# Contents

PREFACE V ABBREVIATIONS XXI TABLE OF STATUTES XXIII LIST OF CASES XXIX

# PART I INTRODUCTION

# CHAPTER 1 GENERAL OBSERVATIONS 3

- SECTION 1. DIFFICULTY IN ARRIVING AT A DEFINITION OF TORTS 3
- SECTION 2. ISSUES COMMON TO ALL TORTS 4
- SECTION 3. THE VARIOUS INTERESTS PROTECTED BY THE LAW OF TORTS 5
  - Intentional invasion of personal and proprietary interests 5
  - Interests in economic relations, business and trading interests 5
  - Interests in intellectual property 6
  - Negligent interference with personal proprietary and economic interests 6
  - Further protection of personal and proprietary interests 6
  - Reputation 6
  - G. Due process 7
  - H. Miscellaneous interests 7

# SECTION 4. SOME CONSEQUENCES OF THIS EMPHASIS ON THE INTERESTS PROTECTED 7

- A. A law of tort or a law of torts? 7
- B. Malice or motive 7

#### SECTION 5. 'GHOSTS FROM THE PAST' 8

Forms of Action 8

# SECTION 6. GENERAL ISSUES AND THE LAW OF TORTS 9

- A. Conflict between certainty and justice 9
- Judicial caution in respect of non-material harms 9
- The judges and laissez-faire 9
- Limits of the effectiveness of the law of torts 10
- E. Loss distribution 10
- F. Economics and law 11
- G. The future 11

# PART II INTENTIONAL INVASIONS OF INTERESTS IN PERSON AND PROPERTY

#### CHAPTER 2 INTENTIONAL TORTS TODAY 15

- SECTION 1. TRESPASS AND NEGLIGENCE 15
- SECTION 2. INTENTION AND TRESPASS 17
- SECTION 3. RELEVANCE OF TRESPASS TODAY 19

#### CHAPTER 3 INTENTIONAL TORTS TO THE PERSON 21

# SECTION 1. BATTERY 21

- A. State of mind of the defendant 21
- No consent by the plaintiff 22 The character of the act of the defendant 23
- Damages 24

# viii Contents

#### SECTION 2. ASSAULT 25

A. The character of the defendant's conduct 25

SECTION 3. INTENTIONAL PHYSICAL HARM OTHER THAN TRESPASS TO PERSON 26

SECTION 4. FALSE IMPRISONMENT 27

A. State of mind 28

B. Character of the act 28

C. Knowledge of the plaintiff 30

- Who is liable, the policeman or the aggreived defendant who calls in the policeman 31
- Damages 32

SECTION 5. OTHER FORMS OF COMPENSATION 33

#### CHAPTER 4 GOODS 34

SECTION 1. INTRODUCTION 34

SECTION 2. CONVERSION 36

A. Interest of the plaintiff 37

(1) Bailment 37

(2) Lien and pledge 38

(3) Sale 39

- (4) Licensee 40
- (5) Finder 40
- (6) Jus Tertii 41

The subject matter 42

State of mind of the defendant 43

Acts of conversion 44

(1) Taking goods or dispossessing 44

(2) Destroying or altering 44

(3) Using 45

(4) Receiving 45

Exceptions to the principle that receiving is conversion 46

The state of the s

- (5) Disposition without delivery 47
- (6) Disposition and delivery 48

(7) Misdelivery by carrier 49

(8) Refusal to surrender on demand 50

(9) Goods lost or destroyed 51

(10) Residual acts amounting to a conversion 51

Conversion as between co-owners 52

- Remedies: Damages 52
- Remedies: other forms of relief 57

Limitation of actions 58

#### SECTION 3. TRESPASS TO GOODS 59

Forms of trespass 59

- Character of the act of the defendant 59
- State of mind of the defendant 60

D. The interest of the plaintiff 61

- Damages 62
  - (1) Measure 62
  - (2) Trespass ab Initio 63

Section 4. Residual Torts 63

#### CHAPTER 5 LAND 65

SECTION 1. TRESPASS 65

- A. Types of acts 65
- Subject matter 68
- State of mind of the defendant 69
- The interest of the plaintiff in the land 69

