



LAW 203

Torts

S2 Day 2014

Dept of Law

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Disclaimer

Macquarie University has taken all reasonable measures to ensure the information in this publication is accurate and up-to-date. However, the information may change or become out-dated as a result of change in University policies, procedures or rules. The University reserves the right to make changes to any information in this publication without notice. Users of this publication are advised to check the website version of this publication [or the relevant faculty or department] before acting on any information in this publication.

General Information

Unit convenor and teaching staff

Unit Convenor

Penelope Watson

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Contact via penelope.watson@mq.edu.au

W3A 516

Mon 11-2; Tues 9-10 (teaching wks) or by appointment

Tutor

Lucy Bylhouwer

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W3A 341

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Tutor

John Eldridge

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Credit points

3

Prerequisites

LAW109 and (LAW204 or LAWS104) and (admission to LLB or BAppFinLLB or BALLB or BA-MediaLLB or BA-PsychLLB or BBALLB or BComLLB or BCom-ProfAccgLLB or BEnvLLB or BITLLB or BIntStudLLB or BPsych(Hons)LLB or BScLLB or BSocScLLB)

Corequisites

Co-badged status

Unit description

This unit examines the law of torts and its operation in context from doctrinal, practical and theoretical perspectives. The unit builds on and extends knowledge and skills gained in previous law units, with particular emphasis on skills of oral and written communication, problem solving, and analysis of primary source material. Torts addresses critical questions about social responsibility and obligations members of a community owe to one other, and how civil legal standards can and should be used to encourage appropriate behaviour and rectify wrongs. Negligence is the principal focus; other topics studied include intentional torts, nuisance and different types of liability.

Important Academic Dates

Information about important academic dates including deadlines for withdrawing from units are available at <https://www.mq.edu.au/study/calendar-of-dates>

Learning Outcomes

On successful completion of this unit, you will be able to:

1. Explain the roles and functions of the law of torts; differentiate between different types of torts and categories of liability, including strict, vicarious, concurrent and fault based liability, and the distinguishing features of each (GC 1, 5)
2. Brief a case correctly, identifying issues and ratio and commenting on reasoning; explain the significance of a case or series of cases, relevant statutory provisions, and the interaction between the two, accurately and concisely (GC 1, 2, 5)
3. Construct, present and evaluate oral and written arguments about tort law, drawing on relevant precedent and policy considerations; integrate and synthesise learning and knowledge about torts from a range of sources (GC 1, 2, 3, 5)
4. Work effectively in teams and individually to analyse a hypothetical fact situation, identify legal, ethical and factual issues involving the law of torts, and apply the relevant law to solve tort problems; take responsibility for their own learning; manage their time productively; demonstrate capacity to plan a task and work to achieve it; reflect on their learning (GC 1, 2, 3, 5, 8)
5. Explain and analyse the common law and statutory components of a negligence action including causation; demonstrate understanding of duty of care in a variety of contexts including statutory authorities; discuss and evaluate statutory changes to the common law of negligence, the assumptions underpinning those changes, and their impact (GC 1, 2, 5)
6. Discuss and analyse the legal components of selected property torts including nuisance, trespass to land and chattels, conversion; intentional torts to the person

including assault, battery, false imprisonment, action on the case; appropriate defences (GC 1, 2, 5)

Assessment Tasks

Name	Weighting	Due
Task 1	0%	29/8/14
Task 2	30%	19/9/14
Task 3	50%	16/11/14
Task 4	20%	whole semester/OCS

Task 1

Due: **29/8/14**

Weighting: **0%**

Ungraded practice hypothetical - compulsory

On successful completion you will be able to:

