

## Index

- absolute privilege, 976-982
- abuse of process, 89-91, 503-504
- abuse of public office, 408-417
- accidental conduct, 36-39
- accidents, successive, 589-593
- accountants/auditors, negligence of, 543
- act of God, 795-797, 802, 810
- act of plaintiff, 795-797
- act of stranger, 795, 797-798
- action for damage to reversionary interest, 131-132
- active concealment as fraudulent misrepresentation, 845
- acts of third parties, responsibility for, 625-634
- additional causes, failure of “but for” test, 578-579
- adult activities doctrine, 437-438
- age, reasonable person and, 435-439
- aggravated damages
  - defamation, 1014-1016
  - generally, 153
  - intentional torts, 149-154
  - trespass to land, 146
- agony of collision doctrine, 445
- agony of the moment doctrine, 445
- air space, owner of land and, 142-143
- animals *ferae naturae* (wild animals), 807-808
- animals, liability for
  - cattle trespass, 811-812
  - scienter* action, 807-811
  - Searle v. Wallbank*, rule, 812-813
- animals *mansuetae naturae* (dangerous animals), 808, 811
- Ann v. Merton London Borough Council*, 206-209
- anti-SLAPP legislation, 1011-1013
- apportionment, *See also* contribution
  - between wrongdoers, contributory negligence
  - contribution between wrongdoers, 707
  - contributory negligence, 649-654
- architects, negligence of, 482
- assault, 49-52
- Athey v. Leonati*,
  - “but for” test, 557, 559-560, 561
  - causation and, 552-555
  - indivisible injury, 589-590
- automobile accidents, 448, 679, 727-729
- bankers/financial advisors, negligence of, 543
- battery
  - intentional, 53-65
  - medical treatment, as, 56, 165-171, 518
  - negligent, 65-68
  - sexual wrongdoing, 61-65, 157
- breach of contract, inducing
  - conduct inducing breach, 866-868
  - contract, existence of, 859-860
  - damage, 868
  - indirect means, procuring breach by, 871-872
  - intention, 860-865
  - justification, 869-871
  - knowledge, 865-866
- breach of peace, stopping, defence of, 175
- burden of proof, *See also res ipsa loquitur*
  - battery, 59-60
  - conspiracy to injure, 840-841
  - duty of care, 232-233
  - general principles, 155, 711-714
  - res ipsa loquitur*, 714-736
  - statutory authority, 800
- business torts
  - conspiracy, 877-888
  - contractual relations, interferences with not involving breach, 872-873
  - deceit, 841-858, *See also* deceit
  - inducing breach of contract, 858-872, *See also* breach of contract, inducing
  - intimidation, 873-877, *See also* intimidation
  - secondary picketing, 893-895
  - “unlawful means” tort, 889-893
- “but for” test
  - alternatives to, 556

causal connection, 548-552  
 failure of, 578-579  
 unworkable, 559-560

**call-in shows, 972-973**

**careless performance of contract, 335**

**cattle trespass, 811-812**

**causation**

additional causes, 578-579  
 adverse results, increasing risk of, 575-577  
 alternative causes, 579  
*Athey v. Leonati*, 552-555  
 “but for” test, 548-552, 553, 555, 556,  
 557-561  
 cause-in-fact, 547  
 cause-in-law, 547  
*Cook v. Lewis*, rule in, 580-581  
 establishing causal connection, 548-552  
 failure to inform, doctors and, 518-522  
 generally, 545-547  
 “injury”, redefined, 575-577  
 joint tortfeasors, 578, 579, 580  
 losses, and, 582-589  
 material contribution test, 557-574  
 material increase in risk of injury  
 approach, 565-567  
 medical negligence cases, 521-524  
 product liability, 478-480  
 successive accident cases, 589-593

**champerty, maintenance and, 92-94**

***Charter of Rights and Freedoms***

generally, 8-10  
 police, actions of, 275-276  
 provincial statutes, and, 180  
 secondary picketing, and, 894

**children, *See also* wrongful life/birth**

contributory negligence, and, 666-667  
 occupiers’ liability, and, 750, 759, 772  
 parental responsibility for, 257-263, 625  
 standard of care, 435-439  
 teacher and pupil, 263-266  
 unborn, legal status of, 235-237

