**TUTORIAL 1**

<table>
<thead>
<tr>
<th>Trespass</th>
<th>Actions on the case</th>
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<tr>
<td>Direct interference e.g. Scott v Shepard</td>
<td>Can be indirect</td>
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<tr>
<td>No need to prove damages</td>
<td>Must prove damages</td>
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<td>Defendant bears the onus of disproving fault</td>
<td>Intentional &amp; unintentional</td>
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<tr>
<td>Intentional &amp; unintentional</td>
<td>Onus of proof of fault on plaintiff</td>
</tr>
<tr>
<td>Examples – battery, assault, false imprisonment, trespass to lands, trespass to chattels</td>
<td>Examples – negligence, nuisance, defamation, intentional infliction of personal injury, deceit</td>
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</table>

- Possession not ownership is the required title to sue for trespass to land.

**LECTURE 1**

- 'The law of torts concerns the **obligations** of people...to respect the safety, property and personality of their neighbours... [Torts] involves questions of how people **should** treat one another and the rules of proper behaviour that **society imposes** on each citizen for avoiding improper **harm** to others, and for determining when **compensation** for harm is due'

- Imposed by the common/statute law
- Source of obligations → imposed equally on everybody in certain circumstances
- Personality → intangible kinds of interests e.g. reputation, defamation, liable slander
- Focus at defendant’s behaviour and ask ‘is that good enough?’ e.g. surgeon cutting off patient’s leg. Looking at standards of behaviour.
- Interest in safety, well-being

- **Jumping a motorbike** – high risk sporting activity. Torts have a lot to do with settings that are exposed to injury.
- **Wet floor at work** – unsuitable kind of surface.
- **Home** – you are responsible for whatever happens at home. Liable in torts if there’s a visitor. ‘Blame and claim’
- **Working site** – site manager’s fault

**Aims, purposes, role of tort law**

**1. Compensation**

- ‘Compensation is the reparation of a wrong by provision of a sum of money (damages) awarded by a court’.
- Interest in safety, wellbeing
- Damage/harm to person/ property/ economic/ other e.g. reputation
- Idea of ‘comparator’ essential – e.g. wrongful life - Harrittorn (HCA, 2006) – life as harm?
- **Restitutio in integrum** (to put the person back in the position if the tort didn’t occur; restore)
- ‘Once and for all’ rule → one chance to prove to the court all of your injuries past, current and future.
- ‘Knowledge of the future being denied to mankind... There is really only one certainty: the future will prove the award to be either too high or too low’ Lord Scarman **Lim Poh Choo** (1980, HL)
Disadvantages compounded (settle in exchange for money) for those who are already at a disadvantage - the ones that lose the least in financial terms will gain the least.
- *Example with the pregnant woman with rubella* - there will be economic harm caused by the doctor. Doctor did not cause the rubella; the rubella has called the illness.

2. **Deterrence** - Cautions that can be avoided e.g. floor is of a suitable surface,

- Industrial safety?
- Consumer goods & services?
- Occupiers' liability? public/private
- Professional neg?
- Roads?
- Effect of insurance?

3. **Promotion of safety**

4. **Punishment**

**Tort Theory**

*a) Economic theorists* – Calabresi, Posner, Coase theorem

- Search for 'efficiency' ie minimize costs of accidents + costs of avoidance + transaction costs – societal perspective
- Main focus negligence - ‘fault’ is failure to take interests of others into a/c – ‘reasonable person’ – precautions
- Action as rational cost/benefit analysis - Loss shifting/ spreading – but evidence weak
  - Statute takes priority

*b) Corrective justice*

- Morality as basis of tort – normative – ‘wrongs’ - eg neglig
- Duty to repair harm to others – correct wrongs - cf punishment

