(1838) 8 A & E 602), or to apply a 'tone-rinse' to the scalp of a customer which was not ordered and caused damage, i.e. a skin rash, is enough (*Nash* v *Sheen* (1953) *The Times*, 13 March). Substantial damages will be awarded when the battery is an affront to personal dignity, e.g. the wrongful taking of a fingerprint. It should, however, be noted that a person who has been detained and charged with or told he will be charged with a recordable offence, e.g. an offence punishable by imprisonment, can have his fingerprints taken without consent (s 61, Police and Criminal Evidence Act 1984 (referred to hereunder as PACE)). Persons who are convicted of a recordable offence but fined rather than imprisoned can be required to attend at a police station for prints to be taken. Failure to do so allows arrest without warrant (PACE, s 27). The mere jostling which occurs in a crowd does not constitute battery, because there is presumed consent and in any case there is normally no hostility which is also a requirement. Thus in *Wilson* v *Pringle* [1986] 2 All ER 440, one schoolboy had intentionally pulled a schoolbag off another boy's shoulder. However, this was only a form of horseplay and in the absence of a hostile intention there was no battery. It should be noted that there may be a battery without an assault, as where a person is attacked from behind.

There may be exeptional cases where there is a battery even though there is no physical contact with the victim. Thus, in *Haystead* v *DPP* (2000) *The Times*, 2 June a man hit a woman causing her to drop the child she was holding. The court ruled that in the circumstances there was a battery to both the woman and the child.

As regards strip searching of prison visitors, e.g. for drugs the case of *Secretary of State for the Home Department* v *Wainwright* [2002] QB 1334 is instructive. The Court of Appeal decided that the trial judge was wrong to award basic and aggravated damages to a mother and son who were strip searched without their consent while on a prison visit. The Court of Appeal made clear that an intention to do harm or recklessness as to the same must be present and here the prison officers did not intend harm nor were they reckless. This ruled out the common law rule of trespass and any privacy rights under the Human Rights Act 1998 though the events took place in 1997. As regards intention and recklessness, the Court of Appeal found it necessary to distinguish *Wilkinson* v *Downton* (1897) Case **268**.

This ruling was affirmed by the House of Lords (see *Secretary of State for the Home Department* v *Wainwright* [2003] 3 WLR 1137).

Was there consent?

In considering the defence of *volenti* there has already been some treatment of informed consent in an action for alleged negligence in medical cases (see *Sidaway* v *Bethlem Royal Hospital Governors* [1984] 1 All ER 1018 and the cases appearing with it in Chapter 20). A similar issue was raised in *Freeman* v *Home Office* [1984] 1 All ER 1036. The claimant was serving a sentence of life imprisonment. He was given drugs by a medical officer employed by the Home Office. He claimed that the drugs were given to discipline and control him and not, as he thought, as medical treatment. He claimed that the medical officer had committed battery upon him and that his consent was negatived because it was not informed. The Court of Appeal decided that since the doctrine of informed consent formed no part of English law, the sole issue was whether on the facts the claimant had consented to the administration of the drugs and on that issue the trial judge had found that the claimant had so consented. His claim therefore failed.

In *Re MB (Caesarian Section)* (1997) 147 NLJ 600 the Court of Appeal held that a woman with full capacity could consent to or refuse treatment even though refusal might result in harm to her or her baby. However, doctors were entitled to administer an anaesthetic to carry out birth by caesarian section where it was in the best interest of the woman and her child given that she had a temporary lack of capacity because of panic brought on by fear of injection by needle.

Those who suffer passively from the smoking of others are able to claim damages for battery. Since spitting at someone is a battery there seems no reason why blowing out poisonous smoke in the vicinity of other people should not also be. Thus in *Bland* v *Stockport Metropolitan Borough Council* [1993] CLY 1506 a woman who had been exposed to passive smoking for 11 years at her work received £15,000 damages for injury to her health including in particular bronchitis and sinusitis. The Smoke-free (General Provisions) Regulations 2006 will go some way to dealing with the problem but on the basis of criminal law. In addition, a claim for damages for mental illness allegedly caused by sexual abuse has been brought against an alleged abuser and has been allowed to proceed (*Stubbings* v *Webb* [1991] 3 All ER 949). Limitation of actions problems did exist in the case and the House of Lords eventually ruled that the claim was time-barred. But for this it seemed that the substance of the claim was acceptable (see *Stubbings* v *Webb* [1993] 2 WLR 120).

