

O'Donovan , Lowell Bautista

Index

[More Information](#)

INDEX

- abatement, 329
 - abatement of nuisance, 332, 496
 - recaption of goods, 329–31
 - re-entry of land, 331–2
- action for breach of statutory duty
 - availability of action, 564–5
 - defences to, 575
 - elements of, *see* elements of breach of statutory duty
- actionable interferences in trespass to land
 - direct interferences, 272–3
 - interference with land, *see* interference with land
- age, breach of duty of care and, 107–9
- agency, vicarious liability and, 401–4
- aggravated damages, 4, 497–8, 500
 - awarded for intentional torts, 500–1
 - awarded for negligence, 501
 - in defamation, 475
 - limited by civil liability legislation, 501
 - as remedy for trespass to land, 350–1
 - as remedy for trespass to the person, 346–7
- airspace, 274–7
- animus possidendi*, 269–70
- apportionment, contributory negligence and, 208–11
- assault, 242–4
 - reasonable apprehension of, *see* reasonable apprehension of assault
 - subjective intention and, 249
 - threat of imminent harm and, *see* threat of imminent harm
- Australian statutory compensation schemes
 - National Disability Insurance Scheme, 41–2
 - transport accident compensation, 40
 - victims of crime compensation schemes, 42
 - workers compensation, 40–1
- awards of damages adjustments
 - collateral source rule, 537–9
 - contingencies or ‘vicissitudes’, 533–6
 - ‘discount rate’, 531–3
 - ‘saved’ items of expenditure, 536–7
 - tax to be deducted, 537
- battery, 236–7
 - direct application of force and, 238
 - fault of the defendant and, 242
 - as positive act, 237–8
 - unlawful touching and, 238–41
- Bernstein* test, 273, 274, 275, 276
- Bolam* principle, 37, 115, 116, 137
- breach of confidentiality, privacy and, 483–7
- breach of duty of care, 21–2, 99–101
 - demonstration of, *see* demonstrating breach of duty of care
 - importance of civil liability legislation, 103–5
 - negligent conduct, 101–2
 - no degrees of breach, 102
 - proving breach, *see* proving breach of duty of care
 - reasonable person standard, *see* reasonable person standard
 - relevance of past findings of, 102–3
- ‘but for’ test, 22, 166, 171–5, 179, 184
- calculus of negligence, *see* negligence calculus
- causation, 22
 - ‘but for’ test, *see* ‘but for’ test
 - chain of, *see* chain of causation
 - contributory negligence and, 207–8
 - dependants’ action and, 546–7
 - factual causation, *see* factual causation
- chain of causation
 - breaking of, 184–7
 - causally independent events, 188–9
 - successive causes leading to a similar damage, 189
 - voluntary human action, 187–8
- chattels, trespass to, *see* trespass to personal property
- circumstances for injunctions, 552–3
 - adequacy of damages as remedy, 553
 - proprietary interest required, 553
 - rights protected by injunctions, *see* rights protected by injunctions
- civil liability reforms, 36
 - background to, 36–7
 - effects of, 38–9
 - key amendments, 37–8
 - response to, 38
- claims upon the death of a person, 543
 - assessing damages, 550–1
 - claims by dependants of the deceased, 545–8
 - claims by estate of the deceased, 543–5
 - non-pecuniary loss, 549–50
 - pecuniary loss, 549
- collateral benefits
 - gifts by the defendant, 538
 - gifts by third parties, 538
 - Medicare payments, 538
 - no-fault compensation schemes, 539
 - redundancy payments, 538
 - sick pay, 538
 - social security benefits, 538–9
 - voluntary payments by an employer, 538
- collateral source rule, 537–9

O'Donovan , Lowell Bautista

Index

[More Information](#)