4. **Tort Law: Common law and statute**

- Pre-2002 – mainly common law (cases) + specific statutes eg *Workers Compensation Act 1987; Motor Accidents Compensation Act 1999*
- Post 2002 – need to integrate C/L with *CLA*
- 'Tort reform’ – Civil Liability Acts - post 2002
- Context: The ‘insurance crisis’
- collapse of: HIH Insurance group 2001 + United Medical Protection (medical insurers) + impact Sept 11 on global reinsurance
- perception: incr litigation, incr damages, pro-Pl courts - *Simpson v Diamond 2001* - record $14m

- "Negligence: the last outpost of the welfare state... [which] encourage[s] individuals to hold others responsible for looking after them and protecting them from the consequences of their own conduct”  Spigelman CJ (2002) 77 ALJ 432
- incr in public liability premiums early 2002

**Causes? solutions?**

- Federal legislation introd to accommodate tort law reform by states
Negligence review panel estab – chair Justice David Ipp – ‘Ipp committee’
Ipp Terms of reference: ‘The award of damages for personal injury has become unaffordable and unsustainable ...desirable to examine a method for the reform of the common law with the objective of limiting liability and quantum of damages arising from personal injury & death’ cost cutting exercise. Measures were implemented into the legislation to produce effects.
Ipp Reports 2002
2002- all Aust jurisdictions passed legislation or Bills to deal with insurance crisis

Civil Liability Act 2002 (NSW)

CL Act 2002 - mainly re damages – backdated to 20 March 2002
CL Amendment (Personal Responsibility) Act 2002 - mainly re liability – 6 Dec 2002
Consolidated
See also Civil Liability Act 2003 (Qld); Wrongs Act 1958 (Vic); Civil Law (Wrongs) Act 2002 (ACT); Civil Liability Act 1936 (SA); Civil Liability Act 2002 (Tas); Civil Liability Act 2002 (WA); Review of the Law of Negligence, Final Report (2002) (the ‘Ipp Report’)
D Villa, Annotated Civil Liability Act 2002 (NSW), LawBook Co, 2012

5. Tort Law and human rights
- Interest is the focus in torts law
- Because Australia does not have a bill of rights
- False imprisonment (liberty), assault,
- Human Rights Act 2004 (ACT)
- Charter of Rights & Responsibilities 2006 (Vic)
- Both modelled on UK Human Rights Act 1998

Rights Act 1998
- No national Bill of Rights or equiv
- Role of tort law?
- eg protect indiv liberty against gov’t – actions against stat authorities, tort of misfeasance in public office; false imprisonment, assault/ battery

Chapter 2
INTRODUCTION TO INTENTIONAL TORTS: Trespass and actions on the case

Historical context
- Trespass – law-French transgressio – wrongs
- C12- Peremptory writs or forms of action (pleadings)
- Vi et armis et contra pacem regis (with force and arms against the King’s peace)
- Direct forcible interference with person, goods or land of another incl assault, battery, false imprisonment
- peace keeping function – similarities with criminal law
- later trespass on the case (case) – negligence, nuisance, etc
- important procedural differences
- trespass - all direct physical contacts
- case – consequentially inflicted injury
- procedural reforms UK C19 abolished forms of action – followed in all Aust states – NSW last 1972 (Supreme Court Act 1970)
- Maitland: ‘The forms of action we have buried, but they still rule us from their graves’

Elements of trespass (things that must be present in order for a case to proceed)
- Trespass is a cluster of torts. Things that the plaintiff has to prove.
- Directness
- Actionable per se (actionable in themselves as opposed to needing to prove harm)
- Fault
  - Negligible is different to torts. You wont be responsible if you don’t harm anyone.

**Directness**

‘the invariable principle... is that where the injury is immediate on the act done, there trespass lies; but where... consequential, there the remedy is in case': *Leame v Bray* (1803) per Le Blanc J; similar *Scott v Shepard* (1773)

