

## 7 Torts

1. THE LIABILITY FOR TORT. The account of the law of contract given in the last chapter shows that English law (unlike Roman law) has developed a set of comprehensive rules relating to the formation, validity, and effect of contracts, and has laid comparatively little stress on the differences arising between various kinds of contracts from the nature of their subject-matter. It was for a long time doubtful whether any such statement could be made as to liability for wrongs which are independent of breach of contract and trust, i.e. for tort. Until the latter part of the nineteenth century the prevalent opinion was that the law only recognized liability for a number of specific torts, and that no act entailed liability for tort unless it fell under some one or other of them. But at the present day the prevalent opinion is that the law recognizes the general principle that any harm to a person caused intentionally or negligently creates a liability in tort, unless the person causing the harm has some just cause or excuse for his act or omission. It is true that the largest part of the detailed rules of the law of tort has grown up round the conditions laid down by the courts as to the circumstances in which specific torts can be committed. At the same time it must not be forgotten that for centuries the courts, as occasion arose, have never hesitated to create new torts. Thus the modern tort of deceit emerged at the end of the eighteenth century; and the modern tort of negligence, i.e. the failure to perform a legal duty to the damage of the plaintiff, emerged in the earlier half of the nineteenth century. It was inevitable that, as rules as to many different torts old and new accumulated, some general principles of liability should emerge, with the result that it is now possible to say that the infliction of unjustifiable harm creates a liability in tort. Today, therefore, it is in many cases important to consider, not so much whether any given act falls under some specific head of tort, as whether, if one person has harmed another, he has some just cause or excuse for

his act. Whether or not he has some just cause or excuse is a question which depends very largely upon the general conditions in which the law will impose a liability for tort.

2. GENERAL CONDITIONS OF LIABILITY. (a) *Intention*. The consequences of an act may be said to be intended when the person acting contemplates that they will necessarily or probably follow from it, whether that consequence be desired for its own sake or not. It is said that a man is presumed to intend the probable consequences of his acts, but failure to anticipate probable consequences is really negligence rather than intention, and if the saying is more than a rule of evidence for ascertaining intention, it only means that for some purposes negligence, no less than intention, creates liability. Although some torts clearly cannot be committed unintentionally (e.g. fraud), it is a general condition of liability that other wrongful acts will become torts if intentionally committed.

(b) *Motive and malice*. The motive with which an act is done is for the most part immaterial. A lawful act does not become unlawful because it is done with a bad motive, such as ill-will; nor is an unlawful act excused because it is done with the best of motives. There are, however, some kinds of tort in which malice forms, or appears to form, an essential ingredient.

The right enjoyed by every citizen of prosecuting criminals is given for the purpose of vindicating law and justice, and a prosecutor who uses his right for the purpose of ill-will or extortion, or for any other than the proper purpose, will (if certain other conditions are also present) incur liability for malicious prosecution.

In claims for defamation the plaintiff alleges that the words spoken or written were published 'maliciously', but this phrase has nothing to do with motive, and merely denies by anticipation the existence of any ground of defence. On the other hand, when a defence of privilege is raised, and this is answered by an allegation of 'express (or actual) malice', the answer amounts to saying that the defendant has used his privilege for some purpose other than that for which the law allows it.

(c) *Negligence*. Negligence which harms another unjustifiably is not only a tort in itself, it is also a condition of liability for tort. From this point of view it is, like intention, a mental state. It has been defined as 'omitting to do something which a reasonable

man would do, or the doing of something which a reasonable man would not do'; more shortly, one may say that it is a failure to use proper care in one's conduct. Negligence will in general involve liability for damage caused by it; but, before we can say that there has been negligence of which the law will take account, one must make sure that there is a legally recognized duty to take care. It was held by the House of Lords in 1963 that a person may, quite apart from contract, be under a duty to take care that his statements are true where he gives information or advice in circumstances which establish a relationship creating a duty not only to be honest but also to be careful. Thus accountants who negligently prepare a falsely optimistic statement of the accounts of a company for inclusion in the company's prospectus would be liable to any investor who suffers financial loss as a result of buying the company's shares in reliance upon the stated accounts. On the other hand, an insurance company gratuitously and negligently giving wrong information to one of its policy-holders on the financial stability of an associated company, in which the policy-holder wished to invest, was held not to be under such a duty of care, because it did not hold itself out in business to give such advice. Again, an owner of land is under no duty to take care that the growth of thistles upon it shall not cause damage to his neighbours.

