

# Topic 6: Torts law - Introduction, Liability for Negligent Acts Causing Physical or Psychological Damage or Pure Economic Loss, Duty of Care, Breach of Duty, Damage, Defences

**Tort law** – a mixture of common law and statute. It tells us what our responsibilities are to avoid causing loss to others.

## **CACL chapters:**

- 14.10 – 14.190: Liability for negligent acts causing physical/psychological damage, or pure economic loss, duty of care
- 14.390 – 14.460: Breach of duty
- 14.490 – 14.570: Damage, defences

## **Negligence:**

- We focus on negligence (civil wrong). It is a cause of action (if someone is negligent and causes a loss), it is suable.

## **To answer negligence question, to see if a claim in negligence is validly made out:**

- Is there duty of care?
- Has the duty of care been breached?
- Is there causation satisfied
- Are there any issues with remoteness
- Defences (if appropriate)

## **Introduction:**

- Tortus – crooked or wrong
- As a civil wrong. Law of torts – remedies for these civil wrongs: rights and duties
- Tortfeasor – person committing a tort
- Conduct must be wrongful – not just causing loss (e.g. competitor businesses)
- Come into play where there's a right/duty has been breached
- Commercial impact – liability to customers, consumers, employees, other businesses and the general public

# Topic 8: Consumer Protection – Overview, Misleading or Deceptive Conduct, Unconscionable Conduct, Specific False or Misleading Representation

## Consumer protection:

- Ordinary contract law doesn't work with consumers and organisations
- Imbalance of bargaining power, consumers are at a disadvantage
- Therefore, contract law cannot protect consumers
- ACCC is the public enforcement body for this part of law
- Dual purposes: protecting consumers, preventing businesses gaining an unfair competitive advantage

## Misleading or Deceptive Conduct:

- Australian Consumer Law, s18(1):  
'A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive'
- Applies to 'persons' (natural persons) and 'corporations' (legal persons)
- Applies only to conduct in trade or commerce (commercial conduct, not private conduct); a restriction
- Applies to a wide range of conduct; not just representations
- Applies strictly; no need to show fault or an intention to mislead
- No-one needs to actually be misled; likely to mislead is enough
- Opportunities to exclude or limit the provision (e.g. exclusion clauses) are very narrow
- Remedies are superior to the common law
- 4 step process (CACL pg 271):
  1. has a person? (natural and legal)
  2. in trade or commerce? (commercial conduct, not private)
  3. engaged in conduct? (actions, words, silence or non-action)
  4. that is misleading or deceptive, or that is likely to mislead or deceive (whether it is likely to lead someone into error)

## Misleading or Deceptive Conduct (Person):

- Both natural and legal persons (companies) are included
- 'In trade or commerce', only commercial involvements. The conduct itself has to have a trading/commercial character
- **Concrete Constructions (NSW) Pty Ltd v Nelson (CACL 13.5)**

Gave instructions to another worker, stand on a grate. Construction site is a commercial conduct but the instructions is not a trade in commerce, so not