Index

absolute privilege, 926-932

abuse of process, 87-90, 477-478

abuse of public office, 383-391

accidental conduct, 36-39

accidents, successive, 560-564

accountants/auditors, negligence of, 515

act of God, 757-759, 763-764

act of plaintiff, 758

act of stranger, 758-759

action for damage to reversionary interest, 126

active concealment as fraudulent misrepresentation, 804-805

acts of third parties, responsibility for, 595-604

additional causes, failure of “but for” test, 549-550

adult activities doctrine, 411-412

age, reasonable person and, 409-413

aggravated damages

defamation, 959-964

intentional torts, 142-147

trespass to land, 139

agony of collision doctrine, 419

agony of the moment doctrine, 419

air space, owner of land and, 136-137

animals ferae naturae (wild animals), 768-769

animals, liability for
cattle trespass, 773

scienter action, 768-773

Searle v. Wallbank, rule, 773-774

animals mansuetae naturae (dangerous animals), 769, 772

Anns v. Merton London Borough Council, 200-203

apportionment, See also contribution between wrongdoers, contributory negligence

contribution between wrongdoers, 674

contributory negligence, 629-632

architects, negligence of, 513-514

assault, 49-52

Athey v. Leonati, “but for” test, 529, 531, 553

causation and, 524-527

indivisible injury, 560

automobile accidents, 399, 433, 693-695

bankers/financial advisors, negligence of, 515

battery

intentional, 53-64

medical treatment, as, 55, 159-165, 490

negligent, 64-67

sexual wrongdoing, 60-64, 152

breach of contract, inducing

conduct inducing breach, 825-826

contract, existence of, 818-819

damage, 827

indirect means, procuring breach by, 830

intention, 819-823

justification, 827-830

knowledge, 824

breach of peace, stopping, defence of, 169

burden of proof, See also res ipsa loquitur

battery, 58-59

conspiracy to injure, 840-841

duty of care, 221-222

general principles, 149, 677-680

res ipsa loquitur, 680-701

statutory authority, 761-762

business torts

conspiracy, 836-846

contractual relations, interferences with not involving breach, 831-832

deceit, 801-817, See also deceit

inducing breach of contract, 817-831, See also breach of contract, inducing

intimidation, 832-836, See also intimidation

secondary picketing, 851-852

“unlawful means” tort, 847-851

“but for” test

alternatives to, 527-528

causal connection, 520-524

failure of, 549-551

unworkable, 531-532
call-in shows, 922

careless performance of contract, 315

cattle trespass, 773

causation

additional causes, 549-550
adverse results, increasing risk of, 546-549
alternative causes, 551
Athey v. Leonati, 524-527
“but for” test, 520-524, 527-528, 531-532, 549-551
cause-in-fact, 518-519
cause-in-law, 519
Cook v. Lewis, rule in, 551-552
establishing causal connection, 519-524
failure to inform, doctors and, 494-497
generally, 517-519
“injury”, redefined, 546-549
joint tortfeasors, 549-552
losses, and, 553-560
material contribution test, 529-546
material increase in risk of injury approach, 533-535
medical negligence cases, 493-497
product liability, 451-453
successive accident cases, 560-564

champery, maintenance and, 90-92

Chart of Rights and Freedoms
generally, 8-10
police, actions of, 259
provincial statutes, and, 174
secondary picketing, and, 852

children, See also wrongful life/birth

contributory negligence, and, 635-636
occupiers’ liability, and, 735-736
parental responsibility for, 242-247, 596
standard of care, 409-413
teacher and pupil, 248-251
unborn, legal status of, 222-224

circumstantial evidence, See res ipsa loquitur

commercial hosts, duty to assist, 233-238

common humanity, duty of, 715-716

complex structure theory, 338

concurrent liability
generally, 302-304, 306
professional negligence, and, 455-459

concurrent tortfeasors, 656-659

consent, See also voluntary assumption of risk
defamation, 958-959
duress, and, 153
generally, 150-156
medical treatment, and, 159-165
private nuisance, 893
public policy, and, 152
sports, and, 156-158
unequal power, and, 151-152
Volenti non fit injuria, contrasted, 150

consortium, loss of, 326-330

conspiracy

agreement and execution, 838
damage, 846
employees, liability of, 816-817
generally, 836-837
injure, conspiracy to, 839-841
unlawful means, conspiracy to use, 842-846