The House of Lords also held in 1969 that a barrister or solicitor normally owes his client a duty of care, any breach of which will render him liable to his client, except where he is acting as an advocate, when he will not be liable for negligence in his conduct of a case. The reason for this exception is that an advocate owes his main duty to the court, so that there is a general public interest in his complete freedom in the conduct of a trial; and it follows that the advocate's immunity from liability for professional negligence extends to any pre-trial work which is intimately connected with the conduct of the cause in court. It may also be noted that to allow an action for negligence to be brought against an advocate by his client would inevitably lead to an undesirable retrial of the merits of the original case.

It would be impossible to enumerate the occasions on which a duty to take care arises, nor has the law exhaustively defined them; but we may notice the duty of persons who use vehicles upon the highway; the duty of owners of premises to prevent

them from being a source of danger to those upon the highway, or to neighbours, or to persons who resort to them as lawful visitors; the duty of persons who deliver goods to others to take care that they are free from danger, or, in some circumstances, to give warning of any known defect; the duty of persons to whom goods are delivered to be used or dealt with, to take care to prevent damage to them. The extent and degree of care necessary will vary according to the circumstances, but there is no sharp line of division such as is suggested by the use of such terms as 'gross' or 'slight' negligence.

The Unfair Contract Terms Act 1977, already referred to in the last chapter, provides that liability for negligence in respect of death or personal injuries cannot be excluded at all either by contract or by any non-contractual notice, and that such liability in respect of other loss or damage can only be excluded or restricted in so far as the term or notice satisfies the reasonableness test already mentioned above (p. 126). The duty of care owed by occupiers of premises to lawful visitors was introduced (altering the previous law on this point which had been rather out of line with other common law rules) by the Occupiers' Liability Act 1957; and more recently the courts have in effect extended it by determining that, in respect of trespassers known to be on land or likely to be there, the occupier owes a duty to act humanely and to protect them from dangers known to be present.

It may be that though B has through his negligence harmed A, yet the proximate cause of the harm may have been the 'contributory negligence' of A. The Law Reform (Contributory Negligence) Act 1945 pursues the path of sensible apportionment of damages, by providing that 'where any person suffers damage as the result partly of his own fault and partly of the fault of any other person, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage'. (For the position under the Maritime Conventions Act 1911, see p. 40.)

(d) *Liability independent of intention or negligence.* In some exceptional circumstances a person may incur liability for damage which is not intentionally caused by him nor due to any negligence

on his part. Thus a person who creates a dangerous state of things upon his land, as by the construction of a reservoir, will be liable for damage resulting to others from water, if, for instance, the reservoir bursts, although he has used every precaution, unless the accident is due to the act of a stranger or to some natural event of extraordinary violence (an 'act of God'), such as a flood caused by exceptional rainfall. The person who keeps a wild animal of a dangerous species, or even a domestic animal which is known to him to have dangerous characteristics—for instance, a dog which he knows to have bitten human beings—will be liable for damage done by it, whatever care he may have used to keep it safely. The keeping of a dangerous wild animal, unless under a local authority licence, or in a zoological garden, circus, or licensed pet shop, is made a crime by the Dangerous Wild Animals Act 1976. Further, a statutory strict liability has been imposed on the owner of a dog for damage done by it to livestock, even if he had no knowledge of its propensity to do such damage; and a man is strictly liable for damage done to crops by his horses and cattle straying from his land. He is also liable if his acts interfere with another's possession of, or right to possess, his land or chattels—if, for instance, he enters the plaintiff's land, or carries off his goods, or uses his goods in a manner which is inconsistent with the plaintiff's right to possess them. Conduct of the type last named with regard to goods constitutes the tort of conversion, which bears with especial harshness on one who has, in all good faith, brought goods from one who had no title to them.

