

UNLOCKING THE LAW

# UNLOCKING TORTS

4<sup>th</sup> edition

Chris Turner



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# Guide to the book

In the Unlocking the Law books all the essential elements that make up the law are clearly defined to bring the law alive and make it memorable. In addition, the books are enhanced with learning features to reinforce learning and test your knowledge as you study. Follow this guide to make sure you get the most from reading this book.

## AIMS AND OBJECTIVES

---

Defines what you will learn in each chapter.

---

### definition

Find key legal terminology at a glance

---

## SECTION

---

Highlights sections from Acts.

## ARTICLE

---

Defines Articles of the EC Treaty or of the European Convention on Human Rights or other Treaty.

---

### tutor tip

Provides key ideas from lecturers on how to get ahead

---

## CLAUSE

---

Shows a Bill going through Parliament or a draft Bill proposed by the Law Commission.

## CASE EXAMPLE

---



Illustrates the law in action.

## JUDGMENT

---



Provides extracts from judgments on cases.



Indicates that you will be able to test yourself further on this topic using the Key Questions and Answers section of this book on [www.unlockingthelaw.co.uk](http://www.unlockingthelaw.co.uk).

## QUOTATION

---

Encourages you to engage with primary sources.

## ACTIVITY

---



Enables you to test yourself as you progress through the chapter.

xiv

### student mentor tip

Offers advice from law graduates on the best way to achieve the results you want

## SAMPLE ESSAY QUESTIONS

---

Provide you with real-life sample essays and show you the best way to plan your answer.

## SUMMARY

---

Concludes each chapter to reinforce learning.



# *Acknowledgements*

The books in the Unlocking the Law series are a departure from traditional law texts and represent one view of a type of learning resource that the editors always felt is particularly useful to students. The success of the series and the fact that many of its features have been subsequently emulated in other publications must surely vindicate that view. The series editors would therefore like to thank the original publishers, Hodder Education, for their support in making the original project a successful reality. In particular we would like to thank Alexia Chan for showing great faith in the project and for her help in getting the series off the ground. We would also like to thank the current publisher, Routledge, for the warm enthusiasm it has shown in taking over the series. In this respect we must also thank Fiona Briden, Senior Publisher, for her commitment and enthusiasm towards the series and for her support.

# Preface

The 'Unlocking the Law' series on its creation was hailed as an entirely new style of undergraduate law textbooks and many of its ground-breaking features have subsequently been emulated in other publications. However, many student texts are still very prose dense and have little in the way of interactive materials to help a student feel his or her way through the course of study on a given module.

The purpose of the series has always been to try to make learning each subject area more accessible by focusing on actual learning needs, and by providing a range of different supporting materials and features.

All topic areas are broken up into manageable sections with a logical progression and extensive use of headings and numerous sub-headings as well as an extensive contents list and index. Each book in the series also contains a variety of flow charts, diagrams, key facts charts and summaries to reinforce the information in the body of the text. Diagrams and flow charts are particularly useful because they can provide a quick and easy understanding of the key points, especially when revising for examinations. Key facts charts not only provide a quick visual guide through the subject but are also useful for revision.

Many cases are separated out for easy access and all cases have full citation in the text as well as the table of cases for easy reference. The emphasis of the series is on depth of understanding much more than breadth of detail. For this reason each text also includes key extracts from judgments where appropriate. Extracts from academic comment from journal articles and leading texts are also included to give some insight into the academic debate on complex or controversial areas. In both cases these are highlighted and removed from the body of the text.

Finally the books also include much formative 'self-testing', with a variety of activities ranging through subject specific comprehension, application of the law and a range of other activities to help the student gain a good idea of his or her progress in the course. Appendices with guides on completing essay style questions and legal problem solving, supplement and support this interactivity. Besides this a sample essay plan is added at the end of most chapters.

A feature of the most recent editions is the inclusion of some case extracts from the actual law reports which not only provide more detail on some of the important cases but also help to support students in their use of law reports by providing a simple commentary and also activities to cement understanding.

