TORTS 1 WEEKLY NOTES

PART 1 – WHAT IS TORT LAW?

Why Study Tort Law?

- Tort underpins many important issues in Private Law.
- Tort law is a significant tool for social policy – sets standards for "reasonable" behaviour.
- Torts is an area that is largely derived from the Common Law, but has also undergone significant statutory modification.

(1.05): Tort law consists of principles, doctrine, and rules developed by courts and legislatures to define the circumstances which will entitle a plaintiff to seek recompense (e.g. compensation) for the interference with a personal interest (e.g. safety, property, or reputation) by the defendant.

Private Law: The part of the legal system that governs interactions **between persons.**
Common Law: The area of law which is **not** legislation/statute based, but entirely developed by judges in cases, without proceeding on the basis of some statutory text.

What is a Tort?

- Tort law is about righting wrongs (**non-contractual**) between private individuals/companies.
- Torts = An act or omission by the defendant, constituting an infringement of a legally recognised interest of the plaintiff, giving rise to a right to a legal remedy.

IMPORTANT: When you are analysing a fact scenario, more than one tort may need to be considered. In practice, this is reflected by the reality that legal proceedings are often brought by plaintiffs claiming a right to a remedy for more than one reason, called a Cause of Action. While there are rules to control over-compensation, there is no rule preventing a plaintiff from succeeding in more than one of those causes of action.

Cause of Action: A legally recognised basis for bringing a claim. It is the set of facts that, if proven, entitles the plaintiff to a remedy (e.g. negligence, trespass, defamation).

McPherson & Kelley v Kevin J Prunty & Associates (1983): 'Torts, or wrongs, are breaches of a duty owed generally to one's fellow subjects, the duty being imposed by law and not as a consequence of duties fixed by the parties themselves.'

- Not all torts require actual damage. The plaintiff may be able to succeed despite having suffered **no actual damage**. The latter type of tort is said to be actionable **"per se."** It is particularly the case where the defendant's actions are found to be **intentional**.
    - **Note:** The tort of negligence **does** require actual damage.
- There can be **more than one** tort on the same set of facts.
- All tort causes of action give right to Unliquidated Damages.

Unliquidated Damages: Damages that are **not** fixed in amount in advance of the tort, but are generally measured according to the damage suffered by the plaintiff. In some cases, this may **not** be substantial. For example, a court may acknowledge that a plaintiff's legally protected interest has been interfered with, but will only award Nominal Damages or Contemptuous Damages where the identified damage is negligible.
Nominal Damages: A very small amount (e.g. $1 or a small symbolic sum). The court recognised that a legal wrong occurred, but there was no substantial loss (e.g. a brief technical trespass with no real harm).
Contemptuous Damages: A trivial amount awarded where the court thinks the claim should **not** really have been brought forward. It signals that the plaintiff technically succeeded, but the harm was **so minor** that **litigation was unnecessary**. This can **affect legal costs.**

(1.10): In cases where the infringement has caused the plaintiff damage, the court must assess the value of the damage in Monetary Terms and Compensatory Damages for that amount are awarded. Sometimes, the court may award damages in excess of any actual damage the plaintiff has suffered by awarding Aggravated Damages. These reflect matters such as the conduct of the defendant, the circumstances under which the tort was committed, and the effect of the tort in the plaintiff. In rare cases, the court will award Exemplary (Punitive) Damages which are **not** related to loss suffered by the plaintiff or the effect of the tort upon the plaintiff, but are intended to make an example of or punish the defendant.