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<tr>
<th>Case</th>
<th>Facts</th>
<th>Issue</th>
<th>Held</th>
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</table>
| **Hutchins v Maughan**| Plaintiff drover warned of poison baits (unlawful) laid on Defendant’s land – took his dogs on – poisoned – sued in negligence, nuisance & trespass.  
First instance: Pl lost in neg & nuisance (ie actions on the case), won in trespass. | Injury direct or consequential?  
You cannot sue in negligence. The action was not an act of negligence.  
Said he was going to lay poison bait.  
What kind of damage has been done? How can owner sue?  
Property has been destroyed and therefore that is the harm - trespass to chattels.  
Not direct harm. | Consequential – no trespass  
NB log on highway example – from *Scott v Shepard* / endorsed *Leame v Bray*  
If you threw a log out the window and it hits somebody, that would be a direct injury for the purposes of injury.  
However, if you threw the log out and no one happened to be there and an hour later someone came and tripped over it, that would be indirect – not trespass. |
| **Scott v Shepard**   | Lighted firecracker thrown in crowded market – passed on by 2 intermediaries – exploded and injured Pl | You would *intuitively* say no it was indirect because there were two intermediates.  
Court held that it was a reflex action and there was no human intervention. Not a reasoned action.  
**Direct** – because intermediaries acted from ‘compulsive necessity for their own safety and self**
2. **Actionable per se**

- No proof of damage needed (liability) – but relevant to damages (quantum)
  - These interests are thought to be so important that you don’t need to interfere with them or you interfere with them at your peril.
- Possible exception trespass to chattels
- Reflects importance attached to bodily integrity and land in early common law

3. **Fault**

- ‘No man shall be excused from trespass... except it may be adjudged utterly without his fault’ *Weaver v Ward* (1616)
- Trespass ‘does not lie if the injury... although direct... was caused unintentionally and without negligence’: *Fowler v Lanning* [1959] 1 QB 426
- There needs to be intent where intent is the fault element.

Fault = intent or negligence – NB Intention re act not consequences

**Negligent trespass v negligence**

‘The distinction between trespass and (action on the) case is obsolete... Instead of dividing actions for personal injuries into trespass (direct damage) or case (consequential damage), we divide the causes of action now according as the defendant did the injury intentionally or unintentionally (cause of action is therefore negligence) ... [where unintentional] his only cause of action is in negligence’:


*The law in UK but NOT Australia*

Why does it matter if the log hit someone at the time or someone later?

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**Williams v Milotin**  
High Court (1957) 97 CLR 465; SVW p 33

Plaintiff on bicycle struck by truck driven negligently –  
Plaintiff statute barred re trespass but not negligence –  
won in negligence – Def appealed - Def argued that action could have been framed as trespass therefore statute barred for both

Limitation for trespass was one thing and the limitation for negligence was another thing.

Statute of limitation says that in order to not lose your right to sue, you have to bring your action within a suitable period of time

**High Court**

'The 2 causes of action are not the same now and they never were. When you speak of a cause of action you mean the essential ingredients in the title to the right which it is proposed to enforce. The essential ingredients in an action for negligence for personal injuries include the special or particular damage – it is the gist of the action – and the want of due care. Trespass to the person included neither.' (p 33-34)

Appeal dismissed

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**Ch 3. Intentional interference with THE PERSON**

**1. Battery**  
Defendant has to prove that the act was unintentional or negligent.

*Fault element in trespass can be negligence but it is not the tort of negligence, it is the tort of trespass.*

**Elements** (ie what Pl must prove)  
- Positive act  
- Direct and intentional or negligent act  
- Touching/contact

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| Rixon v Star City  
(2001) 53 NSWLR 98; SVW p 41 | PI patron sued casino for unlawful arrest, false imprisonment, assault  
Plaintiff subject to exclusion order under Casino Control Act 1992 (NSW) – detained by e/ee in interview room at casino 1 ½ hours before police arrived – stress/ anxiety  
At trial – no assault because no intention – no battery because no hostile attitude  
Plaintiff failed re false | **Court of Appeal**  
Sheller JA  
‘the least touching of another in anger is a battery’: *Cole v Turner* (1704)  
Except for normal everyday contact: *Cole*  
Touching need not be hostile (*Wilson v Pringle* [1987] QB 237) nor ‘in anger’ *Cole*  
‘any touching of another’s body is, in the absence of lawful...*' |
imprisonment and unlawful arrest because Defendant acting within power – CC Act

excuse, capable of amounting to a battery and a trespass: In re F (Mental Patient: Sterilisation) [1990] 2 AC 1 at 73 per Lord Goff of Chieveley; Collins v Wilcock

