

(1963) 81 WN (Pt 2) (NSW) 204 at 211-12, SC(NSW); *Ramoo Son of Eritapan v Gan See Sivee* [1971] 3 All ER 320 at 327, PC.

3. (ACT) Civil Law (Wrongs) Act 2002 s 21(2)
 (NT) Law Reform (Miscellaneous Provisions) Act 1956 s 13
 (NSW) Law Reform (Miscellaneous Provisions) Act 1946 s 5(2)
 (QLD) Law Reform Act 1995 s 7
 (SA) Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 s 6
 (TAS) Tortfeasors and Contributory Negligence Act 1954 s 3(2)
 (VIC) Wrongs Act 1958 s 24(2)
 (WA) Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947 s 7(2).
4. See note 3 above. See, for example, *Ballina Shire Council v Volk* (1989) 18 NSWLR 1 at 9-10 per Kirby P; (NSW) Law Reform (Miscellaneous Provisions) Act 1946 s 5(2).
5. See note 3 above. However, a contribution to the costs of defending the action brought by the plaintiff against the person seeking contribution is not recoverable: *Hanson v Matthew Bros Contractors Ltd* (1990) 55 SASR 183. Except in Western Australia, a full indemnity is generally only recoverable by one wrongdoer against another when the first, though not at fault, is legally liable for the fault of the other: see *Pantalone v Alaouie* (1989) 18 NSWLR 119 and note 3 above; *Sherias v Van der Maat* [1989] 1 Qd R 114. Indemnity cannot be recovered where both tortfeasors are independently at fault: *Sinclair v William Arnott Pty Ltd* [1963] SR (NSW) 88; (1963) 81 WN (Pt 2) (NSW) 204.

[415-205] **Costs** In all jurisdictions there is provision for denying recovery of costs to a tortfeasor who has unreasonably claimed contribution in a separate action from that in which judgment is first given.¹

Note

1. (ACT) Civil Law (Wrongs) Act 2002 s 20(2)(b)
 (NT) Law Reform (Miscellaneous Provisions) Act 1956 s 12(3)
 (NSW) Law Reform (Miscellaneous Provisions) Act 1946 s 5(1)(b)
 (QLD) Law Reform Act 1995 s 6(b)
 (SA) Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 s 12(2)(b)
 (TAS) Wrongs Act 1954 s 3(1)(b)
 (VIC) Wrongs Act 1958 s 24AB
 (WA) Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947 s 7(1)(b).

[415-210] **Contractual indemnity** The contribution legislation has not directly affected a tortfeasor's right to a contractual indemnity against liability in tort.¹ Such indemnity might arise by way of insurance contract, or by way of an indemnity clause of, or incident to, another contract² where the contract grants such a right of indemnity or contribution in respect of the very circumstances in which the claimant has suffered the loss.³

Notes

1. Provided such a contract can be construed apart from the legislation: *Sims v Foster Wheeler Ltd* [1966] 1 WLR 769, CA; *Arthur White (Contractors) Ltd v Tarmac Civil Engineering Ltd* [1967] 1 WLR 1508.

2. See, for example, *Arthur White (Contractors) Ltd v Tarmac Civil Engineering Ltd* [1967] 1 WLR 1508; *Driver v William Willett (Contractors) Ltd* [1969] 1 All ER 665; *Gillespie Bros & Co Ltd v Roy Bowles Transport Ltd* [1973] QB 400; [1973] 1 All ER 193; [1972] 3 WLR 1003; *Sims v Foster Wheeler Ltd* [1966] 1 WLR 769, CA; *Florida Hotels Pty Ltd v Mayo* (1965) 113 CLR 588; 39 ALJR 50. See also *Wright v Tyne Improvement Comrs* [1968] 1 WLR 336, CA. Compare *Hadley v Droitwich Construction Co Ltd* [1967] 3 All ER 911; [1968] 1 WLR 37.
3. *Lambert v Lewis* [1981] 1 All ER 1185; [1981] 2 WLR 713, HL (approving *Hadley v Droitwich Construction Co Ltd* [1967] 3 All ER 911; [1968] 1 WLR 37 at 43 per Winn LJ, CA). Statutory provisions in relation to contribution supersede any rights to recover contribution, as distinct from indemnity, other than an express contractual right such as the right of joint contractors to recover contribution from each other. The legislation does not affect express or implied contracts providing for indemnity (see *Voli v Inglewood Shire Council* (1963) 110 CLR 74 at 100; [1963] Qd R 256; [1963] ALR 657; (1963) 37 ALJR 25) or any express contract regulating or excluding contribution provided any such contract would be enforceable if not for the legislation: see, for example, *Sims v Foster Wheeler Ltd* [1966] 1 WLR 769 (express contract determining rights of joint tortfeasors). See also EMPLOYMENT [165-1040]-[165-1070].