Monetary Terms: Assessing damage in monetary terms involves quantifying the plaintiff's loss in financial value so that compensatory damages may be awarded to restore the plaintiff, so far as money can, to their pre-tort position. For example, medical expenses are calculated as **actual bills**, lost wages are calculated from **salary records**, and pain and suffering is estimated as a **financial figure.**
Compensatory Damages: If the defendant's wrongdoing caused harm, the court calculates the financial value of the harm and awards the money to compensate the plaintiff. The purpose is to put the plaintiff, as far as money can, in the position they would have been in if the tort **had not** happened (e.g. medical expenses, lost income, pain and suffering, property damages, future losses, etc.)
Aggravated Damages: Extra compensation awarded because the defendant's conduct made the harm worse. They reflect (a) the defendant's insulting or humiliating behaviour, (b) malice or improper motive, (c) the way the tort was committed, and (d) any additional emotional distress caused. They responded to **increased harm** suffered by the plaintiff.
Exemplary (Punitive) Damages: They are not about compensating the plaintiff, but are meant to **punish the defendant** and **deter similar conduct.** They are awarded in rare cases where the conduct is (a) deliberate, (b) outrageous, and (c) in conscious disregard for the plaintiff's rights.

Tort (Civil Law) v Crime (Criminal Law)
SIMILARITIES

- Both are departures from what the law determines should happen.
- The same behaviour may both be a crime and a tort.

DIFFERENCES

- The essential difference is **purpose.** The focus in criminal law is on the defendant and imposing a punishment. The focus in tort law is on the plaintiff and providing a remedy for a wrong.
- In tort, the **action is brought** by a private individual. By contrast, the enforcement of the criminal law is usually left to state prosecuting authorities. In criminal law, the Crown is required to prove its case Beyond Reasonable Doubt, while in tort, the plaintiff is required to prove his/her case on the Balance of Probabilities.
- The **outcome** in tort is the award of a remedy to the plaintiff, such as damages or an injunction. In criminal law, the sanctions imposed can include imprisonment.

Beyond Reasonable Doubt: The jury must be **firmly convinced** of guilt, and any doubt must be reasonable – not imaginary or speculative. If a reasonable person would still question whether the accused committed the crime, the standard is **not** met.
Balance of Probabilities: Requires the court to be satisfied that a fact in issue is more probable than not, based on an evaluation of the whole of the evidence.

Tort v Contract
SIMILARITIES
- Both are departures from what the law determines should happen.
- The same behaviour may be both a tort and a breach of contract, but you can't have 'double recovery'.

DIFFERENCES

	Tort	Contract
To whom is the duty owed?	Owed generally	Other contracting parties
What is the basis of the duty owed?	Duty is imposed by law	Duty arises as a result of undertakings made by the parties
What interests are protected?	Personal and mental security, property interests, fame and reputation, financial and economic interests	Expectation of a future benefit arising from the undertakings

(1.10): In cases of Concurrent Liability, the liability in tort is indistinguishable in substance from the failure to perform the contractual duty. A breach of contract and facts that give rise to an action in tort are **discrete causes of action**, despite their factual coincidence.
- SIMPLIFIED: This liability arises where the same factual circumstances constitute both a breach of contractual obligations and a breach of a duty in tort. Although the duties may overlap in substance, breach of contract and tort remain distinct causes of action.

Concurrent Liability: Where liability arises in both tort and contract in relation to the same conduct of the defendant. It has been found to exist only where the tort in question is Negligence, and the contractual duty is one of reasonable care.
Negligence: Established when the defendant **has not** acted like a reasonable person (objective test). E.g. A driver is texting and hits a pedestrian, and or, a company leaves dangerous machinery unguarded.
Contributory Negligence: The plaintiff is **also** responsible for the damage they suffered (objective test). E.g. A pedestrian walks in front of a car without looking, and or, a worker sticks their hand in the moving machine.

(1.15): Tort law is generally concerned with imposing liability for Misfeasance, and occasionally Non-Feasance. The contractual right, on the other hand, is essentially applied in cases of non-feasance, for a failure to perform the contractual promise.

