告行为构成battery, 即使没有直接触碰原告。

*Scott v Shepherd* (1773) 96 ER 525: 被告向人群扔爆竹，其他人为自保把爆竹扔向别处，导致原告受伤。 The court dismissed the appeal; the injury to the complainant was the direct and unlawful act of the defendant who originally threw and intended to throw the squib. The other people were not ‘free agents’ in this situation and threw on the squib for their own safety and this was justifiable. The throwing on was classed as a continuation of the defendant’s action, which was intended. Whatever followed this was part of the defendant’s original act. 法院裁定构成battery, 后续行为均是由被告扔爆竹所引发。

Note the criminal law cases of *DPP v K* [1990] 1 WLR 1067 and *Haystead v CC of Derbyshire* [2000]

## Force/Physical Contact

Any contact with the body of the claimant (or his clothing) is sufficient to amount to a battery. 任何身体接触都算

*Cole v Turner* (1704): ‘The *least touching of another* in anger is a battery.’ 愤怒中轻微的触碰都构成battery

Hitting C with a rifle or other instrument – *Lavery v MOD* [1984] 士兵使用步枪击打原告导致受伤，使用武器击打他人也构成battery，即使没有直接身体接触。

Throwing a bucket of water over C – *Pursell v Horn* (1838) 泼水也构成battery. The court held that **throwing water on a person can constitute a battery, regardless of the lack of physical contract between the defendant and the claimant’s bodies.** The requirement for directness was not completely discarded however, as the court made a distinction between situations in which the defendant only succeeds in splashing the claimant’s clothes and a situation in which he splashes both the claimant’s clothes and their body. **The defendant getting wet because their clothes became wet would be insufficient for battery, but direct contact between the water thrown and the claimant’s body was sufficient.** 仍需要directness, 区分沾湿衣服和使人身体湿透

Bomb – *Breslin v McKevitt (The Omagh Bombing Case)* [2011] 间接的暴力（如bomb）可以构成battery, the force from bomb constitutes the definition of force in battery.

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 Robertso*n [1991] FSR 62

## Actionable per se 自身可诉性

P does not have to suffer any injuries. 无需实害结果

*Re F* *(mental patient: sterilisation)* [1990]: D can be liable in battery even if he/she improves P’s health. 医院为了病人利益为女性精神病患者做绝育，法院裁定违法。

Remoteness: D is liable for all direct consequences, even if unforeseeable (*Wong Kwai Fun v Li Fung [1994]*). 被告对直接后果负责，即使该结果不可预见

## Unlawful Force: Hostility?

*Cole v Turner* (1704) 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.’ 包括日常生活中可接受的一切身体接触

*Wilson v Pringle*: hostility is required but hostility ‘cannot be equated with ill-will or malevolence.’

*Re F (mental patient: sterilization)* [1990] 2 AC 1*:* hostility is not required.

*Flint v Tittensor* [2015]: follows *Wilson* (but no mention of Lord Goff’s *dicta*).

*Saeed v Secretary for Justice* [2015] 1 HKLRD: 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.’ 存在敌意不代表具有恶意，但需证明合理性

Either way, battery requires something more than ordinary physical contact. 要求大于一般身体接触

# Assault

‘An act which causes another person to apprehend the infliction of immediate, unlawful force on his person’ - *Collins v Wilcock* [1984] per Robert Goff LJ. 使他人担心即将受到非法侵害

## Intention

D must intend for P to apprehend a battery (have ‘intended personally to put [P] in fear of imminent violence’). Recklessness is not sufficient *(Bici)*. D须故意让P认为有被侵害的危险， 仅有recklessness是不足够的。

## An Act

It requires an overt/positive act/conduct by D (*Mbasogo v Logo Ltd (No 1)* [2007], *Hepburn v CC of Thames Valley Police* [2002]).

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.

当语言包含暴力内容或令人感到恐惧时，通常可以满足assault的要求。

## Reasonable Apprehension 合理的恐惧

An objective test (*Pong Seong Teresa v Chan Norman)*.