(f) REMEDIES

(i) Judicial Remedies

[415-215] **Damages** Compensatory damages must conform to the principle of *restitutio in integrum*, which requires that they put the plaintiff, in so far as monetary compensation can do so, into the position he or she would have been in had the tort not been committed.¹ This differs from the theory of compensation in contracts where compensatory damages aim to place the plaintiff in the position he or she would have been in had the contract been completed.² The attempt to restore the plaintiff to his or her original position by awarding compensatory damages carries through actions relating to personal injury,³ property damage,⁴ economic loss⁵ and injury to reputation.⁶ The general rule is that damages are assessed at the date of the breach, with an award of statutory interest (if available) compensating the plaintiff for not having received the damage at the date of breach.⁷

Nominal damages are awarded in recognition that a wrong has been done to the plaintiff where no injury has been occasioned by that wrong.⁸ It can be awarded in cases such as battery constituted by the least touching of the plaintiff⁹ or trespass to land that causes no damage to the property.¹⁰

Exemplary damages differ from ordinary damages in that while the object of ordinary damages is to compensate, the object of exemplary damages is to punish and deter. Exemplary damages can be awarded whenever it is necessary to teach a wrongdoer that tort does not pay.¹¹ Exemplary damages can be awarded in actions for defamation,¹² intimidation,¹³ conspiracy,¹⁴ deceit,¹⁵ trespass to land,¹⁶ false imprisonment¹⁷ and potentially negligence.¹⁸ However, a plaintiff will not be compensated for any loss that can be avoided by mitigation.¹⁹

Notes

1. *Livingstone v Rawyards Coal Co* (1880) LR 5 App Cas 25 at 39; 42 LT 334 per Lord Blackburn. See also DAMAGES.

2. See CONTRACT [110-11060].
3. *Todorovic v Waller* (1981) 150 CLR 402; 37 ALR 481; 56 ALJR 59. See also DAMAGES.
4. *Owners of Dredger Liesbosch v Owners of SS Edison* [1933] AC 449; (1933) 149 LT 49. See also DAMAGES.
5. *Butler v Egg and Egg Pulp Marketing Board* (1966) 114 CLR 185; [1966] ALR 1025; (1966) 40 ALJR 114. See also DAMAGES.
6. *Uren v John Fairfax & Sons Pty Ltd* (1966) 117 CLR 118 at 150; [1967] ALR 25 per Windeyer J (compensation by way of solatium rather than monetary recompense for harm measurable in money); *Rogers v Nationwide News Pty Ltd* (2003) 216 CLR 327 at 347-8; 201 ALR 184; [2003] HCA 52; BC200305225 per Hayne J. See DEFAMATION [145-2620]-[145-2845].
7. The rationale is that, although all losses occur at the time the injury is inflicted, this loss accrues to the plaintiff gradually over the pre-trial period and in many cases into the future; *Philips v Ward* [1956] 1 All ER 874 at 876-7; [1956] 1 WLR 471 per Denning LJ. See also DAMAGES.
8. *Baume v Commonwealth* (1906) 4 CLR 97 at 116; 13 ALR 22 per Griffith CJ (citing *Owners of SS Mediana v Owners of Lightship Comet (The Mediana)* [1900] AC 113 at 116; [1900-3] All ER Rep 126 per Halsbury LJ).
9. *Law v Wright* [1935] SASR 20 at 25 per Piper J. See also [415-345] (battery) and DAMAGES.
10. *Dehn v A-G* [1988] 2 NZLR 564 at 582-3 per Tipping J. See also [415-480]-[415-550] (trespass to land) and DAMAGES.
11. *Lamb v Cologno* (1987) 164 CLR 1 at 8; 74 ALR 188; 61 ALJR 549; (1987) Aust Torts Reports ¶80-124, HC of A. See also DAMAGES. As to the distinction between exemplary and aggravated damages see *Gray v Motor Accident Commission* (1998) 196 CLR 1 at 4-5; 158 ALR 485; [1998] HCA 70; BC9806067 per Gleeson CJ, McHugh, Gummow and Hayne JJ; *New South Wales v Ibbett* [2006] HCA 57; BC200610288 at [33]-[37].
12. *Uren v John Fairfax & Sons Pty Ltd* (1966) 117 CLR 118; [1967] ALR 25. See also DEFAMATION [145-2825]-[145-2840].
13. *Rookes v Barnard* [1964] AC 1129; [1964] 1 All ER 367. As to intimidation see [415-1575]-[415-1595].
14. *Williams v Hussey* (1959) 103 CLR 30; [1959] ALR 1383; (1959) 33 ALJR 269. As to conspiracy see [415-1600]-[415-1615].
15. *Musca v Astle Corp Pty Ltd* (1988) 80 ALR 251 at 269 per French J; *Archer v Brown* [1985] QB 401; [1984] 2 All ER 267 at 283; [1984] 3 WLR 350 per Pain J. As to deceit see [415-1620]-[415-1630].
16. *Schumann v Abbott* [1961] SASR 149; *Coles-Smith v Smith* [1965] Qd R 494 at 507. SC(QLD); *Johnstone v Stewart* [1968] SASR 142; *NL Petroleum (NSW) Pty Ltd v Caltex Oil (Aust) Pty Ltd* (1985) 155 CLR 448 at 471; 57 ALR 639; BC8501117; *Caprimo Pty Ltd v Gold Coast City Council* (1982) 53 LGRA 243; *Amstad v Brisbane City Council (No 1)* [1968] Qd R 334; (1968) 16 LGRA 372. As to trespass to land see [415-480]-[415-550].
17. *Vignoli v Sydney Harbour Casino* (2000) Aust Torts Reports ¶81-541; [1999] NSWSC 1113; BC9907659.
18. *Gray v Motor Accident Commission* (1998) 196 CLR 1 at 9-10; 158 ALR 485; [1998] HCA 70; BC9806067 per Gleeson CJ, McHugh, Gummow and Hayne JJ.
19. *Ardlethan Options Ltd v Easdown* (1915) 20 CLR 285 at 296 per Isaacs J.