Misfeasance: Doing something, but doing it badly or wrongly. It involves **active wrongdoing**. For example, driving carelessly and causing an accident, performing surgery negligently, or hitting someone (battery). Tort law is **mainly concerned** with these kinds of wrongful acts.
Non-Feasance: Failing to do something. It is an **omission**, as the person has **done nothing**. For example, failing to repair something you promised to fix, or not delivering goods you agreed to supply.

(1.30): The purpose of the law of torts may be expressed as the provision of a civil remedy for injury or damage to, or other infringement of, a recognised interest. This serves to distinguish torts from other civil wrongs such as Restitution or Breach of Trust.

Restitution (Quasi-Contract): It is about reversing unjust enrichment. The focus is **not** about compensating for injury, but returning the benefit that **should not** have been kept. For example, if you accidently transfer money to someone, restitution requires them to return it.
- IMPORTANT: The focus is on the defendant's gain, not the plaintiff's loss.

Breach of Trust: This occurs when a trustee misuses or mismanages trust property. This is governed by **equity**, with the focus on Fiduciary Obligations, and protecting trust relationships.
- IMPORTANT: It is **not** primarily about compensating general wrongs.

Fiduciary Obligations: Special legal duties of loyalty and trust that one person owes to another. They arise where (a) one person has power or discretion, and (b) another person places trust and confidence in them. The fiduciary must act in the **best interest of the other person**, not their own.

PART 2 – AIMS, INTERESTS, SOURCES, AND OTHER MATTERS

Aims of Tort Law
1. **Norms to Regulate "Civil" Behaviour:** Like the criminal law, tort law tells us, for example, that it is wrong to text while driving.
2. **Compensation for Loss – Corrective Justice:** Tort system requires a causal link between a defendant's breach of duty and the plaintiff's damage, and when this occurs, D has to compensate P, so the parties can be restored to the position they were in before the tort was committed.
3. **Distributive Justice:** E.g. A statutory compensation scheme, such as the National Disability Insurance Scheme, which distributes resources from a pool of funds to members of society who need them; 'Vicarious Liability' in the employment context.
4. **Deterrence of Wrongful Behaviour:** The prospect of being sued should dissuade tortious behaviour.
5. **"Closure" and Expressive Function:** Tort law allows victims to have their "day in court" and communicates that the plaintiff has wronged the defendant.
6. **Economic Efficiency:** The idea that judges should decide cases with the aim of maximising society's total wealth. If the cost of taking care to avoid injury is less than the cost of compensating injured persons, companies should take action to avoid injury (e.g. implement safety measures).

Vicarious Liability: An employer **can** be held legally responsible for the wrongful acts of an employee committed in the course of employment.

'The principal objects of [the law of torts] are to **deter wrongdoing**, to **compensate losses** arising from conduct contravening socially accepted values, and where appropriate, to **distribute losses** among those in the community best able to afford them. However, since torts are a miscellaneous group of wrongs with little in common, it is not surprising that there is disagreement among theorists as to what the aims of the law in this area are.' (**Erlich v Leifer [2015], citing Hawkins v Clayton [1986]**).

Assignment 1: Did the employee's tort occur in the course of their employment?

- **Essential Facts**: Work backwards from legal reasoning. Consider in the context of all 4 cases. I.e. There may be facts that are relevant when considering all 4 cases.

(1.40): A central feature of common law as a source of tort law is the concept of Stare Decisis and the related doctrine of precedent. In dealing with disputes, trial courts (courts of first instance) and intermediate appellate courts (like Courts of Appeal) are usually constrained by **binding precedents**. I.e. They **cannot** ignore binding authority simply because they disagree with it, they **must** follow higher courts. While superior courts in Australia, including the High Court can, and occasionally do, decline to follow their own previous decisions, the courts are still constrained by the need for what has been described as "internal consistency".

Stare Decisis: Courts should follow earlier judicial decisions. It promotes consistency, predictability, and stability in the law. E.g. If a legal principle has already been decided in a higher court, lower courts **must** apply it in similar cases.

