

Chapter 1 : bits of law | Tort | Negligence | Remedies: Injunctions

1 DURU Onyekachi Free Law Lecture Series: No. 7 NOTES ON THE TORT OF NUISANCE by * Onyekachi Wisdom Duru Esq. Nature of Nuisance Nuisance in Common Parlance Nuisance is a word that everybody understands and we can say that nuisance in common parlance means nothing more than inconvenience to people or to another.

History of contract law Roman law contained provisions for torts in the form of delict , which later influenced the civil law jurisdictions in Continental Europe , but a distinctive body of law arose in the common law world traced to English tort law. Medieval period[edit] Torts and crimes at common law originate in the Germanic system of compensatory fines for wrongs OE unriht , with no clear distinction between crimes and other wrongs. After the Norman Conquest , fines were paid only to courts or the king, and quickly became a revenue source. A wrong became known as a tort or trespass, and there arose a division between civil pleas and pleas of the crown. The trespass action was an early civil plea in which damages were paid to the victim; if no payment was made, the defendant was imprisoned. The plea arose in local courts for slander , breach of contract , or interference with land, goods, or persons. It may have arisen either out of the "appeal of felony", or assize of novel disseisin, or replevin. Later, after the Statute of Westminster , in the s, the "trespass on the case" action arose for when the defendant did not direct force. The English Judicature Act passed through abolished the separate actions of trespass and trespass on the case. Liability for common carrier , which arose around , was also emphasized in the medieval period. As transportation improved and carriages became popular in the 18th and 19th centuries , however, collisions and carelessness became more prominent in court records. English influence[edit] The right of victims to receive redress was regarded by later English scholars as one of the rights of Englishmen. However, tort law was viewed[who? Long Island Railroad Co. Modern development[edit] The law of torts for various jurisdictions has developed independently. In the case of the United States, a survey of trial lawyers pointed to several modern developments, including strict liability for products based on *Greenman v. Yuba Power Products*, the limitation of various immunities e. However, there has also been a reaction in terms of tort reform , which in some cases have been struck down as violating state constitutions, and federal preemption of state laws. Even among common law countries, however, significant differences exist. For example, in England legal fees of the winner are paid by the loser the English rule versus the American rule of attorney fees. The Jewish law of rabbinic damages is another example although tort in Israeli law is technically similar to English law as it was enacted by British Mandate of Palestine authorities in and took effect in There is more apparent split between the Commonwealth countries principally England, Canada and Australia and the United States, although Canada may be more influenced by the United States due to its proximity. The influence of the United States on Australia has been limited. This occurs particularly in the United States, where each of the 50 states may have different state laws , but also may occur in other countries with a federal system of states, or internationally. Outline of tort law Torts may be categorized in several ways, with a particularly common division between negligent and intentional torts. Quasi-torts may be used to refer to torts which are similar to but somewhat different from typical torts. Particularly in the United States, "collateral tort" is used to refer to torts in labour law such as intentional infliction of emotional distress "outrage" ; [19] or wrongful dismissal ; these evolving causes of action are debated and overlap with contract law or other legal areas to some degree. The tort of negligence provides a cause of action leading to damages, or to relief, in each case designed to protect legal rights, including those of personal safety, property, and, in some cases, intangible economic interests or noneconomic interests such as the tort of negligent infliction of emotional distress in the United States. Product liability cases, such as those involving warranties, may also be considered negligence actions or, particularly in the United States, may apply regardless of negligence or intention through strict liability. Intentional torts include, among others, certain torts arising from the occupation or use of land. Trespass allows owners to sue for entrances by a person or his structure, such as an overhanging building on their land. Several intentional torts do not involve land. In some cases, the development of tort law has spurred lawmakers to create alternative solutions to disputes. In other cases, legal commentary has led to the development of new causes of action outside the traditional common law torts.