- 'commonsense' test, 175–6, 179
- compensation, feminist analysis and, 10–11
- compensation schemes
 - Australian statutory, *see* Australian statutory compensation schemes
 - international, *see* international compensation schemes
- compensatory damages, 498
 - as remedy for trespass to land, 349–50
 - as remedy for trespass to the person, 345–6
- compensatory damages for property damage, 507–8
 - cost of repair or diminished value, 508–12
- consent, 332–3
 - capacity to give, 337–40
 - express consent, 333–5
 - implied consent, 335–6
 - real and voluntarily given, 336–7
 - revocation and expiration of, 340–1
 - scope of, 341
- contribution, 560
 - against whom contribution may be claimed, 561
 - assessment of, 561
 - who may claim, 560–1
- contributory negligence, 23, 194–5
 - apportionment and, 208–11
 - causation and, 207–8
 - definitions and rationale, 195
 - as non-defence to trespass, 344
 - standard of care for, *see* standard of care for contributory negligence
- control test, 406–7
- conversion, 301–2
 - bailees and bailors and, 303
 - co-owners and, 304
 - fault and, 310–11
 - finders and, 304–5
 - owners and, 302–3
 - remedies for, 355–6
 - repugnant dealing, *see* repugnant dealing
 - title to sue, 302–5
- co-owners
 - conversion and, 304
 - possession and, 272
- damage, recognised by law, 152–4
- damages, 4
 - adjustments to awards of, *see* awards of damages adjustments
 - aggravated damages, *see* aggravated damages
 - claims upon the death of a person, *see* claims upon the death of a person
 - compensatory damages, *see* compensatory damages
 - contemptuous damages, 499
 - 'damage' and 'damages', 497
 - damages 'at large', 497–8
 - exemplary damages, *see* exemplary damages
 - gratuitous services damages, *see* gratuitous services damages
 - Griffiths v Kerkemeyer* damages, 524, 526
 - nominal damages, 498–9
 - non-pecuniary damages, *see* non-pecuniary damages
 - other factors affecting assessment of, 551
 - pecuniary damages, *see* pecuniary damages
 - personal injury compensation, *see* personal injury compensation
 - restitutionary damages, *see* restitutionary damages
 - 'special' and 'general' damages, 497
 - Sullivan v Gordon* damages, 529
 - trespass to land, 349–51
 - trespass to the person, 345–8
 - types of, 498
 - types of for remedies for trespass, 318–19
 - vindictory damages, 499–500
- damages in defamation, 474
 - aggravated damages, 475
 - economic loss, 474
 - exemplary damages prohibited, 475
 - non-economic loss, 474–5
- defamation, 437
 - damages in, *see* damages in defamation
 - defences to, *see* defences to defamation
 - elements of, *see* elements of defamation
 - liability for, 4
 - purpose of defamation law, 437–8
 - remedies for, *see* remedies for defamation
 - social media and, *see* defamation and social media
 - uniform legislation, *see* uniform defamation legislation
- defamation and social media, 476
 - defamation and the internet, 476–7
 - liability of anonymous users, 477–8
 - liability of intermediaries, 478–83
- defamatory imputation, 442
 - defamatory imputations, 442–3
 - definition of 'defamatory', 443–50
 - definition of 'matter', 442
 - true and false innuendos, 443
- defences to defamation, 457
 - absolute privilege, 463–4
 - contextual truth, 460–3
 - fair report of proceedings of public concern, 466
 - honest opinion, 470–2
 - innocent dissemination, 472
 - justification, 458–60
 - publication of public documents, 464–5
 - qualified privilege, 466–70
 - triviality, 473
- defences to negligence, 193
 - contributory negligence, *see* contributory negligence
 - good Samaritans and volunteers, 221–2

O'Donovan , Lowell Bautista

Index

[More Information](#)