(e) *Damage and damages.* In some cases the mere infringement of a right is itself a cause of action, though there may have been no pecuniary loss and not even any appreciable harm done, as in the case of trespass to land or goods. Here, if no actual damage is proved, and there are no circumstances of aggravation, such as insulting conduct, only nominal damages are recoverable. In the bulk of cases, damages will be computed on the basis of the actual damage suffered, which will be worked out by a jury, which is now in practice found only in cases of defamation and fraud, or more commonly by a judge, who decides issues of law and fact alike. In some cases in which the conduct of the defendant may be regarded as exceptionally bad, it may be taken notice of by the award of heavy damages, technically known as exemplary. Where the continuance or repetition of a tort is threatened, the judge

may grant an injunction, which may take an affirmative or 'mandatory' form. So if B has actually built a wall which deprives A's premises of 'ancient lights', B will be ordered to pull the wall down. The injunction is particularly common in the tort of nuisance, in which an award of damages is unlikely to be an adequate remedy. Somewhat different are the cases of injurious acts, such as libel or malicious prosecution, which are actionable without proof of any pecuniary loss, and for which heavy damages may be given, having regard not only to any pecuniary loss, but to the injured feelings of the plaintiff and the improper conduct of the defendant. Again, in the majority of cases of slander, no action lies, unless 'special damage', in the sense of some pecuniary loss, is proved; but the damages recoverable are not limited to the amount of such 'special damage'. Lastly, in the case of a number of torts (e.g. deceit), proof of actual damage is both a condition of actionability and the measure of the damages recoverable. It was laid down by the House of Lords in a case of 1956 that in assessing damages for loss of earnings the court should take into account the amount of tax the plaintiff would have had to pay, had the injury not been suffered, and deduct this for the purposes of the award.

3. TERMINATION OF LIABILITY. (a) *Death of either party.* This resolves itself into two distinct questions. (i) If A is killed by an act of B for which, had he lived, he could have sued B, can anyone else recover damages from B in respect of his death? The general rule is that the death of a human being gives no cause of action to a survivor. But this is subject to an important series of statutory exceptions, constituted by the Fatal Accidents Act 1976 (as amended by the Administration of Justice Act 1982), and the Carriage by Air Act 1961. These enable certain near relatives, who were dependants of the deceased, to recover damages in respect of any injury suffered by them on account of the death. A person who has lived with the deceased as husband or wife for at least two years immediately before the deceased's death may also so recover, even though they were not actually married. The sum awarded is a matter of pure arithmetic; the dependants are bringing their own action, and in no sense succeeding to that of the deceased. (ii) If a person against whom a tort has been committed dies, can his executor succeed to his cause of action in respect of it, and can the executor of a deceased tortfeasor be sued

for the tort? The law is contained in the Law Reform (Miscellaneous Provisions) Act 1934, as amended. All causes of action, subsisting in or vested in any person, survive against or for the benefit of his estate, except actions for defamation, and for claims for damages for bereavement or for loss of income after death. But in actions brought under this Act exemplary damages are recoverable only against, and not by, an executor, whose claim is confined to damages which represent, so far as possible, the pecuniary loss suffered. The executor is suing or being sued as representative of the deceased, not as a 'dependant' on his own account; if he is also a dependant, any sum recovered by him under the Act of 1934 must go in reduction of the amount recoverable by him under the other Acts, whose provisions are described in dealing with question (i).

