

• <i>Public Authorities</i>	49
<i>Breach of Duty</i>	55
➤ <i>Standard of Care</i>	56
➤ <i>Requirements of Breach</i>	60
➤ <i>Calculus of Negligence</i>	61
<i>Causation</i>	63
➤ <i>Factual Causation</i>	63
➤ <i>Legal Causation</i>	65
➤ <i>Legally Recognised Damage</i>	68
<i>Remoteness of Harm</i>	69
➤ <i>Categorisation of Harm</i>	69
➤ <i>Reasonable Foreseeability</i>	70
➤ <i>Egg-Shell Skull Principle</i>	70
<i>Defences to Negligence</i>	
<i>Contributory Negligence</i>	72
<i>Intoxication</i>	75
<i>Voluntary Assumption of Risk</i>	76
<i>Risk Warnings (Recreational and Sporting Activities)</i>	79
<i>Exclusion Clauses</i>	80
<i>Obvious Risk (Dangerous Recreational Activities)</i>	80
<i>Illegality</i>	83
<i>Inherent Risk</i>	84
<i>Good Samaritans</i>	84
<i>Vicarious Liability</i>	
<i>Principal and Agent</i>	85
<i>Employer and Employee</i>	85
<i>Nuisance</i>	
<i>Nuisance</i>	88
<i>Death Claims</i>	
<i>Death Claims</i>	97

OVERVIEW OF TORT LAW

Torts are often described as:

Unintentional	Unintentional torts comprise the tort of negligence and some forms of nuisance. Unintentional torts require some unreasonable conduct on the part of the defendant. Unreasonableness is measured by what a hypothetical reasonable person, in the defendant's position, ought to have known or foreseen and would have or have not done in response to the foreseeable risk.
Intentional	Intention refers to one of the elements of the cause of action. In most intentional torts, subjective recklessness will establish intent; this is where the defendant actually knew of, or actually foresaw, the likely consequences of his/her conduct and nevertheless engaged in the conduct. In tort law, objective recklessness is usually described as 'gross negligence'
Strict liability	The plaintiff is not required to prove any negligence or intent, nor is the absence of negligence and intent a defence. An employer's vicarious liability for a tort committed by an employee is a form of strict liability that remains a part of tort law.

NO-FAULT COMPENSATION SCHEMES

An alternative to tort law as a means of compensation for personal injury and death are the no-fault compensation schemes. A feature of the workers compensation scheme is that the right to bring a tort action at common law is restricted to serious injuries - the damages are limited and any statutory compensation previously received for the injury is deducted from the damages.

Workers Compensation Scheme

- Damages are limited to lost wages (past and future) and loss of earning capacity.
- If a worker recovers damages at common law from the employer there is no further entitlement to workers compensation payments at all and weekly payments already paid must be deducted from the damages (s 151A)
- Very significantly limits workers' rights to damages at common law.
- There must be a causal connection between the employment and the injury. The employment must be a 'substantial contributing factor to the injury' (s 9A).

Need to prove:

1. You are an "actual" or "deemed" worker (s 4).
2. The injury arose out of or in the course of employment.
3. You suffered loss or impairment as a result.

Workers Compensation Act s 9 - Substantial Contributing Factor

No compensation is payable under this Act in respect of an injury (other than a disease injury) unless the employment concerned was a substantial contributing factor to the injury.

Workers Compensation Act s 14 - Conduct of worker

Disqualifies a worker from entitlement unless the injury results in serious permanent disablement or death.

	this lack of ability was not apparent to the P (E.g an unloaded gun) (<i>Brady v Schatzel</i>)
Imminence	<ul style="list-style-type: none"> ➤ For there to be an assault, the apprehension must be of a physical contact that is imminent ➤ An ongoing apprehension of imminent physical conduct will suffice (<i>Zanker v Vartzokas</i>) <ul style="list-style-type: none"> ○ The fear in the P's mind must be immediate and continuing ➤ A threat of some harm at some unspecified and uncertain future time may not constitute an assault, unless in all the circumstances it would be reasonable for the plaintiff to anticipate imminent harm (<i>Barton v Armstrong; Balven v Thurston</i>) ➤ Sometimes words may contain a condition which must be met before the threat will be carried out (<i>Tuberville v Savage</i>) <ul style="list-style-type: none"> ○ A court will ask whether it is reasonable for the plaintiff to anticipate imminent force if he disobeys the defendant's instruction <ul style="list-style-type: none"> ■ Even though the threat was conditional on the policeman moving forward, the court held it was an assault as the 'menacing attitude of the respondent caused the police officers to retire (<i>Police v Greaves</i>)
Conditional threats	<p>A conditional threat will constitute an assault where it is reasonable for the plaintiff to anticipate imminent force if he/she disobeys the condition set forward by the defendant (<i>Rozsa v Samuels</i>). The D's [threat or act] is contingent on the [Plaintiff's condition to be met], creating a conditional threat. The RP would/would not apprehend imminent force if not complied with due to the [proximity/ conduct/ holding of weapon/ context] by the defendant.</p> <ul style="list-style-type: none"> ➤ If the physical contact that is threatened would be illegal (e.g constitute a battery) if carried out, then the conditional threat will be an assault (<i>Rozsa v Samuels</i>)

FALSE IMPRISONMENT

False imprisonment is a total deprivation of the P's freedom that is directly, and intentionally brought about by the positive and voluntary act of the D (*Tevorror v SA*).

**the P's liberty must have been restrained; it is not necessarily physical restraint*

Actionable per se	D may argue that the P was unharmed and thus the act will not constitute an assault, however, the P will raise that false imprisonment is actionable per se and thus does not require injury.
Positive and voluntary act	<ul style="list-style-type: none"> ➤ False imprisonment must be brought about by the intentional positive and voluntary act of the D. <p>The D's act of _____ was a conscious and willed act and it was not a mere passivity or omission' (<i>Innes v Wylie</i>) as it was clear OTF that the D was not under duress and nothing indicated otherwise.</p>
Reasonable means of egress/ Total Deprivation of the	<p>In order for there to be false imprisonment, it is necessary that the P have been totally restrained rather than merely partially obstructed (<i>Bird v Jones</i>). P need not be aware of imprisonment at the time the tort is committed (<i>Meering v Graham White Aviation; Hart v Herron</i>).</p> <p>But if there is a reasonable means of egress available to a person, then there will not be false imprisonment (<i>McFadzean; Bird v Jones</i>). D will argue that the means of escape is not</p>