(1.40): The law of negligence, which is the most significant branch of the law of torts, only emerged in the 1930s, with the decision in **Donoghue v Stevenson (1932)**.

(1.40): The Australian legal system is based on the Doctrine of the Separation of Powers. Law making, as such, is the function of the legislature, not the judiciary. The strict role of the judiciary in the legal system is to interpret the law. By doing so, judges can and do adopt new principles and expand on existing doctrines to reflect prevailing community standards and values. It is this process of interpretation that creates the foundations of common law as "judge-made" law.

<u>IMPORTANT:</u> Judges **do not** "make" law in the same way Parliament does. Through interpretation and precedent, they develop and refine legal principles over time.

Doctrine of the Separation of Powers: The Government power is separated into 3 branches; (1) **Legislature** (Parliament) makes laws, (2) **Executive** (Government) enforces laws, and (3) **Judiciary** (Courts) interprets and applies laws. This prevents any one branch from having too much power.

(1.45): Courts frequently interpret statutes. In this process, a body of case law can be developed regarding a particular statute. This is easily demonstrated in the High Court's decisions on the Australian Constitution and the emerging body of law surrounding the **Civil Liability Acts**.

<u>IMPORTANT:</u> The Civil Liability Acts in each State regulate negligence and damages. Courts must interpret (a) what "reasonable precautions" means, (b) how causation should be applied, and (c) how damages thresholds operate. Over time, judicial decisions create a **structured body of law** explaining how these statutes function.

Interests Protected by Tort Law

Interest protected	Tort
Interest in bodily and mental security	Battery, assault and negligence, action on the case for indirect intentional injury
Freedom of movement	False imprisonment
Interest in the security and enjoyment of property including intellectual property	Trespass to land, trespass to goods, conversion, detinue, negligence, nuisance, passing off
Fame and reputation	Defamation
Financial and economic interests	Negligence

(1.60): There has been a consistent push to recognise a tort of privacy in Australia. In 2001, the High Court held in **ABC v Lenah Game Meats Pty Ltd (2001)** that there was no authority preventing the development of a tort of invasion of privacy in Australia. Despite this decision and decisions by State courts on this issue, a common law tort of privacy is **yet** to be recognised.

Sources of Tort Law

1. Common Law (Judge-Made Law)
    - Doctrine of Precedent, and
    - Limits on Judicial Activism.
2. Legislation
    - Civil Liability Acts: Wrongs Act 1958 (Vic)
        - Limits the defendant's liability where personal injury is caused by negligence.

Doctrine of Precedent: Courts must follow legal principles established in earlier cases. E.g. If a higher court has decided a legal issue, lower courts **must** apply that rule in similar cases. Courts follow the Ratio Decidendi, while comments not essential to the decision (Obiter Dicta) are **persuasive** but **not binding**.
Judicial Activism: Judges developing or extending the law through interpretation. I.e. Judges cannot simply make whatever law they see fit. They are limited by (a) the doctrine of precedent, (b) existing legal principles, (c) statutory interpretation rules, and (d) separation of powers (Parliament makes legislation).
Ratio Decidendi: The principle of law that forms the basis of a court's decision (**Ratio** = Reason, **Decidendi** = Deciding) and is binding on the lower courts under the doctrine of precedent. I.e. The legal reasoning for the court's decision.
Obiter Dicta: Judicial statements made in the course of a judgement that are **not** necessary for the decision and therefore, **do not** form binding precedent, though they may be persuasive.

Elements of Torts

1. Act or Omission Infringing P's Protected Interests
2. Fault Element
    - Intentional: Defendant acts with the specific purpose of producing a consequence/with substantial certainty the intended result will occur.
    - Reckless: Defendant turns their mind to the likely risk of harm, yet proceeds anyway.
    - Negligent: Objective test of what a reasonable person should have foreseen.