A study of the law of torts can prove fascinating because it is really all about people, the problems that they have and the ways that these might be overcome in law. Tort law covers civil wrongs and in this way the topic areas vary widely in their content and context from basic negligence actions for motoring accidents, through assaults encountered in sporting activities to the interference of problem neighbours. Since tort is also essentially a common law area much of this book is devoted to cases and case notes, and these are separated out in the text for easy reference.

The book is designed to cover all of the main topic areas on undergraduate, degree equivalent and professional tort syllabuses and help provide a full understanding of each.

I hope that you will gain as much enjoyment in reading about the tort, and testing your understanding with the various activities in the book as I have had in writing it, and that you gain much enjoyment and interest from your study of the law.

The law is stated as I believe it to be on 1 August 2013.

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# 1

## *The origins and character of tortious liability*

### AIMS AND OBJECTIVES

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After reading this chapter you should be able to:

- Understand the basic character of torts
- Understand the basic principles of tortious liability
- Understand the basic aims of tortious liability
- Understand the basic interests protected by the Law of Torts
- Understand the relevance of specific mental states in pursuing tort actions
- Discriminate between fault liability and no fault liability
- Discriminate between joint liability and several liability and understand how and why contributions can be made between different tortfeasors
- Understand how human rights legislation impacts on the Law of Torts

### 1.1 The origins of tort

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#### **tort**

Tort is a French word meaning 'wrong' – so is a general word used to describe civil wrongs

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The law of **tort**, or torts, is part of the English common law which has developed incrementally since Norman times. Academic writers are not agreed whether there is a law of tort or a law of torts. A law of tort implies some general common rules relevant to all parts of the law. A law of torts recognises that there are various separate and distinct aspects but also implies that the separate parts have something in common. The writer of this book inclines to the idea that there is a law of torts, each tort being governed by similar underlying principles. It is a nice subject for a debate but of little practical importance.

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#### **trespass**

Torts based on trespass tend to involve interference, e.g. with rights over land, or property or indeed with their 'bodily integrity'

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Although some modern torts have been created by statute, the law is still generally to be found in common law principles. The origins of torts can be traced back to the fourteenth century when the word '**trespass**' was given a much wider legal meaning than it has today. It originally referred to 'any direct and forcible injury to the person, land or property (chattels)'.

Trespass was one of two medieval forms of action, the second being 'trespass on the case' or simply 'case'. Case covered 'injury which was consequential to a wrong but the wrong was neither forcible nor direct'.

**actionable  
per se**

An action for a tort where the claimant does not have to prove that damage occurred only that the tort occurred

**claimant**

The person who brings an action in tort

The distinction can still be seen in the law of torts today – torts which are **actionable per se**, i.e. without proof of damage, such as trespass to land and trespass to the person, generally originate from the old form of trespass, while those torts which require proof of damage, for example negligence and nuisance, generally come from case.

In the past, the distinction was of crucial importance as using the wrong form of action could result in the **claimant** being left without any remedy. Today, although there may be cost penalties, the Rules of Court allow for the amendment of pleadings (subject to the provisions of the Limitation Act 1980 which are discussed in Chapter 20). The legal historian will be able to find traces of the old rules in modern law but for practical purposes the distinction is of little relevance. Both Lord Atkin and Lord Denning MR have made this clear. In his judgment in *United Australia Ltd v Barclays Bank* [1941] AC 1, Lord Atkin said:

**JUDGMENT**

'When these ghosts of the past stand in the path of justice clanking their medieval chains the proper course for the judge is to pass through them undeterred.'

**JUDGMENT**

'These forms of action have served their day. They did at one time form a guide to substantive rights; but they do so no longer. Lord Atkin told us what to do about them.'