In general there will be some active conduct constituting the assault. However, the courts have accepted that a battery can arise from an omission.

Fagan v *Metropolitan Police Commissioner*, 1968 – A battery from an omission (**350**)

Defences

There are certain defences to an action brought for assault or for battery:

(a) Self-defence. This is not merely the defence of oneself but also of those whom one has a legal or moral obligation to protect. It also applies to the protection of property, but no more than reasonable force must be used.

(b) Parental or similar authority. *As regards parents and those* in loco parentis, e.g. a step-father, s 1(7) of the Children and Young Persons Act 1933 provided a defence to the reasonable chastisement of a child on a charge of assault. This provision was removed by s 58 of the Children Act 2004. In addition, however, s 58(3) of the 2004 Act states that battery of a child causing actual bodily harm to the child cannot be justified in any civil proceedings on the ground that it constitutes reasonable punishment. This leaves problems as to what is 'actual bodily harm'. It is in fact a government compromise between retaining the defence and outlawing smacking. On the issue of the punishment of children in the home, the European Court ruled in *A* v *UK* [1998] CLY 3065 that UK law failed to protect a boy who had suffered repeated and severe beatings with a cane by his stepfather as contrary to Art 3 of the Human Rights Convention.

As regards schools, corporal punishment is outlawed in all schools under s 131 of the School Standards and Framework Act 1998 (see *Williamson* v *Secretary of State for Education and Employment* [2002] 1 FLR 493). In that case it was held that even religious belief in corporal punishment did not justify corporal punishment even where supported by a religious text and parental consent. The ruling was later affirmed by the House of Lords (see *R (on the application of Williamson)* v *Secretary of State for Education and Employment* [2005] 2 AC 246).

(c) *Volenti non fit injuria*. As in the case of the players in a rugby match (see *Simms* v *Leigh RFC* (1969)).

(d) Judicial authority. This includes the right to inflict proper punishment and to make lawful arrests.

(e) Necessity. This is not favoured as a defence but may be allowed if the defendant can prove that he committed the battery in order to prevent the happening of a greater harm. Thus in *Leigh* v *Gladstone* (1909) 26 TLR 139, the forcible feeding of a suffragette in prison was held justified by the necessity of preserving her life.

Although the forced feeding of prisoners is not in general practised in our penal institutions, the case of *Secretary of State for the Home Department* v *Robb* [1995] Fam 127 is of interest. The High Court held in that case that prison officials and medical attendants could lawfully abstain from providing food or drink to a prisoner who did not want it but only as long as he retained the capacity to refuse nutrition or hydration. After that presumably forced feeding could take place. Furthermore, in *B* v *Croydon Health Authority* [1995] Fam 133 the Court of Appeal held that where a patient was detained under the Mental Health Act 1983, feeding by tube without consent was lawful since it was treatment for the patient's disorder. The patient in this case was given to inflicting harm upon herself and her refusal to eat was another means of inflicting harm.

(f) Prosecution in a magistrates' court. Assault and battery is a crime as well as a civil wrong. If the wrongdoer is prosecuted, and *summary* proceedings are taken by the *victim* and not the *Crown* and the accused is convicted and punished, or the case is dismissed and the magistrates award a certificate of dismissal, no further action or civil proceedings may be taken in respect of the particular wrong (Offences against the Person Act 1861, ss 44–45).

It is now clear that trespass to the person is not actionable in itself; the claimant must prove intention or negligence, though he need not prove damage. It is also settled that where the interference is *unintentional* the claimant's only cause of action lies in negligence.

