

= Trespass in English law =

Trespass in English law is an area of tort law broadly divided into three groups : trespass to the person , trespass to goods and trespass to land .

Trespass to the person comes in three variants : assault , which is " to act in such a way that the claimant believes he is about to be attacked " ; battery , " the intentional and direct application of force to another person " ; and false imprisonment , " depriving the claimant of freedom of movement , without a lawful justification for doing so " . All three require that the act be a direct and intentional act , with indirect or unintentional acts falling under the tort of negligence . Battery and assault require the claimant to establish that the defendant intended to act , while false imprisonment is a tort of strict liability . The guiding principle behind all three is based on the statement of Goff , LJ , who stated in *Collins v Wilcock* that " any person 's body is inviolate " , excepting normal , day @-@ to @-@ day physical contact .

Trespass to goods is defined as " wrongful physical interference with goods that are in the possession of another " , and is covered not only by the common law , but also by the Torts (Interference with Goods) Act 1977 . The " trespass " can be as little as touching or moving the goods , given the right circumstances . It is unknown whether intention is required for a claim under trespass to goods , as the matter has never gone to court ; the courts have confirmed that for damages to be awarded for harm suffered , the harm must have been reasonably foreseeable .

Trespass to land involves the " unjustifiable interference with land which is in the immediate and exclusive possession of another " ; it is both a tort and , in certain circumstances , a crime under the Criminal Justice and Public Order Act 1994 . It is not necessary to prove that harm was suffered to bring a claim , and is instead actionable per se . While most trespasses to land are intentional , the courts have decided that it could also be committed negligently . Accidental trespass also incurs liability .

= = Trespass to the person = =

The general principle is that a trespass to the person must be a direct and intentional act , while if it was indirect or unintentional the tort of negligence is more appropriate , as established in *Letang v Cooper* . The tort of trespass to the person contains three possible types ; assault , battery and false imprisonment .

= = = Assault = = =

In English law , an assault means to act in such a way that the claimant or victim apprehends the application of immediate unlawful force upon themselves . The key elements of the tort are therefore that the defendant acts , and does so in such a way that the claimant is put in fear of " immediate physical violence " . There is no requirement that actual damage be caused . In *R v Constanza* , the courts held that threats made by a stalker could be assault , while in *R v Ireland* , the House of Lords said that in the right situation (specifically , harassing phone calls) silence could be enough . In some situations an act which would otherwise be assault can be mitigated by the language used . In *Tuberville v Savage* , the defendant reached for his sword and told the claimant that " if it were not [court] time , I would not take such language from you " ; it was held that despite the threatening gesture , this meant the claimant was not in immediate danger . The actions must give the claimant reasonable expectation that the defendant is going to use violence ; if a fist was raised in front of the claimant , it could be enough . If the fist was raised from inside a police van following arrest , it would not .

= = = Battery = = =

Battery is defined as " the intentional and direct application of force to another person " , and has three elements ; force , direct application and intent . The courts have also added a requirement of "

hostility " or lack of consent in many cases . As with assault , there is no need to show that damage was caused . Any application of physical contact , regardless of harm caused , can constitute force . In *Collins v Wilcock* , a female police officer took hold of a woman 's arm , intending to talk to her on suspicion of soliciting contrary to the Street Offences Act 1959 . The woman scratched the female police officer 's arm . As the female police officer had gone beyond her duties in grabbing the woman (since she did not intend to charge her with an offence , but was still using force) it was held that this constituted " force " . Goff LJ wrote that the fundamental principle is that any person 's body is inviolate , except in situations where the bodily contact " [falls] within a general exception embracing all physical contact which is generally acceptable in the ordinary conduct of daily life " .

The defendant must intend to carry out the act which constitutes trespass for it to be valid . This does not require the defendant to intend harm ; in *Nash v Sheen* , a hairdresser who put a tone rinse on the claimant (when the claimant had given permission for a perm) was found liable in battery after it caused a rash . In *Livingstone v Ministry of Defence* , the defendant , a soldier , had intended to shoot someone with a baton round , which went wide and hit the claimant . Even though he had not intended to hit the claimant , it was held that because he had intended to fire the baton round in the first place , he was liable . The final element occasionally added to the tort is the hostility of the action ; in *Wilson v Pringle* , it was decided that the onus is on the claimant to show that the force was hostile , except in such situations where it is self @-@ evident . This was undermined by *R v F* , in which Goff wrote that he " respectfully doubts whether [the requirement to show hostility] is correct " , in line with his comment in *Collins* .

