

TRESPASS TO THE PERSON

Asst prof Shamrao patil

Assault and Battery.

- Battery The wrong of battery consists in intentional application of force to another person without any lawful justification.
- Its essential requirements are :
- i) There should be use of force.
- (ii) The same should be, without any lawful justification.

Use of Force Even though the force used is very trivial and does not cause any harm, the wrong is still constituted. Physical hurt need not be there. Least touching of another in anger is a battery

- (ii) Without Lawful Justification:-
- It is essential that the use of force should be intentional and without any lawful justification.
- In *Cole v. Turner*
 - *“It was stated by Holt, C.J. that if two or more persons meet in a narrow passage and without any violence or design of harm, the one touches the other gently, it will be no battery”*

But if either of them uses violence against the other, to force his way in a rude or inordinate manner, it will be a battery. Harm voluntarily suffered is no battery. The use of force may also be justified in pulling a drowning man out of water, forcibly feeding a hunger-striking prisoner to save his life, or performance of operation of an unconscious person by a competent surgeon to save the former's life.

- **In Pratap Daji v. B.B. & C.I:**

The plaintiff entered a carriage on the defendant's railway but by oversight failed to purchase a ticket for his travel. At an intermediate station, he asked for a ticket but the same was refused. At another place, he was asked to get out of the carriage since he did not have a ticket. On his refusal to get out, force was used to make him get out of the carriage. In an action by him for his forcible removal, it was held that the use of the force was justified as he, being without a ticket, was a trespasser. The defendants were, therefore, not liable.

Use of force to oust a trespasser from certain premises is perfectly justified. However, only reasonable force can be used against a trespasser. It should not be more force than is necessary

- **Assault:-**

Assault is an act of the defendant which causes to the plaintiff reasonable apprehension of the infliction of a battery on him by the defendant.

When the defendant by his act creates an apprehension in the mind of the plaintiff that he is going to commit battery against the plaintiff, the wrong of assault is completed. The wrong consists in an attempt to do the harm rather than the harm being caused thereby.

Blake v. Barnard, (1840):-

If the pistol is not loaded, then even it may be an assault, if pointed at such a distance that, if loaded, it may cause injury.

- Generally, assault precedes battery. Showing a clenched fist is assault but actual striking amounts to battery. Throwing of water upon a person is an assault but as soon as the water falls on him, it becomes battery.

False Imprisonment

- False imprisonment consists in the imposition of a total restraint for some period, however short, upon the liberty of another, without sufficient lawful justification.
- To constitute this wrong, imprisonment in the ordinary sense is not required. When a person is deprived of his personal liberty, whether by being confined within the four walls or by being prevented from leaving the place where he is, it is false imprisonment. If a man is restrained, by a threat of force, from leaving his own house or an open field, there is false imprisonment. The essentials required to constitute this wrong are :
 - (i) There should be total restraint on the liberty of a person.
 - (ii) It should be without any lawful justification.

- **Total Restraint** Under criminal law, whether the restraint is total or partial, the same is actionable. When the restraint is total and a person is prevented from going out of certain circumscribed limits, the offence is that of 'wrongful confinement' as defined in Sec. 340, I.P.C. On the other hand, when the restraint is not total but it is only partial, and a person is prevented merely from going to a particular direction where he has a right to go, it is 'wrongful restraint', according to Sec. 339, I.P.C.
- Under civil law, the position is different. The tort of false imprisonment is constituted when there is a total restraint
- In **Bird v. Jones**, a part of the public footway, as opposed to carriage way, on Hammer Smith bridge was wrongfully enclosed by the defendant. Seats were put there and entry to the enclosure was allowed only to those who made the payment to watch the rowing there. The plaintiff asserted his right of using this footway, climbed over the fence of the enclosure but was prevented to go forward. He remained there for about half an hour and subsequently brought an action for false imprisonment.

- Held, that there was no false imprisonment as there was no total restraint on the plaintiff's liberty.

- **Means of Escape:-**

If there are means of escape, the restraint cannot be termed as total and that does not constitute false imprisonment.

- **Knowledge of the plaintiff:-**

There has been a difference of opinion on the point whether the knowledge of the plaintiff, that there has been restraint on his freedom, is essential to constitute the wrong of false imprisonment.

In **Herring v. Boyle**, it has been held that such a knowledge is essential.

In **Meering v. Grahame-white Aviation Co.**, it has been held that the knowledge of imprisonment is not an essential element for bringing an action for false imprisonment because the wrong could be constituted even without a person having the knowledge of the same.

- Unlawful detention In order to constitute the wrong of false imprisonment, it is necessary that -the restraint should be unlawful or without any justification. If a person is not released from jail after his acquittal but is continued to be detained thereafter, the detention cannot be considered to be lawful.
- In **Rudul Sah v. State of Bihar**, the petitioner was acquitted by the Court in 1968 but was released from the jail in 1982, i.e., 14 years thereafter. The State tried to justify the detention by pleading that the detention was for the medical treatment of the petitioner for his mental imbalance. The plea was rejected. As an ancillary relief, in a writ of habeas corpus by the petitioner, a sum of Rs. 35,000 was granted as compensation as an interim measure by the Supreme Court, without precluding the petitioner from claiming further compensation

Remedies

- **(i) Action for damages :** Whenever the plaintiff has been wrongfully detained, he can always bring an action to claim damages. Compensation may be claimed not only for injury to the liberty but also for disgrace and humiliation which may be caused thereby.
- **(ii) Self-help :** This is the remedy which is available to a person while he is still under detention. A person is authorized to use reasonable force in order to escape from detention instead of waiting for a legal action and procuring his release thereby.
- **(iii) Habeas Corpus :** It is a speedier remedy for procuring the release of a person wrongfully detained. Such a writ may be issued either by the Supreme Court under Article 32 or by a High Court under Article 226 of our Constitution. By this writ, the person detaining is required to produce the detained person before the Court and justify the detention. If the Court finds that the detention is without any just or reasonable ground, it will order that the person detained should be immediately released