These are loosely grouped into quasi-torts or liability torts. Negligence Negligence is a tort which arises from the breach of the duty of care owed by one person to another from the perspective of a reasonable person. Although credited as appearing in the United States in *Brown v. Donoghue* drank from an opaque bottle containing a decomposed snail and claimed that it had made her ill. She could not sue Mr. Stevenson for damages for breach of contract and instead sued for negligence. The majority determined that the definition of negligence can be divided into four component parts that the plaintiff must prove to establish negligence. The elements in determining the liability for negligence are: The plaintiff suffered damage as a result of that breach The damage was not too remote; there was proximate cause to show the breach caused the damage In certain cases, negligence can be assumed under the doctrine of *res ipsa loquitur* Latin for "the thing itself speaks" ; particularly in the United States, a related concept is negligence per se. However, as per *Esanda Finance Corporation Ltd v. Peat Marwick Hungerfords* , such auditors do NOT provide a duty of care to third parties who rely on their reports. An exception is where the auditor provides the third party with a privity letter, explicitly stating the third party can rely on the report for a specific purpose. In such cases, the privity letter establishes a duty of care. Proximate cause Proximate cause means that you must be able to show that the harm was caused by the tort you are suing for. A common situation where a prior cause becomes an issue is the personal injury car accident, where the person re-injures an old injury. For example, someone who has a bad back is injured in the back in a car accident. Years later he is still in pain. He must prove the pain is caused by the car accident, and not the natural progression of the previous problem with the back. A superseding intervening cause happens shortly after the injury. For example, if after the accident the doctor who works on you commits malpractice and injures you further, the defense can argue that it was not the accident, but the incompetent doctor who caused your injury. Intentional tort Intentional torts are any intentional acts that are reasonably foreseeable to cause harm to an individual, and that do so. Intentional torts have several subcategories: Torts against the person include assault , battery , false imprisonment , intentional infliction of emotional distress , and fraud , although the latter is also an economic tort. Property torts involve any intentional interference with the property rights of the claimant plaintiff. Those commonly recognized include trespass to land, trespass to chattels personal property , and conversion. An intentional tort requires an overt act, some form of intent, and causation. In most cases, transferred intent, which occurs when the defendant intends to injure an individual but actually ends up injuring another individual, will satisfy the intent requirement. Statutory torts[edit] A statutory tort is like any other, in that it imposes duties on private or public parties, however they are created by the legislature, not the courts. State of California in which a judicial common law rule established in *Rowland v. Christian* was amended through a statute. In some cases federal or state statutes may preempt tort actions, which is particularly discussed in terms of the U. Nuisance "Nuisance" is traditionally used to describe an activity which is harmful or annoying to others such as indecent conduct or a rubbish heap. Nuisances either affect private individuals private nuisance or the general public public nuisance. The claimant can sue for most acts that interfere with their use and enjoyment of their land. In English law, whether activity was an illegal nuisance depended upon the area and whether the activity was "for the benefit of the commonwealth", with richer areas subject to a greater expectation of cleanliness and quiet. Fletcher , strict liability was established for a dangerous escape of some hazard, including water, fire, or animals as long as the cause was not remote. Defamation Defamation is tarnishing the reputation of someone; it has two varieties, slander and libel. Slander is spoken defamation and libel is printed or broadcast defamation. The two otherwise share the same features: Defamation does not affect or hinder the voicing of opinions, but does occupy the same fields as rights to free speech in the First Amendment to the Constitution of the United States, or Article 10 of the European Convention of Human Rights. Related to defamation in the U. Abuse of process and malicious prosecution are often classified as dignitary torts as well. Economic tort and Misrepresentation Business torts i. Negligent misrepresentation torts are distinct from contractual cases involving misrepresentation in that there is no privity of contract; these torts are likely to involve pure economic loss which has been less-commonly recoverable in tort. One criterion for determining whether economic loss is recoverable is the "foreseeability" doctrine. Supreme Court adopted the doctrine in *East River S.* In the European Union, articles and of the Treaty on the Functioning of the European Union apply but

allowing private actions to enforce antitrust laws is under discussion. Touche limited the liability of an auditor to known identified beneficiaries of the audit and this rule was widely applied in the United States until the s. White in Massachusetts, this rule spread across the country as a majority rule with the "out-of-pocket damages" rule as a minority rule.

Chapter 2 : Private Nuisance | Oxbridge Notes Australia

Basic summaries and coherent overviews of private nuisance in tort law.