(b) *Limitation of actions.* In general an action in tort must be begun within six years of the commission of the tort, subject to the following exceptions:

Actions under the Fatal Accidents Act 1976 must be begun within three years of either the death of the deceased person or the date of knowledge of the death by the person for whose benefit the action is brought, whichever is the later, unless the action is one for which a period of limitation is prescribed by some other Act. By the Maritime Conventions Act 1911, actions upon claims in respect of damage to a vessel or her cargo, or in respect of loss of life or personal injuries suffered by any person on board a vessel, must normally be begun within two years. By the Limitation Act 1980 actions for personal injuries through negligence, nuisance, or breach of duty must be begun within three years, and this period applies to every defendant, including 'public authorities', who were formerly in a privileged position as defendants. Where, however, the plaintiff is unaware of the cause of action until after the three year period has run (as where a miner contracts pneumoconiosis several years after his exposure to silica dust started as a result of his employers' breach of duty), the Limitation Act permits him to start proceedings within three years of the date that he was, or reasonably ought to have been, aware of the facts. Furthermore, in respect of an action either under the Fatal Accidents Act or for personal injuries, the court has the power to override the normal limitation period if it appears to the court that it would be equitable to allow an action

to proceed. There is also, under the Administration of Justice Act 1982, a general power for the court to award provisional damages where there is a chance that an injured person may later develop a serious disease or suffer serious deterioration in his physical or mental condition. Claims to the possession of land must be brought within twelve years after the wrongdoer, or those under whom he claims, first took possession; but if the person in possession gives a written acknowledgement of the claimant's title before the period has elapsed, the period begins to run again.

4. *SPECIFIC TORTS.* (a) *Wrongs to personal safety and liberty.* 'The least touching of a man in anger is a battery', and any direct application of force to a man's person, whether intentional or negligent, is an actionable wrong. The attempt and even the threat of immediate violence where there is something more than mere threatening language, and there is present power and intention to do violence—aiming a gun, for instance, or shaking one's fist in a man's face—is also actionable, and is known as an assault, a term which, in its strict legal sense, is distinguished from a battery.

Further, any intentional or negligent doing of actual harm to a man's person, though it may be indirect and not amount to a battery, is an actionable wrong, as where injury is done by placing an obstruction on a highway, or where a medical man does harm through want of care—care including the use of such skill as belongs to his profession. Where illness is caused by apprehension of harm—e.g. where a person is nearly but not quite run into by a negligent driver—damages may be recovered in respect of the illness, though not for the mere mental distress. Where an injury has shortened a person's normal expectation of life he was formerly able to recover moderate damages. The Administration of Justice Act 1982 abolished this direct cause of action, though in awarding damages for pain and suffering the court may still take into account any suffering caused by an awareness that expectation of life has been reduced.

'Any restraint of the liberty of a free man is an imprisonment, although he be not within the walls of any common prison', and where such imprisonment is not legally justified it amounts to the wrong of false imprisonment. The restraint must, however, be complete. There is no imprisonment if a person is prevented from going in one or more of several directions in which he has a right

to go, so long as it is left open to him to go with reasonable safety in some other direction. Not only confinement or restraint by physical force, but the show of a pretended authority to arrest, if it is complied with, amounts to an imprisonment.

Interferences with a man's person or liberty are of course justified on many grounds. Parental powers of chastisement and coercion, whether personal or delegated to a schoolteacher (though legislation to prohibit corporal punishment by school teachers may be passed in the near future), the lawful punishment of criminals, the restraint of persons of unsound mind, are familiar instances. We may note also that it is the right even of a private person to arrest without a warrant someone suspected of being in the act of committing, or having actually committed, one of the more serious crimes; but the right is exercised at some risk, for if the prisoner's guilt cannot be proved, the person who arrests him can justify himself only by showing both that he had reasonable grounds of suspicion, and that the offence was actually committed by someone. A constable who makes an arrest in the like circumstances is justified by merely showing reasonable grounds of suspicion, and in other respects has considerably larger powers of arrest.