D must have capacity to carry out the threat (*Mbasogo*) 被告须具有实施威胁的能力

Words can negate an assault (*Tuberville v Savage* (1669) 1 Mod 3). 言语可以否定攻击（？）

Conditional threats do not necessarily negate an assault. *Read v Coker* (1853): 被告威胁如果不离开就扭断脖子，原告后还是返回拿走货物——该威胁构成assault, 附条件的威胁未免不构成assault. *A threat of violence is an assault even if the defendant is not actually about to strike or using a weapon. It does not matter that the threat is conditional on the claimant refusing to immediately acquiesce to the defendant’s demands.*

## Direct and Immediate

P must expect an immediate assault. There is no assault on a claimant unless C is made to think that they are in imminent danger of being attacked. 直接性、立刻性

*Thomas v NUM* [1986]: 被告作为罢工的旷工向原告示威威胁，然而现场有警察，并且原告坐在巴士内——被告的行为不构成assault，因为缺乏立即实施威胁的能力。The court held that the actions of the Defendant **could not constitute an assault as the crowd lacked the capacity to immediately carry out its threats. Capability to put a threat imminently was a necessary aspect of the tort of assault.**

*Stephens v Myers* (1830): 存在暴力威胁，但没有实际发生暴力因为被阻拦，只要有意实施即构成assault——where there is a threat of violence but no actual violence, there need not be the means of carrying the threat into effect, so long as the tortfeasor intended to carry out the threat until he was stopped by surrounding circumstances.

*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). 不需要存在身体接触

C does not have to suffer any injury. 不需要实害结果

C does not have to be fearful/scared. 原告无需感到恐惧

# False Imprisonment

‘[T]he unlawful imposition of constraint upon another’s freedom of movement from a particular place’ – *Collins v Wilcock* [1984]

*R (on the application of Lumba) v Secretary of State for the Home Department* [2012] 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.’ 被告需证明自己这样做的合法性

## Intention

This tort requires an intention to perform the act *and* deprive C of his liberty (*Iqbal v Prison Officers Association* [2010]: 原告本可以每天离开牢房一段时间，由于被告疏忽而一直被关押；法院裁定D did not have the requisite intention to deprive C of their liberty, nor did the prison officers take any direct positive steps to shut C in his cell. In any case, the prison guards and D had not acted unlawfully and thus could not be liable in tort). 不构成非法监禁

False imprisonment is only made out where D both commits a **positive act and intends to** deprive C of their liberty. *(Iqbal)* 有意图+剥夺自由

Recklessness may suffice to satisfy the intention requirement. (*Iqbal*)

## A Positive Act

D is not liable if all they did was abstain from providing C with the means of escaping that constraint 矿工拒绝上班，煤矿主不让他回到地面，H被留在矿井中——如果只是不帮助逃出，不构成非法监禁 (*Herd v Weardale Steal, Coal and Coke Company* [1915]). *a person cannot bring an action against another person for tort or delict if they had willingly placed themselves in a position where harm might result, knowing that some degree of harm might result. 明知存在风险，但自愿承担，则不能诉*

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] 囚犯的刑期被非法延长，监狱长对非法监禁负有责任

## Directness

D’s act must be the direct cause of C’s imprisonment (*Davidson v CC for North Wales [1994]:* 店员以为原告买磁带没付款，报警逮捕关押了两个小时——店员雇主不构成非法监禁；Directing a third-party to detain a person will only give rise to liability in false imprisonment if the third-party acts as the defendant’s agent. 只有在警察代理雇主的情况下才是非法监禁).