This means that the formatting here may have errors. This text version has had its formatting removed so pay attention to its contents alone rather than its presentation. The version you download will have its original formatting intact and so will be much prettier to look at. Interference must be direct and immediate. *League Against Cruel Sports v Scott* []: C used land as a sanctuary for wild animals and prohibited hunting. The court held that D was liable for trespass. This case established two key points: One issue is airspace: *Anchor Brewhouse Developments v Berkley House* []: C sought an injunction. Scott J cranes constituted a trespass. *Bernstein v Sky Views* []: An owner has rights to the airspace above his land e. Balance between rights of the owner to enjoy land and rights of public to use airspace is best struck by drawing line at any incursion which may "interfere with the ordinary use and enjoyment" of land. To claim in tort, an individual must prove he has suffered more damage than the rest of the community. Actionable interference with land There are four types of non-actionable interference: Light is "a matter only of delight, and not of necessity" and "the law does not give an action for such things of delight. Interference with TV reception: *Hunter v Canary Wharf* []: Diversion of percolating water: D diverted water feeding the spring. D was entitled to do so, even though his purpose was to force C to pay him to stop: *Victoria Park Racing v Taylor* []: D was refused an injunction. No right not to have land overlooked. Three broad types of actionable interference categories listed by Lord Lloyd in *Hunter*: *Smith v Giddy* []: D liable in nuisance. Key distinction is between fixtures damage is actionable and chattels damage is not actionable. Here damage was actionable. C lived in a residential area; D owned an oil factory on a neighbouring industrial development. Need to balance interests of C and D: The test is claimant focused what can C reasonably be expected to put up with? *Barr v Biffa Waste Services* []: Remitted to trial judge. Ordinary use of residential premises is not actionable: *Robinson v Kilvert* []: Nature and extent of the interference must be substantial? *Halsey v Esso Petroleum* []: Last factor is important: Nature of the locality: In C bought a house adjacent to a speedway racetrack, which had been there since the s. C claimed in nuisance for noise from stadium. Relevance of planning permission: *Wheeler v JJ Saunders* []: This was rejected in *Coventry o Coventry v Lawrence*: This is because planning decisions are made in the public interest and public interest cannot trump private rights. Related Tort Law Samples:

Chapter 3 : Nuisance | Oxbridge Notes United States

Nuisance Notes This is a sample of our (approximately) 10 page long Nuisance Notes notes, which we sell as part of the Tort Law Notes collection, a 1st package written at Oxford in that contains (approximately) pages of notes across different documents.

Interference with land 2. Or, actual damage 3. An invasion of a legal right It is actionable per se without actual damage. Some torts require more fault or responsibility to establish a cause of action. Can put into a tort a control mechanism, e. Societal values will play a part in the development of torts. Protecting Interests in Land: Trespass - intentional interference Rylands v Fletcher - strict liability Nuisance - strict liability Negligence - failure to take reasonable care For strict liability, there is no defence of reasonable care - CM3 pg74 Cambridge [CD], [H] Interference Requirement: Trespass Interference with possession plaintiff does not need to be the owner Rylands v Fletcher - Damage Nuisance - Interference with enjoyment Control Mechanisms: Trespass - No loss or damage required, simple interference actionable per se Rylands v Fletcher - Foreseeable damage Nuisance - Foreseeable interference Negligence - Foreseeable loss or damage A search for a new doctrinal approach to negligence has been going on since the s. Courts in the s started saying lets worry about fairness and justice instead. De Richaumont Investment Co. He reaffirms the doctrinal approach that trespass is actionable per se. Civil Aviation Act protects the right of airplanes to use the airspace above properties - you do have an action though if they drop something into your property. Pushed onto the land, not a voluntary entry 2. Foreseeability of risk or harm to plaintiff, and the nature of the harm 2. Judicial control of liability through duty of care 3. If defendant takes reasonable care, there is no breach of duty Rylands v Fletcher: Non natural use of land 4. Strict liability for all consequences of the escape 6. Economic utility justifying strict liability. Barry has a problem with this - cost of preventing escape may be huge where cost of plaintiff protecting property may be low. Australian Position on Rylands v Fletcher: The rule in RvF has its difficulties, qualifications and exceptions - has to regard itself as absorbed by negligence. NZ Position on Rylands v Fletcher: Hamilton v Papakura DC: No suggestion made at all the RvF is not applicable. Even plaintiff admitted there was no negligence - the defendant took reasonable care. Sued under RvF - retained by law lords, although they did say that it occupied a strange corner of the law. Four reasons for retaining RvF: Category of cases where it is just to impose liability even where no fault exists. Need to retain RvF for this reason. Had it for more than years - part of the fabric of the law. Legislation exists that works on the premise that RvF exists. There would be unforeseen consequences if we got rid of it. HL unanimously endorsed RvF in Cambridge. European law CM10 [39] Lord Hoffman also accepts that it operates in a very narrow realm. We will normally have a statute to govern high risk activity e. Lord Goff in Cambridge CM5 made a very similar sort of point. It is more appropriate to impose strict liability in high risk situations, and impose that liability through Parliament. The legislation means that there is no need to develop RvF - keep it a small tort. The 3rd party and Act of God defences undermine the strict liability requirement for RvF. Related Tort Law Samples:

Chapter 4 : Nuisance | Oxbridge Notes the United Kingdom

Differences nuisance: between public Public Nuisance The plaintiff is not required to have an interest in the property. The plaintiff needs to prove that he constitutes the public or is a section of the public. it is enough to be a public.

Last updated Jul 21, 5: What a great word. Just say it again. The last time you heard the word nuisance being said was probably when your parents were complaining about how much of a nuisance it was to load their car up and cart you off to university. That time, and also your tort law lectures earlier this year which you have completely forgotten – uh oh! Causing a nuisance is a tort in English law, and nuisance can be both private and public. This was later overruled in *Hunter v Canary Wharf*. The creator of the nuisance is liable for private nuisance. Generally, therefore, your landlord is not liable for the racket you make every Saturday night. However, an exception may be made if your water pipes are ridiculously loud and the landlord knew about this problem before you moved in. For there to be a claim, the claimant must be able to show that damaged was caused. This can be physical damage, discomfort or inconvenience. Interference is usually a result of continuous events and can amount to physical invasion, noise or smells. This was discussed in *Hunter v Canary Wharf*, where it was argued that a TV signal being blocked by the construction of a skyscraper was a nuisance. Nuisance must also be unreasonable, but this varies case by case. For instance, locality must be taken into account, as must the time of day. Noisy road works taking place in the middle of Oxford Street is a lot different to the same road works taking place in a rural village. Similarly, time must be considered; road works are less unreasonable at midday than they are at 11pm. Nuisance is one of the exceptions to the rule that malice is not relevant in tort law. In *Christie v Davey*, it was ruled that the defendant was deliberately creating a noise in order to frustrate the claimants. Public nuisance Public nuisance is a tort and a crime. Picketing in the road, as under *Thomas v NUM*, is a public nuisance, as is disrupting traffic by queueing in the road. There is also the year prescription rule, whereby if a private nuisance continues for 20 years, it becomes legal so long as the defendant can show it has been continuous and the claimant has been aware. Another defence is obviously related to statutory authority. If activity has been authorised by legislation, this defends it from causing a public or private nuisance. Three remedies are possible when it comes to nuisance: An injunction is an order to stop the nuisance. Damages is obviously money paid by the defendant to the claimant and abatement allows the claimant to directly end the nuisance, such as trimming back a hedge. You may find yourself in hot water because of it.

Chapter 5 : Tort - Law Of Nuisance | LAW - Torts A | Thinkswap

Nuisance and Rylands v Fletcher Lecture A good preliminary definition for the tort of private nuisance can be found in *Miller v Jackson* [] QB Denning MR at said: "The very essence of private nuisance [] is the unreasonable use of man of his land to the detriment of his neighbour."