Consent to an act (e.g. the voluntary undergoing of surgical treatment, provided it is carried out with proper care and skill) and the voluntary incurring of risk, as in the case of those who engage in a lawful game, provide a defence to most claims in tort. This is known as the principle of *volenti non fit injuria*. The defence is, however, often difficult to prove, as the defendant must establish that the plaintiff had a *full* knowledge and acceptance of risk. Nevertheless, the principle operated to deprive of any remedy a shopkeeper through whose open door had strayed an ox, which was being driven along the road. The defence must be distinguished from that of contributory negligence, which admits a *prima facie* liability. To an action based on the breach of a statutory obligation the latter may be, but the former is not, a valid defence.

(b) *Defamation*. This tort is divided into libel and slander. Slander consists of spoken words, libel of some reproduction in permanent form, such as writing. But reproduction in a permanent form is deemed, by the Defamation Act 1952, to include broadcasting for general reception by means of wireless telegraphy,

including television, and, since the Theatres Act 1968, the use of words, pictures, visual images, gestures, etc., in the public performance of a play. A representation is defamatory either if it is made in respect of a man's personal character and is calculated to 'injure him in the estimation of right-thinking persons', or if it is calculated to disparage him in any office, profession, calling, trade, or business carried on by him.

Publication of a libel or slander consists in communicating it to any third person. In this connexion the doctrine that for some purposes 'husband and wife are one person' has been so applied that while a communication to the wife of the person whose reputation is attacked is a publication, communication to one's own wife is no publication. A publication may be made not only intentionally but negligently, as by putting a book into circulation without taking care to make sure that it contains nothing libellous.

The chief importance of the distinction between libel and slander lies in the rule that while a libel is actionable without any proof of 'special damage', this is true of only a limited class of imputations made by way of slander, among which imputations of the commission of a criminal offence, of a woman's unchastity, and those calculated to disparage a man in his office or profession are the most important. Special damage means some loss which is pecuniary, or at any rate capable of being estimated in money, such as the loss of custom, or even loss of the hospitality (though not the society) of one's friends.

The proof of the substantial truth of a defamatory statement is a complete defence to any civil action (but not to a criminal prosecution, see p. 156) brought in respect of it, and is known as 'justification'. This defence is, however, dangerous, for it is equivalent to a repetition of the libel, and its failure will incline a jury to give heavier damages. But the Defamation Act 1952 relieves a defendant to the extent that, if the statement contains two or more distinct charges against the plaintiff, the defence will not fail by reason only that the truth of every charge is not proved, if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

In particular circumstances, a person is allowed with greater or less impunity to make defamatory statements, so as to incur no

liability even if the statement is untrue. A defence founded on such a right is called the defence of privilege. Such privilege arises in numerous circumstances: the proceedings in Parliament; statements made in the course of judicial proceedings by judges, advocates, parties, and witnesses; communications made in private life in the furtherance of some recognized duty or interest—e.g. confidential communications by a former to an intending employer with regard to the character of the employee are all privileged. In some cases the privilege is *absolute*, i.e. it is not lost even if it is shown that the statement was made with knowledge of its falsity, or for mere purposes of ill-will; this is true of the privilege given to statements made in Parliament or in a court of law. In other cases, especially where the privilege exists in private relations, it is said to be *qualified*, and is lost if the statement is shown to have been made with 'actual malice', i.e. with knowledge of its falsehood, or from ill-will, or for any purpose not justified by the circumstances of the privilege.

Disparaging statements made by way of fair comment or criticism on matters of public interest, e.g. the conduct of men in public positions, or published works of art or literature, also enjoy immunity. The defence of fair comment will not cover mis-statements of fact, but it will not fail by reason only that the truth of every allegation of fact is not proved, if the expression of opinion is fair comment, having regard to such of the facts alleged or referred to in the words complained of as are proved. The relation of fair comment to privilege is a matter of great difficulty. It is probably safe to say that a criticism actuated by improper motives cannot be a fair comment, even though the same criticism might have been fairly made by a person who had no such motive. But while a successful plea of qualified privilege throws on to the plaintiff the burden of proving malice, in a case in which fair comment is pleaded it is for the defendant, who has made it, to prove that it is fair, not for the plaintiff, against whom it has been made, to prove it unfair.