[415-220] **Injunctions** Generally, injunctions are granted when damages are not an adequate remedy for the harm to the plaintiff.¹ A prohibitory injunction is issued against someone for the purpose of restraining that person from committing or repeating an act.²

Notes

1. *Taylor v Auto Trade Supply Ltd* [1972] NZLR 102. As to injunctions generally see EQUITY [185-1400], [185-1405], [185-1425].
2. See EQUITY [185-1400]-[185-1565].

[415-225] Statutory remedies Statutory remedies are available for harm caused by the commission of torts and include the workers' compensation legislation of the Commonwealth and each State and Territory which provides for 'no-fault' compensation for injury or death attributable to employment.¹ Workers' compensation will be denied where the injury is deliberately self-inflicted² and, unless death or serious and permanent disablement are suffered, where the injury is attributable to the worker's serious and wilful misconduct.³

Notes

1. (CTH) Safety, Rehabilitation and Compensation Act 1988; (CTH) Seafarers Rehabilitation and Compensation Act 1992
(ACT) Workers Compensation Act 1951
(NT) Work Health Act 1986
(NSW) Workers Compensation Act 1987
(QLD) Workers' Compensation and Rehabilitation Act 2003
(SA) Workers Rehabilitation and Compensation Act 1986
(TAS) Workers Rehabilitation and Compensation Act 1988
(VIC) Accident Compensation Act 1985
(WA) Workers' Compensation and Injury Management Act 1981.
See further WORKERS' COMPENSATION [450-40], [450-50].
Further examples of statutory remedies include motor accidents compensation legislation (see TRANSPORT [425-1500]-[425-1670]) and criminal injuries compensation schemes: see CRIMINAL LAW [130-17305] note 5.
2. (CTH) Safety, Rehabilitation and Compensation Act 1988 s 14(2); (CTH) Seafarers Rehabilitation and Compensation Act 1992 s 26(2)
(ACT) Workers Compensation Act 1951 s 82(2)
(NT) Work Health Act 1986 s 57(1)(a)
(NSW) Workers Compensation Act 1987 s 14(3)
(QLD) Workers' Compensation and Rehabilitation Act 2003 s 129
(TAS) Workers Rehabilitation and Compensation Act 1988 s 25(2)(a)(ii)
(VIC) Accident Compensation Act 1985 s 82(3).
There are no equivalent provisions in South Australia and Western Australia.
3. (CTH) Safety, Rehabilitation and Compensation Act 1988 s 14(3); (CTH) Seafarers Rehabilitation and Compensation Act 1992 ss 12, 26(3)
(ACT) Workers Compensation Act 1951 s 82(3)
(NT) Work Health Act 1986 s 57(1)(b)
(NSW) Workers Compensation Act 1987 s 14(2)
(QLD) Workers' Compensation and Rehabilitation Act 2003 s 130
(SA) Workers Rehabilitation and Compensation Act 1986 s 30B(2)(b)(i), 30B(3)
(TAS) Workers Rehabilitation and Compensation Act 1988 s 25(2)(a)(i)
(VIC) Accident Compensation Act 1985 s 82(4), 82(4A), 82(5)
(WA) Workers' Compensation and Injury Management Act 1981 s 22(c).
See further WORKERS' COMPENSATION [450-40], [450-50].

