

Busl250 – mid semester notes



**ASSIGN
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BUSL250 - Mid-semester Notes Liabilities * Harm may be caused deliberately or carelessly * One person's single harmful act to another person

(deliberately or carelessly) can give rise to one or more legal liabilities *

Legal Liabilities Tortious Liability: harmful act can be a tort (civil wrong), other than breach of contract, remedy is compensation (commenced through litigation) * Vicarious Liability: Liability for harmful act caused by another *

Statutory liability: harmful act by breach of statute, prosecution is punishment * Contractual liability: harmful act by breach of contract, remedy

is compensation * Criminal liability: harmful act and harmful act is a crime,

incurs criminal liability, prosecution for punishment * A harmful act may

incur one or more legal liabilities Tortious vs. contractual liability: tortious

liability can incur in the absence of contract but contract liability can only

incur if a contract exists. * Difference between tortious liability and criminal

liability * Consequences of causing harm Tort of trespass * Trespass is

actionable per se, which means that there is no need for the plaintiff to

prove actual loss or damage in order to commence a civil action against the

trespasser. It is, however, necessary to prove that the interference was

either intentional or negligent. * Types of trespass You commit the tort of

trespass to land if you directly and intentional interference with land in the

rightful possession of X without X's consent or other excuse. Lord Bernstein of Leigh (Baron) v Skyviews & General Ltd [1978] 1 QB 479 * * Doesn't need

to be physical trespass of airspace * A tenant in rightful possession of land

has the right to sue for trespass, including the right to sue the landlord if the

landlord enters the land without permission or lawful excuse. * No trespass

to land if there is no attempt to make it clear that you are not welcomed to

their land. i. e. implied permission * You commit the tort of trespass to goods

if you directly and intentionally interfere with goods in the possession of X, without X's consent or other excuse * Trespass against goods: direct and intentional interference with or use of personal property of another *

Conversion: intentionally using/dealing the goods that is inconsistent with the owner or their rightful possession of the good * Detention: committed when someone either intentionally or carelessly detains the goods of another. (i. e. carelessly through losing the good not able to give back when demanded) * Trespass to persons: You commit the tort of battery if you directly, intentionally or negligently cause contact with the body of X without X's consent. Courts established plaintiff's not entitled to insist that no one ever touch them, and that a certain minimal level of physical contact is an unavoidable element of daily life. *Rixon v Star City Pty Ltd* [2001] NSWCA 265 * You commit a tort of assault if you unlawfully threaten another with imminent physical harm * You commit the tort of false imprisonment if you cause total deprivation of X's freedom of movement without lawful justification or excuse * Defences * Accident * Consent * Necessity Self defence (usually for trespass to person) * Defence of property (usually for trespass to person) Tort of nuisance * You commit the tort of nuisance if you indirectly interfere (i. e. interfere with no actual physical contact e. g. through noise) with X's use and enjoyment of private or public land * 2 types * Private nuisance * Public nuisance * Defences: * Consent from plaintiff (expressed or implied) * Statutory legislation * Contributory negligence Tort of defamation * You commit the tort of defamation if you publish to a third party, spoken or written form, a statement about X that would damage the reputation of X.

Economic torts * Tort of deceit: a tort committed when one person makes a fraudulent misrepresentation to another * If you tell someone the truth then something happens that changes those facts, you must notify persons of that change or you will be charged with misrepresentation * You must know that the information you gave was false to misrepresent * No defence to expect plaintiff to check the information * Tort of passing off: a tort committed when one person misrepresents themselves or their product as having some kind of connection with another person or business.

Pacific Dunlop v Hogan. * Tort of intimidation: a tort and/or crime committed when one person threatens to commit an unlawful act to force another to do something against their interest Rookes v Barnard. * Tort of interference with contractual relations: a tort committed when one person knowingly induces another to break a contract with a third party. Lumley v Wagner. *