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law of tort

Eighth Edition

Law of Tort

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First published in Great Britain in 1992
Second edition 1995
Third edition 1997
Fourth edition 1999
Fifth edition 2001
Sixth edition 2003
Seventh edition 2005
Eighth edition published 2007

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ISBN: 978-1-4058-4694-3

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library

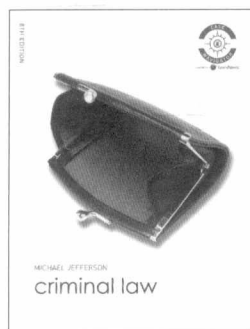
10 9 8 7 6 5 4 3 2
11 10 09 08

Typeset in 9/13.5pt Stone Serif by 71
Printed and bound in Malaysia (CTP-VVP)

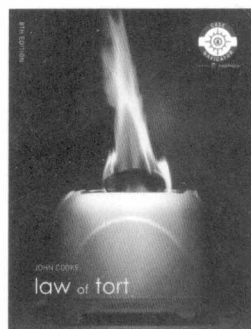
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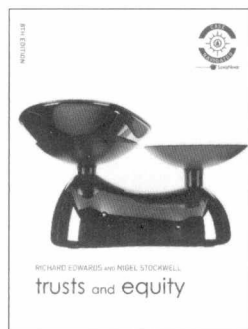
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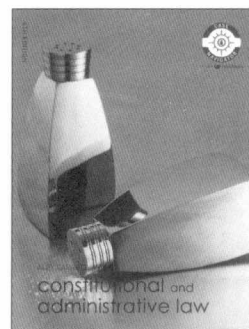
ISBN: 9781405846813



ISBN: 9781405846943



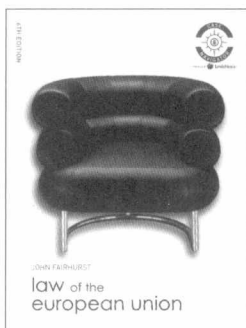
ISBN: 9781405846844



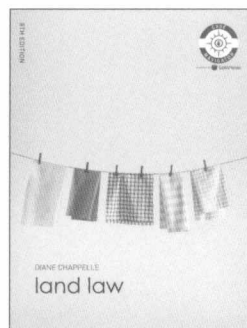
ISBN: 9781405812313



ISBN: 9781405846912



ISBN: 9781405846882



ISBN: 9781405858250

New editions will publish during Spring 2007

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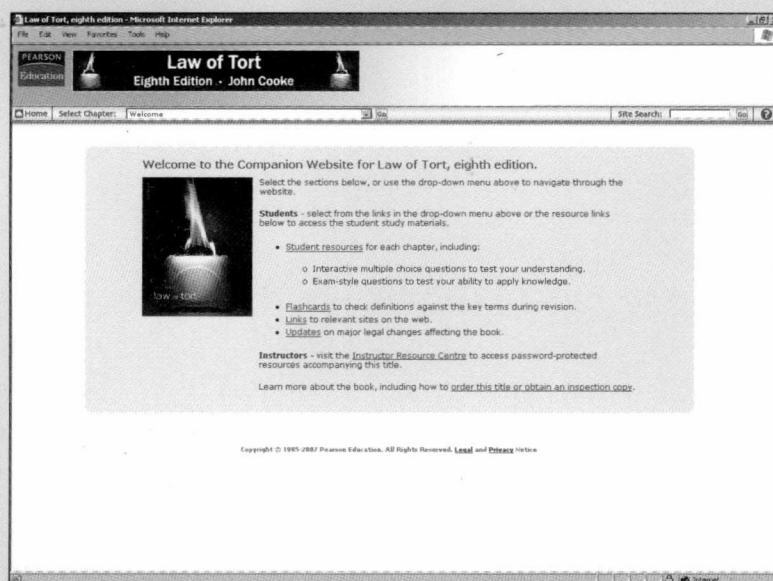
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Preface

Tort law never stands still. Since the seventh edition there have been numerous changes to the law and in a Preface one can only hope to pick out the most notable.

The most significant change in this edition is a separate chapter on Privacy. In previous editions this has been in the Defamation chapter but now deserves a chapter to itself, although there is some dispute as to whether it belongs in a Tort book at all.

The House of Lords produced a very outspoken attack on 'compensation culture' in *Tomlinson* and this edition deals with some of the issues surrounding 'compensation culture', including the Compensation Act 2006 and the NHS Redress Bill 2005 and some important research on the frequency and costs of litigation in personal injuries.