(ii) Self-redress

[415-230] Defence of person or property A person may act to protect himself or herself if he or she reasonably believes that the attack or threat of

[415-230]

Halsbury's Laws of Australia

another person will cause him or her death or serious injury.¹ This extends to acts committed in defence of relatives, friends or other persons where the circumstances are such that the person reasonably believes that the other is in danger.²

A person who is in possession of land or goods may use reasonable force to prevent interference with this possession.³

Notes

1. See [415-370].
2. See [415-370].
3. See [415-375].

[415-235] **Other remedies** Other remedies of self-redress, which can alternatively be characterised as defences to trespass,¹ include:

- (1) the use of reasonable force to retake goods which a tortfeasor has refused to return upon request;²
- (2) distress damage feasant, allowing a person to detain goods which are unlawfully on his or her land until that person is compensated for the wrong;³
- (3) the use of reasonable force by a person in possession of land to eject another who no longer has a right to remain there;⁴ and
- (4) abatement of nuisance, whereby an occupier who suffers a nuisance may act to remove or end the nuisance.⁵

Notes

1. As to defences to trespass to the person, including remedies of self-redress, see [415-360]-[415-390]. As to defences to false imprisonment, including remedies of self-redress, see [415-400]-[415-440]. As to defences to trespass to land, including remedies of self-redress, see [415-525]-[415-550].
2. See [415-465].
3. See [415-470].
4. See [415-535].
5. See [415-545].

(g) EXTINCTION OF LIABILITY

[415-240] **Contracting out** Tortious negligence can be excluded by contract terms or non-contractual disclaimers. The basis of this is that the plaintiff has, by express or implied agreement to the exclusion provision, bound himself or herself not to sue the negligent party.¹ For a defendant who is concurrently liable in tort or contract, any relevant term in the contract limiting or excluding the contractual liability will also be effective to limit or exclude the tortious liability.² However, such limitations are applied, if necessary, only after the defendant's proportion of responsibility has been determined.³ The workers' compensation legislation contains a prohibition against the contracting out of liability.⁴

Notes

1. See NEGLIGENCE [300-159].
2. *Coupland v Arabian Gulf Petroleum Co* [1983] 3 All ER 226; [1983] 1 WLR 1136, CA.
3. *Unsworth v Cnr for Railways* (1958) 101 CLR 73; [1958] Qd R 528; [1958] ALR 793.
4. (CTH) Safety, Rehabilitation and Compensation Act 1988 s 112
 (ACT) Workers Compensation Act 1951 s 13
 (NT) Work Health Act 1986 s 186A
 (NSW) Workplace Injury Management and Workers Compensation Act 1998 s 234
 (QLD) Workers' Compensation and Rehabilitation Act 2003 s 110
 (SA) Workers Rehabilitation and Compensation Act 1986 s 119
 (TAS) Workers Rehabilitation and Compensation Act 1988 s 31
 (VIC) Accident Compensation Act 1985 s 97(4)
 (WA) Workers' Compensation and Injury Management Act 1981 s 301.
 See also WORKERS' COMPENSATION [450-80].

[415-245] Limitation The general limitation period for actions in tort is six years in all jurisdictions except the Northern Territory, where the limitation period is three years.¹ This is subject to whether a person having a right of action is under a legal or physical disability² or an extension of the limitation period.³

Notes

1. (ACT) Limitation Act 1985 s 11(1)
 (NT) Limitation Act 1981 s 12(1)(b)
 (NSW) Limitation Act 1969 s 14(1)(b)
 (QLD) Limitation of Actions Act 1974 s 10(1)(a)
 (SA) Limitation of Actions Act 1936 s 35(c)
 (TAS) Limitation Act 1974 s 4(1)(a)
 (VIC) Limitation of Actions Act 1958 s 5(1)(a)
 (WA) Limitation Act 2005 s 131.
2. See LIMITATION OF ACTIONS.
3. See LIMITATION OF ACTIONS.

[415-250] Waiver The term 'waiver' is used to describe a decision by a victim of a tort to elect to seek restitution.¹ It is misleading because such a decision no longer indicates a waiver of substantive rights² and the plaintiff is free at any time before signing judgment to abandon the claim in restitution and sue in tort.³ An action in restitution will not bar proceedings in tort on the same facts against another wrongdoer unless the plaintiff has obtained satisfaction of the judgment.⁴ Once the judgment in restitution is signed, the claim against the defendant in tort is barred.⁵ If a plaintiff has sued in tort and the judgment is for the defendant, the judgment is a bar to an action in restitution on the same facts.⁶

Notes

1. As to the distinction between suing in tort and restitution see [415-25]. As to waiver see also RESTITUTION [370-3760].
2. *United Australia Ltd v Barclays Bank Ltd* [1941] AC 1 at 19 per Viscount Simon LC, at 28-9 per Lord Atkin, at 34-5 per Lord Romer; [1940] 4 All ER 20. Waiver does not amount to an assertion of inconsistent rights regarding a claim founded on

[415-250]

Halsbury's Laws of Australia

restitution and one founded on tort: *Suttons Motors Pty Ltd v Campbell* (1956) SR (NSW) 304; 73 WN (NSW) 212, SC(NSW), Full Court. Compare *Rinbar Pty Ltd (in liq) v Nichevich* (1987) 11 ACLR 757; 5 ACLC 957, SC(WA).