Damages 72

SECTION 2. ACTIONS BY REVERSIONERS 73

# CHAPTER 6 DEFENCES TO INTENTIONAL TORTS TO THE PERSON AND PROPERTY 74

## SECTION 1. MISTAKE AND INEVITABLE ACCIDENT 74

A. Mistake as such is no defence 74

B. Inevitable accident 74

# SECTION 2. CONSENT 75

A. Distinguished from assumption of risk 75

B. What constitutes consent 75

C. Consent to medical treatment 77

D. Revocation of licences 78

SECTION 3. CONTRIBUTORY NEGLIGENCE 79

SECTION 4. SELF-DEFENCE 79

SECTION 5. DEFENCE OF THE PERSON OF ANOTHER 80

SECTION 6. DEFENCE OF ONE'S PROPERTY 80

SECTION 7. DEFENCE OF THE PROPERTY OF ANOTHER 82

SECTION 8. PREVENTING CRIME 83

SECTION 9. NECESSITY 83

A. Distinguished from defence of property 83

B. Scope 83

(1) Private necessity 83

(2) Public necessity 84

# SECTION 10. DISCIPLINE 85

A. Children 86

(1) By parents 86

(2) By schoolteachers and others responsible for their training and education 86

B. Passengers in public transport 87

# SECTION 11. ARREST, SEARCH AND SEIZURE 87

A. ARREST 88

(1) By a policeman with a warrant 88

(2) Arrest without warrant 88

B. Reasonable cause 89

C. Manner of arrest 90

D. Entry, search and seizure 92

SECTION 12. EXECUTION OF PROCESS 93

SECTION 13. STATUTORY AUTHORITY 94

SECTION 14. JUDICIAL ACTS 95

SECTION 15. ACTS CONNECTED WITH PARLIAMENTARY PROCEEDINGS 95

SECTION 16. EXECUTIVE ACTS 96

A. Act of State 96

B. Prerogative 96

SECTION 17. AN ACT WHICH IS ALSO A CRIME 96

A. Assault and battery 96

SECTION 18. PLAINTIFF A WRONGDOER 97

SECTION 19. SELF-HELP REMEDIES 98

#### PART III INTENTIONAL INTERFERENCE WITH ECONOMIC INTERESTS

#### CHAPTER 7 INTERFERENCE WITH ECONOMIC INTERESTS 103

SECTION 1. 'RIGHTS' AND ECONOMIC INTERESTS 103

SECTION 2. FREE COMPETITION; UNFAIR COMPETITION 105

SECTION 3. ECONOMIC LOSS AND NEGLIGENCE 106

SECTION 4. ECONOMIC TORTS AND ECONOMIC REGULATION 107

#### CHAPTER 8 FALSE REPRESENTATIONS 108

#### SECTION 1. DECEIT 108

A. False representation 108

B. Knowledge of falsity 109

#### x Contents

- C. Intention to deceive 110
- D. Reliance of the plaintiff 111
- E. Damage 112
- F. Agency 113
- G. Statute of Frauds Amendment Act 1828 114
- H. Misrepresentation Act 1967 115

#### SECTION 2. PASSING OFF—UNFAIR TRADING 116

- A. Misrepresentation 117
  - (1) Marketing a product as that of the plaintiff 117
  - (2) Using a plaintiff's name 117
  - (3) Using a plaintiff's trade name 118
  - (4) Using plaintiff's trade mark 119
  - (5) Imitating appearance of plaintiff's goods 119
  - (6) Selling inferior goods of plaintiff, thereby misleading purchaser 120
  - (7) False advertising 120
  - (8) Cashing in on goodwill 121
- B. In the course of trade 122
- C. A representation to customers or ultimate customers 122
- D. Calculated to injure goodwill 123
- E. Proof of damage 124
- F. Defences 124
- G. Remedies 124
  - (1) Injunction 124
  - (2) Damages 125
- H. Unfair trading and passing off 125

