The Law of Wrongs, Civil and Criminal

Mr. Maguire

Roth G. Meares
4th yr 22 B. 1916
Text Book — Salmond's "Law"

(Salmond on "Law"
Third Edition)

(Kenny — Outlining
Criminal Law)
Salmond p. 4

A *tort* is "a civil wrong for which the remedy is an action for damages, and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation."
The Law of Wrongs (Civil & Criminal)

Lecture 1

Civil Wrongs

Wrong means "legal wrong"—breach of a legal duty.
The State imposes duties—general duties, absolute duties, particular duties.

Crime

What duty imposed in interests of the community, and the State imposes sanction, breach of it is a crime. This is the practical test of a public wrong. The State is principally concerned with the matter.

In case of a civil wrong, the interest of the State is not so great. The individual may seek remedy or not, and may stop when he likes. —Tort

Tort

In this sense breach of contract is a legal wrong—a civil wrong, but not usually considered a tort, as it is specifically provided for. Note that a tort may be also a crime—e.g., libel, assault.

Slander is a tort and not a crime. One cannot define a tort as you can a contract. Cf. Salmon's definition.
Salmond p7. Ten classes of wrongs stand outside sphere of tort
1. Wrongs exclusively criminal
2. Civil wrongs which create no right to action for damages
3. Civil wrongs which are exclusively breaches of contract
4. Civil wrongs exclusively breaches, but some other merely equitable obligation.

There is no general principle of liability —
"The law of torts consists of a body of rules establishing specific injuries."
"A tort is a breach of a legal duty, other than contractual or quasi contractual, giving rise to an action for damages."

At first, remedies were only if things the claim
within one of the original writ issued
by the King's Court, later by Chancery
inventories then dealt with by King's judges
the scope of these writs gradually extended.
For develops out of the action of trespass.

At early time, clerks of chancery lost
power of framing new writs. Then came the
statute Westminster II - the
"Consent's"
cases clausas - writs to be issued in like
cases. This responsible for the writ - trespass
on the case - the main source of the law of
tort, and gradually expanding to injuries
or consequential injuries.

Here is, a general term, a law of contract
but there is no broad general "law of tort.

W. B. Salmon's "Law of Torts"

upto a comparatively late period, much
depended on the forms of action
Scott v Shepherd

Since the distinction abolished, all you do
Benjamin v. Stow L.R. 9 Q.B. 400

If a nuisance to the public it is a crime, but no civil action can be brought for it, except by someone on whom it has inflicted a special damage.

If there is a general public nuisance, a particular plaintiff must prove he is successful.

1. Plaintiff suffering injury beyond what suffered by the rest of the public.
2. Injury to him must be direct, not consequential.
3. Injury must be of substantial, and not fleeting character.
is state the facts, and if they warrant a remedy you will get it. (Salmond p 5.)

In contract there was want of covenant, act, and debinos then arose trespass on the case. Malefeasance to misfeasance to non-feasance.

For all civil wrongs are torts - e.g. breach of contract. Same action may give right to action of tort or contract. e.g. an unskillful physician may by doing harm break an implied contract, and he is also guilty of tort.

Inherent characteristic of tort is the right to recover damages.

Benjamin v. Stov. (Kenny's case Tort)

Of course you may get injunction as well as damages.

In equitable jurisdiction of the Chancellor then arose - subject petitioning the sovereign, in particular and slavery concern itself with breach of trust - but these are not torts. Tort has nothing to do with equity!! It is a matter of common law.

A man liable in tort when, intentionally or negligently, he wrongs his neighbor in person or property.
Two conditions -

1. Damage suffered by plaintiff from the act of the defendant.
2. insurgents in unlawful negligence on the part of the defendant.

Early Incident: Employee contracted with coach builder to repair delivery van. Employee drove van, and wheel came off, causing injury. No action by the employee for breach of warranty to the employer and repairman.
Salmond says, normal condition is damage and mens rea. Must be shown that the defendant is in fault.

In Roman delicts, as a rule, dolus necessarii, you are not to hurt unwillfully or by want of care, and this very much the case in English law also.

Lecture 2

Not to suppose that breach of contract canning拉丁 to a third person will an ample give action to the injured third party.

Carl v Intick 1905 1 K.B. 377 378 258.

Action in contract arising from agreement of the parties, lost from the command of the State. Life, slander, nuisance, trespass, assault &c are torts. Divide these into three groups.

1. Wrongs to personal reputation
2. Property
3. Person estate generally.

In the first there is an element of wilfulness, and in the third liability appears to depend on the farter to take reasonable care. In both there is thus a moral element.

In the second
The mental element usually necessary in tort—intention or negligence.

"Injury sine damno" — et fide.

In such cases the law conclusively presumes damage.

Vic Ry Com v. Comitas — 13 A.C 222.

Damages in a case of negligent collision must be the natural and reasonable result of the defendant's act; damages from nervous shock or mental injury caused by fright as an impending collision are too remote.

"Damnum sine injuria" — Magne Case.

- Dickson v. Reeb's Telegram
- Bradford v. Pickle
- Derry v. Peek.
group, no mental element discoverable, because
the duty is absolute. But this case belongs
rather to the law of property, so that as a rule
intention or negligence (dolor or culpa) necessary
in tort. (Salmond p. 13)

Primary compensation is not the end, but the
means - of final coercion.

1. Injuria sine damno - e.g. an unlawful trespass on land.
2. Damnum sine injuria - e.g. fraud completed.
3. Compensation paid, though no harm suffered at
   all - the right is an absolute one
4. Harm suffered, but no legal right infringed,
   and no action lies

No action will lie for mental suffering,
unaccompanied by physical harm

[Contact Victorian Rly. Corp.

General rule of society is hokus non laderum
but some harms for which no remedy. How
are we to determine what kind of harm is
retributable?

When suing in tort, you must bring
the action within some specific and recognized
sort - some not on defendant to show that
the alleged offence comes under some exemption.
Stasmore v. Richards

Some legal rights are so unqualified that no action lies for damage which results, even directly, from their exercise, however negligent or malicious that exercise may be.

One such right is the right to destroy the soil of your own land, and all subsurface water that percolates through that soil without a known channel.

Stanley v. Powell - No action lies for damage which, through some unavoidable accident, ensues from an act done with all due care. N.B. "Unavoidable" by such a degree of care as an ordinary reasonable man would take.

Rylands v. Fletcher - It is a tort for a landowner to cause damage by the escape even without any negligence of his of any extraordinary source of danger which he has brought upon his land.
This, because there is no general law of tort, but only particular laws of tort.

1. Torts of two kinds - those actionable per se, and those actionable only on proof of some special damage.

Thus - *will actionable per se*

- Stand on only actionable on proof of actual damage resultant on the words as a rule, law only makes a man pay when he is in fault, save in cases of absolute liability.

Kenny C. - Stanley v. Powell 1891 1 KB 86 recognizes invariable action as an excuse. But

Rylands v. Fletcher sets up a standard of absolute liability, independent of the question of negligence.

Second case of absolute liability is inevitable mistake - action done under a false belief - applying particularly to wrong to property - conversion - also - disposing of the goods of another.

Trespass to property - any interference with...
The meaning of trespass

Vicarious liability - e.g. Linpea's case -
The principal's liability extends to every act done by his agent in the course of his business and for his interest, even though the act be one which he has forbidden.

Married Women Prop Act 1915 $19.

Presumption that natural consequence of an act as intended
The possession of another. Trespass to person — assault.

Salmond p 166. gives three meanings:
1. Any wrongful act
2. Any legal wrong for which appropriate remedy was the unit of trespass.

A third case of absolute liability, as that of vicarious liability — as when innocent master liable for Jones of servant.

Salmond p 190. Linfors v. London Omnibus C0y. 1 N. C. 526 1908 sec 2. But as vic. now, by M. W. Prep Act, a husband not liable for tort of his wife, unless they are done in such cases as the his act.

Brown's Holloway 10 C. L. R. 89. Here the High Court arrived at the same conclusion independently of statute.

Lecture 3. Everyone is presumed to intend the natural consequences of his act. There can be no actual proof of what is in the man's mind, so must draw inference from his conduct.
Absolute Liability

1. Involuntary Accident - no excuse e.g., Rylands v. Fletcher.
2. Involuntary Mistake - commonly no defense, as in Life of Landa.
3. Reasonable Liability

Malice
1. Wilful and conscious wrongdoing

Bromage brown:
“Malice in common acceptation, means ill-will against a person, but in its legal sense it means a wrongful act done intentionally without just cause or excuse.”

But in York, motive commonly immaterial
- Bradman v. Rekle.
- Allen v. Flood.
In cases like trespass a title, plaintiff may recover without proving special damage. There are certain cases where a man is said to act as his own judge—rule in Rylands v. Fletcher. Other rules as in Case Lecture.

Malice is used in at least two distinct senses—

1. Malice in Law—Intentional doing of an wrongful act without justification or excuse.
2. Malice in fact—Acting from an invidious or unknown motive.

Neither of these corresponds exactly to the everyday meaning of "spite." Each instance of first will be found in the law of torts. Is the act done deliberately?

In second sense, only rarely has malice making. There are two particular cases—

1. Malicious prosecution.
2. Privileged defamation.

In these two cases, malice refers to the improper motive.

In general way clearly right and only to prosecute person who has broken criminal law. If killer not convicted, he may sue the
NEGLIGENCE.

Subjectively — careless state of mind
Objectively — careless conduct.

The objective theory of negligence — as unreasonable conduct, is insufficient — the mental attitude must be considered — the conduct alone is not sufficient proof.
Fame; but must show malice + no reasonable cause for the prosecution.

The defamation case not easy. But same cases of privilege — e.g., master writing a character of his servant; in effect, presenting master's, must show malice — indirect or non-proper motive. Abuse of privilege.

Bases in Kenny's Select Cases in Tort.

Bad motive in legal act does not render the act illegal. (Bradford v. Dukie v. Allen v. Flood.)

Negligence and intention as to motive. Always important.

Negligence — Pollack considers this a spurious tort in itself.

Breach of duty to take care.

Elements in nearly every tort, but can't always.

Law treated not as spurious but, rather, a ground of liability. Everything which is a tort if committed negligently is a tort if committed intentionally.

Confusion arises from the failure of common law to even classify the torts on which action lay.
The duty to take care must be an owned responsibility and not merely bothered.

Conditions to be prescribed before negligence becomes actionable.

"The Standard of the Average Man."
all the actions were known indiscriminately as actions on the case. Actio in factum:

**INTENTION**

Intention — foresight + design.

Negligence — no consideration of consequences as hate to happen, or an undue taking of the risk of the consequences happening. Salmon insists that it is a mental attitude.

There is no negligence unless there is in the particular case a legal duty to take care. A person is not always under a duty to take care! Again, the duty must be owed to the plaintiff himself, and not to other people.

McKenzie v 29 Exrs. I.R. 64

The next proposition — negligence tending failure to take reasonable care, while person undertakes a duty involving special skill there is considered to be a special warranty of skill.

The standard in all cases is the care that would be taken by the average man with the knowledge or means of knowledge. Does the jury think that the amount of care was reasonable.

Vaughan v Trencher — lack of pay which caused fire.
Salmond p. 22 discusses Bogor Bernard.

"The test of negligence is the same in all cases.

Nevertheless, in Bogor Bernard, an unfortunate attempt was made to introduce into English law the misunderstandings of the Roman Law of negligence that were then received among the civilizers, and the distinctions then suggested ("ordinary, gross, and slight") have been repeated from time to time.

In Wilson v. Brett, Rolfe B. said it "could be no difference between negligence and gross negligence, that it was the same thing with the addition of an extraordinary spark!"
negligence is always relative to the circumstances of the case — Coggs v. Bernard.

Holt L.J. lays down three degrees of negligence — but Salmon & Co. reject any classification that splits negligence up into degrees.

In an ordinary case, proof cannot succeed unless he can show that the harm suffered would not have happened without some want of care on the part of defendant. Two questions — 1. for judge — whether the facts proved may amount to negligence.

2. for jury — whether they do.

The judge determines whether there is any evidence of negligence.

Ormsby v. proof of negligence rests on plaintiff; and judge may decide that there is no evidence to go to the jury.

Duthie v. Cly v. Sladick

Metropolitan Ry. v. Jackson

Must show that defendant under duty to show care — towards plaintiff — and want of care caused particular harm. This last point important in the last case cited.
Caskmore v Chief Comm. N.S.W. — The fact that a passenger on a rail train, protrudes his arm from a window of the carriage in which he is travelling is not itself negligence which diminishes his limit to; but it is a question of jury whether, in so protruding his arm, he failed to take such care to avoid danger from passing objects as was reasonable in the circumstances.

FRASER v. VICTORIA RAILWAYS COMMISSIONERS — Person in waggons crossing railway crossing, should look both ways and take due care, and if he is killed by train, the fact that no whistle sounded, though it is proof of negligence, does not excuse the negligence of the person crossing. Thus being an equal negligence on both sides, the defendant wins.

Fairbairn v London, S.W. Railway — Similar case - man did not whistle a fair warning of approach. Held that though this was negligence, there was no evidence to connect such negligence with the accident.

Chief Comm. N.S.W. v Boylen — Woman killed, crossing over train, not generally of contrite negligence of the train, she was that she was probably has crossed, as a reasonable person, thinking it safe to do so after looking out for danger (Dark night, arm in air, excessive speed).
**Nabbin v London v SW Ry Co.** 12 A.C. 41

**Garr v Victorian Ry. Co.** 8 C.L.R. 54

**Ichard v Chief Com.** 21 A.L.R. 265

**Bashmore v Chief Com.** 30 C.L.R. 1

**Jones J.** 9 C.L.R. 777 - quoting -

"What is meant by Res ipsa loquitur is that the jury is warranted in finding, from their knowledge as men of the world, that such accidents usually do not happen except through the defendant's fault, so that if the accident happened through defendant's fault unless otherwise explained..."

(p 33)

**Note: Reynolds v Randle:**

Bath radio failure and wall blew.

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Handayou v Milbраниц Co.** 1916 V.I.R. p 16

Planning being a paying passenger, the burden of care was on the defendants. So said County Court Judge - appeal, argued on appeal that this was not a case of res ipsa loquitur.

Supreme Court found itself unable to accept the broad principle of the County Court decision.

**Chapin v Macmillan** 21 Lewis C.R. 633 - a simple instance of res ipsa loquitur.

Concludes ordinary negligence.
Cashmore v Chief Comm. N.S.W. - The fact that a passenger may, by having his arm protrude from a window of the carriage in which he is travelling in itself negligent which does not entitle him to rely on it as a means to throw objects from passing objects.

FRASER v VIC. RAILWAYS COMMISSION

crossing railway crossing, take due care, and if he has no whistle, sound though he may the negligence of the railway authorities equal negligence on both

(based distinguishable from Wakelin's case).

Wakelin v London, SW. Rycoy - Similar case - hair and red whistle a prior warming of approach. Held that though this was negligence, there was no evidence to connect such negligence with the accident.

Chief Comm N.S.W. v Boylen - Woman killed, crossing over line, not guilty of contributory negligence if the line was not her fault she was probably the reason she crossed as a reasonable person, thinking it safe to do so after looking out for danger, (dark night, arm not in line, excessive speed to x)
Nakatin v London & SW Ry Co. 12 A.C. 41
Opan v Victorian Ry. Com. 8 C.L.R. 54
Reid v Chief Com. v Boylston 21 A.L.R. 265
Bashmore v Chief Com. 20 C.L.R. 1

Ordinary negligence. Has plaintiff must prove facts showing harm done to defendant's want of care, which position clearly in control of party, so that it is for plaintiff to show that, rei ipsa cognoscit. In such case, suff. for plaintiff to prove negligence, and he need not prove any more.

Isaacs J. v Gorman v Wills 4 C.L.R. 764

Lecture 4

Henderson v Meat Improved Co. 1916 V.L.R. 316

Planity being a paying passenger, the burden of care was on the defendants. So said County Court Judge — appeal argued on appeal that this was not a case of rei ipsa cognovit. Supreme Court found they were able to accept the broad principle of the County Court decision of Chapmocchi v Machin 21 Lumin. L.R. 633 — a simple instance of rei ipsa cognovit v. The Ry.

Concludes ordinary negligence.
Case of Damien Dunn v Metropolitan Railway, L.R. 8 Q.B. 161

Petty passenger on railway - landed against door of carriage. Door had been negligently left unfastened by defendant's servants, and plaintiff fell out. Held - defendant liable for plaintiff not bound to take precautions of examining door handle.

Condit, N.S. v. a special app. J. Reversing of damage, but held that Delato co.

Cook's case - Rep. coy kept burnable unlocked (i.e. dangerous for children) on their land close to a public road. The coy's servants knew that children were in the habit of playing with the burnable, to which they gained easy access through a well-worn gap in a fence which the coy was bound by statute to maintain. A child 6-7 years old playing with other children on the burnable having been seriously injured. Held that there was evidence for a jury of actionable negligence on the part of the railway company.

Last opportunity - Elders - If both are at fault, but one had the last opportunity of avoiding the occurrence, it will be held by any damage suffered by the other, and described to recover any damage suffered primarily.
contributory negligence — must be negligence which was pretty well the prominent cause of accident, not an mere element in the matter. Butlerfield v. Scruela
Dane v. Mann. Kenny's Cases 576

Maxim — in pari delicto potest est conditio dependentis.