Collins v Wilcock [1984] 1 WLR 1172, per Robert Goff LJ (later Lord Goff) – every person’s body is inviolate – principle of autonomy. Refer Blackstone’s Commentaries (1830) – SVW p 42

Exception – ‘exigencies of everyday life’ – implied consent to contact: Collins - or general exception

Pl’s appeal dismissed

2. ASSAULT

Elements

1. Reas apprehension of imminent contact: Zanker v Vartzokas
2. ‘intention to use force or create apprehension re use of force’: Hall v Fonseca

1. Reasonable apprehension of imminent contact

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<tr>
<th>Zanker v Vartzokas (1988) 34 A Crim R 11 (S/C SA); SVW p 45</th>
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<tr>
<td>Pl accepted lift from Defendant stranger – refused offer of money for sex – Defendant speeded up when she asked to get out – opened door &amp; threatened to jump – ‘I am going to take you to my mate’s house. He will really fix you up’ – van doing 60 km/h – Pl jumped – injured</td>
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<tr>
<td>Defendant charged with assault only – denied - conceded false imprisonment – magistrate found for Defendant because no fear of immediate violence on facts – Pl appealed</td>
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<tr>
<th>White J (Supreme Court SA)</th>
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<tr>
<td>‘Present fear of relatively immediate imminent violence’ - ‘immediate and continuing fear’ while in car</td>
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<tr>
<td><em>Barton v Armstrong</em> (1969, NSW) – held: serious threats by phone can put reasonable person in fear of later violence = assault, even though Pl does not know when – depends on circumstance</td>
</tr>
<tr>
<td>‘Gist of the offence of assault is putting a person into apprehension of impending physical contact’: Taylor J <em>Barton</em></td>
</tr>
<tr>
<td>‘The effect on the victim’s mind is the material factor, and not whether the def actually had the intention or the means to follow it up’: Taylor J <em>Barton</em></td>
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<tr>
<td><em>E.g.</em> If you commit a robbery and pull out a toy gun, have you put the person into apprehension of being possibly killed? Yes. It is the essence of the offence.</td>
</tr>
<tr>
<td>Significant in <em>Zanker</em> that Pl imprisoned in car – continuing fear</td>
</tr>
<tr>
<td>Some doubt re <em>Barton</em> circs as assault</td>
</tr>
<tr>
<td>Held: appeal allowed – conviction for assault occasioning ABH</td>
</tr>
<tr>
<td>harm from jumping = ‘occasioned’ whether Def foresaw or not</td>
</tr>
</tbody>
</table>
|if threat produces fear or
apprehension of physical violence... the law is breached, although the victim does not know when that physical violence may be effected

- **Assault**: Apprehension of imminent contact e.g. raising hand to hit someone
- **Battery**: Bashing.
- Purpose of tort is to secure the compensation.

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| *Hall v Fonceca* [1983] WAR 309 (S/C WA); SVW p 50 | Both the appellant (plaintiff) and the respondent (defendant) were members of Harlequins Hockey Club and were arguing over the finances of the club. The appellant became abusive and the respondent told him to “watch it” and poked the appellant at which point the appellant raised his left arm. The respondent apprehended that the appellant was about to strike him, and struck the appellant in anticipation. The appellant struck his head on the floor and suffered a brain haemorrhage. | **Smith & Kennedy JJ**
Must be ‘intention on the part of the assailant either to use force or to create an apprehension of the use of force’ (SVW p 50)
This an element of assault
Appeal dismissed
**Relied on the common law in holding that assault does require an intention to apply the force or to make the victim think that the threat will be carried out.**
Held that an intention to apply force or to create an apprehension of force is an element of *all* assaults – those involving threats of force AND those involving application of force. |