constitutional issues, 4-7, See also Charter of Rights and Freedoms

contracts

breach of contract, inducing, 817-831
careless performance of, 315
careless performance of, 315
contractual relations, interference not involving breach, 831-832

contribution between wrongdoers

apportionment, basis of, 674
common law, 656-662
concurrent tortfeasors, 656-659
Cook v. Lewis, 660
joint and several tortfeasors, 656-659
joint liability, consequences of, 660-661
legislation, 662-676
multiplicity of proceedings, 676
no contribution between wrongdoers, 661-662
obligation to pay contribution, 666-673
right to seek contribution, 664-666
scope of statutory provisions, 663-664
settlement, effect of, 665-666, 670-671
special defences, effect of, 668-670, 673
subsequent action against second tortfeasor, 675
Transit in rem judicatam, 660

contributory negligence

apportionment, basis of, 629-632
children, and, 635-636
common law, 617-618
definition, 615-617
finding of, effect, 632-635
imputed fault, 624-625
last clear chance, 618, 625-628
legislation, 618-635
negligent statements, 299-301
occupiers’ liability, 718, 733-734
provocation, 179-182, 622
private nuisance, 894
safety devices, failure to use, 636-641
stalemate solution, 618
standard of care, 616-617
statutory defence, scope of, 620-624
conversion
chattels, 121-122
dealings, types of, 122-124
definition, 115
intention, 117-121
remedies, 124-126
who can sue, 116-117
Cooper v. Hobart, 206-209
cost of avoidance, 416-418
criminal law, See also private nuisance,
malicious prosecution
fighting, and, 157-158
intentional torts, and, 44-49
powers of arrest, 174-176
restitution and compensation, 48-49
suspension/exclusion of civil action, 44-46
tort damages, 47-48, 146
use of criminal convictions/acquittals as evidence, 46
use of force, 158
Crown liability, See also public authorities
duty of care, 343-347
non-delegable duties of, 796-797
occupiers’ liability, 739
crumbling skull, 526, 560-564, 588-593
custom, See general practice, professional liability and
damage, remoteness of, 140-142
damages
aggravated damages
defamation, 959-964
intentional torts, 142-147
trespass to land, 139
exemplary damages
conspiracy, 846
conversion, 124, 125
punitive damages
breach of contract, inducing, 827
conspiracy, 846
criminal law sanctions and, 47-48
deceit, 816
defamation, 959-962
intentional torts, 47-48, 139, 142-147
provocation and, 180-181
dangerous animals (animals mansuetae naturae), 769, 772
dangerous instruments, control of, 254-255
dangerous products, 333-342, See also product liability
dangerous situations, creators of, 260
decit
active concealment, 804-805
active non-disclosure, 806-809
damage, assessment of, 814-816
elements of tort, 803-814
employees, liability of, 816-817
false representation/statement, 803-809
generally, 801-802
half-truth, 804-805
intention to deceive, 810-811
knowingly false, 809-810
material inducement causing damage, 811-814
puffery, 812-813
defamation
absolute privilege, 926-932
avoiding multiplicity of proceedings, 918
call-in shows, 922
concurrent actions, defamation and negligence, 967-970
consent as defence, 958-959
damages, 903, 959, 962-964
defamatory, what qualifies as, 903-911
defences, 923-959
exceeding privilege, 940-944
fair comment, 950-958
generally, 899
group of individuals defamed, 914-916
injunctive relief, 964
injurious falsehood, 964-966
intention, 788-789
joint publication, 921
justification, 923-925
libel/slander distinguished, 901-903
low threshold requirement, 905, 908-911
malice, 932, 940-944, 958
media defences, 947-950

