

Exam Notes							
Law Area	Legal Principle	Tests	Defences	Statute/Act/Legislation	Supporting Case	Case Elements	Definition - Legal Words
Causing harm	* Criminal liability, tortious liability, contractual liability, statutory liability, vicarious liability (liability for the conduct of another) * May be civil and/or criminal * Person harmed (plaintiff) sues the person who caused the harm (defendant) * Tort=Civil wrong (other than breach of contract)	Criminal Guilt: 1. a wrongful act (actus reus) 2. a guilty mind, that is, intention, foresight, knowledge or awareness (mens rea) However, if offence is created by legislation rather than common law, the legislation may not require the establishment of mens rea in order for the defendant to be found guilty. (eg. speeding in a motor vehicle)	Topic 4: Deliberately Causing Harm Criminal Defences: * Crown must prove the accusation beyond reasonable doubt * Self-defence * Insanity * Diminished responsibility (murder to manslaughter - only in QLD, NSW and ACT) * Duress * Automatism * Infancy * Necessity	Criminal Code Act 1995 (Cth)	Vicarious liability: 1. Century Insurance Co Ltd v Northern Ireland Road Transport Board [1942] AC 509; [1942] UKHL 2 2. Deatons Pty Ltd v Flew (1949) 79 CLR 370; [1949] HCA 60	1. Petrol tanker driver lit cigarette and started a fire. Court found that since the driver was carrying out an authorised task, the employer was liable. 2. Bar attendant threw glass at Flew's head. Court found the employer not liable as the bar tender was not acting in the scope of their employment at the time.	
Criminal Offences:							
Tort of Trespass to Land (PAGE 172)	Occurs if the defendant intentionally or negligently interferes directly with land in the rightful possession of the plaintiff without the plaintiffs consent or other excuse	The tort of trespass to land is committed by X if all the following requirements are satisfied: 1. X interferes with Y's exclusive possession of land 2. X's interference is direct 3. X's interference is either intentional or negligent 4. There is no consent by Y or lawful justification for the interference	Defences to the tort of trespass (PAGE 176): * Accident: the interference was neither intentional nor negligent * Consent: the plaintiff has either expressly or by implication voluntarily consented to the trespass * Necessity: the trespass was necessary to protect life, land or goods from imminent or real harm * Self-defence: the trespass (usually to person) was reasonably necessary to protect the defendant or another from imminent physical aggression by the plaintiff and was proportionate to the threat		1. Kelsen v Imperial Tobacco Co Ltd (1957) 2 QB 334 Defence 3. Southwark LBC v Williams [1971] Ch 734	1. Airspace above the land can still be trespass to land. Sign by Imperial Tobacco Co Ltd projected onto Kelsen's property's airspace. 2. Homeless (Williams) relies on defence of 'necessity' for squatting. Court found homelessness not be a defence as no one's homes would be safe.	
Tort of Trespass to Goods (PAGE 173)	direct and intentional or negligent interference by the defendant with goods in the possession of the plaintiff without their consent. The plaintiff does not have to be the owner of the goods, as long as they have rightful possession of the goods at the time.	The tort of trespass to land is committed by X if all the following requirements are satisfied: 1 X interferes with Y's possession of goods 2 X's interference is direct 3 X's interference is either intentional or negligent 4 There is no consent by Y or lawful justification for the interference	* Defence of property: the trespass (usually to person) was reasonably necessary to protect the defendant's land or goods from imminent harm by the plaintiff and was proportionate to the threat.		1. Penfolds Wines Pty Ltd v Elliot (1946) 74 CLR 204.		Conversion: a tort committed when one person wrongfully deals with the property of another in a way that is inconsistent with their ownership or rightful possession Detinue: a tort committed when one person wrongfully detains the property of another