3. For example, where the plaintiff has sued unsuccessfully in conversion, a further suit in restitution is barred: *Hitchen v Campbell* (1772) 2 Wm Bl 827; 96 ER 457. The plaintiff is only required to elect between remedies at judgment: see, for example, *Hogan v Pacific Dunlop Ltd* (1988) 83 ALR 403 at 432; 12 IPR 225; (1988) AIPC ¶90-530; (1988) ATPR ¶40-914 per Gummow J, Fed C of A. Failure to 'waive' a tort does not preclude a subsequent claim in restitution: *Re Simms; Ex parte Trustec* [1934] 1 Ch 1, CA. As to the waiver of an action for conversion see *Lamine v Dorrell* (1701) 2 Ld Raym 1216; 92 ER 303; *Comité des Assureurs Maritimes v Standard Bank of South Africa* (1883) Cab & El 87; *Chesworth v Farrar* [1967] 1 QB 407 at 416-17; [1966] 2 All ER 107; [1966] 2 WLR 1073 per Davies J.
4. It is satisfaction under judgment that leads to the bar, not the mere bringing of an action: *United Australia Ltd v Barclays Bank Ltd* [1941] AC 1; [1940] 4 All ER 20. See also *Rice v Reed* [1900] 1 QB 54 at 67 per Vaughan Williams LJ, CA.
5. *United Australia Ltd v Barclays Bank Ltd* [1941] AC 1; [1940] 4 All ER 20; *Suttons Motors Pty Ltd v Campbell* (1956) SR (NSW) 304; 73 WN (NSW) 212, SC(NSW), Full Court; *Mahesan (T) s/o Thambiah v Malaysia Government Officers' Co-op Housing Society Ltd* [1979] AC 374; [1978] 2 All ER 405; [1978] 2 WLR 444, PC.
6. For example, where the plaintiff has sued unsuccessfully in conversion, a further suit in restitution is barred: *Hitchen v Campbell* (1772) 2 Wm Bl 827; 96 ER 457.

[415-255] **Release** Release is usually reserved for surrenders by deed which will discharge the cause of action even if there is no consideration.¹ Release may discharge tortious liability, whether it is given before or after the commencement of the action.²

Notes

1. *Phillips v Clagett* (1843) 11 M & W 84; 152 ER 725.
2. *Apley Estates Co v De Bernales* [1946] 2 All ER 338.

[415-260] **Accord and satisfaction** Tortious liability can be extinguished by agreement for valuable consideration between the injured party and the tortfeasor which is termed 'accord and satisfaction'.¹ The agreement is the 'accord' and 'satisfaction' is the consideration provided by the tortfeasor, which may constitute a promise of a future performance or performance itself.² Whether the cause of action will be discharged by mere agreement and before that agreement has been performed is a matter of interpretation of the agreement, although courts lean in favour of regarding performance by the defendant in accordance with the contract as necessary.³

Notes

1. *Peytoe's Case* (1611) 9 Co Rep 77b; 77 ER 847. As to the position in relation to multiple tortfeasors see *Jameson v Central Electricity Generating Board* [2000] 1 AC 455 at 472; [1999] 1 All ER 193; [1999] 2 WLR 141 per Lord Hope of Craighead; *Baxter v Obacelo Pty Ltd* (2001) 205 CLR 635 at 656-7 per Gleeson CJ and Callinan J; 184 ALR 616; [2001] HCA 66; BC200107042.

2. The satisfaction may be either executed or executory: *British Russian Gazette and Trade Outlook Ltd v Associated Newspapers Ltd* [1933] 2 KB 616; [1933] All ER Rep 320 per Scutton LJ, CA.
3. *Scott v English* [1947] VLR 445 at 452-3 per Fullagar J.