INDEX 973
mitigation of damages, 962-963
plaintiff, reference to, 912-916
public interest, responsible communication of matters of, 944-947
publication, 916-922
punitive damages, 959, 962
qualified privilege, 932-940
protection of another’s interests, 935-936
protection of common interests, 936-938
protection of one’s own interests, 934-935
protection of public interest, 938-940
remedies, 959-964
reports of judicial proceedings, 947-950
reports of legislative proceedings, 947-948
responsible communication of matters of public interest, 944-947
secondary disseminators, 918-921
slander, distinction between libel and, 900, 901-903
slander of goods, 964-966
sources of defamation law, 900-901
spouses, communications between, 932
truth, 907, 923-925
defective products/buildings, liability for economic losses, 333-342, See also product liability
defence of inevitable accident, 408, 420-422
defence of others, 167-169
defence of property, 169-173
defences to intentional interferences
consent, 150-165, See also consent
contributory negligence, 179-182, 620-624
defence of others, 167-169
defence of property, 169-173
genewly, 149
legal authority, 173-179
necessity, 183-187
provocation, 179-182
right to eject trespassers, 170-173
self-defence, 165-167
self-help, 172-173, 184, 897-898
stopping breach of peace, 169
defences to negligence, See also standard of care, contractual relations
age, 409-413
contribution between wrongdoers, See contribution between wrongdoers
contributory negligence, See contributory negligence
defamation, 923-959
illegal, 651-656
inevitable accident, 408, 420-422
insanity, 404-405
intentional interferences, See defences to intentional interferences
mental disability, 403-407
multiple tortfeasors, 656-676
physical abilities, 407-409
strict liability, See Rylands v. Fletcher
voluntary assumption of risk, See voluntary assumption of risk
degrees of negligence, 432-435
detinue
generally, 110-111
remedies, 113-115
sur bailment, 110
sur trover, 110
wrongful detention, 111-113
directness test of remoteness, Re Polemis, 568-569
director’s personal liability, negligent statements, 309-310
disappointed beneficiary cases, 315-319, 481-482
doctors, See physicians
Donoghue v. Stevenson
inspiration for modern negligence law, 190-191, 267
neighbour principle, 198-200, 271
privity of contract and, 31
drunk driver/willing passenger situation, 647-651
duty of care
Anns v. Merton London Borough Council, 200-203
burden of proof, 221-222
Cooper v. Hobart, 206-209
Donoghue v. Stevenson, 198-200
Edwards v. L.S.U.C., 206-209
elements of relationship, 197-222
foreseeability, 209-213
neighbour principle, 198-200
occupiers’ liability, and, 724-730, 735-737, See also occupants’ liability
policy considerations, 219-221
presumptive duty approach, 202-203
product liability, 440
proximity, 214-219
public authorities, 348-382 See also public authorities
purpose of duty concept, 195-197
solicitors, 481-484
two-stage test, 200-203, 204-206
test refined, 206-209
unborn children, 222-224
duty of common humanity, 715-716
duty to assist
commercial hosts, 233-238
dangerous instruments, control of, 254-255
dangerous situation, creators of, 254-255, 260
economic benefit rationale, 233-238
employee-employer relationships, 251-252
generally, 225-226
Good Samaritan dilemma, 225-226, 231
inmates, 256
occupier’s responsibilities, 264-265
parent and child, 242-247
passenger-carrier relationships, 252-253
police officers, 256-259
pros/cons of imposing duty, 228-232
reliance relationships, 261-263
social host, 238-241
statutory duties, 259, 264
strict rule, 227-228
teacher and pupil, 248-251
theories of tort, and, 228-232
where one begins to assist, 261-263
duty to protect inmates, 256
duty to warn, See product liability
economic benefit rationale, 233-238
economic loss, recovery of
cares less performance of contract, 315
defective products/buildings, 333-342, 453,
See also product liability
direct undertakings to perform gratuitous service, 310-313
generally, 267-270
indirect undertakings to perform service, 313-319
negligent performance of services, 310-319
negligent statements, 271-310, See also negligent statements, liability for
relational losses, 320-333
special relationship between parties, 277-292
economic torts, See business torts
emergencies, 161-163, 418-422
employer-employee relationship
duty to assist, 251-252
economic loss, 306-308
employee or independent contractor, 778-784, 794-795
employees, liability of for deceit or conspiracy, 816-817
loss of services, 330-333
vicarious liability, 774-800, See also vicarious liability
engineers, negligence of, 513-514
enterprise theory of liability, 745
environmental issues
private nuisance and riparian rights, 884-888
public nuisance, and, 864
trespass to land, 137-139
evidence, See also res ipsa loquitur
admissibility of criminal convictions/acquittals, 46
exemplary damages, See also punitive damages
conspiracy, 846
conversion, 124, 125
ex turpi causa non oritur action, 651-656
fair comment, defence to defamation, 950-958
comment and fact, 951-953
fairness, 954-958
generally, 950-951
malice, 958
public interest, 954
false arrest, 68, 71, 72, 178
false imprisonment
generally, 67-68
intentional, 69-75
directness, 71-73
imprisonment by “agreement”, 73-74
imprisonment defined, 69-70
knowledge of confinement, 74-75
negligent, 75
felonious tort rule, 45-46
fights, 157-158
fires, 687-690, 762-767
Fires Prevention (Metropolis) Act, 1774, 689-690, 766-767