- illegality, *see* illegality
 - limitation of actions, 220–1
 - voluntary assumption of risk, *see* voluntary assumption of risk
- defences to nuisance
 - prescription, 384
 - statutory authorisation, 384–7
- defences to trespass
 - abatement, *see* abatement
 - categories, 317–18
 - consent, *see* consent
 - defence of another, 323–4
 - defence of property, 324–5
 - disciplinary powers, 341–2
 - inevitable accident, 342
 - necessity, *see* necessity
 - self-defence, 320–3
- defendant characteristics, breach of duty
 - of care, 107
 - age, 107–9
 - experience, 113–14
 - intoxication, 111–12
 - physical and mental impairment, 109–11
 - possession of special skills, 112–13
 - public authorities, 119–20
 - status of professional, 115–19
- defendants for private nuisance liability
 - adopting or continuing a nuisance, 380–1
 - authorisation of a nuisance, 379–80
 - creators of a nuisance, 379
- defendants for public nuisance liability, 379
- demonstrating breach of duty of care, 122–4
 - failure to warn, 138–40
 - negligence calculus, *see* negligence calculus
 - 'not insignificant' risk, 127–8
 - reasonable foreseeability, 124–7
- dependants' action, 545–6
 - causation and, 546–7
 - proof claimant is dependant, 547–8
 - right of action, 546
- detinue, 311
 - demand and refusal, 312–13
 - fault and, 313
 - remedies for, 356–7
 - title to sue, 311–12
- direct intention or reckless indifference, malfeasance
 - in public office and, 580–1
- distributive justice, 7
- duty of care, 4, 20–1, 47–9
 - articulation of, 56
 - breach of, *see* breach of duty of care
 - duty to control others, *see* duty to control others
 - duty to prevent psychological injury, *see* duty to prevent psychological injury
 - duty to prevent pure economic loss, *see* duty to prevent pure economic loss
 - non-delegable duties, *see* non-delegable duties
 - in the novel case, salient features approach, *see* salient features approach
 - occupiers, *see* occupiers
 - public authorities, *see* public authorities
 - special defendants, *see* special defendants
 - special duty relationships, *see* special duty relationships
 - steps for appropriate rule, 55–6
- duty of care established categories, 54–7
 - doctor–patient, 61
 - duty owed to a rescuer, 63–4
 - employer–employee and master–servant, 58–9
 - manufacturer–customer, 57–8
 - occupier–entrant, 59–60
 - teacher–pupil and school authority–pupil, 61–3
 - users of the highway, 64–5
- duty of care general principles, 49
 - current law, 54
 - 'neighbour' principle, 49–51
 - 'proximity' principle, 52–4
- duty to control others, 90–2
 - existence of some other factor, 92–3
 - existence of special relationship, 92
 - when duty arises, 92–3
- duty to prevent psychological injury
 - development of liability, 79–81
 - early decisions, 78–9
 - policy factors in mental harm cases, 77–8
- duty to prevent pure economic loss, 81–2
 - difference between pure and consequential economic loss, 82
 - negligent misstatement and, 82–6
 - other factors causing loss, 86
- easements, possession and, 272
- economic loss, 346
 - pure, duty to prevent, *see* duty to prevent pure economic loss
- 'eggshell skull' principle, 180, 182–4, 547
- elements of breach of statutory duty
 - breach caused injury suffered by plaintiff, 574–5
 - damage suffered falls within scope of statute, 573–4
 - defendant bears relevant duty under statute, 571
 - duty breached, 571–3
 - Parliamentary allowance of action under particular statute, 565–70
 - plaintiff belongs to class of person protected by statute, 570–1
- elements of defamation, 441
 - defamatory imputation, *see* defamatory imputation
 - identification of plaintiff, *see* identification of plaintiff in defamation matters
 - publication of statement, *see* publication of defamatory matter

O'Donovan , Lowell Bautista

Index

[More Information](#)