The Human Rights Act continues to have an effect on this branch of the law and developments have been incorporated into this edition. Some guidance on the relationship between tort law and rights under the legislation has been given by the House of Lords in *Watkins* and the comparison between suing the police in negligence and under the legislation is illustrated by *Brooks* and *Van Colle*. The courts have continued to look at the public interest version of qualified privilege in defamation with a significant decision in *Jameel*.

In causation, the effects of *Fairchild* continue to be felt with the House of Lords' apparent attempt to placate the insurers in *Barker v Corus*, followed by its swift reversal by statute. The House of Lords has also rejected the opportunity to apply 'loss of chance' in personal injuries cases but has created another favourable enclave for one class of victims in informed consent cases in *Chester*.

My thanks go to Joan for her support and help and to my children Emma and Matthew. Thanks also to the staff at Pearson Education.

John Cooke
April 2007

Guided tour

CHAPTER 3 DUTY OF CARE 51

solicitor. This means that the client has no contract with the barrister. Any liability of the barrister to the client must sound in tort.

Rondel v Worsley [1969] 1 AC 191

The House of Lords held that a barrister does not owe a duty of care to their client in connection with the conduct of a case in court. The public policy ground for this decision was that a barrister owes a duty to the court which transcends that of their duty to their client. Fear of being sued for negligence by their client might lead them to neglect the duty to the court. Further, if a barrister was successfully sued, this might lead to cases being re-opened.

In practice, the immunity became extremely complex to apply. Increasingly fine distinctions were drawn such as: whether the negligence was 'intimately connected' with the conduct of the case in court; whether a settlement of the case was covered; and whether an advocate's strategy or tactics were covered.

The difficulties created by the extent of the immunity and the amount of litigation that this lack of clarity created led a specially constituted seven-judge House of Lords to sweep away the immunity.

Hill v Simons [2000] 3 All ER 673

Clients brought proceedings for negligence in three separate cases against their former solicitors. In each case the solicitors relied on the immunity of advocates and the claims were struck out. The Court of Appeal held that the claims fell outside the scope of the immunity and should not have been struck out.

Held (House of Lords) (7 judges 6:1 dissent):

Advocates no longer enjoyed immunity from suit in respect of their conduct of civil proceedings. Such an immunity was no longer needed to deal with collateral attacks as these would normally be struck out as an abuse of process. A collateral attack is where a negligence action is started against a lawyer with the ulterior purpose of having a previous decision of a court overturned. If it is charged and convicted of a criminal offence and then wishes to sue his barrister for negligence, this may involve what is in effect a retrial of the original case. (For the law on collateral challenge see *Hunter v Chief Constable of West Midlands* [1982] 3 All ER 727.)

The House based its decision on other professions, such as doctors, who owed dual duties and experience in other jurisdictions.

- 1 A collateral civil challenge to a subsisting criminal conviction would ordinarily be struck out as an abuse of process, but the public policy against such a challenge would no longer bar an action in negligence by a client who had succeeded in having his conviction set aside. (See *Acton v Graham Pearce* [1997] 3 All ER 906.)
- 2 The principles of *res judicata*, issue estoppel and abuse of process should be sufficient to cope with the risk of challenges to civil decisions.
- 3 The immunity was not needed to ensure that advocates would respect their duty to the court. There were a number of examples of dual duties owed by professionals and the experience in Canada, where there was no advocate immunity, had demonstrated that removal of the immunity would not undermine this aspect of the advocate's duty.
- 4 It would bring to an end the anomalous exception to the premise that there should be a remedy for a wrong and there was no floodgates risk.

Case summaries - Highlight the facts and key legal principles of essential cases that you need to be aware of in your study of tort law.

Examples - At times the law can be difficult to understand. Examples help you to explain and understand complex legal processes.

PART 1 GENERAL PRINCIPLES OF TORT LAW

The basic pattern

The paradigm tort consists of an act or omission by the defendant which causes damage to the claimant. The damage must be caused by the fault of the defendant and must be a kind of harm recognised as attracting legal liability.

This model can be represented:

act (or omission) + causation + fault + protected interest + damage = liability.
An illustration of this model can be provided by the occurrence most frequently leading to liability in tort, a motor accident.

Example

A drives his car carelessly with the result that it mounts the pavement and hits B, a pedestrian, causing B personal injuries. The act is A driving the vehicle. This act has caused damage to B. The damage was as a result of A's carelessness, i.e. his fault. The injury suffered by B, personal injury, is recognised by law as attracting liability. A will be liable to B in the tort of negligence and B will be able to recover damages.

Variations

We will be looking at these elements of a tort in more detail shortly. Now we will look at some of the common variations on the basic model. The elements of act (or omission) and causation are common to all torts. There are certain torts which do not require fault. These are known as torts of strict liability.