An extension to battery was given in *Wilkinson v Downton* , where emotional distress was considered a possible battery despite no physical force being used . The defendant told the claimant (as a practical joke) that her husband had been seriously injured . As a result the claimant suffered a nervous disorder and was thought to be suicidal for a time . It was held that such an action will be valid under battery where it is calculated to cause physical damage and does so . The principle was extended by *Khorasandjian v Bush* , in 1993 , where there was a risk that the defendant 's actions would cause physical or psychiatric damage . The tort set down in *Wilkinson* is normally considered a separate tort of intentional infliction of emotional distress .

= = = False imprisonment = = =

False imprisonment is defined as " depriving the claimant of freedom of movement , without a lawful justification for doing so " . Unlike assault and battery , false imprisonment is a tort of strict liability : no intention on the behalf of the defendant is needed , but the imprisonment must be caused by a deliberate act (as decided in *Sayers v Harlow Urban District Council* , where a faulty lock , not a deliberate act from another party , caused a woman to become trapped in a public toilet) and must be unlawful . The imprisonment of a lawfully convicted criminal is not false , nor is the arrest of a suspect if done in line with the Serious Organised Crime and Police Act 2005 and Police and Criminal Evidence Act 1984 .

Imprisonment is considered any restraint on the freedom of movement , for however short a time . In *Austin and another v Metropolitan Police Commissioner* , seven hours was considered a sufficient period of time to constitute false imprisonment (although the claim was ultimately rejected due to the circumstances of a potentially hostile crowd of demonstrators) . The requirement is complete restraint ; in *Bird v Jones* , the defendant fenced off part of a footpath for use as a viewing point for a boat race . The claimant , accustomed to walking across it , climbed into the enclosure ; the defendants refused to let him pass . They were found not liable for false imprisonment , as another way across existed . There is on the other hand no requirement that the claimant actually attempt to leave , as in *Grainger v Hill* , or even that he knows he is being prevented from leaving , as in *Meering v Graham @-@ White Aviation Co Ltd* .

= = = Defences = = =

There are many defences to trespasses against the person ; the stranger are the right of parents to

commit assault and battery against their children for " chastisement " under the Children and Young Persons Act 1933 , and the right of the captain of a ship to discipline his crew , as in *Hook v Cunard Steamship Co Ltd* . There is also a right to eject a trespasser to land using reasonable force , and a defendant is also not liable for " inevitable accidents " , as in *Stanley v Powell* , where a ricocheting pellet was ruled to be accidental . Individuals and bodies will not be liable for imprisonment , battery or assault if doing so in line with statutory authorities , such as the Criminal Law Act 1967 .

A commonly used defence for the torts of trespass against the person is that of *volenti non fit injuria* , or consent . If a claimant participates in a sporting activity in which physical contact is ordinary conduct , such as rugby , they are considered to have consented . This is not the case if the physical contact went beyond what could be expected , as in *R v Billingham* , or where the injuries were suffered not from the claimant 's participation in the sport but inadequate safety measures taken , as in *Watson v British Boxing Board of Control* . The same general rule applies to people who voluntarily take part in fights , although only if the injuries caused are proportionate , as in *Lane v Holloway* . If the claimant is informed by a doctor of the broad risks of a medical procedure , there will be no claim under trespass against the person for resulting harm caused ; the claimant 's agreement constitutes " real consent " , as in *Chatterton v Gerson* . Consent for medical procedures is different in cases where the claimant does not have the mental capacity to consent . In *F v West Berkshire Health Authority* , it was held that in such situations the requirements are that there " must be a necessity to act when it is not practical to communicate with the assisted person ... [and] the action taken must be such as a reasonable person would in all the circumstances take , acting in the best interests of the assisted person " .

Self @-@ defence is also a valid defence to trespasses against the person , assuming that it constituted the use of " reasonable force which they honestly and reasonably believe is necessary to protect themselves or someone else , or property " . The force used must be proportionate to the threat , as ruled in *Cockroft v Smith* . If the action is undertaken to prevent a crime , Section 3 of the Criminal Law Act 1967 permits it assuming that it is " reasonable under the circumstances " .