(1.55): The subjective test of the defendant's state of mind necessary to establish intention or recklessness is contrasted with the objective standard applied to determine what is negligence. Here, the defendant is judged by the **standard of what a reasonable person** in the defendant' position **should have foreseen** and what action such person **should have taken or refrained from taking** as a result.

Under the standard of Strict Liability, there is no need to establish any fault/mental element.

Strict Liability: A standard of liability in which the prosecution is **not** required to prove fault or Mens Rea; liability arises upon proof of the prohibited act alone.
Mens Rea: The mental element required for criminal liability, encompassing states of mind such as intention, knowledge, recklessness, or negligence, depending on the offence.

(1.55): Breach of Statutory Duty as a tort is largely limited to statutes imposing industrial safety requirements in places of work. Even here, strict liability is unusual, since the statutory standard is known in advance and the actual failure to comply with it is likely to be at least negligent. Some torts requiring Intentional Conduct on the part of the defendant (e.g. trespass, conversion, defamation, etc.) may impose a form of strict liability where the defendant intentionally infringed the plaintiff's interest, but acted under a reasonable belief that he/she was entitled to carry out the act in question.

Breach of Statutory Duty: It is a tort that arises when (1) a statute imposes a **legal duty**, and (2) a person breaches that duty, causing harm to someone the statute was **meant** to protect.
Intentional Conduct: Some torts require the defendant to (i.e. the legal rule says the defendant **must** have done "X" for liability to arise) intentionally perform the physical act, but not necessarily intend to cause harm. These include trespass to land, trespass to goods, conversion, defamation. The defendant **must** intend the act itself – not necessarily the legal wrong.

- IMPORTANT: If the defendant **intentionally does the act** and that act interferes with the plaintiff's **legally protected interest**, they may be liable even if they (a) thought they had permission, (b) made a reasonable mistake, and or (c) did not intend to harm anyone. The mistake **does not** necessarily prevent liability.

Matters of Procedure and Proof
- Procedure
  - Burden of Proof on the plaintiff.
    - The plaintiff must be in accordance with the normal requirement of proof, both in civil actions and criminal trials, as the **legal burden of proof** rests on the plaintiff. They must prove that all the **required elements** for the **relevant tort** have been met.
    - (1.65): In a civil action, the plaintiff need only make out its case on the **balance of probabilities**; in a criminal trial, the guilt of the accused must be proved **beyond reasonable doubt**. The Deleterious Consequences of a criminal conviction are generally much greater than those attending a civil liability to pay damages.
  - A jury trial or a trial by the judge sitting alone.
    - (1.65): A major difference between a jury verdict and that of a judge is concerned with the powers of an Appellate Court. A jury verdict **will not** indicate the primary findings of fact upon which the jury has reached its conclusion. This means that an appellate court would be **unable** to interfere with those conclusions, unless they were **wholly unreasonable** and **against the weight of the evidence**. A judge, normally states the findings of primary fact before stating what the conclusions are (so-called "Inferential" Findings of Fact).
    - (1.65): An appellate court will **always accept** the trial judge's findings of primary fact, but may **overturn** inferences from those facts if it disagrees with them, on the basis that the court is in just as good position as the trial judge to draw those inferences. As a result, the appellate court has **greater power** of interference with the decision of a trial judge than with that of a jury.
- Limitations of Actions
  - Can be pleaded as a defence by the defendant.
    - (1.70): A defence must generally be pleaded and relied upon by the defendant. If the defendant waives or fails to raise an available defence, and the plaintiff establishes the elements of the cause of action, judgement may be entered into favour of the plaintiff.
  - Generally, actions in tort law are barred after the expiration of **6 years** from the date of the accrual of the cause of action (**Limitations of Actions Act 1958 [Vic] s 5 [1] [a]**).
    - Personal injury is **3 years** (s 5 [1AA]), but the courts have the power to extend.
    - The date of accrual of the cause of action depends on whether the tort is actionable per se, or if proof of damage is required.
      - Actionable per se torts **do not** have to prove any damages. The cause of action accrues when the damage is suffered.
    - (1.70): Limitation periods in Australia are entirely statutory, although in the case of actions in tort against the Commonwealth of Australia, it is necessary to apply **s 64 of the Judiciary Act 1903 (Cth)** to "pick up" relevant State limitation law, ensuring that the Commonwealth is subject to the same limitation regime as a private litigant.
      - **Judiciary Act 1903 (Cth) [s 64]**: 'The rights of parties in a suit involving the Commonwealth are to be as nearly as possibly the same as in a suit between private individuals.
      - SIMPLIFIED: Time limits for starting legal proceedings are created by legislation (statutes), not by judge-made common law. Parliament sets limitation periods through Acts such as (a) **State Limitation Acts**, and (b) Civil Liability Legislation. For example, if you are injured in Victoria, you sue the Commonwealth for negligence. The Victorian limitation period applies because **s 64** "picks up" and applies that State law.

