

Principles of Torts

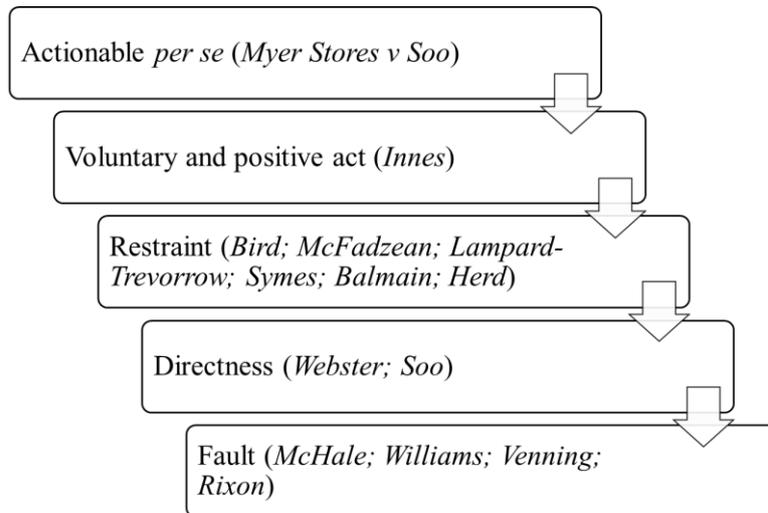
Exam Notes

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Trespass: False Imprisonment

TRESPASS: FALSE IMPRISONMENT



Definition

- A **total restraint** on the plaintiff’s freedom that is **directly**, and **intentionally** or **negligently**, brought about by the **positive** and **voluntary act** of the defendant without lawful excuse
 - In theory there is **no time limit** – can be falsely imprisoned for minutes

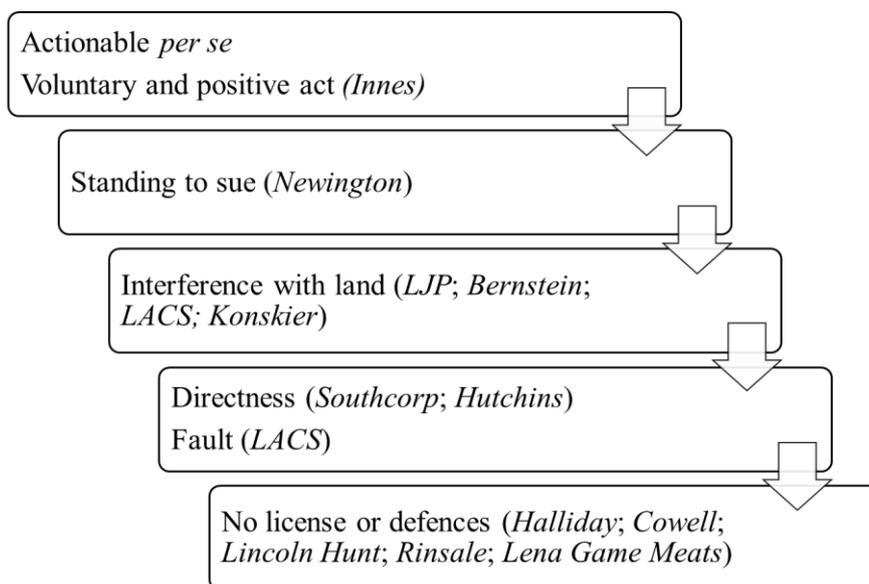
Total restraint (*Bird v Jones*)

- There will be no imprisonment if, as here, a person “*merely obstructs the passage of another in a particular direction*”, leaving the person obstructed “*at liberty to stay where he is or to go in any other direction if he pleases*” (Patterson J)
- A prison, even a notional one, must have a “*boundary*” beyond which the person imprisoned is “*prevented from passing*”
- To be imprisoned in the relevant sense, a person must be prevented from leaving a place, “*within which the person imprisoning would confine him*” (Coleridge J)

FACTS	OUTCOME
<i>Bird v Jones</i> ✓ A section of public road was closed off to provide a vantage point for a boat race. ✓ Bird refused to be excluded, and complained that he had not been allowed to use the public highway. ✓ Although obstructed from continuing forward, Bird was at liberty to move in any other direction.	✓ <i>Held</i> , a partial obstruction is not falsely imprisoned – at liberty to stay or go as you please (≠ total restraint) ✓ Psychological false imprisonment – not physically able to leave but <i>psychologically</i> the defendant convinced the plaintiff they couldn’t leave

Trespass to Land

TRESPASS TO LAND



Definition

- A **voluntary** and **positive act** of the D that **directly** and **intentionally** or **negligently** interferes with the P's **exclusive possession of land**.