Fowler v *Lanning*, 1959 – Trespass requires intention or negligence (**351**)

False imprisonment

This is the infliction of unauthorised bodily restraint without lawful justification. It is not necessarily a matter of bars and bolts, but any form of unlawful restraint might turn out to be false imprisonment. The imprisonment must be total, and if certain ways of exit are barred to a prisoner, but he is free to go off in another way, then there is no false imprisonment. If a person is on premises and is not given facilities to leave, this does constitute false imprisonment unless the refusal is merely the insistence on a reasonable condition. It is not even essential that the claimant should be aware of the fact of his imprisonment, provided it is a fact. *Volenti non fit injuria* is a defence to false imprisonment, as where a prison visitor agrees to be locked in a cell with the prisoner.

It should be noted that a defendant will not be liable for false imprisonment where he merely gives information to the prosecution which affects the claimant's arrest and detention. Thus a store detective who incorrectly informed police officers that the claimant had been shoplifting was not liable for false imprisonment where the police had at their discretion arrested and detained the claimant (see *Davidson* v *Chief Constable of the North Wales Police and Another* [1994] 2 All ER 597).

A further example is provided by *R* v *Governor of Brockhill Prison ex parte Evans (No 2)* [2000] 3 WLR 843 where the claimant was detained in prison for 59 days longer than she should have been following an error in the calculation of her sentence in terms of days spent in custody before sentence. The governor was held liable even though he had acted in good faith. The tort of false imprisonment is one of strict liability said the court.

Bird v *Jones*, 1845 – Imprisonment must be total (**352**)

Herd v *Weardale Steel, Coal and Coke Co Ltd*, 1915 – Where refusal to allow a person to leave is reasonable (**353**)

Meering v *Grahame White Aviation Co Ltd*, 1919 – Knowledge of imprisonment is not required (**354**)

Arrest and the tort of trespass to the person

An arrest or other restraint of a person, as by stopping and searching him, will be unlawful and actionable as a trespass in civil law unless the following requirements are met.

Powers of arrest: the Serious Organised Crime and Police Act 2005

Any person may arrest without a warrant:

- anyone who is in the act of committing an indictable offence; or
- anyone whom he or she has reasonable grounds for suspecting to be committing such an offence;
- where an indictable offence has been committed a person other than a constable may arrest without warrant:
  - anyone who is guilty of the offence;
  - anyone whom he or she has reasonable grounds for suspecting to be guilty of it.

It is required in all of the above cases that the citizen has reasonable grounds to believe that it is necessary to make the arrest and the police are not available. The above material is in s 24A of PACE, having been inserted by the Serious Organised Crime and Police Act 2005.

In the above context, indictable offence includes each way offences.

The position regarding citizens arrest as it is called has always been unsatisfactory and still is because a citizen is unlikely to know what an indictable offence or each way offence is much less to identify them.

The police have a power to arrest for any offence subject only to a necessity requirement. This is to the effect that an arresting officer should believe, on reasonable grounds, that an arrest was necessary. The burden of proving this rests with the arresting officer.

The new powers significantly extend the police powers of arrest. The accompanying PACE Code which is useful to defence lawyers states that the power must be fully justified and officers exercising it should consider if the necessary objectives can be met by other and less intrusive means. It states: 'Arrest must never be used simply because it can be used.'

Section 28 of PACE requires that the person arrested should be told at the time of the arrest or as soon as practicable thereafter that he is under arrest and the grounds therefor, even if it is obvious, as where a thief is apprehended in the act of theft. However, an arrest made without these formalities is not unlawful if the arresting officer cannot comply with them because of the condition or behaviour of the person arrested, as where there is a struggle with police and it is impossible to inform him (see *DPP* v *Hawkins* [1988] 3 All ER 673).

Since arrest is a continuing act, an arrest which is made without reasons becomes lawful if reasons are given later, e.g. at the police station as in *Lewis* v *Chief Constable of the South Wales Constabulary* [1991] 1 All ER 206.