Example

An Act of Parliament makes it compulsory for employers to ensure that their employees wear safety helmets. The employer may be liable in a tort called breach of statutory duty if the employee does not wear a helmet and is injured as a result. This is the case even if the employer has done all they could to ensure the helmet was worn. (See also *the mental element in torts*.)

In some cases the act or omission of the defendant may have caused damage to the claimant but the claimant may have no action as the interest affected may not be one protected by law. Lawyers refer to this as *damnum sine injuria* or harm without legal wrong.

Example

A opens a fish and chip shop in the same street as B's fish and chip shop. A reduces his prices with the intention of putting B out of business. A has committed no tort as losses caused by lawful business competition are not actionable in tort.

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Extracts from statutes

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Extracts from statutes - Extracted text of essential statutes is provided in Part 7, providing you with all the resources required for the study of tort law at your fingertips.

Summary

After reading this chapter you should be able to:

- Explain the problems raised by nervous shock in negligence.
- Understand the basic medical background to psychiatric illness.
- Explain the historical development of liability for nervous shock.
- Understand the distinction between primary and secondary victims.
- Explain the legal rules which restrict recovery by secondary victims for nervous shock.
- Understand the advantages available to primary victims and explain the problems faced by the courts in making the distinction between primary and secondary victims.
- Explain the ways in which this branch of negligence could be reformed.

Further reading

- Cooke, P. J. (2004), *Primary Victims: The End of the Road?* 26(1) Liverpool LR 29.
 Mulvaney, N. (1998), *Liability for Careless Communication of Traumatic Information* 114 QJR 380.
 Sprince, A. (1995), *Alger v Smith, Being Primary Colours* 81 PN 124.
 Sprince, A. (1998), *Innegigently Inflicted Psychiatric Damage: a Medical Diagnosis and Prognosis* 8 LS 59.
 Teft, H. (1992), *Liability for Psychiatric Illness After Hillsborough* 12 OJLS 440.
 Teft, H. (1998), *Liability for Negligently Inflicted Psychiatric Harm: Justifications and Boundaries* 11 JLI 91.
 Teft, H. (1998), *Liability for Psychiatric Illness: Advancing Cautiously* 8 MLR 849.
 Todd, S. (1999), *Psychiatric Injury and Rescuers* 115 LQR 345.
 Trindade, F. A. (1996), *Nervous Shock and Negligent Conduct* 112 LQR 22.

Chapter summaries - Located at the end of each chapter, chapter summaries draw together the key points that you should be aware of following your reading, and provide a useful checklist for revision.

Further reading - At the end of each chapter, use the further reading section to delve deeper into the topic, and read those articles which will help you to gain higher marks in both exams and assessments!

Companion Website

Want to test your knowledge of a topic, practice answering exam-style questions, visit useful tort law sites on the web or just check if the law has changed? Visit www.pearsoned.co.uk/fsis, to find extensive resources designed to aid you in your study, including multiple choice questions, exam style questions and answer guidance, web links to further resources, flashcards to test your knowledge of key terms, an online glossary and regular web updates on major legal changes.

For Instructors

The Companion Website also includes a testbank of multiple choice questions which can be used to access students' progress.

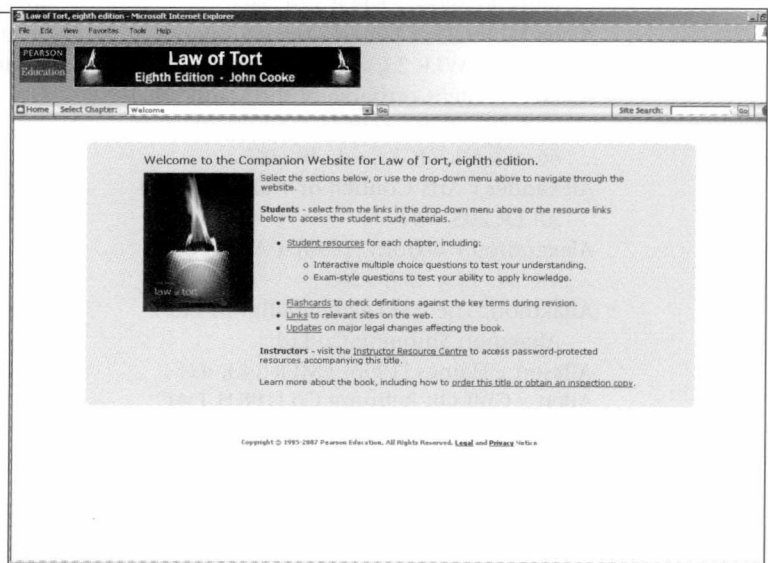


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