Cadmore v. Chief Commissioners is instance of discussion of contributory negligence, and the case of St. v. Metropolitan referred to herein.

This can be no contributory negligence unless there is a legal duty to take care. Person leans against rly. carriage door — it is loosely fastened by reason of negligence of railway servant — action the age company, even though pety. might have found defect by examining the door. There is no legal duty laid on him to do so!

St. v. Metropolitan 1909 A.C. 229.

Must depend on who has the last opportunity of avoiding the accident.

If Salmond on these principles, and cases, then, of course, certain cases of absolute liability.
Salmond, after discussion, p 40-42, formulates rule in Damion v Mann. Thus: "Care has no duty of departing from a practice or habit of a higher degree than the plain and ordinary. Of avoiding the accident by reasonable care and that to him knew ought to have known of the danger, caused by the plaintiff's negligence."

"Injuria non fit volenti."

But mere knowledge is not consent; though it is important as proof.

South Finchley v Richardson

Drum, 6 reach waggons, had 6 arrive on railway lines, which by reason of their proximity 3 inches above surface. Drum knew of this defect - in crossing, the wagon jolted, and he was thrown off and killed. Held that no evidence below that he had failed to take reasonable care, whereas the burden is on the defendants, who owned the property and invited the drunken. He used reasonable care to protect such invitees against danger (unless they be perfectly obvious). Thus no contributory negligence to excuse the defendants.

(Interesting discussion of Rehwenn v Danes etc., by Isaac J.)
Salmond 44. Doctrine of Identification now no longer operative, as a general rule. No man (\textit{injuria non fit volenti}) can bring action on what he submitted to willingly - as the participation in a football match or the sitting in a dentist's chair.

But where public law threatened, consent is no answer - no one can consent to be killed in this way.

Y Smith v. Baker. 1891 A.C. Here must be express or implied consent, and not mere knowledge. There must be some probable acceptance of the risk as one which will be taken. Knowledge may be evidence of agreement, but nothing more.

\textit{South v. Cory v. Richardson. 20} E.L.R. 181

Knowledge as proof

But knowledge of the danger may -

\begin{enumerate}
\item negatize the idea of defendant's negligence
\item may estabish contributory negligence on part of plaintiff
\end{enumerate}

So it is an important factor.

Smith v. Baker. Where man worked knowingly, knowing danger from falling stones. \textit{Ex absurdo sequitur absurdum}, \textit{ex non potest esse injuria} and not \textit{scinti non fit injuria}.
Campbell v Paddington Corp.  Stand erected by council, and block a road of planning - Governor Edward VII.

First J. explains Porter's case - "that case was only an illustration of the principle that where the wrongful act is done within the express authority of the corporation, an authority from the corporation to do it cannot be implied if the act is outside the statutory powers of the corporation. That principle has no application to a case where the corporation has resolved to do and has, in the only way in which it can do, any act, actually done the thing which is unlawful and which causes the damage complained of." The resolution was the res of the corporation, and the act which caused the damage, no matter for whose benefit it was done, was the act of the corporation and not of the individual councillors who resolved to do it. No ground to say that defects not responsible."
Lecture 5

Alien enemy can't sue, and convicted felon while undergoing sentence. No proceedings can be taken against the crown for tort. Similarly can't sue for official as official, but can sue him on his private capacity even if two committed by royal order.

Act of State:

Foreign sovereign - head of an independent state no right of action against him. Similarly ambassador while he is ambassador.

Action of tort can be brought against colonial gov't. but defendant may plead as defence that the act complained of was within the scope of his lawful authority; and court has jurisdiction to determine whether the plea is justifiable.

All this belongs to Administrative Law.

In Boden's Corporate ripon 1911 1 K. B. p. 862 — Ponelton's case referred to & Lord J. explained its face. Corporation hath no such act
Decision said that Trade Union, though not a corporate body, could be sued in an action for tort for wrongful act of its officials.

Age of defendant may be evidence of absence of passion in mens rea, which is essential element in kind of tort in question. E.g. action based on malice as some special intention.

**Contract & Tort**

Infants not liable for breach of most contracts. How then of breach that involved amounts also to a tort? Could be learned in law? Blackstone says yes!
Members of corporation not liable for tort of the corporation.

Taff Vale Case, 1901 A.C. 426 discussed the liability of traders' unions for torts of officials. Decision took more pre-eminence to traders despite 1906 (England - not yet!)

Pach v London Sch. Conferences, 1913 A.C. 107 held that action in Del not limited to torts committed in contemplation or furtherance of trade and public defamation of a corporation (p 408.)

Infants' liability in tort, but can't make him liable on contract merely by framing the action as one of tort. Unpaid until called for damages against infant, but could you make the money?

In negligence, take into account the age of the child.

Talbot v Talbot, 1910, noted that 'don't look as much'

Mannion v Rees, 10 V.L.R. Law 264 - unless relation of principal and agent exists between them.

Littler's - considerable doubt. Fact of using litiater does not ipso facto carry exception.
Lunacy

1. In wrong of special intent, lunacy may obscure intent
2. Interference with person — M'Naughten's case
3. Wrong of absolute inability, no reason probable to escape
4. Wrong of negligence — did the necessary knowledge or means of knowledge exist?
Married Women: As Com. Law Instinct, wife was one person and could not sue one another. This modified by Married Women's Property Act.

Brown v. Holloway 10 C.L.R. 89

In Eng., though married woman can be sued in her own name, may be now that rule that husband liable for wife's acts does not exist. This liability of husband for wife's acts existed though they were living separately; this liability ceases on divorce or other dissolution of marriage, even though the right of action accrued lifetime.

The Office of Death — "actio personalis mortis cum persona." Suppose to be an ancient maxim — now used for "actio personalis"? But as present forum is influenced by English law, and not recently action for lost dies with either party, only from law exception was Phillips v. Bombay 24 Ch. D. 439.

In wrongs to property, the maxim is hardly applicable at all.
Lemprière v Lange. 
Def: obtained a lease of a furnished house on an implied representation that he was of full age, held the lease must be declared void, and possession given up, and Def: restrained by injunction from parting with the furniture; that it was not hostile use and occupation.
In this case, argued that it was not guilty of a
charge of concency as a bailee, on the ground that he
could not contract, and so could not commit the crime.
Held he was liable for the crime — he was capable of
becoming a bailee, as true may be complete bail.
ment apart from contract.

Lempriere v Lange 12 Ch.D. 675

Lempriere v Bell 1915 see 62 Personal Reps. 37

deceased entitled to one for tort to the real estate of
deceased committed within 6 mo. before his death
upon which he himself could have sued in his life.
But action must be brought within 12 mo. after death.

Commonly, executors can be sued for wrongs
within 6 mo. the real or personal estate committed within
6 mo. of the death — action to be brought within 6 mo.
after defendants have entered on administration
of the estate.

Successor of deceased can be sued when
deceased has wrongfully appropriated chattels
personal of another and thereby increased his own
estate.

It was said that the death of a person cannot
be made a cause of action, that was fully an end.
Wrong Act 1915 — Action may be brought after death of the deceased or the time the deceased would have lived had he lived.

(Embodied in notes opposite.)

§ 16: The actions brought for benefit of person, wife, husband or child.
To insurance. At t. & L. note evil wrong to cause death of human being - the wrong dies with him. Osborne v Giffen. Great out of this rule, that Pollock combat the theory.

In Clark v London, Omnibus Co - death - civil action won't aid. The America 1914 P. 186.

Wrong Act 1915 114-20, is copy of Lord Campbell in Act

The America - per Buckley L.J. - "Lord Ellenborough's ruling in Baker v Bonhote that 'no civil bond the death of a human being could not be complained of as an injury' must, notwithstanding the great weight of Baron Bramwell's minority judgments in Baker v Bilton, be regarded as having upon us.

Allegation of effect by Wrong Act 1915. When death caused by wrongful act or neglect of person (even if act amounts to a felony) the personal representative of deceased may, when deceased co. had he lived, bring action for damage.

If a felony, prosecution must precede taking of civil action. Duty & State come first. §17. Where no exec. or admin. of deceased person, or no action brought by executors within 6 mos, then
§ 18. In assessing damages, no account taken of money paid under any assurance contract.

§ 19. Action to be commenced within 12 mos. after death.

Another hyperbolic case where damages assessed by near relative of deceased —

Bom v. Boyson, per Lush, C.J.

With respect to the question of damages, it is

[Handwritten note: "Taff Vale Ry Co. v. Jenkins 1913 4 C. & L., as an authority for the proposition that it is not necessary to prove an immediate pecuniary loss, and that a

prospectiv pecuniary loss may be taken into consideration."

This was ample evidence of prospectiv pecuniary loss by the daughter in question.
action may be brought by person for whom tennip action ed. have been brought by such claimant.

Personal reps cannot bring action unless decd.

himself ed. have brought an action if claimant yp
deceased has, between accident & death, accepted full compensation, relative can’t sue on his deal

But, if death causes some pecuniary loss

to a relative, relative has an action, although no solatium paid for mental suffering!

Taft Vale Railway Case 29 Y. L. R. 17 Petff to damages

t to be assessed by negligence of boy’s servant. Daughter apprenticed though not earning money. Was soon

have finished apprenticeship and begin to earn

money. Held that as petff has reasonable expectation of pecuniary benefit by continuance of daughter’s life, he was entitled to damages.

they both Rep. v. Boyleson 21 A. L. R. 267 followed the above

It need be said that damages should be assessed and (if more than one claimant)

apportioned by the jury.

In 1910 provided that in such cases damages ed. be assessed and apportioned by judge without

jury.
In felony, prosecution to precede action

Smith v. Selwyn

An action for damages based upon a felonious act on the perpetr of the defendant committed against the plaintiff is not maintainable so long as the defendant has not been prosecuted or a reasonable excuse shown for his not having been prosecuted, and the prosecution for the fraud to be adopted in such a case is to stay further proceedings in the action until the defendant has been prosecuted.

Richard v. Lohman. To sustain an action for negligence, it must be shown that the neg, found by the jury is the proximate cause of the damage. Where the proximate cause is the malicious act of a third person against which precautions would have been ineffective, the defendant is not liable in the absence of a finding within that he was negligent in that he ought to have foreseen and provided against it.
When both tort and felony, prevention must precede taking of action.

Bristow Smith v Selwyn 1914 3 KB 96, which upholds the rule, despite Salmond's later criticism of it.

An action will lie on behalf of alien relatives of an alien killed on the high seas.

Lecture 7

Choyne v South End Gas Co. 1916 1 KB p33

Persons joint wrongdoers when they are jointly liable for the same tort.

Persons may join all as defendants, or any one.

Lothian v Richards 1913 A C 263, and the High Court of Judicature should be read

Rush v Long 32 YLR R 82

Independent action as the cause of wrong.

Lothian v Richards should be read as a good general summary of the particular subject.

Sometimes a person hath, even though act...
Receipt 19. The artificial doctrine established by Mercurybe v Mean, that there can be no contribution between joint tortfeasors is not applicable to this case, and is not a doctrine which one is conscious beyond further than is necessary.

Company Act §92 — Liability or statements in prospectus, unless reasonable belief or e e e
Some third person intervenes between him and the actual wrongdoing. But ifvell third
person is misconduct, the matter is different.

My negligence must be the effective cause of
the action, or I am not liable.

Thus in Knopp v Long, a vehicle was lifted
off its wheels, and another jumped on, by pulling
down, starting it and injuring plaintiff. Held
no negligence by owner of vehicle, as intervention
of third person was proximate cause of accident
and there was been no accident without
such intervention.

Footnote 6 Salmond p 77 relates to remedy
of action, as in Procedure
(Odgers on Practice & Pleading)
Rule in Merryweather v McLean not favoured
by Salmond. Rule — no contribution
between joint tortfeasors — now qualified,
and applies only to cases wilful and
conscious wrongdoers.

Anson Evans & Smillie 1915 3 K. B p 392 (Rees) L J.
Comments on rule
Company's Pet 1915 892. E. S. E. E. — consequence
on Deny v Bart.
But two instances of contribution are:

1. Principal entitled to contribution from agent
2. Anchorman entitled to contribution against client depositing goods wrongfully for sale

Principal and agent

2. The book fund among proportionate ship for his own two men, that—
   — death for hire he has authorized in rapids—
   — death for ship he has authorized in rapids—
   — death for ship is serious done in coming of employment and sometimes for acts of
   — contractor employed by him.

Principal that for acts of agent done by his authority—it is only a special authority.

But if giving H. anchorman instruction to may be stopped from denial of authority.

Kulby's master—can't be ratification unless person acting says that he is acting on behalf of the principal. This obviously can't be strictly enforced in tort, but suff. if the intention sufficiently appears.

Principal must know the nature of the act done on his behalf.
Johnston v Marovski: A small footbridge placed by a public council across a path made by a public pathway was without authority removed from its position by some person. An employee of council fraudulently replaced the footbridge, which misled as the plan was crossing it, and she was hurt. While not apparent that the act of the employee was authorized by the council, it was shown that the council was informed of the act, and took no further action in the matter. Held that the fraud in replacing the footbridge was an act of misfeasance, for which the defendant was liable.

The general rule that there can be no ratification without full knowledge of the facts does not apply when a person chooses to adopt the act of another without enquiring as to who...
Johnson v. Mangas, 1913 L.R. 291

In this case, Queen J. said: "A person adopts an act of another without any authority, then he was nevertheless liable.

Partners.


§ 14. A partner jointly and equally liable for torts of the partner done in course of business.

§ 15. Where money normally received by partner is misapplied.

Hamlyn v. Houston, 1903 1 K & B 81


(This refers to: Lloyd v. Grace Clark.)

It is said that man has choice of servants, and so should be liable if he employs a bad one. Diff. to get compensation from servant, so the principal should be liable.

One fact: plain fact for an

Responsibility superior

These are the various theories put forward as to the rationale of master's liability.
But act must have been done in course of the employment; and this must be relation of master and servant.

True test of the latter is the continuous presence of control — you constantly declare the manner in which the job is to be done.

**Evans v Liverpool Corporation** 1906 1 KB 160

**Dominus pro tempore** a phrase e.g. Chinese employs men to unload ship — he employs the crew of ship does the job — he is then the **dominus pro tempore**

**Davis v London & C.** 30 T LR

**Mercy Docks case**

Government departments come under somewhat exceptional rules.

**Convey employment** — some set authorised by master, and then done wrongfully by the servant!

Nurse's task: not authorised, but closely connected with one to which he has been authorised.

**Mills v Barnesh v London & C.** Stock on these theories

Note: Master may be liable even when act complained of expressly forbidden (**Tempers v London Omnibus**).
Absent of journey conductor of bus, in presence of driver, who was seated beside him, to turn the
steering wheel, which negligeant and injudiciously driven the omnibus for next journey, down through high-which
resulted in negligence on part of driver in allowing omnibus to be negligently driven
by conductor; — Beard v L.G. Omnibus distinguished.

In that case, driver had gone away by his own

Vicarious Liability of Master —

Scope of employment

Engelhardt v Ferrant: Defendant employed a man to drive a
cart, with instructions not to leave it, and a lad who had
nothing to do with the driving, went in the cart to deliver parcels.
Driver left the cart, in which the lad was, and went into a house.
While driving about lad drove on and collided with
planning's carriage. In an action for damages caused
held that negligence of driver to go leaving the
cart was the effective cause of the damage, and that
the defendant was liable.
Two distinct ways in which wrongful act may fall outside course of employment of Salmon,

Buffett v. Ulling 1915 1 K. B. 644

Bk r. Sw v. Hamorton Owston 4 A. C. 270.

Lecture 8

The master is responsible for acts of servant committed in course of his employment.

The master is not liable for acts done by his servant even on his behalf if it is outside the scope of his employment.

Hogg v. Isaac Smith 1912 A. C. 746. at 752

Barnette v. London Joint Stock Coy not an authority for the proposition that a master is not liable for the wrongs of his servant committed within the scope of his employment if it is not for his master's benefit.

A master not responsible for the negligence of his servants committed by the servant without the master's authority and for his own benefit. Common e.g. in the use of the master's car without authority.

Ingham v. Farren 1897 1 Q. B. 240.

A person is always liable for wrongs...
Kristak v. L.C.C.  
Rep. had only paid his fare, but was 
rejected from one of defendant's trolleys by conductor, who 
was under mistaken idea that rep. was travelling beyond 
the point where his ticket allowed him to travel. The 
conductor claimed damages from def. for the injuries he 
sustained through being ejected.

Held — Def. fails to prove negligence near him.

Holdring v. H.A. Telephone.  
Conductor took a golden pry 
work in connection with telephone trenching job. He stung 
cancer around a golden trowel splashed on passerby. But 
work done by plumber under supervision of defendant's fore-
man, and only their men assisting him. Held apt to.

Baste inferences.

Also in case of plumber was maid. Conductor, job 0 and 
a native on public highway) had ample. Sound to take care 
that those who entered work for him and not negligently 
cause injury to such persons.

Bower shak — Man cannot avoid responsibility on maxi-

'See case two we on alien violence by delegating excavations on 
his property to an independent contractor.'
which he authorised or ratifies, but he is not as
a rule liable for acts of an independent contractor.
But this rule is subject to exceptions.

1. Where the work commissioned is unlawful.
   
   *Norton v L.G.[1]
   1915 2 KB 676.