foreseeability, See also remoteness
duty relationship, elements of, 209-213
proximity and, 201-207, 216
public authorities, duty of care and, 354, 364, 375
reasonable foreseeability test, 141, 569-570, 573
scope of, 570-573
social hosts, 239-240
unborn child, absence of legal status and, 223

fraudulent misrepresentation, See deceit
general practice, professional liability and, 460-468

Good Samaritan dilemma, 225-226, 231, See also duty to assist
goods, slander of, 964-966, See also defamation
gross negligence, 433-435

Hall v. Hebert, defence of illegality and, 652-655

Hedley Byrne & Co. v. Heller & Partners Ltd.
concurrent liability, 457-459
contributory negligence, 299-300
employee’s duty, 308
engineers and architects, 513
negligent statements, 271, 272, 275-277
opinions or statements about future events, 290-291
pre- and post-contractual misrepresentation, 301-302, 305
public authorities, 352-354
reliance, 296-298
skill of advisor/advisee, 286-287
special relationship, 277-278, 284

Hunter v. Canary Wharf Ltd., private nuisance and, 877-878

illegality, defence of
generally, 651-652, 655-656
Hall v. Hebert, 652-655

immunity from suit, lawyers, 475-478
implied agreements, voluntary assumption of risk, 646-651

imprisonment, See also false imprisonment
agreement, by, 73-74
definition, 69-70
directness, 70-73

knowledge of confinement, 74-75
negligent false imprisonment, 75
imputed fault, contributory negligence and, 624-625
incomplete privilege, defence of necessity and, 186-187
indirect evidence, See res ipsa loquitur
indirect undertakings to perform services, 313-319
inducing breach of contract, 817-831, See also breach of contract, inducing
intrinsic accident, 408, 420-422
informed consent to medical procedures, 159-165

injury
additional causes of, 549-550
alternative causes of, 551
exacerbation of, 604-610
gravity of injury, 416
likelihood of injury, 415-416
material increase in risk of injury approach, 533-535
redefined, 546-549
successive accidents, 560-564
thin skull, 588-593
third party causing, 595-604

inmates, 256, 597
instruments of danger, control of, 254-255
insurers, negligence of, 515

intellect/knowledge/experience, reasonable person and, 401-407

intentional battery, 53-64

intentional conduct, 36-39

intentional false imprisonment, 69-75

intentional infliction of mental suffering,
Wilkinson v. Downton and
act or statement, 93-99
calculated to produce harm, 96-99
generally, 93
harm, 98-99