- elements of tort of misfeasance in public office
 - defendant fulfills a public function, 579–80
 - defendant has requisite intention, 580–3
 - defendant is 'holder of public office', 577–8
 - plaintiff suffers material damage, 583–4
- employer–employee relationship, 406
 - control test, 406–7
 - enterprise test, 407–8
 - multifactorial test, 408–9
- employers, legal liability for acts of sexual abuse
 - committed by employee, 426–33
- employment and vicarious liability, 404–5
 - employer–employee relationship, *see* employer–employee relationship
 - employer's right of indemnity, 415–16
 - exception to employer's vicarious liability, 414–15
 - master–servant theory, 405–6
 - scope of employment and, *see* scope of employment
- enterprise test, 407–8
- equitable damages, conditions for award of, 352
- European Court of Human Rights, 16
- exemplary damages, 4, 501–3
 - awarded for intentional torts, 503
 - awarded for negligence, 503–4
 - examples of, 505–7
 - as remedy for trespass to land, 351
 - as remedy for trespass to the person, 347–8
 - statutory limitations, 504
 - where criminal punishment already imposed, 504–5
- experience, breach of duty of care and, 113–14
- factual causation, 22–3, 161
 - civil liability legislation, 164–70
 - historical overview and interpretive framework, 170–8
 - onus and standard of proof, 373–4
- false imprisonment, 250–1
 - defendant at fault, 262–3
 - direct interference, 251–3
 - restraint in all directions, *see* restraint in all directions
- fault
 - conversion and, 310–11
 - trespass to goods and, 300
 - trespass to land and, 290–1
- fault of the defendant in trespass, 232
 - intention, 232–3
 - lack of care, 234
- form of action, 225, 227, 228, 236
- Gillick* competence, 338
- good Samaritans and volunteers, 221–2
- gratuitous services damages, 524–5
 - loss of ability of plaintiff to provide gratuitous services to others, 529–30
 - statutory limitations on gratuitous services, 526–9
 - valuation of gratuitous services, 525–6
- historical origins of trespass
 - action on the case, 226–7
 - choosing between trespass and case, 227–31
- 'holder of public office', 578
- hospitals, non-deligable duty, 419–21
- human rights, tort law and, 12–16
- identification of plaintiff in defamation matters, 450–3
 - express identification, 450
 - reasonable to identify plaintiff, 450–3
- illegality
 - common law position, 218–19
 - as a defence, 218
 - state legislative variations, 219–20
- incapacity, 344–5
- independent contractors, 94
- injunctive, 552
 - circumstances for ordering of, *see* circumstances for injunctions
 - discretionary bars to relief, 555
 - quia timet injunctions, 555
 - as remedy for trespass to land, 351–2
 - as remedy for trespass to the person, 348
 - requirements for interlocutory injunctions, 555
 - rights protected by, *see* rights protected by injunctions
 - types of, 552
- integration test, *see* enterprise test
- intentional torts, 3–4, 17–18
 - aggravated damages awarded for, 500–1
 - categories of, 17
 - exemplary damages awarded for, 503
 - features of, 18
 - historical development of, 17
- interference with land, 273
 - airspace, 274–7
 - subsoil, 277
- interference with use and enjoyment of land, 362–4
 - unreasonable interference, *see* unreasonable interference
- interference without lawful justification, 278
 - authorised by law, 285–8
 - continuing trespass, 290
 - exceeding the licence, 282–4
 - express licence, 278–80
 - implied licence, 280–2
 - revocation or withdrawal of licence, 284–5
 - trespass ab initio, 289–90
- international compensation schemes
 - New Zealand, 43
 - no-fault schemes, 42–3
- internet, defamation and, 476–7

O'Donovan , Lowell Bautista

Index

[More Information](#)