**CASE EXAMPLE****Letang v Cooper [1965] 1 QB 232**

The claimant decided to sunbathe on a grass area which was also used as a car park. The defendant drove in. He did not see the claimant lying on the grass and ran over her legs. The problem for the claimant was caused by the date on which she tried to commence her action. She was out of time to bring an action for negligence (a descendant of case) where the usual time limit is three years. If she was able to use trespass, then the action could stand as the time limit was six years. It was argued that the old rules should apply, her injury was direct and forcible.

The Court of Appeal held that the old rules no longer apply. Intentional injury will give a claim based in trespass, but unintentional injury gives a claim based in negligence. The claimant was unsuccessful.

Before leaving this introduction, mention should be made of the tort of defamation. Slander has its roots in the old ecclesiastical law. Libel stems from the old prerogative law which regarded certain written statements as prejudicial to the state. Both libel and slander eventually found a home in the common law courts. As will be seen in Chapter 14, the tort of defamation continues to have its own unique characteristics.

**1.2 General principles of liability****1.2.1 The character of torts**

Anyone who teaches law is certain to be asked 'What does tort mean?' If only there was an easy answer! It seems to be generally accepted that the word itself is a surviving relic

of Norman French and means simply 'wrong'. This does not tell us very much. Winfield defines the meaning as follows:

## QUOTATION

'Tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressible by an action for unliquidated damages.'

*W V H Rogers, Winfield and Jolowicz on Tort (16th edn, Sweet & Maxwell, 2002)*

The definition is helpful in that it shows that there are three elements:

1. a duty fixed by law – as we shall see this does not necessarily, or indeed usually, mean fixed by statute but a duty which the courts have recognised;
2. the duty must be owed generally – as we shall see individual torts have been developed so that a general duty is owed to any person in a position to bring an action based on that tort;
3. the breach of duty must entitle the claimant to general **damages**.

The nature of the duty varies from tort to tort. For example where negligence is alleged, the duty is to take reasonable care; in the case of trespass to the person the duty is to refrain from infringing a person's bodily integrity.

The class of persons to whom a duty is owed may be limited. For example in negligence, a duty is owed only to those who ought reasonably have been foreseen as likely to be affected by failure to take reasonable care; in trespass to the person the duty is owed only to those directly affected by the action.

The injury sustained must be of a type recognised by the law. In negligence for example it took many years for the courts to recognise that psychiatric harm was as much an injury as physical damage. In trespass to the person and other torts which are actionable per se it is unnecessary to prove damage, the infringement of the right being regarded as injury enough.

### 1.2.2 The functions and purposes of torts

The aim of the law of torts is twofold:

1. to compensate someone who has suffered a wrong at the hands of the **defendant**; and
2. to deter persons from acting in such a way that another person's rights are infringed.

#### *Compensation*

Clearly a person who has suffered injury is entitled to financial compensation which is intended, so far as possible, to put them in the position they would have been in but for the wrongdoing of the defendant. Where the damage is purely to property this may be possible, but real difficulty arises in cases of personal injury. The rules which guide the courts in such matters are discussed in detail in Chapter 20.

The award of damages can also be regarded as ensuring that an injured party receives justice in that loss caused by the tort is compensated. In some cases the 'victim' would not agree that justice has been done. How often does the media report a case where a 'victim' makes it clear that the money is in reality no compensation for the loss which has occurred? While the finding of liability may go some way to satisfy the injured party's desire for vengeance, having 'had their day in court', it is only rarely that a punitive element of damages is payable.

#### **damages**

Refers to the compensation awarded by the court in a successful claim

#### **defendant**

The person against whom a claim in tort is made

From the defendant's point of view, the concept of justice is also debatable. The amount of damages is assessed purely by the effect on the claimant. A defendant who has caused serious personal injury to the particular victim because of some personal characteristic of that victim will find that the award far exceeds the amount which would have been payable to another, less vulnerable, victim.

The law does not compensate a person for all types of damage. We shall see, for example in Chapter 14, that generally there is no duty to respect another's privacy. A person who publishes something which is true is not liable for defamation no matter how detrimental the publication may be to the 'victim'.