- 1. Explain the roles and functions of the law of torts; differentiate between different types of torts and categories of liability, including strict, vicarious, concurrent and fault based liability, and the distinguishing features of each (GC 1, 5)
- 2. Brief a case correctly, identifying issues and ratio and commenting on reasoning; explain the significance of a case or series of cases, relevant statutory provisions, and the interaction between the two, accurately and concisely (GC 1, 2, 5)
- 3. Construct, present and evaluate oral and written arguments about tort law, drawing on relevant precedent and policy considerations; integrate and synthesise learning and knowledge about torts from a range of sources (GC 1, 2, 3, 5)
- 4. Work effectively in teams and individually to analyse a hypothetical fact situation, identify legal, ethical and factual issues involving the law of torts, and apply the relevant law to solve tort problems; take responsibility for their own learning; manage their time productively; demonstrate capacity to plan a task and work to achieve it; reflect on their learning (GC 1, 2, 3, 5, 8)
- 5. Explain and analyse the common law and statutory components of a negligence action including causation; demonstrate understanding of duty of care in a variety of contexts including statutory authorities; discuss and evaluate statutory changes to the common law of negligence, the assumptions underpinning those changes, and their

impact (GC 1, 2, 5)

- 6. Discuss and analyse the legal components of selected property torts including nuisance, trespass to land and chattels, conversion; intentional torts to the person including assault, battery, false imprisonment, action on the case; appropriate defences (GC 1, 2, 5)

Task 2

Due: **19/9/14**

Weighting: **30%**

Intentional torts and property torts covered weeks 1-4 inclusive (excludes negligence).

On successful completion you will be able to:

- 1. Explain the roles and functions of the law of torts; differentiate between different types of torts and categories of liability, including strict, vicarious, concurrent and fault based liability, and the distinguishing features of each (GC 1, 5)
- 2. Brief a case correctly, identifying issues and ratio and commenting on reasoning; explain the significance of a case or series of cases, relevant statutory provisions, and the interaction between the two, accurately and concisely (GC 1, 2, 5)
- 3. Construct, present and evaluate oral and written arguments about tort law, drawing on relevant precedent and policy considerations; integrate and synthesise learning and knowledge about torts from a range of sources (GC 1, 2, 3, 5)
- 5. Explain and analyse the common law and statutory components of a negligence action including causation; demonstrate understanding of duty of care in a variety of contexts including statutory authorities; discuss and evaluate statutory changes to the common law of negligence, the assumptions underpinning those changes, and their impact (GC 1, 2, 5)
- 6. Discuss and analyse the legal components of selected property torts including nuisance, trespass to land and chattels, conversion; intentional torts to the person including assault, battery, false imprisonment, action on the case; appropriate defences (GC 1, 2, 5)

Task 3

Due: **16/11/14**

Weighting: **50%**

Covers negligence; open book takehome exam.

NOTE: Unit expectations:

Complete all assessment tasks (graded and ungraded) AND

- Achieve a minimum of 43% for the takehome exam (Task 3) and a minimum of 40% for class participation (Task 4) AND
- Achieve a minimum overall mark of 50% for the total assessment AND
- Attend a minimum of 80% of tutorials/all of OCS unless granted exemption by the unit convenor on serious medical or personal grounds.

On successful completion you will be able to:

- 1. Explain the roles and functions of the law of torts; differentiate between different types of torts and categories of liability, including strict, vicarious, concurrent and fault based liability, and the distinguishing features of each (GC 1, 5)
- 2. Brief a case correctly, identifying issues and ratio and commenting on reasoning; explain the significance of a case or series of cases, relevant statutory provisions, and the interaction between the two, accurately and concisely (GC 1, 2, 5)
- 3. Construct, present and evaluate oral and written arguments about tort law, drawing on relevant precedent and policy considerations; integrate and synthesise learning and knowledge about torts from a range of sources (GC 1, 2, 3, 5)
- 5. Explain and analyse the common law and statutory components of a negligence action including causation; demonstrate understanding of duty of care in a variety of contexts including statutory authorities; discuss and evaluate statutory changes to the common law of negligence, the assumptions underpinning those changes, and their impact (GC 1, 2, 5)

Task 4

Due: **whole semester/OCS**

Weighting: **20%**

Active participation in seminars. Marks are NOT awarded for attendance. See rubric posted to ilearn for criteria and descriptors.

