

Class Six: Negligence

Origins of the tort of negligence

- Early view that where there was a contract there was no room for tort
- By 1932 increasing volume of cases seeking redress for indirectly caused harm → Urgent need for legal protection for those not protected by law of contract → Idea of 'foresight' in direct conflict with concerns raised in *Winterbottom v Wright* (1842)

Trespass

Trespass: starting point in the development of law of torts

- Trespass vi et armis – 12th century
 - Direct and forcible interference
 - Trespass on the case – 13th century
 - Indirect (consequential)
 - Although writ system has faded, it gave rise to causes of actions in both trespass and case which continue today
- Must have a cause of action
 - Reflects substantive rules when pursuing any legal action

Modern Trespass

- Trespass to land
 - Trespass to goods (chattels)
- Trespass to the person
 - Battery, assault and false imprisonment

Negligence

- Negligence is an action on the case – damage is the gist of the action
- Elements of tort comprising the cause of action:
 - Defendant must have owed plaintiff duty of care (duty of care)
 - That duty must have been breached (breach of duty)
 - Plaintiff suffered injury which was reasonably foreseeable (damage/injury)
 - Breach of duty must have caused damage to P (causation)

Doctrine of Precedent

- Factual similarity and reasoning by analogy
- Reasoning by analogy: when are cases alike?
 - Identification of relevant 'material facts' which provide common ground
 - Inductive reasoning
 - Deductive reasoning

Doctrine of Precedent in Action – Cases

- **Langridge v Levy 1837**: Imposition of duty of care to user would "open the floodgates and allow for indeterminate and infinite liability."
- **Winterbottom v Wright 1842**: Could not consider negligence because the contract was between the Post Master General and the Coach Repairer: no connection between plaintiff and defendant
- **George v Skivington 1896**: The duty under the contract should extend to those whom the seller knew would be using the product.
- **Heaven v Pender 1883** when 'duty of care' became English Law; A duty of care was owed to the person who was to use the platform, especially as it was during his employment
- **Donoghue v Stevenson 1932**: neighbour principle; must take reasonable care to avoid acts or omissions that you can reasonably foresee would be likely to injure your neighbour