- intoxication
 - breach of duty of care and, 111–12
 - standard of care for contributory negligence and, 202–6
- Ipp Report, 36, 74, 115, 119, 128
- causation and, 165–6
- individual autonomy and, 195
- recommendations, 37–8, 123, 164, 171, 197, 210, 527, 573
- standard of care for contributory negligence and, 195–6
- Ipp Review, 103, 115, 127, 165, 200, 214, 217
- knowledge of risk, 213–14
 - obvious risks, 214–15
 - unavoidable risks, 215
- lex loci delicti*, 14
- liability of multiple tortfeasors, 556
 - concurrent liability, 556–7
 - effect of judgment and release for joint tortfeasors, 557–8
 - joint tortfeasors versus several tortfeasors, 556
 - liability of several tortfeasors for distinct damage, 559–60
 - proportionate liability, 557
 - proportionate liability under legislation, 558–9
 - solidary liability, 557
- licensees, possession and, 271
- litigating a tort claim, 32–3
 - procedure, 33–4
 - proof, 34
 - time limitations, 34–5
 - uninsured defendant, 35–6
- 'live and let live' principle, 365
- Lord Campbell's Act*, 158, 545, 547
 - successors to, 545, 548
- Lord Campbell's Act* actions, 158, 160
- loss of amenities of life, non-pecuniary damages for, 542
- 'loss of a chance' in medical negligence, 154–5
 - wrongful birth cases, 155–6
 - wrongful death cases, 158–60
 - wrongful life cases, 157–8
- loss of expectation of life, non-pecuniary damages for, 542–3
- malicious intention, malfeasance in public office and, 581–3
- master–servant theory, 405–6
 - master's tort theory, 405–6
 - servant's tort theory, 405
- 'material contribution' test, 176–8
- medical negligence, 'loss of a chance' in, 154–60
- mental harm, 77
 - feminist analysis of, 11–12
- mesne profits, as remedy for trespass to land, 353
- misfeasance in public office
 - elements of tort of, *see* elements of tort of misfeasance in public office
 - liability of government entities for misfeasance of individuals, 584–5
 - as public law tort, 576–7
- mistake, 343–4
- multi-factorial approach, *see* salient features approach
- multifactorial test, 408–9
- multiple tortfeasors
 - contribution, *see* contribution
 - liability of, *see* liability of multiple tortfeasors
- National Disability Insurance Scheme, 41–2
- 'necessary condition' test, 166–70, 179
- necessity, 325–6
 - imminent danger and, 326–7
 - imminent danger not due to defendant's fault, 328
 - proportionate to danger to be avoided, 328
 - reasonable necessity, 327–8
- negligence, 4
 - aggravated damages awarded for, 501
 - defences to, *see* defences to negligence
 - elements of, 20, 150
 - exemplary damages awarded for, 503–4
 - overview of, 18–23
 - private nuisance and, 390–1
- negligence calculus, 21, 22, 60, 88, 101, 128–9
 - burden of taking precautions, 132–5
 - common practice, 137
 - legislative standards, 136
 - probability, 129–31
 - seriousness, 131–2
 - social utility, 135–6
- negligent conduct, 101–2
- nemo dat* rule, 308
- nervous shock, *see* mental harm
- no-fault compensation schemes, 42–3
- nominal damages
 - as remedy for trespass to land, 349
 - as remedy for trespass to the person, 345
- non-defences to nuisance
 - coming to the nuisance, 387–8
 - nuisance due to numerous independent acts, 388
- non-defences to trespass
 - contributory negligence, 344
 - incapacity, 344–5
 - mistake, 343–4
 - provocation, 343
- non-delegable duties, 93, 416–17
 - employer and employee, 94–5
 - employer liability for acts of sexual abuse committed by employee, 427–8
 - hospitals, 419–21
 - independent occupiers, 94

O'Donovan , Lowell Bautista

Index

[More Information](#)