2. Where the employer himself takes part
   in or manifests with the work, he will
   be liable himself.

   *Nolladaj v Nat Telephone Co. 1899 2 QB 392

3. Where he is an absolute duty imposed by
   statute or common law; upon the employer he
cannot discharge himself from responsibility
   by employing independent contractors.

   *Brown v Peake. 1 QB D 38

4. Where there is a duty on the employer
to see that reasonable care and skill is
exercised in the performance of the particular work
he will be liable if such skill is not
exercised.

   Salmon 390.

If an indept. contractor is employed to do
a lawful act his employer is not liable for
negligence on part of contractor or his servants
which is causal and merely collateral to the
performance of the act.
Priestly v Fowler commenced the doctrine of "common employment."

For the doctrine to apply, the two servants must have not merely a common employer but also a common employment, as Sir F. H. Jenkins has said. "If a person carries on both the one of banker and barker, a drapery business and his bill-clerk was run over by the drayman, the drapery cd. not be set up by him. But it is not necessary that they shall be working for some immediate purpose at the same place.

5. Cases where worker can recover under the Act —
"Common Employment"

Lecture 9

If servant in course of employment
leaves another servant, in common employment,
employer not with

1. Priestly v. Fowler 88 Kerry S.C.

This has been altered by statute,

Employer v. Employee Act 1915  §34-45.

Duty of master is to take proper care that
the plant and materials used, and to take
reasonable care that the servant is employed &
compliance. Sand v. Wilson v. Mining master
must do these things - select proper persons and
furnish them with proper materials. Doesn't
guarantee that plant is sound, but takes reason-
able care to see that it is sound.

If master takes proper care, then he cannot
be responsible unless he personally supervises.
The effect of above act is to put the fellow
servant in position of the stranger, within the
limits of Act. Fini cases when workman
can recover.

p102

1. Any defect in plant used in occupation,
provided it is negligence by employer.

2. Injury caused by negligent supersession
of some superior servant.
Nicholls v Ballard

Master had three defenses against suit by servants:
1. Francis v negligence, and conduct negligence.
2. Common employment.
3. Contract by servant to take known risks.

This allowed by Employers' Liability Act 1880.
Defence 2 contract negligence should only be proved by employer, but the
other two defenses taken away. But he is given an
additional statutory defense - when they are placed in
plant or machinery, if it may appear that servant knew
the defect and did not communicate it. The judge
has thus taken from the employer two defenses, and
given him another.

Stevens v Austral Otis. Claim for compensation under Employers' and
Employers' Act 1890 and common law claim for damages in respect of
some injuries may be joined in the one action; and when this
is done the plaintiff is not bound to elect at the trial which
remedy to
will pursue. (On Madden's 2d. The jury shall be held by the
judge that their verdict should be as to one cause of action or the
other, and the plaintiff cannot have judgment as to both.

Bean v Harper. Same act. Injuries caused by defect in
plant. Jury found that injuries caused by defect + negligence &
fellows workman held suff. of proof that defect was a direct
and proximate cause.
3. When servant not actually superintendent, but servant injured had doing time.
4. Injury caused by obeying mistaken rules.
5. Injury caused by negligence of servant in urban mine.

Barani advises avanath - [Redacted].

Wentchi v. Ballard 17 Q.B.D. 122 at p. 124 - Summary

This worker can expressly contract himself out of this act, though he cannot out of the Workers' Compensation Act.


J. Stevens v. Anokah & Co. 27 V.L.R. 424

J. Bwan v. Haron 18 V.L.R.

[Redacted] v. [Redacted] 23 V.L.R. defines "plant."

Footway v. Inorganic v. Heaven 14 C.L.R. 321

These cases in notes to consolidated Act.

Based on special ways and plant.

J. Meckie v. Great Northern 3 C.L.R. 563

[Redacted] v. [Redacted] non fit injury

J. Ballan v. Coal v. Murray 9 C.L.R. 568

[Redacted] v. [Redacted] 4 C.L.R. 612
Metcalf v Great Boulder Mines. "Defect in condition" means defect in construction, and does not cover the negligence of a properly constructed appliance. A person employed in a mine, whose duty it was to notify by signal when conditions were such that work which the miners were bound to do, might be safely proceeded with, is not a person 'duty bound' under orders and directions a workman's bound to conform within the meaning of the Employers' Liability Act.

Pashley v Freeman. It is a breach of duty to cause damage to a person by a false statement made with the intention that he should act on it.

Robinson's case. Photo, used as a def. Held (N.Y.) no libel to privacy, as there was nothing shown about the publication and mere annoyance not actionable.
Workers' Compensation Act 1915

Does not affect other remedies, but can't

recon remedy under both acts.

Employer becomes an insurer

Right to compensation not based on any act of

action in tort.

Personal injury by accident arising out

of an in the course of employment. Employer

liable to pay compensation. Great difficulty on

"arising out of and in the course of his employment.

Amount compensation allowed in act.

If death, not over £500 but ≤ 3 years' wages.

But if injury due to drunken and unwise mis

conduct of workman, then unless injury results

death or disability, compensation disallowed.

B'wealth Smugglers' Compensation Act also.

Agreement paid and recorded.

Carroll v. Fleming K.S.C 473, a special case on the

position of partners - should he noted?

Retson v. Rochester Foundry Co. also in Kenny's Cases 364

on the "right to privacy"?

 Held that the right to reputation doesn't

include right to privacy.

Brown v. Flower 1911 1 Ch 219 - Defendant says he

constructed a tower overlooking bedroom windows - 

faced, or only privacy and comfort affected!
Independent Contractors.

General Rule - employer not liable.

Exceptions:

1. Employer liable for wrongful act committed by himself.

2. If there is want of duty on employer, he can't escape liability by alleging himself to be independent contractor.

3. If there is absolute liability (and negligence immaterial) no defence that cause was negligence of independent contractor.

4. Two exceptional cases where employer & contractor allowed by law only on terms that employer necessarily responsible:
   (i) In interference with right of support, care must be taken that no interference or mischief caused hurly; and if so, employer liable.
   (ii) Where contractor employed both on a highway some dangerous act other than ordinary use of highway.
   (Penny v Hindledon) — contractor left unlighted heap of stones on road.
Salmond p. 455.
If connected with / done by / in / to / in / by / for / on / to
actions, it must be brought by person appointed
for ens.

Lecture 10

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Section 57, Passengers Act 1904 Commonwealth
Instruments Act 1923-238
Robinson's case (supra) shows that you must
bring yourself within terms of some specific act.

Remedies for Tort

1. Damage - ordinary and essential remedy
2. Injunction - for delicts only, equitable remedy - an
   anticipatory remedy.
3. Specific Restitution - practically only
   applicable where there's recovery of land.

Kinds of damage
1. Ordinary - actual loss suffered
2. Nominal - empty verdict
3. Vindictive
The owner of an animal is answerable for any damage done by it, provided it be of such a nature as is likely to arise from such an animal and the owner knows it. Thus in the case of a dog, if the bite is to a man or woman, and his owner knows that it is accustomed to bite men or women, the owner is responsible; but the party injured has no remedy unless the owner can be proved... "If the horse does something which is quite contrary to his ordinary nature, something which his owner has no reason to expect he will do, he has the same sort of protection that the owner of a dog has."
Vindicated damages (also Prinicipal or Exemplary)
Salmond says this is by way of solatium (as in
Roman advow injuries).

Man responsible for such consequences as
intended to follow, such consequences as
reasonable man would naturally know of.

Other consequences are "too remote".

Thus an exceptional case of absolute
liability.

Sanderson v. Leape 51 L.T. N.S.

Is there any breach of duty?
Yes, was the harm the natural and probable
consequence? Of these, the second question
is the more important.

Standard of the prudent man.

Thus quite a little confusion on such cases.

Man not liable for his dog's acts unless
he knows that the dog has a nasty wicked
disposition. Same applies to the shop also.

When wrongful act of repair is made
in so far the rule of remuneration simply determines
amount of damage. But when only damage is too
remote, no action at all (no absolute rule really)
If damage a natural consequence, influence if third party no excuse, even if careful.

Horse was in field: owing to neg. of defendant's servant gate left open, and man escaped into field while cricketers playing. Bricks were thrown, one was thrown in proper manner to drive the back through the gate. Horse ran against wire fence, was injured. Was injury too remote a consequence of negligence or leaving the gate open? Bunch said no.
Damage is too remote if not intended, or not the natural and probable consequence.

Salmond treats this as a phase of mens rea - the defendant must be in fault.

N.B. If it is likely that the damage will happen in some way, it makes no difference if the actual way is an unlikely one!

Kenny’s Cases p.19 give illustrations of

the rule of liability.

“Even though third person lawfully intervenes; I am liable for natural consequences

Nervous shock - how accidental, apart from actual impact? Of course, there must be some physical damage resulting from the nervous shock, and shock must arise from a reasonable fear of immediate personal injury to oneself.

Halsbury v Gregory seems a case very near the mark - not easy to say whether damage too remote is not.

Damage not necessarily too remote because some third party negligently intervenes.
Lothian v. Richards - Damage arising from flooding of cavatary by tap left turned on, negligently or maliciously, by some third person. but be avoided by having a lead flat in cavatary.

Held that defendant liable. If an event likely to occur, there is a duty to take reasonable precautions to avoid the happening. And if damage caused through neglect to take those precautions, in determining liability it is immaterial whether the act of the third person was careless, malicious, or malicious.

Liability not affected by the fact that the act of the third person, if malicious, would be a criminal offence.

Look at Pretty commer. judge.

Marshall's case. As the bank's customer there is no assumed unequal duty on the part of the customer, neither cheque, nor guard nor foreign (i.e., by leaving spaces which might be filled.) Schofield v. Lord Londesborough, a similar case re Bill of Exchange.
On even when third party deliberately acts.

1 of Lethan v. Richards (High Court) 12 CLR 165
Chief Justice p. 171

If damage taken by intervention of third party, then owner must take reasonable care to avoid such consequences.

Leshen 11  Wether v. Wether 32 7 CR p 290.

On position of husband and wife in tort.

Marshall v. Belmer 88 1 CR 632 refers to

Skeffem v. End Landr threw. Look at this!

On negligence and Remoteness of Damage.

Ask - What was the proximate cause of the damage?

Jinks BK III 80 334 says - Defendant's
hate of his negligence is the effective cause of the damage.

Only sentence said Richards (in case supra) must hate, as cause was act of change, but really decided case on Hylans v. Muck

Jury not used in all these cases by any means - the judge acts as jury in question of fact.

Jinks p. 370 p 798 on these things.
In an action for defamation of an aggravated character, in which the defence of truth was pleaded, the jury found a verdict for the plaintiff with one shilling damages. The judge summed for the plaintiff without costs, tending to expunge, under the circumstances of the case, the verdict. The judge directed that the jury should regard the plaintiff's character and conduct in the matters referred to, and considered the facts practically justifying, although the defence of truth was not fully established.

Held that he was justified in drawing this inference, and that it afforded good cause for the exercise of his discretion as to costs, adversely to the plaintiff.
Under certain circumstances, the jury may give nominal damages.

Connolly's Sunday Times 7 C. L. R. 263 - case on nominals, a rather consummation damages.

Where damage awarded an excessively large or small, party may ask for a new trial alleging some fault on the part of the jury. But court will not disturb verdict of jury unless convinced that:

1. Certain matter not covered by jury
2. Jury fixed up - re. ill considered
3. Verdict such as no reasonable jury could find.

All damage from one cause of action must be recovered in one action.

But same act may violate two distinct rights - in that case an action will be on each cause of action.


But not enough of the one act amounts to two distinct violations of same right.

Also note an exception when the wrong complained of is a continuing one (and the you cannot get prospective damages).

Darely main case notable one.
successive actions for damage will lie.

1. While same act violates two distinct rights.

Brodin's Humphrey - Cabdriver gets damages for injury to cab in collision, and later was allowed sums for personal injuries in same collision.

2. Two actions lie when defendant has
   committed two distinct wrongful acts even
   in violation of same right.

3. If injury a continuing one, continuance
   afforded first action is new cause of action.
   But you cannot obtain prospective damages
   for an anticipated continuation of the injuring, even
   though such anticipation has diminished the value
   of the property.

4. Probably, when act only actionable on proof
   of special damage, and it produces damage
   twice at different times, then are two causes
   of action.

   But the second damage must arise directly
   from the wrongful act, and not indirectly through
   the damage already sued for.

Junks $800. In a qui pro quo action, brought to render the
commission of an apprehended tort, it will not grant injunction
unless strong probability has been committed.

Injunction may be obtained in qui pro quo action, but
commission of injury that will probably be committed.
only one exception to this—
Lord Cairns: But how power to Equity to put damage instead of injunction, and in his case, damage being awarded to take place of injunction, includes future damage.

D. Injunction

1. Prohibitory
2. Mandatory

Interlocutory injunction may be given on security.

Injunctions against
(a) continuing
(b) reputation
(c) commission

Look at Judicaire Act—Injunction will be granted as often as the court will be just or convenient. This seems to extend the doctrine of the court. Has held that injunctions did only discontinue when previously a court of equity had power to grant it!

Interlocutory injunctions to restrain publication of libel—exception to this rule.

Monson v. Daubers. 1894 1 Q.B. 671

Mrs. agnitz’s case recently.
Sheep v. London Electric Tramway Co.

Injunction granted prohibiting use of electric-lighting machinery which was causing structural injury and discomfort in a public house.

Three causes of action:
1. Damage for past & injurious
2. Damage for past & merely
3. Damage for past & future violation injunctive
   (Lord Barnard's Act)
Jurisdiction to grant injunction is discretionary and not of right; but general rule (p130) that injunction should be granted in all cases of continuing injury or threatened injury to bond consider two matters

1. Magnitude of injury
   2. Conduct of parties. [ Vigorous remedy necessary]

Injunction; remedy that comes law remedy on damage, not sufficient, and so injunction necessary.

1133. If damage substantial, and nothing in plan to render new undermining of remedy, an injunction granted, even though it means greater loss to defendant and general public.

NOTE

135. When right to bring an action for loss will be barred.

"Limitation of Actions"

Explanatory paper Consolidated Statute

S.C.A. 1915. Sect 1. Only if provisions of this division, actions, suits, or other proceedings as herein above are commenced within the time herein expressed after the cause of action accrues or upon the unconstitutionality —
Limitation of Actions - Supreme Court Act
A. 1. Actions for personal damage, etc., 2 years
   2. Actions for slander - two years
   3. Actions for trespass by person, menace, assault, battery, wounding or imprisonment - four years

B. Actions in the name of actions for
   trespass quo warranto fugit, trespass to goods
   deliver, heme

   (7) all other actions founded on contract
   (8) all other actions in the name of actions on the case.
   Six years

Ordinary considerations re extinction apply.

If plea an unfit, insane, or insane as
(i.e. beyond understanding) then time does not run until sanity, majority, or return.

Lesson 12

p. 138. Some special periods of limitation -
  e.g. Public authorities Protection Act 1893
  Bradford Corp. v Myers
  Clark v Corp. St. Helens
Limitation of Detroit -

When does this begin & run?

Partners

Account
When the concept of a breach of an absolute right - unsettling
a norm; then time runs the moment breach
occurs.

But when actual damage essential, time
will not begin to run until such special damage
takes occurred.

E.g. In trespass to land, time runs from date of
trespass.

1902 2 K. B 318

In action of detinue, time runs from date of
demand.

In action for conversion when goods sold
or destroyed, time runs from sale or the act
which blamably renders, even if the plaintiff be
equally guilty unless such ignorance due to
the grand defect in concealing the conversion;
and in that case time only runs when fraud
discovered or might with ordinary diligence have
been discovered.

except for the ni avary partner - time
doesn't run until fraud actually discovered

95 2 Ch 474

Sometimes may ask for his ACCOUNT - in
cases of waste, misappropriation, infringement & takings.
Replevin.

When goods wrongfully reposed — an interlocutory restoration pending determination of rights with us.
When court has jurisdiction to grant injunction in the commission of tort which has resulted in the appropriation or use by deft of plff's property, the plff may at option instead of damage obtain as ancillary to such injunction an order for the taking of accounts of the profits received by defendant; and for payment to plff of whatever amount shown by accounts to have been wrongfully received by defendant.

Appellate case 1897 16 893

Court will sometimes order restitution - common in land; sometimes in chattels.

It may order possession of part or chattel to be delivered to plaintiff by sheriff, by court of possession - in case of land and by a writ of delivery followed if necessary by a writ of assistance in the case of chattels.

Evidence, 42, 48, S. C. Rules

v. Knight 39 Ch. D. 165

Replac[e] When goods of one man have been wrongfully detained by another, the injured party may by action of 7 repel[e]m, receive immediate & provisional possession of them pending
Replenish a part of
intercourse restoration
of property.

"Prosecution
before
Action."
result of action but by law to determine the action of the parties.

Plaintiff commences action by complaint, and then gives issue by venue writ to sheriff or warrant to bring (complaint) to replace the goods and the officer, on summons being given by the plaintiff by hand with two witnesses, takes and hands over the goods to the plaintiff. If the P. succeeds in his action, he keeps the chattel, then provisionally restores them, and gets judgment for damage & costs resulting from default of buyer.

To 157

SCHILLER S.L.C. 1914 3 K.B. 98 applies the above, after considering all the cases.
ASSIGNMENT OF RIGHT OF ACTION IN TORT.