What is Nuisance and what are Kinds of Nuisance? Blackstone describes Nuisance as something that "worketh hurt, inconvenience or damage. Nuisance is an activity or state of affairs that interferes with the use of enjoyment of land or rights over land or with the health, safety, or comfort of the public at large. In simple words, Nuisance is an injury to the right of a person in possession of property to undisturbed enjoyment of it and results from an improper use of by another person of his own property

2 Kinds of Nuisance: Public Nuisance is a crime. It says that A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. Public Nuisance can only be the subject of one action, otherwise, a party might be ruined by a million suits. Public nuisance does not create a civil cause of action for any person. In order that an individual may have a private right of action in respect of a public nuisance, the following must be proved - 1 He must show a particular injury to himself beyond that which is suffered by the rest of public. It was held that the ringing was a public nuisance and the plaintiff was held entitled to an injunction. Private nuisance in contrast to the public nuisance is an act affecting some particular individual or individuals as distinguished from the public at large. It cannot be made the subject of an indictment, but maybe the ground of civil action for damages or an Injunction or both.

Essentials of Private Nuisance: Damage actual or presumed is an essential element for an action on nuisance. Kinds of Private Nuisance: If a nuisance is created on a highway by a private individual, liability would arise if any person is injured as a result of what he has been done irrespective of negligence. If anything is placed on a highway which is likely to cause an accident being an obstruction to those who are using the highway on their lawful occasion such as vehicle unlighted and unguarded standing there at night and an accident results, there is an actionable nuisance. Relevant Case law *Ware Vs.* At night time no near light was shown. A motorcyclist ran into the trailer. It was held that it was an obstruction on the highway and as such as a public nuisance.

Chapter 6 : Private Nuisance | Digestible Notes

Attractive Nuisance Doctrine - It states that a landowner may be held liable for injuries to children trespassing on the land if the injury is caused by a hazardous object or condition on the land that is likely to attract children who are unable to appreciate the risk posed by the object or condition.

Allen v Gulf Oil [] Facts: The government passed a statute setting up an oil refinery Held: In this case, the claimant was complaining about building work going on next door Held: However, the building works must be reasonable, so if there is too much dust and noise he may have a claim in nuisance Baxter v Camden LBC [] Facts: A tenant of flats complained of noise from the upstairs flat. The issue was that the council had renovated the flats with wooden flooring which made the noise from upstairs louder than it should be. The tenant wanted the landlord to do something about it. The court said what they are really complaining about is that there is not enough sound insulation "so in that case, the downstairs tenants get what they pay for Bone v Searle [] Facts: A pig farm was making an awful smell. The claimant sued for nuisance Held: Pickles offered to sell land to the local council, but they refused. The court held he was not allowed to do this because the defendant had acted with malice. However, note, most commentators do not agree with the outcome of this case Cambridge Water Co v Eastern Counties Leather [] Facts: Eastern Counties a company were using chemicals that seeped through the floor of their building into the water supply of Cambridge Waters - so the drinking water was being contaminated. The court held that the chemicals seeping through the floor was not foreseeable, so it certainly wasn't foreseeable that the chemicals would have made its way into the water supply. Therefore, they were not liable for nuisance. Christie v Davey [] Facts: In this case, there were 2 adjoining houses. In one house, two women gave music lessons to pupils as part of their job. This led to the guy next door writing to them nasty letters complaining about the noise. He then got annoyed and started to bang on the wall whenever the women were doing their lessons. The teachers therefore sued the man for nuisance. The court found in favour of the women i. A man owned a farm next to an RAF base which made a lot of noise Held: The court said they won't just grant an injunction and shut down the RAF as they are doing an important job. In this case, there was a disused naval dockyard and the local council wanted to regenerate this area and turn it into a commercial dockyard. This caused a lot more noise and traffic in the area. The court held that it was not a nuisance because this is now the character of the neighbourhood - the neighbours cannot simply hold back changes because they do not like it! Goldman v Hargrave [] Facts: The court held the national trust could have reasonably have stopped it, so they are liable for nuisance Halsey v Esso [] Facts: This is an interesting case. Halsey had a house nearby and was complaining about the noise of trucks driving by Held: In other words, despite the requirement that nuisance must emanate from land belonging to that person, there was nuisance found here Heath v Mayor of Brighton Facts: A church was next to the local electricity generator and the church was complaining about the noise. The church was being unusually sensitive - it is their unusual need for silence that is causing the problem. Emmett owned a big plot of land and he had plans to build on it, then sell it off and make lots of money. The man next door to him wished to start breeding silver foxes and sell their fur. Emmett did not like that as he thought that would devalue his land. The court said that you can shoot on your land all you like, but he was only doing so in order to make a noise and ruin the farm next door - therefore, the shooting was seen as malicious and a nuisance Hunter v Canary Wharf [] Facts: When Canary Wharf was being built people were complaining it interfered with their TV reception Held: The court said that you cannot complain over the fact that someone has built something on their land - so it was not a nuisance Lawrence v Fen Tigers Held: If you move next to a stadium you have to expect a reasonable amount of noise. There was a build up of gas which caused a gas explosion Held: This is quite a creative judgment but it does not really reflect what is going on as the owners did not foresee the explosion nor did they know there was a build-up of gas. It is likely that if this case were decided today it would not fall within the remit of private nuisance Network Rail v Morris Facts: Morris complained that electromagnetics from train-tracks, close to his house, were interfering with his recording studio equipment for his business. Network Rail argued, however, that the interference was not foreseeable Held: The court agreed with Network