# SECTION 3. INJURIOUS FALSEHOOD 126

- A. Interests protected 126
- B. Disparagement 127
- C. False statement 128
- D. Publication 128
- E. Malice 128
- F. Damage 130
- G. Defences 131
- H. Injurious falsehood and defamation 131

#### CHAPTER 9 UNLAWFUL INTERFERENCE WITH TRADE 132

#### SECTION 1. CONSPIRACY 132

- A. Combination 133
- B. The purpose of the defendants 134
- C. Justification 136

#### SECTION 2. INDUCING BREACH OF CONTRACT 136

- A. Kinds of contract 137
- B. Breach of contract 137
- C. Knowledge of the contract 139
- D. 'Inducement' and 'interference' 139
  - (1) Direct persuasion or procurement 140
  - (2) Direct intervention 141
  - (3) Indirect procurement 141
  - (4) Inconsistent dealings 142
- E. State of mind of the defendant 143F. Damage 144
- G. Justification 144
- H. Remedies 145
  - . Remedies 145 (1) Damages 145
    - (2) Injunction 146

# SECTION 3. UNLAWFUL INTERFERENCE WITH TRADE 146

- A. Intimidation: Unlawful threats 147
- B. Unlawful acts 147
- SECTION 4. ECONOMIC TORTS AND TRADE UNIONS 150

# CHAPTER 10 INTELLECTUAL PROPERTY INTERESTS 151

SECTION 1. COPYRIGHT, PATENTS AND SIMILAR INTERESTS 151

# SECTION 2 BREACH OF CONFIDENCE 152

- A. The obligation of confidentiality 152
- B. Public interest 153
- C. Remedies 154

# PART IV NEGLIGENT INVASIONS OF INTERESTS IN PERSON AND PROPERTY AND ECONOMIC INTERESTS

# CHAPTER 11 DUTY OF CARE I—THE NEIGHBOUR PRINCIPLE 157

- SECTION 1. INTRODUCTION 157
- SECTION 2. PROXIMITY AND POLICY 158
  - A. Is there any principle on which duty is based, or are there merely categories of duty-situations? 158
    - (1) Duty-situations 158
    - (2) Creation of new duties 160
    - (3) The unforeseeable plaintiff 163
- SECTION 3. OMISSIONS 164
- SECTION 4. THE EXERCISE OF STATUTORY POWERS 165
- SECTION 5. DUTY AND THIRD PARTIES 169
- SECTION 6. DUTIES IN TORT AND CONTRACT 171

# CHAPTER 12 DUTY OF CARE II: RECOGNISED HARM 174

- SECTION 1. INTRODUCTION 174
- SECTION 2. HARM TO PERSONS 175
  - A. Duty to rescuers 175
  - B. Duty to the unborn 176
  - C. Nervous shock 177
- SECTION 3. POLICY AND PUBLIC INTEREST 181
- SECTION 4. PHYSICAL DAMAGE TO PROPERTY 183
- SECTION 5. ECONOMIC LOSS 185
  - A. Statements and 'special relationships' 185
  - B. Statements and Donoghue v Stevenson 188
  - C. Economic loss and negligent conduct 190

# CHAPTER 13 BREACH OF DUTY 194

- SECTION 1. THE STANDARD OF CARE 194
  - A. Law, not fact 194
  - B. The guiding principles of law 196
    - (1) The likelihood of harm 196
    - (2) The seriousness of the risk and the risk of serious injury 196
    - (3) The utility of the act of the defendant 196
    - (4) The cost of avoiding the harm 197
  - C. The relation between standard of care and duty 198

# SECTION 2. THE REASONABLE MAN 201

- A. Children 202
- B. Other categories of persons 202
- C. Intelligence 203
- D. Knowledge 204
- E. Skill 205
- F. The circumstances of the plaintiff 206
- G. Degrees of care 207
- H. Reasonable anticipation 208
- I. Foreseeable acts of third parties 208
- J. General practice of the community 209