1. Rule does not prevent assignment of property merely because it is the subject of litigation and cannot be recovered without action.
2. Does not prevent assignment by trustee of bankrupt's choses in action.
3. Does not prevent assignment of fruit of action in tort.
4. Trustee may assign to beneficiaries the right of action for injury to trust estate.
5. Right of action for injury properly assigned along with property.

Warning: If money obtained by tortious action, Plaintiff may want his remedy in tort, and click here on an implied contract for restoration of the money.
"action for money had and received"
Assignment of Rights of Action in tort

of Paip Travesty and Appeals Jurisdiction Act à la

Assumption

But assignment of right of action in tort

is generally illegal and void

May v Lane

Kemp v Victoria Insurance Co. 1896 A.C. juris som

brouth, domino. Appellant care of entrapment

Defeas v Minn. 1913 1st. 98 Samuel J.

Note the effects:

1. Marriage
2. Death
3. Insolvency

in extinguishing rights of action in tort.

Note — p. 143. S.C. — Insolvency Bankruptcy

may assign his choses in action, as it has statutory

power only because the assets

Waiver

abandon, lost, and one in quasi

contract for money had and received.

Foreign torts. Before action ed. to show by

foregut, but conduct had the hurt by the

law of both places. But now all that rem

Foreign Torts.
b. The remark is that so long as a complaint is not lodged by the local action, action may be had in England. If not by Eng. law.

Macnab v. Tonto

This is not quite the simple statement as made in Private International Law notes.

Philipps v. Tyne

"Discharge."

How is a Rs. 9 action to be discharged?

1. May be barred by passage of time.
2. Apart from statute, death of either party.
3. Insolvency} now slight effect
4. Marriage
5. Writ
6. Release under seal
7. "Accord and satisfaction."
9. Judgment over one or two joint wrongdoers, even though judgment not satisfied.

Insubjudicial remedies — SELF-REDRESS

Self-defense, weapon to defend yourself & family, etc. But you need must be proficient
SELF REDRESS
The nature of the crime sought to be avoided
Prairie défini, not necessarily used
Prevention of trespass. Any occupant of land or
person authorized by him may use reasonable degree
of force in order to prevent trespass from entry,
or eject him after entry.

Truth - what is reasonable force? This is
doubtful - "mollicia manno impune" -
that self defense is usually very risky.
But if trespass violent, then becomes case of
self defense.
Same if force entry attempted.

Lecture 13

Certain statutory rights

Dog Act 1915 $19. Occupier of fenced
paddock or yard may destroy any dog force
found at large of sheep, cattle, or poultry on his
Pounds Act 1915 $15. Occupier of land may
destroy goats, hogs, or fowls trespassing on land.

Health Act 1890 $25. Pigs may be destroyed
in neighborhood of lakes, reservoirs, may be destroyed.
But poison cannot prejudice the protection
of the prop. doing a statute act whose ordi...
Nelson Walker, I believe that owner of land bound to receive
the rainwater naturally flowing onto the surface of adjoining
higher land is part of the common land. Applies to land whose
surface altered during unity of title, hence

Respectfully,

Chapel.
tendency is because, which does cause, damage to his neighbour.

If flood water comes on your land by no fault of years, you are not entitled to do any act to make it flood your neighbour.

Lancashire & Yorkshire Rly Salmond p 206

Minerve v M'Gough 24 A. L.T. 200

This considered and approved by Nelson v Walker 10 C. L.R 560

Scott African case of town on Salmond p 207.

owner held untitled barni away town, even though they went to neighbour's land.

any person wrongfully deprived of land may make possession, provided it were to free - must re-enter peaceably. By statute of Richard II, "force to entry" is made a mis-demeanour. - but it doesn't give rise to any civil action.

But if there is a concurrent assessment of damage to chattels, action would lie.

Salmond refuses to accept this.

In relation to chattels, reasonable force may be used.
Abatement of Nuisance

NOTICE
But how far is reasonable force allowed in enforcing on land for taking relining cloth?

Abatement of nuisance. Lawful for the occupier of land to take any nuisance caused which affects his property.

Lemon v Webb R.C. 459

May cut off encroaching branches or boughs considered that prescription could not apply to a case like this.


Distinction between nuisances and encroaches

When necessary to abate to order, then the question of notice arises.

No Notice Necessary
1. Where no entry
2. Emergency.

Notice Necessary
1. Where nuisance committed by predecessors of present occupier.
2. Where occupier not responsible for the continuance or creation of nuisance.

Both nuisance - Special damage - action - Benjamin v Store
Daisies Damage Hazard

1. The ragged weed only is required
2. Must be eradicated and be unattracting
3. Must be actual damage done
4. Must be cut with white chisel on land
5. Right of sale by Pounds Act
6. Daisies suspends right of Action

Pounds Act 1915
But any number of persons may take a nuisance of commons or, without special damage.

*Dispersed Damage Tenant*

When cattle or other stock are unlawfully on your land, and have done damage, the thing must be served when still on the land. There is no right of sale by common law, but the Pounds Act gives power to sell. Cannot have ejector + right of action.

Pounds Act 1915 - a pound exists in each municipality, and cattle must be taken to the nearest acceptable pound of place where found.

19 A.L.T. 99

The municipality pays the fees. Adjoining owners could own pound each other cattle. No there was no fine, but this doesn't apply now in case of land purchased under any land Act since 1865. (Land Act 1901 §165) This act makes fencing a condition precedent to ownership of any land purchased since 1865.

§12 Pounds Act - occupier of any land occupied on by cattle may receive same beware and in such case such one may demand
Pomadip Castle
second a Petty Session from owner of cattle the
and of any trespass rate that was to pay half of
the cattle were unconfined
Trespass rate fixed by $9
Rush v. Melley 22 N. L. R. 104
P2: No trespass rate remains when cattle
driven more than three days unconfined
P3: Occupies of any land adjoining public
road which is paved on both sides by a
residential fence is imprisoned any cattle wandering
without control on said road.
[battle very widely defined]
P21: Pound keeper can give notice to persons
regalizing foals
P22: When cattle remain been released inside
21 days after notice by $21, they may be sold at
pound in any sale yards approved by County

Sale in market shall give good title as well.
A pound keeper sold by some unsalubrity, and
held that p. keeper has no power of sale unless
Injunction of P21, 22 complied with

Dogg v. Heath 1908 V.L.R. 118
If provisions compiled with, then it is a sad
by market went.

Chapter V. Forms of action — once they were
essential. Need of trespass.
Now, you must state facts and remedy
grain on those.

But of para 1. Chapter V. These
forms still important

Trespass to trespass was that injury must have been
done; if injury induced (leaving stones on
road) then action in case. Direct and
consequential injury

[Scott v. Shepherd - thrown in a squat]

Note the arrangement of chapters in Salmond.
Note Pollock's classification.

Lecture 14

Trespass to land is a tort against
the occupier, not the owner.

Any unauthorised interference, however slight,
by means of a voluntary act, with the possession
of land.

Doesn't matter if by mistake, hurt does matter
Trespass to Land

1. By wrongful entry
2. By remaining on such land
3. By placing any natural object upon it.

See A.L.T. 1919

End of Bank & Morse 1919. C.L.M.
when act involuntary - as when horse runs away with me.

To succeed, plainly must know Kalam-buri wrong was committed, he had possession; and possession may be actual or constructive.

Possession is exclusive control, or power of exclusive control, coupled with some kind of intent.

Constructive possession - when possession is agent or servant, or immediate fl to possess, or possession conferred by law in certain cases, except of any physical appurtenances or house.

Person with mere right to possess or not bring the action (p173), but may put himself in possession and then bring action.

Does interference with sust. soil or an amount of process. Man owns "male ad callem usque ad inferos:" Interference with sust. soil probably trespass, (unless ownership parthenised). But what about the air? Man may use his air; build high as he likes; remove all appurtenances above his land.

But mere entry into air space above land not of itself actionable - unless action for nuisance
Trespass a strictly possessory action.
To bring action, plaintiff must show that his possession of land (somewhere in Victoria) has been violated.

Trespass is place material objects on another man’s land. Trespass must be a direct injury, and not a consequential one.

If owner of possession brings action he would have to show damage to his reversion. Stanley v Powell. Trespass not actionable unless intentional or negligent.

167 Even person who has right of entry commits trespass if he exceeds his right.

Roads. In hyp. adjoining owners own road ad medium plenum.

Local Govt Act 1903 s.91 gives possession in Victoria, and any excess is trespass. Harris v Rustland K.C.

1907 2 K.B. 345.

Distinction continuing trespass from continuing consequences of trespass. (handwritten: Landlord not one for trespass to land in possession of tenant; unless damage to reversion.)
Tongland v Benalla Shire. The said grazing license under sec. 119 of the Land Act 1884, which entitled him to enter on certain Crown lands and deposit on the same with sheep, cattle, or other animals. On this land there was a quarry filled with water in which the defendant deposited rubbish, rendering the water so filthy as to unfit for animals to drink. An action for damages brought by plaintiff.

 Held that all the license only personal one, and conferred no right in possession of the land, still it conferred sufficient beneficially and advantage to maintain interference with proper enjoyment of rights, and hence plaintiff was entitled to recover practical damage sustained by the act of the defendant.

Lodge. A lodge who has contracted for the exclusive use of a specific room or rooms in a house can (probably) use in trespass, even against his landlord; but not a lodger who is bound to take such a room as his landlord may from time to time assign to him.
Man may have exclusive right or interest in land, not that which belongs to another; and yet such a right or interest in no way entitles him to occupy land, or enter on it except for the purpose of exercising his right. If anyone asserts that man’s exclusive right or interest, action of trespass will lie at his suit, without proof of any previous entry.

If person with knapsack & sword can bring action for trespass on land

Fitzgerald v. Forbank 1897 2 Ch. 101

Vaughan v. Shri Benalla 17 V.L.R. 129

Person with right to possession of land must enter there to bring action for trespass - to land or goods

If tenant as well, either landlord or tenant may sue as alone.

Bough or tenant has no possession. But of Jenks p. 382.

Doesn’t matter for these purposes of the person

Wrongfully in possession. Provided the trespasser has not a better title. No action by the

jury verdict; unless authorized by the true owner.
Excuses at mitis
trespass by remaining. Person who has lawfully entered may be trespasser if he exceeds his lawful period. A lessee, after his lease expires, not a trespasser, but may be sued for double value of rent.

Wood v Leadbitter 13 N. & W.

Hunt v Picture Theatre Ltd. 1915 1 K. B. 1.

Position of tenant in common.

Jennings v Brunville. No trespass unless under 7 other party.

The famous "five barristers" case. When person enters by authority, then abuser has authority by some misfeasance; he is regarded as entering without authority. In trespass at iniatio.

195

Rule of trespass does not apply to -

1. Irregularities committed in memory lawful distress.

2. Justice, etc. When irregularities occur in executing warrant, executor not trespasser at iniatio.

Trespass - no need to prove special damage.
"Measures of damage is not the cost of reinstatement"
This if you can prove special damages, you may recover them. You can recover the damage you’ve actually suffered, not the cost of repairing the damage. If old building destroyed; cannot recover cost of putting up new one.

What are answers to action for relief? 1. Jenkins

1. Committed under authority conferred by law

2. Committed under trespass granted by planning or unlawful exercise private right of way, or of rights of common or other such use.

Coke v. 1912 1 K. B. 496.

Lecture 15

Few words on Negligence where there is interference by third person. Salmon p. 117.

What was the effective cause of the accident?

Does the same rule apply when the act of third person is wrongful or malicious?

In Richards v. Lochin, jury found as fact
An off v Long. Person lawfully leaving his property unattended on a highway must take reasonable means to prevent such mischief as he ought to contemplate as likely to arise from his use of the highway. He is not liable for damage caused by the property through such interference of third persons as he is not bound to anticipate.

Defendants' servant momentarily left stationary mechanism unattended on a highway a steam driven long. In order to start the long, it was necessary to withdraw a handpin from the gear lever and then know that and two other levers. Two volunteers nearing the long mounted it. One tried but failed to assist in motion. The other succeeded in starting it backward so that it ran into plaintiff's shop front and did damage for which action brought.

Was there any evidence of negligence on part of defendants in leaving the long unattended? No.

Was there any evidence that the negligence (long) was an effective or proximate cause of the injury or damage to the plaintiff? No.
That Richards purely of negligence, but also that some third person maliciously interfered. Let the defendant on exception to Reylends v. Ritchie.


While steam loyalty up a roadway & voted adjoining curves and moved it on. Was this negligence and if so was it proximate cause? No. Machine could not start of its own accord!

These two questions always asked:
1. Was this negligence on part of defendants?
2. Was this the proximate cause?

Brought a reasonable man's observation to some third person with a mounted vehicle, pull out safety pin, and manipulate the district curves? Court says no!

Could the act have been anticipated by a reasonable man? Jury must give affirmative answer to this.

Read judgment in Knoff v. Long - give a very good summary of the law.
Achini 9 ejectment

More person has right than defendant.

Stopped—eas. Mortgage need not prove title as against npa.

Co-owner may bring ejectment if total exclusion or such

Screen dispositens may—

1. Sue for ejectment and for mean profit in one action.

2. Sue for mean profit, if already back in possession.

3. Sue for mean profit alone if he interest in the land has already come to an end.
Rescission a possessory action
actions real, personal, & mixed.
Action of ejectment is for recovery of land
Plaintiff need not prove himself owner; enough
if he prove a better right than defendant.
Priority of possession gives the better right.
Asher v. Whitlock
Perry v. Rhoads

a co-owner cd. bring it if he was totally
If landlord - tenant, or mortgagee - mortgagor,
don't have to prove title. "estoppel" operator.
But may show that lease was never entered
on parted with.

Action of mesne profits - cd not be
brought until poss. had re-entitled & recovered
possession of the land.

Sequestration - where his interest in the land
has come to an end. In this case
may sue for mesne profits without getting
possession.
Nuisance.

"Damage" is the gist of nuisance.

Two classes. 1. Dynamis baccaritides 2. Branguliyus canary a allowing escape.

Diffs from trespass in same way as case.

"To plant a tree in another man's land is a trespass; but allow it spread its roots and branches across the boundary is a nuisance and not a trespass."
Nuisance - public & private.

Only a private nuisance is a tort, unless in case of public nuisance, plaintiff can show special damage. (Benjamin's Story)

Public nuisance is a criminal offence.

The act of wrongfully carrying goods of another man's matters into another man's land. p. 190.

A nuisance commonly created by acts done on defendant's land (as law usually an application of art where max. is that of public nuisance may be created on public - but not an actionable nuisance unless it affects the occupation of the land.

Nuisance commonly continuing evil must be substantial interference with comfort of the church, Bello's Cases.

Nuisance must be distinguished from trespass: latter must show some actual and palpable injury - they are mutually exclusive.

Practical importance is that it means an absolute right; but a nuisance you must
Haddon v. Lynch (F.C.). The Court will not restrain the ringing of a church bell on the ground of nuisance unless the inconvenience complained of is unreasonable. Materially, with the ordinary course of human existence are the plain, sober and simple notions of reasonable people.

Guardians of Anglican Church Malvern rang the Sunday morning bell at 7:30 and disturbed Haddon. Held that ringing the bell will such results as an harm when thousands of suburban dwellers are habitually restless was a nuisance, notwithstanding that many neighbors were undisturbed by it.

Wood v. Conway Corporation. If one's property, either a house or a garden or, is so substantially injured in the reasonable enjoyment of his property and sustain what is equivalent to a legal nuisance, he is entitled to an injunction. In this case, fumes and smoke from additions and injures trees in plantation—containing nuisance.
In the guise of action, not consequent.

Tangible & material.

Rents & cattle.

R. 548  D. A. R. 186

A substantial

Able, man would

Triggered.

Not sufficient

O.

2 Ch. 47

Not a nuisance

Not.

E.g. garden, not

Beally injured, he is

my's cause. Should be

be injured over.
Defensive Defences to Nuisance

1. That plaintiff knew of the existence of the nuisance when he acquired the property.

2. That nuisance is beneficial & public as any reasonable person believes.

3. That place from which nuisance proceeds is suitable one for purposes of carrying on operation complained of.

4. That all due precautions used to prevent the continuance of the nuisance.

5. That others are doing same thing and so helping to constitute nuisance.

6. That defendant is merely making a reasonable use of his own property.
proven damage - this is the gist of action.

Trespass - 1. Direct, not consequential.

2. Must be tangible - material
animals - drain, las dogs, cats & cattle.

Hadson v. Lynch 16 A.L.R. 578 17 A.L.R. 186

An injury complained of a substantial
injury, such as reasonable man would
complain of.

Locality also considered.

Prospective damage not supported.

Sturges v. Bridgman 11 ch.D.

Wood v. Conway Corporation 1914 2 ch. 47

Section 16: 

No new factory not a nuisance

If house next door is vacant.

If owner of property, e.g. garden, not
necessarily house, is substantially injured, he is
entitled to injunction.

Sturges v. Bridgman Kenny's case should be
carefully looked at.

198. Ineffectual defences

need not be lingered over.

butani defences perfectly useless.
Richard's v Lothain. P.C. commanded that former v Rylands v Twitch dinst apply, as this case (malicious act of some third person comes under exception of "vis majis") of the King's enemies — which exception was clearly enumerated in case of Nicholls v Manseland. In that case the act of God "flooded ornamental lakes.

Defendant not liable on another ground — that the use of the land, expressly Rylands v Twitch, must be some special use tending with increased danger both to and mankind. Not merely the ordinary and proper use, such as laying on flat water undoubtedly is.