[415-265] Judgment There are two effects of a judgment. First, the original cause of action is terminated by its merger in the judgment.¹ Second, the judgment bars any further proceedings in respect of successive actions on the same facts.²

Notes

1. *Buckland v Johnson* (1854) 15 CB 145; 139 ER 375.
 2. *Fetter v Beale* (1701) Holt KB 12; 90 ER 905 sub nom *Fitter v Veal* (1701) 12 Mod Rep 542; 88 ER 1506.
-

405 — TAXATION AND
REVENUE

CONTENTS • TABLES

410 — TIME

415 — TORT

[The next page is 787,121]

(2) TORTS DERIVED FROM TRESPASS

CONTENTS

	<i>Para</i>
(A) INTRODUCTION	
Classification	[415-320]
Proof of injury generally not necessary	[415-325]
Interference must be direct consequence	[415-330]
Intention or lack of care required	[415-335]
Limitation of actions	[415-340]
(B) TRESPASS TO THE PERSON	
(i) Battery and Assault	
(A) Liability	
Battery	[415-345]
Contact must be offensive	[415-350]
Assault	[415-355]
(B) Defences	
Consent	[415-360]
Necessity	[415-365]
Acting in defence of the person	[415-370]
Acting in defence of one's property	[415-375]
Re-entry on land	[415-380]
Retaking goods	[415-385]
Discipline	[415-390]
(ii) False Imprisonment	
(A) Liability	
Total restraint of the person	[415-395]
(B) Defences	
Consent	[415-400]
Necessity	[415-405]
Discipline	[415-410]
Arrest	[415-415]
Execution of process	[415-420]
Prison authorities	[415-425]
Statutory authority	[415-427]
Judicial acts	[415-430]
Parliamentary privilege	[415-435]

405 — TAXATION AND REVENUE

CONTENTS • TABLES

410 — TIME

415 — TORT

	Para
Armed forces	[415-440]
(C) TRESPASS TO GOODS	
(i) Liability	
Interference with possession	[415-445]
Actual or constructive possession required	[415-450]
(ii) Defences	
Consent	[415-455]
Necessity	[415-460]
Re-entry on land	[415-465]
Distress damage feasant	[415-470]
Other defences	[415-475]
(D) TRESPASS TO LAND	
(i) Liability	
(A) Actions which Constitute Trespass	
Unjustified entry	[415-480]
Exceeding licence	[415-485]
Continuing trespass	[415-490]
(B) Subject Matter	
Land and subsoil	[415-495]
Airspace	[415-500]
(C) Persons who may Sue	
Person in possession	[415-505]
Person with right to possession	[415-510]
Employer and principal	[415-515]
Co-owners	[415-520]
(ii) Defences	
Consent	[415-525]
Necessity	[415-530]
Ejection and re-entry on land	[415-535]
Entry to retake goods	[415-540]
Abatement of nuisance	[415-545]
Lawful authority	[415-550]

(a) INTRODUCTION

[415-320] **Classification** The various torts derived from the action for trespass protect three distinct interests:

- (1) bodily integrity;
- (2) possession of goods; and
- (3) rights in the possession of land.

Protection of bodily integrity is provided by the separate torts of battery,¹ assault² and wrongful or false imprisonment.³ The possession of goods finds protection in the tort of trespass to goods.⁴ The right to possession of land is protected by the action for trespass to land.⁵

Notes

1. See [415-345].
2. See [415-355].
3. See [415-395].
4. See [415-445], [415-450]. Intentional interference with the right to possession of goods may also constitute the torts of conversion and detinue: see PERSONAL PROPERTY [315-585]-[315-650] (conversion), [315-565]-[315-580] (detinue).
5. See [415-480]-[415-520].

[415-325] Proof of injury generally not necessary Unlike other torts, most of the torts derived from trespass may form the basis of an action even though the plaintiff has suffered no physical injury or material damage to property, that is, they are actionable per se.¹ An action for trespass to land will lie against a defendant who, without the plaintiff's permission or licence, so much as sets foot on the plaintiff's land,² unless the defendant's entry is justified in some way.³ To confine a person within an enclosed space against that person's will, although it causes no physical hurt, may constitute false imprisonment,⁴ just as to lay a hand on another without the latter's consent may be actionable as battery.⁵ There may be an action for trespass to goods, despite there being no damage, if the plaintiff is wrongfully denied possession of the goods⁶ or if they are moved without the owner's consent.⁷ However, it is doubtful whether merely touching another's chattels, without moving them or harming them, will constitute a tort.⁸