- non-delegable duties (cont.)
 - occupier and entrant, 93–4
 - occupiers, 421–2
 - places of employment, 423
 - prisons and detention facilities, 423–4
 - school authorities, 95–6, 421
 - special relationships, 418–19
- non-economic loss, 346
- non-pecuniary damages, 539
 - heads of damage, 539
 - loss of amenities of life, 542
 - loss of expectation of life, 542–3
 - method for assessment of damages, 540–1
 - pain and suffering damages, 541–2
 - thresholds and caps, 539–40
- normal fortitude, 11, 80, 183, 202
- novus actus interveniens*, 184, 186, 187
- nuisance, 361–2, 395
 - areas of liability, 362
 - defences to, *see* defences to nuisance
 - distinction between private and public nuisance, 390
 - non-defences to, *see* non-defences to nuisance
 - private nuisance, *see* private nuisance
 - public nuisance, *see* public nuisance
 - remoteness of damage and, 388–9
 - trespass to land and, 391
- occupiers
 - early law, 87
 - meaning of, 87
 - modern law, 87–8
 - non-delegable duty, 93–4, 421–2
- pain and suffering, non-pecuniary damages for, 541–2
- parens patriae* jurisdiction, 335, 338, 339
- pecuniary damages, 518
 - assessment period, 520–1
 - deductions or allowances, 531–9
 - earnings cap, 521
 - gratuitous services provided to plaintiff, 524–9
 - hospital and medical expenses, 521–4
 - loss of earning capacity and loss of earnings, 518–19
 - loss of plaintiff's ability to provide gratuitous services to others, 529–30
 - net earnings and, 519–20
- personal injury compensation
 - basic principles, 513–15
 - heads of damage, 515–17
 - impact of civil liability legislation, 515
- physical and mental impairment, breach of duty of care and, 109–11
- Polly Peck* defence, 459
- positive contact, 238–41
- possession
 - co-owners and, 272
 - easements and profit à prendre, 271–2
 - licensees and, 271
 - plaintiff's interest, 269–71
 - tenants and lessors and, 271
- principle of triviality, 368–9
- prisons and detention facilities, non-delegable duty, 423–4
- privacy
 - breach of confidentiality and, 483–7
 - right of, 383–4
- private nuisance
 - categories of defendants for, *see* defendants for private nuisance liability
 - interference with use and enjoyment of land, *see* interference with use and enjoyment of land
 - negligence and, 390–1
 - unprotected interests, *see* unprotected interests
- professional status, breach of duty of care and, 115–19
- profit à prendre*, 272
- property damage
 - cost of repair or diminished value for, 508–12
 - restitutionary damages for, 513
- proving breach of duty of care, 141–2
 - evidential considerations, 145
 - use of inference in negligence law, 142–5
- provocation, 343
- proximity, 49, 58, 66–7, 68
 - rise and fall of, 52–4
 - salient features approach and, 71–2
- psychiatric harm, *see* mental harm
- public authorities, 88–9
 - breach of duty of care and, 119–20
 - common law duty of care, 90
 - interpretation of relevant statute, 89–90
- public nuisance, 391–2
 - special or particular damage and, 392–5
 - unreasonable and substantial interference, 392
 - who can sue for, 378
- publication of defamatory matter, definition and interpretation of 'publication', 453–5
- quare clausum fregit*, 226, 267
- quia timet injunctions, 555
- reasonable apprehension of assault
 - apprehension, 247
 - apprehension not fear, 248–9
 - reasonableness of the apprehension, 247–8
- reasonable foreseeability, 21, 65–6
 - demonstrating breach of duty of care and, 124–7
 - test of, 49, 52, 125, 181–2, 454

O'Donovan , Lowell Bautista

Index

[More Information](#)