Merely providing the occasion for the constraint is not enough (*Iqbal)* 仅为限制提供机会也不构成

## 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*). 原告被警方强行制服，通过言语使他产生不能自由离开的印象，构成心理上的限制。

A large area is capable of being an area of constraint (*Austin v Commissioner of Police for the Metropolis*). 警方在没有逮捕令的情况下将一群人围困在一个特定区域内长达数小时，但当时法院裁定不构成非法监禁。

The restraint of C’s freedom of movement must be total: *Bird v Jones* (1845) 公共道路因比赛而封闭，原告无法走想走的方向，但仍有出口可以走，不构成非法监禁；*a boundary it must have; and that boundary the party imprisoned must be prevented from passing; he must be prevented from leaving that place, within the ambit of which the party imprisoning would confine him, except by prison-breach.*

D can place reasonable conditions on C’s exit: *Robinson v Balmain New Ferry Co* *Ltd*. [1910] D可以对C的离开提出条件；轮渡公司强行阻止C离开，除非支付金额；不构成非法监禁。

This case narrows the law on false imprisonment, following the case of *Bird v. Jones*[1845] in which it was held that false imprisonment is constituted by total (and not partial) obstruction, however in the present case it is held that it even where a person is totally obstructed **尽管是完全被限制**it will not constitute false imprisonment if there **is a reasonable condition to passing.**

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

It does not matter that C would have been constrained anyway but for D’s act “即使没有D的行为，C本来也会被限制”并不重要（不阻却D违法）

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.’ 如果拘留是非法的，即使本可以合法，该行为仍构成非法监禁，即使拘留机关不存在恶意。*

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

# 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. D向C开玩笑称C的丈夫遭遇事故，使C受到冲击，要求D就虚假陈述使其遭受的疾病和痛苦作出赔偿；尽管D did not intend the harm which was caused, the injury caused to C was not too remote and could have been foreseen.

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.

## *O v Rhodes* [2016] AC 219

The tort (*Intentional Infliction of Mental Suffering, IIMS*) has three elements:

* 1. A 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.’ 没有作出该言词或行为的合理理由，C承担举证责任

* 1. A mental element;

D’s intent can be one of two types: **(1)** willfully 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. 故意造成损害

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]: sexual gratification still satisfied the mental element as it was obvious it would cause harm. 即使被告的动机是性满足（而非伤害），但其行为显然会导致伤害，则仍然满足故意伤害的mental element.

*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.’

* 1. A consequence element.

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

# The Tort of Harassment

## 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. 香港暂时无相关立法

## 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). 主张香港设立tort of harassment

*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 recognized 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; 实施了骚扰行为
2. the conduct complained of must, objectively, amount to harassment (in the ordinary sense of that word); 客观上构成骚扰
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 主观故意或reckless
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.’ 存在实害结果

Standing: debatable whether a corporate entity can claim in its own right (as opposed to on behalf of its officers and employees). 法人能否提起相关权利诉讼？

# Defences to Trespass to the Person

## 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? 抗辩or诉因？

1. Part of the cause of action: *Freeman v Home Office* (No 2) [1984], 监狱工作人员强行约束囚犯用药，囚犯拒绝同意，以此提起诉讼。In the circumstances, it was clear that the claimant was capable of making a free decision, and he had done so in the past. The claimant’s consent had been real and valid.
2. A defence: *Collins v Wilcock;* *Chatterton v Gerson* [1981]: 原告同意接受手术，但手术导致右腿失去知觉，疼痛更加严重；法院认为原告对手术同意有效，the Claimant gave valid consent to the surgery, so there was no battery. 此处consent是defence.

Consent can be express or implied, oral or written. 同意明示默示书面皆可

Implied consent: *Chan Kin Bun v Wong Sze Ming* [2006] 3 HKLRD 208 (two teenagers, battery), *Tso Yung v Cheng Yeung Hing* [2003] HKEC 253.

## The Requirement for a Valid Consent (see *Re T* (Adult: Refusal of Treatment))

1. That P is competent to give consent; 有同意的能力（完全行为能力人的状态）

*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.’ 需在心智健全的成年病人同意下才能对其进行手术

*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.’ 无行为能力人无法理解治疗作用，则无法作出有效同意

Not based on condition you have, 但如果存在精神问题难以理解information, 会影响capacity 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]: 未成年人向医生寻求避孕建议，母亲不同意并诉卫生局；法院裁定如果有足够智力理解则未成年人可以自行表示同意，无需父母知情或同意). In some circumstances a minor would be able to give consent in their own right, without the knowledge or approval of their parents. The test proposed by Lord Scarman posits that a minor will be able to consent to treatment if they demonstrate “sufficient understanding and intelligence to understand fully what is proposed”.