# SECTION 3. PROFESSIONAL NEGLIGENCE 210

- A. The background 210
- B. Duty and breach 211
- C. The reasonable 'professional' 211
- D. Patients and doctors 212

SECTION 4. PROVING NEGLIGENCE 213

A. Law and fact 213

B. Onus of proof 215

C. Res Ipsa loquitur 215

(1) 'The doctrine is dependent on the absence of explanation' 216

(2) The harm must be of such a kind that it does not ordinarily happen if proper care is being taken 217

(3) The instrumentality causing the accident must be within the exclusive control of the defendant 218

(a) The meaning of 'control' 218

(b) Where one of two or more persons is in control 218

D. The effect of res ipsa loquitur 220

# CHAPTER 14 CAUSATION: REMOTENESS OF DAMAGE 223

SECTION 1. ANALYSIS OF CAUSAL CONCEPTS 223

SECTION 2. EVIDENCE OF CAUSATION 224
SECTION 3. REMOTENESS OF DAMAGE 225

A. Re Polemis and The Wagon Mound 226

B. Foreseeable type of harm 227

C. The means by which the harm was caused 228

D. Measurement of damage 229 Existing physical states 231

F. Ulterior harm 232

SECTION 4. CONCURRENT CAUSES 235

SECTION 5. CONSECUTIVE CAUSES 236

# CHAPTER 15 DEFENCES TO NEGLIGENCE 238

SECTION 1. CONTRIBUTORY NEGLIGENCE 238

A. Risk 238

B. That the negligence was contributory 239

C. The negligence of the plaintiff 243

D. The scope of the Law Reform (Contributory Negligence) Act 1945 245

E. Apportionment of damages 247

SECTION 2. VOLUNTARY ASSUMPTION OF RISK 248

A. Is assumption of risk properly regarded as a defence? 248 B. When the plaintiff is deemed to have assumed the risk 250

(1) Suits by workmen against employers 250

(2) Other cases 252

C. Voluntary act 253

SECTION 3. EXCLUDING LIABILITY 254

# CHAPTER 16 LIABILITY FOR DEFECTIVE PREMISES 257

SECTION 1. OCCUPIERS' LIABILITY 257

A. Liability to visitors 257

(1) Who is an occupier? 257

(2) Occupiers' Liability Act 1957 258

(a) Scope 258

(i) Visitors 258

(ii) Against what risks the Act affords protection 259

(b) Common duty of care 261

(i) General principles 261

(ii) Warning 262

(iii) Assumption of risk 263

(iv) Visitor's knowledge of the danger 263

(v) Contributory negligence 263

(vi) Liability for independent contractors 264

(c) Some special cases within the Act 264

(i) Fixed or movable structures 264

(ii) Damage to property 265

(iii) Liability in contract 266

(d) Exclusion of liability: the 1957 Act 267

(e) Exclusion of liability: the Unfair Contract Terms Act 1977 268

B. Liability to uninvited entrants 270

C. Common law liability and activities on land 271

D. Common law rules and movable structures 272

E. Liability to those outside the premises 273
To those on adjoining premises 273

# SECTION 2. LIABILITY OF NON-OCCUPIERS 275

A. The Defective Premises Act 1972 275

B. Builders and contractors who are not landowners 276

C. Landowners 277

D. Professional advisers 278

E. Local authorities 278

F. Landlords 279

# CHAPTER 17 EMPLOYERS' LIABILITY TO THEIR EMPLOYEES 281

- A. A personal, non-delegable duty 281
- B. The provision of competent staff 284
- C. Adequate premises and plant 284
- D. A proper system of working 285