Christie v *Leachinsky*, 1947 – An unlawful arrest (**355**)
Wheatley v *Lodge*, 1971 – When arrest is lawful (**356**)

Under s 32 of PACE a person arrested may be searched for a weapon or evidence relating to the alleged offence. The power of search extends to any premises on which the arrest took place.

Powers to stop and search

In addition, s 1 of PACE gives the police power to stop and search persons. The Act gives the police the power to search any person or vehicle *found in a public place* for stolen or

prohibited articles, e.g. a gun (and more recently fireworks) and to detain a person or vehicle for the purpose of such search. A person can be ordered to stop for the purpose of such a search and any stolen or prohibited article found in the course of the search may be seized. The statutory powers of stop and search are supported by a code of practice, a revised version of which took effect from 1 January 2006. Its provisions in terms of its details are unlikely to be the subject of an examination question and so are not considered further.

The matters of cautioning on arrest and procedure to be followed before the person arrested reaches court have already been considered (see Chapter 4).

Remedies available against false imprisonment

The *remedies* available against false imprisonment are self-help, i.e. breaking away, the writ of *habeas corpus* and an action for damages. This prerogative writ of *habeas corpus* is designed to provide a person, who is kept in confinement without legal justification, with a means of obtaining his release. If he can show a *prima facie* case that he might be unlawfully detained, he (or often a friend or relative) will apply to the Queen's Bench Division, though application may be made to any judge of the High Court during vacation times. The person detained applies, through counsel, for the writ to be issued, the facts alleging unlawful detention being set out on an affidavit supporting the application. If the writ is issued, the effect is to cause the alleged captor to 'bring the body' of the prisoner before the court which will then decide on the merits of the case whether there are any legal grounds for detention of the prisoner. If not, he is set free by the court. The civil procedure reforms introducing tracking arrangements have no relevance to these applications.

A person detained may also be able to make an application for release or damages (if released) as a result of the incorporation into UK law of the European Convention on Human Rights. Article 5(4) states: 'Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful'.

Torts affecting property

21

Trespass to land

Trespass to land is interference with the possession of land. It is not enough that the claimant is the owner; he must also have possession. So where land is leased for a term of years, the lessee is the person entitled to sue in trespass, though the lessor may bring an action if the damage is such as to affect his reversion when the lease ends. However, when a person signs a contract for the purchase of land, he becomes entitled to possession of it, and if a trespass takes place before he actually takes possession, then he can sue in respect of that trespass when he does. His right to sue relates back to the date on which he became entitled to the land under the contract.

In *Manchester Airport plc* v *Dutton* [1999] 3 WLR 524 the Court of Appeal appears to have rewritten the common law when it ruled that a mere licensee who was not in occupation was entitled to a possession order against a trespasser. There was no need, said the court, for the claimant to have a freehold or lease. It appeared that the claimant wanted another runway and that this involved felling or lopping trees in a wood owned by the National Trust. The Trust gave the airport a contractual licence to enter into the wood for that purpose. The

defendants set up camps and tree houses to prevent this and the airport authority obtained a possession order against them. The House of Lords refused an appeal.

Interference with the possession of land may take many forms but it must be direct. For example, an unauthorised entry on land is a trespass. It is trespass to place things on land, e.g. leaving a dead cat in a neighbour's garden. To remain on land after one's authority is terminated constitutes a trespass. So, if a friend invites you into his house for a meal, tires of your company and asks you to leave, then if you refuse you are a trespasser. If you abuse the purpose for which you are allowed to be on land, you become a trespasser. In *Hickman* v *Maisey* [1900] 1 QB 752, where the highway was used for making notes of the form of racehorses being tried out on adjoining land, this constituted a trespass, since the proper use of a highway is for passing and re-passing.

While trespass usually takes place above the surface, it may be underneath by means of tunnelling or mining. With regard to trespass in the airspace above land, the position is doubtful, since there is no good authority. It is probably only a trespass if it is either within the area of ordinary user, or if it involves danger or inconvenience.

