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## Torts

- A tort is a civil wrong that was, while not intended, was caused by being careless.

### Torts of Negligence:

- Caused by when one carelessly cause harm to another person
- 3 steps:
1. The Defendant owe the Plaintiff a duty of care
    - Examples of Duty of Care:
      - Motorists owe a duty of care to other road users
      - Doctors owe a duty of care to their patients
      - Bankers owe a duty of care to their clients;
      - Manufacturers of products owe a duty of care to their customers;
      - Occupiers owe a duty of care to people who come onto their premises;
      - Employers owe a duty of care to their employees;
        - An employer may be liable for the acts or omissions of their own employees (**Vicarious Liability**)
  2. The Defendant breached the duty of care – the standard expected is that of the ‘reasonable person’
    - Requirements of breach of duty:
      - Was the risk foreseeable? If yes;
      - Was the risk insignificant? If no;
      - Did the reasonable defendant do what a reasonable person would have done in the circumstances, taking into account
        1. The probability of harm,
        2. The likely seriousness of harm
        3. The burden of taking precautions and
        4. The social utility of the conduct? If no, then a Breach of Duty has occurred
  3. The breach of duty causes the Plaintiff to suffer loss, damage or injury and the injury was caused by the breach. This means that the injury suffered by the plaintiff was reasonably foreseeable by the defendant and that the injury was not too remote.
    - Requirements for causation:
      - Injury must have become actual
      - Injury must flow from the breach
      - Injury must not be remote
        - Injuries include physical or mental injuries, economic loss, damage to property etc.
      - In other words, did the breach of duty *actually* cause the injury?
    - Factual Causation – Plaintiff must establish that the breach was a necessary condition of the occurrence of the harm – that the careless act caused the harm
      - Was the breach a necessary condition of the occurrence of harm? If yes;
      - Is it appropriate to the scope of the defendant’s liability to extend to the harm? If yes, then harm was caused by the breach

## Defences:

A plaintiff may avoid or reduce liability if they can establish the existence of one or more defences, even if all three elements of the torts of negligence

- Voluntary assumption of risk – difficult to establish
  - o Plaintiff had full knowledge and appreciation of the risk; and
  - o Freely and willingly agreed to the precise risk that eventuated – of their own free choice without restraint
  - o If proven, the defendant may be relieved of all liability
- Contributory Negligence
  - o 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

## Remedies:

- An award of damages is the typical remedy for a tortious wrong
- The primary purpose of tort liability is to compensate the person who is injured by making the person at fault pay for the damage they have caused. Notions of punishment generally have no place in an award of tortious damages
- The objective of the award is to place the person injured in the position they would have had been had the tort not been committed
  - o In other words, the objective is to restore the injured person, so far as money can do so, to their original position

## Consequences – Injunctions and Damages

- Injunction - a court order whereby a person is required to do or refrain from doing certain acts – it will be an appropriate remedy if the person is committing a tort on an ongoing basis, such as nuisance, trespass or defamation – failure to comply with an injunction results in civil or criminal penalties.
- Damages - purpose - to compensate the plaintiff for the loss or injury suffered because of the defendant's harmful conduct.
- Assessed 'once and for all' - Plaintiff cannot return to court again seeking more compensation – so it's necessary to estimate future losses resulting from the harmful conduct.
- Mitigation - the plaintiff is under a duty to mitigate – take active steps to try to reduce/minimise - their loss as reasonable in the circumstances.

## Trespass

- Trespass to the Person
  - o Battery
    - A person commits the tort of battery – the actual application of physical force – if:
      1. They cause some sort of physical interference with the body of another person;
      2. The action is direct – directly causing contact with the body of another person;
      3. The act is either intentional or negligent - unintentional;
      4. There is no consent or lawful justification for the act.
    - Note: Courts have held that a certain minimal level of physical contact is unavoidable in daily life

- Assault
  - A person commits the tort of assault – the threat of the actual application of physical force – if:
    1. They cause another person to develop an apprehension of direct, imminent and harmful physical contact;
    2. The act is direct;
    3. The act is intentional or negligent - unintentional; and
    4. There is no consent or lawful justification for the act
- False Imprisonment
  - A person commits the tort of false imprisonment – the complete deprivation of someone's freedom of movement – if:
    1. They cause another person to be **totally** restrained;
    2. The act is direct;
    3. The act is intentional or negligent - unintentional;
    4. There is no consent or lawful justification for the act.
- Tort of Nervous Shock – a person who wilfully does something calculated to hurt another and causes nervous shock
- Defences to the tort of trespass include:
  - Consent;
  - Self-defence;
  - Protection of property;
  - Statutory authority;
  - Taking precautions to minimise a nuisance

THIS IS JUST A SAMPLE AND THE CONTENTS PAGE WILL BE DEFINED IN THE COMPLETE SET OF NOTES.