# PART V INVASIONS OF INTERESTS IN PERSON AND PROPERTY WHERE INTENTIONAL OR NEGLIGENT CONDUCT NEED NOT ALWAYS BE PROVED

#### CHAPTER 18 PRODUCT LIABILITY 291

SECTION 1. INTRODUCTION 291

SECTION 2. CONSUMER PROTECTION AND THE CHANGING COMMON LAW 292

A. The limitations of contract 292

B. The action for negligence 294

(1) The narrow rule in Donoghue v Stevenson—defective products 295

(2) Range or defendants 296

(3) Products 296

(4) Ultimate consumer 297

(5) Sale 297

- (6) Intermediate examination 298
- (7) Preparation or putting up 298

(8) Continuing duty of care 298

(9) Economic loss 299

(10) Proving negligence 299

C. Action for breach of statutory duty 301

# SECTION 3 THE NEW STRICT LIABILITY REGIME 302

A. The European Directive and the Consumer Protection Act 1987 302

B. Who can sue under the Act? 303

C. On whom is strict liability imposed? 303

D. Products 305

- E. Defining 'defect' 305
- F. General defences 307
- G. The 'development risks' defence 309

H. Causation 310

I. Limitation 311

## CHAPTER 19 NUISANCE 312

SECTION 1. NUISANCE AS A SEPARATE TORT 312

- A. Meanings of the word 'nuisance' 312
- B. Nuisance and negligence 313
- C. Private and public nuisance 313
- D. Nuisance distinguished from other torts 314

SECTION 2. DAMAGE 315

SECTION 3. THE NATURE OF THE INVASION OF THE INTEREST IN LAND 316

A. Physical injury 316

B. Substantial interference with enjoyment 317

(1) Duration of the interference 318

(2) Locality 319

(3) 'State of affairs' 319

C. Interference with servitudes 321

#### SECTION 4. UNREASONABLENESS 321

A. The conduct of the defendant 322

(1) His purpose 322

(2) Suitability of locality 323(3) Ordinary use of the land 323

(4) Impracticability of preventing or avoiding the interference 325

B. The seriousness of the interference with the plaintiff's user of land 325

(1) The extent of the harm 325

- (2) The character of the harm 326
- (3) The suitability to the locality of the use interfered with 326