Rylands v Twitch. "The person who, for his own purposes, brings on his land and collects and keeps anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not choose or prima facie assume all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was consequence of vis majis or the act of God."
no defence to nuisance & say that you have taken all reasonable precautions. -

No defence to say that others are commencing same act independently
locally important in actions for nuisance.

Rylands v Fletcher: absolute liability

Leathan v Richrds discusses this 19 A.L.R. 109. In that case negligence disposed of,
but Privy Council decided on ground of
Rylands v Fletcher. Man brings certain
things on his property & permits

If you can bring your case inside rule in
Rylands v Fletcher, then you are absolved from
necessity of proving negligence - unless a
matter of mismanagement or act of God (as in
Nichols v Manrden)

Tri areas with p.222.

Cattle trespass - from this the rule in
Rylands v Fletcher probably developed.
Several areas had rule in R.S.F. does not
apply to the "natural user" of land - only to some...
Wimpel's case

ирас J. — "Richard v. Lothran undue, as I understand it, that before the party of Rylands v. Fletcher can be invoked at all, it must appear that use of land was a non-natural use. Not correct to say that mere introduction of a foreign element is non-natural use. Gravel as fire and gas are inherently dangerous if they escape, as that water is cut saturated is dangerous. Still there is always a condition precedent to application of doctrine of Rylands v. Fletcher — that the use of the land for purposes for which those dangerous elements introduced was not the natural use of the land.

Rule does not apply, then, to case of a fire as for domestic purposes.

Sparks become becomes of land is under no duty at common law to keep down a noxious weed, such as prickly pear, growing naturally on his land as as to prevent it from spreading or extending his neighbor's land; and if, owning other failure to keep it down, it grows in such a way as to damage his neighbor's fence, it is not subject to render him liable.
extraordinary use. Dicta scarcely supported on principle - what is "natural use" - hard to draw the line.

Whripfield v Land Purchase Board. 1914. V.L.R.
Read judgment of Isaacs J. in this case. - It differs entirely from Salmon's statement re "natural use" on page 204.

Isaacs says that "use of land was not the natural use of the land" a condition precedent to any application of the rule in Rylands v Fletcher.

Person not liable for things that are naturally there - the "thistle" case.

Spark v Osborne. T.C.L.R. 51 - this is the Queensland "bricky pear" case, which applied the principle of the thistle case.

Certain limitations on this general rule suggested in Spark v Osborne.

Other cases as in Salmon.

If plaintiff conceals, then rule does not apply and negligence must be shown. In the ordinary way.

Blake v Wooff.
Pettys were owners of electric cables which had been laid under certain public streets. The appeal was the owners of Hydrancrie maris which had been laid under some clocks under statutory powers. Maris burned, damaging cables. No negligence on part of defendants.

Hold that doctrine of Rylands v. Fletcher applies not only to cases in which dangerous thing has escaped from defendant's land on to plaintiff's land and done damage there, but also to cases in which the use of the plaintiff's injury was occupied by him only under a license and not under any right of property in the soil, and that in the absence of statutory authorization of the nuisance the defendants were liable for the damage caused by the burning of their mains notwithstanding that they had not been guilty of any negligence.

N.B. per Scrutton J. — But for Midwood's case I should have some doubt whether the defendants were not protected as persons using the road in the normal way, and not liable to persons damaged by the use unless their negligence was proved, on the lines of such cases as Blake v. Woolf; if I think it is now an ordinary use of a road by many maris of watermen that co-owners take the road subject to the risks arising from the uses of the maris of their co-owners, so long as the latter are not negligent.
What is a stranger? A trespasser is a stranger. Does not include any servant or authorized person!

What shall be said of persons lawfully on land with defendant's permission - e.g. guests? Becomes clear to be unreasonably liable for acts of such persons by Rylands v baker.
Look at fig again p 226.

Lecture 17

Charity Coop London Hyatt 1913 3 H B 442 is a converse case on Rylands v Baker.

May not have all consequences? Weaker - only the natural and probable consequences.

Four exceptions

1. natural user.
2. consent of plaintiff.
3. act of stranger - (in my mind) (Richards v tokom)
4. act of God.

Act of God - not same meaning as in carrier's liability.

Here means - any event which cd not have been prevented by reasonable care on part of someone?
Right of common nuisance may be acquired by prescription—

provided as retroactive nuisance for 20 years.
Independent contractor is not a stranger.

Rule comes 'things that escape from land, and also from the highway, if that escape caused by act of defendant (a negligence).

Distinguish between special use and non-special use.

217.

Right to commit a nuisance may be acquired as an easement by prescription - 20 years - must have been a nuisance for 20 years! and must have interfered with some adjoining servient (Shingoe v. Wrightman).

Must have been a nuisance to the plaintiff for 20 years.

Statutory authority, good defence, unless some want of care can be shown.

Vaugham v. Staff. Vale Ry. Co. - when fire caused by sparks, but shown that engine was constructed as guard as far as possible got danger from fire.

Statute may give authority absolute conditional.
Fullerton v N.M. Electric Tramway

Communicated wire on tramway pole, touched by child, who was injured. Defeas pleaded statutory authority as good defence. Jury found no negligence.

Held, that by permitting escape of current there was nuisance, and defeas had failed to show that they could not carry on authorised enterprise without creating that nuisance. Defeas must set up

1. That ordinary legislation is insufficient
2. They cannot possibly obey those orders without injuring my private rights.

per C.J. The case may, I think, be put on either of 3 grounds.

1. Reynolds v Fletcher.
2. Placing on highway of unprotected wire either at any moment becomes a live wire & was actionable nuisance.
3. Defendants have inflicted bodily injury upon the plaintiff which they are unable to justify.
Conditional authority is authority do act know no mind or.

Distinction clearly made in

Metropolitan Asylum v Hill 6 A.C. 213 193.

In any case, reasonable care must be used. 

cases discussed in

Fullerton v North Melbourne Tramways 22 A.L.R. 93.

Here there was statutory authority but 

remedy, but this did not avail as a defence in 

this case.

Statutory authority good defence - if the 

authority cannot be carried out without misadver 

and there is no negligence.

The onus of proving these things lies on defendant. 

Fullerton's case, on appeal to High Court, goes 

with this fully.

Another great question - was the authority 

mandatory, or merely permissive? If the 

former, and misadventure cannot be avowed, 

then no liability.

Humpy v Wintlebon  Not case of 

'collateral negligence' (cf. p 290)
Jenkins p. 394.5 If actor omission prima facie nuisance, no defense for defendant to prove
(a) That act was, pure, reasonable use of defendant's property.
(b) That the nuisance invaded before plaintiff came to place.
(c) That he was carrying on usual trade or business here.
But
Defendant may show prescriptive right.
Occupying land affected is nuisance if person entitled to injury action. Where nuisance continuous, fact that occupier's title arose since actor omission which caused the nuisance is no bar to his action.

Reversion can one of can show permanent damage to reversion (ancestors - remaindermen also). But fact e.g., that tenants have quasi nota bigness.
Something for which you would be liable if done by servant, but not liable as done by independent contractor - collateral liability.

222. Liability for fire. Look at 14 Gil l. c. 18 e. 88 and Hickey v. Phippard.

Occupier's land from which fire escapes is liability if one acts negligently himself, servant, licensee or guest.

not if act of change or inevitable accident. 

Difficult say whether any obligation in such cases to put the fire out.

Lecture 18


Says privy of Rylands v. Fletcher does not apply where some combination between working agent and some other agent - just like the reg. of third party.

Who can bring action?

As mill, occupier.

Reversion, only when jury brings in.
consequences of damage is not conclusively proof of permanent damage.

Attorney: Sen v. Rome. Defendant worked on quarry adjoining public highway. Prior owner had excavated; to prevent persons using road had constructed wall resting on ledge anterior to the quarry. Part of wall now collapsed and road, being impassable, and danger to persons using it held.

1. S.L. hypothesis on possession of excavation depends on finding of whether made upon a after the possession, whether it was or was not made to this land, and if any.

2. In action by A.G. at relaying council, mandatory order must be made on defendant to take the wall and by restoring the road to condition prior to incidence and by rebuilding the wall or persuading other reasonable person to do so again.
Who is liable? As general rule, the occupier.

If the nuisance existed or the plan when the first entered, i.e. a continuing nuisance, the occupier is nevertheless liable.

When nuisance created by act of party, unless with knowledge or means of knowledge. He permits the nuisance & remains.

Barber v. Herbert  1911 2 K.B.

228. aad.

Attorney General v. Rankle  1915 1 Ch. 235

As rule, liability exists when occupation exists, unless some positive misfeasance.

233. Known not, as such, hath. As such, no action apt. Landlord to nuisance on tenant's premises, 1. unless he created the nuisance by some positive misfeasance.

2. The exception in Salmon, as when landlord let land man for hasting operations, burning time - necessarily a nuisance - the landlord hath.

Ayres v. Hannon  56 Ex. 9  735
own as his field for company on Sunday - this was nuisance and negligence. Needy landlord was only liable for nuisance if native company was mentally a nuisance.

Further, that such fact must be proved by evidence.

3. Landlord liable if nuisance due to breach by terms of covenants of lease.

4. Where nuisance existed at commencement of tenancy, and no covenant by tenant broken. Here the landlord is deemed to have authorised its continuance.

Injuries & Servitudes

Bassains refused and disowned.
Roman law servitude - personal, principal, personal, 
Dominant & servient servitudes

Bassains acquired by:
1. deed
2. implied grant
3. use

p238: Clearly puts the importance of his class of cases.
Legal servitudes:
(a) eaves
(b) profits à prendre.

Equitable servitudes:
(a) seines
(b) restrictive covenants.
If I as owning land, have easement, any interference with it is a tort.

Distinguish from proxí à prenúm. These last may exist in pós.

Besides easements, Salmond says there may be equitable servitudes - as in

Tulck v. Moskow

But a licence is merely a right in personam and is revocable, not instituted (unless classed) cases, as easements are.

Rule v. Wood v. Headlestone

Hurst v. Picture Theatre 1915 H.B. 1

Lecture 19

Our concern - When person has an easement, any interference with it by

changer or by owner of servient land is a tort. What constitutes interference we will see later.

Salmond has a second class of rights - "equitable servitudes" - as in Tulck v. Moskow

Heywood v. Brunswick Adp. Society
Restrictive covenant binds subsequent purchasers re.

Licence usually described as something that only confers no new right, but makes lawful what was previously unlawful for that particular person.

When person not in possession, but only has some use, he can't bring trespass. "This was always the rule. But of Huns v. Picture Theatre"

But owning easement, though cannot bring nuisance or trespass, has an action of tort for interference (supra)"

Note carefully these distinctions

Licence, if specifically enforceable, may run with the land as good equitable servitude.

Licence can bring action for damage for breach of contract for any disturbance by the licensor. But no action against third party for licence has no possession in the land.

Licence is revocable at will by licensor, even though granted for a fixed term; it only a breach of contract may be sued upon in consequence.

Wood v. Leadbetter.
Salmond

Wood v. Lord Rother. decided by Mr. J's case.

A license granted for a fixed period is in all ordinary cases specifically enforceable. If licensees be compelled by injunction, license cannot now be treated as a dispensation.
But another matter is the licence is *specifically*

N.B. Can you use a *specifically* enforceable licence?

Licence coupled with an interest is not revocable.

See

Best v Picture Theaters Ltd. 1915 1 K.B. 1.

Buckley L.J. 1. Contract by good sense, as any man could put out by simply a writ, say of a constant patron.

2. Contract by good law. Wood v Leadbetter discussed. Licence coupled with grant is revocable. But Wood v Leadbetter said that easement could not be granted save by deed, that mere licence and revocable. This good law (and Wood v Leadbetter decided it).

Here then (a) licence to enter building

(b) might be the picture

Thus, a licence coupled with a grant!?!?

Bond must now give effect to equitable considerations.
"Equitable remainder" — must he purely neg.
ativa and restrictive — covenant not to do
something.

Can't have easement to compel a man to do
something.

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Particular Easements — Way, water, air, light,
support etc.

Support "natural and acquired:
Every man has natural rights of support for
his land via natural slate.

But mineral has no natural right of support
save by grant or prescription (twenty years).


Actionable wrong — withdraw support &
which other man entitled. But damage
must be shown.

253

Hughes v. Perenval on independent contract.

Underground Waters — (Blackerow v. Richards)
not but withdraw underground waters
unless rt. of support has been acquired by
grant, express or implied.
Perth Corporation v Walls

In Feb. 1899 the appellants, acting under statutory authority, put down a storm-water drain in a public street. Some years after the completion of the drain, the respondent erected two houses which fronted shut-in which drain land, one house being built in 1904, the other in 1905. The walls began to crack in 1906-1907. The drain was badly constructed, large quantities of sand and water, carried away from the adjoining land, finding their way into it.

Held that the appellants were liable for loss of rent caused by removal of sand, and that the legal consequences would have been the same if the damage had resulted merely from the withdrawal of water, the appellants not being owners of the soil of the streets so as being themselves within the doctrine of Hazen v. Richards, and having exceeded the authority of the statute from which they derived their powers.

Per Trifftz C.J. — The rights of the appellants with respect to the land in the streets of Perth are only such as are authorized by the statute; and if and so far as they exceed that authority, they are in no better position than a mere wrongdoer creating a public nuisance in the street.
Perth Corporation v Halle. 13 C. L. R. 393

It is clear that, in change of ownership, the person who originally made the excavation remains liable. Thus, in case of a subsidence, and in distinction from principle of A. G. v. Roe, where excavation was apparent and so a continuing nuisance.


Sec 176. R. P. Act / Ancient Lights Act 1907. now absolves prescription of rights to light.

Lecture 20

Legislation of Minutiae by Statutory authority in
Humphries v. S. Cent. Railway 32 N. R. 373

Lights put up to guard against Zepkelsius (Defence of Realm Act). The lights were at entrance to station.

Lecine makes lawful what was unlawful.
Vanghan v. Bemalla Shri: Plaintiff held grazing licence under Land Act, entering land to use on certain crown lands for pasturing sheep. On his land there was a quarry hole filled with water. Defendant collected this water for sale - so unfit for animals to drink. Held, that although licensee only personal one, conferred no estate or right of possession of the land, still it conferred sufficient rights to recover fully and a wrong done for unauthorized interference with the proper enjoyment of the licence, and hence the plaintiff was entitled to recover practical damage sustained by the act of the defendant.

Moore v. Holt:
A contract with the Melb. Archtop. Board of Works to construct a sewer on crown land. Course of centre line of sewer was marked on the land by a line of pegs. At, having begun work on one end of proposed sewer, held, he had acquired possession of land to maintain access to sewer against person trespassing on other end of proposed sewer. In this case, trespass consisted of sinking staff in proposed course of sewer.
Licence is a rule, personal and revocable except when coupled with grant.

In Hume's case, the contract was of itself that the grantor would specifically enforce (under the Indecent Acts) the deed of the court of law, under the Indecent Acts. Licence, as defined in licences, are

1. appointment
2. granted by deed
3. part of the property.

Vanguar v. Binella 17 V.L.R. — Licence was allowed to bring action. Something same in Moore v. Robb 18 A.L.T. 5 Land Act 1901 $165 — giving statutory licence certain to be done.

Rights of light can only be acquired by express or implied grant. Not prescription. Must be acquired in reference to a building. No notice or any obstruction of light amounts to violation of easement.

Collins v. Home Stores finally wins a sheet.
Natural interference so as to interfere with
comfort of ordinary non-factional person.
Interference must be substantial; not a
slight diminution. Embellished barracud
reasonably necessary for reasonable use of house.
Must be defined apart from building.

Water abstraction, pollution, abstraction
271 defines Riparian Land
Includes only that land which is substantially
adjacent to stream.

If riparian property divided so that part
B is separated from stream by part A, then part
B loses its riparian one right.

Stream must not be diminished, subject
to reasonable use by riparian owners higher
up the stream. Stream must be flowing
its defined natural channel.

May be interference by change in riparian
owners, wrong actionable at cost of any rip-
arian owner whose portion is affected.

Riparian use not easy to define.
Pollution of underground water, as opposed to abstraction or interference with it, is actionable as a nuisance.

Lyons v. Sullivan. In consequence of a popular performance daily, at 2:30 and 6:20 p.m., at the defendant's theatre, a variation in access to the plaintiff's adjacent premises was obstructed during intermission periods by reason of assembly of crowd formation of a queue, as lines grew deep, on the west front of plaintiff's premises previously to the opening of the doors of the theatre.

Held (C.A.): that in the case, the obstruction was an actionable nuisance, and the defendants were liable to be restrained by injunction, and that the failure of the police to prevent the obstruction by regulating the crowd and taking precautions for the passage of the public through the queue did not afford a good defence.
On question of special damage.

Brayford v Pickles — underground precipitation, quiver, not in defined stream.

Bannan v Richards

Pollution Ballard v Zorn 29 Ch D

Actionable as nuisance.

Local Road Act 1915 $471 on stretch of road, making them the property of crown.

Rights of Highway

A.G. v Brighton Horse Association 1900 1 Ch

Lyons v Gulliver 30 T.L.R. 75 1914 1 Ch

Obstructing highway or making highway dangerous.

Dedication of road to the public. Later take subject to all dangers existing at time of dedication.

Public nuisance is a crime — a misdemeanor may also be restrained by injunction.

