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Tort Law

1. CAUSING HARM

Criminal Liability: if someone has done something that causes harm to another person, and the harmful act is a crime, they will incur criminal Liability.

Each Australian jurisdiction has its own criminal legislation.

FORMS OF LEGAL LIABILITY:

Conduct=

- **Criminal Law**: to punish a person, the state takes action. Reasonable doubt. criminal prosecution
- **Tortious Liability**: tort = harmful act. can sue for compensation
- **Statutory liability**: A statute is a law made by parliament. Also known as 'legislation'
- **Vicarious liability**: Liability for the conduct of another. Most frequently between the relationship between the employer and employee. ** if the employee is acting well outside the scope of their employment the employer will not be vicariously liable Deatons Pty Ltd v Flew
- **Contractual Liability**: If a person engages in harmful conduct has a contractual relationship with the victim of the harm, the the harmful conduct may given rise to contractual liability. Contractual liability only arises if there is a contract in existence between the plaintiff and the defendant. If contravenes the ACL

2. DELIBERATELY CAUSING HARM

Tort = civil wrong (other than breach of contract)

TYPES OF TORT:

Trespass: Protects both person and property from unauthorised interference e.g. assault, unlawful imprisonment, battery

Conversion: Provides remedy when goods are dealt with in a manner inconsistent with the rights of the true owner.

Defamation: Protects a person from injury to reputation caused by a false accusation.

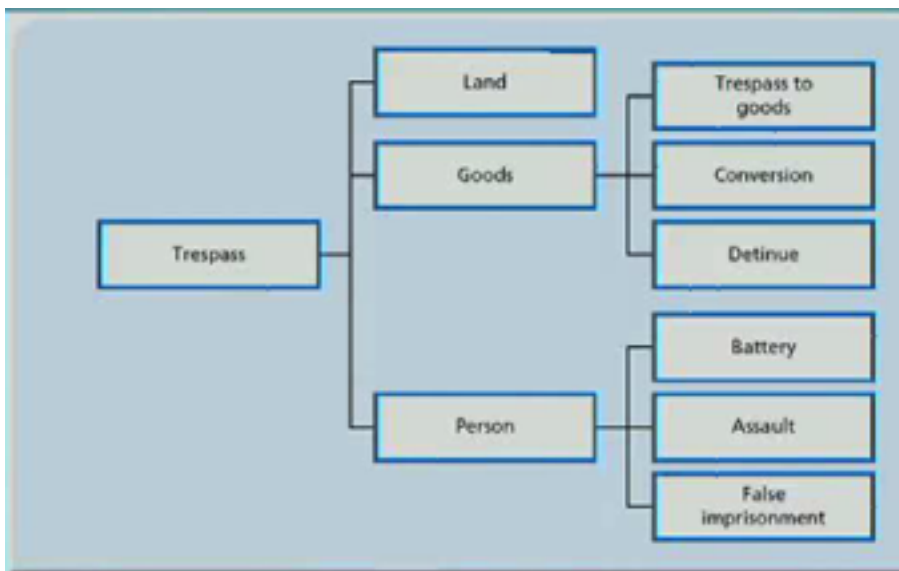
Negligence: allows recovery for damages in respect of injury or loss suffered as result of a duty to take care.

Deceit: provides a remedy for damage suffered as a result of a fraudulent misrepresentation.

Passing off: remedy for damages from leading the public to believe that your goods are manufactured by a competitor who is a leader in the field.

Nuisance: protects person's enjoyment of land without interference.

TORT OF TRESPASS:



Trespass of goods; is the unauthorised trespass of property goods.

Detinue: a person has your goods and they refuse to give them back to you.

Trespass of the person:

Assault: is the threat to hurt someone.

Battery: the action infliction

of force against a person.

False imprisonment: a tort committed when one person unlawfully deprives another of their freedom of movement.

** necessary to prove that the interference was either intentional or negligent. If it was accidental the tort of trespass is not committed

Stanley v Powell (1891): Stanley and Powell were hunting. Powell shot at a bird and missed, the bullet ricocheted off a tree and hit Stanley. Stanley sued Powell in the tort of trespass to the person. The court decided that Powell had not committed trespass because the interference was neither negligent nor intentional; it was accidental

Tort of trespass to Land

A person commits the tort of trespass to land if:

- They interfere with another person's exclusive possession of land; and
- The interference is direct;
- the interference is either intentional or negligent
- there is no consent or lawful justification of the interference

- A person who has not been previously invited isn't necessarily a trespasser.
- There does not have to be physical contact with the land Kelsen v Imperial Tobacco Co (1957)

Tort of trespass to goods (personal property):

3 types of torts relating to interference with goods are:

- 1) trespass to goods
- 2) Conversion: tort committed when one person wrongfully deals with the goods of another in a way that is inconsistent with their ownership or rightful possession
- 3) Detinue: tort committed when one person wrongfully detains the goods of another.

CHECKLIST

- They interfere with another person's possession of goods; and
- the interference is direct; and
- the interference is either intentional or negligent and
- there is no consent or lawful justification for the interference

Penfolds Wines Pty Ltd v Elliott (1946) : taking goods without permission

Tort of trespass to the person:

1) A person commits the tort of **battery if:**

- They cause some sort of physical interference with the body of another person; and
- the act is direct
- the act is either intentional or negligent; and
- there is no consent or lawful justification for the act.