The law does not always regard a person as having a legal claim. In negligence, for example, a person who suffers psychiatric damage as a result of the defendant having negligently caused harm to someone else, will only be able to bring an action when certain very strict conditions have been complied with (see Chapter 6).

### *Deterrence*

The deterrent effect of torts is debatable. This is illustrated by the decision of certain publishers to go ahead and publish defamatory material in the belief that, if the 'victim' brings an action, the profit will outweigh any possible compensation. In such cases if an action is brought damages can include a punitive element, but such a publisher may also calculate that the 'victim' is unlikely to bring an action. An action for defamation frequently has the effect of ensuring that the material becomes known to many more people, no legal aid is available and the outcome is unpredictable as in many cases the final decision rests with a jury. None of these are matters that a 'victim' is likely to ignore.

Where insurance is required, for example in relation to motor vehicles (Road Traffic Act 1988), the deterrent effect is perhaps more effective. A person who is liable may well find that once the insurance company has paid the compensation, the premium goes up. Defendants may or may not care that their actions have caused injury to someone else, but all are likely to be very concerned about the effect on their pockets!

The deterrent effect is also reinforced in the case of professionals who are subject to strict codes of practice, for example health care professionals, lawyers and accountants. Professional governing bodies usually have powers to prevent future practice where the code is not obeyed thus preventing a wrongdoer from earning a living.

## **1.2.3 The interests protected by the law of torts**

Common law develops incrementally by virtue of the doctrine of precedent but it is possible to classify, in broad terms, the general nature of interests which the law of torts protects:

- personal security
- property
- reputation
- economic interests.

Reference should be made to the various chapters for more detail. The following paragraphs simply draw the reader's attention to the specific torts which may be relevant to the particular interests.

Personal security is most obviously protected by the torts of trespass to the person and trespass to land. When negligence is studied it is clear that this tort also has a part to play in ensuring that an individual does not suffer harm by the unreasonable acts or

**occupier**

In liability for damage caused by the state of premises the occupier is the person in actual control of the premises when the damage occurs – so there can be dual occupation

omissions of others. Nuisance helps to protect an **occupier** of land from activities on neighbouring land which are detrimental to health or comfort. Statutory torts created by the Protection from Harassment Act 1997 and the Consumer Protection Act 1987 also play an important role.

Property is protected by the torts of trespass to land and interference with goods. Nuisance and *Rylands v Fletcher* [1868] LR 1 Exch 265 also help by providing a remedy for wrongful interference with the use of land or damage caused to land, in both cases caused by some activity or omission on the wrongdoer's land. Negligence also has a role to play where property is damaged as a result of failure to take reasonable care.

A person's reputation is protected by the tort of defamation. The equitable remedies available for breach of confidentiality, although not strictly part of tort law, and the growing influence of the European Convention on Human Rights cannot be ignored in this context. These may help to protect privacy by preventing publication of true but detrimental information.

**economic loss**

Refers to a loss that is purely financial, e.g. loss of profit – in contrast to personal injury or damage to property

**Economic loss** is an oddity. Damages are calculated to take account of financial loss sustained by the victim of a tort (see generally Chapter 20) but, as will be seen in Chapter 6, there are restrictions on the availability of a claim in negligence for what is described as 'pure economic loss'. The 'economic' torts of deceit, malicious falsehood, passing off and interference with trade (see Chapter 15), may ensure that a business is protected from unfair competition. Economic loss will also be compensated where the law of contract can be used.

## 1.2.4 The parties to an action in tort

### *Capacity generally*

The usual principle applies to torts as to any other part of the civil law. In order to bring or defend an action, the party concerned must have legal capacity. A minor can neither bring nor defend an action in their own name but must rely on representation by a suitable adult. Similar rules apply to those of unsound mind. Special rules apply to certain other groups, for example corporations and trade unions. Until the twentieth century, married women were also included as a slightly different case but now they are generally treated as any other person!