But not for an actionable at suit of private person.
Second Term 1916

A. G. v New Docks

Act 1791 empowered cly to break canal.

Ch. cut across roads, and had to make bridges of such dimensions as commissioners appointed under Act showed them sufficient.

All such bridges, the most in sufficient repair by cly.

Canal, completed 1812, crossed several highways, and bridges built satisfactorily.

In action by urban authority against company for declaration that they were unable to keep the bridges in repair so as to sufficient toleration the traffic which might reasonably be expected to pass along the highways carried over the canal by the said bridges, having regard to the present character and needs of the district.

Held that the company were only liable to keep the bridges in repair in the condition in which they were made or are with the requirements of the commissioners.
Lecture 21

283. The four kinds of injury occurring highway.

To be actionable at suit of private person, must show special damage.

In cases where sought to be shown that plaintiff's

injury has sufficed damage, it must be shown

that injury resulted from plaintiff himself being prevented from using the highway as frequently

as he.top.

The prevention of others using it does not

acquire to plaintiff.

288. Case of contract repairing highway.


291. Repairs of road. In non feasa and doctrine of

Knewell v Men of Devon.

Originally, duty of repairing highway rested on

inhabitants, only remedy was an indictment.

Later, the duty was fixed on by parish surveyors

who, however, was not made liable. The municipal

authorities took them over, still not held liable.

Once it is estab. that local authority did
Koolahra v Moody. Of local authority, to whom is vested the care of public highway, undertakes new work, such as kerbing and guttering, upon surface of road which was previously been constructed by road makers, and widening this work leaves surface of road immediately adjoining in such a condition that by the natural flow of surface water it becomes dangerous to traffic. This constitutes misfeasance and under the local authority liable for damage thereby caused.

Thus was in slow or certain way when gap not kerbed.

This would be worn away by accelerated volume of water from new gulley, 5 to 10 wits dangerous. Barton P.C., considered this misfeasance, and not more permanent.

Papworth v Battersea. Local authority made road; built gulley near end of road + covered it with grating. This caused depression in road, but work done with due care and skill. Placing, no consequence of depression. Known from cyclist injured. Jury found grating dangerous, but local authority not negligent in not having assessed defect.

Held - local authority not liable.

O'Leary v Ryan v Fitzgerald. Under Drainways Act 1870, Drain. Co. is bound to keep that part of the highway which lies between kerbs in a fit and safe condition proceeding to drain. Failure to do the renders corp liable to person injured.
something the road, it is removed from demand. A non-plea under becomes misfeasance.

Munro v. Westlake & Moodie. 19 A.L.R. 196.

In this case, claimed has no liability for non-plea under. However, no positive law on the point.

V. Parkes v. Rafflesia Gonell 1914 2 K.B. 397
1915 1 K.B. 392
1916 1 K.B. 583

Bases of non-plea under look like misfeasance occur when the authority has done something to the road from which operation. However, the injury does not result, but arises by reason of failure of authority to do something which they should have done to prevent such.

The highway authority is not liable for mere non-plea under.

V. Dublin Iron v. Fitzgerald. 1903 A.C.

V. Emmett v. Stevens. 15 A.L.R. 113

V. Nielsen v. Brisbane Trams 18 A.L.R. 419

V. O'Conor v. Shri Elham 28 V.L.R. 322

V. Doonan v. Bundalo Trams.

293: "Where an artificial structure — a bridge is not an artificial structure in this rule, but is part of the highway."
Trainways & Streets

Trainways Trust bound repair in way as road authority shall direct, and bear satisfaction.

held that this imposes personal duty on Trust which imposed condition & repair, notwithstanding no direction has been given by the road authority, that action for injuries caused by a breach of said personal duty will lie.

Isaac J. notes of time & any liability for non-feasance.


but Crown in recent cases seems to extend statutory prov., and had done so.

So respondents no longer under statutory obligation repairs, so were entitled to judgment.

P. Isaac J. - When statutory authority's Trainways, there is a presumption that it authorizes any recommendation or interference with the highway incidental through use of trainway.

Ingraham v. Wham. Local Clerk made drain across highway - drain w.d. have been a nuisance. To make it safe, they covered it with a bridge of wood. Therefore did nothing to bridge, wood became weak, broke when plaintiff's horse stepped on it, and horse injured. There was a duty on council, having originated structure, to maintain & repair to take up accident.

Cherry v. Benalla. Authority carefully constructed open drain, was only designed as prevent reasonably anticipate, just when horse wandered in shallow end walked into deep end, injured itself trying to get out. (!)
Stevens v Shri Benalla 12 C.L.R. 642.

Stevens v McLaury 1914 V.L.R. 526.

If a person took away one's chattel —
action of trespass.

If he detained one's chattel —
action of detinue.

If goods falsely detained —
action of replevin.

If chattels of another converted —
action of trover.

Conversion is by consuming, selling etc.
Detinue is an action open to the wages of law, it was therefore unsatisfactory. Hence trover was invented as remedy for conversion.

N.B.

Forbes v Willoughby. 1841 M.R. 540.
But a mere taking which does not amount to an act of conversion, viz. resting the goods, is not trover, but only trespass.

Conversion — Any unauthorized dealing with another man's goods.

Conversion actually dealing with another's goods as owner or otherwise limited a time or purpose.

If defendant has improperly disposed of the
Hannon v. McElrath

Transporting a wagon of wheat by wire roadside. Farmers burned the horses on the road, & they ate some of the wheat, and consequently dried.

Admitted by farmer that wheat has disappeared from where horses were, & in field where it was eaten in large quantities.

Admitted by farmer that he knew it was not unusual for wagons loaded with wheat the left unguarded on highway.

Held. Teamster not liable.

Foulkes v. Nillooghby

Manager of steamer put off horse belonging to plaintiff, as cattle was misconducting himself. Horses were stabled on shore by defendant's brother, who offered to give them up of rent & for keep paid for, otherwise sold by auction. This was done. Was there a conversion?

Court said: "Merely asportation of a chattel does not amount to conversion unless the taking or detention of the chattel is with intent to convert it to the Taker's own use or that of some third person, or unless the act done has the effect either of destroying or changing the quality of the chattel."

Lecture 22 34. Israel nature of conversion discussed.

Howe. Decision must be looked at carefully.

Conversion—dealing with other man’s goods as if they were your own. Pollock’s definition.

In Salmond’s view, the mere taking away of the goods was a conversion—i.e., necessarily depriving of them. Thus refusal to give up on demand is with Salmond a conversion—with other text without only evidence of conversion.

General opinion is that detention after demand is only evidence of conversion.

Salmond, even in p. 314, says “when the owner deals in his mind as defendant’s chattels, a temporary refusal to deliver up, pending inquiry into title, is justifiable, is no conversion”!

Historically—1. Trespass. 2. Dehines.

3. Torn.
Junks. The unjustifiable exercise of a right of ownership over specific goods of which another person has a right to possession constitutes the tort of conversion; and the person whose right is thus infringed is entitled to recover, however, the goods were taken.

"Act of ownership," for purposes of above definition, means some physical act assuring the claimant to defendant to deal with the goods in a manner in consistent with the rights of the claimant.
Jinks defines conversion, p. 214

"The irreversible act of ownership over specific goods."

Trace - Conversion is removal from possession of another, with denying of possession to another, or exercising some dominion control over them for his own benefit or benefit of some third person.

Obvious difference is keeper vs. conversion - only person who can keep has possession.

Person keeping known as person who has right to pos.

Jinks, § 370 explains "act of ownership" very strongly.

Salmond, p. 307, "had the law developed logically?"

Critiques and explains Tolhurst v. Willoughby.

Conversion is a willful wrong. Doesn't follow that you mean to do anything wrong the act must be intended, but not necessarily intended as a wrong. (Kid v. Bell S.C. p 308).

Person equally liable if he has acted on behalf of some other person as his servant or agent.
Conversion by detention

Succeeded by Demand + Refusal

or Conduct showing hostility, threatening theft

Not necessarily owner who has action for conversion —
but person with right to possession of the goods
e.g. Bailor for period term

If two successive acts of conversion — e.g.
1. Taking
2. Converting

Statute of limitations runs from time of first act:
Securio this - if you act as apparent owner, obey instructions which owner would give, then you are not liable for conversion. (Trace argues this)

If a thief comes, takes a girl's property - may not justify as conversion.

3. Conversion by definition - contemnancy in this.

312. Conversion by definition - contemnancy in this

313. Acts not amounting to conversion - only

314. Acts not amounting to conversion - only

315. Argument in conversion is admissable

321. Conversion by advertisement

Well known case of Seton v. Lafone 19 O. B. D. 68

Not necessarily owner who has action for conversion - $107 Salmond. Person with rights to possession of goods (of unpaid vendor of goods)

Lecture 23

Position of de facto possessors -

Annuny v. Delamairie - Boy found jewel and was able to recover from jewelers who had refused to give it back.

328. Conversion as between 2 owners.

Damages

The full value of the property at date of conversion + subsequent increased value, if not due to act of defendant.

Berry v. Henn

Plaintiff, workman earning 38/- per week, sued for damages for loss of wife, killed by train. Woman had performed duty conscripted duties, in consequence of her death. Plaintiff had to employ a housekeeper. Jury assessed damages at £50.

Held: That under Fatal Accidents Act 1876 the damages assessed in such an action are not limited to the value of money lost or money value of things lost, but include the monetary loss incurred by replacing services rendered gratuitously by the deceased where there was a reasonable prospect of these being rendered freely in the future but for death, and that the plaintiff was entitled to recover the damages assessed by jury.
332. Measure of Damages to Conversion.

336. If chattels remain in possession of defendant, court may now act in discretion ord. Senate resolution.

373 341

Effect of Judgment in an action of Trespass to Chattels, remember rule in Stanley v. Powell — has intention or negligence always necessary.

Bailor is as rule proper person to give respass. Andor Sales Act 1915

347. Death — done already. Hallelujah! Amen! I think, I know, or yes I'm sure

This work we've done before

Humpty Dumpty sat on a wall
And snugly fell to the floor.

Serry v. Nunnah. 1915. K. B. 627

Some now, good Ballad, tell me hew,
And Mr. Young he Burns and saws me from distraction,
While Mr. Haysie bawls out aloud,
And Wacky-Winky the action!!
FALSE IMPRISONMENT. — While the defendant, by his own act, or by
the agency of others, and without legal justification, has, no matter
for how short a time, restrained the liberty of the plaintiff in
every circumstance, hath backto: for E. 1. without proof of actual damage.

Robinson v Balmain Ferry
A ferry company placed one wharf to
their private wharf another wharf had a fare of 1d. to fared by
all persons entering or leaving the wharf, whether they had handled
by the company's boats or not. The P. who was aware of these con-
ditions, paid the fare of 1d. and was admitted to the wharf through a
turnstile. Having missed his boat, he attempted to leave the wharf by
another turnstile, which was the only means of exit except by water.
as he refused to pay a second 1d. the company's servants endeavored
to detain him, but he eventually succeeded in getting his way through.
Is singing songs a grave assault?
On Shaddock's speeches slander?
Is Jimmy Tar's monument quite dead?
And is a goose a gander?

What cheer? Some aken-old papa
Engaged in mild repressions,
Should smite his son with Rules of Court:
Right on the Petty Sessions!

Lecture 24

24th V.C. 13 A.C. The coroner was not actionable—announced by—

Coyne
John Watson 1915 A.C. 1

Actual manslaughter not necessary—new unlawful arrest not sufficient—so long as his
shirrip is absolutely commended.

Robinson v. Balmain ferry 4 C.L.R. 379. 4 1910 H.C.

Hurd v. Wiledale Steam Co. 1915 A.C. 1 67
opinion upon the several points of the case, and he brought an action against the company for assault and false imprisonment—plea not guilty. Held that as the plaintiff could have left the wharf by water, there was, under the circumstances, no imprisonment; and

That the plaintiff, having entered the wharf with knowledge of the conditions imposed by the defendants, was to be taken to have assented, agreed to be governed by them, so that his demands justifiable or necessary were was reasonably necessary for the purpose.
to continue a lawful imprisonment beyond the proper time is also a false imprisonment.

If imprisonment directed by interference of some judicial officer, then no action for false imprisonment. Proper action would be one for "malicious prosecution." The judicial officer is not the agent of the injustice, so there can be no false imprisonment.

N.B. Policeman may be my agent - he is a mere ministerial officer and not judicial!

All plaintiff has to prove is that he has been deprived of his liberty - that floats his case.

Defendant proves -

1. That tracked with warrant - e.g. a constable may arrest anyone whom he suspects a reasonable ground of having committed a felony. (2) To prevent a breach of peace, or whenever breach of peace committed in his presence. (3) Statutory authority by the Police Officers Act.

J. Maybury v. Bloumian. 20 KB 2: R. Q.

II. If a private person, he may arrest a person whom he suspects on reasonable
Walters v W. A. Smith.

A private person is justified in arresting another on suspicion of having committed a felony if, and only if, he can show that the particular felony for which he arrested the other was in fact committed, and that he had reasonable and probable cause for suspecting the other of having committed it.

Brown v Lizars. A reasonable suspicion that a person has, in a foreign country or in another part of the British dominions, committed an offence which, if committed in N. S. W., was a felony, does not justify a constable in arresting such a person in N. S. W., without a warrant, and is not a defence to an action by such person against the constable for false imprisonment.

The only existing powers to arrest, extradite, or surrender to a foreign country or to another part of the British dominions, a person suspected of having then committed a criminal offence, are such as are conferred by statute.
grounds, of having committed a felony, provided that a felony has been actually committed."

Lawns v W.H. Smith 1914 1 K.B. 596

3) To stay a breach of the peace, or for treason

4) Statutory authority

5) A bail is entitled to arrest the person for whom he has given bail, if he has reasonable grounds for believing that such person is about to escape or otherwise causes a forfeiture of the security, and to try reason of his position.

6) By reason of position, naval and military officers may arrest subordinates, masters, servants, but not husband and wife.

v Jackson 1891 1 Q.B.

v Brown v Eggers 2 C.1.R.

359. Liability for dangerous property.

1. Rule in Indemnity v Dames
Norman v G. W. Rly Coy

The duty of a railway company towards persons resorting to their stations and yards in the ordinary course of business is not lighter than that of the occupier of private premises towards invitees resorting to such premises in the ordinary course of business as land down in Anderson v Dunes. The duty of rly coy. in such a case may be stated to be a duty to take reasonable care that their premises are reasonably safe for persons using them or entering and customary manner with reasonable care.

South Australian Company v Richardson of supra p 14

per Deanes J. "Inviter" - it was upon the appellants' premises on their business invitation.

"With respect to such a visitor at least, we consider it settled law that, using reasonable care on his part for his own safety, is entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual damage which he knows or ought to know; and that, when there is evidence of neglect, the question whether such reasonable care has been taken by notice, knowledge, guaranty or otherwise, and whether there was such contributory negligence as to the sufferer, must be determined by a jury as a matter of fact."
South Trust Co v Richardson 20 C.T.P.
partnerly Isaac J.
owner may leave the property dangerous, so long
as he reasonably protects the invitee.

Norman v G.W. Rly Co 1915 1K B 584

Rule in Savannah v Dames is that the
adaptation is a special case of the general doctrine
Sic utero tuo ut alienum non laedas

N.B. In Norman's case the owner was not an invitee. He was there by right, and so had a right to come upon a place free from criminal danger.

Only towards those coming on purpose are they

4. trespassers: Takes things as he finds them, but the occupier will be liable if he intentionally harms
He is not bound to act. His premises, which are his private property and under his sole dominion; his duty, though arising in relation to his premises, is not in respect of his premises as the subject matter of his duty. The subject matter of his duty is his visitor, and so the occupier may leave his premises dangerous, provided he reasonably protects the inviter.

The duty arises solely from the invitation, contract forms with its acceptance.

If invitee warns him of specific danger, cannot demand that such danger be removed; his remedy is to stay away.

pp 193-195 - Latham v. Norman's case

Latham v. Johnson
Defendants owned unenclosed plot of waste land accessible by path from home of plaintiff, a child 3 yrs. children in habit of playing on heaps of sand, stone & pebbles had leg injured by one of the stones. Children were run over because of albat. Scullin J. gave judgment for plaintiff on ground of Cooke v. Midland Ry. This ruled on appeal and Cooke's case distinguished - next page.
he trespasser, and perhaps for previous acts of negligence, misprision done by himself with knowledge of the trespasser's presence.

362. Salmon makes this trim. — In the case of a trespasser, knowledge of the danger is an absolute bar, while in the case of persons entering as guests, his knowledge of a breach of the occupier's duty doesn't in itself excuse it, but is merely evidence for the jury of an implied agreement that effect.

2. Rule in Francis v. Cockrell

If occupier agrees for value that some other person shall have no duty other for some specific purpose, contract contains implied warranty that premises as safe for that purpose as reasonable care and skill on the part of anyone can make them.


368. Liability when licensee is a child

Johnson v. Johnson 1913 K. B. 398
per Farrell t.j. "A child may be too young to qualify I contend,

negligence and yet old enough before a pedipede donkey or cow

into kicking; but it cannot be said that the owner who allows

adults and children alike to walk through his meadows where he

turns out the ordinary quiet dairy cows is liable for injuring now

to child who comments them.

"There is nothing in this case trace any liability on the D.