Standing to sue

- The plaintiff must have **exclusive possession** of the land (i.e. right to use or hold the land to exclusion of all others) at time of interference.
- May be the:
 - Owner (propriety interest – have a title but is not always exclusive; only owner occupier is exclusive)
 - Owner Lessee / Tenant (if owner can't have possession then lessee has authority)
 - Flowing from fact of actual possession (*Newington v Windeyer*)
 - *Factual* ownership – doesn't explicitly state in facts that P is owner but they do things that owners would
 - Licensees – not a sufficient interest (any person that has been given permission to be on the land by the owner; does *not* give right to sue)
- The very act of possession itself can give a defendant an exclusive right to possession against the whole world, except someone with a better title (*Newington v Windeyer*)
 - Alternative way to have standing to sue
 - People that claimed that to have exclusive possession and were acting like they did but legally they do not

FACTS:	OUTCOME:
<i>Newington v Windeyer</i>	
<ul style="list-style-type: none"> ✓ Person that owned estate had passed away and no one claimed possession ✓ People in adjacent homes were acting as though they were in possession ✓ They held functions, watered the garden, mowed the lawn, 	<ul style="list-style-type: none"> ✓ <i>Held</i>, despite not having possession of the land, they had an exclusive right to sue. ✓ The owner had passed way and no one stepped in to take possession of the land