### *The state*

As the Crown is traditionally regarded as the fount of all justice, it is not surprising that special rules have evolved as to the liability of the state and its officials. In relation to the monarch the old idea that the 'King can do no wrong' is maintained and no action can be brought against the sovereign personally, nor in respect of certain prerogative and statutory powers.

Until 1947 the only remedy against the Crown was by way of petition of right asking the monarch for redress of a wrong. This anomaly was dealt with by the Crown Proceedings Act 1947. The present position is that the Crown is usually in the same position as any other legal person and can therefore sue or be sued in relation to torts in much the same way as anyone else.

**vicarious liability**

Not a tort in itself but a means of imposing liability on somebody who is responsible for the tortfeasor usually an employer

There are some oddities. For example, the doctrine of **vicarious liability** cannot apply to heads of government departments as all servants of the Crown are fellow employees. The head of department cannot therefore be regarded as employing subordinate officials. In practice this was of little importance as the wrongdoer remained personally liable and the Treasury Solicitor would satisfy any judgment. Theoretically, however, it was possible for the Crown to plead immunity when an allegation of tortious behaviour was made. This has been dealt with by the Crown Proceedings Act 1947 which brought Crown immunity in tort to an end in most circumstances.



Foreign sovereigns and their servants have long enjoyed what is popularly known as ‘diplomatic immunity’ for tortious actions. Such immunity can always be waived but its existence can and does cause problems. By way of example, a person whose vehicle has been damaged by the negligent driving of a chauffeur employed by a foreign embassy will be unable to obtain compensation if the chauffeur can show that the accident occurred in the course of employment by the embassy unless immunity is waived.

The Member States of the European Union may have liability to their citizens where the state has failed to implement EU legislation (*Francoovich v Italy* [1991] ECR I-5357). The European Union is liable for the activities of its institutions or servants by virtue of Article 340 TFEU.

### *Minors*

A person does not become legally adult until their eighteenth birthday is reached (Family Law Reform Act 1969 s1). Until that time a minor may only sue or defend an action by a responsible adult known as a ‘litigation friend’. Apart from this procedural requirement a minor has exactly the same rights and duties in torts as an adult. We shall see, however, that certain allowances may be made, particularly in relation to the defences of voluntary assumption of risk and contributory negligence, for a less mature understanding.

The general rule is that minors may be liable for their own tortious activities. The fact of immaturity is relevant in some cases. For example in a case of negligence, the actions of the child will not be judged by the usual standard of the reasonable man but by the standard of a reasonable and prudent child of the same age.

Victims of child tortfeasors might well hope that the minor’s parents would be liable for the child’s wrongdoing. This is not the case unless:

- the parent can be shown to have vicarious liability; or
- the parent has personally been negligent, for example in *Bebee v Sales* [1916] 32 TLR 413 by failing to exercise reasonable control over a 15-year old who injured another child’s eye with an airgun given to him by his father. The father had failed to exercise proper control when he did not remove the gun from the boy’s possession after he had smashed a neighbour’s window.

There is no general rule that a child may not sue its parent but a child injured while in the womb is subject to special rules. These are found in the Congenital Disabilities (Civil Liability) Act 1976 which provides

1. the child must be born alive and disabled;
2. the defendant must have potential tort liability to the child even if the mother was not harmed and has no cause of action;
3. the mother herself cannot be liable for any injury to her unborn child.

### *Married persons*

As far as claims by or against third parties are concerned, married people are in the same position as anyone else. Where a claim is made by one spouse against the other, proceedings are not subject to any special rules except that the court has power to stay any proceedings if no substantial benefit is likely to be obtained by either party if the matter continues. This provision, found in the Law Reform (Husband and Wife) Act 1962 s1(2) (a), is designed to ensure that the courts do not become yet another forum in which husband and wife can fight purely personal battles for the sake of it.