### 3. FALSE IMPRISONMENT

**Elements**
1. Direct act (trespass)
2. Intention/fault (trespass)
3. Deprives plaintiff of liberty without lawful justification (specific to the element of false imprisonment)

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<tbody>
<tr>
<td><strong>Total Imprisonment</strong></td>
<td>Defs operated ferry – private wharf - notice near turnstiles: ‘fare of one penny must be paid on entering or leaving wharf’ - PI paid – missed ferry – prevented from exiting turnstile by Def’s e/ees unless paid again – PI forced way out Sued for assault and false imprisonment – lost re both</td>
<td>Griffith CJ PI free to leave premises by water, so no imprisonment; no assault O-Connor J Abridgment (impose a restriction) of a man’s liberty is not under all circumstances actionable – restraint of liberty here an implied term of contract ‘The company being lawfully entitled to impose that condition, and the PI being free to pass out thru the turnstile at any time on complying with it, he had only himself to blame for his detention, and there was no imprisonment’ (p 392) Assault - Defs ‘entitled to prevent PI from squeezing thru… and justified in meeting PI’s forcible attempt with as much force as was reasonably necessary to defeat it’ – if assault, then justified</td>
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<tr>
<td><strong>Balmain New Ferry Co v Robertson</strong> (1906) 4 CLR 379 (HCA) SVW p 55</td>
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<tr>
<td><strong>Robinson v Balmain New Ferry</strong> [1910] AC 295 (Privy Council)</td>
<td>Upheld HCA - Finding for def – PI entered wharf of own free will – defs entitled to impose fair conditions – PI could wait for next ferry</td>
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<tr>
<td><strong>Symes v Mahon</strong> [1922] SASR 447 (SVW p 57 notes [3.115])</td>
<td>PI told by police with arrest warrant that he had to go with police by train because of warrant – PI went next day in separate carriage and bought own ticket - mistaken identity</td>
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<tr>
<td><strong>Held</strong></td>
<td>Murray CJ - false imprisonment from time of entering train until formal release, because complete submission of Pl to control of defendant – reasonable belief that no reasonable way of escape</td>
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| **Murray v Ministry of Defence**  
[1988] 1 WLR 692 (H/L); SVW p 58 | PI detained on suspicion of IRA involvement – period in own house – not told under arrest until later – C/A held knowledge of imprisonment essential, relying on *Herring v Boyle* – Pl not imprisoned until told of arrest |
| --- | --- |

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<tr>
<th><strong>Lord Griffiths</strong> (H/L) – all others agreed</th>
<th>Not essential element of false imprisonment that victim be aware of imprisonment – <em>Herring</em> wrong</th>
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- *e.g.* If somebody turns the key when you’re asleep and opens it before you wake up you, this is counted as false imprisonment. 

- Discusses *Meering v Graham-White Aviation* (SVW p 58) – e/ee held for questioning at work over suspected theft – unaware that 

- Instruction not to allow him to leave - knowledge not essential – eg can be imprisoned while asleep or unconscious – but affects damages 

- Note reference to USA *Restatement of Torts* – Pl must be aware of confinement or harmed by it – but not law in UK, Aust 

- ‘The law attaches supreme importance to the liberty of the individual ... wrongful interference ... actionable without proof of special damage’ (SVW p 59) 

- Nature of imprisonment – doesn’t have to be behind doors or locked doors. 
- If the person is confined, that will be sufficient but not necessarily or physically confined. 
- Subject to somebody else’s will or authority – may be subjected to confinement.
- Even if you’re physically free to escape, you may not be mentally free.

**ACTION ON THE CASE**
- Actions on the case is a newer form of tort than trespass
- *Indirect* intentional infliction of personal injury.

