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Torts

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Mandy Shircore

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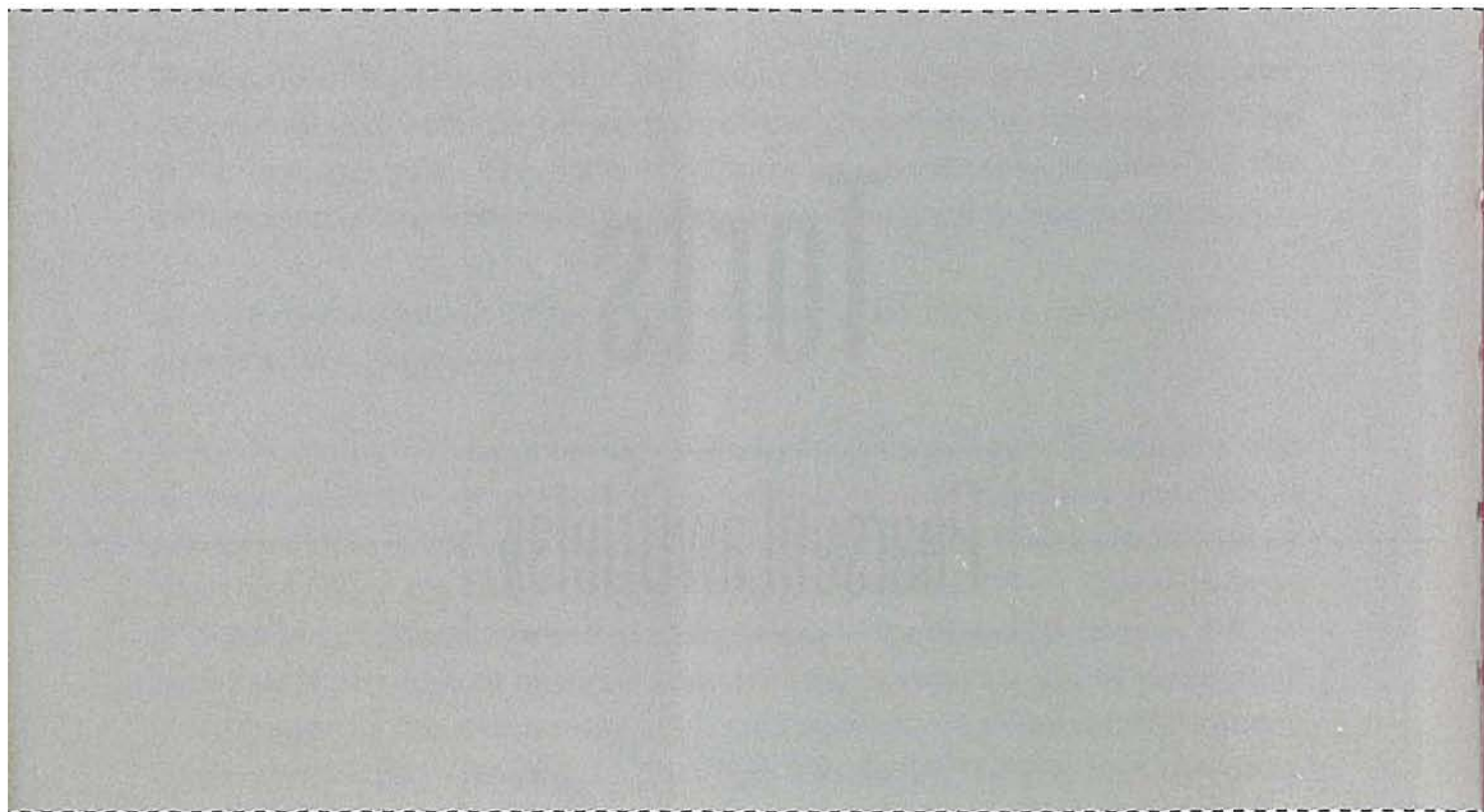
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Foreword

Pearson Law Briefs is a series designed to assist those people studying law to come to grips with what are at times complex legal issues. The law is about analysing cases and statutes and then applying the prevailing law to legal problems that clients present to their lawyers. From there, lawyers synthesise an argument based on the prevailing law and receive instructions from their clients on what course of action is appropriate, based on that process of synthesis.

This process, simply described here, can involve a complex interpretation of what a judge or judges say on how to apply the relevant precedent case or cases to the client's facts. Every day in courts around the common law world lawyers explore whether precedent should be applied to the client's facts or whether the law should distinguish precedent and create some new law or a derivation of the prevailing law. The complexity of such an exploration is at times quite daunting.

Pearson Law Briefs seek to achieve two important goals in dealing with the level of complexity thrown up by the law. First, they seek to demystify the complexity of the law by providing clear and concise explanations of the law. Second, they seek to provide a diagrammatic explanation of the law that will help students grapple with the complexity of legal concepts and allow students to have a clearer understanding of the area of law they are studying.

Pearson Law Briefs have engaged expert authors in each of the basic and core areas of study in the law who actually teach the area of law they are writing about. This is an important factor in the success of the Law Briefs series as it ensures students are reading the words of law teachers who are actively teaching in the field they are writing on. This means the latest and best explanations of the concepts students are studying.

I hope *Pearson Law Briefs* assist you to achieve great results in your law studies and help to instil a love of learning the law and ultimately a love of practising the law in whatever field of endeavour you choose. The law is a challenging profession that responds to a dynamic society constantly adapting to its surroundings. Best of luck with your law studies.

David Spencer
Series Editor

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Preface

Unlike many other core areas of law that students are required to study in their degree, the law of torts consists of a number of distinct civil wrongs. It is for this reason that defining exactly what amounts to a tort has proved difficult. Many commentators prefer to define torts in the negative, by comparing and distinguishing torts from other actions with similar features, such as contract law and criminal law. Others prefer to define torts by considering the types of interests the law of torts seeks to protect. In general terms, torts law provides a right to compensation where one person wrongfully breaches a duty or obligation that has been imposed by the law (rather than the parties themselves) for the protection of another.

Until recently, the development of the law of torts has been left largely to the common law. The earliest tort of trespass was developed to protect a person's bodily integrity, land and goods from direct interference by another. In 1932, the modern tort of negligence was born and with the advent of industrialisation the tort continued to expand to cover an ever-increasing range of unintentional conduct. Towards the end of the century there were concerns expressed that the law of negligence had gone too far. In response to the 'insurance crisis' in 2002, Australian governments introduced sweeping civil liability legislation to reduce the number of possible negligence claims and limit the damages available. Even so, many of the principles established under the common law remain, and study of the law of negligence requires detailed examination of both case law and the various legislative provisions.

As it is not possible to cover all tortious actions in this book, the most significant torts have been selected. After an introductory chapter, which defines torts and traces their

historical development, the book is divided into three main parts. The first section covers what are generally referred to as the intentional torts, trespass to the person, goods and land, and the development of a new tort of invasion of privacy. The second, and largest, part of the book deals with the tort of negligence. Duty of care, breach of duty, causation, defences to negligence and damages are all considered. In the final section, a number of miscellaneous torts are dealt with including nuisance, breach of statutory duty and defamation.

As interactions within society become more complex, the law of torts will continue to develop and adapt. Amidst calls to pare back legislative reforms, further changes to civil liability legislation and negligence laws are to be expected. This makes the law of torts a dynamic and challenging area of the law to study. Good luck with your studies in Torts Law.

Mandy Shircore