### *Corporations*

A corporation is an artificial person having legal personality by virtue of incorporation. A corporation can sue for any tort which is committed against it save for those where

commission of the tort is clearly impossible, for example false imprisonment. Similarly, the corporation is an appropriate defendant, usually by virtue of vicarious liability as the employer of someone who has in fact committed the tort.

### Partnerships

Partnerships do not have legal personality and cannot therefore sue or be sued. A right of action vests in the partners who sue as individuals. Where a tort has been committed by the firm, the individual partners have joint and **several liability** to the claimant. The Rules of Court make special provision to ensure that legal actions are not duplicated or unduly prolonged.

It should be noted that a new type of partnership was brought into being by the Limited Liability Partnerships Act 2000. Where a partnership is formed by virtue of the Act, it has its own legal personality and can sue or be sued in the same way as any other corporation.

### Persons of unsound mind

A person who is of unsound mind may sue, through the services of a litigation friend, for any tort committed against them. Where such a person has allegedly committed a tort the position is not straightforward.

If a tort requires a particular state of mind, then evidence will be needed that the person had that state of mind.

#### several liability

Where there are joint tortfeasors each one can be separately liable for the whole damage – so if one lacks funds to pay compensation the claimant can bring the action against the one that can pay

## CASE EXAMPLE



### *Morriss v Marsden* [1952] 1 All ER 925

While the defendant did not know that he was doing wrong, he attacked and seriously injured the claimant. The evidence showed that he intended to strike the claimant and he was therefore liable.

Where the actions are involuntary, the person is unlikely to be liable.

## 1.2.5 Tort and mental state

In torts, two mental states are relevant:

- intention
- malice.

### Intention

In the criminal law, the general principle is that a person must intend to commit the crime if they are to be found guilty (the element of *mens rea*). It is very rarely the case that a person must be shown to have intended to commit a tort although where this can be shown, the claimant may find it easier to establish a case.

Having said this, many torts require the defendant to have intended to do the act which amounts to the tort. In trespass to the person, for example, the defendant must have intended to touch the claimant in order to be liable although they need not have intended to commit battery. A trespass to land cannot be committed by a parachutist who is blown on to land by the wind.

In the tort of negligence, the defendant is liable for unintended consequences of an act. Liability rests on the fact that the defendant failed to foresee the potential consequences and thus failed to guard against them. If the consequences are intended, then some other tort may have been committed. By way of example, if a motorist deliberately

#### malice

Motive is generally unimportant in most torts but in some circumstances acting maliciously is an element of the tort, e.g. malicious falsehood and nuisance

rams another vehicle, there may be liability for trespass to the person or trespass to goods, but there will be no liability for negligence.

### *Malice*

In some rare circumstances, the defendant's motive may be relevant. An improper motive is usually referred to as malice and its presence can have the effect of rendering what might otherwise be a reasonable action unreasonable and therefore unlawful. Examples of this are found in the tort of malicious falsehood (see Chapter 15) and in nuisance (see Chapter 9). Malice may also defeat the defence of qualified privilege available in defamation (see Chapter 14).

## 1.2.6 Alternative methods of obtaining compensation

### *Alternative Dispute Resolution (ADR)*

While a person may be able to bring legal action to seek a remedy for some injury or damage which has been suffered, this can be fraught with difficulty. Despite the recent reforms, the court system is slow and expensive. The availability of legal aid has been substantially curtailed. Perhaps most importantly, there can never be any true certainty as to the outcome. While the victim of wrongdoing may well wish to see the defendant publicly found liable by a judge in a court of law, most will think long and hard before venturing into such uncharted waters.

Over recent years other methods to resolve issues have been developed so that there are now various methods of ADR available. These include

- arbitration
- adjudication
- conciliation
- mediation.

Each may be relevant in the context of torts; for example, conciliation and mediation schemes have been created by a number of local authorities to deal with complaints of statutory nuisance (see Chapter 9).

For full discussion of ADR the reader should consult a text on the English legal system.

