

# Contents

Wednesday, 26 June 2019 9:19 AM

- 1. Torts Law**
  - a. Development of Torts
  - b. Categories
  - c. VIDEO: Carolyn Hutchinson
- 2. Intentional Torts**
  - a. Highway and Non-Highway Cases
- 3. Intentional Interference with the Person**
  - a. Trespass to the Person
  - b. Battery
  - c. Assault
  - d. False Imprisonment
  - e. Indirect Intentional Infliction of Personal Injury (Action on the Case)
  - f. Damage
- 4. Trespass to Land**
  - a. Conduct
  - b. Land
  - c. Title of the Plaintiff
  - d. Defences
- 5. Defences to Intentional Torts**
  - a. Consent
  - b. Self-Defence
  - c. Provocation
  - d. Contributory Negligence
  - e. Necessity
- 6. Negligence**
  - a. Duty of Care
  - b. Existing Categories of Negligence
  - c. Professionals
  - d. Reasonable Foreseeability
- 7. Duty of Care: Mental Harm**
  - a. Steps in Dealing with a Mental Harm Claim in Negligence
  - b. Psychiatric Harm
- 8. Duty of Care: Pure Economic Loss and Novel Categories**
  - a. Steps
  - b. Negligent Misstatement
  - c. Novel Categories
  - d. Development of DOC
- 9. Breach of Duty**
  - a. Foreseeable Risk of Injury
  - b. The "Reasonable Person"
- 10. Vicarious Liability**
  - a. Steps
  - b. Relationships Giving Rise to Vicarious Liability
  - c. Liability for Agents and Independent Contractors
  - d. In the Course of Employment
  - e. The Requirement of Tortious Wrongdoing
- 11. Breach: Calculus and RP Responses**
  - a. CLA s 5B(2) (objective test)
  - b. Determining Breach: General Approach

- c. Probability of Harm
- d. Gravity or Likely Seriousness
- e. Burden of Taking Precautions

**12. Damage and Factual Causation**

- a. Damage
- b. Factual Causation
- c. Novus Actus Interveniens
- d. Exceptional Cases

**13. Causation: Scope of Liability**

- a. Scope of Liability/Remoteness
- b. Egg Shell Skull Rule

**14. Contributory Negligence**

- a. Objective Standard
- b. Causal Relationships to Damages
- c. Appointment
- d. Presumed Contributory Negligence

**15. Voluntary Assumption of Risk**

- a. Obvious Risk
- b. Examples
- c. Dangerous Recreational Activities

**16. Damages**

- a. Basic Principles in Compensatory Damages Awards
- b. Certainty and Proof of Loss
- c. Economic Loss
- d. Non-Economic Loss
- e. Heads
- f. Threshold

# 1. Torts Law

Tuesday, 1 March 2016 1:02 PM

[Torts law] concerns the obligation of persons living in a crowded society to respect the safety, property and personality of their neighbours, both as an *a priori matter* and as a duty to compensate for wrongfully cause harm, *ex post*. [It] involves questions of how people should treat one another and the rules of proper behaviour that society imposes on each citizen for avoiding improper harm to others, and for determining when compensation for harm is due.

- D Owen 1995 (pp. 3-4)

Tort law **provides**:

- **Compensation** (money)
- **Deterrence** and corrective justice (communities sense of justice)
- **Distributive justice** and risk allocation ('loss spreading', who should pay for people's injury etc., raises questions regarding insurance and the **doctrine of subrogation**)

**No-fault schemes** are social service scheme, don't need a defendant/prove the wrong, state pays based on need.

## DEVELOPMENT OF TORTS

Trespass is **direct interference** with goods, property or person. It developed in the 12th century as the first type of tort law and served a peacekeeping function (linking it to criminal law). To seek compensation at the Royal Court a case had to fall within a recognised *writ*.

By the 13th century writs had developed for both trespass and action on the case. These writs were different in the court, mode of trial, pleas, available remedies and *substantive law*. By the 14th century action of case writs did not mention the use of force (direct action) but harm needed to occur, thus distinguishing trespass and case.

## CATAGORIES

Torts can also be **categorised** according to what they protect:

- **Physical integrity** (e.g. negligence, assault, battery, false imprisonment)
- **Property** (e.g. trespass to land)
- **Enjoyment of property** (e.g. nuisance, negligence)
- **Reputation** (e.g. defamation)
- **Economic interests** (e.g. *passing off*, interference with contract, negligence, deceit)

The CLAs came about as a response to rising insurance costs (especially public liability) and it was thought that reducing litigation and limiting damages would reduce insurance premiums and make insurance more readily available.

The **Doctrine of Parliamentary Sovereignty** states that parliament is elected so statute law dominates when there are inconsistencies between it and common law.

## VIDEO: Carolyn Hutchinson

[https://www.youtube.com/watch?v=42yvQwSehXM&index=3&list=PLLB5s\\_9x2Tt68qjxqW\\_ucx3feYlsys2yh](https://www.youtube.com/watch?v=42yvQwSehXM&index=3&list=PLLB5s_9x2Tt68qjxqW_ucx3feYlsys2yh)

This video shows the wide scope that tort law covers, including P wanting to sue D for swapping porcelain dolls while repairing it (including damages for her emotional distress). She also went to 'bed side hearings' from asbestos poisoning, as people who were dying tried to sue to provide for their families. She also talked about how a law degree helps us learn how to read and analyse what we're reading as well as building a foundation for our understanding of law.

*Chattels:*