Tort of Trespass to Person	<p>Is direct and intentional or negligent interference with the person (body) of the plaintiff</p> <p>Three types: 1. battery 2. assault 3. false imprisonment</p> <p>Battery: intentional or negligent conduct that directly causes contact with the body of the plaintiff without their consent or lawful justification</p> <p>Assault: a threat that causes the plaintiff to anticipate direct, imminent and harmful or offensive contact with their person.</p> <p>False Imprisonment: total deprivation of the plaintiff's freedom of movement without consent or lawful justification</p>	<p>Battery (Page 174):</p> <ol style="list-style-type: none"> 1. X causes some sort of physical interference with the body of Y 2. X's act is direct 3. X's act is either intentional or negligent 4. There is no consent by Y or lawful justification for X's act <p>Assault (Page 175):</p> <ol style="list-style-type: none"> 1. X Causes Y to develop a reasonable apprehension of imminent physical contact 2. X's act is direct 3. X's act is either intentional or negligent 4. There is no consent by Y or lawful justification for the act <p>False Imprisonment:</p> <ol style="list-style-type: none"> 1. X causes Y to be totally restrained 2. X's act is direct 3. X's act is either intentional or negligent 4. There is no consent by Y or lawful justification for the act 	<p>A person commits the tort of false imprisonment if they cause another person to be totally restrained.</p>	<p>1. Rixon v Star City Pty Ltd [2001] NSWCA 265</p>	<p>1. Courts have made it clear that a certain minimal level of physical contact is an unavoidable element of daily life.</p>
Tort of Nuisance	<p>Is an act by the defendant that indirectly interferes with the plaintiff's use and enjoyment of private or public land</p> <p>Private Nuisance: A person commits the tort of private nuisance if they indirectly interfere with another person's property use and enjoyment of private land</p> <p>Public Nuisance: A person commits the tort of public nuisance if they indirectly interfere with another person's use and enjoyment of public land (eg. a street or a park)</p>	<p>Private Nuisance (Page 177):</p> <ol style="list-style-type: none"> 1. X interferes with Y's use and enjoyment of private land 2. Y has an interest in that land (eg. they are the owner or a tenant) 3. Y suffers actual harm or damage 4. X's interference is indirect 5. X's interference is either intentional or reckless 6. X's interference is sustained and unreasonable <p>Public Nuisance (Page 178):</p> <ol style="list-style-type: none"> 1. X interferes with Y's use and enjoyment of public land 2. Y suffers actual harm or damage over and above that suffered by members of the public generally 3. X's interference is indirect 4. X's interference is either intentional or reckless 5. X's interference is sustained and unreasonable 	<p>(Page 178):</p> <ul style="list-style-type: none"> * consent by the plaintiff (expressed or implied) * statutory authority (legislation that may permit the defendant to engage in the harmful conduct) * contributory negligence (by the plaintiff) 	<p>Public Nuisance: 5. Silservice v Supreme Bread Pty Ltd (1949) 50 SR (NSW) 207</p>	<p>Queues lined up and blocked access to neighbouring store (Silvervice). Court found this unreasonable, unless the actions are not necessary for their business, business premises inadequate to control likely crowds or failed to use some reasonable means to minimise or prevent damage to plaintiff</p> <p>Private nuisance: The court will assess the unreasonableness of the interference with: * The severity of the interference * the duration and time of day of the interference * the location of the plaintiff's property (eg. residential or industrial area) * whether the plaintiff is abnormally sensitive * whether the interference is deliberate and malicious * whether the defendant took precautions to minimise the interference</p>
Tort of Defamation	<p>A person commits the tort of defamation if they publish to a third party, in spoken or written form, a statement about another person that would damage the reputation of the other person.</p>	<p>The other person must show that (Page 179):</p> <ol style="list-style-type: none"> 1. The defendant's statement the plaintiff was defamatory <ul style="list-style-type: none"> * makes ordinary people think less of plaintiff * causes people to shun or ridicule the plaintiff * causes the plaintiff to be excluded from society 2. the defendant's statement identified the plaintiff <ul style="list-style-type: none"> * It is not necessary that the plaintiff actually be named, as long as the statement is one that can be reasonably identified as referring to the plaintiff 3. the defendant's statement was published to a third party (someone other than the plaintiff) <ul style="list-style-type: none"> * Communicated - includes any spoken or written statement made to or in the presence of another person 	<p>Defences for tort of defamation (Page 180-181)</p> <ul style="list-style-type: none"> * Justification (truth) * Contextual Truth * Absolute privilege (in parliament they can defame anyone) * Publication of public documents * Fair reporting of matters of public concern * Qualified privilege (had good reason for saying it in circumstances, not motivated by malice or ill will) eg. reference for a job * Honest opinion (just expressing as my opinion and something the public is interested in) * Innocent dissemination (the newsagent can use this defence to not get sued because they did not know what was inside the magazine) * Triviality 	<p>Requirement 1: Bjelke-Peterson v Warburton [1987] 2 Qd R 465</p>	<p>Leader of QLD opposition expressed a defamatory remark about ministers through innuendo</p>

Tort of Deceit	A false statement during contractual negotiations to induce the plaintiff to enter into a contract	<ol style="list-style-type: none"> 1. They make a statement of fact to another person knowing that it is false 2. They make the statement with the intention that it be relied upon by the other person 3. The other person relies upon the statement 4. The other person suffers harm as a result of relying upon the statement <p>* eg. the sales of a second hand car with lying and deceit</p>	<p>1. Bisset v Wilkinson [1927] AC 177; [1926] UKPC 1</p> <p>Statement of opinion "that he believed the land could hold 2000 sheep" is not a "statement of fact knowing that it is false".</p>
Tort of Passing Off	Misinterpret themselves or their product as having some kind of connection with the plaintiff or their business	<ol style="list-style-type: none"> 1. they make a misrepresentation (expressly or by implication) that their goods or services are connected with another person or have the other person endorsement or approval 2. the misrepresentation is made in the course of trade 3. the misrepresentation is intended to deceive potential purchasers 	<p>1. Pacific Dunlop v Hogan (1989) FCA 185</p> <p>1. Crocodile Dundee character was passed off</p> <p>1. The picture made clear that it was not the plaintiff. Absence of misrepresentation means the tort was not committed</p> <p>1.. Newton-John v Scholl-Plough Australia Ltd (1986) 11 FCR 233</p>

Topic 4: Carelessly Causing Harm

Carelessly Causing Harm Even if a person did not deliberately cause the harm, they may still be liable if they have been negligent.

Most acts that cause harm to other people are the result of carelessness rather than intent

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* Voluntary assumption of risk:
If it can be established that the plaintiff was fully aware of the risk at the time the harm was caused and they voluntarily assumed that risk, the defendant is relieved of all liability.

1. Insurance Commissioner v Joyce (1948) 77 CLR 39; [1948] HCA 17
2. Rootes v Shelton (1967) 116 CLR 282; [1967] HCA 39

* Contributory negligence:
If it can be established that the plaintiff contributed in some way to their own loss or injury, liability will be apportioned between the defendant and the plaintiff.

1. Ingram v Britten [1994] Aust Torts Reports 81-291

Negligence A person commits the tort of negligence if a careless act by the person causes harm to another.

If the relationship falls into the established categories of duty of care otherwise use tests:

The tort of negligence is committed if all of the following requirements are satisfied:

1. They owe the other person a Duty of Care
2. They breach the duty of care
3. Their breach causes the other person to suffer reasonably foreseeable harm