

### Chapter 1 : [PDF] Download Sourcebook On Tort Law 2 E " Free eBooks PDF

*Sourcebook on Tort Law 2/e (Sourcebook Series) [Graham Stephenson] on calendrierdelascience.com \*FREE\* shipping on qualifying offers. The purpose of this book is to provide a clear guide to tort law, examining the main principles and areas of the subject.*

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 : Sourcebook on Tort Law 2/e : Graham Stephenson :

*SOURCEBOOK ON TORTS Second Edition Graham Stephenson, LL.M., Solicitor Principal Lecturer in Law University of Central Lancashire Cavendish Publishing.*

Intentional torts[ edit ] Intentional tort â€” category of torts that describes a civil wrong resulting from an intentional act on the part of the tortfeasor alleged wrongdoer. Assault tort â€” intentionally and voluntarily causing the reasonable apprehension of an immediate harmful or offensive contact. Battery tort â€” Bringing about an unconsentful harmful or offensive contact with a person or to something closely associated with that person such as an item of clothing. It differs from assault in that it requires actual contact. False imprisonment â€” A person is intentionally confined without legal authority. Intentional infliction of emotional distress â€” Intentional conduct that results in extreme emotional distress. Consent â€” A possible excuse against civil or criminal liability under the defense that they should not be held liable as the actions were not taken without their permission. Necessity tort â€” The defense of necessity gives the state or individual property of another; typically invoked only against the intentional torts of Trespass to chattels , trespass to land , or conversion law. It is expressed in Latin as *necessitas inducit privilegium quod jura privata*, "Necessity induces a privilege because of a private right. Differs from necessity in that it is usually the response to an immediate danger. Property torts[ edit ] Trespass to land â€” Committed when an individual intentionally enters the land of another without lawful excuse. It is actionable per se, and thus the party whose land was entered may sue even if no actual harm is done. Detinue â€” An action for the wrongful detention of goods, initiated by an individual who claims to have a greater right to their immediate possession than the current possessor or holder. Replevin â€” Signifies the recovery by a person of goods unlawfully taken out of his or her possession by a legal process. Trover â€” A form of lawsuit for recovery of damages for wrongful taking of personal property. Dignitary torts[ edit ] Dignitary torts â€” a specific category of intentional torts where the cause of action is being subjected to certain kinds of indignities. Defamation â€” The communication of a statement that makes a false claim, expressively stated or implied to be factual, that may harm the reputation of an entity. Invasion of privacy â€” The unlawful intrusion into the personal life of another person without just cause. Breach of confidence â€” Protects private information conveyed in confidence; typically requires that the information be of a confidential nature, communicated in confidence, and was disclosed to the detriment of the claimant. Abuse of process â€” A malicious and deliberate misuse or perversion of regularly issued court process not justified by the underlying legal action. Malicious prosecution â€” Similar to abuse of process , but includes intent, pursuing without probable cause, and dismissal in favor of the victim. In some jurisdictions, malicious prosecution is reserved for the wrongful initiation of criminal proceedings, while malicious use of process refers to the wrongful initiation of civil proceedings. Alienation of affections â€” Brought by a deserted spouse against a third party whom the spouse believes to be responsible for the failure of the marriage. Economic torts[ edit ] Economic torts â€” torts that provide the common law rules on liability which arise out of business transactions such as interference with economic or business relationships and are likely to involve pure economic loss. Also called business torts. Fraud â€” Making of a false representation by one party with an intention to induce another party into an act of commission or omission owing to which the later party suffers a damage. The first Party may or may not be the benefited by the damage caused to second party. Also, the first party need not be in collusion with someone who actually benefited. Conspiracy civil â€” An agreement between two or more parties to deprive a third party of legal rights or deceive a third party to obtain an illegal objective. Restraint of trade â€” Contractual obligations not to trade are illegal agreements on public policy grounds unless they are reasonable in the interests concerning both parties and the public at large; this mainly affects post-termination restrictive covenants in employment contracts. Nuisance[ edit ] Nuisance â€” Denial of quiet enjoyment to owners of real property. The test to determine whether an interference is reasonable is whether the gravity of the harm is outweighed by the social benefit of the nuisance. Negligence[ edit ] Negligence â€” failure to exercise the care that a reasonably prudent person would exercise in like circumstances Duty of care â€” Obligation imposed on an individual requiring that they

adhere to a reasonable standard of care while performing acts that could possibly harm others. Breach of duty  
â€” There can be no liability in negligence unless the claimant established that he or she was owed a duty of care by the defendant and that there has been a breach of that duty. Factual causation â€” Whether or not a given injury would have occurred without a breach of duty. Legal causation or remoteness â€” The idea that liability may be so remote from the defendant that the negligence was not foreseeable or preventable by that party. Damages â€” Places a monetary value on the harm done, following the principle of *restitutio in integrum*, "restoration to the original condition". Negligent Infliction of Emotional Distress - The idea that one has a legal duty to use reasonable care to avoid causing emotional distress to another individual. Duty to visitors[ edit ] Attractive nuisance â€” A landowner may be liable for injuries to children trespassing on the land if the injury is caused by a hazardous object or condition on the land is likely to attract children. The duty to visitors in tort law is dependent on how the party involved not owning the land has entered the land. Trespasser â€” A person who is trespassing on a property without the permission on the owner. Conversely, the status of a visitor as a trespasser grants certain rights to the visitor if they are injured due to the negligence of the property owner. Licensee â€” A person who is on the property of another, despite the fact that the property is not open to the general public; historically, emergency workers have been considered licensees. Invitee â€” A person who is invited to the land by the possessor of the land, either as a guest or to conduct business. Strict liability torts[ edit ] Further information: Strict liability Product liability â€” The area of law in which products manufacturers, distributors and sellers are held responsible for the injuries caused by their products. Generally, a product liability claim is based on either a design defect, a manufacturing defect, or a failure to warn. This topic is closely associated with negligence, breach of warranty and consumer protection. Ultrahazardous activity â€” An activity so dangerous that a person engaged in such an activity can be held strictly liable for injuries caused to another person, regardless of whether or not reasonable precautions were taken to prevent others from being injured. An example of this is a pedestrian crossing a road carelessly and was hit by a driver driving carelessly. Last clear chance â€” Doctrine under which a plaintiff can recover against comparative and contributory negligence defenses if they can demonstrate that the defendant had the last opportunity to avoid the accident. Eggshell skull â€” Doctrine under which an individual is held liable for all consequences resulting from his actions even if the victim suffers an unusually high levels of damage i. The term comes an example argument that if a person had a skull as delicate as the shell of an egg, and an assailant was unaware of that condition hit that person on the head and it subsequently broke, the responsible party should be liable for all damages resulting from the content. Vicarious liability â€” A form of strict secondary liability arising from *respondeat superior*. The responsibility of the superior for the acts of their subordinates, under which, they are responsible for negligent acts committed by their employees during the course of their employment. That is, a boxer consents to being hit, and the injuries related to boxing are thus not actionable although if his opponent were to hit him with an iron bar, that would be actionable as he did not know such things would occur. In The United States, this legal doctrine is more commonly known as equitability of unclean hands, and it prevents a criminal from bringing a claim against another criminal.

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