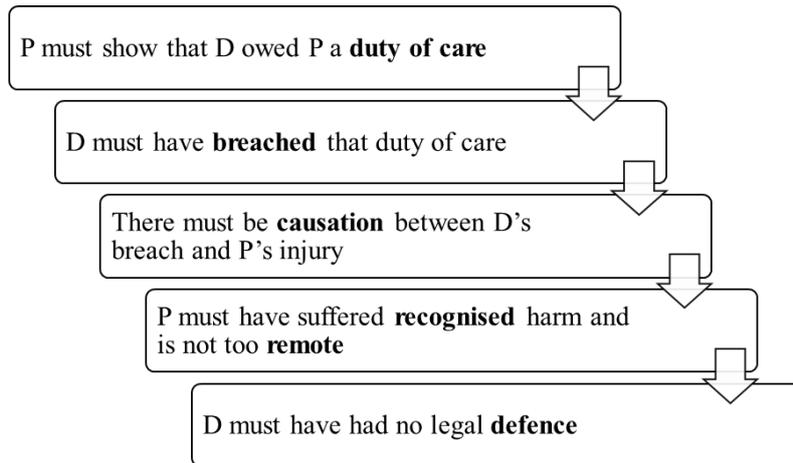
Defences: Trespass

NECESSITY

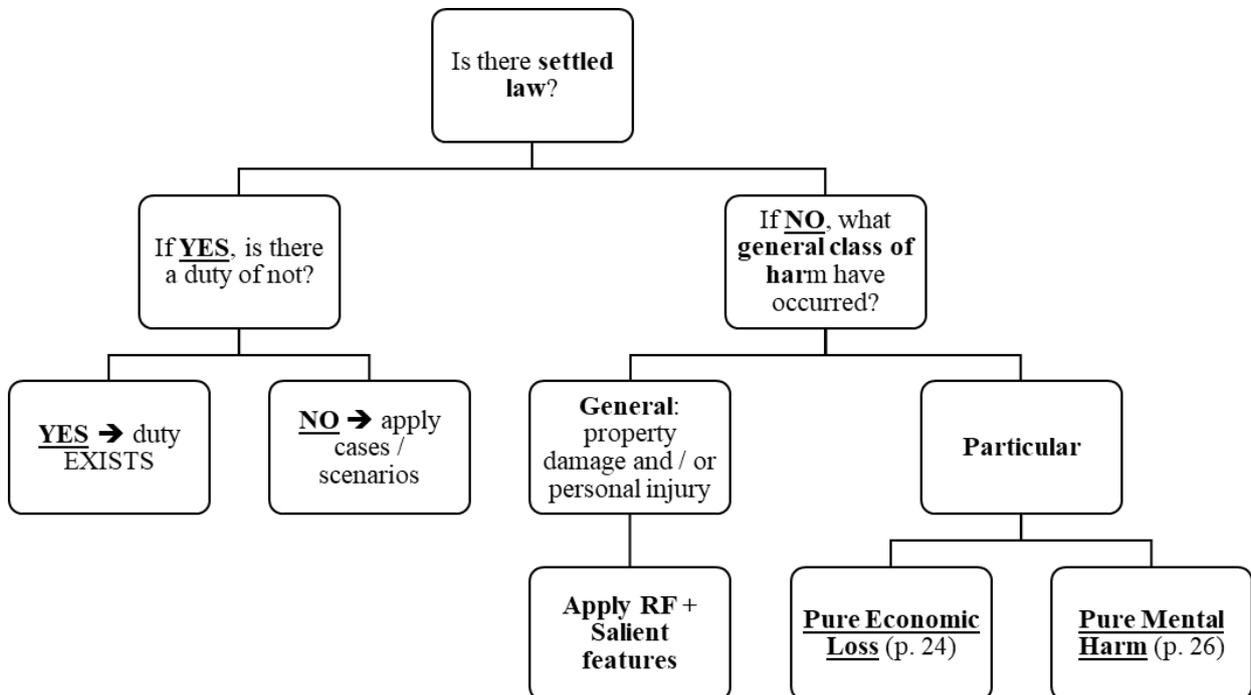
FACTS:	OUTCOME:	
Policy		
<i>Southwark London Borough Council v Williams</i>	<ul style="list-style-type: none"> ✓ The defendants in dire need of housing accommodation entered empty houses owned by the plaintiff local authority as squatters. ✓ The council litigated them for trespass to land. ✓ The court considered the defence of necessity because they were homeless. 	<ul style="list-style-type: none"> ✓ <i>Held</i>, cannot allow necessity as defence. ✓ English common law has never allowed ones' impoverished circumstance to commit tortuous act (e.g. ones' hunger does not justify stealing). ✓ If the law allows this, then we will live in an anarchy society. ✓ The court upheld this as a matter of policy. ✓ Furthermore, homelessness is not an imminent peril, it is prevalent problem.
Personal protection		
<i>Scott v Shepherd</i>	<ul style="list-style-type: none"> ✓ Shepherd threw a lighted gunpowder squib [a small explosive firework] onto a market stall owned by Yates. ✓ To prevent injury to himself and to Yates' wares, Willis picked up the squib from Yates's stall and threw it onto another stall, owned by Ryall. ✓ Ryall threw the squib away from his stall and it exploded in Scott face, putting out one of his eyes. 	<ul style="list-style-type: none"> ✓ <i>Held</i>, Shepherd was fully liable, because the act was direct and not consequential. ✓ Willis' and Ryall's acts of intermediaries arose naturally and directly as a mere a continuation of Shephard's act. ✓ They were not acting as free agents but acting in self-defence and under a compulsive necessity for their own safety and self-preservation.
Medical treatment		
<i>In Re F</i>	<ul style="list-style-type: none"> ✓ F was a 36 year-old woman with a serious mental disability. ✓ She had the verbal capacity of a child of two and the mental capacity of a child of 4. ✓ She developed a sexual relationship with a fellow patient. ✓ Her mother and medical staff were concerned that she wouldn't cope with pregnancy and raise a child by herself. ✓ They sought a declaration for her to be lawfully sterilised as other contraceptives weren't practical ✓ F was incapable of giving valid consent since she didn't 	<ul style="list-style-type: none"> ✓ <i>Held</i>, the declaration was granted. ✓ It would be lawful for the doctors to operate without her consent. ✓ General rule: the performance of a medical operation upon a person without his or her consent is unlawful, constitutes both the crime of battery and the tort of trespass to the person. ✓ In limited circumstances however, recognition may be given as a necessity [in the interests of the patient] that treatment should be given to them in circumstances where they are [temporarily or permanently] disabled from consenting to it.