- reasonable person standard
 - feminist critique and, 9–10
 - as objective standard, 105–7
 - relevant characteristics of defendants, *see* defendant characteristics, breach of duty of care
 - time of assessment and, 121–2
- recaption, 495
- reliance, 70–1
- remedies
 - abatement of nuisance, 496
 - recaption, 495
 - replevin, 495
 - self-help, *see* self-help remedies
 - specific restitution, 496
 - types of, 490
- remedies for defamation, 473
 - injunction, 475–6
 - role of apology, 476
- remedies for trespass, types of damages, 318–19
- remedies for trespass to land, 348
 - aggravated damages, 350–1
 - compensatory damages, 349–50
 - exemplary damages, 351
 - injunctions, 351–2
 - mesne profits, 353
 - nominal damages, 349
 - self-help, 353
- remedies for trespass to the person, 264
 - aggravated damages, 346–7
 - compensatory damages, 345–6
 - exemplary damages, 347–8
 - injunctions, 348
 - nominal damages, 345
- remedies for trespass to personal property, 353
 - remedies for conversion, 355–6
 - remedies for detinue, 356–7
- remedies for trespass to goods, 353–4
- remoteness of damage, 165, 166, 171, 178, 179, 180–4
 - 'eggshell skull' principle, 180, 182–4
 - nuisance and, 388–9
 - reasonable foreseeability test, 181–2
- repugnant dealing, 305
 - wrongful delivery, 309–10
 - wrongful destruction or alteration, 307
 - wrongful detention, 310
 - wrongful disposition, 307–9
 - wrongful taking or dispossessing, 306–7
 - wrongful use, 305–6
- res ipsa loquitur*, 143–5, 162–4
- restitutio in integrum*, 153, 498
- restitutionary damages, 500
 - for property damage, 513
- restraint in all directions, 254–7
 - knowledge of the restraint, 261–2
 - no reasonable means to escape, 257–9
 - physical restraint not necessary, 259–61
- rights protected by injunctions, 553
 - bodily integrity, 554
 - economic rights, 554
 - property rights in goods and funds of money, 554
 - proprietary rights in land, 553–4
 - reputation, 554
- Rylands v Fletcher* rule, 422
- salient features, 48, 66
 - list of, 66
 - weighting of, 67
- salient features approach, 21, 48, 49, 55, 56, 66–7
 - assumption of responsibility, 71
 - avoidance of harm, 74
 - category of relationship, 72
 - conflicting duties, 75
 - conformance and coherence of structure and fabric
 - of common law, 75–6
 - consistency with statutes, 75
 - control, 68–9
 - effect on autonomy or freedom, 74–5
 - foreseeability, 67–8
 - knowledge that conduct will cause harm, 73
 - nature of the activity, 72
 - nature or degree of danger or hazard, 72–3
 - plaintiff's harm, 68
 - potential indeterminacy of liability, 73–4
 - proximity, 71–2
 - reliance, 70–1
 - vulnerability, 69–70
- school authorities
 - duty of care, 61–3
 - non-delegable duties, 93, 421
- scope of employment
 - acting in the scope of employment, 410
 - establishing the scope of employment, 410–14
- scope of liability, 23, 178–80
 - chain of causation and intervening causes, 184–9
 - remoteness of damage, 180–4
- 'scope of the risk' test, 171, 176
- self-defence, as defence to trespass, 320–3
- self-defence of the person, 492
 - force used was reasonable, 493–4
 - reasonable need to protect oneself, 493
- self-help remedies, 491–2
 - eviction of trespassers, 492
 - self-defence of the person, *see* self-defence of the person
 - trespass to land, 353
- special defendants
 - duty to control others, 90–3
 - occupiers, 87–8
 - public authorities, 88–90

O'Donovan , Lowell Bautista

Index

[More Information](#)