Rail i. The defendant, who was being sued, had the basement of a building. The work he was doing needed the basement to maintain really high temperatures, which caused the flat above to get quite warm. The flat above was being used to make paper and the heat, from Held: There was a monastery with a big chunk of land, which included a drainage ditch. Trespassers the council came onto the land and interfered with the drainage ditch to modernise it. They interfered in such a way that it was blocked. When it subsequently rained, the rain did not drain properly and flooded the neighbouring land. The claimant bought a house in the industrial part of a town so you have to expect a certain amount of industrial processes occurring i. Nevertheless, this does not mean the factories can do what they want. The claimant here was complaining that because of the factories his plants were dying Held: *Walter v Selfe* Held: A farm got planning permission to be extended, but the smell was very bad and the neighbour sued. The court held that living next to a farm you have to expect some smell but this goes beyond reasonable "so despite having planning permission this was still a nuisance. The court took the stance that "the simple grant of planning permission cannot be taken, ipso facto, to license what would otherwise be a nuisance". This case certainly appears to work contrary to the case of *Gillingham Borough Council v Medway Dock* [] About Us Digestible Notes was created with a simple objective:

Law Common law Tort law Tort Trespass Nuisance Public nuisance Sturges v Bridgman Robinson v Kilvert Hunter v Canary Wharf Ltd Canary Wharf This is a Partial Set of Study Notes Partial Study Notes typically cover only single topics of a unit of study or do not cover multiple topics in significant detail.

N is an unlawful interference with: However it depends on variety of consideration: Once P has suffered a substantial degree of interference is enough. D cannot say that his activity benefits the community or he has taken care to avoid damage to P. His conduct is irrelevant. Held R is liable in negligence and nuisance but FC held no liability at all and confirmed by Privy Council. Khan Mohamed v Katz Brothers Act of driving piles in river boundary to prevent erosion but which obstruct use of water held nuisance but P can claim damage Tovo Textiles Ind. Held D acted unreasonably and liable. Interference with drainage system and cause flood on neighboring land may also be Private Nuisance. As a result of developing works carried out by D caused the land sink. D who caused structural damage to adjacement property were held liable to the owners of such property for nuisance. Whether the D conduct is according to the ordinary usages of mankind living in a particular society. Here the factors considered is the balancing between interest of D and the competing rights of neighbor , a process of compromise and rule of give and take. Svarikat Perniagaan Selanqor Sdn Bhd. V Fahro Rozi Mohd Court will take into account all circumstances of particular case to determine whether or not defendants act is unreasonable to constitute nuisance. Lord Westbury distinguishes the following: No matter where the P is. Court allows the claim. Ahmad Rice Mill Ltd. Public is required to accept this. But if serious damage is caused than the issue of tolerance must be give way. Bellew v Cement Co. Refused to grant an injunction because there was no proof that Pie noise affected the congregation except the incumbent he was not prevented for preaching or conducting his service. Robinson v Kilvert D began manufacture paper boxes in the cellar of a house. His business required hot air and dry air and he heated the cellar accordingly occupied the premises above and stored brown paper there. The heat from cellar dried and diminished the value of brown paper. D is not liable. Stone v Bolton P while stand near highway cricket ball hit him from the adjacement cricket ground. Held that an isolated act of hitting a cricket ball into the road cannot amount to nuisance. Federal Court dismiss the claim for nuisance or negligence. PC held no proof that D brought fire to his land. This is sensitive to the fox. Held intention of D is relevant and held liable.