Negligence: DOC

NEGLIGENCE: ELEMENTS



NEGLIGENCE: DOC (General)

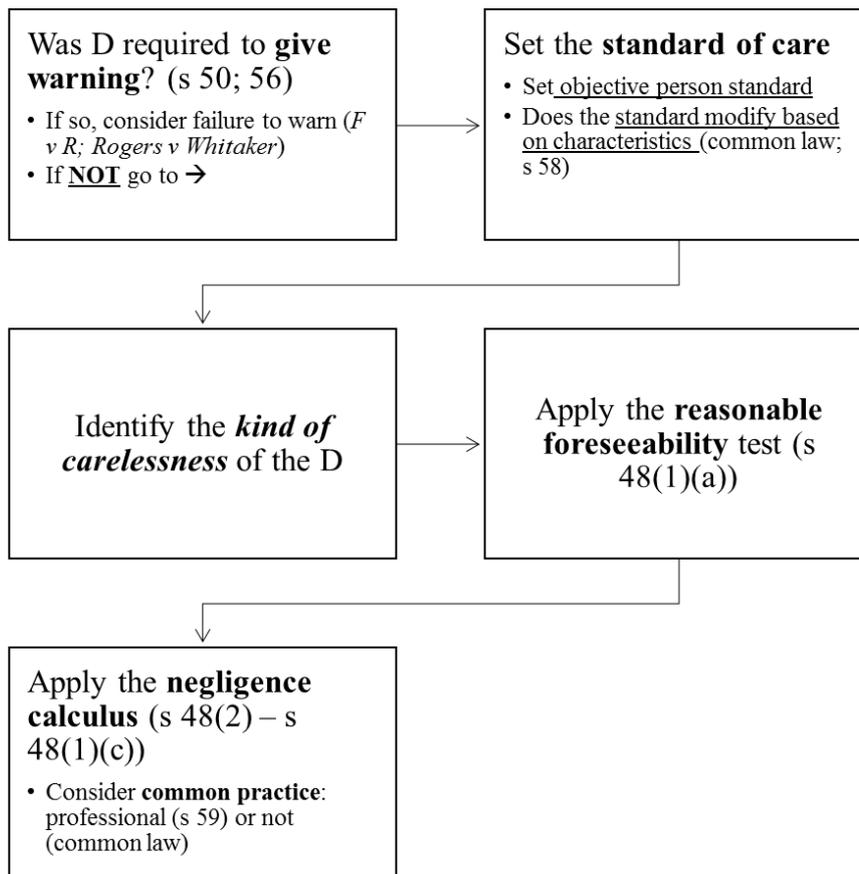


Section 43 Wrongs Act – Definitions

- In this Part—
- **court** includes tribunal, and, in relation to a claim for damages, means any court or tribunal by or before which the claim falls to be determined;
- **damages** includes any form of monetary compensation;
- **harm** means harm of any kind and includes—
 - (a) injury or death; and
 - (b) damage to property; and
 - (c) economic loss;
- **injury** means personal or bodily injury and includes—
 - (a) pre-natal injury; and
 - (b) psychological or psychiatric injury; and
 - (c) disease; and
 - (d) aggravation, acceleration or recurrence of an injury or disease;
- **negligence** means failure to exercise reasonable care.