intentional torts
abuse of process, 87-90
action for damage to reversionary interest, 126
assault, 49-52
battery, 52-67, See also battery
champerty, 90-92
conduct of defendant, 36-39
conversion, 115-126, See also conversion
criminal law, relationship with, 44-49,
See criminal law
damage, remoteness of, 140-142
defences, 149-187, See defences to intentional interferences
defendant’s conduct, 36-39
detinue, 110-115, See also detinue
directness requirement, 32-36
false imprisonment, 67-75, See also false imprisonment
generally, 31-32
intentional infliction of mental suffering, 93-99, See also intentional infliction of mental suffering
invasion of privacy, 99-104
maintenance, 90-92
malicious prosecution, 76-87
punitive damages, 142-147
remoteness of damage, 140-142
replevin, 126-127
trespass to chattels, 104-110, See also trespass to chattels
trespass to land, 127-140, See also trespass to land
volition and capacity, 39-44
interests, protection of, See defamation, qualified privilege
interference with possession of land, See trespass to land
intermediate examination, product liability and, 445-446
intimidation
intention, 835-836
submission to threat, 835
threat, 832
unlawful act, 833-835
invasion of privacy, 99-104
invites, See occupiers’ liability
joint tortfeasors, 656-663
judges, 377-382
land, See trespass to land, Rylands v. Fletcher
landlords, 722-723, 739
last clear chance, 618, 625-628
lawyers, See solicitors, professional negligence
Learned Hand formula, See also standard of care
cost of avoidance, 416-418
formula, 413-418
gravity of injury, 416
likelihood of injury, 415-416
learned intermediary rule, 449-453
legal authority, 173-179
legislative acts, immunity for, 377-378
liability, See strict liability, vicarious liability
libel, See defamation
licensees, See occupiers’ liability
likelihood of injury, 415-416
limitation periods, 61, 63-64, 197, 457-459, 487, 668, 672
locality rule, 468-470
loss of a chance, 479, 547-548
loss of consortium, 326-330, 625
loss of profit, 332-333, 334-336, 556
loss of services, 330-333
maintenance and champerty, 90-92
malice, See defamation
malicious prosecution, 76-82
malpractice, See professional negligence, solicitors, physicians
master-servant relationship, See employer-employee relationship
material contribution test, 529-546
“but for” test unworkable, 531-532
defendant’s negligence, 529-531
English mesothelioma judgments, 535-539
Resurfice Corp. v. Hanke, elaboration on test, 542-546
risk of injury, materially increasing, 533-535
“robust and pragmatic” approach, 539-541
Walker Estate v. York Finch General Hospital, 532-533
material increase in risk of injury approach, 533-535
media, See defamation
medical treatment, 159-165, 608-610, See also consent
mental suffering, intentional infliction of, 93-99
mesothelioma judgments, English, material contribution test and, 535-539
misfeasance in public office
  intentional wrongdoing, 387-391
  public official, 384
  wrongful conduct, 385-386
multiple causation, 529-531, 549-551
mutual fights, 157-158
necessity, 183-187
negligence law, See also contributory negligence
  analysis of negligence action, 193-194
  concurrent actions, defamation and negligence, 967-970
  degrees of negligence, 432-435
  duty concept, purpose of, 195-197
  duty of care, See duty of care history, 190-193
  immunities from suit, 195-196
  importance, 189-190, 741
  limits on action, 197
  professional negligence, See professional negligence
  standard of care, See standard of care
negligent battery, 64-67
negligent conduct, 36-39
negligent false imprisonment, 75
negligent performance of services, liability for
  direct undertakings to perform gratuitous service, 310-313
  indirect undertakings to perform service, 313-319
negligent statement cases, public authorities, 352-354
negligent statements, liability for
  advice, nature of, 290-292
  advisee, skill of, 286-287
  advisor, skill of, 283-285
  contributory negligence, 299-301
  director's personal liability, 309-310
  employee's duty, 306-308
  general rule, 271
  Hedley Byrne, 275-277
  inaccurate/misleading statement, 293-295
limited class, reliance by, 289-290
nature of problem, 271-275
negligence, 295-296
occasion, nature of, 287
policy reason for negating duty, 283
pre- and post-contractual misrepresentation, 301-306
public authorities, 352-354
reliance, 296-298
request for advice, 287-290
requirements for successful claim, 277
special relationship, 277-292
standard of care, 296
negligent trespass, 38-39, 58, 109-110, 140
negligent trespass to chattels, 109-110
negligent trespass to land, 140
neighbour principle in Donoghue v. Stevenson, 198-200
nervous shock
  claims based on pure nervous shock, 98-99
  foreseeability, 211, 213
  negligent statements, 272
  recovery, 576-588
non-natural use of land, 744, 745-750
novus actus interveniens
  generally, 594
  original injuries exacerbated, 604-610
    medical treatment, subsequent, 608-610
    second accident, 605-607
  suicide cases, 607-608
  third parties, responsibility for acts of, 595-604
    injuries caused by strangers, 598-604
    injuries caused by those under one's control and supervision, 595-598
nuisance
  generally, 853, 864
  public nuisance, 853-864, See also public nuisance
  private nuisance, 864-898, See also private nuisance
occupiers' liability
  affirmative steps to prevent damage, 264
  child trespassers, 713, 724, 735
  common duty of care, 724-730
  common law, 704-720
  contractual entrants, 711-712, 719-720
  contractual restrictions, 737-738
control requirement, 704-706
Crown liability, 739
duties of occupiers
  contractual entrants, 719-720
  invitees, owed to, 718-719