**circumstantial evidence, *See res ipsa loquitur***

**commercial hosts, duty to assist, 247-253**

**common humanity, duty of, 749-750**

**concurrent liability**

generally, 321-322, 325  
 professional negligence, and, 481-485

**concurrent tortfeasors, 688-692**

**consent, *See also* voluntary assumption of risk**

defamation, 1010-1011  
 duress, and, 159  
 generally, 156-162  
 medical treatment, and, 165-171  
 private nuisance, 940  
 public policy, and, 158  
 sports, and, 162-164  
 unequal power, and, 157  
*volenti non fit injuria*, contrasted, 156

**consortium, loss of, 346-349**

**conspiracy**

agreement and execution, 879-880  
 damage, 888  
 employees, liability of, 857-858  
 generally, 877-879  
 injure, conspiracy to, 880-883  
 unlawful means, conspiracy to use, 883-888

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

**contracts**

breach of contract, inducing, 858-872  
 careless performance of, 335  
 contractual relations, interference not  
 involving breach, 872-873

**contribution between wrongdoers**

apportionment, basis of, 707  
 common law, 688-694  
 concurrent tortfeasors, 688-692  
*Cook v. Lewis*, 692  
 joint and several tortfeasors, 688-692  
 joint liability, consequences of, 692-693  
 legislation, 694-709  
 multiplicity of proceedings, 709  
 no contribution between wrongdoers,  
 693-694  
 obligation to pay contribution, 699-706  
 right to seek contribution, 697-699  
 scope of statutory provisions, 695-697  
 settlement, effect of, 698-699, 703-704  
 special defences, effect of, 701-702, 706  
 subsequent action against second tortfeasor,  
 708  
*transit in rem judicatam*, 692

**contributory negligence**

apportionment, basis of, 660-663  
 children, and, 666-667  
 common law, 648-649

- definition, 645-648
  - finding of, effect, 663-666
  - imputed fault, 655-656
  - last clear chance, 648, 656-659
  - legislation,
  - mitigation, distinguished from, 647-648
  - negligent misrepresentations, 318-320
  - occupiers' liability, 751, 753, 769
  - provocation, 186-189, 652
  - private nuisance, 940
  - safety devices, failure to use, 667-672
  - stalemate solution, 648
  - standard of care, 646
  - statutory defence, scope of, 650-654
- conversion**
- chattels, 125-127
  - dealings, types of, 127-129
  - definition, 120
  - intention, 122-125
  - remedies, 129-131
  - who can sue, 120-122
- Cooper v. Hobart, 212-215**
- cost of avoidance, 440, 443-444**
- criminal law, See also private nuisance, malicious prosecution**
- fighting, and, 164
  - intentional torts, and, 44-49
  - powers of arrest, 181-185
  - restitution and compensation, 49
  - suspension/exclusion of civil action, 45-47
  - tort damages, 47-48, 151
  - use of criminal convictions/acquittals as evidence, 47
  - use of force, 164
- Crown liability, See also public authorities**
- duty of care, 363-367
  - non-delegable duties of, 836-837
  - occupiers' liability, 777
- crumbling skull, 554, 589-593, 617-623**
- custom, See general practice, professional liability and**
- damage, remoteness of, 147-149**
- damages**
- aggravated damages
    - defamation, 1014-1016
    - generally, 153
    - intentional torts, 149-154
    - trespass to land, 146
  - exemplary damages
    - conspiracy, 888
    - conversion, 128, 129
  - punitive damages
    - breach of contract, inducing, 868
    - conspiracy, 888
    - criminal law sanctions and, 47-48
    - deceit, 856-857
    - defamation, 1013-1018
    - intentional torts, 146, 149-154
    - provocation and, 187-188
- dangerous animals (animals *mansuetae naturae*), 808, 811**
- dangerous instruments, control of, 270-271**
- dangerous products, 353-362, See also product liability**
- dangerous situations, creators of, 276-277**
- deceit**
- active concealment, 845-846
  - active non-disclosure, 846-849
  - damage, assessment of, 855-857
  - elements of tort, 843-855
  - employees, liability of, 857-858
  - false representation/statement, 843-849
  - generally, 841-842
  - half-truth, 844-845
  - intention to deceive, 851-852
  - knowingly false, 850-851
  - material inducement causing damage, 852-855
  - puffery, 853
- defamation**
- absolute privilege, 976-982
  - anti-SLAPP legislation, 1011-1013
  - avoiding multiplicity of proceedings, 968
  - call-in shows, 972-973
  - concurrent actions, defamation and negligence, 1021-1025
  - consent as defence, 1010-1001
  - damages, 950-951, 971, 1013-1018
  - defamatory, what qualifies as, 951-961
  - defences, 973-1013
  - exceeding privilege, 991-994
  - fair comment, 1001-1010
  - generally, 947
  - group of individuals defamed, 963-965
  - injunctive relief, 1018
  - injurious falsehood, 1018-1020
  - intention, 956, 963
  - joint publication, 971