The Act of 1952 introduced a new defence in cases of 'unintentional defamation'. If the person who has published a statement which annoys another person claims that the publication was made innocently in relation to that person, he may offer to make amends, by way of a suitable apology and financial recompense. The acceptance of his offer precludes any action in

respect of the statement; while if the offer is not accepted, proof of its promptitude, and of the absence of intention to injure the plaintiff, will in general operate as a defence, subject to certain conditions laid down in the Act. Apart from the Act, there are certain cases of statements in newspapers in which an apology coupled with a payment of damages into court may be pleaded as a defence or by way of mitigation of damages.

Statements (whether made in writing or otherwise) which are not attacks on a man's character or credit or competence, but which cause damage, e.g. by casting doubts on his title to property, or disparaging the quality of his goods, are not defamatory. Such statements, however, are actionable if they are shown to be false, and to have been made with malice. It is not necessary to prove actual damage, if the statements are calculated to cause pecuniary damage to the plaintiff in respect of his office or profession, or are calculated to cause any other pecuniary damage and are published in writing or other permanent form.

(c) *Abuse of legal proceedings*. A person may recover damages for malicious prosecution, if he can show:

(1) That the defendant instituted against him criminal proceedings of such a kind as to be discreditable to his reputation or to involve possible imprisonment.

(2) That the proceedings have resulted in his acquittal, or at least have terminated in his favour by being discontinued.

(3) That the proceedings were taken without reasonable and probable cause, and

(4) That the proceedings were taken maliciously, i.e. from ill-will or any motive other than a desire to secure the ends of justice.

A somewhat similar liability is incurred by persons who maliciously institute bankruptcy proceedings against a man (or winding-up proceedings against a company), but it is not actionable to institute an ordinary civil action, however maliciously and unreasonably.

(d) *Interference with family and contractual relations, business and employment*. An old rule of law recognized that the master had an interest in the services of his servant, for which he was entitled to legal protection against third persons. He was entitled, for instance, to recover damages against a person who wrongfully harmed the servant. However the old actions for enticement, seduction, and for harbouring a wife or child were abolished by

the Law Reform (Miscellaneous Provisions) Act 1970; and similar actions in respect of servants, and for loss of the services of a wife, child or servant, were abolished by the Administration of Justice Act 1982. Nowadays the action for loss of service is superseded by the wider modern rule that it is an actionable wrong for a third person to cause damage by knowingly interfering with contractual relations. It is said that there may be some just cause or excuse for such interference or inducement to break a contract, but it is clear that the motive of self-interest in a trader, who induces the employee of a rival to change masters, is no such cause or excuse. It is difficult to justify the complete exemption from liability for inducement of breach of contract of employment which has been given by the Trade Disputes Act 1906, and reinforced by the Trade Disputes Act 1965 and the Trade Union and Labour Relations Act 1974, in the cases where such a breach is induced 'in contemplation or furtherance of a trade dispute'. However, under the Employment Act 1982, this exemption has been substantially reduced, and a trade union may now be sued, and its funds put directly at risk, for unlawful action for which it is legally responsible.

Where, without any breach of contract, damage is done to a man's business through interference which consists of acts criminal or wrongful in themselves—for instance, by using violence to his customers—there is no doubt that an action will lie. The same is true where the damage is caused to a trader by a rival who puts goods on the market so got up as to mislead purchasers into thinking that they are purchasing the goods of the former.

Further, an interference with trade or employment, with intent to injure, by persons acting in combination, which causes damage, is an actionable conspiracy at common law, though the interference is carried out by means of acts which in themselves are not unlawful. But if the acts are not in themselves unlawful and are done, not with intent to injure, but only with the intent of furthering the trade interests of the actors, they give rise to no cause of action. A mercantile combination which sought to crush its rivals by underselling them, by offering special advantages to persons who dealt exclusively with members of the combination, and by refusing to employ agents who acted for the rivals, was held to be justified on the ground of furtherance of legitimate

trade interests. A similar principle would seem to justify a spontaneous strike or combination of workmen.