(4) Social value of the use interfered with 327

(5) Could the plaintiff easily have avoided the consequences of the harm? 327

SECTION 5. WHO CAN SUE? 327

SECTION 6. WHO CAN BE SUED? 329

A. Creator 329

B. Failure to remedy 331

C. Landlord and tenant 333

SECTION 7. MUST THE INTERFERENCE COMPLAINED OF EMANATE FROM LAND? 334

SECTION 8. DEFENCES 335

A. Prescription 335
B. The relevance of the conduct of the plaintiff 335

C. Statutory authority 336

D. Other defences 337

E. Fire 337

SECTION 9. REMEDIES 338

A. Damages 338

B. Injunction 339

SECTION 10. PUBLIC NUISANCE 339

A. Elements 339

B. The relation between public nuisance and private nuisance 341

# CHAPTER 20 RYLANDS v FLETCHER 344

SECTION 1. INTRODUCTION 344

SECTION 2. 'THINGS' WITHIN THE RULE 346

SECTION 3. BRINGING ON THE LAND 348

SECTION 4. NON-NATURAL USER 350

SECTION 5. ESCAPE 351

SECTION 6. INTERFERENCE WITH USE OF LAND BY THE PLAINTIFF 352

Bindie Strate Libration

SECTION 7. DAMAGE 353

SECTION 8. DEFENCES 353

A. Statutory authority 353

B. Consent of plaintiff 354

C. Contributory negligence 354

D. Act of third parties 355

E. Act of God 356

F. Necessity 357

SECTION 9. NUISANCE AND Rylands v Fletcher 357

# CHAPTER 21 ANIMALS 359

SECTION 1. NEGLIGENCE AND STRICT LIABILITY 359

SECTION 2. DAMAGE DONE BY DANGEROUS ANIMALS 359

A. Dangerous species 359

B. Other dangerous animals 360

C. Liability for either kind of dangerous animal 360

SECTION 3. LIABILITY FOR STRAYING LIVESTOCK 361

SECTION 4. LIABILITY FOR INJURY DONE BY DOGS TO LIVESTOCK 362

# CHAPTER 22 VIOLATION OF INTERESTS PROTECTED BY STATUTE OR THE ACTION FOR BREACH OF STATUTORY DUTY 363

SECTION 1. INTRODUCTION 363

SECTION 2. THE NATURE OF THE ACTION 366

SECTION 3. WHAT THE PLAINTIFF MUST PROVE 367

A. An obligation on the defendant 367

B. The statute must impose the burden on the defendant himself 367

C. The statute protects his interest by way of a cause of action in tort 368

(1) The state of the pre-existing common law 368(2) Alternative remedies provided by the statute 369

(3) Public and private rights 370

D. The harm suffered by him is within the scope of the general class of risks at which the statute is directed 371

E. He was one of the persons protected by the statute 372

F. When he must prove damage 372

G. The conduct of the defendant was of such a character as to violate the statute 373

H. A breach of the duty 374

I. Causation 374

SECTION 4. DEFENCES 374

A. The relation between criminal and tortious liability 374

B. Assumption of risk 374

C. Contributory negligence 375

D. Act of third party 376

SECTION 5. PROPOSALS FOR REFORM 376

# PART VI INTERESTS IN REPUTATION-DEFAMATION

# CHAPTER 23 THE TORT OF DEFAMATION 379

SECTION 1. INTRODUCTION 379

SECTION 2. THE CRITERIA FOR DISTINGUISHING LIBEL AND SLANDER 381

SECTION 3. THE DIFFERENCES IN THE LAW OF LIBEL AND OF SLANDER 382

A. Slander as such is not a crime 382

B. Libel always actionable per se 383

SECTION 4. EXCEPTIONAL CASES WHERE SLANDER IS ACTIONABLE per se 383

A. Imputation of crime 383

B. Certain types of disease 384

C. Office, profession, calling, trade or business 384

D. Unchastity of a woman 385

Section 5. Special Damage, and Remoteness of Damage in Defamation Generally 385

#### CHAPTER 24 ELEMENTS OF LIBEL AND SLANDER 388

#### SECTION 1. DEFAMATORY 388

A. Definition 388

B. Who may be defamed 390

C. The interpretation of defamatory statements; the innuendo 391
 D. Effect of the defendant's being unaware that his statement was defamatory 394

(1) Mechanical distributors 394

(2) Other publishers 395

(a) At common law 395

(b) The Defamation Act 1952 395

# xvi Contents

SECTION 2. REFERENCE TO THE PLAINTIFF 397

A. Class libels 398

B. Unintentional references to the plaintiff 399

SECTION 3. PUBLICATION 400

## CHAPTER 25 DEFENCES 402

SECTION 1. CONSENT AND ASSUMPTION OF RISK 402

SECTION 2. JUSTIFICATION 403

SECTION 3. IMMUNITY OF PROCEEDINGS IN PARLIAMENT 406

SECTION 4. ABSOLUTE PRIVILEGE 406

A. Executive matters 407

B. Judicial proceedings 408

- C. Solicitor-client communications 409
- D. Reports of judicial proceedings 410