Burden of Proof: Refers to who has the responsibility of proving the facts of the case in court. In tort law, the burden is on **the plaintiff**.
Deleterious Consequences: These refer to adverse or harmful outcomes resulting from an act, omission, or legal rule.
Appellate Court: A superior court that reviews decisions of lower courts to determine whether errors of law or significant procedural errors occurred, with the power to affirm (uphold), vary (change), or overturn (reverse) the original judgement. For example, appeals from **state Supreme Courts** may go to (a) The Court of Appeal (within that state), or (b) in some cases, the High Court of Australia.
"Inferential" Findings of Fact: A factual conclusion drawn by the court from established primary facts, rather than from direct testimony or observation. E.g. A witness testifies: "I saw the defendant hit the plaintiff." Therefore, the court directly finds that the defendant hit the plaintiff.

Civil Liability Legislation: It compromises Statutory Reforms enacted by Australian jurisdictions to regulate negligence and personal injury claims, modifying common law principles relating to duty, breach, caution, and damages.

- CLL = Parliament reshaping tort law, particularly negligence, by limiting and clarifying liability.

Statutory Reforms: Legally binding norms enacted by Parliament through legislation, which may modify, codify, or override common law principles.

Limitation Period: Wilson v Horne (1999)

- The plaintiff had been sexually abused as a child by the defendant, between 1973 – 1980. In 1994, the plaintiff suffered psychiatric illness and commenced legal action in 1996. A six-year limitation period for actions in Trespass (e.g. assault, battery, false imprisonment) meant the plaintiff was Statute-Barred. She, therefore, sued the defendant in negligence, given the psychiatric illness had developed in 1994 and thus, fell within the limitation period imposed by the statute.
- For many years, it was uncertain whether an action for negligence could be brought for a direct intentional act.
- **Held:** An action exists in both negligence and trespass for the acts constituting child sexual abuse. This can, therefore, bring different limitation periods into play.

Trespass: Certain torts like assault, battery, and false imprisonment fall under the old action of **trespass to the person.**
Statute-Barred: The claim is legally blocked because it was brought too late.

Limitations Act (Vic), ss 27 (O) – 27 (R): No limitation period for child sexual and physical abuse.

Limitation Period: Cartledge v Jopling (1963)

- Employees at a steelworks contracted pneumoconiosis due to inadequate ventilation. The disease was insidious and could not be diagnosed until it had reached an advanced stage. The plaintiffs were statute-barred before they even knew they had a cause of action.
- **Held:** The cause of action for negligence accrued when the disease established itself, not when the plaintiff became aware of it. The plaintiff's unawareness that they had suffered any damage did **not** prevent the limitation period from commencing.
    - Approved in **Hawkins v Calyton (1987) 164 CLR 539.**
        - (1.75): Hawkins v Clayton recognises that in certain circumstances, particularly where the plaintiff is justifiably unaware of the damage or lacks the legal capacity to act, the commencement of the limitation period may be postponed until the plaintiff is in a position to enforce the cause of action.