Chapter 8 : What is Nuisance and what are Kinds of Nuisance? - SRD Law Notes

Law Notes > Oxford Law Notes > Tort Law Notes Nuisance Notes This is a sample of our (approximately) 14 page long Nuisance notes, which we sell as part of the Tort Law Notes collection, a 1st package written at Oxford in that contains (approximately) pages of notes across different documents.

Absence of Explanation “ There is nothing to prove The impossibility of Happening “ The event would not have happened on its own in given circumstances. Under these conditions, the plaintiff could not provide direct evidence as to whether the person responsible for the barrel had breached his duty of care. The court held that the fact of the barrel falling is prima facie evidence of negligence, and the plaintiff who was injured by it is not bound to show that it could not fall without negligence. *Municipal Corporation of Delhi v. The court held that doctrine res ipsa loquitur was rightly applied as in the circumstances of the case the mere fact that there was a fall of the clock tower, which was exclusively under the ownership and control of the defendant, would justify raising an inference of negligence so as to establish a prima facie case against the defendant.* The youth in tender years doctrine has been not defined leading to certain states defining fixed age bracket for it and others comparing child in question to what a child of same age would have done in similar circumstances. The collision took place in broad daylight, on a clear pavement, with no pedestrians, autos, or bicyclists present. Roadway was also straight and flat. Plaintiff alleged that parents negligently failed to instruct their son on proper hike usage and supervise him riding because they should have known that his youth would prevent him from considering the safety of those around him. The court held that the child was incapable of identifying negligence and hence the defendants were not liable. The doctrine has been applied to hold landowners liable for injuries caused by abandoned cars, piles of lumber or sand, trampolines, and swimming pools. It is being used in several provinces of the United States. The place where the condition exists is one on which the possessor knows that children are likely to trespass The condition is one of which the possessor knows will involve an unreasonable risk serious bodily harm to such children, The children, because of their youth, cannot realize the risk involved in inter-meddling with it The utility to the possessor of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children involved The possessor fails to exercise reasonable care to eliminate the danger *Bennett v. His mother also drowned trying to save him. The father sued the neighbours in negligence. It is usually applied in fiduciary relationships such as employer and employee or principal and agent. Vicarious liability is applied only if the person causing the tort is acting within the regular course of his employment. Some of them are discussed below: Plaintiff was awarded a small sum of five guineas in damages. The appellate court reduced damages considerably and held that the Due Process of the Constitution limits the amount recoverable in punitive damages when the damages constitute grossly excessive punishment for a tortfeasor. It was held that the plaintiff impliedly took the risk of such injury the danger being inherent in the sport, and therefore, the defendants were held not liable. Suddenly one of the bolts fixing the right front wheel to the axle gave way toppling the jeep. The two strangers were thrown out and sustained injuries, and one of them died as a consequence of the same. It was held that neither the driver nor his master could be made liable, first, because it was a case of a sheer accident and, secondly, the strangers had voluntarily got into the jeep and as such, the principle of volenti non fit injuria was applicable to this case. The use of force is justified only when there is an imminent threat and is absolutely necessary to repel the invasion. The force applied should be in preparation to threat. Defendant did not post a warning. Plaintiff chased an escaped bird into the garden and set off the trap, suffering serious damage to his knee. The court held that one who sets traps without posting a notice is liable for any damages caused. The plaintiff was not awarded damages as there was a warning indicating of the possible threat. A state is immune from torts committed by itself or its agents while performing sovereign functions. However, if the state was not discharging its sovereign function but discharging obligations such as welfare obligations then it will be liable for its actions. State immunity is confined to acts of state. The defendant was not held liable as it had a defence of statutory authority. It gives the State or an individual a privilege to take or use the property of another. It is of two types, private necessity*