NOTE: Unit expectations:

Complete all assessment tasks (graded and ungraded) AND

- Achieve a minimum of 43% for the takehome exam (Task 3) and a minimum of 40% for class participation (Task 4) AND
- Achieve a minimum overall mark of 50% for the total assessment AND
- Attend a minimum of 80% of tutorials/all of OCS unless granted exemption by the unit convenor on serious medical or personal grounds.

On successful completion you will be able to:

- 1. Explain the roles and functions of the law of torts; differentiate between different types of torts and categories of liability, including strict, vicarious, concurrent and fault based liability, and the distinguishing features of each (GC 1, 5)
- 2. Brief a case correctly, identifying issues and ratio and commenting on reasoning; explain the significance of a case or series of cases, relevant statutory provisions, and the interaction between the two, accurately and concisely (GC 1, 2, 5)
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- 4. Work effectively in teams and individually to analyse a hypothetical fact situation, identify legal, ethical and factual issues involving the law of torts, and apply the relevant law to solve tort problems; take responsibility for their own learning; manage their time productively; demonstrate capacity to plan a task and work to achieve it; reflect on their learning (GC 1, 2, 3, 5, 8)
- 5. Explain and analyse the common law and statutory components of a negligence action including causation; demonstrate understanding of duty of care in a variety of contexts including statutory authorities; discuss and evaluate statutory changes to the common law of negligence, the assumptions underpinning those changes, and their impact (GC 1, 2, 5)
- 6. Discuss and analyse the legal components of selected property torts including nuisance, trespass to land and chattels, conversion; intentional torts to the person including assault, battery, false imprisonment, action on the case; appropriate defences (GC 1, 2, 5)

Delivery and Resources

Delivery

2 hour lecture weeks 1-13 incl; one hour tutorial weeks 1-12 incl. This unit uses ilearn, Echo 360; grademark and turnitin.

Resources - prescribed text

Required

- Carolyn Sappideen, Prue Vines, Penelope Watson, *Torts: Commentary and Materials* (Law Book Co/Thomson Reuters, 11th ed, 2012) AND
- *Civil Liability Act 2002* (NSW) – download free from austlii

Highly Recommended

- Dominic Villa, *Annotated Civil Liability Act 2002 (NSW)* (Thomson Reuters, 2nd ed, 2013)

Unit Schedule

<p>Week 1</p> <p>Lecture & tut</p>	<p>Overview of structure and key aspects of LAW 203 Torts;</p> <p>Introduction to torts: Definition and nature of tort; aims and functions; interests protected; bases of liability: strict/ intent/ want of due care; 'Tort reform'</p> <p>Introduction to intentional torts: Trespass and actions on the case ; Intentional torts to the person: battery, assault, false imprisonment; <i>Wilkinson v Downton</i></p> <p>READING: Casebk Ch 1, pp 3-22 (skim briefly); Ch 2 pp 25-37;</p> <p>Ch 3, pp 39-68</p> <p>NB LECTURES AND TUTORIALS START IN WK 1.</p>
<p>Week 2</p> <p>Lecture & tut</p>	<p>Intentional torts to Property: trespass to land & chattels; conversion.</p> <p>READING: Ch 4 pp 77-90; Ch 5 pp 98-128</p>
<p>Week 3</p> <p>Lecture & tut</p>	<p>Defences to intentional torts (consent, self –defence, provocation, contributory negligence; necessity);</p> <p>Strict liability: Private nuisance.</p> <p>READING: Casebk Ch 6 pp141-175; Ch 16 pp 760-777</p>
<p>Week 4</p> <p>Lecture & tut</p>	<p>Negligence: Approaching the Duty of Care</p> <p>READING: Casebook: Ch 7 pp 179 -227</p>
<p>Week 5</p> <p>Lecture & tut</p>	<p>Negligence: Duty of care (cont): Categories: Physical harm; psychiatric harm;</p> <p>READING: Casebk Ch 8 pp 230 -278</p>