For the great majority at least of the cases which are likely to arise in practice, any liability for interference with trade or employment would seem to be removed, on the one hand, by the rule that furtherance of trade interests is a just cause and excuse; on the other, by the Trade Disputes Acts which have in effect put upon the footing of just cause and excuse the 'contemplation or furtherance of a trade dispute'. The exemption given by these statutes applies where acts are done in combination which would have been lawful if done by persons acting without combination; or where an attempt is made to hold any person liable on the ground merely that his act is an interference with the trade, business, or employment of another, or with the right of another to dispose of his capital or labour as he wills.

(e) *Fraud*. Fraud or deceit has already been dealt with as a matter vitiating a contract, and it has the same characteristics when considered as a tort. A person who sues for damage caused by fraud must show that he has suffered damage by acting on a representation made with the intention that he should act on it; that the representation made was false and that it was false to the knowledge of the person making it, or at least was made recklessly without any belief in its truth. The representation need not have been made directly to the person who acts on it, but it must have been made with the intention that it should reach him and that he should act on it.

(f) *Torts in respect of property*. Trespass to property consists of any interference with property which is in the possession of another: entry upon land, causing missiles to fall upon it, posting bills on a fence (without the owner's consent), touching or damaging or removing goods, are all acts which amount to trespass. Even an entry on land below the surface, e.g. by mining, is a trespass; but though the ownership of land carries with it a right to restrain encroachments on the space above it, it is not clear that at Common Law passing through the upper air is a trespass with regard to the land below. The Civil Aviation Act 1949 provides that no action shall lie for trespass or nuisance by reason only of the flight of aircraft over property at a height which, having regard to wind, weather, and other circumstances,

is reasonable; but, if material damage to person or property is caused by aircraft, damages can be recovered from the owner of the aircraft without proof of negligence or intention, except when the damage was contributed to or caused by the sufferer. If the damage is caused solely by the wrongful act of a person other than the owner or his employees, the owner can recover the amount of the damages from that person.

Trespass is primarily an interference with possession. On the one hand, a person in possession of property, whether land or goods, is entitled to resist and to sue any person who interferes with his possession, and cannot show a better right to the possession. On the other hand, a person who is not in possession and has no present right to the possession—a reversioner of land, an owner of goods who has bound himself by agreement to leave the possession in the hands of another who has hired them for a definite time—cannot complain of a trespass as such, though he may be allowed to sue in a special form of action if he can show that his reversionary interest is damaged. The distinction is important, inasmuch as damage is not a condition of bringing an action of trespass. But a person who, though not in actual possession, is entitled to resume immediate possession, e.g. a gratuitous lender of goods, the landlord of a tenant at will, is equally entitled with the actual possessor to sue third persons for trespass.

An act which would otherwise be trespass may be justified if it is done by the consent of the owner, or in the exercise of a public or private right over the land. In the former case, a person who persists in remaining on another's premises, when the owner's consent is withdrawn, becomes a trespasser; unless he obtained the consent under a binding agreement, as by paying for a ticket, in which case the owner, arbitrarily ejecting him, both breaks the contract and commits a trespass against his person. A right over land must not be used for other purposes than those for which the right exists: a man will be a trespasser on a public footpath if he goes there for the purpose of spying on the owner's adjacent premises or disturbing his game. An owner does not commit a trespass by taking his property from one who is wrongfully in possession of it, but the forcible retaking of land (but not of goods) is a criminal offence.

Not only is it a trespass to deprive an owner of any property of

which he is in possession, or even to retain possession of land against the person entitled to it, but in the case of land it constitutes the wrong of dispossession, and in the case of goods is one of the forms of the tort known as conversion.

An owner wrongfully deprived or kept out of possession of land may bring an action to recover the land (sometimes called the action of ejectment), in which he will obtain an order for the restitution of the land itself, as well as damages representing the value of the land for the time during which the wrongful possession has continued.

