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Tortious Liability:

Vicarious Liability - Liability for the conduct of another. Usually an Employer liable for Employee.

Century Insurance Co Ltd v Northern Ireland Road Transport (smoking driver vicarious liability)
Employer held responsible for fire caused by smoking driver as he was performing work function at time.

Deatons Pty Ltd v Flew (vicarious liability bar tender)

Employer not held responsible for bartender throwing drink at patron as was not a part of job function.

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Tort of Trespass

3 forms; Land, Goods, Person

Trespass Land

Direct interference with land in someone else's rightful possession. Meaning that action can be brought either by the land owner or the tenant.

Law assumes that if there is no locked gate or signage then passage is free to those who need it e.g. deliveries, door knockers. Implied granting of permission - *Halliday v Nevill*

Requirements:

1. Defendant interferes with the plaintiffs possession of land.
2. Defendants interference is direct.
3. Interference is intentional or negligent. - *Stanley v Powell (intent)*
4. No consent from the Plaintiff or lawful justification for the interference.

Cowell v Rosehill Racecourse Co Ltd

Defendant refuses to leave a premises within a reasonable time of being asked to do so.

Bathurst City Council v Saban

Defendant leaves rubbish or other objects on the plaintiffs property.

Kelsen v Imperial Tobacco Co

Sign erected that projected into the airspace of the plaintiffs property.

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Trespass Goods

Direct interference with the property of another. Can just be in possession of goods at time not the owner - borrowed goods.

Requirements:

1. Defendant interferes with plaintiffs possession of goods.
2. Defendants interference is direct.

3. Defendants interference is intentional or negligent.
4. No consent from plaintiff or lawful justification.

Penfolds Wines Pty Ltd v Elliott

Tort of trespass to goods is committed if the plaintiff does not have permission to handle goods, takes without permission or uses the goods in a way that was not authorised.

Conversion **Intentional** not just negligent interference with the plaintiffs goods. e.g. :

- Destroys the property -*Hollins v Fowler*
- Uses in a way not authorised -*Penfolds (above)*

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- Refusal to return goods when asked -*Flowfill Packaging Machines Pty Ltd v Fytore Pty Ltd.*
- Transfers or sells the goods without consent -*Perpetual Trustees and National Executors or Tasmania Ltd v Perkins.*

Detinue Inc **Negligence** refusal to return goods when asked to do so. Covers situation where the defendant negligently loses goods - *John F Goulding Pty Ltd v Victorian Railway Commissioners.*

Trespass Person

Direct interference with the body of the plaintiff intentionally or negligently, three forms; Battery, Assault and False imprisonment.

Battery Unlawfully applying force to another person, can be serious in nature such as punch or more simple in unwanted touching. Can not expect to go through life without ever being touched, there are certain actions that are a natural occurrence in life which are excluded - *Collins v Wilcock.*

Requirements Battery:

1. defendant causes some sort of physical interference with the body of the plaintiff.
2. Defendants act is direct.
3. Defendants act is intentional or negligent.
4. No consent or lawful justification.

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Assault Threat causing anticipation of direct and imminent harmful or offensive act. No physical element is required. *Stephens v Myers.*

The defendant's intention of carrying out the threat is irrelevant as is the ability to carry out the threat e.g. threat with unloaded gun. All that is important is that the defendant intends for the plaintiff to believe the threat is real. *Hall v Foncea.*

Requirements Assault:

1. Defendant causes the plaintiff to develop a reasonable apprehension of imminent physical contact.
2. The act is direct.
3. The act is intentional or negligent.
4. No consent from plaintiff or legal justification for the act.

False Imprisonment deprivation of the plaintiffs freedom of movement without consent or lawful justification.

Doesn't have to be direct physical interference just no means of escape - *Burton v Davies*.

Can be psychological restraint in convincing the plaintiff they have right to detain - *Symes v Mahon*

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Requirements False Imprisonment:

1. Defendant causes the Plaintiff to be completely restrained
2. Defendants act is direct
3. Act is wither intentional or negligent.
4. No consent or lawful justification.

Defences Trespass:

- Accident, interference was neither intentional or negligent. *Stanley v Powell*
- Consent, the plaintiff was consensual to the trespass either expressly or implied. *McNamara v Duncan*.
- Necessity, trespass was necessary to protect life, land or goods from imminent and real harm. *Wilson v Pringle*.

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Tort of Nuisance

Act by the defendant that indirectly interferes with the plaintiff's use and enjoyment of public or private land. Differs from trespass in that it is indirect not direct.

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Private Requirements:

1. defendant interferes with another persons use and enjoyment of private land.
2. plaintiff has an interest in the land (owner or tenant)
3. Plaintiff suffers actual harm or damage.
4. Defendants interference is indirect.
5. Interference is either intentional or reckless.
6. Interference is sustained and unreasonable. - duration? times of day? - *Wherry v KB Hutchinson Pty Ltd*

Considerations: Defendant take reasonable actions to prevent nuisance? -*Painter v Reed*. Plaintiff abnormally sensitive? - *Robinson v Kilvert*

St Helens Smelting Co v Tipping (Fumes)
Killing of vegetation through noxious fumes.

Thorpes v Grant Pastoral Co Pty Ltd (Flooding caused by action on own property)
Blocking of a watercourse causing flooding on plaintiffs property

Andreae v Selfridge and Co Ltd (Noise Severity of interference)

Excessive Noise by defendant

Raciti v Hughes (Excessive Light)

Floodlights shining into backyard

Sturges v Bridgman (Vibrations Location of the plaintiffs property residential/industrial)

Vibrations from defendants factory

Hollywood Silver Fox Farm Ltd v Emmett (**deliberate and malicious intent**)

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Public Requirements:

1. Defendant interferes with another's use and enjoyment of public land. (park, street etc)
2. Plaintiff suffers actual harm or damage over and above that of the public generally.
3. The interference is indirect.
4. Interference is either intentional or reckless
5. Interference is sustained and unreasonable. - duration? times of day? -*Wherry v KB Hutchinson Pty Ltd*

Considerations: Defendant take reasonable actions to prevent nuisance? -*Painter v Reed.*

Silservice v Supreme Bread Pty Ltd (reasonable precaution taken normal course of business)

Queue from bread shop blocking front of adjacent business. Ruled was in normal course of business, would have been liable if; defendant attracted the crowd unnecessarily, premises inadequate to hold expected crowds, defendant failed to take reasonable precaution to minimise damage to other businesses.

Defences Nuisance:

- Consent by Plaintiff, express or implied permission from the plaintiff.
- Statutory Authority, Legislation exists that permits defendant to engage in the conduct.
- Contributory Negligence, The harm suffered was partially the plaintiffs fault as a result of carelessness.