

Law of Torts Exam Notes

Accident Compensation Scheme (ACC)

- It started in 1974 – Woodhouse Report – this was mainly to discuss accidents suffered in employment – it was narrow – but now ACC covers all accidents
- The difficulties in suing and recovering you face after injury include:
 - Litigation is expensive – access to justice issues
 - Practical problem that your employer will not welcome you back to work
 - Litigation takes a long time – without a remedy for a long time
 - Litigation risk – you may not get a compensation in the end – you have to pay your costs and their costs
 - Mediation is not legally binding – and it's not compulsory
 - Efficiency reasons – reduces amount of cases that come in
 - Insolvent defendants – the defendant doesn't have any money
 - Victim has the burden of proof to show fault – and it is very stressful – may not be able to pay medical bills
 - There was no evidence to show that this would mean employers engaged in risky behaviour
 - Damages awarded maybe disproportionate to the severity of the injury
- The reasons for having ACC are:
 - Community responsibility for injuries caused by accident – everyone contributes
 - Comprehensive entitlement – without proof of fault – you don't have to worry about burden of proof
 - Complete rehabilitation – get you back to work
 - Realistic compensation – for the whole period of incapacity and recognition for permanent bodily impairment
 - Administrative efficiency
- **Principle head** – weekly compensation – up to 80% of pre-accident weekly earnings – if it happens during employment the employer pays the 1st week
- **Lump sum compensation** for permanent impairment – no lump sum for mental injury
- **Rehabilitation** and contribution to medical expenses – all paid by ACC
- **Death benefits** – funeral & survivor's grants; weekly compensation for dependent spouse (60% of deceased's weekly compensation) & children (20% of deceased's weekly compensation) – only for a period of time
- If you are self-employed you still pay levies for ACC
- **S20 of ACC 2001** – personal injury by accident, treatment injury, work-related injury then you have cover under ACC
- **S26** definition of personal injury means:
 - Death of person
 - Physical injury
 - Mental injury suffered because of physical injury
 - Damages to replacement of any body parts by prosthetics
- **S26 (2)** – personal injury does not include personal injury caused wholly or substantially by a gradual process, disease, or infection

- **S26 (3)** – heart attacks and strokes are excluded unless they are a treatment injury or work-related (where you are doing something abnormal at work)
- **S27** – mental injury is clinically significant behavioral, cognitive, or psychological dysfunction – it needs to be diagnosed

ACC v Ambros (2007)

- ACC is for distributive justice – it is a social contract
- The purpose of the ACC is to provide public good – minimizing incidents of injury and reducing economic, social and personal costs

ACC Act – Accident Definition

- Accident is defined as –
 - Specific event - not gradual
 - Application of force or twisting or evasion of force
 - Inhalation/ingestion
 - Burn – cannot cover exposure to the elements (such as sun burn)
 - Absorption of chemical – within a defined period of time
 - Just because you have personal injury does not make it an accident – you need both
- Work-related injury
 - A single event as opposed to gradual process
 - That is sudden or a direct outcome of a sudden event or series of events
 - The person experiences, sees or hears the event directly – is in close proximity and are either involved or witness to it
 - The event can be reasonably expected to cause mental injury
- It is not experiencing event through secondary source or work stress
- **S30** – some diseases are covered if they are work-related – designed to cover industrial cases – such as asbestos cases – inhaling from work – you have to show it was caused due to work – some diseases are automatically covered
- All those automatically covered are shown in schedule 2
- If you get injured travelling to or from work and transport is paid by employer, you are covered by ACC

Pure Mental Injury

Queenstown Lakes District v Palmer (1999)

- They are doing a shot-over jet – it capsizes, and Mrs. Palmer drowns – Mr Palmer watches all this and is traumatized – post traumatic disorder – he suffered no physical injury
- The only proceedings barred are those in relation to the person covered by the scheme – he did not have any personal injury which caused the mental injury – so he is not barred by the act to bring proceedings
- Should not remove the access to courts lightly, purpose is to deny double recovery not to deny cover at all – he was entitled to bring damages of \$150,000
- **Pure mental injury is not covered by ACC** – Palmer is seeking mental injury caused to him by the negligence of the defendants

Treatment Injury

Allenby v H (2012)

