

Topic 1. Introduction: scope and context of tort law

Limitation of actions

- The general limitation period for a cause of action founded on tort is **6 years**
 - A cause of action for defamation is **1 year**
 - A claim against a ship owner for death or personal injury caused to a person on another vessel is **2 years**

Topic 2. Historical background of modern tort law

Trespass and the action on the case: the historical distinction

- Trespass = **direct** injury; action on the case = **indirect** injury
- Trespass is **actionable per se** (the plaintiff need not prove actual injury or damage)

(a) Direct/indirect interference

Case	Facts	Significance
<i>Scott v Shepherd</i> (p. 1)	<ul style="list-style-type: none"> ➤ Shepard (defendant) threw a lighted squib into a crowded market-house which resulted in two other patrons, Willis and Ryal, to throw the squib until it struck Scott (plaintiff) in the face, causing Scott to lose sight in one eye ➤ Plaintiff sued defendant in trespass and assault ➤ This case is a trespass 	<ul style="list-style-type: none"> ➤ Where the injury is immediate, an action of trespass will lie; where it is consequential, it must be an action on the case ➤ “The highway analogy” <ul style="list-style-type: none"> ○ If I throw a log of timber into the highway (an unlawful act), and another man tumbles over it and is hurt, an action on the case only lies as it is a consequential damage ○ If I throw it and hurt another man, it is a trespass as it is an immediate wrong ➤ Every one who does an unlawful act is considered as the doer of all that follows <ul style="list-style-type: none"> ○ All that was done after the original throwing was a continuation of the first force and first act which will continue till the squib was spent by bursting ➤ The intervention of a free agent will make a difference <ul style="list-style-type: none"> ○ Willis and Ryal are not considered as free agents but acting under a compulsive necessity for their own safety and self-preservation
<i>Hutchins v Maughan</i> (p. 3)	<ul style="list-style-type: none"> ➤ Hutchins (plaintiff) is a drover who was warned of the baits laid unlawfully along the creek by Maughan (defendant). The plaintiff’s 	<ul style="list-style-type: none"> ➤ Not a trespass as it is consequential of the act <ul style="list-style-type: none"> ○ An injury is direct when it follows so immediately upon the act of the defendant that it may be part of the act ○ It is consequential when it is regarded

	<p>dogs ate the baits and died</p> <ul style="list-style-type: none"> ➤ Plaintiff sued defendant in negligence, nuisance or trespass ➤ This case is an action on the case 	<p>not as part of the defendant's act, but merely as a consequence of it by some obvious and visible intervening cause</p> <ul style="list-style-type: none"> ○ The death of the plaintiff's dogs is like that of the man who, going along the road upon which a log has been thrown and tumbles over it
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(b) Rule in *Williams v Holland*: an action on the case may be brought for direct, negligent injury.

Case	Facts	Significance
<p><i>Williams v Holland</i> (p. 5)</p>	<ul style="list-style-type: none"> ➤ Holland (defendant) lost control of his horse and his horse-drawn cart collided with Williams (plaintiff)'s horse-driven carriage where the plaintiff was injured ➤ Direct interference; the defendant was negligent ➤ Plaintiff sued defendant in an action on the case ➤ This case is an action on the case as the plaintiff had chosen to sue the defendant with this cause of action 	<ul style="list-style-type: none"> ➤ Where the injury is occasioned by the carelessness and negligence of the defendant, the plaintiff is at liberty to bring an action on the case, notwithstanding the act is immediate, so long as it is not a wilful act ➤ In some circumstances, the same facts may give rise to an action in trespass and an action in negligence
<p><i>Williams v Milotin</i> (p. 6)</p>	<ul style="list-style-type: none"> ➤ Williams (plaintiff) struck while riding his bicycle by a motor truck driven by Miloton (defendant) ➤ Direct interference; the defendant was negligent 	<p><u>ISSUE 1: limitation period</u></p> <ul style="list-style-type: none"> ➤ Although trespass has a limitation period of three years under the <i>Limitation of Actions Act 1939-1948</i> (SA), this does not limit negligence, arising from the same set of facts, which has a limitation period of six years <p><u>ISSUE 2: could the plaintiff sue for both trespass and action on the case?</u></p> <ul style="list-style-type: none"> ➤ Cause of action - the essential ingredients in the title to the right which it is proposed to enforce <ul style="list-style-type: none"> ○ Protects two different interests in two different ways ➤ Direct but unintentional tort can be pleaded as either trespass or action on the case <ul style="list-style-type: none"> ○ Can be pleaded concurrently

		<ul style="list-style-type: none"> ➤ Negligently inflicted injury to the person can (in some circumstances) be pleaded as trespass to the person, but the intentional infliction of harm cannot be pleaded as negligence <ul style="list-style-type: none"> ○ This point is not always taken
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Fault in trespass

- In Australia, a trespass action may still be brought for a direct and negligent interference
- Called a “negligent trespass”

Case	Facts	Significance
<i>Weaver v Ward</i> (p. 8)	<ul style="list-style-type: none"> ➤ Ward (defendant) shot and wounded Weaver (plaintiff) during a military training exercise ➤ Plaintiff sued defendant in trespass of assault and battery ➤ This is a case of battery 	<p><u>ISSUE: whether there is liability</u></p> <ul style="list-style-type: none"> ➤ No man should be excused of a trespass except it may be judged utterly (彻底) without his fault ➤ Fault (intent or negligence) is an essential ingredient in trespass

Onus of proof of fault in trespass cases

Case	Facts	Significance
<i>Venning v Chin</i> (p. 9)	<ul style="list-style-type: none"> ➤ Venning (plaintiff) suffered personal injuries when struck by a car driven by Chin (defendant) when crossing a public road ➤ Plaintiff sued defendant in trespass 	<p><u>ISSUE 1: onus of proof</u></p> <ul style="list-style-type: none"> ➤ In trespass, the onus of proof generally lies on the defendant to disprove intent or negligence ➤ In a highway case, the onus is on the plaintiff to prove either intention or negligence on the part of the defendant ➤ A highway case - a collision between a vehicle and a pedestrian on the highway
<i>Platt v Nutt</i> (p. 14)	<ul style="list-style-type: none"> ➤ Platt (plaintiff)’s hand was injured when Nutt (defendant) slammed the door ➤ Plaintiff sued defendant for trespass ➤ Trespassory act is not established as the plaintiff would not be injured if she did not raise her hand 	<ul style="list-style-type: none"> ➤ As a first step, the plaintiff needs to prove that there is a trespassory act <ul style="list-style-type: none"> ○ Does the defendant’s conduct directly interfere with the plaintiff’s interests? ○ There needs to be a causal connection between what the defendant did and the interference ➤ The plaintiff did not prove there is a trespassory act, thus the defendant needs not to disprove his fault