### *Insurance*

The purpose of insurance from a defendant's point of view is to protect them from personally having to foot the bill. From the claimant's point of view, the fact that a defendant is insured will mean that there are resources from which any damages will be met.

As the level of damages for personal injury can be very high, insurance is compulsory in certain circumstances. The Road Traffic Act 1988 makes third party insurance compulsory for all motor vehicles while the Employers' Liability (Compulsory Insurance) Act 1969 requires employers to have insurance against liability for injury to employees. Professionals, for example solicitors and doctors, are required to have third party insurance as a condition of practice although they will be covered by their employers' insurance if employed. Insurance against public liability may be required as a term in a standard form contract, for example the 'Standard Form of Building Contract' (commonly known as the JCT contract) which is widely used by the construction industry.

Individuals may choose to obtain no-fault insurance to protect themselves and/or their property in the event of accidental damage. Common examples are household insurance policies which protect the buildings and contents. Other policies protect against redundancy, ill health and death.

The judges are of course aware that many awards of damages will in fact be paid by insurance companies and that individuals may have chosen to protect themselves against misfortune. This may in some cases influence the way in which a case is approached. In the context of road traffic accidents, the courts can impose a very high standard of care.

The availability of insurance may also be relevant. One of the policy reasons influencing the decision on **nervous shock** arising from the Hillsborough cases (see Chapter 6) was the need to ensure that the number of potential claims was limited. This means that insurance companies are in a position to make a realistic assessment of potential liability, an essential first step to setting the amount of a premium!

### nervous shock

A recognised psychiatric injury such as clinical depression and post-traumatic stress disorder caused by a single shocking event

## 1.2.7 Relationships with other areas of law

### Crime

In one sense, torts are the civil equivalent of crimes. Each requires a certain standard to be observed and breach of the 'code' leads to consequences. Tortious behaviour may entitle a 'victim' to compensation or some other remedy while criminal behaviour will lead to punishment of the person convicted and may also lead to compensation of the victim by means of a criminal compensation order, or by payment of compensation by the Criminal Injuries Compensation Authority. The distinction between crime and torts is essentially one of degree. A crime is generally regarded by society as wrongdoing of a sufficiently extreme nature that it requires punishment, while tortious behaviour leaves the 'victim' to decide whether or not to pursue a private remedy.

In some circumstances, the two areas of law overlap. This is particularly evident in cases involving trespass to the person which overlaps with criminal assaults and torts such as conversion and trespass to goods. In such cases it may be possible for civil action to be brought using tort even though the wrongdoer has been punished by the criminal law. It was partly to avoid such duplication of actions that the criminal courts have been given power to award compensation to the victim in straightforward cases.

### Contract

Both the law of contract and the law of torts are concerned to ensure that a person fulfils a duty whether this is imposed by agreement (contract) or law (torts). For example, for many years the only remedy for a deliberate misrepresentation inducing a party to enter a contract was to be found in the tort of deceit. As can be seen from consultation of a textbook on contract law, tortious principles have to some extent been assimilated into contract law.

Other areas of contract law such as consumer protection demonstrate a close link with torts. The reader is referred to Chapter 12 for more detailed discussion.

Academic writers are divided over the issues raised. Some believe that the separate law is evolving into a new category, a general law of obligations which gives rise to a remedy whenever an obligation is breached. This is so whether the obligation arises from agreement between the parties or from a duty imposed by law. The arguments continue but we are beginning to see textbooks published which are concerned with the 'Law of restitution' or the 'Law of obligations' indicating that evolution is continuing.

### Land law

While torts are rarely concerned with rights relating to the title to land, many torts, for example trespass to land and *Rylands v Fletcher*, depend on the legal status of the parties in relation to the occupation of the land affected or from which the problem emanates. The torts lawyer needs to be fully aware of the basic principles of land law. This text generally assumes such knowledge although the reader's attention will be drawn to specific problems where necessary.