There is nothing alluring nor trap, invitation, or dangerous

animal or thing. The use of the land for depositing stones in

a normal manner, and stones are now dangerous than cows

or donkeys, if indeed as much. It is impossible to tell the

defendants liable unless we are prepared to say that they are tend-

 honour a groundkeeper to look after the safety of their licensees.

"In Booker's Midland Rly the real mischief was that there was

at the end of the track, being indeed the terminus ad quem of

the track, a machine 'attractive to children and dangerous as

a planting', and there is cast on persons who put in a place,

open to their licensees, a thing dangerous in itself, a duty to take

precautions for the protection of others who will certainly come

into its proximity."
In accordance with the rule of non-trespassing, trespassers (infants)

1. All persons
2. Concealed traps
3. Invitations
4. Dangerous animals or plants

The Midland Railway Company has been unduly stretched with manière.

Trespassers take things as to funds, but not to intentionally injured by spring guns.

Such also for poison acts, trespassers don with knowledge if trespassers penetrate

box or cellar.

The bad man warded his chocky iron
And rushed out in the blizzard.

He saw a naked heathen,
And shot him in his gizzard.

As his up jumped a hidden trap
Here he Borko chile of battle,
And feeling in his other parcel,
Relieved him of his chattels.

A trespasser! you'll say later,
And took things as he found 'em.
Jane v. Williamson. Rake man paid for admission rake. Rake was a defect in flooring and man’s leg injured. Jury was directed that defendant bound with brick reasonable care to prevent accidents to persons using the rake. The court rejected the high standard of responsibility set up in Francis v. Goodrich, that there was an implicit contract that the article was reasonably fit for the purpose. Verdict for defendants.

Gorman v. Mills. Defect in stairway, ground floor of building premises. Lease authorized lessor to make another stairway by adjoining building accessible. Premises above ground floor. The stairway contained a covenant by lessor to keep premises in repair, and not in terms include the stairway in the app. Plaintiff, tenant called for the stairs on two occasions, was injured by one of the stairway steps from one floor to another by stairway; the step in the stairway fell down and was injured. Defendants denied negligence and also that the stairway was in their possession or control. Held — there was evidence that stairway was in possession or control of the defendant in some way and make them responsible for its condition. Otherwise made by them, it was evidence of defect which defects must be known. The duty of the person occupying the premises is not to guarantee the safety of the place, but one reasonable care to prevent danger to those who may be using the premises in any way that is reasonably to be expected.

Lucy v. Barnum. Defect varied between entry at ground floor by flight of steps protected on each side by caking. Plaintiff, on the way up steps was an area. Plff., a tenant, slipped and fell into area; was injured. Jury found that defect lay in absence of railing. Held — that only obligation on defendant was to avoid exposing plaintiff to an unexpected danger without giving her warning; that as the danger was patent to everyone, and plaintiff knew of it, she had voluntarily taken upon herself to lean against no railing action.

Miller v. Hancock and Riggs v. Miers approved.
Lecture 26  Harmer v. Williamstown Baths 25 A.L.T.

v. Corrnan v. Wills 4 C.L.R. 764

on the liability of occupiers.

**Liability of Landlords.**

His liability, apart from express contract, for defects of quality or tone.

Reed v. Lord Badenoch

Wilson v. John Hallon

When property e.g. park or flat, position not at all clear.

Miller v. Hancock

Huggett v. Mico, ni nile.

The question of "implied invitation" makes these two cases distinct. If an implied invitation, probably liability for injuries.

Lucy v. Bawden 1914 2 N.B. 328 again.

Distinction with Miller v. Hancock

Hall v. Rogers 1916 1 N.B. 646

Shan had leases of unfurnished house does not warrant condition of possession. Roof must be kept in repair.
Hard's Rogers. Landlords let to tenants a flat on the top floor of a block, and retained possession and control of the roof. One day, a tenant found a way into the flat through cracks in the roof. He held that landlords should retain control, and that they did not discharge their obligation by showing that they had reasonable care in keeping it in repair. In Vernon v. Landlord, it was clear that ordinary care of an unoccupied house does not necessarily warrant that the premises are fit for human occupation, and that the tenure of a furnished house or apartment does not imply warranty that the premises are fit for human occupation at the beginning of the tenancy.

Newbury v. Bristol Tramways

Electric trains. Trolley arm sometimes left wire. To prevent accident the head of trolley arm must be detachable, so that arm could be detached at socket. Plt. injured through arm becoming detached and falling on him. Jury found for P. on ground that D's knew of risk, and didn't take steps. Precautions became passenger safety. Held: not strictly what precautions ought have been taken.

Cook v. British Rail

Costs to be entered for defendants, as they had successfully met the burden of proof on their part. Reason for accident consistent with the performance by them of their contractual duty to safeguard the passengers by all practical care and skill.

White v. Chedman

Male Ptl. lived from D's house which it was his duty to guard. Drunk used proper care, but horse became unmanageable and the husband and wife injured. Jury found for horse was unseated by the defendant. Was defendant to blame?

Held that was due to own, whom defendant had contemplated would use the carriage, to warn him of the dangerous character of the horse.
374. Landlord liable for positive act of negligence
    Parry v. Smith If a change liable for such positive act, surely landlord is not absolved.

Dangerous CHAStEa.

Newbury v. Bristol Tramways 1913 Decr.

When a chattel delivered by contract, liability depends on contract, or implied conditions in Sale of Goods Act.

Apart from this, merely duty to use reasonable care.

In gifts, quia non liable unless he failed to warn donee of same dangerous defect.

377. Ward v. Notts

Duty, although a dangerous chattel owes to kind persons any?

Complete a complaint answer cannot begin.

White v. Stedman 1913 3 K. B. 340.
Baker v. Baby

Defendants manufactured ginger tea which they placed in bottles bought from another firm. They sold the bottled ginger tea to a shopkeeper from whom the plaintiff bought one bottle; owing to a defect in the bottle it burst when the plug was opening it and injured him. The defendants did not know of the defect, and could have discovered it by the exercise of reasonable care. Held nevertheless, that defendants not liable.
A man who knew a right to know depos in chancel, he lives hath to third persons?

Baker v Baker. 1913 3 K.B. 357 (Brown v Brown)

Must concern - was the complaining third party one whose inference in use of chancel was in reasonable contemplation at the time of living?

In White v Steadman, for instance, it was reasonable to anticipate that the wife of the plaintiff should not the carriage hired to her husband by the farmer stable keep.

But - Language v Jury. There was grand, an actionate sort.

Lecture 27

Liability for Dangerous Chalkels.

Damage third persons - complicated by decision in White v Steadman, which breaks through the general rule of non-liability in Baker v Bukkock.

Thomas v Winchesters, regarded in White v Steadman as authority for being that actual knowledge is not necessary; has constructive knowledge enough. But Salmon disagrees.
Duty to prevent danger depends on contact
Duty to create danger is apart from contact.

Elliot v Hall 1913 8K 8 15 Q B 315 (?)
Only suits towards persons when known
must have contemplated as likely harm to.
George Skivington

Rex v Sales 32 T L R Taken fought animal
in son. Taken amenable for damage.

Dangers animals

Proof of scienter
1. Knowledge proved as fact in individual case (e.g. dog on tie)
2. Knowledge conclusively presumed, as case of animals
ferae naturae.

In cases of cattle stands apart.

"De provinj scienter, not nec. To show that the
animal on any previous occasion actually did the
kind of harm complained of. Suff. That it has man-
yielded a tendency to do it, a defect was aware but fact.
Worth v. Gilling

It is not necessary, in order to maintain an action against a person for negligently keeping a dangerous dog, taken that the animal had actually bitten another person before it hit the plaintiff. It is enough to show that it has, to the knowledge of its owner, caused a savage disposition, by attempting that. (In this case, the dog attacked a child which alone prevented it from being punished)

Special prov. in Dog Act 1915

§ 20 as opposed. The fact that dog was unaccompanied before the activity in company with the person informed against or warned from the premises. Prima facie evidence that it was known of the dog.

Lane v. Barry

This action applies only to proceedings where justice for a penalty, or to recover compensation for the actual damage done. In an action in the supreme court, broaching damages in respect of injuries inflicted by a dog. It is still necessary to allege and prove scientia.

Quain (Rey. v. Hare 14 V.L.R.) could evidence be admitted below to the fact that the dog was irritated by the complainant (under Dog Act prov.?)

Blackett v. Lycour

Defendants absolved from liability. There is any toward custumers could not be placed to high art amounts a guarantee against all danger. To keep a cat with rabbits is a natural and common occurrence. The cat was an animal manifestly natural, not known to be vicious towards mankind, but only towards dogs. The injuries to the owner, the dog was not the natural & probable consequence of the negligence of any.
Work v Selling 182 2 C.P.

In proving knowledge the knowledge of any servant who has the custody or care of the animal, or whose duty it is to attend to the matter, is deemed equivalent to the knowledge of his master.

To secure, exception p. 385 —

The Dog Act 1915 $20.

If dog mauls or worry any person, shop, etc., owner pays Penalty $25 + compensation for any injured chattel. Not necessary to prove previous malicious tendency on part of animal.

This only applies to summary proceedings in Petty Sessions. In County or Supreme Court, you will have to prove sec. 14 of 1912.

Clinton v Lyons 1912 3 K.B. 198

Dog brought into her room. Cat had kittens. Trouble ensued. Was cat a savage animal? Not usually, but only on account of her new kittens.

Hudson v Roberts (cited in his case). Will known the dangerous man with red handkerchief.
Doyle v. Vance.

The owner is liable for injury done by his dog while trespassing upon the land of another, and not in its owner's presence.

Pr. Stephen J. - 

Mans have been considered in old times that there was a marked distinction between trespass by a dog and trespass by an ox. Now, as a general rule, no such distinction is made. I cannot see why the rule should be any.
But damage may be too remote.

Doyle v. Banks 6 V.L.R.

In proving such case need not show that animal has actually done any injury,只要 demonstrate the tendency sufficient.

386. Rule in May v. Burdett.

Different from Rylands v. Fletcher. No need for animal escape to render owner liable.


May v. Burdett includes the rule in Rylands v. Fletcher completely, so far as animals concerned.

p390. Defences

1. Contributory negligence
2. Act of God. No major
3. Trespass from highway. Lillicr v. Ward
4. Had plaintiff was between when bitten.
5. Volenti non fit injuria. Does not mean must be warned, or if care been used, that harm.
6. act of kind person (?)
Wrong Act 1815 §13

In any action of seduction brought by a parent or person in loco parentis, it shall not be necessary for the party alleging a quasi contract in loss of service to the plaintiff by the woman, girl, servant or child between them, that there was the relation of master and servant, but such loss of service and relation shall be conclusively presumed in favour of the plaintiff.

Jews

A person who, without just cause or lawful excuse, either by spoken words, or by writing, print, picture, effigy, or any similar means, publishes concerning another a statement conveying an imputation upon such other, calculated to injure him in his name, character, profession, or official position, is liable (subject to privilege), to an action for damages by the person concerned whose such statement is published; and, if necessary, for an injunction restraining the repetition or continuation of such statement.
Case 28: Barry v. Harris (supra)

Actress' action for consortium annulment (Supreme Court)
"Requested consortium and consortium annulment (Supreme Court)"

Wrong Act §713: action for seduction.
In case of parent or person in loco parentis, loss of services is presumed.

403. D'v..Sort, Ireland 16 A.L.T. 66

Marriage Act § 146-149

Defamation: the infringement of a personal right.

The tort consists in publishing printed or oral matter, concerning another, which is calculated to injure his reputation, or to damage him in his trade or business, without lawful justification.

Jenks p. 500. says: "Lashed, contempt, or ridicule."

Two main forms: spoken - writing or print. But may take form of effigy etc.
An injurious statement — It is not defamatory to state in a newspaper that a certain tradesman has ceased to carry on business; yet, if this statement is wilfully false, and causes him actual damage, an action will lie for it.

But state falsely that he carries on business dishonestly or insincerely is defamatory, and an action will lie even though the statement is not wilfully false, and even though actual damage has not been caused by it — Salmon, p 407.

Action lies for publishing libellous story relating plaintiff to a ridiculous light, a caricature personal appearance.

Must not say lawyer doesn’t know his law, or that X is missing, or that Jones, a banker, is dishonest.

The estimation considered is that which man is held by society generally, and not by particular class.

(Marce v Rigott [Irish informers case])
Litil. Slander (spoken defamatory).

1. Libel is a crime as well as a tort - slander is a tort only.

2. Libel is actionable per se; in slander, as a rule, must prove special damage to woman.

Defamatory is something that injures man's reputation.
Injurious falsehood causes damage, but does not injure his reputation.

Fletcher v. Evans. Kenny's Cases.

There are cases in which a statement purporting to reflect on man's business may also reflect on his personal reputation as defamatory.


Publication - communication to some third person in some way.

Test of defamatory statement is that it induces other persons to think less of the plaintiff.

A statement that injures man's rep sorts itself to the business or has it always amounted.
Defamation of a Corporation

1. Statement must be such that it must have been defamatory and been directed against an individual.

2. Must also be of such nature that its tendency is to cause actual damage to the corporation in respect of its property or business.

The test is whether, under the circumstances in which the writing was published, reasonable men to whom the publication was made would be likely to understand it as a libellous term.

*Statute v Dairy Telegraph*

A candidate for the House of Commons referred to in a newspaper as a "Socialistic candidate." In an action by candidate against publishers for libel, in which it was alleged that by so describing the plaintiff it defamed him, it was held that the publication was made in favour of the corporation of all property held nothing in the words from which a reasonable reader could infer that the defendant intended the words complained of with the meaning alleged in theinnocent. Why were not witnesses called to show that they read the words or understood them to refer to the plaintiff as in fact?

*Godward v Inglis*

Inglis published article accusing certain companies of corrupt practices. The companies, each of which Godward managed, were sued. The court held that the companies' corrupt practices, of which the companies were distinct from the individuals controlling it, were incapable of being referred to as "the persons who managed the company and the only persons present." The court could refer - *Magna v Manchester & Williams*

*Perry v Griffith C.J.* "The injury is done if a man is pointed out..."
Interesting party publishing defamatory statement is
unneutral - He may have been ignorant of plaintiff's
very existence. We are concerned with the meaning
reasonably gain to the statement by reasonable men.
Reason is responsible for innocent statement.


Note the functions of judge v. jury.
Judge must first be satisfied that there is sufficient
evidence for the jury.

413. Immendio, where meaning not plain on surface.
Plausibility must arise what he conveys & the literal
meaning of the statement.

Slater v. Daily Telegraph 6 C.L.R. 1. A man was

The called "a Socialist."
In any action for defamation, statement must
be shown to refer to plaintiff, that people understood it

Godbard v. Inglis 2 C.L.R 78

This conveys - approves "L Jarm v. Maldonson
The Irish factory case."
in such away that any reader) therefore may know who it is that is being attacked. A man who makes an attack upon an individual by a description which applies distinctly to that individual, is not entitled because himself by saying “I did not know that it was he man.” “You look to the mind of the reader.”

(Law Quarterly Review, April 1916)

**Huth v. Huth.** The defendant went through the post in an unclosed envelope a written communication which the plaintiff alleged was defamatory of them. The communication was taken out of the envelope and read by a officer who was a servant at the house to which the envelope was addressed in breach of his duty and only curiosity. In an action for libel the only harm alleged was no ordinary publication.

**Wilson v. Mutual Store.** Plaintiff managed the grocery department, and in half-yearly report issued by directors it was stated that certain allegations by a clerk in the office could only have been perpetuated by the negligence of head of grocery department, and a change was deemed necessary. This report was printed for issue to shareholders, and manager was instructed not to give it to the press. In action for libel, only evidence of publication was that newspaper clerk called at country house and asked for the balance sheet, and received from a person in the country house a copy of the report and balance sheet. No error was disclosed showing any authority at any time to any persons in
Publication — putting it in the power of a third person

...bread or tear — not necessarily an actually completed

publication.

Speaking to plaintiff himself not a child, if no one

hearing.

Exception, husband or wife — communication

with or not publication.) But upon as to

statement to plaintiff's wife or husband, this is public

Arthur v. Arthur. 1915 3 K. B. 32

an unsealed letter — distinct from

postcard case Sadgrove v. Holt, but in both cases

held no publication.

James v. Beck. 31 Y. L. R. following Emmens

Porter p. 419.

Wilson v. Mutual Coke. 25 Y. L. R.

Ordinary defence—

1. Truth — substantial truth

2. Fair comment

3. Privilege
The company's employment of a letter to anyone a report and balance sheet (c. Better accountancy) had thus been not suff. evidence of publication by the defendant company to a jury, and had the plaintiff should have been non-suited.

On justification, denied that if justification proved as to one or more parts, judgment and jury not to give damages in respect of those parts.


To quiet this action without proving special damage, must know that slander spoken of clergyman as clergyman. Where one says that he has heard a statement defamatory of another repeating it, if the words of the repetition are such as show that the speaker does not give the defamatory statement his own authority, the speaker may, in action against him for defamation, if the repetition is justifiable, rely on the truth of the actual words spoken by him although the defamatory statement is untrue. Artic written by Harper to the Bishopry, reasonably the slander, was held privileged.
Lecture 29  
Reason for trial by jury a crime is that tendency because breach of the peace is criminal while "the greater the truth the greater the trial" - you must prove something more than the mere truth of your statement.

But in wrong as a tort proves of substantial truth will be good defence.

Bishop v. Lavender on "substantial truth".