= = Trespass to goods = =

Trespass to goods is defined as " wrongful physical interference with goods that are in the possession of another " . It is covered not only by the common law , but also by the Torts (Interference with Goods) Act 1977 , which was written to clear up the confusing rules on trespass to goods which had evolved over the centuries . It is similar to the tort of conversion , which covers the interference with goods in a way which is inconsistent with the rights of the owner . " Physical interference " is usually the taking or destroying of goods , but can be as minor as touching or moving them in the right circumstances . In *Kirk v Gregory* , the defendant moved jewellery from one room to another , where it was stolen . The deceased owner 's executor successfully sued her for trespass to goods . Goods cover almost any physical object , including animals , as in *Slater v Swann* , but not organs , as in *AB & Ors v Leeds Teaching Hospital NHS Trust* . " Possession " has the standard legal meaning , referring to the claimant 's right to use , control or deal with the item . This can include owners , but also bailees .

It is unknown what mental element is expected in cases of trespass to goods ; while trespass to the person requires intent , the requirements for trespass to goods have never been tested in court . The common remedy is damages , which may be awarded regardless of if any actual harm is suffered ; where there is damage , the defendant will only be liable if he could have reasonably foreseen it , as in *Kuwait Airways Corporation v Iraqi Airways Co (No 5)* . Valid defences are those of statutory authority , consent , where it is necessary to interfere with the goods , or *jus tertii* .

= = Trespass to land = =

In English law , trespass to land involves the " unjustifiable interference with land which is in the immediate and exclusive possession of another " . It is not necessary to prove that harm was suffered to bring a claim , and is instead actionable *per se* . While most trespasses to land are

intentional , in *League Against Cruel Sports v Scott* , the courts decided that it could also be committed negligently . Accidental trespass also incurs liability , with an exception for entering land adjoining a road unintentionally (such as in a car accident) , as in *River Wear Commissioners v Adamson* . Although previously a pure tort , the Criminal Justice and Public Order Act 1994 created some circumstances in which trespass to land can also be a crime .

Land is defined as the surface , subsoil , airspace and anything permanently attached to the land , such as houses . The rights of landowners over airspace are not unlimited ; in *Bernstein of Leigh v Skyviews & General Ltd* , the action for trespass failed because the violation of airspace took place several hundred metres above the land . This was backed up by the Civil Aviation Act 1982 , which provides that it is not trespass if the aircraft is flying at a reasonable height . An overhanging crane can constitute trespass , as in *Woolerton v Costain* , as can an advertising sign , as in *Kelsen v Imperial Tobacco Co* . Possession does not necessarily mean the ownership of land , but the right to eject or exclude others from it .

= = = Interference = = =

The main element of the tort is " interference " . This must be both direct and physical , with indirect interference instead being covered by negligence or nuisance . " Interference " covers any physical entry to land , as well as the abuse of a right of entry . If the person has the right to enter the land but remains after this right expires , this is also trespass . It is also a trespass to throw anything on the land . For the purposes of trespass , the person who owns the land on which a road rests is treated as the owner ; it is not , however , a trespass to use that road if public . In *Hickman v Maisey* , it was established that any use of a road that went beyond using it for its normal purpose could constitute a trespass , but this was altered by *DPP v Jones* . Lord Irvine , giving the leading judgment , said that " the public highway is a public place which the public may enjoy for any reasonable purpose , providing that the activity in question does not amount to a public or private nuisance and does not obstruct the highway by reasonably impeding the primary right of the public to pass and repass ; within these qualifications there is a public right of peaceful assembly on the highway " .

= = = Defences = = =

There are several defences to trespass to land ; licence , justification by law , necessity and *jus tertii* . Licence is express or implied permission , given by the possessor of land , to be on that land . If a licence is lawfully revoked , a licence @-@ holder becomes a trespasser if they remain on the land . Justification by law refers to those situations in which there is statutory authority permitting a person to go onto land , such as the Police and Criminal Evidence Act 1984 , which allows the police to enter land for the purposes of carrying out an arrest . *Jus tertii* is where the defendant can prove that the land is not possessed by the claimant , but by a third party , as in *Doe d Carter v Barnard* . The exception to this defence is if the claimant is a tenant and the defendant a landlord who had no right to give the claimant his lease . Necessity is the situation in which it is vital to commit the trespass ; in *Eso Petroleum Co v Southport Corporation* , the captain of a ship committed trespass by allowing oil to flood a shoreline . This was necessary to protect his ship and crew , however , and the defence of necessity was accepted .