

MLL213 TORTS EXAM NOTES
EMILY FORBES
2016

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TOPIC 1

DAMAGES AND COMPENSATION SCHEMES

THE NATURE OF TORTS LAW

Definition and classification of torts

- Non-criminal conduct that gives rise to causes of action with civil remedies
- A tort signifies an actionable, wrongful act, other than breach of contract, done intentionally, negligently, or in circumstances involving strict liability.
- Law's response to '*breaches in noncriminal, often non-contractual interpersonal relationships*'.
 - ***John Pfeiffer Pty Ltd v Rogerson (2000)***
 - 'the term tort is used...to denote not merely civil wrongs known to the common law but also acts or omissions which by statute are rendered wrongful in the sense that a civil action lies to recover damages occasioned thereby'
- Each tort relates to a particular interest or interests that the law regards as worthy of protection.
 - Personal liberty
 - Unimpaired reputation
 - Physical, emotional and economic integrity
 - Security of property etc.
- A defendant's conduct will be deemed wrongful where a failure to act in accordance with normative standards of behaviour occasions an injury to the plaintiff's interests
- Legally recognised wrongs that have specific names are called 'nominate torts'
- Innominate torts are known by the names of cases that first legally recognised the wrong involved
 - The tort of ***Wilkinson v Downton [1897] 2 QB 57***

Remedies

- Litigation is a means of obtaining a legal remedy
- The main object of torts law is to obtain damages for loss suffered as a result of the tortious conduct
- Compensation in the form of damages may not be automatic upon the plaintiff proving wrongful conduct.
 - Before the loss is shifted onto the defendant, the plaintiff must show not only that the injury causing conduct was legally recognised as wrong, but also that the injury itself was of a kind recognised by the law of torts, and that it was not too remote
- In other cases, the person will not be compensated because the alleged injury is outside the interests recognised and protected by the law of torts.
- Historically, CL has been more ready to safeguard against intentional deprivation of liberty or trespassory injury to body, property, honour or reputation, than to safeguard against injury to feelings or damage to economic interests through unintentional acts.
- In the 1980's and 1990's, the tort of negligence 'swallowed up' other tortious actions
 - The tort of strict liability known as the special rule in ***Rylands v Fletcher*** [1868] UKHL 1
 - General action on the case, absorbed into negligence in ***Northern Territory v Mengel*** [1995] HCA 65
- New torts are created either by statute or by judiciary
- The law of torts has another function; deterrence
- Non-judicial remedies
 - Self-help remedy of abatement of nuisance
 - Privilege of reception of chattels
 - ADR
- Judicial remedies
 - Compensation through damages
 - Punishment
 - Restitution
 - Coercive relief by way of injunction and specific performance

The law of Torts in Australia protects the following interests

- Our right to physical integrity
- Our right to freedom from serious and unreasonable interference with mental integrity
- Our right to privacy
- Our legal interest in freedom of movement
- Our right to use land, light, air, running water, the sea, and the shore of the sea
- Our rights to free belief and opinion
- Our right to free social and commercial exchange without economic or physical duress
- Our rights of property

TORT REFORM

Background to reforms

- Community outcry re cost of public liability and/or professional indemnity insurance-
 - Amateur sporting associations
 - Medical professionals
 - Councils
- Sustained lobbying by insurance industry
 - Led to *IPP Report* in Sept 2002 which recommended reform
- Each jurisdiction has introduced reforms- **only Vic reforms examinable**
- reforms commonly provide for
 - codification of the elements of negligence and provisions dealing with controversial areas such as:
 - obvious risks
 - recovery for psychiatric injury
 - damages reforms: sets thresholds to prevent minor claims and imposes damages caps
 - good Samaritan, volunteer and food donor protection
 - waiver agreements with providers of recreational services

torts reform post-2002 re damages

- significant legislative reform
 - part V and VBA of the *Wrongs Act*
 - caps and thresholds on damages
- NOTE: reforms N/A where the fault concerned is an intentional act done with intent to cause death or injury or that is sexual assault or other sexual misconduct
 - Ss 28C, 28LC
- NOTE: source of damages award is the common law NOT the *Wrongs Act*- the *Act* merely modifies common law principles

Further changes 2015

- Following *Adjusting the Balance: inquiry into aspects of the Wrongs Act 1958* which was made public on 1 Sept 2014

The process of implementation

- ***Wrongs Act (1958) Vic*** were intended to limit their ambit to particular areas of tort law, namely, negligence.
- However, not only the law of negligence, but the law of torts in general, has been changed, and through the judicial process of statutory interpretation and construction, is in the process of profound transformation.
- Although the Ipp Report recommended a single statute be enacted by each Australian jurisdiction, as the power of administering and regulating the Common Law lies with the states respectively, the Commonwealth did not have the power to enact this.

Scope of the reforms

- Exclusions
 - work-related injuries covered under various worker's compensation schemes
 - personal injuries which fall within the purview of transport accident compensation schemes

