

OCR

Oxford Cambridge and RSA

To be opened on receipt

A2 GCE LAW

G158/01/RM Law of Torts Special Study

PRE-RELEASE SPECIAL STUDY MATERIAL

JUNE 2016



INSTRUCTIONS TO TEACHERS

- This Resource Material **must** be opened and given to candidates on receipt.

INSTRUCTIONS TO CANDIDATES

- This copy may **not** be taken into the examination room.

INFORMATION FOR CANDIDATES

- This document consists of **8** pages. Any blank pages are indicated.

G158 LAW OF TORTS

SPECIAL STUDY MATERIAL

SOURCE MATERIAL

SOURCE 1

Hepple and Matthews, Tort Cases and Materials, 6th Edition (2009), Oxford University Press, pp. 716–717

Whereas an action in the tort of negligence requires proof of damage, trespass to the person is actionable per se. The rationale for this was stated in *John Lewis & Co Ltd v Tims* (1952) 1 All ER 1203, 1204, where Lord Porter stated (in the context of false imprisonment) that when ‘the liberty of the subject is at stake questions as to the damage sustained become of little importance’. Indeed, the trespass action can be a particularly important weapon in safeguarding the freedom of the individual. Substantial sums of money have been awarded in the past to vindicate this freedom ... Exemplary damages can be awarded against the police for infringing this freedom, but once again this will be a relatively rare occurrence. Often, claimants will seek a declaration that their person has been unlawfully interfered with. In *Ashley v Chief Constable of Sussex Police* (2008) 2WLR 975, (2008) UKHL 25, the House of Lords permitted a claim for assault and battery brought against the police to proceed to trial, even though the defendant had admitted liability in negligence and false imprisonment, and the claim for assault and battery would not result in any increase of the damages that the claimants could obtain. (The claimants wished to obtain a finding via the action for assault and battery that the police action in question, which had resulted in the shooting and killing of a family member, was unlawful.) The majority of their Lordships considered that the claimants were seeking a vindication of their claim that an unlawful killing had taken place through the action for assault and battery, and that this was a form of declaratory relief which the claimants were entitled to pursue. It is also important to bear in mind that the protection offered to personal autonomy by these torts overlaps with and is increasingly influenced by the requirements of the European Convention on Human Rights: this is an area where Convention standards and the common law are closely intertwined.

The three torts of assault, battery, and false imprisonment are also crimes, and acts giving rise to tortious liability may, therefore, involve criminal liability as well. Criminal cases are used as precedents in determining the scope of these torts, but, since the policy of the law in the two spheres may differ, some caution must be exercised when this is done. Apart from the possibility of the same act giving rise to both civil and criminal liability, a particular factual situation may also involve liability under more than one of the various torts which come within the category of trespass to the person. A battery will usually, but not always, be preceded by an assault, although each can exist independently of the other, and acts amounting to false imprisonment could, in addition, involve liability for assault or battery.

SOURCE 2

Thomas v National Union of Mineworkers [1986] Ch 20

Scott J:

The position seems to me to be this. Some 50 to 70 striking miners attend at the colliery gates daily. Six of them are selected to stand close to the gates. The rest are placed back from the road so as to allow the vehicle conveying the working miners to pass. Abuse is hurled at the vehicle and at the men inside. Police are in attendance. This picketing or demonstrating is taking place against a background of high community tension and known anger by the pickets or demonstrators against the working miners. It is taking place not on isolated instances but on a daily regular basis. Whether there is thereby committed an infringement of the rights of the working miners I have yet to consider. Whether this picketing or demonstrating is within the rights of those taking part or is such as a trade union is entitled to organise or encourage is also for argument. But I really do not think it can be sensibly suggested that picketing or demonstrating of this sort and in the circumstances revealed by the evidence in this case would be otherwise than highly intimidating to any ordinary person. Why is it necessary for the working miners to be brought into their workplace by vehicles? Why is it necessary for police to be in attendance? Are the apprehensions of violence, intimidation or unruly conduct that prompt these precautions without foundation? On the evidence adduced in the present case I cannot think so.

It must not be taken to be doubting the sworn evidence of those lodge officers who have deposed to their personal abhorrence of violence and to their firm lodge policy that there should be no violence on the picket lines. But where, as in this industrial dispute, feelings run high, substantial numbers of pickets are, in my view, almost bound to have an intimidatory effect on those going to work. I was struck by a remark of Mr. Scrivener in this connection. He invited me to imagine a large number of sullen men lining the entrance to a colliery, offering no violence, saying nothing, but simply standing and glowering. That, he said, would not be intimidating to a working miner. I disagree. It would, in my opinion, be highly intimidating.

I have already said that I am unable to accept Mr. Blom-Cooper's basic approach, which was to start by asking whether the picketing represented an offence under section 7 of the Act of 1875. As a supplement to that approach he submitted that the picketing complained of was tortious under a number of heads. It represented, he said, the tort of assault in that the miners going to work were put in fear of violence. I cannot accept this. Assault is defined in Clerk & Lindsell on Torts, 15th ed. (1982), para. 14–10 as 'an overt act indicating an immediate intention to commit a battery, coupled with the capacity to carry that intention into effect.' The tort of assault is not, in my view, committed, unless the capacity in question is present at the time the overt act is committed. Since the working miners are in vehicles and the pickets are held back from the vehicles, I do not understand how even the most violent of threats or gestures could be said to constitute an assault.