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<tr>
<td><em>Wilkinson v Downton</em></td>
<td>Plaintiff (Mrs W) told by Defendant that H seriously injured – practical joke – travel expenses – ‘serious and permanent physical consequences... threatening her reason’</td>
<td>Wright J Def has ‘wilfully done an act calculated to cause physical harm to Pl ...and has in fact thereby caused physical harm... That proposition, without more, appears to me to state a good cause of action’ (test)</td>
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</table>

*Wilkinson*

Not trespass – indirect (speech)

Not negligence – intentional + *Victorian Railways Commissioners v Coultas P/C* 1888

NB Wright J in *Wilkinson v D* distinguished *Coultas & Allsop v Allsop (1860)* because ‘there was not...any element of wilful wrong”

Action on the case – indirect intentional injury

- A on C for physical injury based on intentional statements
- Extension of A on C for physical injury – cf *v Holbrook (1828 spring gun case)*

**Meaning of intention**

- ‘wilfully done an act calculated to cause physical harm” *W v D*
- trespass: intentional act not consequences (actionable *per se*)
- Action on Case – intent re both
- Def’s act ’so plainly calculated to produce some effect of the kind which was produced that an intention to produce it ought to be imputed to the Def’
- Reckless indifference? (objective test?)
LECTURE 2
Intentional Torts to Property
Trespass to land and chattels; conversion

RE-CAP FROM WEEK 1
Intentional torts – Trespass to person:
• Assault
• Battery
• False imprisonment

Elements of all trespass torts

1. Directness
2. Actionable per se
3. Fault

+ own elements specific to each tort

1. Directness - ‘the invariable principle... is that where the injury is immediate on the act done, there trespass lies; but where... consequential, there the remedy is in case’: Leame v Bray (1803) per Le Blanc J; similar Scott v Shepard (1773)
   • Hutchins v Maughan/ Scott v Shepard

2. Actionable per se
   • No proof of damage (injury) needed to establish liability – but relevant to damages ($ - quantum)

3. Fault
   • ‘no man shall be excused from trespass... except it may be adjudged utterly without his fault’ Weaver v Ward (1616)
   • Fault = intent or negligence in Aust – cf UK Letang v Cooper
   • Onus of disproving/proving fault in trespass is on Def in Aust: McHale v Watson, except highway cases: Venning v Chin (1974) 10 SASR 299 (cf UK Fowler v Lanning)
**TRESPASS TO LAND**

**Meaning of Land**

*Bernstein v Skyviews*

[1978] QB 479; SVW p 79

| FACTS | Defs aerial photographers- took pics of Pl’s stately home & tried to sell to him – Pl wrote alleging breach of privacy – no tort of privacy at that time in UK - sued for trespass |
| ISSUE | Meaning of 'land' for trespass? – from Heaven to Hell? (Latin maxim) |
| HELD | Griffiths J  
- Must balance owner’s rights to enjoy property against public's rights to benefit from technology – planes, satellites etc  
- Owner's rights in air space restricted to 'such height as is necessary for ordinary use and enjoyment of land and structures upon it’  
- Anything 'attached' to the land is the owner’s rights  
- **No trespass**  
- NB See *Bocardo v Star Energy* [2011] AC 380 (SVW 80) re substrata |

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**Title of the Plaintiff**

- Not everyone has the right to sue. E.g. You cant sue for the right of entitlement to MY land

*Newington v Windeyer*

(1985) 3 NSWLR 555 (C/A) SVW p 82

| FACTS | Plaintiffs occupiers of properties adjoining 'The Grove' – deceased estate in Woollahra – treated as own – Def also occupied adjoining property – wanted to share Grove – at trial Pls won in trespass to land  
No beneficiaries |
| HELD | **McHugh JA**  
- Plaintiffs are not owners but can still sue in trespass  
- Re old system title - Possession gives good title against all except those with better (older) title  
- Person in adverse (to true owner) possession still has legal interest  
- Authority that also applies to Torrens title land – conceded in *Newington*  
- Conduct that indicates taking of possession here – 50 years, employed gardener and maintained land, used for parties/weddings etc, paid council rates, vigorously excluded others |