Negligence: DOC (Breach)

NEGLIGENCE: DOC (Breach)



FAILURE TO WARN

- **Preliminary points:**
 - Failure to warn or give adequate information requires the application of some additional principles to determine if that failure constitutes a breach of a duty of care
 - *F v R; Rogers v Whitaker*
 - This issue arises most often in the provision of medical care
 - It is important to distinguish between diagnosis and treatment – which is not characterised as a failure to warn scenario– and the provision of (or failure to provide) advice or information

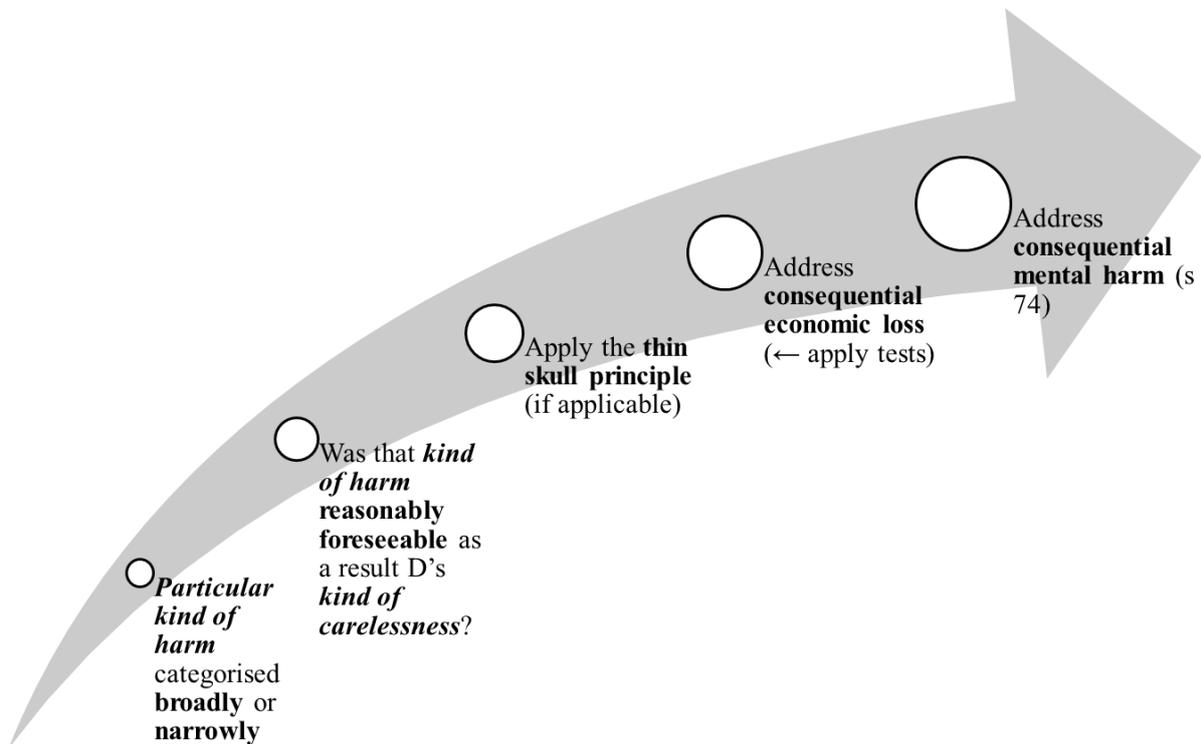
- **Section 50: Duty to warn of risk—reasonable care**
 - A defendant who owes a duty of care to the plaintiff to give a warning or other information to the plaintiff in respect of a risk or other matter, **satisfies the duty of care** if the defendant takes reasonable care in giving that warning or other information.

- **Section 56: Plaintiff to prove unawareness of risk**
 - (1) In any proceeding where, for the purpose of establishing that a person (the **defendant**) has breached a duty of care owed to a person who suffered harm (the **plaintiff**), the plaintiff alleges that the defendant has—
 - (a) failed to give a warning about a risk of harm to the plaintiff; or
 - (b) failed to give other information to the plaintiff—the **plaintiff bears the burden of proving**, on the balance of probabilities, that the plaintiff was **not aware of the risk or information.**
 - (2) Subsection (1) does not apply to a proceeding on a claim for damages in respect of risks associated with work done by one person for another.
 - (3) Despite subsection (2), subsection (1) applies to a proceeding referred to in subsection (2) if the proceeding relates to the provision of or the failure to provide a health service.