- special duty relationships, 76–7
 - duty to prevent psychological harm, 77–81
 - duty to prevent pure economic loss, 81–6
- special skills, breach of duty of care and, 112–13
- standard of care for contributory negligence
 - children, 197
 - employees, 206–7
 - general rule, 195–6
 - intoxication, 202–6
 - plaintiffs with disabilities, 198–202
- Stolen Generations
 - compensation and reparation, 30–2
 - limitations of litigation for, 25–6
 - litigation, 26–30
 - policy and legislation, 24–5
 - tort law and, 23–32
- survival of causes of action claim, 543–4
 - damages, 544–5
- tenants and lessors, possession and, 271
- theories of tort law, 6
 - corrective justice theory, 7–8
 - economic efficiency theory, 8
 - feminist critique of, 9–12
- threat of imminent harm
 - conditional threat, 246–7
 - harmful nature of the threat, 244–5
 - imminent harmful contact, 245–6
 - mere words, 246
- tort, differences to contract, 5–6
- tort claims, litigation of, *see* litigating a tort claim
- tort law, 2–4
 - civil liability reforms, *see* civil liability reforms
 - human rights and, 12–16
 - purpose of, 4–6
 - sources of, 3
 - Stolen Generations and, 23–32
 - strict liability in, 4
 - theories of, *see* theories of tort law
- torts, intentional torts, 3–4, 17–18
- transport accident compensation, 40
- trespass, 225, 231
 - actionable per se, 234
 - continuing trespass, 290
 - defences to, *see* defences to trespass
 - direct interference, 232
 - fault of the defendant in, *see* fault of the defendant in trespass
 - historical origins of, 225–6,
 - (*see also* historical origins of trespass)
 - negligent trespass, 229, 230, 231, 234, 253
 - non-defences to, *see* non-defences to trespass
 - onus of proof, 234–5
 - remedies for, *see* remedies for trespass
 - trespass ab initio, 289–90
 - trespass *de bonis asportatis*, 226, 301
- trespass to goods, 295–6
 - bailment exception, 297–9
 - direct interference, 300
 - fault, 300
 - remedies for, 353–4
 - title to sue, 296–7
- trespass to land, 3, 17, 267–9
 - actionable interferences, *see* actionable interferences in trespass to land
 - animus possidendi*, 269–70
 - definition, 269
 - fault, 290–1
 - interference without lawful justification, *see* interference without lawful justification
 - nuisance and, 391
 - possession, *see* possession
 - remedies for, *see* remedies for trespass to land
- trespass to personal property, 292–5
 - conversion, *see* conversion
 - detinue, *see* detinue
 - documentary intangibles and, 293
 - human body parts and, 294–5
 - pure intangibles and, 293
 - remedies for, *see* remedies for trespass to personal property
- trespass to the person, 3, 4, 17, 34, 236
 - assault, *see* assault
 - battery, *see* battery
 - false imprisonment, *see* false imprisonment
 - remedies for, *see* remedies for trespass to the person
- trespassers, eviction of, 492
- triviality, defence of, 473
- uniform defamation legislation
 - background to, 439
 - common law and legislative frameworks, 440–1
 - existing legislative frameworks, 440
 - standing to sue under, 455–6
- unprotected interests, 382
 - right of privacy, 383–4
 - right of support, 382
 - right to a view and aesthetic appearance, 382
- unreasonable interference, 364–6
 - intensity, time and duration, 372–3
 - locality, 370–2
 - malice and, 375–6
 - material damage, 367
 - nature of defendant's activity and the public interest, 374–5
 - non-physical interference with use and enjoyment of land, 368

O'Donovan , Lowell Bautista

Index

[More Information](#)

- practicality of avoiding interference, 375
- principle of triviality, 368–9
- sensitive plaintiff and, 373–4
- type of damage, 366–7
- ultimate question of fact, 376
- vicarious liability, 399–401
 - agency theory of, 401–4
 - employer liability for acts of sexual abuse
 - committed by employee, 428–33
 - in the employment context, *see* employment and vicarious liability
- victims of crime compensation schemes, 42
- Victorian Competition and Efficiency Commission, 39
- volenti non fit injuria* defence, 23, 211, 217
- voluntary assumption of risk, 23
 - appreciation of the risk of injury, 216–17
 - definitions and rationale, 211–13
 - knowledge of risk, *see* knowledge of risk
 - voluntary acceptance of risk, 217–18
- vulnerability, 69–70
- Wednesbury* test, 573
- workers compensation, 40–1, 206, 212
- writ of action on the case, 226–7
 - choice between trespass, 227–31
- wrongful birth, 155–6
- wrongful death, 158–60
- wrongful life, 157–8