SECTION 5. QUALIFIED PRIVILEGE 410

A. Malice: how it may be established 411

(1) The defendant does not believe in the truth of his statement 411

(2) Abuse of the purpose of the privilege 412

(3) Extraneous matter 413

(4) Unreasonable publication to persons outside the scope of the privilege 413

(5) Judge and jury and burden of proof in respect of malice 413

B. Excess of privilege 414

C. Joint publishers and malice 415D. Instances of qualified privilege 415

General principle 415
 Public interest 416

(a) Reports 416

(i) Parliamentary 416

(ii) Judicial 416

(b) Registers 419

(c) Misconduct of public officers 419

(d) Statements by way of help in discovering criminals 420

(3) Interest of the publisher 420

- (4) Interest of others 420
- (5) Common interest 421

#### SECTION 6. FAIR COMMENT 422

A. Matters of public interest 422

B. Comment on true facts 423

C. Comment must be honest and not actuated by malice 425

D. Burden of proof and the functions of judge and jury 426

SECTION 7. APOLOGY 426

SECTION 8. DAMAGES 427

SECTION 9. INJUNCTION 429

#### PART VII MISUSE OF PROCESS

## CHAPTER 26 MISUSE OF PROCESS 433

SECTION 1. MALICIOUS INSTITUTION OF PROCEEDINGS, ESPECIALLY MALICIOUS PROSECUTION 433

A. Institution of proceedings 433

B. Nature of proceedings 434

C. Termination in favour of plaintiff 435

D. Absence of reasonable and probable cause 436

E. Malice: improper purpose 438

F. Defences 438

SECTION 2. ABUSE OF PROCESS 439

SECTION 3. ABUSE OF PROCESS BY JUDICIAL OFFICERS 439

SECTION 4. EVIDENCE IN COURT 439

SECTION 5. MISUSE OF ADMINISTRATIVE PROCESS 440

#### PART VIII REMEDIES AND PARTIES

CHAPTER 27—SERVANTS AND INDEPENDENT CONTRACTORS: THE CIRCUMSTANCES IN WHICH AN EMPLOYER MAY BE LIABLE WHERE HARM IS CAUSED BY AN ACT OR OMISSION OF SOMEONE DOING WORK FOR HIM

SECTION 1. IMPORTANCE OF THE DISTINCTION BETWEEN SERVANTS AND INDEPENDENT CONTRACTORS 445

SECTION 2. CRITERIA FOR DISTINGUISHING SERVANTS AND INDEPENDENT CONTRACTORS 446

A. Control 446

B. Some particular cases examined 447

(1) Hospital staffs 447

(2) Borrowed servants 447

SECTION 3. IS THERE A SEPARATE CATEGORY OF AGENTS? 448

SECTION 4. LIABILITY IN RESPECT OF AN INDEPENDENT CONTRACTOR 450

A. Authorising him to commit a tort 450

B. Torts where intentional or negligent conduct need not always be proved 451

C. Negligence 451

(1) Personal negligence on the part of the employer 451

(2) Those duty-situations where the duty extends to a responsibility for the negligent acts of an independent contractor—non-delegable duties 452

SECTION 5. WHERE THE EMPLOYER IS NOT LIABLE FOR THE ACTS OF AN INDEPENDENT CONTRACTOR 454

A. No breach by employer of any duty imposed on him by the law of torts 454

B. Collateral negligence 455

SECTION 6. LIABILITY IN RESPECT OF SERVANTS 456

A. The Commission of a tort by the servant 456

B. The course of employment 456

C. Relevant factors in determining whether the act was committed in the course of employment 457

(1) Mode of doing the work that a servant is employed to do 457

(2) Authorised limits of time and space 458

(3) Express prohibition 459

(4) Connection with employer's work 460

(5) Deliberate criminal conduct 461

Fraud 462

D. Statutory duty and vicarious liability 463

# CHAPTER 28 REMEDIES 464

SECTION 1. EXTRA-JUDICIAL 464

SECTION 2. JUDICIAL 464

A. Damages 464

(1) Nominal 464

(2) Contemptuous 465

(3) General and special damages distinguished 465

(4) Personal injuries 465(5) Damages and tax 465

(6) Parasitic damages 465

(7) Aggravated and exemplary damages 466

(8) Mitigation of damage 468

(9) Successive actions on same facts 469

(a) Violation of two rights separately protected 469

(b) Consequential damage where two torts protect the same interest 470

(c) Successive acts 470

(d) One tortious act causing damage on different occasions 470

B. Advantages of proceedings in tort or contract 471

C. Tort and quasi-contract 472 (1) Election of remedies 472

(2) Advantages of proceedings in tort or quasi-contract 473

D. Account 473

E. Injunctions 473

(1) As remedy for torts or additional remedy to damages 473

(2) Injunction and declaratory judgment as a remedy where an action in tort does not lie 474