Negligence (Remoteness)

NEGLIGENCE (REMOTENESS)

- A defendant will **not be liable** for a plaintiff's injury if that **injury is too remote** (s. 51(1)(b) – *scope of liability*)



Metrolink – two stage inquiry

- Remoteness is a two-stage inquiry, that requires you to:
 1. Identify the particular kind or genus of harm, to which the loss belongs (*'the categorisation question'*);
 2. Determine whether a reasonable person in the position of the defendant ought to have foreseen loss of that particular kind or genus (*'the foreseeability question'*)

CATEGORISING "KIND OF HARM"

- Categorising the '*kind of injury*' into **actual injuries** that were suffered does **not require** the D to foresee:
 - The extent or precise nature of damage; or
 - The precise chain of events leading to damage

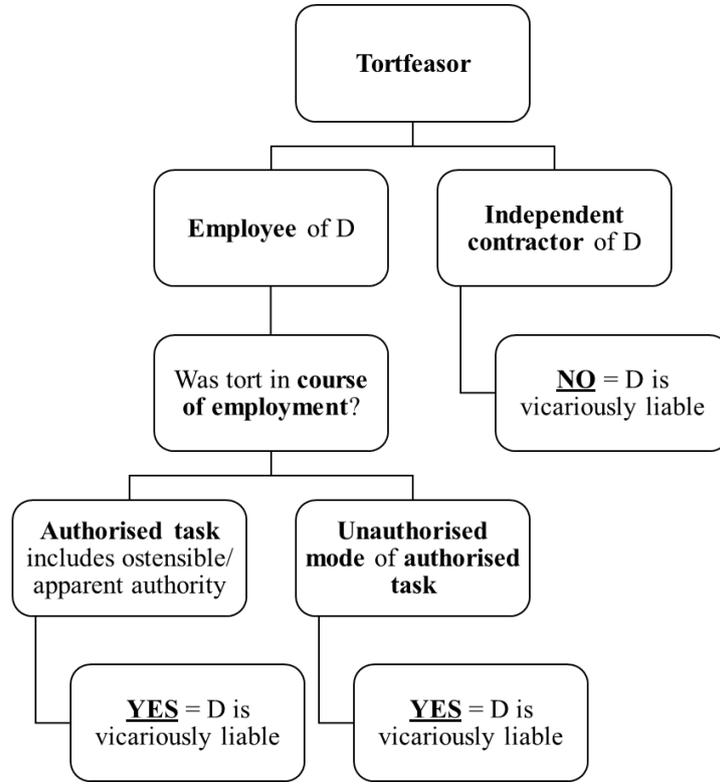
Metrolink – reconciling the cases

- Categorising '*kind of injury*' **broadly** or **narrowly**
 - In the **ordinary case**, a **broad categorisation** of the kind of loss will be appropriate
 - In a case which involves an **unusual injury** or an injury which arises from a particularly **unusual sequence of events**, a **narrower categorisation** of the kind of loss may be appropriate

Vicarious Liability

VICARIOUS LIABILITY

- (*Employer of D*) may be vicariously liable to (*P*) for the (*tort*) committed by (*D*) if it can be shown that (*D*) is an employee and not an independent contractor (*Hollis v Vabu*)



Section 61 *Wrongs Act*: Liability based on non-delegable duty

- (1) The extent of liability in tort of a person (the defendant) for breach of a non-delegable duty to ensure that **reasonable care** is taken by a person in the **carrying out of any work or task delegated** or otherwise entrusted to the person by the defendant is to be determined as if the defendant were **vicariously liable** for the negligence of the person in **connection with the performance of the work or task**.
- (2) This section applies to a claim for damages in tort whether or not it is a claim for damages resulting from negligence, despite anything to the contrary in section 44.