By conversion of goods is meant any act in relation to goods which amounts to an exercise of dominion over them, inconsistent with the owner's right of property. It does not include mere acts of damage, or even an asportation which does not amount to a denial of the owner's right of property; but it does include such acts as taking possession, refusing to give up on demand, disposing of the goods to a third person, or destroying them. A person who has converted the goods of another will be ordered to restore them, if they are still in his possession, otherwise to pay their value, and in any case to pay damages for the detention. The old tort of detinue (detention of goods short of conversion) was abolished by the Torts (Interference with Goods) Act 1977, and replaced by the statutory tort of 'wrongful interference' with goods.

Though dispossession and conversion are regarded primarily as wrongs done to the owner, yet on the one hand a person who has not a present right to possession—e.g. a person whose estate in land is not a present but a future estate—is not entitled to sue for these wrongs; and on the other hand a man may have obtained possession from another in such a way that, though the latter is not the owner, the former will not be entitled to dispute his right. Thus a jeweller, to whom a chimney-sweep had handed for examination a jewel which he had found, was held liable to restore it to him, though it was obvious that the boy was not the owner.

Ignorance of another's rights is no defence to claims for trespass, dispossession, conversion or wrongful interference with goods. A man who innocently buys goods from a thief (except in market overt) and sells them again must pay their value to the owner.



A private nuisance is an act which, without being trespass, interferes with a person in the enjoyment of his own land or premises, or of some right which he has over the land or premises of another. Thus it is a nuisance, on the one hand, to interfere with the comfort of a dwellinghouse by the persistent production of noise, or fumes, or smells, to cause crowds to assemble so as to prevent access to a house or place of business, to divert or pollute the flow of water in a natural stream to which every owner of land abutting on it is entitled, or to display signs in the window of a nearby sex shop indicating that explicit sex acts and uncensored adult videos can be seen inside, and that similar material is for sale; on the other, to interfere with rights of light for windows or private rights of way, or rights of common. It should be noticed that a man has no right of light for his windows unless such a right has been acquired by grant or by long enjoyment; and therefore, in the absence of such a right, it is lawful to cut off light coming to a neighbour's window, by putting structures or buildings on one's own land. Such development of land is, however, subject to the various controls imposed by planning law, which is too complicated a subject for the purpose of this book.

A man has a right to have his land in its natural state supported by his neighbour's land, but if he erects buildings which need a greater degree of support, he can only acquire a right to it by grant or length of enjoyment. The withdrawal of a right of support, whether natural or acquired, is a nuisance.

It is a nuisance to allow the branches of one's trees to grow so as to overhang one's neighbour's land.

A person who suffers from a nuisance may abate it, i.e. remove it, even without giving notice, if he can do so without going on to another's land, e.g. by cutting overhanging branches; he may even, in case of emergency, enter to abate without notice, but in most cases where entry is made notice should be given.

If an action for nuisance is brought, not only will damages be given, but the court may, and commonly does, grant an injunction forbidding its continuance and even ordering an offending structure to be pulled down. But the granting of an injunction remains a matter solely within the discretion of the court, as was well illustrated by a case decided in 1977. The use of a particular village cricket ground by a cricket club was held by the Court of Appeal to have caused nuisance to those neighbours

whose houses had been hit, or whose gardens had been fallen into, by occasional balls struck over the boundary. Damages were awarded, but an injunction against the playing of cricket on the ground was refused, as this would have deprived the local inhabitants of the spectacle of village cricket which had been enjoyed by the community for over seventy years.

A public nuisance is an unlawful act or omission which causes annoyance to the public generally, such as obstructing a highway, or (where there is a duty to repair) failing to repair it, or allowing rubbish and filth to be deposited on one's land to the annoyance of the neighbourhood. For a public nuisance no individual can sue unless he suffers damage peculiar to himself, as by breaking his leg through falling into a hole in the road. A public nuisance is, however, punishable in criminal law, and the Attorney-General may also take civil proceedings to obtain an injunction forbidding its continuance. Local authorities also have power to take proceedings to put a stop to public nuisances. A private person may remove an obstruction on a public way, but he may not repair a public way or bridge.