SOURCE 3

Collins v Wilcock [1984] 1 WLR 1172

Robert Goff LJ:

‘The question for the consideration of the High Court is whether a Police Constable is acting in the execution of her duty when detaining a woman against her will for the purpose of questioning her regarding her identity and her conduct which was such as to lead the Constable to believe she may have been soliciting men.’

5

We are here concerned primarily with battery. The fundamental principle, plain and incontestable, is that every person’s body is inviolate. It has long been established that any touching of another person, however slight, may amount to a battery. So Holt CJ held in 1704 that ‘the least touching of another in anger is a battery’: see *Cole v Turner* 6 Mod Rep 149, 90 ER 958. The breadth of the principle reflects the fundamental nature of the interest so protected; as Blackstone wrote in his Commentaries:

10

‘The law cannot draw the line between different degrees of violence, and therefore totally prohibits the first and lowest stage of it; every man’s person being sacred, and no other having a right to meddle with it, in any the slightest manner.’

The effect is that everybody is protected not only against physical injury but against any form of physical molestation.

15

But so widely drawn a principle must inevitably be subject to exceptions. For example, children may be subjected to reasonable punishment; people may be subjected to the lawful exercise of the power of arrest; and reasonable force may be used in self-defence or for the prevention of crime. But, apart from these special instances where the control or constraint is lawful, a broader exception has been created to allow for the exigencies of everyday life. Generally speaking, consent is a defence to battery; and most of the physical contacts of ordinary life are not actionable because they are impliedly consented to by all who move in society and so expose themselves to the risk of bodily contact. So nobody can complain of the jostling which is inevitable from his presence in, for example, a supermarket, an underground station or a busy street; nor can a person who attends a party complain if his hand is seized in friendship, or even if his back is (within reason) slapped. Although such cases are regarded as examples of implied consent, it is more common nowadays to treat them as falling within a general exception embracing all physical contact which is generally acceptable in the ordinary conduct of daily life. We observe that, although in the past it has sometimes been stated that a battery is only committed where the action is ‘angry, or revengeful, or rude, or insolent’, we think that nowadays it is more realistic, and indeed more accurate, to state the broad underlying principle, subject to the broad exception.

20

25

30

SOURCE 4

Murray v Ministry of Defence, House of Lords [1988] 2 All ER 521

Lord Griffiths:

My Lords, the plaintiff, Mrs Margaret Murray ... [s]ued the Ministry of Defence for false imprisonment by the army. Her claim was dismissed by Murray J and the Court of Appeal in Northern Ireland, and she now appeals to your Lordships' House by leave of the Court of Appeal. 5

... [t]he appeal raises the correctness of the procedures laid down and followed by the army in Northern Ireland when they purport to exercise the power of arrest, detention and search, contained in s 14 of the Northern Ireland (Emergency Provisions) Act 1978

... [A]lthough on the facts of this case I am sure that the plaintiff was aware of the restraint on her liberty from 7.00 am, I cannot agree with the [Northern Ireland] Court of Appeal that it is an essential element of the tort of false imprisonment that the victim should be aware of the fact of denial of liberty. The Court of Appeal relied on *Herring v Boyle* (1834) 1 Cr M& R 377, 149 ER 1126 for this proposition which they preferred to the view of Atkin LJ to the opposite effect in *Meering v Grahame-White Aviation Co Ltd* (1919) 122 LT 44. *Herring v Boyle* is an extraordinary decision of the Court of Exchequer: a mother went to fetch her 10-year-old son from school on 24 December 1833 to take him home for the Christmas holidays. The headmaster refused to allow her to take her son home because she had not paid the last term's fees, and he kept the boy at school over the holidays. An action for false imprisonment brought on behalf of the boy failed. 10 15

... I suppose it is possible that there are schoolboys who prefer to stay at school rather than go home for the holidays but it is not an inference that I would draw, and I cannot believe that on the same facts the case would be similarly decided today. In *Meering v Grahame-White Aviation Co Ltd* the plaintiff's employers, who suspected him of theft, sent two of the works police to bring him in for questioning at the company's offices. He was taken to a waiting-room where he said that if he was not told why he was there he would leave. He was told he was wanted for the purpose of making inquiries about things that had been stolen and he was wanted to give evidence; he then agreed to stay. Unknown to the plaintiff, the works police had been instructed not to let him leave the waiting-room until the Metropolitan Police arrived. The works police therefore remained outside the waiting-room and would not have allowed the plaintiff to leave until he was handed over to the Metropolitan Police, who subsequently arrested him. The question for the Court of Appeal was whether on this evidence the plaintiff was falsely imprisoned during the hour he was in the waiting-room, or whether there could be no 'imprisonment' sufficient to found a civil action unless the plaintiff was aware of the restraint on his liberty. 20 25 30 35

... [T]he law attaches supreme importance to the liberty of the individual and if he suffers a wrongful interference with that liberty it should remain actionable even without proof of special damage.