- justification, 973-976
  - libel/slander distinguished, 949-951
  - low threshold requirement, 953, 957, 960-961
  - malice, 983, 991-994, 1009-1010
  - media defences, 998-1001
  - mitigation of damages, 1016-1018
  - plaintiff, reference to, 961-965
  - public interest, responsible communication of matters of, 994-997
  - publication, 965-973
  - punitive damages, 1013, 1015
  - qualified privilege, 982-990
    - protection of another's interests, 985-986
    - protection of common interests, 986-988
    - protection of one's own interests, 984-985
    - protection of public interest, 988-990
  - remedies, 1013-1018
  - reports of judicial proceedings, 998-1001
  - reports of legislative proceedings, 998-999
  - republication, 968-972
  - responsible communication of matters of public interest, 994-997
  - secondary disseminators, 968-971
  - slander, distinction between libel and, 949-951
  - slander of goods, 1018-1020
  - sources of defamation law, 948-949
  - spouses, communications between, 982
  - truth, 973-975
- defective products/buildings, liability for economic losses, 353-362, *See also* product liability**
- defence of inevitable accident, 434, 446-448**
- defence of others, 174-175**
- defence of property, 176-179**
- defences to intentional interferences**
- consent, 156-171, *See also* consent
  - contributory negligence, 186-189, 650-654
  - defence of others, 174-175
  - defence of property, 176-179
  - generally, 155
  - legal authority, 179-186
  - necessity, 183-187
  - provocation, 186-189
  - right to eject trespassers, 170-173
  - self-defence, 171-173
  - self-help, 178-179, 190, 944-945
  - stopping breach of peace, 175
- defences to negligence, *See also* standard of care, contractual relations**
- age, 435-439
  - contribution between wrongdoers, *See* contribution between wrongdoers
  - contributory negligence, *See* contributory negligence
  - defamation, 973-1013
  - illegality, 683-687
  - inevitable accident, 434, 446-448
  - insanity, 430-431
  - intentional interferences, *See* defences to intentional interferences
  - mental disability, 431-433
  - multiple tortfeasors, 688-692
  - physical abilities, 433-435
  - strict liability, *See Rylands v. Fletcher*
  - voluntary assumption of risk, *See* voluntary assumption of risk
- degrees of negligence, 459-462**
- definue**
- generally, 115
  - remedies, 118-120
  - sur bailment, 115
  - sur trover, 115
  - wrongful detention, 115-118
- directness test of remoteness, *Re Polemis*, 598-599**
- director's personal liability, negligent statements, 328-329**
- disappointed beneficiary cases, 335-338, 507**
- doctors, *See* physicians**
- Donoghue v. Stevenson***
- inspiration for modern negligence law, 195-199, 283
  - neighbour principle, 204-206, 208, 239, 283, 288, 293
  - privity of contract and, 31
- drunk driver/willing passenger situation, 678-682**
- duty of care**
- Anns v. Merton London Borough Council*, 206-209
  - burden of proof, 232-233
  - Cooper v. Hobart*, 212-215
  - Donoghue v. Stevenson*, 204-206
  - Edwards v. L.S.U.C.*, 212-215
  - elements of relationship, 203-234
  - elements of relationship, new approach, 233-234