Rationale

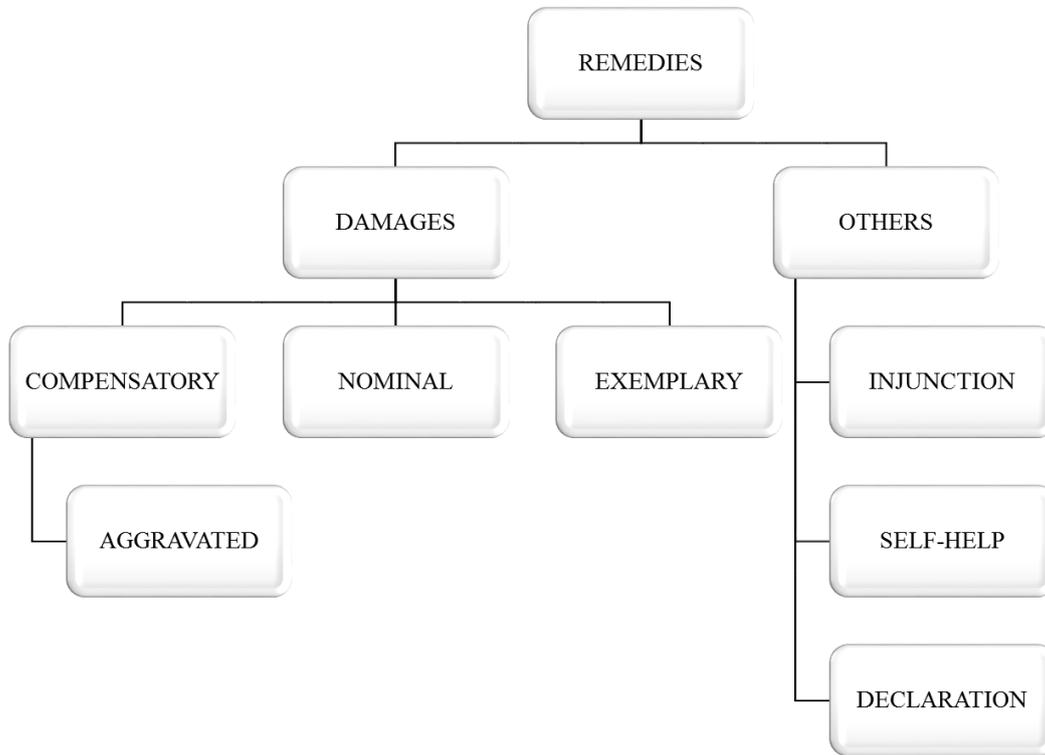
1. Employer is better placed to carry costs – enables just and practical remedy for harm;
2. Deters future harm by incentivising safe practice;
3. The employer is less innocent than the victim of the tort: the employer benefits from the enterprise from which harm flows; set it in motion; has capacity to minimise risk.

Two requirements:

1. The defendant **must** be an **employee**
 - An employer will be vicariously liable for the torts committed by an employee in the course of the employee's employment.
 - The law draws a **distinction**, for the purposes of vicarious liability, between employees and independent contractors
 - Employers may be vicariously **liable** for the acts of **employees**, but **not** for the actions of **independent contractors**
2. The tort **must** be completed in the **scope of employment**

Remedies

REMEDIES



DAMAGES

- **Compensatory Damages:**
 - Purpose is to put the plaintiff – as nearly as possible – in the position they would have been had tort not been committed
- **Heads of Damages:**
 - Itemised components of the overall award of damages
- **Once and For All Rule:**
 - Once damages are assessed, that is the end of the matter
- **Lump Sum Rule:**
 - Damages must be awarded as a lump sum and it is generally not permissible to order periodic sums

Compensatory:	<p>To put the plaintiff – as nearly as possible – in the position they would have been had the tort not been committed</p> <ul style="list-style-type: none"> • E.g. missed out on work (get paid income) • Intangible damages (i.e. humiliation – the court calculates its value) • Aggravated: Compensate when harm aggravated by manner in which act was done or subsequent circumstances (E.g. <i>Myer Stores v Soo Murphy J</i> (p 603 report)): <ul style="list-style-type: none"> ○ <i>‘The damages in an action for FI are generally awarded not for a pecuniary loss but for a loss of dignity, mental suffering, disgrace and humiliation. Any deleterious effect on the plaintiff’s health will also be compensated.’</i>
Nominal:	<p>Awarded in recognition of fact action made out but no physical or financial harm or insult</p> <ul style="list-style-type: none"> • NOTE – do NOT assume that all <i>actionable per se</i> torts leading to no physical injury result in only nominal damages