Held - Plaintiffs won in trespass

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**Kuru v State NSW**

(2008) 232 CLR 410; SVW p 86

**Trespassory Conduct - Entry to land**
FACTS

Gleeson CJ, Gummow, Kirby, Hayne JJ

- Police called to ‘violent domestic’ – Ms K had left and Mr K in shower when police arrived
- Door open – police entered – later asked Mr K if they could look around – he agreed
- Later K angrily & repeatedly told police to leave – did not
- K started fight with police
- K sprayed with capsicum & handcuffed – fell down stairs – arrested & taken to police station – released after few hours
- K sued for trespass to land, trespass to person, false imprisonment
- Won at trial

HELD

Court of Appeal - Mason P, Santow & Ipp JJA

- Only issue whether police trespassing in flat at time fight began ie parties agreed that outcome of trespass to person & false imprisonment claims must be same as trespass to land
- Unanimous finding for NSW - police not trespassers - Crimes Act and C/L justification for police to remain on land after permission withdrawn

High Court (Gleeson CJ, Gummow, Kirby and Hayne JJ)

- Appeal allowed – no common law or statutory justification to remain on premises – police were trespassing – NO legal authority
- Should have left & sought warrant – safeguard for indivs – civil liberties
- Plenty v Dillon (1991) 171 CLR 635 – can only enter land with consent or by lawful authority - Police no special rights apart from this
- Authority can be revoked – then must leave ASAP
- Halliday v Neville – implied licence for all to enter if no physical barrier or notice - but only for legitimate purpose where no interference with occupier or injury

Halliday v Neville


FACTS

- Police saw Halliday driving out of neighbour’s driveway – knew he was disqualified
- H saw police & drove back in police walked down open drive & arrested H
- H ran to own house – police chased into house – scuffle - H charged with escaping lawful custody, resist police, assault

ISSUE

Were the police trespassing?

HELD

At trial – Held: driveway arrest unlawful because police trespassers – dismissed charges from arrest

Appeal to Supreme Court of Vic – arrest lawful even if trespass – Pl guilty of escape from lawful custody – police entry to home justified Crimes Act (Vic)

High Court: Gibbs CJ, Mason, Wilson, Deane JJ

- Important issues re liberty
- Agreed that appeal can only succeed if police trespassing when arrested Pl
- Police had implied licence from neighbour to enter driveway
How to determine licence?

• Means of access (open, locked gate etc)
• Lawful communication with or delivery to occupier
• Public may enter ‘for legitimate purpose that involves no interference with occupier’s possession nor injury to occupier’
• Implied licence includes police in execution of duties

Held - No trespass – arrest lawful
NB note dissent Brennan J – case about privacy in home – public authority v private dwellings

**Lincoln Hunt Aust P/I v Willessee**

(1986) 4 NSWLR 457 (S/C NSW) – see SVW notes p 90

| FACTS | Consumer dispute – unhappy client went to Pl’s premises with TV reporter and film crew who harassed staff and filmed incl opening interior doors – Pl applying for injunction to stop film being shown on TV because prejudice to business goodwill |
| ISSUE | Trespass – licence – was Def trespasser from outset or only once licence revoked? NB this case about competing principles of public’s right to know (freedom of press) vs indivs right to privacy and freedom from harassment and invasion of property rights |
| HELD | **Young J**
H/C reviewed authorities in *Neville v Halliday*

Common sense attitude to entry onto private premises without express permission

Must analyze express or implied invitation from occupier in each case

Implied invitation generally for limited purposes – entry for other purposes is trespass from outset

On facts, implied invitation to members of public by business to enter for legit business purposes only, not purposes of own contrary to interests of occupier

S/C has jurisdiction to grant injunction to restrain publication of videos, photos etc taken by trespasser even if not confidential

But will only do so where publication unconscionable

Pl must also show that ‘irreparable damage’ will be suffered if no injunction + ‘balance of convenience’ favours Pl (standard test for injunction: *Castlemaine Tooheys v Sth Aust*)

Pl shown prima facie trespass but not shown irreparable damage

Held: Trespass. Injunction refused – remedy in damages open

**Plenty v Dillon**

(1991) 171 CLR 635 – discussed in *Kuru SVW* p 87-88