  licensees, owed to, 716-718
  trespassers, owed to, 712-716
duty of common humanity, 715-716
tenants, types of, 707-712
  contractual, 711-712
  invitees, 710-711
  licensees, 708-709
trespassers, 707-708
genernally, 703-704
invitees, 710-711, 718-719
landlords, 722-723, 739
legislation, 720-739
licensees, 708-709, 716-718
negligence of independent contractors, 738
occupier (common law), defined, 704-706
occupier (legislation), defined, 721-723
railway accident cases, 713-715
restrictive duties, 735-737
risks, acceptance of, 731-734
trespassers (common law), 704-706, 707-708,
712-716, 735
trespassers (legislation), 735-737
parent and child, 242-247, 596, 635-636, 640-641
passenger-carrier relationship, 252-253
physical abilities, reasonable person and,
407-409
physical abuse, vicarious liability for, 787-794
physicians
  causation, 494-497
  duty to assist, 255
  duty to disclose alternative treatments,
504-505
  duty to disclose results of treatment, 502-503
  duty to disclose risks, 490-502
  extensions of duty, 502-506
  errors of judgment, 474
  failure to inform, 491-493
  generalists and specialists, 470-472
  malpractice, 690-691
  res ipsa loquitor, 690-691
  subsequent medical treatment, 608-610
  therapeutic privilege, 493
  wrongful life/birth, 506-513
police officers, duty to assist, 256-259
policy/operational dichotomy, policy reasons to
limit prima facie duty, 364-375
powers of arrest, 71-73, 174-179
presumptive duty, 202, 203, 241, 280, 313, 314
privacy, invasion of, 99-104
private nuisance
  accident compensation and loss distribution,
882-884
  acquiescence/consent, 893
  acts of normal husbandry, 894-895
  bona fides of parties, 875-876
  character of neighbourhood, 872
  continuing or adopting nuisance, 879-881
  contributory negligence, 894
  damages, 896
  defences, 888-892, 892-895
  deliberate and continuing nuisances, 868-878
  environmental pollution, riparian rights and,
884-888
  excessive noise/odours, 873-874
  generally, 864-868
  Hunter v. Canary Wharf Ltd., 877-878
  injunctive relief, 896-897
  landlord/tenant situation, 878
  loss distribution, 882-884
  natural use of land, 894-895
  normal husbandry, acts of, 894-895
  occupier inheriting nuisance, 879-881
  physical injury to property, what constitutes,
870-871
  prescription, 892-893
  remedies, 896-898
  riparian rights, 884-888
  self-help, 897-898
  statutory authority, defence of, 888-892
  statutory immunity, 895
  unreasonable interference with personal
  sensibilities, 871-872
  who can sue, 877-878
product liability, See also economic loss,
recovery of
  causation, 445
  design defects, 442-443
  duty of care, 440
  duty to warn of risks, 446-453
  economic losses, 333-342, 453
  generally, 437-439
  generic drugs, 440
  intermediate examination, 445-446
  learned intermediary rule, 449-453
manufacturing defects, 342, 444-446
proof, problems of, 453
 res ipsa loquitur, 453, 691-693
"risk utility" approach, 443-444
standard of care, 440-453
design, 441-444
manufacture, 444-446
marketing, 446-453
warranties, 437-439
professional advice-givers, 829-830
professional negligence
accountants/auditors, 515
architects, 513-514
bankers, 515
beginners, 472-473
concurrent liability, 456-459
doctors, See physicians
engineers, 513-514
errors of judgment, 474
general practice, 460-463, 464-467
generalists/specialists, 470-472
insurers, 515
invariable practice, 474
lawyers, See also solicitors
 collectibility of judgment, 480
duty to third parties, 481-484
immunity from suit, 475-478
lost cause, 479
malpractice, 486-489
retainer, effect of, 484-485
trial within a trial, 478-481
locality rule, 468-470
realtors, 515
standard of care, 460-468
proof, See burden of proof, res ipsa loquitur
property, defence of, 169-173
property damage
 adjoining landowners, See private nuisance, Rylands v. Fletcher
suffered by third party, 320-326
provocation, 179-182, 622
proximate cause, 567-573, See also remoteness
proximity, duty of care, and, 214-219
public authorities, See also Crown liability
 Crown liability, 343-347
duty of care, 348-382
English approach, 375-376
express statutory liability, 349-352
generally, 348-349, 375-377
legislative/judicial immunity, 377-382
misfeasance in public office, 383-391, See also misfeasance in public office
negligent statement cases, 352-354
policy reasons to limit duty, 364-375
prima facie duty of care
establishing, 354-364
reasons to limit, 364-375
proximity, 354-364, 375-377
public nuisance
activities, types of, 854-858
criminal offence comparison, 856
environmental harm, statutory intervention, 864
generally, 853-854
negligence requirement, 859-860
nuisance, definition, 856-858
public, definition, 855-856
special damages requirement, 860-864
 Wagon Mound (No. 2), 859
public office, misfeasance, See misfeasance in public office
puffery, 812-813
punitive damages
breach of contract, inducing, 827
conspiracy, 846
criminal law sanctions and, 47-48
deceit, 816
defamation, 959-962
intentional torts, 47-48, 139, 142-147
provocation and, 180-181
purely economic loss, See economic loss, recovery of
 pur negligent garder son few, 763
qualified privilege, See also defamation
 protection of another’s interests, 935-936
protection of common interests, 936-938
protection of one’s own interests, 934-935
protection of public interest, 938-940
question of law/fact, negligence as, 394-399
railway accident cases, 713-715
reasonable foreseeability test, 141, 209-213, 569-570, 574, See also remoteness
reasonable person
age, 409-413
generally, 399-401
general practice of those engaged in similar activity, 422
intellect/knowledge/experience, 401-407
professionals, 460-468
physical abilities, 407-409

