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**MANDY SHIRCORE**



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# LawBrief: Torts



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# LawBrief: Torts

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# Preface

Unlike many other core areas of law that students are required to study in their degree, the law of torts consists of a number of distinct civil wrongs. It is for this reason that defining exactly what amounts to a tort has proved difficult. Many commentators prefer to define torts in the negative, by comparing and distinguishing torts from other actions with similar features, such as contract law and criminal law. Others prefer to define torts by considering the types of interests the law of torts seeks to protect. In general terms, torts law provides a right to compensation where one person wrongfully breaches a duty or obligation that has been imposed by the law (rather than the parties themselves) for the protection of another.

Until recently, the development of the law of torts has been left largely to the common law. The earliest tort of trespass was developed to protect a person's bodily integrity, land and goods from direct interference by another. In 1932, the modern tort of negligence was born and with the advent of industrialisation the tort continued to expand to cover an ever-increasing range of unintentional conduct. Towards the end of the century there were concerns expressed that the law of negligence had gone too far. In response to the "insurance crisis" in 2002, Australian governments introduced sweeping civil liability legislation to reduce the number of possible negligence claims and limit the damages available. Even so, many of the principles established under the common law remain, and study of the law of negligence requires detailed examination of both case law and the various legislative provisions.

As it is not possible to cover all tortious actions in this book, the most significant torts have been selected. After an introductory chapter, which defines torts and traces their historical development, the book is divided into three main parts. The first section covers what are generally referred to as the intentional torts, trespass to the person, goods and land, and considers how tort law may provide protection from an invasion of privacy. The second, and largest, part of the book deals with the tort of negligence. Duty of care, breach of duty, causation, defences to negligence and damages are all considered. In the final section, a number of miscellaneous torts are dealt with including nuisance, breach of statutory duty and defamation.

As interactions within society become more complex, the law of torts will continue to develop and adapt. Amidst calls to pare back legislative reforms, further changes to civil liability legislation and negligence laws are to be expected. This makes the law of torts a dynamic and challenging area of the law to study. Good luck with your studies in Torts Law.

Mandy Shircore

May 2015





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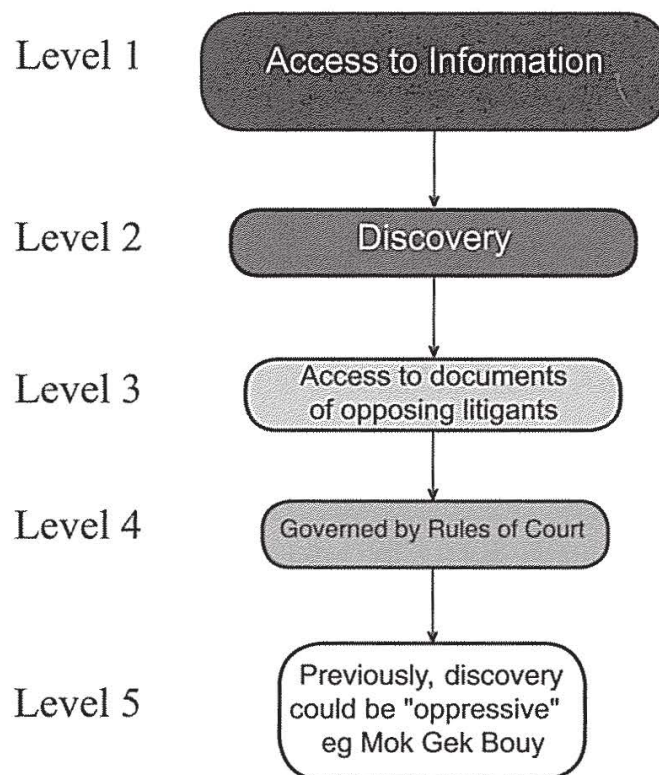




# How to Use Mind Maps

Mind maps are located at the end of each chapter to provide a visual explanation of the topics discussed in that chapter. Referring to the mind maps as you read through each chapter will enable you to better understand how each piece of information fits into the overall topic. The maps are also highly useful revision tools, setting out the content in a format which allows you to see important details for each topic at a glance.

The mind maps are structured in a similar way to flowcharts. The main concepts branch out into a number of topics, which each branch out into subtopics for up to five levels of explanatory detail. To show progression from one point to the next, each level is connected to the one following by a solid line with an arrow. See the sample below.



In addition to the five levels, other features may be included in the mind maps, including:

- **Key Points** – these are key points for the overall topic of the map which should be given consideration when referring to any part of the map.
- **Explanatory notes** – these notes may relate to just one point or may be an overarching explanatory note for the entire map. Where they relate to just one point they are connected to that point by a double-headed arrow. Where they

relate to the entire map, they appear above it in umbrella form. Explanatory notes offer some additional context to, or further explanation of, the content they relate to.

- *“But” or “Exception” boxes* – these sit alongside a sublevel and contain an exception or “but” statement relating to that sublevel. They are indicated by a dotted line and appear in blue text. “But” or “exception” boxes are used to qualify statements made in their associated sublevels.

The spiral binding of this book makes it easy to tear out the mind maps so you can refer to them as you read through each chapter, or use them as visual prompts while preparing for (or sitting) exams. We trust that you will find them useful.

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Pt VB: 15.120

### Western Australia

*Civil Liability Act 2002*: 1.110

s 3: 12.20

s 5AA: 8.180

s 5AK: 17.220

s 5B: 10.50

s 5B(2): 10.120

s 5C: 12.10, 12.100, 12.120

s 5C(1)(b): 13.10

s 5C(3): 12.170

s 5C(4): 13.10

s 5D: 12.210

ss 5E to 5I: 14.140

s 5F: 10.290

ss 5F to 5N: 14.130

s 5K: 14.50

s 5L: 14.60

s 5O: 10.290

s 5P: 14.150

s 5PB: 11.130, 11.180

s 5S: 9.50

s 5T: 12.20

s 5W: 10.200

ss 5W to 5Z: 8.180

s 5X: 8.180, 19.260

s 10: 16.50

s 11: 15.200

s 12: 15.160, 15.170

s 15: 15.90

Pt 2: 15.120

*Criminal Code*

s 246: 5.220

*Defamation Act 2005*: 20.10

*Fatal Accidents Act 1959*

s 4: 16.160

*Guardianship and Administration Act*  
 1990: 5.100, 5.120

*Law Reform (Contributory Negligence  
and Tortfeasors Contribution) Act  
1947*

s 4(1): 14.40

*Law Reform (Miscellaneous Provisions)  
Act 1941*

s 5: 15.220

*Limitation Act 2005: 14.210*

*Workers' Compensation and Injury  
Management Act 1981*

s 92: 16.110

### **United Kingdom**

*Fatal Accidents Act 1846: 16.140*

*Lord Campbell's Act: 16.140, 16.160*