



CLERK & LINDSELL  
ON TORTS



克拉克和林塞尔  
论侵权法

(第20版)

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CLERK & LINDSELL ON TORTS

克拉克和林塞尔论侵权法

(第 20 版)

〔英〕迈克尔·A. 琼斯 主编

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### **Publisher's Note**

In order to keep this work up to date and thus maintain its value to readers, this book will be supported by annual Cumulative Supplements.

## PREFACE

As always with a new edition the text has been brought comprehensively up to date to take account of all the major developments in torts. The House of Lords was particularly active in its last years, with for example major decisions on negligence and its relationship to the rights of claimants under the European Convention on Human Rights (*Mitchell v Glasgow City Council*; *Jain v Trent Strategic HA*; *Smith v Chief Constable of Sussex Police*; *Van Colle v Chief Constable of the Hertfordshire Police* and *Savage v South Essex Partnership NHS Foundation Trust*). The emerging clarification of this relationship accounts for a large proportion of the increased size of Chapter 14 on Public Service Liability. There have been significant decisions on causation (*Barker v Corus* modifying the test established in *Fairchild v Glenhaven Funeral Services*; and *Corr v IBC Vehicles Ltd* on intervening acts) and two decisions on the *ex turpi causa* defence (*Gray v Thames Trains Ltd*; and *Stone and Rolls Ltd v Moore Stephens*). *Rothwell v Chemical & Insulating Co* dealt with the meaning of damage in a personal injury claim where a claimant has non-symptomatic physiological changes, and also ruled out claims for psychiatric harm arising from fear of developing a serious medical condition in the future. *Watkins v Secretary of State for the Home Department* demonstrated that there is still life in the tort of misfeasance in public office (although the Law Commission had provisionally suggested that the tort should be abolished, but has withdrawn the proposal following consultation). *Jameel v Wall Street Europe* has provided clarification of the “*Reynolds* qualified privilege” defence to defamation, and has given the defence greater flexibility under the concept of “responsible journalism”. Two decisions of their Lordships illustrate the continued role of the law of torts as a feature of civil liberties (*R. (Laporte) v Chief Constable of Gloucestershire* on the powers of constables to deal with anticipated breaches of the peace; and *Austin v Commissioner of Police of the Metropolis* on the lawfulness of the police tactic of containing a crowd at public demonstrations), and *Ashley v Chief Constable of Sussex Police* reaffirmed the necessary requirements for the defence of self-defence.

We have also taken the opportunity to make some structural changes. The chapter on Economic Torts has undergone major revision, not least to take account of two important House of Lords’ decisions (*OBG Ltd v Allan* and *Revenue & Customs Commissioners v Total Network SL*) on the scope of, and relationship between, the different economic torts. The separate chapter on *Rylands v Fletcher* has now been merged with the chapter on Nuisance. For some time the House of Lords has taken the view that liability under *Rylands v Fletcher* is simply a species of liability in nuisance. Although there remain some distinctive features of an action based on *Rylands v Fletcher*, overall the similarities have persuaded us to take the step that the logic of the House of Lords’ decisions has been pointing to. We trust that the merged chapter provides a more

## PREFACE

coherent and unified analysis. The chapter on Breach of Confidence has been renamed Breach of Confidence and Privacy and restructured to give greater prominence to the developing law of privacy. There is now a clear demarcation between actions for breach of confidence in a commercial or public setting and breach of confidence/privacy in the context of personal information. There have been a number of high-profile privacy cases since the last edition, and the litigation in *Douglas v Hello!* has revealed the extent to which privacy concerns and commercial confidences are now protected. Central to an understanding of how the law of privacy is developing is a consideration of the balance to be drawn between arts 8 and 10 of the European Convention on Human Rights (see, for example, *Murray v Big Pictures (UK) Ltd* and *HRH Prince of Wales v Associated Newspapers*).

Readers looking for reference to the Supreme Court Act 1981 should now search for the “Senior Courts Act 1981”. The Constitutional Reform Act 2005 provided for the Supreme Court Act 1981 to be cited as the Senior Courts Act 1981, from January 1, 2010. Although the provision was merely enabling, we have taken the view that references to the Supreme Court Act 1981 should be replaced by Senior Courts Act 1981.

There have been some changes to the editorial team. Daniel Alexander and David Price have left. Tony Dugdale, who has been a member of the editorial team since the 17th edition, and general editor of the 18th and 19th editions, has stepped down as general editor, but we are delighted to record that he continues the link with *Clerk & Lindsell* in the role of consulting editor. We are pleased to welcome as new contributors Gillian Davies and Jenny Steele. Jenny has taken on several chapters, and Gillian has taken over the chapter on Statutory Intellectual Property Rights. Gillian wanted particularly to acknowledge the assistance she has received from Chris de Mauny of Hogarth Chambers in the updating of that chapter.

The law is stated as at the end of May 2010, though it has been possible briefly to note some subsequent developments at proof stage.

The Editors  
September 2010

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