Section 76 of the Civil Aviation Act 1982 provides that, subject to the exception of aircraft belonging to, or exclusively employed in the service of Her Majesty, no action lies in respect of trespass or nuisance by reason only of the flight of an aircraft over any property at a height above the ground, which having regard to weather and the other circumstances of the case is reasonable.

Southport Corporation v *Esso Petroleum Co*, 1954 – Trespass to land must be direct (**357**)

Kelson v *Imperial Tobacco Co*, 1957 – A sign trespasses into airspace (**358**)

Woollerton and Wilson v *Richard Costain (Midlands) Ltd*, 1969 – Crane invades airspace (**359**)

Bernstein v *Skyviews & General*, 1977 – An aerial photograph (**360**)

Subject to the same exception in regard to aircraft in the service of Her Majesty, the owner of an aircraft is liable for all material loss or damage to persons or property caused by that aircraft, whether in flight, taking off, or landing, or by a person in it, or articles falling from it, without proof of negligence or intention, or other cause of action.

Trespass to land or goods will not be unlawful and actionable at civil law if it is by the police who follow the provisions laid down in PACE. Broadly speaking, s 17(1) of the Act gives the police power to enter premises without a warrant in certain circumstances, e.g. to make an arrest. The Court of Appeal ruled in *O'Loughlin* v *Chief Constable of Essex* [1998] 1 WLR 374 that when exercising power under s 17 a police officer should give reasons for the entry unless this is impossible, impracticable or undesirable. The fact that this has not been done will assist the legal position of the occupier who resists the entry. Section 8 gives the police a power to enter premises to search under a warrant from a JP. Section 19 gives power to seize articles found on the premises unless they are exempt articles if the officer concerned reasonably believes that it is evidence in relation to an offence which he is investigating or any other offence, and that it is necessary to seize it in order to prevent its 'concealment, loss or destruction'. Section 19(6) states that items exempted from seizure are those subject to legal professional privilege.

Revocation of licences

Problems have arisen where a claimant has entered the premises by virtue of a licence, contractual or otherwise, because at one time it was not certain whether this licence could be revoked so as to make the claimant a trespasser and permit his ejection.

The common-law view was that, where a person paid for admission to premises, his licence to be on those premises could be revoked at any time, in spite of valuable consideration, so that he could then be ejected as a trespasser, the defendant being liable for breach of contract, but not for assault.

On the other hand, equity took the view that, if there was an enforceable contract not to revoke, express or implied, as where valuable consideration had been given, the licence could not be revoked so that if the claimant had been ejected he could sue for assault; he could not be made a trespasser by a mere attempt at revocation.

The equitable view gave rise to certain problems because it seemed to confuse rights over land with mere contracts, but the matter may now be regarded as settled. The position is that, although a licence for value is contractual in its nature and cannot create a right over land itself (or a right *in rem* which will run with the land and affect third parties), yet, as between the parties to the contract it may be implied, even if it is not expressed, that the licence cannot unreasonably be revoked during the period for which the parties intended it to continue.

Winter Garden Theatre (London) Ltd v *Millennium Productions Ltd*, 1948 – Revoking a licence (**361**)

Hounslow LBC v *Twickenham Garden Developments*, 1970 – Revoking a licence; a further example (**362**)

Extra-judicial remedies

There are certain extra-judicial remedies available to a person injured by a trespass. For example, *distress damage feasant* is the right to seize chattels which have done damage on land. There is no right to use or sell the chattels but merely to detain until the owner offers compensation. The remedy does not lie against Crown property, and the right to sue in trespass is postponed until the chattel is returned. Livestock may be detained (subject to notice to the owner and police) for compensation supported by a right of sale (Animals Act 1971, s 7). These provisions apply only to damage caused by straying animals; they do not give powers of detention in the case of other forms of damage by animals, e.g. damage caused by negligent control where the animal has not in fact strayed.

