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INTRODUCTION:

What Is A Tort?

Tort Law focuses on the social conduct of humans that the law prohibits for instance, construction of a building may block a view, public utterance may affect someone's reputation or getting injured at work.

These are just some examples of what is considered a tort. This guide will discuss some of the different types of tort actions a plaintiff can take.

If you are in any of the following situations, you should contact a solicitor regarding pursuing a negligence claim.

Tort Liability:

There are 4 types of liability in Tort Law.

1. Fault Liability:

This type of liability focuses on blameworthiness. In other words, who is to blame for the negligence that occurred? To answer this question, fault must be measured objectively.

2. Strict Liability:

This type of liability does not necessarily focus on fault for instance, Liability for defective products -- Defective Products Act 1991.

3. Torts 'actionable per se':

This type of fault focus on the fact that a wrongful act is actionable alone and damage does not need to be suffered. For instance, in Defamation or Trespass to the Person.

4. Torts 'actionable on proof of damage

This type of liability focus on the fact that damage was suffered. For instance, a negligence claim.





TYPES OF TORT CLAIMS:

1. Negligence

What Is Negligence:

Negligence is an area in Tort law that gives compensation to the injured party of another person's careless conduct.

What Do I Need To Prove Negligence?



There is a recognised duty among individuals to comply with a standard of care.

The required standard of care is not complied with. It must be proven on a balance of probabilities that the duty has been breached.

The negligent actions of the defendant must have caused your injury/loss/damage.

Actual loss /injury or damage to the plaintiff must have occurred

No legally recognised defence on part of the defendant

What Is The Standard Of Care Required?

Generally, the standard of care is based on what a reasonable person would do in the circumstances. An example of an reasonable person is a driver; they will be judged by the standard of the reasonable driver. However, there are circumstances when the reasonable man test won't apply. For instance, if someone has a physical disability while driving, they will be held to the same standard as someone who has the same disability as them.



2. Nuisance:

There are 2 types of Nuisance under Irish law.

A. Public Nuisance:

A public nuisance is an act or omission, that affects the comfort of the public for example, constantly blocking the highway on a busy road.

✚ **NOTE: PUBLIC NUISANCE IS A TORT AS WELL AS A CRIME.**

B. Private Nuisance:

Private nuisance affects individuals in their private property for example, consistent loud music coming from a neighbour.

How Can I Bring An Action For Private Nuisance?

To bring an action, the plaintiff must show that his interest, use or enjoyment of land is affected in an unreasonable way. In other words, the nuisance must have caused physical damage and interfered with the plaintiff's use and enjoyment of property. An instance of damage would be where the plaintiff suffered injury/ property damage/ financial loss.

An act will not amount to nuisance unless it is substantial and unreasonable. When seeing if nuisance is unreasonable, the following are some factors that are accounted for. Firstly, the exact location which the activity is taking place will have an effect on whether it is considered unreasonable. Secondly, the duration of the nuisance and finally, the severity of damage.

Who Can Sue Or Be Sued In A Nuisance Claim?

Generally, landowners and occupiers sue in nuisance. The creator of the nuisance may be liable, whether or not they are in occupation of the land in question. Furthermore, a landlord may be sued in nuisance where he allows the creation or maintenance of a nuisance. An occupier may be sued in nuisance where he/she creates a nuisance or where their visitors created a nuisance, which he/she authorised.

Remedies:

1. Injunctions

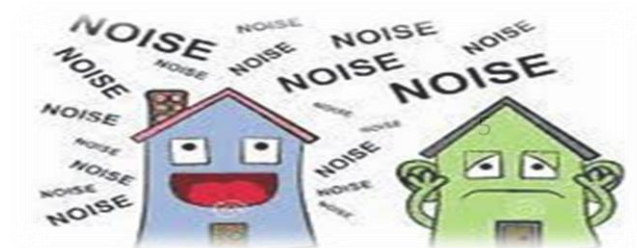
- The court may order an injunction to order the defendant not to continue with the nuisance etc.

2. Damages

- If nuisance has caused damage to the plaintiff's property, the court may award damages to the plaintiff in order to compensate for that loss.

3. Abatement

- The right of an injured party to abate the nuisance. In other words, the injured party can act themselves to calm the nuisance.





3. Passing Off:

What Is Passing Off?

Passing off is a legal term for when a trader in the course of their business sells a similar item of another trader. This sale must be done to intentionally damage the goodwill of another trader. For instance, copying the same design or advertisement of a popular brand.

How Do You Prove Passing Off In Ireland?

Firstly, goodwill must be established.

The plaintiff must establish the following steps

1. They built up goodwill in the product
2. The defendant took that reputation for their own use
3. This damaged the reputation of the plaintiff by declining their sales.

Secondly, Misrepresentation must be established. This means that confusion on the consumers side must occur.

Lastly, damage: Where the plaintiff is seeking an injunction in order to put a stop to passing off, he must show that the defendant's actions have the potential to damage his goodwill to obtain an interlocutory injunction.



4. Defective Products:

Tort Law aims to ensure producers, manufacturers and others in the retail chain are liable for injury /damage or other loss caused by their products or services. For instance, you purchased a defective hairdryer that caught fire, and the fire resulted in an injury.

It is governed by *Liability for Defective Products Act, 1991*. According to the 1991 Act, a product is “defective” if it does not comply with providing reasonable safety to consumers.





5. Defamation:

Defamation is concerned with balancing two competing enumerated rights in the Irish Constitution: personality rights of reputation in contrast to the right to freedom of expression. There are times when statements are made that could potentially ruin your reputation. In that instance, you should contact a legal professional to assist you in your case.