- Women went to sterilization – doctor was negligent, and she gets pregnant – she suffers a lot of loss of having a child
- The court holds she in fact did have a treatment injury – ACC did cover this – and she could not claim under torts
- If, however, the purpose of the treatment was to prevent pregnancy and it was not achieved – it is similar to forgetting to remove a tumor and cause significant change to anatomy – which causes pain – and for that reason she has cover under ACC

Exemplary Damages

Couch v AG (2010)

- Exemplary damages are not barred
- Couch claimed exemplary damages for injury she had suffered – because of having the junior officer conduct him and not telling RSA of the criminal history
- Exemplary damages are not barred – she did get a payout – she got \$85,000 – but nowhere near what you get in the USA

Battery

- **Battery is an act intentionally applying force to the body of another without that person's consent or lawful justification**
- You do not need to show any harm was caused
- You can gain damages without injury such as – spitting on a person, wrongfully putting handcuffs on someone – taking fingerprints – searching without consent

Development of the Tort of Battery

Cole v Turner (1704)

- Historical position – the least touching out of anger is a battery
- Touching implies physical contact – so shooting someone is still a battery today but you did not touch them
- The common law had to develop – Trump groping someone is considered a battery today – he did not do it out of anger

Letang v Cooper (1965)

- Woman sunbathing at a place also used as a carpark – and a person drives over her legs
- Now we distinguish between battery and negligence on the basis of whether it was intentional or unintentional

Beals v Howard (1960)

- Kids climbed up a tree and threw rocks a man's house – the man came out and shot a child which blinded the child
- The plaintiff has the onus of proof to show there was intention to shoot the gun

Wilson v Pringle (1987)

- Two boys are running – and one decides to pull the backpack of another – when the bag is pulled the boy wearing it injures his hip and brings an action in battery
- The boy defense was that he did not intend to hurt the boy – but this failed as the **intention of doing the act is all that is needed**
- **No need to show injury was intended**

Collins v Wilcock (1984)

- The police officer grabs her shoulder and physically pulls her to talk to her – and the woman is arrested for scratching the police officer
- Battery means everyone is protected against any physical form of molestation
- There are however exceptions to such a broad rule – such as to prevent crime, self-defense
- A new exception is when the touching occurred in the course of everyday life – as people have consented by being in society and exposing themselves to society – whether it is reasonably necessary
- **Police officer's grabbing went beyond reasonable – as had she done just a tap it would have been fine**

In Re F (1990)

- Carer's want the woman to have a procedure done so she can't get pregnant – and they go to the courts to have this ordered – otherwise it is a battery because they can't consent
- The doctors are allowed to do the surgery – because of medical necessity – if it is in the best interest of the patient and it is necessary then it will not be battery

Bettel v Yim (1978)

- One person decides to shake another person – and the victim has a really bad reaction to it and gets a broken nose and need to have surgeries done
- You are liable for all damages in battery – as it is intentional – due to the Egg Shell Principle

Defences to Battery

- Consent – you have been expressly or impliedly given consent
- The conduct is generally acceptable standards of contact (Collins v Wilcock)
- Necessity
- **Parental Control S48 Crimes Act 1961** – everyone is justified in using, in the defense of themselves such force as he or she believes to be reasonable – you take circumstances the victim believed they were in and you apply the reasonable person test to that to see if the reasonable person would have done the same

Assault

- Tortious an overt act intentionally creating in another person an apprehension of the imminent infliction of battery
- Overt act includes a threat of offensive contact or imminent use of force
- **Intentionally – Need an intention to assault** (an intention to threaten P with force)
- No defense to no means or intention of carrying out the threat (e.g. if gun is unloaded and P has no knowledge)
- **Apprehension – Reasonable apprehension by P of offensive physical contact** (objectively determined)
- **Imminent infliction of battery or proximity** – D has apparent or actual present ability to execute the threat
- Actionable per se tort – complete at time of the threat (no damage required)
- You can have assault without battery – since someone can threaten to hit you but not go through with it
- You can also have battery without assault – if you slap someone while they are sleeping is a battery – not assault because there was no apprehension
- **Assault can be committed purely by actions or words, though words used can dispel threat and indicate lack of an intention to assault**
- Purpose of assault is to protect our state of mind – to be free the fear of imminent violence – this protects your mental state – plaintiff does not need to be afraid of the defendant