Notes

1. Actions in trespass may be distinguished from torts based on the other traditional form of action on the case, which require that the plaintiff have suffered damage or injury: see [415-10].
2. *Dumont v Miller* (1873) 4 AJR 152; *Plenty v Dillon* (1991) 171 CLR 635 at 639; 98 ALR 353 at 355; 65 ALJR 231 per Mason CJ, Brennan and Toohey JJ. See also *Coco v R* (1994) 179 CLR 427 at 435; 120 ALR 415; 68 ALJR 401; 72 A Crim R 32 per Mason CJ, Brennan, Gaudron and McHugh JJ; *Lincoln Hunt Australia Pty Ltd v Willesee* (1986) 4 NSWLR 457 at 460-1; 62 ALJR 216 per Young J; *Lippl v Haines* (1989) 18 NSWLR 620; 47 A Crim R 148, CA(NSW). The plaintiff may be entitled to substantial damages to vindicate his or her right to exclusive use and occupation of the land: *Plenty v Dillon* (1991) 171 CLR 635 at 645 per Mason CJ, Brennan and Toohey JJ, at 654-5 per Gaudron and McHugh JJ; 98 ALR 353; 65 ALJR 231. See also DAMAGES. If an award of damages is not an adequate remedy, an injunction may be sought: *Lincoln Hunt Australia Pty Ltd v Willesee* (1986) 4 NSWLR 457; 62 ALJR 216; *Church of Scientology Inc v Transmedia Productions Pty Ltd* (1987) Aust Torts Reports ¶80-101; BC8701359; *Emcorp Pty Ltd v Australian Broadcasting Corp* [1988] 2 Qd R 169.
3. *Halliday v Nevill* (1984) 155 CLR 1 at 10-11; 57 ALR 331 at 335-6; 59 ALJR 124 per Brennan J; *Coco v R* (1994) 179 CLR 427; 120 ALR 415; 68 ALJR 401; 72 A Crim R 32. As to the grounds for justification see [415-525]-[415-550].

[415-325]

4. *Myer Stores Ltd v Soo* [1991] 2 VR 597; (1990) Aust Torts Reports ¶81-077; *Roddan v Corrections Corp of Australia Pty Ltd* [2001] WASC 196; BC200104384 at [27] per Bredmeyer M (unauthorised detention for a short period described as a 'serious wrong'). Substantial damages may be awarded for this and other trespasses to the person to compensate for the plaintiff's loss of dignity, disgrace and humiliation: *Myer Stores Ltd v Soo* [1991] 2 VR 597 at 603; (1990) Aust Torts Reports ¶81-077 per Murphy J. See also DAMAGES.
5. *Burton v Davies* [1953] St R Qd 26 at 30; (1952) 27 ALJ 388 per Townley J; *Battiano v Lagana* [1992] 2 Qd R 234.
6. *Penfolds Wines Pty Ltd v Elliott* (1946) 74 CLR 204 at 214-15; 47 SR (NSW) 158; [1946] ALR 517 per Latham CJ; *Arthur v Anker* [1997] QB 564 at 571; [1996] 3 All ER 783 at 787; [1996] 2 WLR 602 at 606 per Bingham MR, CA; *Vine v Waltham Forest London Borough Council* [2000] 4 All ER 169 at 175; [2000] 1 WLR 2383 per Roch LJ, CA; *Demers v Destosier* [1929] 3 DLR 401. SC(Alta)
7. *Kirk v Gregory* (1876) 1 Ex D 55; 45 LJQB 186; 34 LT 488; *Inland Revenue Commissioners v Rossminster Ltd* [1980] AC 952 at 1011; [1980] 1 All ER 80 at 93; [1980] 2 WLR 1 per Lord Diplock.
8. *Wilson v Marshall* 1982 Tas R 287 at 299-300 per Cox J; *Everitt v Martin* [1953] NZLR 298 at 302 per Adams J.

[415-330] **Interference must be direct consequence** In an action for trespass it is essential that the interference of which the plaintiff complains is an immediate and direct result of the defendant's act, as distinct from a consequential or indirect result.¹ Directness, in this sense, does not require physical contact by the defendant with the plaintiff's person or property. It is sufficient if the defendant's act sets in train an unbroken series of consequences which result in the interference complained of by the plaintiff.²

Notes

1. *Scott v Shepherd* (1773) 2 Wm Bl 892; 96 ER 525. This may be contrasted to actions on the case: [415-10].
2. *Hillier v Leitch* [1936] SASR 490 at 494 per Cleland J. See also *Platt v Nutt* (1988) 12 NSWLR 231 at 245 per Clarke JA, CA(NSW). So, for instance, if A, B and C are taking part in a motorcycle race and A swerves, colliding with B who as a result collides with C, who is thrown to the ground, C has an action in battery against A: *Hillier v Leitch* [1936] SASR 490; *Platt v Nutt* (1988) 12 NSWLR 231 at 246 per Clarke JA, CA(NSW). It would also be battery to fire a pistol so close to the plaintiff's face as to burn him or her: *R v Hamilton* (1891) 12 LR (NSW) L 111 at 114; 8 WN (NSW) 9 per Windeyer J. If, however, A loses control of his motorcycle, which A leaves lying in the road, and C subsequently collides with the fallen machine and suffers injury, it is unlikely that C would have an action in trespass against A: compare the examples used to illustrate the difference between direct and consequential interference in *Scott v Shepherd* (1773) 2 Wm Bl 892 at 894-5; 96 ER 525 at 526 per Blackstone J and *Admiralty Commissioners v Owners of SS Amerika* [1917] AC 38 at 46-7; [1916-17] All ER Rep 177 per Lord Parker. As to the requirement of directness in the tort of false imprisonment see further [415-395] note 2.
Similarly, if A were to give poisoned meat to B's dogs, who eat it and die, B may sue A for trespass to goods, but an action in trespass would not lie if A puts the poisoned meat on public land and B's dogs later come upon the meat and are killed by eating it: *Hutchins v Maughan* [1947] VLR 131; [1947] ALR 201. See further [415-445]. As to what constitutes directness, for this purpose, in the case of trespass to land see [415-480] note 3.