Keep in mind: reform underway – <https://justice.ie/en/jelr/pages/minister-mcentee-receives-cabinet-approval-to-reform-irish-defamation-law>.

How Do I Take A Defamation Case?

Defamation is provided for under the Defamation Act 2009. The act states you must evidence the following elements,

1. Publication

This means that the statement was published to at least one other person. Publishing can extend to newspapers, speeches, photos, blogs etc.

2. Identification

There must be a clear link between the plaintiff and the defamatory statement that is to be regarded as a publication.

3. Defamatory Effect

Burden of proof is on the plaintiff to establish the truth and that the statement was damaging. In order to establish if the statement was damaging, it is judged objectively. In other words, would a reasonable person think the statement was defamatory?

4. Lack of defence

No legally recognised defence on part of the defendant.

Defamation Defences:

- a) Truth
- b) Absolute Privileged
- c) Qualified Privilege
- d) Loss Of Defence Of Qualified Privilege
- e) Honest Opinion
- f) Distinguish Between Allegations Of Fact And Opinion
- g) Offer To Make Amends
- h) Apology
- i) Consent
- j) Fair And Reasonable Publications On A Matter Of Public Interest
- k) Innocent Publication

Recent Defamation Case:

Depp v Newsgroup LTD [2020] EWHC 2911

NOTE: new defamation case in Virginia, US: \$50m (£38m) defamation trial against ex-wife Amber Heard - opinion piece Heard wrote for the Washington Post in which she called herself a victim of domestic violence. He denies any abuse - Heard has sued back with a \$100m counterclaim.

See the below link for Depp's testimony.

<https://www.youtube.com/watch?v=S57C1nAGOHQ>





6. Remedies:

Damages:

Damages are the main type of remedy available to a plaintiff in a tort action. Damages are financial compensation awarded to the plaintiff due to his/her legal rights being infringed. Injunctions can be imposed to stop an action from happening or reoccurring.

Under section 22 of the *Civil Liability and Courts Act 2004*, the courts look to the Book of Quantum when assessing damages.

Compensatory/ General Damages	<ol style="list-style-type: none"> 1. General compensatory Damages are given for pain and suffering 2. Special Compensatory damages are given for loss of expenses
Nominal Damages	Nominal damages are given where the injury may be nominal and are awarded in torts that are actionable per se.
Punitive / Exemplary Damages	These damages are given if the defendants actions are considered wrong in the eyes of the courts and they want to make an example of him/her.
Aggravated Damages	These are awarded when the defendants actions are harmful to the plaintiff. This ensures the PL is compensated.

7. Psychiatric Injury:

In the instance of witnessing a horrific event happening or the immediate aftermath, you may experience “nervous shock”. You can receive damages for Psychiatric injury/nervous shock. Psychiatric illness is a legally recognisable psychiatric injury, not mere mental or emotional distress.

The Irish courts have approved the following to be a recognised psychiatric injury.

- a) Post-traumatic stress disorder (PTSD)
- b) Clinical depression
- c) Pathological grief disorder (PGD)
- d) Generalized anxiety disorder (GAD)
- e) Panic disorder

8. Trespass:

Trespass focuses on whether a Plaintiff's civil liberties/rights are adversely impacted by the D's wrongful conduct, which is voluntary, direct and intentional.

Trespass is made up of the following torts:



1. Trespass to land –

This involves going onto someones property without their consent.



2. Trespass to chattels/goods

This includes other personal property (right to property)



3. Trespass to the person

- Battery – unlawful personal contact (bodily integrity, dignity)
- Assault – threat of battery (security of the person/bodily integrity, dignity)
- False imprisonment – unlawful deprivation of personal liberty (right to liberty, dignity)



9. Limitation Periods:

What Is A Limitation Period?

All tort claims must be commenced before a certain time. Tort law provides that after the passing of a certain time, plaintiffs can no longer bring an action. The law in this area is contained in the *Statute of Limitations Act, 1957*. This Act has been amended by the *Statute of Limitations Act, 1991* and most recently by the *Civil Liability and Courts Act, 2004*.



Actions for personal injuries caused by negligence, nuisance or breach of duty are not be brought after 2 years from the date which the cause of action accrued or the date of knowledge (if later) of the person injured



1-year limitation This can be extended in limited circumstances



3 years with respect of clinical negligence claims under Part 15 of the Legal Services Act 2015



3 year limitation

When Does The Clock Begin To Run?

The clock will start to run from the moment the cause of action accrues. In tort cases, which are actionable per se (without proof of damage) the clock runs from the moment the tort is committed.



Variations In The Time Limit

People under a Disability:

Section 48(1) of the *Statute of Limitations Act*, 1957 sets out those who are under the heading of disability

- a) A child (under 18 years)
- b) Person of unsound mind
- c) A convict subject to the Forfeiture Act, 1870
- d) Victim of sexual abuse who is suffering from psychological injury
- A person under the heading of disability has 6 years from the end of the disability, or when if or when they die, (whichever is sooner) to commence with their claim for non-personal injury.
- According to s.49 of the Statute of Limitations, 1957 the limitation period regarding people suffering from a disability who are suing for personal injury, have two years from the end of the disability period.
- Additionally, the extension does not apply where the plaintiff was in the custody of a parent when the right of action accrued to him. The rationale being that that parent should have acted reasonably in looking out for the plaintiff and brought an action on his behalf

Fraud:

In the event of fraud committed by the defendant, the clock won't start until the fraud is discovered. Also, if the defendant, through fraud, disguises the fact that the plaintiff may not have an action, again the clock does not begin until the fraud is discovered or could have been reasonably discovered.