When defamatory statement put forward as rumour or report, not suff to show that rumour existed merely mere from truth. Ronald v. Harper 11 L.R. 63.

Bingle v.  
Salmond 421. tomm.

New defence of justification pleaded, and what allowed to prove things that occurred after the libel was given to show the existence of an alleged tendency.
Stockdale v. Hansard. Hansard republished a purely private
which contained an alleged libel on a medical work by Stockdale.
The plea ofinnocence unreasonably raised. Anticlimax now!

Attwood v. Chapman. Liquor licence when dealing with an objection. The
renovation of an old on-licence are not a Court within the meaning of the rule
by which defamatory statements made in the course of proceedings before a
court are absolutely privileged.

Plaintiff, before, had applied for renewal of licence. Defendant
a private individual, gave notice of his intention to oppose plaintiff's appeal.
On the ground that, as the alleged plaintiff was not a fit and proper person
to hold such a licence. Defendant served a copy of his notice of
objection on the plaintiff, on the clerk to the liquor licence, on the super-
intendent of police, and on the owner of the premises.

Defendant's plea failed - that he was taking a necessary and proper
step in a judicial proceeding!

Cf. Bonelli v. Kendal Justice 1897 A.C. when Harrison said that justices within
at a liquor licence meeting are not a court at all!

Absolute Privilege
Absolute privilege

1. Judicial proceedings
2. Parliament
3. Statement of affairs taken from income party
4. Final report of judicial proceedings
5. Parliamentary papers

☑ (Stockdale v. Harmsworth) D.A.E.I.

Allwood v. Chapman. 1914 3 KB 275

Juries and honest reports usually privileged. Report of a public meeting is not privileged in Victoria, though it is in England.

So paper takes risks of publishing defamatory statements made by speakers.

Qualified privilege (Jenkins $1008, 1009.)

1. Party duties.
2. Statements in petition to court.
3. Statements by parties, counsel in non-judicial (quasi) proceedings
4. Party papers
5. Accurate newspaper reports of court proceedings
6. Statements by defendant in counsel's military duty
7. Comment or memo by state or official sanctions.
"Truth, like all other good things, may be loved unselfishly—may be pursued too keenly, may cost too much."

Macintosh v. Dun. Trade protection society communicated confidential information to subscribing members to specific inquirers. Did involved have the privilege? Certainly there was no cause to request a inquiry, but then the very inquiry was the result of the defendant's suggestions and request for business. The occasion was privileged of the communication inquired. The plaintiff's character was made in the general interest of society and from sense of duty; not so, if it were made from nothing of self-interest by those who for the commencement of a class, made for profit in the character of other persons, and who often for all information, which, however, cautiously and discreetly sought, may have been improperly obtained.


Similar case to Macintosh v. Dun, except that the inquirers were an association; cannot attempt to establish that association warranted, like Dun's company, run for profit, but only for information of members, and is distinguishable. But Court followed Macintosh v. Dun, and held no privilege.
Salmond states that:
(a) Statements made in performance of duty (moral)
(b) Statements made in protection of duty interest
(c) Tarn comment on matters of public interest
(d) Reports of parliamentary, judicial & proceedings

A publication is made on a private occasion of a matter
published in public interest, and of the party who
published it owes a moral, though not necessarily a
legal duty, to communicate it to the public.

Adam v Ward 31 T.L.R. 299

Always help if you can show that what you spoke
was in answer to inquiry which the person was
entitled to make.

Stewart v Bell Kenny’s case – father warning
danger against character & financial

Mackintosh v Durnin 1908 A.C. 390
Grunheid v Wernher 1915 3 K.B. 503

London Ass. Nat. Trade v Greenlands 32 T.L.R. 281


Norton applied for leave to amend defence by alleging that Hoare had in column 'The naval alchemist' attacked Norton's conduct, whereby Norton was likely harmless personally and not subject to his property or newspaper, and that matter complained of was published by defendant in reply to the plaintiff's article, and in reasonable defamatory the defendant and of his property or interest in his newspaper.

Held that the matter alleged was properly pleaded as in defence of property or interest, and that the amendment should be allowed.

2. Norton v. Hoare. -- An action for libel the defendant pleaded that the words complained of were printed and published on a privileged occasion, long ago, and without malice. In particular under that defence the defendant that Le was a member of the Catholic faith and the Catholic Federation, and that the words were printed (if at all), in defence or furtherance of certain doctrines, tenets, principles, aims and objects of the said faith and/or Federation, and in answer to an article or articles written, printed, and published by the plaintiff's newspaper.

Application then the part of defence struck out refused.

per Lord J.: "These persons have an interest because they are all members of said faith or federation, and so, a person interested, addresses primarily persons interested."
McIntosh should be looked at as imposing certain qualifications on privacy.

Starkman made vi protection. *Emphasis*

_Howe v. McCoolough v. Lees_ 11 C.L.R. 361 defines what is an "interest."

*Emphasis*

Starkman's self-defence

_Norton v. Hoare_ 19 A.L.R. 466. - A man has the protected from false statements misapprehension of his property.

_Norton v. Hoare_ (2) 20 A.L.R. 7. Members an organization have common interest in repelling an attack made on it. (church organization)

May fairly criticize public man in public capacity; but must he comment - cannot invent facts and then comment on them!

Brad - "As far as the statements are statements of fact they are true - the rest is fair comment."

To show fair comment, what must show

1. The words fairly relevant to one making attack.
Sparks's' Syme. To justify the plea of "fair comment," the facts upon which the comment was founded must really have existed, but it is not necessary for the defendant to prove that of his own knowledge, when he wrote he knew such facts have happened.
b. They are expressions of opinion and not the allegation of a fact.

c. They do not exceed the limits of a fair comment and even then, open to proof by proving that they were published maliciously.

Whether the matter commented on is or is not one of public interest is a question for the judge. But the public conduct of every public man is certainly a matter of public concern.

Fair means the comment, and not the words themselves. *Spight v. Lynn* 21 L.R.R.

In this case, fair comment was raised as defined. A basis of fact was proved.

A man’s private character is not a subject for fair comment. Truth must then be proved.

Malice in law—Bromage v. Broomer—a wrongful act done without just cause or excuse.
Worms Act §3. No action or information shall be maintainable against any person for publishing a faithful and accurate report of proceedings in any county judge, county petty sessions, inquiry before a coroner or other legally constituted court.

But no obscene or blasphemous matter
no matter what judge
Lecture 30

[ Pinn v Ren. 60 S. 2d.]

Decisions of a superior court — suggest reflections on the nature of owner’s liability for animals.

Man bought cows; calf at market, guaranteed quiet. 
How attacked woman, who brought action; and succeeded.
Thus in similar cases, like Clinton v Lyons, a different decision arrived at.

Solicitor: Journal comments adversely on the decision in Pinn v Ren. But that case decided on ground that is, who takes his animal on highway must take reasonable care. Thus perhaps distinguish from Clinton v Lyons.

Reverses a nos montes.

Malice destroys fair comment — plaintiff must prove it.

That there’s any belief in the comment made is proof of the presence of malice, and therefore fair comment cannot be raised.

Privileged Reports: Big Ways v March, amicus.

Report of purely proceedings privileged at common law.

By Wrongs Act 1915 §3 appears to all up above.
privilege, though in practice only qualified privilege. There have been a couple of cases where figures were
for publishing statements of counsel which defamed witnesses. Statutory defence raised, the paper failed to establish that the report was faithful and accurate.

Reports of public meetings are published at risk of the newspaper.

Plaint action for without proof of special damage in certain cases —
1. Imputation that plaintiff has committed criminal offence
2. Imputation that he has venereal disease
3. Imputation of unchastity against woman
4. Imputation in way of blemish or office.

1. "Criminal offence" must be one that leads to imprisonment.
   Need not be an indictable offence — 20 days' leads to imprisonment.

2. "Venereal disease" must imply to continue now, and not previous existence of such disease.

3. "Unchastity" — Wrong Act provides this.
Jones v Jones (C.A.) One Jones brought action against a Mrs Jones for
slander (in the Welsh language too!) slandered him by accusing him of
improper conduct with a third party, a lady. The first
Jones was a schoolmaster. At the time of speaking the words com-
plained of no reference was made by defendant to the fact of the
plaintiff being a schoolmaster, nor was it proved that the person to
whom the slander was uttered was aware of the position occupied by
the plaintiff. Defence was that the words did not impute to him
misconduct in the course of discharging his duties of schoolmaster, and
so not actionable without proof of special damage, of which there
was none. Defence succeeded.
4. Business or office.

To charge misstatement against hadu!

Ignorance against lawyer!

Words must be shown to have been spoken of plaintiff in relation to particular capacity (Ronald v. Barker). If man no longer holds office, action for wilful
not true for slander.

Dishonour between officers of profit and officers of leisure.

In last case, as when man is J.P., words implying malpractice not actionable unless, unless true, they would be ground of deprivation.

Livingston v. McCarthy 28 A.L.T. 131

But if implies dishonesty, then drawn between officer of profit and common variance.

Rule p.466 runaway from town. Must charge lawyer and伤病者.

Jones v. Jones 1916 1 K.B. 351

Words held actionable unless, slandering a schoolmaster, although the words were not spoken of plaintiff as a schoolmaster, nor of anything he had done as a schoolmaster.
The law of slander is an artificial law, resting on very artificial distinctions and refinements, and all that the court can do is to apply the law to those cases in which Justice has been held applicable.

"If the action is to be extended to a class of cases in which it has not hitherto been held to be, it is the Legislature that must make the extension, and not the Court."

As said in Ogun v. Crown (2 A. E.) "Some of the cases have proceeded to a length which can hardly fail to work injury; a clergyman having failed to obtain redress for the imputation of adultery to a schoolmistress having been declared incompetent to maintain an action for a charge of prostitution. Such words were undeniably calculated to injure the success of the plaintiff in his normal profession, but not being applicable to his conduct herein, no action lay."

Exception 1: The imputation of unworthiness upon a person who is in fact a banks, whether he is a banker therein, that capacity, and is his private capacity, is actionable.

2. Again, to impute misconduct to a clergyman, who is deprived or holds some clerical office, or employment, if moral or degradation, is actionable per se, as being a cause of defamation or degradation.
had Jones Jones most carefully
bomt protest against extending an artificial sub-
like that of slander actionable per se.
only two exceptions - that of the landlord who is
accused of untruth + expense?

can always settle, not as defence, but in
mitigation of damages. Not as soon as gets you published
an apology
Wrong 215 54

15. Special provisions re newspaper. Open's defendant

Spread (a) that such libel was inserted in such newspaper
without actual malice and without gross
negligence

and (b) that before commencement of action, not
earliest opportunity to insert in such newspaper
a full apology for the libel. Or, if the
newspaper is published at large circulators than
annuity, had offend defendant apologize in any
newspaper selected by plaintiff

Before pleading such defense, every such defendant shall have
liberty to pay into court a sum of money by way of
amends for the injury sustained by the publication,
and 6 and unless it shall be competent for plff to
Tomkins v Wilson

action for libel ni Australasian

Wilson raised the three defences by statute.

West J. in directing jury, instructed them to decide on malice, gross negligence, and suffering of apology; but omitted to state that the question of the sufficiency of the money paid into court as amends was an essential element of the case which had been considered by the jury.

New South granted on grounds of misdirection.

Wilson v Dun's Gazette

Trade protection publication. Defeat said that what was published was published wrong to error of plaintiff's agent: this raises no defence or mitigation of damage.

Wright. Not also relied on, but no money paid into court. Held that statutory defence not to be pleaded, because no money paid into court; and apology should be delivered as a statement of intention with the defence, not in the defence.
reply generally, denying the whole? and defence!

This only applies to public newspaper or other periodic periodical publication.

Three questions for jury – on this section:
1. Was the actual matter grossly libelous?
2. Was the apology expressed?
3. Was money been paid in?

Thomson v Wilson 14 V.L.R 383.
Wilson v Dun’s Gazette 1912 V.L.R 342.

Ordinary answers in tort also apply:
1. Record and Satisfaction.
2. Release.
   Other tort 6 years.)
5. Death of one party
   (actus personalis munitus even persona.)
Smith v. Streetfeld. The writer of a pamphlet employed a firm of printers to print it. This was a natural and proper means of publishing it. He then circulated the pamphlet among persons having with him a common interest in its contents. It contained statements defamatory of the plaintiff. The writer was actuated by malice. The printers acted in the ordinary course of their business and without malice.

Held, that the privilege of the occasion extended to the printers, and that the malice of the writer defeated the privilege both for the writer and for the printers, and that they were joint tortfeasors and jointly liable to the plaintiff.
Lecture 31
Smith v. Shufreud 1913 3 K.B. 764

Malaria as affecting writer & printer.

Van Buren’s Rep. 1916 p. 97 Rule 7

Liability of father for tort by child, Betti v. Sales.

Permitting child to use an gun recklessly and do damage with it; the element of recklessness enters into it.

Canadian cases put it on the ground of negligence.

Defeat: Fraud has two meanings—In Law, in Equity.

And the unappealed by the Judicature Act. Perry v. Peak.

Fraud at law had a definite meaning; but in Equity, the word used in wide sense, carrying any kind of unfair dealing.

In these cases relief obtained in Equity, though impossible to know fraud in the strict legal sense.

If want to get damage for deceit, must show legal fraud.

But may get contract rescinded for something short of that.

Junks 1536 gives history of matter.

Fraud: “False statement of fact made with knowledge or falsehood or recklessly, intended to induce another to act, and actually induce him to his damage.”

Non disclosure not fraud—Ward v. Nott.
Robinson v Moffatt v Selcom. A person who has induced another to enter into contractual relations with him by honesty and bona fides making a representation, which he afterwards discovers to be false, is as regards contracts entered into with him subsequently to such discovery, under a duty to disclose the falsity if he represents the other contracting party, otherwise he will be liable in an action of deceit for damages thereby suffered by such contracting party through continuing to act on the faith of such representation.

Norton v Lord ashburton. 953. per Walden L.C. "It must now be taken for settled that nothing short of proof of a fraudulent intention in the hands and will suffice for an action of deceit. (Derry v Peek)."

But when fraud is referred to in order never used in blameworthy descriptions, cases which were within its exclusive jurisdiction, it is a mistake to suppose that an actual intention existed and always be presumed. Constructive fraud may exist, as where some obligation violated, common maturity. Thus the case when a fiduciary relationship existed by solicitor and client, and Derry v Peek has not recognised client as remedy.

Tackey v McBain In action of deceit the plaintiff must prove that untrue statement (about Sumatra rubber plantation) made by the defendant was made with a fraudulent intent.
(1) Non-disclosure of fact by expert.
(2) Act or omission constituting fraud.
(4) Breach of statutory obligation to disclose §88 Companies Act.

There are exceptions to the general rule that mere non-disclosure is not fraud.

448. Agency - Warranty & Authority

Bollen v. Wrong 8 E & B 647

§82 Companies Act - Statutory exception to Derry v. Peek.

Directors liable for negligent mis-statement in a prospectus.


Jenks 1029. Not necessary for the defendant has made or intended to make a profit out of the fraud.


Holmes v. Jones 4 C.L.R. 1692

Rep'd but not acted on.
Holmes v. Jones

Fraudulent misrepresentation must in fact have been relied on and acted on, and produced actual loss. Owners selling market property made false statements as to the number of stock on it, but purchasers refused offer. Later, fully informed of the inaccuracy, they negotiated purchase on different terms regarding the stock, inspected property, and as a result of inspection, decided to purchase. Held that it could not afterwards say that he relied upon the misrepresentations made by the vendors in the first instance.

Latham v. Rank

In an action for damages to a business caused by malicious falsehoods, when the words are not defamatory and actionable per se, the plaintiff must prove actual loss of customers to whom the words were spoken, and cannot as a rule put evidence of general decline in business.

Dame whether in proof of actual loss the jury may award damages in excess of such actual loss, by way of punishment or example.
Instruments Act $230.

Statute of Frauds.

Difficultly - if false statement incorrectly made by agent, but known as false to principal, difficulty many arise. Is knowledge principal of agent?

Perhaps Robinson v. trapping v. Robson may be followed - employee both of 2 endeavours took advantage of the mistake.

Injuriously fabricated

Kethiff v. Evans

Kenny's case.

To recover, must show: that statements complained of were untrue.

1. That they were made maliciously,
2. That they were made maliciously, i.e. without just cause or excuse,
3. That plaintiff had suffered special damage thereby - even if statement written!

Latham v. Banks, (about 3 years ago) 54 S.J.
INDEX OF CASES

Vol I
Brigadoon Shipwrights v Heggie 3C.L.R. H.C. says down propositions re "malicious injuries"

I. Any interference with rt. I, another, which will not occasion damage then, is actionable, unless lawful.

II. Interference resulting merely from cause of free trade competition, not actionable. 

III. If act lawful, and interference with rt. of another merely incidental or accidental, the act is prima facie neutral and innocent

IV. Acts not forbidden by law, and done in the course of the right of personal liberty, or in the discharge of duty to self or another, an act prima facie lawful. But

V. If interference is deliberate, and actuated by desire to do harm or person whose rt. are interfered with, protection vanishes

VI. If interference is direct result of carrying out of an unlawful enterprise, propositions III + IV have no application, and the cause of action is complete as soon as actual damage follows.
Library Digitised Collections

Author/s:
Menzies, Robert Gordon

Title:
Robert Menzies' student notes: The law of wrongs, civil and criminal

Date:
1916

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