Tuberville v Savage (1669) – Intention

- Defendant put his hand on his sword – and he said “If it was not high time, I would not take such language from you”
- Plaintiff filed an assault charge – court held this was not assault – there was no intention to assault – the accompanying words indicated he had no intention of committing the unlawful act

Stephens v Myer (1830)

- Myers is dismissed and is asked to leave the building – he walks towards Stephens with his fist clenched – the church warden stops him and takes him out of the room – Stephens sues Myer for assault
- There was an assault here – as **Myers was not close enough to hit the plaintiff but was advancing with that intention**
- Plaintiff had reasonable ground to fear the defendant would strike him – and the defendant was close enough

Read v Cocker (1853)

- Threat by the defendant to break the plaintiff’s neck accompanied by gestures – plaintiff left the workshop aggrieved
- Conditional act can be assault – as there was a threat of violence – intention to assault – and it was proximate

Police v Greaves (1964) (CA)

- Legal Test – would a reasonable person in the plaintiff’s position have had the necessary fear of immediate harm

Sexual Assault

- Some sexually abused victims have chosen to bring court proceedings rather than go to the police and be complainants in proceedings – because:
 - Lower burden of proof
 - You don't want the person to go to jail
 - Less public
 - You get to be more directly involved in the civil proceeding – decide your lawyer and how the case is to be handled
 - You have the right to silence in a criminal proceeding – while in civil proceeding you can subpoena someone to give evidence and they will still be subject to cross-examination
 - And they might have complained to the police and the police refused to bring charges against accuser
- Mental injury is also covered by ACC if it is due to certain crimes – including rape

KM v HM (1985)

- Appellant was a victim of incest – she was assaulted by her father from when she was 8 until she was 17 – until she started therapy, she knew incest was wrong but had not realized her father was responsible for the abuse
- Courts also try get around the 1950 Act by using s28 – suggesting that the accuser has used fraud to conceal the action – defendant would have concealed the abuse – and so the plaintiff did not know there was a cause of action

T v H (1993)

- The abuser had passed away and the plaintiff felt comfortable bringing a proceeding – however, there was no evidence in the case of a threat within the 6-year period – also there was no evidence of imminent danger

ACA in s319(2)(a) – court can award exemplary damages even if the defendant had been charged or acquitted for sexual assault

False Imprisonment

- For false imprisonment to be successful – the plaintiff needs to be detained by the defendant without lawful justification
- Plaintiff has the onus of proof to show detention and that it was intentional
- Onus on defendant to show whether it was lawful
- This is an intentional tort – what needs to be intentional is the deprivation of liberty
- Detention is
 - Total restraint of boundary
 - Failing to release on time
 - No reasonable means of escape
- Injury, contact or force is not required
- Plaintiff can be unaware of the detention
- If you consent to the false imprisonment – that is a lawful justification since you have consented – but if the defendant has authority like a police officer, it is considered false imprisonment because they submitted due to the power of the defendant

Birds v Jones (1985)

- Plaintiff wanted to go in a certain direction, but the police refused as it was blocked off – and the police said he could go in any of the other directions available
- Court held no imprisonment as imprisonment must be total – the plaintiff could still go in a different direction
- Dissent said that if you have interference with your freedom to move you are imprisoned – a boundary is not necessary

Persico v Woolworths (1981)

- Security is watching her and follow her and stop her – she is told to come to the manager's office where she is questioned for 5 minutes
- She was falsely imprisoned in the office and was awarded \$1500 damages – **she was not physically detained, but she felt compelled because of the authority the security officers had** – she felt she did not have an option
- Plaintiff is completely deprived of liberty to move – by physical force – or lock and key – or through some false law – because of the humiliation some kind of compensation was needed

Chaytor v London Association of Fashion LTD (1961)

- Two shoppers went along with the police in order to avoid embarrassment and felt compelled to do so – the police had them in the station for 15-minutes
- The court said there is a psychological imprisonment – the shoppers felt obliged to go – and psychologically compelled to stay there

Murray v Ministry of Defense (1988)

- **Court says that plaintiff does not need to know they are being imprisoned** – the reason is action per se you don't need any injury – so you also don't need to be aware, but you will get nominal damages