and public necessity. *Lake Erie Transportation Co.* An unusually violent storm developed. Lake Erie was unable to leave the dock safely and deckhands for the steamship instead tied the Reynolds to the dock, continually changing ropes as they began to wear and break. A sudden fierce wind threw the ship against the dock significantly damaging the dock. The plaintiff, Surocco, was attempting to remove goods from his home while the fire raged nearby. Surocco sued the mayor claiming he could have recovered more of his possessions had his house not been blown up. The court allowed the defence of public necessity as any delay in blowing up the house to allowing plaintiff to remove more of his possessions would have made blowing up the house too late. It has very limited use and is not readily accepted by the courts. Later, believing her husband to be dead, she married another man. Appellant was then charged with the offence of bigamy. It was held that defendant is liable and plea of mistake could only be accepted if the plaintiff has wrongfully induced the mistake.

Two kinds of nuisance in tort law: Public and Private. Private nuisance protects the holder of interest in land from interference with the use and enjoyment of that interest.

The term nuisance first emerged in the thirteenth century and referred to actions that took place on the land of the defendant, but interfered with the rights of the plaintiff. A writ of nuisance could be obtained to take action against the defendant. This action gave rise to the modern day private nuisance, and eventually public nuisance, which was any crime that was committed against the crown. At this point in time the term was very widely used and vague in its meaning; any type of wrongdoing was often termed nuisance. In modern tort law there are different types of nuisances: A private nuisance effects one individuals enjoyment of his land, while a public nuisance effects a larger amount of citizens, or the public in general. Absolute nuisances are nuisances for which the defendant is strictly liable. A land owner is entitled to a certain level of comfort that is free from interference while on his private property. Private nuisance can come in the form of physical damage to the property or the disturbance of comfort. Tort law distinguishes a public nuisance from a private one based on the amount of people that are effected; a private nuisance may only effect a small amount of people. A private land owner can bring action against another for private nuisance, as long as he can prove the defendant interfered with his ability to enjoy the land. Substantial and Unreasonable Interference: A complaint by an overly sensitive plaintiff will not be considered a nuisance on the part of the defendant, because the offense must be something that would disturb the average, reasonable person. Because nuisance is a tort that is based on the reasonable person standard, it is very dependent on the individual circumstances of a situation. A nuisance per se is an act that is always considered to cause a nuisance, while a nuisance in fact depends entirely on the situation. If it is found that a defendant created a nuisance, he will be responsible for providing relief. When the court issues an injunction, it requires the plaintiff to either start or stop doing a specific action. In obtaining injunctive relief, the plaintiff may also request a temporary restraining order which will prohibit the defendant from engaging in the alleged nuisance until the courts have issue their ruling. The court may then issue a permanent injunction; if the defendant violates this injunction he will be subject to fines and possible imprisonment. The courts consider several factors when determining whether the defendant has committed a nuisance and whether the plaintiff is entitled to a remedy. The courts will weigh the interests of both parties and consider whether the defendant has made an attempts to minimize the alleged nuisance, or if the defendant has the means to do so. The situation in which the tort was committed is taken into account, and may be dependent on characteristics of the area. Any intentional pollution or interference with real property rights or a trespass into private property is actionable. In an intentional tort, the actor is aware that the consequences are very likely to occur. When plaintiffs are effected by a private or public nuisance, they have the right to seek relief for damages from the defendant. Sometimes monetary damages are awarded in nuisance cases, but more often, it is equitable damages. An injunction requires the defendant to permanently refrain from the nuisance activity, or limit it to a certain time of day or amount of hours. Sometimes money damages are offered to the plaintiff and the defendant is still permitted to engage in the activity. A nuisance resulting from negligence refers to an interference with the property rights of a land owner by a defendant who was not exercising proper care. For example, hosting an excessively loud party during a time when the defendant should reasonably believe that the plaintiff would be sleeping is considered a nuisance. The defendant did not take proper care to ensure that his acts would not interfere with the comforts of others. If the courts determine that the nuisance that exists is one involving hazardous activity towards others, then the defendant will be subject to strict liability. If a defendant is storing hazardous chemicals on his property and, despite the utmost care, these chemicals somehow interfere with the plaintiff, he is liable for the damages caused, whether it be physical damage or interference to enjoyment.