... [I] am satisfied that the evidence justifie[s] ... that there is no substance [to] this ... complaint. I would therefore dismiss this appeal. 40

SOURCE 5

Jenny Steele, *Tort Law: Text, Cases and Materials, 3rd Edition (2014)*, Oxford University Press, p.37

It has been said that the main purpose of trespass torts is not to compensate for injury, but to identify and respond to actions of the defendant which transgress the acceptable boundaries of physical interference. In the following extract, Tony Weir relates the trespass torts to excess of authority and the vindication of constitutional rights:

Tony Weir, *A Casebook on Tort (10th edn, London: Sweet & Maxwell, 2004)*. 322–3 5

The law of tort does not have one function only: few things do. It is true that most tort claimants want compensation for harm caused to them by someone else and that in this sense (and in this sense only) the main function of tort law is to ordain such compensation. It has another function, however, which, though traditional, has rarely been more important than now, namely to vindicate constitutional rights. Not every infraction of a right causes damage. That is precisely why the law of trespass does not insist on damage. But if jurists believe that damage is of the essence of a tort claim, they will regard trespass as anomalous, deride it as antiquated, ignore the values it enshrines and proceed to diminish the protection it affords to the rights of the citizen. When constitutional rights are in issue what matters is whether they have been infringed, not whether the defendant can really be blamed for infringing them. But if jurists think of negligence as the paradigm tort (and they do so for no better reason than that a great many people are mangled on the highway) they will regard it as the overriding principle of the law of tort that you do not have to pay if you were not at fault and, equally, that you always have to pay if you were at fault. ... [I]f a defendant can say that he acted reasonably, a negligence lawyer will let him off, without bothering to distinguish the reasonable but erroneous belief that the projected behaviour was authorised from the reasonable but erroneous belief that it was *safe*. 10 15 20

Weir's analysis explains why the focus of the trespass torts is not 'damage'; and also why these torts are not (despite their 'intentional' label) centrally concerned with the quality of the defendant's conduct. It is the unlawfulness of the intended outcome that matters, not the unreasonableness of the intention itself. Nevertheless, the Supreme Court ... [has] decided that in a case not involving harm, this unlawfulness is insufficient basis for an award of more than nominal damages. In terms of the function outlined by Weir, this is something of a disappointment. 25 30

SOURCE 6**Keng Fen Tan, 'A Misconceived Issue in the Tort of False Imprisonment' (1981) 44 MLR 166**

It is therefore sufficiently clear that at common law a person cannot restrain the liberty of another to enforce a monetary condition as to exit. Such restraint is false imprisonment unless authorised by law. It may be that monetary conditions as to exit, in this context, are never reasonable conditions. It is, however, submitted that even if such conditions do not relate to the collection of debts and even if they are construed as reasonable there may still be liability for false imprisonment. This is so because the reasonableness of the condition as to exit does not determine whether the restraint of liberty used to enforce the condition is or is not false imprisonment. The basis for this proposition is that no person can by imprisonment force another to abide by or conform to any condition, if that other person does not consent to do so, unless such compliance is required by law. If compliance is required by contract that other person can choose to abandon the contract and assume liability for the breach. He cannot then be compelled to perform or comply with the contract, unless specific performance is ordered by the courts. 5
10

[However] in the tort of false imprisonment consent once given to submission of liberty cannot, in certain situations, be withdrawn for a critical period. These situations arise when a person puts himself voluntarily, for whatever purpose, in a position which necessarily involves a temporary surrender of his liberty and some inconvenience in meeting, for a critical duration, the withdrawal of his consent to submission of liberty. The difficulty in the tort is in deciding at what stage and for what duration the consent given to submission of liberty is irrevocable. This must be decided according to the particular circumstances of each case. The decision would involve the balancing and adjustment of two competing claims: the claim to personal liberty and the claim of inconvenience entailed in giving in to such claim. 15
20

**Copyright Information**

OCR is committed to seeking permission to reproduce all third-party content that it uses in its assessment materials. OCR has attempted to identify and contact all copyright holders whose work is used in this paper. To avoid the issue of disclosure of answer-related information to candidates, all copyright acknowledgements are reproduced in the OCR Copyright Acknowledgements Booklet. This is produced for each series of examinations and is freely available to download from our public website (www.ocr.org.uk) after the live examination series.

If OCR has unwittingly failed to correctly acknowledge or clear any third-party content in this assessment material, OCR will be happy to correct its mistake at the earliest possible opportunity.

For queries or further information please contact the Copyright Team, First Floor, 9 Hills Road, Cambridge CB2 1GE.

OCR is part of the Cambridge Assessment Group; Cambridge Assessment is the brand name of University of Cambridge Local Examinations Syndicate (UCLES), which is itself a department of the University of Cambridge.