Week 6 Lecture & tut	Negligence: Duty of care (cont): finish psychiatric harm; pure economic loss; Special parties: begin on public authorities READING: Ch 8, pp 278-301; Ch 9 pp 303-326
Week 7 Lecture & tut	Negligence : Special parties (cont): finish public authorities; landlords; occupiers; professionals; immune defs, parents and children; READING: Ch 9 pp 326-375 MID SEMESTER RECESS – OCS 28 & 29 SEPT
Week 8 Lecture & tut	Breach of Duty: general principles; ‘calculus’ of negligence READING: Ch 10 pp 378- 422 THE LECTURE FOR THIS WEEK WILL BE ILECTURE ONLY (Monday public holiday). All Tuesday tuts will be held as usual. Students in Monday tuts please attend any Tuesday tut if possible.
Week 9 Lecture & tut	Negligence: Breach of duty (cont); Inherent and obvious risk; statutory interpretation exercise: <i>Fallas v Murlas</i> (p 429) and <i>Laoulach v Ibrahim</i> (p 440); Standard of care and reasonable person READING: Casebk Ch 10 pp 422-445 and 451-471
Week 10 Lecture & tut	Negligence: Damage: Causation and Remoteness - Factual causation and the ‘but for’ test and its limitations READING: CasebkCh 11, pp 474 -502
Week 11 Lecture & tut	Negligence: Damage: Causation and Remoteness – novus actus; multiple sufficient causes; exceptional cases; Scope of liability and Remoteness; nature of harm READING: Ch 11 pp 502-548

Week 12 Lecture & tut	Negligence: Concurrent liability: Vicarious liability; Non delegable duties; apportionment READING: Ch 13 pp 621-667
Lecture Week 13 NO TUTORIALS	Negligence: defences READING: Ch 14, pp 674-713

Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central](#). Students should be aware of the following policies in particular with regard to Learning and Teaching:

Academic Honesty Policy http://mq.edu.au/policy/docs/academic_honesty/policy.html

Assessment Policy <http://mq.edu.au/policy/docs/assessment/policy.html>

Grading Policy <http://mq.edu.au/policy/docs/grading/policy.html>

Grade Appeal Policy <http://mq.edu.au/policy/docs/gradeappeal/policy.html>

Grievance Management Policy http://mq.edu.au/policy/docs/grievance_management/policy.html

Disruption to Studies Policy http://www.mq.edu.au/policy/docs/disruption_studies/policy.html *The Disruption to Studies Policy is effective from March 3 2014 and replaces the Special Consideration Policy.*

In addition, a number of other policies can be found in the [Learning and Teaching Category](#) of Policy Central.

Student Code of Conduct

Macquarie University students have a responsibility to be familiar with the Student Code of Conduct: https://students.mq.edu.au/support/student_conduct/

Student Support

Macquarie University provides a range of support services for students. For details, visit <http://students.mq.edu.au/support/>

Learning Skills

Learning Skills (mq.edu.au/learningskills) provides academic writing resources and study strategies to improve your marks and take control of your study.

- [Workshops](#)
- [StudyWise](#)
- [Academic Integrity Module for Students](#)
- [Ask a Learning Adviser](#)

Student Services and Support

Students with a disability are encouraged to contact the [Disability Service](#) who can provide appropriate help with any issues that arise during their studies.

Student Enquiries

For all student enquiries, visit Student Connect at ask.mq.edu.au

IT Help

For help with University computer systems and technology, visit <http://informatics.mq.edu.au/help/>.

When using the University's IT, you must adhere to the [Acceptable Use Policy](#). The policy applies to all who connect to the MQ network including students.

Graduate Capabilities

Capable of Professional and Personal Judgement and Initiative

We want our graduates to have emotional intelligence and sound interpersonal skills and to demonstrate discernment and common sense in their professional and personal judgement. They will exercise initiative as needed. They will be capable of risk assessment, and be able to handle ambiguity and complexity, enabling them to be adaptable in diverse and changing environments.