# CHAPTER 29 COMPENSATION FOR PERSONAL INJURIES 477

SECTION 1. INTRODUCTORY 477

SECTION 2. AWARDS OF DAMAGES TO LIVING PLAINTIFFS 478

A. Pecuniary losses 479

(1) Loss of earnings 479

(2) Medical, nursing and hospital expenses 482(3) Additional pecuniary losses and expenses 483

(4) Deduction for benefits received 484

B. Non-pecuniary losses 486

(1) Pain and suffering 486

(2) Loss of amenities 486

(3) Assessing the quantum 486

(4) Provisional awards 487

(5) Interest 488

C. Damage or destruction of goods 488

SECTION 3. DEATH 488

A. Survival and causes of action 489

B. Death as a cause of action 490

(1) Historical introduction 490

(2) Who may sue? 490

(3) Nature of the act complained of 491

(4) The nature of the interests protected 492

(5) Period of limitation 493

(6) Assessment of damages 493

#### SECTION 4. ALTERNATIVE COMPENSATION SYSTEMS 496

A. Responsibility and the welfare state 496

B. Other compensation systems 497

(1) Criminal injuries compensation scheme 497

(2) Occupational sick pay 497

(3) Occupational pensions 497

(4) Trade unions 498

(5) Insurance 498

C. The Pearson Report 498

#### CHAPTER 30 EXTINCTION OF REMEDIES 500

SECTION 1. WAIVER 500

SECTION 2. SATISFACTION 501

SECTION 3. JUDGMENT 501

SECTION 4. RELEASE 502

SECTION 5. ACCORD AND SATISFACTION 502

SECTION 6. LIMITATION 502

A. Period of limitation 502

B. When does a cause of action accrue? 504

C. Special rules for personal injuries 505

D. Latent damage other than personal injuries 507

E. Continuing wrongs 509

F. Effect of disability of the plaintiff 509

G. Postponement of limitation period in case of fraud or concealment 509

SECTION 7. DEATH 510

# CHAPTER 31 PARTIES 511

SECTION 1. THE CROWN 511

A. Vicarious liability 511

B. Non-vicarious liability 511

C. Exceptions 512

(1) Judicial errors 512

(2) Armed forces 512

(3) Certain statutes imposing liability in tort 513

SECTION 2. FOREIGN SOVEREIGNS 513

SECTION 3. AMBASSADORS 513

SECTION 4. POSTAL AUTHORITIES 513

SECTION 5. HIGHWAY AUTHORITIES 514

SECTION 6. CORPORATIONS 515

A. Liability 515

B. Power to sue 517

SECTION 7. TRADE UNIONS 517

SECTION 8. UNINCORPORATED ASSOCIATIONS 518

A. Liability 518

(1) Substantive 518

(2) Procedural 518

B. As Plaintiffs 519

SECTION 9. PARTNERS 520

SECTION 10. HUSBAND AND WIFE 520

SECTION 11. MENTALLY DISORDERED PERSONS 521

SECTION 12. MINORS 522

A. Liability 522

(1) Where the act of the minor is also a breach of contract 522

(2) Liability of the parent 523

B. Capacity to sue 523

SECTION 13. BANKRUPTS 524

A. Liability 524

B. Power to sue 524

SECTION 14. ASSIGNEES 525

SECTION 15. CONVICTED PERSONS 526

SECTION 16. JOINT TORTS 526

A. Categories 526

(1) Joint tortfeasors 526

(2) Several concurrent tortfeasors 527

(3) Several tortfeasors causing different damage 528

B. The importance of the distinction between joint and several concurrent tortfeasors, and other several tortfeasors 529

C. The distinction between joint tortfeasors and several concurrent tortfeasors 530

D. Contribution 530

(1) Scope 530

(2) Who may claim contribution 531

(3) Those from whom contribution may be claimed 531

(4) Amount of contribution recoverable 531

INDEX 535