There is a further extra-judicial remedy, often referred to as *self-help*, whereby the person in possession of the land may eject the trespasser, using such force as is reasonably necessary. The trespasser must be asked to depart peacefully and given time in which to quit the land. A trespasser who enters by *force* may be removed immediately and without a previous request to depart.

Hemmings v *Stoke Poges Golf Club*, 1920 – Ejecting trespassers (**363**)

Other remedies

Trespass to land is actionable *per se* (in itself) and it is not necessary for the claimant to show actual damage in order to commence his action, although the damages would be nominal in the absence of real loss. Nevertheless, it is possible to obtain an injunction without proof of loss. Trespass upon property is not normally a criminal offence (but see below p 578). The law does penalise by statute a trespass on particular property, e.g. railway property, and also the law punishes trespass on property for the purpose of committing, e.g., theft or rape.

Access to Neighbouring Land Act 1992

Before this Act was passed the law did not provide any general right of access to neighbouring land in order to carry out work on one's own property, no matter how essential this might be. To do so without permission was trespass. The Act permits access under an access order obtainable from a county court or the High Court where the owner of the land concerned will not agree to entry. The applicant for the order must show that the work is reasonably necessary to preserve the whole or part of his land and buildings and that the work cannot be done at all, or it would be substantially more difficult to do it, if entry to the neighbouring land was not granted. The order is made against the person who could in other circumstances sue for trespass, so if the neighbouring land is let it will be made against the tenant.

The order may restrict entry to a specified area and provide for compensation to be paid to the neighbouring owner if this is appropriate. It may also require the person who is given access to make a payment to the neighbouring owner reflecting the financial benefit, if any, which the person given access has received. This does not apply where the land subject to the access order is residential property.

An order will not be granted where it would cause, e.g., unreasonable disturbance to the neighbouring land. The court may also make an order for inspection to see whether the works are necessary.

Finally, any provision in an agreement, whether made before or after the Act, which tries to prevent or restrict application for an access order is void.

Criminal Justice and Public Order Act 1994: criminal trespass

Section 61 of this Act enables a police officer to direct trespassers on land to leave that land where the occupier has taken steps to ask them to do so:

(*a*) if any of the trespassers has caused damage; or
(*b*) if they have been threatening, abusive or insulting; or
(*c*) if between them they have six or more vehicles on the land.

This part of the Act is aimed in large measure against hippies or travellers. Failure to obey such a direction, or returning to the land as a trespasser within three months, are criminal offences. The Act creates a number of other offences of what are, in effect, criminal trespass. These include a power to remove persons attending or preparing for a rave. There is also the new offence of aggravated trespass under which it becomes a crime to trespass on land in order to *disrupt or obstruct a lawful activity* which is *being carried out on it*. This is presumably aimed at groups such as hunt saboteurs and criminalises their activities. Of interest on the matter of aggravated trespass is the case of *DPP* v *Tilly* (2002) 166 JP 22. Ms Tilly appealed against her conviction for aggravated trespass under the 1994 Act. She had entered a field and damaged a crop forming part of a government sponsored trial of genetically modified organisms. The question for the Administrative Court on judicial review was whether in view of the requirement that an activity was being carried out it was necessary that someone was on the land at the time of the offence because neither the farmer concerned nor his employees was present on the land cultivating or doing anything else to the crop. Ms Tilly's appeal was allowed. A person could not commit aggravated trespass unless the individual(s) engaged in the relevant lawful activity was (were) physically present on the land at the time of the trespass. An individual could not be obstructed or disrupted from engaging in a lawful activity if that individual was absent from the land.

More seriously, it was held by the Divisional Court of Queen's Bench that under the Act there is no right to hold a peaceful non-obstructive assembly *on the public highway*. In *DPP* v *Jones* (1997) 147 NLJ Rep 162 the respondents took part in a peaceful non-obstructive assembly on the grass verge beside the perimeter fence of Stonehenge, demonstrating for the

right to have access to the monument. The police had previously obtained a prohibiting order from the local authority under s 14A of the Public Order Act 1986 (as inserted by s 70 of the 1994 Act) and arrested the respondents whose criminal act was confirmed by the Divisional Court. They were rightly convicted by the Salisbury magistrates.