Once this problem was exposed by the courts, legislation in most jurisdictions attempted to alleviate it; see **Limitation of Actions Act 1958 (Vic).**

ss 27D – Limitation Period for Personal Injury (General): 'The period of 3 years from the date on which the cause of action is discoverable by the plaintiff; the period of 12 years from the date of the act or omission alleged to have resulted in the death or personal injury with which the action is concerned.'

- SIMPLIFIED: A **dual limitation framework** for personal injury claims. A primary limitation period of 3 years from the date the cause of action is discoverable by the plaintiff, subject to an ultimate **long-stop period** of 12 years from the date of the impugned act or omission.

ss 27F – Date Cause of Action is Discoverable: 'A person **ought to know** of a fact at a particular date if the fact would have been ascertained by the person, had the person taken all reasonable steps before that date to ascertain the fact. In determining what a person knows, a court may have regard to the conduct and statements, oral or in writing, of the person. A cause of action that arises under **Part III of the Wrongs Act 1958** is **not** discoverable before the date of death of the deceased.'

- SIMPLIFIED: Adopts an objective discoverability test, deeming a cause of action discoverable when the plaintiff knew or ought reasonably to have known the relevant material facts. The court may assess the plaintiff's conduct and statements in determining knowledge. In wrongful death actions under Part III of the Wrongs Act 1958, discoverability **cannot arise** prior to the death of the deceased.

ss 27K – Extension of Limitation Periods: 'A person claiming to have a cause of action may apply to a court for an extension of a period of limitation. The court (1) may hear any of the persons likely to be affected by the application, and (2) may, if it decides that it is **just** and **reasonable** to do so, order the extension of the period of limitation.'

- SIMPLIFIED: A discretionary power on the court to extend a limitation period upon application, provided that affected parties are heard and the court is satisfied that it is just and reasonable to grant the extension.

ss 27L – Matters to Consider for Extensions: 'A court shall have regard to (a) the length of and reasons for the delay, (b) whether there **is** or **is likely** to be prejudice to the defendant, (c) whether the defendant had taken steps to make available to the plaintiff means of ascertaining relevant facts, (d) the duration of any disability of legal incapacity, (e) the time within which the cause of action was discoverable, (f) whether the plaintiff acted promptly once the plaintiff knew that the act or omission might be capable of giving rise to an action of damages, and (g) the steps, if any, taken by the plaintiff to obtain medical, legal, or other expert advice, and the nature of that advice.'

- SIMPLIFIED: Requires the court, when exercising its discretion to extend a limitation period, to consider factors including the length and explanation for delay, prejudice to the defendant, discoverability, any legal incapacity, and the plaintiff's diligence in pursuing the claim.

CARTLEDGE V JOPLING (1963) AC 758

FACTS

- Limitation of Action – Negligence. Injury caused by acts **outside** statutory period. Injury first discovered **within** statutory period.
- Steel dressers, employed in the steel works of the respondents, who **denied** allegations of negligence and breach of duty and also pleaded the **Limitation Act (1939).**
    - Glyn-Jones J. found breaches of **statutory duty** proved and assessed the damages in varying sums of up to $25,540, but held that all claims were **barred** by the Act.
- The plaintiffs were steel workers who brought an action against their employer, alleging **negligence** and **breach of statutory duty** arising from exposure to **silica dust** during their employment. The exposure caused **pneumoconiosis**, a progressive lung disease. The central issue concerned the operation of the limitation period under the **Limitation Act 1939 (UK).** The plaintiffs **did not** discover their condition until **more** than 6 years after the physical damage had begun to occur. The House of Lords was required to determine when the cause of action accrued for limitation purposes.

