

VCE Legal Studies: Task

Sorts of torts

Outline

Patrick objects loudly, grabs David by his braces and the heel of his orthopaedic book and drags him around the garden, through the ornamental pond and locks him in the potting shed. After twenty-seven minutes sitting on a tub of rare Brazilian orchids, David escapes by burrowing under the wall. Unfortunately, this results in uprooting a grove of bonzai orange trees, which David heaves over the fence into Patrick's neighbour's swimming pool, splashing a regiment of newly painted gnomes lined up on the terrazzo path by the pool.

The neighbour does not take this well and calls out to David, "I know you. You are that escaped murderer who killed the old lady in Brunswick and set fire to her pet ferret". He squirts David with his paint spray, misses him but fuses Patrick's electric cocktail shaker which had been trembling happily on the outdoor bar.

The vicar, who had been cycling past on his way to communion, heard the neighbour's comments and later warned the choir boys to steer very clear of David or they might suffer an abomination which made the vicar blanch to even think about.

Use this scenario to illustrate your responses, where appropriate, to the following questions:

- (a) Leaving aside any criminal matters, what torts can you identify in this brief suburban interchange?
- (b) What rights are protected by these areas of civil law?
- (c) What elements are required to establish liability for each breach?
- (d) Are there any limitations on actions in these areas of law?
- (e) What possible defences could be raised in any of these areas of law?
- (f) What has been the role of statute law and common law in developing the elements and defences in any of these areas of law?
- (g) What impact could the breach of these areas of law have on the parties?

Responses

(a) The first tort which can be identified is trespass to land which arises when David refuses to leave Patrick's property. It also arises when David throws the bonzai orange trees over the neighbour's fence and when the neighbour squirts water over Patrick's fence. This tort occurs when there is direct and unauthorized interference with land, or anything attached to the land, which is in the possession of another.

The second tort is trespass to the person, in this case battery. It arises when Patrick tips beer over David, when David pokes Patrick with his pen and when Patrick grabs David and drags him around the garden. This tort occurs when one person unlawfully applies force to another.

The third tort is false imprisonment. It arises when Patrick locks David in the potting shed from which there is no reasonable means of escape. This tort occurs when there is the imposition of unlawful restraint upon another either by force or the threat of force. The period of the restraint is immaterial but it must be total restraint.

The fourth tort is trespass to goods. It arises when David splashes the newly painted garden gnomes and when the neighbour, in attempting to squirt David, squirts Patrick's cocktail shaker and fuses it. This tort occurs when there is direct and unauthorized interference with goods in the possession of another.

The fifth tort is defamation. It arises when the neighbour accuses David of having committed serious crimes and it is heard by the vicar. It also arises when the vicar tells the boys to keep away from David. This tort occurs when one publishes a statement which tends to injure the reputation of another. The test is whether, in consequence, right-thinking members of society would shun or avoid that person, or

regard him or her with. Feelings of hatred, ridicule or contempt.

(b) and **(c)** are essentially covered in **(a)**.

(d) The *Defamation Act* 2005 abolished the distinction between libel and slander in defamation actions and the *Limitation of Actions Act* 1958 (as amended) imposes a six-year limit on most actions in tort except for personal injuries which must be brought within three years and defamation within one year. Development in these areas of law in recent years has been largely by statute.

(e) With regard to trespass to land, reasonable force may be used to eject a trespasser. Self-defence may be used as a defence to battery and, in some cases, as a defence to false imprisonment. Justification (truth) may be argued as a defence to defamation as may privilege (e.g. a member of parliament speaking in parliament). Fair comment on a matter of public interest may also be raised as a defence in a defamation action, usually by news reporters.

(f) See **(d)** above.

(g) There may be physical, mental or economic suffering on the part of the plaintiff as well as costs to both parties in legal costs as well as damages payable by the defendant to a successful plaintiff. In defamation cases, the damage to a person's reputation may be substantial.