However, the House of Lords allowed an appeal by the demonstrators. A public highway, said their Lordships, was a public place where any activity that was reasonable, did not cause a public or private nuisance and did not obstruct the highway was not a trespass (see *DPP* v *Jones (Margaret)* [1999] 2 WLR 625).

Squatters

Apart from these statutory exceptions, the criminal law dealt with entering or remaining on property by means of the Statutes of Forcible Entry which were a confusing and archaic set of laws. The fact that trespass is not generally a crime has led to difficulties, particularly in times of acute housing shortage where the civil law is not adequate to deal with the growing activities of 'squatters'. The Criminal Law Act 1977, s 6 now creates the offence of using or threatening violence to secure entry to premises on which there is another person who opposes entry. The offence can be committed by a person notwithstanding he has some interest or right in the premises, as where he is a landlord, but the offence cannot be committed by a displaced residential occupier, i.e. a person whose residential occupation of the premises has been interrupted by the occupation of the premises by a trespasser, or someone acting for a displaced residential occupier. Section 7 makes it a summary offence for a trespasser to fail to leave premises when required to do so by a displaced residential occupier. Section 8 makes it an offence for a person who is a trespasser on any premises which he has entered as a trespasser to have with him a weapon of offence. Section 9 makes it an offence to enter or be upon as a trespasser diplomatic or consular premises or the premises or residence of any body or person having diplomatic immunity in respect of its or his premises or residence. Section 10 creates a summary offence of resisting or intentionally obstructing a court officer seeking to execute an order for possession of premises, while s 11 gives to a constable a power of entry and search for the purpose of exercising a power of arrest under that part of the Act which relates to offences of entering and remaining on property (i.e. Part II). Section 13 abolishes the common law offences of forcible entry and detainer and repeals related statutes.

The Criminal Justice and Public Order Act 1994 supplements the Criminal Law Act 1977 by making a change in the court procedure in relation to premises such as houses and shops as opposed to open land. The Act allows the court to make an 'interim order' for possession. If, following service of the interim order, the trespasser does not leave the premises within 24 hours or leaves and re-enters within a year, he is guilty of an offence and the police may arrest him. This is bringing the police even further into the civil law of trespass and the government announced that the police would be given a 'frontline role' to speed up evictions of squatters from houses and shops where they will usually have squatted in order to carry on a trade.

Countryside and Rights of Way Act 2000

The main provisions of this Act are as follows:

- a proposed right of access on foot for open air recreation to mountain, moor, heath, down and registered common land (or open country);
- land over 600 metres above sea level is automatically covered;
- open land will be shown on maps that will be available to the public. There is an appeal to the Secretary of State where land is included by mistake;

- there are exceptions for land that is cultivated, land covered by buildings, parks and gardens, mineral workings, railway land and golf courses, aerodromes, race courses and development land where planning permission has been granted if development activities have commenced;
- landowners must not erect false or misleading signs likely to deter people from using their statutory right of access, though signs indicating boundaries are acceptable so long as they do not deter walkers by giving them false information;
- landowners may need to provide for new access to open country where public rights of way do not exist or are insufficient;
- open country access may be closed for up to 28 days each year, but not over bank holidays or weekends.

When the Act is in force it will mean that many former trespassers to land will have to be tolerated.

However, even where an access right is granted it is limited by Sch 2 so that no vehicle can be used (including bicycles), no craft can be sailed on waters and no organised games played – so no paintball games! Camping is also prohibited. If these activities are undertaken the persons concerned become trespassers. Countryside bodies also have power to restrict access during a specified period in the event for example of a fire risk and indefinitely for nature conservation, heritage preservation and national defence.

The liability of landowners is not increased by this statutory right of access. Those exercising the right will be in no better position than trespassers. Thus the owner has only a duty to warn of dangers known to him or which he reasonably believes to exist. There is no liability at all in regard to natural features such as ponds and ditches.