- In breach of s 4 and 47 of the Factories Act (1937), the defendants failed to provide effective ventilation from 1939 until October, 1950. As a result of defective ventilation, all the plaintiffs were suffering from pneumoconiosis, but (with 3 exceptions) they were unaware of it and had no reason to suspect it. From 1950, the defendants committed some breaches of regulation with regard to the removal of dust from pedestal grinders. By that date, a new and effective mask was being worn by the workers and breaches were not of sufficient important to produce any material contribution to the disease of the plaintiffs. Therefore, they could not suffice to support or continue any cause of action.

JUDGEMENT

- Lord Reid
    - Held that the cause of action accrues when the actual damage occurs, not when it is discovered.
    - Rejected the argument that the limitation period should begin when the disease is discovered or becomes diagnosable. The fact that the disease was latent and undiscoverable at the time, did not prevent the damage from being legally actionable.
        - He acknowledged that this interpretation could produce harsh and potentially unjust outcomes, particularly in cases involving latent industrial disease.
    - He stated that the courts were required to apply the Limitation Act as drafted, and any reform of the law was a matter for Parliament, rather than judicial innovation.
    - Decision: The plaintiffs' causes of action had accrued more than 6 years before proceedings commenced, and were therefore, statute-barred.
- Lord Hodson
    - Although he did not appear in the judgements, via Lord Reid; he concurred with the other members of the House.
- Lord Evershed
    - Agreed with the reasoning and conclusion of Lord Reid.
    - Emphasised that the structure of the law of negligence requires the existence of damage before a cause of action can arise. Once damage occurs, the plaintiff acquires a complete cause of action, and the limitation period begins from that point.
    - Rejected that the limitation period should depend on the plaintiff's knowledge of the injury, noting that the statute did not incorporate any such requirement.
    - Explained that the subsequent discovery of the disease did not create a new or separate cause of action, as the actionable damage had already occurred.
        - He acknowledged the practical injustice that might arise where diseases are latent and remain undetectable for many years. However, emphasised that it was not the role of the judiciary to rewrite the limitation statute in order to mitigate such consequences.
    - Decision: The plaintiffs' claims were out of time, and the appeal should be dismissed.
- Lord Morris
    - Agreed that the appeal must fail.
    - Rejected the contention that the cause of action should arise only when the disease became symptomatic or discoverable.
        - Held that the evidence demonstrated that actual physical injury to the plaintiffs' lungs had occurred several years before proceedings were commenced. The subsequent medical diagnosis merely revealed the existence of damage that had already taken place.
    - Emphasised that the limitation statute contained no provision postponing the commencement of the limitation period until discovery of the injury. Therefore, the court were bound to apply the statute according to its terms.
    - Decision: The plaintiffs' claims were statute-barred.
- Lord Pearce
    - Agreed with the conclusions reached by the other members of the House.
    - Emphasised that a cause of action in negligence is complete when the plaintiff suffers damage that is real and measurable, even before that damage is detectable. The lung damage caused by inhalation of silica dust constituted actual physical injury, and therefore, actionable damage has already occurred.
    - Rejected the suggestion that each progressive worsening of the disease should give rise to a new cause of action. In his view, the disease represented the continuing consequences of the original injury, rather than a series of separate actionable harms.
    - Acknowledged that the application of the limitation statute in cases of latent disease could lead to serious injustice, as plaintiffs might lose their right to sue before they became aware of their injury.
        - Emphasised that any modification of the limitation rules must be achieved through legislative reform, not judicial reinterpretation.
    - Decision: The appeal should be dismissed.

OUTCOME

- The House of Lords dismissed the appeal unanimously.
- The plaintiffs action were statute-barred, as the cause of action accrued when the lung damage first occurred, which was more than 6 years before proceedings were commenced.

A cause of action in negligence accrues when the plaintiff first suffers actual damage, even if that damage is latent and undiscovered. The limitation period, therefore, begins from the occurrence of the damage, not from the plaintiff's discovery of it.