### TABLE 7.2 Look-up charts: Intentional torts and defences

<table>
<thead>
<tr>
<th><strong>Battery</strong></th>
<th><strong>Assault</strong></th>
<th><strong>False imprisonment</strong></th>
</tr>
</thead>
</table>
| □ A positive act by D that directly causes physical contact or interference with the body of P, done | □ A positive act, gesture or threat by D that directly causes P reasonably to apprehend imminent physical contact, done | □ A positive act or statement by D that directly causes 
□ P to be totally restrained within a delimited area, done |
| □ intentionally, recklessly or negligently. | □ intentionally, recklessly or negligently. | □ intentionally, recklessly or negligently. |
| (Note: if indirect—try the tort below.) | (Always check assault and battery.) | |

<table>
<thead>
<tr>
<th><strong>Action on the case for physical injury</strong></th>
<th><strong>Action on the case for ‘nervous shock’</strong></th>
<th><strong>Action for severe emotional distress</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>□ A positive act by D that indirectly causes actual physical injury to P and is done with the intention of inflicting physical injury on P (or recklessness about causing it).</td>
<td>□ A positive act or statement by D that indirectly causes psychiatric illness to P, is wilfully intended by D to shock, upset, or terrify P (or is recklessly done) and is ‘calculated’ or objectively likely to cause psychiatric illness.</td>
<td>□ A positive act or course of conduct by D that is extreme or outrageous, which causes severe emotional distress to P and is intended by D to cause such distress (or D is reckless about causing it).</td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>Possible elements of the tort.</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Trespass to goods</strong></th>
<th><strong>Conversion</strong></th>
<th><strong>Detinue</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>□ A positive act by D that directly causes physical interference with P’s exclusive possession of goods, done</td>
<td>□ A positive act of dealing with goods by D that deprives P of dominion over goods, which is so serious that D has effectively taken ownership of the goods, done intentionally or recklessly. (Check overlap with trespass and detinue.)</td>
<td>□ A positive refusal by D to yield to P’s demand for possession of goods that is unreasonable in the circumstances, which deprives P of possession of goods, and is done intentionally. (Check overlap with conversion.)</td>
</tr>
<tr>
<td>□ intentionally, recklessly or negligently.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Trespass to land</strong></th>
<th><strong>Possible privacy torts</strong></th>
<th><strong>Tips on problem solving structure</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>□ A positive act by D that directly causes physical interference with P’s exclusive possession of land, done</td>
<td>□ An intentional or reckless • intrusion on privacy OR • disclosure of private facts that is both highly offensive to an ordinary person, and occurs in circumstances where there is a reasonable expectation of privacy.</td>
<td>1 Deal with each event in time order; 2 Work through the elements using the tort’s overview table to check for issues. 3 Then consider: lawful justification, limitations, defences (next page). 4 Then move to the next event and repeat.</td>
</tr>
<tr>
<td>□ intentionally, recklessly or negligently.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## CHAPTER 7
## DEFENCES TO THE INTENTIONAL TORTS

### Necessity
- There was an urgent situation of imminent peril to life or property;
- D’s response was reasonably necessary in the circumstances (+ not just convenient);
- D’s own negligence must not have contributed to the peril.

### Illegality
D may claim that P’s cause of action should be struck out on the grounds that it:
- arose out of and in the course of the plaintiff carrying out an unlawful act
- BUT NOTE: the application of this defence to the intentional torts has been doubted.

### Discipline
D may claim the defence of lawful chastisement of P only if the force used was:
- moderate;
- reasonable in all the circumstances, eg, considering the age and health of P, and
- carried out with reasonable means.

### Necessity
There was an urgent situation of imminent peril to life or property;
- D’s response was reasonably necessary in the circumstances (+ not just convenient);
- D’s own negligence must not have contributed to the peril.

### But Note
The application of this defence to the intentional torts has been doubted.

### Claims about fault

#### ‘Utterly without fault’
- D may escape liability by arguing that on the facts that D was ‘utterly without fault’ in all the circumstances, ie not careless or negligent in any way.

### Inevitable accident
D may claim that, on the facts, the offending contact or interference with P’s interests was an inevitable accident.

### Incapacity (infancy and mental illness)
- So long as D is aware of the nature and quality of the act, it is immaterial that, by reason of defect of mind, he or she is unable to appreciate that it is wrongful.
- The same applies to ‘infants’ (ie persons under the age of 18) so long as they are old enough to know better.

### Mistake
- Mistake of fact or law is not a defence.

### Consent

#### Competence/Capacity of P
- Adults are presumed to have capacity, but this presumption can be rebutted.
- Special rules apply to children and persons permanently or temporarily incapacitated.

#### Understanding
- P must have understood in broad terms the nature of what was being proposed.

#### Voluntarily given
- There must be no force, threats, duress, undue influence or any fraud as to the nature of the act or the identity of D.

### Self-defence (defence of others and property)
D may use force against P if P has attacked, or has threatened an attack against:
- P
- P’s land or goods, or
- a third person (or that person’s property), provided that:
  - the force used was reasonably necessary in the circumstances, and
  - the force was not excessive, ie disproportionate to the threat, and
  - there was no other way to avoid the threatened harm.

### Provocation
- Provocative conduct by P is not a defence to liability and D will still be liable.

#### Note, however:
Provocation by P may operate to reduce an award of exemplary or aggravated damages.

### Self-help remedies

#### Re-entry on land/Ejectment of a trespasser
- Re-caption of goods
- ‘Distress’
- Must be proportionate and reasonable in all the circumstances, and
- P must be given notice wherever possible.