This graduate capability is supported by:

Learning outcome

- 4. Work effectively in teams and individually to analyse a hypothetical fact situation, identify legal, ethical and factual issues involving the law of torts, and apply the relevant law to solve tort problems; take responsibility for their own learning; manage their time productively; demonstrate capacity to plan a task and work to achieve it; reflect on their learning (GC 1, 2, 3, 5, 8)

Assessment tasks

- Task 1
- Task 4

Discipline Specific Knowledge and Skills

Our graduates will take with them the intellectual development, depth and breadth of knowledge, scholarly understanding, and specific subject content in their chosen fields to make them competent and confident in their subject or profession. They will be able to demonstrate, where relevant, professional technical competence and meet professional standards. They will be able to articulate the structure of knowledge of their discipline, be able to adapt discipline-specific knowledge to novel situations, and be able to contribute from their discipline to inter-disciplinary solutions to problems.

This graduate capability is supported by:

Learning outcomes

- 1. Explain the roles and functions of the law of torts; differentiate between different types of torts and categories of liability, including strict, vicarious, concurrent and fault based liability, and the distinguishing features of each (GC 1, 5)
- 2. Brief a case correctly, identifying issues and ratio and commenting on reasoning; explain the significance of a case or series of cases, relevant statutory provisions, and the interaction between the two, accurately and concisely (GC 1, 2, 5)
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- 4. Work effectively in teams and individually to analyse a hypothetical fact situation, identify legal, ethical and factual issues involving the law of torts, and apply the relevant law to solve tort problems; take responsibility for their own learning; manage their time productively; demonstrate capacity to plan a task and work to achieve it; reflect on their learning (GC 1, 2, 3, 5, 8)
- 5. Explain and analyse the common law and statutory components of a negligence action including causation; demonstrate understanding of duty of care in a variety of contexts including statutory authorities; discuss and evaluate statutory changes to the common law of negligence, the assumptions underpinning those changes, and their impact (GC 1, 2, 5)
- 6. Discuss and analyse the legal components of selected property torts including nuisance, trespass to land and chattels, conversion; intentional torts to the person including assault, battery, false imprisonment, action on the case; appropriate defences

(GC 1, 2, 5)

Assessment tasks

- Task 1
- Task 2
- Task 3
- Task 4

Critical, Analytical and Integrative Thinking

We want our graduates to be capable of reasoning, questioning and analysing, and to integrate and synthesise learning and knowledge from a range of sources and environments; to be able to critique constraints, assumptions and limitations; to be able to think independently and systemically in relation to scholarly activity, in the workplace, and in the world. We want them to have a level of scientific and information technology literacy.

This graduate capability is supported by:

Learning outcomes

- 2. Brief a case correctly, identifying issues and ratio and commenting on reasoning; explain the significance of a case or series of cases, relevant statutory provisions, and the interaction between the two, accurately and concisely (GC 1, 2, 5)
- 3. Construct, present and evaluate oral and written arguments about tort law, drawing on relevant precedent and policy considerations; integrate and synthesise learning and knowledge about torts from a range of sources (GC 1, 2, 3, 5)
- 4. Work effectively in teams and individually to analyse a hypothetical fact situation, identify legal, ethical and factual issues involving the law of torts, and apply the relevant law to solve tort problems; take responsibility for their own learning; manage their time productively; demonstrate capacity to plan a task and work to achieve it; reflect on their learning (GC 1, 2, 3, 5, 8)
- 5. Explain and analyse the common law and statutory components of a negligence action including causation; demonstrate understanding of duty of care in a variety of contexts including statutory authorities; discuss and evaluate statutory changes to the common law of negligence, the assumptions underpinning those changes, and their impact (GC 1, 2, 5)
- 6. Discuss and analyse the legal components of selected property torts including nuisance, trespass to land and chattels, conversion; intentional torts to the person including assault, battery, false imprisonment, action on the case; appropriate defences (GC 1, 2, 5)

Assessment tasks

- Task 1
- Task 2
- Task 3
- Task 4

Problem Solving and Research Capability

Our graduates should be capable of researching; of analysing, and interpreting and assessing data and information in various forms; of drawing connections across fields of knowledge; and they should be able to relate their knowledge to complex situations at work or in the world, in order to diagnose and solve problems. We want them to have the confidence to take the initiative in doing so, within an awareness of their own limitations.