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). 如果治疗符合儿童最大利益，则拒绝同意可能被驳回

Lower court said have capacity to consent the treatment. However, the higher court said they cannot refuse all the lifesaving treatment. Adult could. Children could not refuse. 不知道我的笔记是什么意思（？）

1. That P’s consent is given voluntarily; and

Consent will not be voluntary if it is a result of undue influence – see *Re T (Adult: Refusal of Treatment)* [1993] Fam 95: T在车祸需要输血治疗时与母亲（反对输血的教徒）交谈，改变主意拒绝输血；法院裁定an adult with mental capacity has the legal right to refuse medical treatment, even if it leads to death.

P’s consent must not be induced by fraud, misrepresentation or duress.

*R v Williams* [1923]: singing teacher sexually assaulted pupil (‘breathing exercises’) 唱歌老师以发生性关系是为了提高唱歌水平为由，使女生与其发生性关系；法院裁定同意无效。Consent to a sex act can be vitiated 使无效 where the complainant is deceived 欺骗 as to the nature and quality of the defendant’s acts. C.f. *Wang Xi v Lee Pok Hok Andrew* [2012]

*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. 本来不必要拔牙，却因为misrepresentation而拔牙，因此no real consent.

1. P is given sufficient information about the touching.

For a successful defence to trespass, P need only be informed in broad terms of the nature of the procedure which is intended. 只要求让原告大致了解所要进行的程序的性质，不需要详细的信息。 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”完全授权 to the defendant to treat him in whatever way he considered necessary.’ 原告已经全权授权医生治疗，D的行为就不构成未经同意的接触，因此不能构成battery.

## Necessity

If P cannot give a valid consent then treatment can be given in their best interests. 如果P无法给出有效同意，则治疗应符合病人最大利益

*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.’ 手术应当符合患者的最佳利益

*Pile v Chief Constable of Merseyside* [2020] EWHC: 醉酒女性在无意识情况下被女警察更换衣物，诉未经同意的侵权；法院裁定警方有责任保护其安全和尊严，**Necessary Intervention** – Since Pile was in no condition to clean or change herself, the police’s actions were reasonable and necessary to prevent further discomfort and potential health risks.

在necessity的情况下如果treatment fulfills the best interest from the position of the patient, then it is lawful.

## 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.’ 每个人都有权使用武力保护自己

D must honestly and *reasonably* believe that he or she was under attack. 合理相信自己正遭受攻击

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.

## Lawful Arrest

Both police and private citizens have the right to take reasonable steps to detain someone to prevent an imminent breach of the peace 警察和私人都有权为预防破坏和平的行为采取措施(*R (Laporte) v Chief Constable of Gloucestershire* [2007]). 但在该案中，法院裁定警方行动违法，不存在即将发生的破坏，the power to prevent a breach of the peace only applies **when an imminent threat exists**. In this case, the police acted **prematurely**—they stopped the protesters **before any disorder occurred**, meaning their actions were **disproportionate** and unlawful.

*HKSAR v Chan Kwai Hung* [2010] HKCU 1577.

1. 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.’ 警察合法行使逮捕权

1. 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.

1. Police Arrests Without a Warrant—Police Force Ordinance Cap 232 Section 50
2. Arrests by Private Citizens—Criminal Procedure Ordinance Cap 211: ‘Any person may arrest without warrant any person whom he may reasonably suspect of being guilty of an arrestable offence’ (s 101(2)).

## Prevention and Detection of Crime 以预防犯罪为辩护

Police Force Ordinance e.g. s 10, s 54.

*Wong Tze Yam v Commissioner of Police (No 2)* [2011] 3 HKLRD 369.

# Non-Defence to Trespass to the Person

Provocation is not a defence: *Lane v Holloway* [1968] 双方打架，被告以原告挑衅为由抗辩；The defendant’s blow was out of proportion to the claimant’s provocation, so neither defence applied. The provocation did not change the fact that the claimant had been injured. Therefore, it was irrelevant when calculating damages. 挑衅不足以为殴打行为抗辩，不成比例

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).