relational economic loss
personal injuries suffered by third party, 326-333
consortium, loss of, 326-330
services, loss of, 330-333
property damage suffered by third party, 320-326

reliance relationships, 261-263, 296-298, 311-313

remoteness
directness test, 568-569
duty of care, 209-213, 214-219
economic losses, 576-588
foreseeability, scope of, 570-573
generally, 565-567
intentional torts, 140-142
nervous shock, 576-588

novus actus interveniens, 594-610, See also novus actus interveniens
policy considerations, 573-575
proximate cause, tests for, 567-573
reasonable foreseeability test, 141, 569-570, 573
rescuers, duty to, 610-613

Rylands v. Fletcher, 755-756
standard of care, 415-416
suicide cases, 607-608
thin skull rule, 588-593

replevin, 126-127
Re Polemis and Furness, Withy & Co.
directness test, 568-569
Wagon Monad No. 1, test rejected, 569

rescuers, duty to, remoteness and, 610-613

res ipsa loquitur
automobile accidents, 693-695
cause of occurrence not known, 695-697
circumstantial evidence, 681, 684, 692, 693, 696, 698, 699, 701
control requirement, 683-686
elements, generally, 681-683
event not happening without negligence, 686-695
expiration of maxim, 681, 698
fires, 687-690
generally, 680-681
indirect evidence, 680, 681, 698, 701
medical malpractice, 690-691
negligence requirement, 686-695
procedural effect, 697-701
product liability, 691-693

restitution orders, 48-49
Resurface Corp. v. Hanke, elaboration on material contribution test, 542-543
reversionary interest, permanent damage to, 126
riparian rights, 884-888
risks, acceptance of, occupiers’ liability and, 731-734
risk-utility approach, 443-444
road rage, 51
robust and pragmatic approach, causal connection and, 539-541

Rylands v. Fletcher
act of God, 757-758
act of plaintiff, 757, 758-759
act of stranger, 758-759
compensable damage, 754
consent, 756-757
defences, 756-762
discharge of dangerous substances, intentional, 752-754
escape requirement, 750-754, 757-759
tires, 762-767
general benefit of community, 761
generally, 742-744
intentional discharge of dangerous mischief, likelihood of, 754
non-natural use requirement, 745-750, 765
personal injuries, and, 754
remoteness, 755-756
special action on the case, 763-764
statutory authority, 775-762