This graduate capability is supported by:

Learning outcomes

- 3. Construct, present and evaluate oral and written arguments about tort law, drawing on relevant precedent and policy considerations; integrate and synthesise learning and knowledge about torts from a range of sources (GC 1, 2, 3, 5)
- 4. Work effectively in teams and individually to analyse a hypothetical fact situation, identify legal, ethical and factual issues involving the law of torts, and apply the relevant law to solve tort problems; take responsibility for their own learning; manage their time productively; demonstrate capacity to plan a task and work to achieve it; reflect on their learning (GC 1, 2, 3, 5, 8)

Assessment tasks

- Task 1
- Task 2
- Task 3
- Task 4

Effective Communication

We want to develop in our students the ability to communicate and convey their views in forms effective with different audiences. We want our graduates to take with them the capability to read, listen, question, gather and evaluate information resources in a variety of formats, assess, write clearly, speak effectively, and to use visual communication and communication technologies as appropriate.

This graduate capability is supported by:

Learning outcomes

- 1. Explain the roles and functions of the law of torts; differentiate between different types of torts and categories of liability, including strict, vicarious, concurrent and fault based liability, and the distinguishing features of each (GC 1, 5)
- 2. Brief a case correctly, identifying issues and ratio and commenting on reasoning; explain the significance of a case or series of cases, relevant statutory provisions, and the interaction between the two, accurately and concisely (GC 1, 2, 5)
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- 5. Explain and analyse the common law and statutory components of a negligence action including causation; demonstrate understanding of duty of care in a variety of contexts including statutory authorities; discuss and evaluate statutory changes to the common law of negligence, the assumptions underpinning those changes, and their impact (GC 1, 2, 5)
- 6. Discuss and analyse the legal components of selected property torts including nuisance, trespass to land and chattels, conversion; intentional torts to the person including assault, battery, false imprisonment, action on the case; appropriate defences (GC 1, 2, 5)

Assessment tasks

- Task 1
- Task 2
- Task 3
- Task 4

Serious disruption - special consideration

Serious disruption

When a student suffers a disruption to study which is 'serious and unavoidable' she/he may apply for special consideration. For this to be granted, the student must meet the criteria under the Macquarie University "Disruption to Studies" policy and be approved by the Unit Convenor.

Applications are made online at ask.mq.edu.au. Supporting medical or other documentation is required. Outcomes for recognized serious and unavoidable disruptions to studies are as set out in the University schedule. The policy can be viewed at:

http://www.mq.edu.au/policy/docs/disruption_studies/schedule_outcomes.html

When a disruption to study is not serious or unavoidable, the approach to special consideration and the impact on your assessment will be as follows:

Marked Attendance for tutorials/OCS: Please DO NOT apply for serious disruption for missing 1 tut. Any such application will be rejected.

This unit requires a minimum of 80% attendance to pass. Where serious disruption has been granted, this will be relevant only to waive the attendance requirement, not to allow you additional marks.

Graded Participation for tutorials. Marks are awarded for *participation* not attendance. Clearly, you cannot participate if you are not present, and your marks will reflect this.

If you have an ongoing *serious* problem that causes you to *miss 2 or more consecutive tuts*, or more than one session at OCS, you should apply for serious disruption. *You should also approach your tutor* (not the unit convenor) directly for written make-up work, to be counted towards your class participation mark. This is the student's responsibility.

Make up work will not be set for missed tuts in circumstances that do not meet the criteria for 'serious disruption'.

Assessment Task (preparation affected) – must apply for and be granted serious disruption. An extension of time will be considered, but is not automatic. No extension will be considered for circumstances that do not meet the criteria for 'serious disruption'.

Assessment (other than final exam) (late submission) Law School policy is that students will receive a grade of zero unless special consideration has been approved. In circumstances of serious disruption, apply as set out above for an extension of time before the due date.

Changes since First Published

Date	Description
28/07/2014	Changes made to approval: 1. Addition of tutors names and contact details to Staff section 2. Addition of prescribed text to Delivery and resources section 2. Addition of section headed Serious Disruption- special consideration