Crimes Act s316 – Duty of persons arresting

(1) It is the duty of every one arresting any other person to inform the person he is arresting, at the time of the arrest, of the act or omission for which the person is being arrested, unless it is impracticable to do so, or unless the reason for the arrest is obvious in the circumstances. The act or omission need not be stated in technical or precise language, and may be stated in any words sufficient to give that person notice of the true reason for his arrest

(5) Every person who is arrested on a charge of any offence shall be brought before a Court, as soon as possible, to be dealt with according to law

R v Governor of Brockhill (2000)

- Applicant had been convicted and sentenced for 2-years – the governor under the law calculated the release date – and was released 59 days after then when he was supposed to
- This tort is one of strict liability – the defendant does not need to know he is acting wrongfully

Duffy v AG (1985)

- Plaintiff detained in the car for 2.5 hours as police had to pick up other wrongdoers during the shift
- It was held that it wasn't reasonable to be taken to the police station immediately – because they had to pick up others and it was a busy night
- It would be unreasonable to expect that each person who has been convicted to go to the station immediately

Whithair v AG (1996)

- Arrest of male assaults on 23rd July – I was falsely imprisoned, but my arrest was legally justified – it was false imprisonment because he was not taken to court on Saturday but rather on Monday
- The court when a person is detained without being brought to court as soon as possible – but it is false imprisonment depending of fact and degree

Hayward v O'Keeffe (1993)

- Plaintiff was questioned by the police officer at his shop because the butcher was using the supermarket's trolleys – instead of warning him – he was asked to be move but he did not agree – he was handcuffed – he did not resist
- This was a gross abuse of police power – this represented a significant breach of the rights of a person and breach of law
- **The act of escorting is false imprisonment** – it was just because the police officer lost his temper that he made a spectacle of the plaintiff

Dunlea v AG (2000)

- The police went and searched the flat – they were taken to the station handcuffed – who held them for 15 minutes without arresting
- Purpose of compensation is to vindicate the victim for the right that is breached – but also incentivise the state to not breach
- So first you reward damages in tort and nominal damages in the BORA

Intentional Infliction of Emotional Distress (IIED)

Wilkinson v Downtown (1897)

- There was no cause of action for IIED before this case – because courts are very suspicious when the victim only suffers a mental injury and no physical injury
- The defendant as a joke told the plaintiff that her husband had been in an accident and broke both his legs and defendant said to go get her husband
- This led to the plaintiff suffering trauma which rendered her ill – and there were medical expenses
- **The defendant is liable because the defendant willfully did an act intended to cause physical harm to the plaintiff**
- This action is based on the plaintiff's feelings or peace of mind – here we need to show harm and the plaintiff did so

Stevenson v Basham & Anor (1922)

- Plaintiff had said that if you do not leave the house “I will burn you out” – he knew Basham was in the next room and that she was 3-months pregnant
- Basham finds this hysterical – and a doctor comes in the next day and finds that she has had a miscarriage – so the issue is whether Stevenson liable
- He was liable under IIED – it does not matter what Stevenson's intentions were when he said this – but the plaintiff believed it was true and feared of her safety and child
- **The first element is that you need a foreseeable plaintiff – Stevenson knew she was in the house and she may react badly to his words**
- **2nd element is foreseeable damage – he should have known that the threat would frighten anyone – he did mean harm – even if the extent of damage was more than what he intended**
- **3rd element would be the injury needs to be a natural or direct consequence of the shock**

Tucker v New Media Ownership (1986)

- Tucker had most the money – the defendant got a hint that the plaintiff had been a convicted felon – they went to interview him; he became hysterical and went to seek legal advice
- He pleads IIED and breach of privacy – after the injunction is granted – he goes to Sydney to get the transplant done – but one of his donors pulls out of their \$20,000 donation – and a Wellington company had published his convictions
- When you get an injunction there are three things you need to test
 - Is there a serious question to be tried – if you know you will win there is no point
 - Is a compensation remedy satisfactory – here since it is about his health then no because his life was at risk
 - **Where does the overall justice of this case lie globally? – his life is at risk so high importance – Tucker has reluctantly put himself in the public eye – and he has already done time for his crime – injunction not granted**

Bradley v Wingnut Films LTD (1993)

- Defendant made a film – they shot a scene at a cemetery – the tombstone was owned by Bradley