Wrongful interference with goods

We propose to discuss the tort of wrongful interference by outlining the basic features of it, i.e. the relationship between the claimant and the goods, the conduct of the defendant which the claimant must prove, and the principle of liability, bearing in mind that the Torts (Interference with Goods) Act 1977 defines, in s 1, wrongful interference with goods as including conversion of goods, trespass to goods, negligence or any other tort so far as it results in damage to goods or to an interest in goods.

Wrongful interference by trespass to goods

The relationship between the claimant and the goods

Wrongful interference by trespass to goods is a wrong against the possession of goods. Possession in English law is a difficult concept which is considered more fully in Chapter 22. For the moment it will suffice to say that a person possesses goods when he has some form of *control* over them and has the *intention to exclude* others from possession and to hold the goods on his own behalf.

Possession must exist at the moment when the wrongful interference is alleged to have been committed. Thus a bailee of goods can sue for a wrongful interference to them, but a bailor cannot because, although he is the owner of the goods, he does not possess them at the time. Where there is a *bailment at will*, i.e. one which can be determined at any time, both bailee and bailor have possession so that either can sue for a wrongful interference to the goods. Possession does not necessarily involve an actual grasp of the goods; often a lesser degree of control will suffice.

Difficulties have arisen over the requirement of the intention to exclude others as a necessary ingredient of possession, in regard to things found under or on land.

It has been held that where goods are not attached to land it is necessary to distinguish between a finding in a place over which the occupier has shown a clear intent to control exclusively, and finding in a place to which the finder has access as a matter of course. In the latter case, the finder's possessory title takes precedence over that of the occupier.

However, an occupier of land or a building has superior rights to those of a finder in regard to goods in or attached to the land or building.

The special rules relating to treasure are considered in Chapter 3.

The Tubantia, 1924 – Possession and control (**364**)

Parker v *British Airways Board*, 1982 – Finders of property (**365**)

South Staffordshire Water Co v *Sharman*, 1896 – Goods which are on or attached to land (**366**)

Although the claimant relies on possession and not on ownership or title, the defendant can set up the *jus tertii* (right of a third party) under s 8(1) of the Torts (Interference with Goods) Act 1977. Under that section the defendant is entitled to show in accordance with rules of court that a third party has a better right than the claimant as regards all or any part of the interest sought by the claimant and any rule of law (sometimes and formerly called *jus tertii*) to the contrary is abolished. Under s 8(2) rules of court relating to proceedings for wrongful interference require the claimant to give particulars of his title; to identify any person who to his knowledge has or claims any interest in the goods; to authorise the defendant to apply for directions as to whether any person should be joined in the action with a view to establishing whether he has a better right than the claimant, or has a claim as a result of which the defendant might be doubly liable. If a party refuses to be joined the court may deprive him of any right of action against the defendant for the wrong, either unconditionally or subject to such terms or conditions as the court may specify.

The conduct of the defendant which the claimant must prove

In wrongful interference by trespass there must be a *direct* interference with the goods, and this may consist of moving a chattel or the throwing of something at it. A person who writes with his finger in the dust on the back of a car commits wrongful interference, as does a person who beats another's animals or administers poison to them.

In this connection, there have been problems where owners of land have introduced wheel-clamping to prevent the parking of vehicles on their land. The technique is also applied by public authorities to enforce parking restrictions. The legal position was stated definitively by the Court of Appeal in *Vine* v *Waltham Forest LBC* (2000) *The Times*, 12 April where it was ruled:

- that the act of wheel-clamping a car even when the car is on somebody else's land without authorisation is a trespass to goods unless it can be shown that the owner had consented to or willingly assumed the risk of his car being clamped;
- in order to show this, it has to be proved that the owner of the vehicle or its driver (on his behalf) was aware of the consequences of parking the car so that it trespassed on the land of another;
- this can be done by showing that the owner (or driver on his behalf) saw and understood the significance of a warning notice;
- if the notice is seen but not understood, there is nevertheless consent to clamping;