[415-335] Intention or lack of care required In an action derived from trespass, the act complained of must have been done either intentionally or with a want of due care.¹ In the case of trespass to the person occurring otherwise than on a public thoroughfare, the onus is on the defendant to prove an absence of intent or carelessness on his or her part.² It appears that a defendant to an action for trespass to goods or land bears a similar onus.³ However, if the plaintiff alleges trespass to the person arising out of a traffic accident on a public thoroughfare, it is he or she who bears the onus of proving the defendant's intent or want of care.⁴

Notes

1. *Blacker v Waters* (1928) 28 SR (NSW) 406 at 409-10 per Street CJ (trespass to person); *Exchange Hotel Ltd v Murphy* [1947] SASR 112 at 117 per Reed J (trespass to person); *Kruber v Grzesiak* [1963] VR 621 at 622-3 per Adam J (trespass to person); *McHale v Watson* (1964) 111 CLR 384 at 388; [1965] ALR 788; BC6400440 per Windeyer J (affirmed on other grounds *McHale v Watson* (1966) 115 CLR 199; [1966] ALR 513; (1966) 39 ALJR 459) (trespass to person); *National Coal Board v JE Evans & Co (Cardiff) Ltd* [1951] 2 KB 861; [1951] 2 All ER 310, CA (trespass to goods); *Nickells v Mayor, Aldermen, Councillors and Citizens of the City of Melbourne* (1938) 59 CLR 219 at 225; [1938] ALR 154; (1938) 11 ALJ 568 per Dixon J (trespass to land); *Public Transport Commission (NSW) v Perry* (1977) 137 CLR 107 at 132; 14 ALR 273 at 293-4; 51 ALJR 620 per Gibbs J (trespass to land); *League Against Cruel Sports Ltd v Scott* [1986] 1 QB 240 at 251-2; [1985] 2 All ER 489 at 494 per Park J (trespass to land).
Where the plaintiff suffers personal injury, the same set of facts may give rise to actions both in trespass (battery) and in negligence: *Elliott v Barnes* (1951) 51 SR (NSW) 179; 68 WN (NSW) 133; *Williams v Milotin* (1957) 97 CLR 465; [1957] ALR 1145; BC5700520. Compare *Hackshaw v Shaw* (1984) 155 CLR 614 at 667-8; 56 ALR 417 at 456; BC8400458 per Deane J.
2. *Blacker v Waters* (1928) 28 SR (NSW) 406; *McHale v Watson* (1964) 111 CLR 384; [1965] ALR 788; BC6400440; *Tsouvala v Bini* [1966] SASR 157. See, however, *Hackshaw v Shaw* (1984) 155 CLR 614 at 619; 56 ALR 417 at 420; BC8400458 per Gibbs CJ (onus should be on the plaintiff); *Platt v Nutt* (1988) 12 NSWLR 231 at 240 per Kirby P, CA(NSW) (reserved decision on issue; considered that the onus should be on the plaintiff).
3. *Bell Canada v Bannermount Ltd* [1973] 2 OR 811; (1973) 35 DLR (3d) 367, CA(Ont); *Bell Canada v Cope (Sarnia) Ltd* (1980) 11 CCLT 170, SC(Ont) (affirmed *Bell Canada v Cope (Sarnia) Ltd* (1980) 119 DLR (3d) 254, CA(Ont)) (trespass to goods).
4. *Venning v Chin* (1974) 10 SASR 299 (affirmed on other grounds *Chin v Venning* (1975) 49 ALJR 378 at 379 per Gibbs J, HC of A); *West v Peters* (1976) 18 SASR 338 at 346-7 per Hogarth J (affirmed *West v Peters* (1976) 18 SASR 338, SC(SA), Full Court); *Lord v Nominal Defendant* (1980) 24 SASR 458, SC(SA), Full Court.

[415-340] Limitation of actions In all jurisdictions except Western Australia, the relevant statutes provide that the limitation period for actions in trespass is generally the same as that for other actions in tort.¹ In Western Australia, the limitation period after the accrual of the cause of action is three years for actions founded on trespass to the person² and six years for most other tort actions including those based on trespass to land or goods.³

Notes

1. (ACT) Limitation Act 1985 s 11
(NT) Limitation Act 1981 s 12