

WEEK 7: INTENTIONAL INFLICTION OF EMOTIONAL HARM & NUISANCE

EMOTIONAL HARM

STEP 1: Mention *Wilkinson v Downton* [1897] 2 QB 57

- “cause of action only available if the plaintiff could show that the defendant wilfully did an act calculated to cause physical harm”
- **NOTE:** This was approved in *Bunyan v Jordan* (1937) 57 CLR 1.

STEP 2: Set out the elements and apply *Clavel v Savage* [2013] NSWSC 775, *Rothman J*

1. A deliberate act (conduct) by the putative tortfeasor;
2. An intention (including reckless indifference) to cause physical or psychiatric harm by the conduct;
3. The occasioning of harm (including psychiatric injury but not mere distress) as a result of the conduct; **NOTE:** Action is available for intentional infliction of nervous shock caused **indirectly** or **consequentially** (*JMD v GJH* [2012] WADC 124 and *RS v HS* [2016] WADC 157)
4. The harm being caused to a person to whom harm is intended (or a person in the immediate vicinity to whose harm the perpetrator is recklessly indifferent);
5. The putative tortfeasor has engaged in the conduct without justification or lawful excuse.

NOTE: The injury must be lasting psychiatric harm not simply for mental distress (*Giller v Procopets* (2008) 24 VR 1)

NUISANCE

PRIVATE NUISANCE

DEFINITION: Per Windeyer in *Hargrave v Goldman* (1963) 110 CLR 40: ‘an unlawful interference with a person’s use of enjoyment of land, or some right over, or in connection with it’.

STEP 1: Define Private Nuisance

STEP 2: Is there a title to sue?

- Are they an owner, landlord or tenant? Exclusive possession of land? Then YES: *Hunter v Canary Wharf* [1997] AC 665. See also *Brown v Tasmania* (2017) 349 ALR 398 (P must be more than a mere licensee or a person merely present on the land)
- Are they merely a licensee? Probably not: *Oldham v Lawson (No 1)* [1976] VR 654
 - o However: *Animal Liberation (Vic) Inc v Gasser* [1919] 1 VR 51 (only had licence to conduct business on land)
 - o Also – a person in possession of a premises as a mere licensee could sue in private nuisance OR mere fact of occupation gives standing to sue in nuisance: *Deasey Investments P/L and Anor v Monrest P/L* [1996] QCA 466