



**FACULTY OF JURIDICAL SCIENCES**

**COURSE: B.A.LL.B. I st Semester**

**SUBJECT: LAW OF TORTS**

**SUBJECT CODE: BAL 106**

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## LECTURE 16

# TOPIC: CLASSIFICATION OF TORTS- TRESPASS, NUISANCE, DEFAMATION, LIABILITY FOR MIS- STATEMENTS, NEGLIGENCE.

### Liability for Mis-Statement

A tort can be defined as a wrongful act or omission which gives rise to a civil action in a court of law against the party that committed the wrongful act. The tort of negligent misstatement is defined as an “inaccurate statement made honestly but carelessly usually in the form of advice given by a party with special skill/knowledge to a party that doesn’t possess this skill or knowledge”

In today’s society we can observe that there are various forms of tort, some of which have roots back in medieval times and have been recognized by courts since. In order to prove that negligent misstatement occurred, we have to prove that the elements of negligence were breached as most torts have common elements which include;

**Element of Fault:** There has to be proof presented showing that one party committed the tortuous act either intentionally or negligently

**Element of Actual Damage:** the plaintiff would have the onus to prove that they suffered actual damage/injury/loss as a result of the tortuous act by the tortfeasor.

**Element of Obtaining Remedy:** as the law of Torts is concerned with compensating the victim rather than punishing the wrongdoer, the rule applied by the Courts is to put the plaintiff/victim into a position they enjoyed before the wrongful act took place.

For example; if a person was wrongfully imprisoned, the courts would seek to put the victim back into the position they previously enjoyed before the imprisonment took place possibly through monetary compensation.

For the Court to decide whether a tortious act took place, it would have to take into account additional factors that make the wrongdoer responsible for the outcome of the tortious act. Such factors include;

### **Duty of Care**

A person/party must initially owe a legal duty of care to the other person/party in order to be held liable for negligence.

“Duty of care can be defined as a duty to take reasonable care/skill that a normal reasonable person would” (Latimer Paul; Australian Law Handbook (2009) Chapter 4; Torts)

The onus is therefore on the plaintiff to show that a duty of care was owed to him/her by the defendant. The plaintiff will have to consider the three state test of proving that the duty of care did exist between the plaintiff and defendant which considers;

- ✓ FORESEEABILITY; was it reasonably foreseeable to the alleged wrongdoer that his/her conduct/omission would be likely to cause harm?
- ✓ PROXIMITY TEST; was there a physical? Factual or circumstantial link between the parties involved.
- ✓ VULNERABILITY; is it possible that the plaintiff was vulnerable to harm as a result of the defendant’s conduct/course of action?

These pre-requisites need to be addressed in order to prove that the element of duty of care was present when pursuing a case in negligence or negligent misstatement.

With reference to duty of care, we may observe in

## **COLE V SOUTH TWEED RUGBY LEAGUE FOOTBALL CLUB LTD [2004] HCA 29**

FACTS; Mrs Cole left the club on foot at 5.30pm with a blood alcohol limit of 0.238 and was hit by a car

RULING; the court held that the club management had fulfilled its duty of care and could not have legally prevented her from leaving.

## **HACKSHAW V SHAW [1984] HCA 84**

FACTS; A farmer shot at a car of a trespasser stealing petrol from the farm following a series of robberies at his farm. The shooting occurred in darkness when the thief was standing beside his car and his girlfriend was crouched in the front seat of the car and was eventually wounded.

RULING; The Court held that the use of firearms was excessive force and the risk of killing/serious injury was out of proportion to the wrongful acts of the plaintiff.

The second Factor to be considered by the court would be;

### **STANDARD OF CARE**

Once we have ascertained that a duty of care was present between the parties, we need to address if the standard care was breached by the wrongdoer by observing his/her conduct towards the plaintiff.

“An appropriate standard of care can be defined as the standard of care that an ordinary, reasonable and prudent person would follow” (Willesee Bill, Law management 252 Curtin Handbook 2010)

As there are various cases with varying degrees of the amount of care needed to be present, basic principles are considered such as;

- the risks inherent in the conduct
- the severity of the likely outcome should any of the risks materialise

- if the defendant's conduct can be gauged with existing standards
- And whether the defendant has kept up with changes in professional standards.

The third element to consider is

## **DAMAGES CAUSED**

As the area of Torts is concerned with compensating the victim, it is paramount that the Court ascertains that the defendant's actions led to the plaintiff suffering loss/injury.

Once we have ascertained that there was a duty of care present between the parties and that duty was breached, the Court will look at the resulting loss/injury and its connection to the standard of care breached by the defendant. This is also referred to as "the remoteness test".

With reference to the Remoteness Test, we may observe in;

### **LINDEMAN LTD V COLVIN [1946] HCA 35**

FACTS; A Person was hospitalized following a work-related injury to his head. Due to a pre-existing condition "brittle bones", he fractured his leg while in hospital adding to his stay in hospital and medical expenses.

RULING; The Court held that the employer was not liable for the injuries received in hospital as the broken leg was a separate injury with separate cause independent from the initial injury to the head.

### **Exercise:**

1. The defendants by digging a coalpit in the land intercepted the water which affected the plaintiff's well at a distance of about one mile. The plaintiff brought a suit for a damages against the defendants. Which one of the following maxims is applicable in the aforesaid case
  - a) Damnum sine injuria

- b) Injuri sine damnum
- c) Res ipsa loquitur
- d) Volenti no fit injuria

2. Which of the following defences in an action for tort of nuisance are ineffectuated defences?

- a) Public good
- b) Statutory authority
- c) Nuisance due to acts of others
- d) Reasonable care

Select the correct answer using the code given below:

- a) 1 and 2
- b) 2 and 3
- c) 3 only
- d) 2 and 4

3. Assertion (A): Contributory negligence in an accident is a defence to a charge in criminal law.

Reason (R): The fact that the deceased was also negligent and contributed to the accident does not afford a defence to the driver.

- a) Both A and R are individually true and R is the correct explanation of A.
- b) Both A and R are individually true and R is NOT the correct explanation of A.
- c) A is true but R is false
- d) A is false but R is true

4. Ms. Usha wants to file a suit against Bhagyalaxmi Theatre praying for a permanent injunction (stay order) restraining the theatre from running the film named "Jai Santoshi Maa". Her contention is that the film hurt her religious feelings and sentiments as Goddess Saraswati, Laxmi and Parvati were depicted as jealous and were ridiculed.

- (a) She cannot file a suit because injury to religious feelings is not a legally recognized right.
- (b) She cannot file a suit because the Theatre has a fundamental right to speech and expression.

(c) She can file a suit as injury to religious feelings has been legally recognized as a right (*injuria sine damnum*).

(d) It is a case of complete judicial discretion.