scienter action, 768-773
Searle v. Wallbank, rule in, 773-774

seat belt cases
failure to use safety device, contributory negligence, 636-641
parent and child, duty to assist, 245, 246, 396
second accident case, remoteness and, 605-607
secondary picketing, 851-852
self-defence, 165-167
self-help, 172-173, 184, 897-898
services, loss of, 330-333
sexual wrongdoing, vicarious liability for, 60-64, 787-794
slander, distinction between libel and, 900, 901-903, See also defamation
slander of goods, 964-966, See also defamation
social host, 238-241, See also duty to assist
solicitors
- collectibility of judgment, 480
- disappointed beneficiary cases, 315-319, 481-482
- duty to third parties, 481-484
- generalists and specialists, 470-472
- immunity from suit, 475-478
- land transactions, 483-484
- lost cause, 479
- malpractice, 486-489
- negligence in conduct of litigation, 467-481
- real estate transactions, 489
- retainer, effect of, 484-485
- settlements, 488
- standard of care, 460
- testamentary capacity, determining, 489
- trial within a trial, 478-481
special action on the case, 763-764
special relationship, liability arising out of, 277-292, See also economic loss, recovery of
sports, defence of consent and, 156-158
stalemate solution, 618
standard of care
- bad faith, 436
- degrees of negligence, 432-435
- emergencies, 418-422
- generally, 393-394
- general practice, 422-425
- good faith, 435-437
- gross negligence, 433-435
- judge and jury, role of, 394-399
- Learned Hand formula, 413-418, See also Learned Hand formula
- negligent misrepresentation by advisor, 296
- product liability, 440-453, See also product liability
design, 441-444
manufacture, 444-446
marketing, 446-453
professional negligence, 395-402
question of fact/question of law, 394-399
reasonable person, 399-413 See also reasonable person
risks, reasonable/unreasonable, 413-422
similar activity, 422
statutory standards, breach of, 425-432
statutory authority, defence of, 888-892
statutory standards, breach of, 425-432
strict liability
- act of God, plaintiff and stranger, 757-759, 763-764
- animals, 767-774
- consent, 756-757
- defences, 756-762
- fires, 762-767
- generally, 741-742
- Rylands v Fletcher
  - compensable damage, 754
  - escape, 750-754
  - generally, 742-744
  - mischief likely, 754
  - non-natural use, 745-750
  - remoteness, 755-756
  - statutory authority, 759-762
  - vicarious liability, See vicarious liability
strong connection test, 791-794
subsequent medical treatment, 608-610
successive accident cases, 560-564
sudden emergency doctrine, 419-420
suicide cases, 591-593, 607-608
teacher and pupil, duty to assist, 248-251
the things speaks for itself, See res ipsa loquitur
thin skull rule, 588-593
third parties, responsibility for acts of, 595-604
threats, 832
tort law, generally
- accident compensation law, as, 11
- basic rationale, 13
- Charter, and, 8-10
- compensation, and, 12-14
- constitutional issues, 4-7
transit in rem judicatam, cause of action against
joint tortfeasors, 660

trespass
accidental, 39
chattels, to, See trespass to chattels
innocent, 39
land, to, See trespass to land
negligent, 38-39, 58, 109-110, 140
trespass to chattels
damage requirement, 108-109
intentional, 105-109
negligent, 109-110
self-help, 172
trespass to land
consent, 154-155
defence of property, 169-173
environmental context, 137-139
generally, 127-128
intentional, 128-140
land, definition, 136-137
"leave and licence", 154-155
negligent, 140
remedies, 139-140
removal of trespassing objects, 171-172
right to eject trespassers, 170-173
self-help, 172
trespassers, See occupiers' liability
unborn children, 222-224
undertakings to perform service
direct undertakings, 310-313
indirect undertakings, 313-319
"unlawful means" tort, 847-851
vicarious liability
control test, 779-781
course of employment, 784-787
employee or independent contractor, 778-784, 794-795
generally, 774-778

horseplay, 787
independent contractor, 794-795
intentional wrongdoing, 791
intrinsically dangerous activities, 799
joint tortfeasors, 656
non-delegable duties, 795-799
personal duties, 795
physical abuse, 787-791
professional employee, 780
sexual abuse, 787-791
statutory, 656, 800
strong connection test, 791-794
unauthorized activity, 784-787
volenti non fit injuria, 73, 150, 615, 641, 732, See
also voluntary assumption of risk
volition and capacity, 39-44

voluntary assumption of risk, See also consent,
defences to negligence
basis of defence, 641-644
consent, 756-757
express agreements, 644-646
implied agreements, 646-651
occupiers’ liability, and, 718-719, 731-734
volenti non fit injuria/consent, contrasted, 150

Wagon Mound No. 1
reasonable foreseeability test and, 569-572,
588, 593
second accident and, 605

Wagon Mound No. 2
possibility of injury, 572-573
psychiatric injury, 584
public nuisance, negligence requirement, 859

warranties, product liability and, 437-439
wild animals (animals ferae naturae), 768-769

Wilkinson v. Downton, intentional infliction of
mental suffering, and, 93-99

willing passenger/drunken driver situation,
647-651

wrongful life/birth, 506-513