- foreseeability, 215-223
  - neighbour principle, 204-206
  - occupiers' liability, and, 759-767, 771-774 *See also* occupiers' liability
  - policy considerations, 230-232
  - presumptive duty approach, 208-209
  - product liability, 466-467
  - proximity, 223-230
  - public authorities, 368-408 *See also* public authorities
  - purpose of duty concept, 201-203
  - solicitors, 507-511
  - two-stage test, 206-209, 210-212
    - test refined, 212-215
  - unborn children, 235-237
- duty of common humanity, 749-750**
- duty to assist**
- commercial hosts, 247-253
  - dangerous instruments, control of, 270-271
  - dangerous situation, creators of, 276-277, 282
  - economic benefit rationale, 250-253
  - employee-employer relationships, 267
  - generally, 239-241
  - Good Samaritan dilemma, 239-240, 246
  - inmates, 271
  - occupier's responsibilities, 280-282
  - parent and child, 257-263
  - passenger-carrier relationships, 268-269
  - police officers, 272-276
  - pros/cons of imposing duty, 243-247
  - reliance relationships, 277-280
  - social host, 253-257
  - statutory duties, 275, 280
  - strict rule, 241-242
  - teacher and pupil, 263-266
  - theories of tort, and, 243-247
  - where one begins to assist, 277-279
- duty to protect inmates, 271-272**
- duty to warn, *See* product liability**
- economic benefit rationale, 250-253**
- economic loss, recovery for**
- careless performance of contract, 335
  - defective products/buildings, 353-362, 480, *See also* product liability
  - direct undertakings to perform gratuitous service, 329-332
  - generally, 283-286
  - indirect undertakings to perform service, 332-339
  - negligent misrepresentations, 287-329, *See also* negligent misrepresentations, liability for
  - negligent performance of services, 329-339
  - relational losses, 339-353
  - Rivtow Marine Ltd. v. Washington Iron Works*, 354-356
  - special relationship between parties, 293-305
- economic torts, *See* business torts**
- emergencies, 167-170, 444-448**
- employer-employee relationship**
- duty to assist, 267
  - economic loss, 325-326
  - employee or independent contractor, 818-824, 834-835
  - employees, liability of for deceit or conspiracy, 857-858
  - loss of services, 350-353
  - vicarious liability, 813-840, *See also* vicarious liability
- engineers, negligence of, 541-542**
- enterprise theory of liability, 745**
- environmental issues**
- private nuisance and riparian rights, 931, 933-934
  - public nuisance, and, 908-909
  - trespass to land, 144-146
- evidence, *See also* *res ipsa loquitur***
- admissibility of criminal convictions/acquittals, 47
- exemplary damages, *See also* punitive damages**
- conspiracy, 888
  - conversion, 129, 131
- ex turpi causa non oritur* action, 683-687**
- fair comment, defence to defamation, 1001-1010**
- comment and fact, 1002-1004
  - fairness, 1005-1009
  - generally, 1001-1002
  - malice, 1009-1010
  - public interest, 1005
- false arrest, 69, 72, 73, 185**
- false imprisonment**
- generally, 68-69
  - intentional, 70-76
    - directness, 72-74
  - imprisonment by "agreement", 74-75

- imprisonment defined, 70-71
  - knowledge of confinement, 76
  - negligent, 76-77
- felonious tort rule, 45-46**
- fetuses, 235-237**
- fight, 164**
- fires, 721-724, 801-806**
- Fires Prevention (Metropolis) Act, 1774, 723-724, 804-806***
- foreseeability, *See also remoteness***
  - duty relationship, elements of, 220-223
  - proximity and, 211-212, 223-230
  - public authorities, duty of care and, 374, 387, 400
  - reasonable foreseeability test, 147-148, 325, 597, 599-600, 604, 607-608
  - scope of, 600-604
  - social hosts, 254-255
  - unborn child, absence of legal status and, 235
- fraudulent misrepresentation, *See* deceit**
- general practice, professional liability and, 486-494**
- Good Samaritan dilemma, 239-240, 246, *See also* duty to assist**
- goods, slander of, 1018-1020, *See also* defamation**
- gross negligence, 459-462**
- Hall v. Hebert*, defence of illegality and, 683-687**
- Hedley Byrne & Co. v. Heller & Partners Ltd.***
  - concurrent liability, 484-485
  - contributory negligence, 318-320
  - employee's duty, 327
  - engineers and architects, 541
  - negligent misrepresentations, 287-288, 289, 291-292
  - opinions or statements about future events, 308-309
  - pre- and post-contractual misrepresentation, 320-321
  - public authorities, 372-374
  - reliance, 315-317
  - skill of advisor/advisee, 302-303
  - special relationship, 293, 302-303
- Hunter v. Canary Wharf Ltd.*, private nuisance and, 923-924**
- illegality, defence of**
  - generally, 683, 687
  - Hall v. Hebert*, 683-687
- immunity from suit, lawyers, 501-504**
- implied agreements, voluntary assumption of risk, 678-682**
- imprisonment, *See also* false imprisonment**
  - agreement, by, 74-75
  - definition, 70-71
  - directness, 72-74
  - knowledge of confinement, 74-75
  - negligent false imprisonment, 76-77
- imputed fault, contributory negligence and, 655-656**
- incomplete privilege, defence of necessity and, 193-194**
- indirect evidence, *See res ipsa loquitur***
- indirect undertakings to perform services, 332-339**
- inducing breach of contract, 857, 858-873, *See also* breach of contract, inducing**
- inevitable accident, 434, 446-448**
- informed consent to medical procedures, 156-157, 169-170**
- injury**
  - additional causes of, 578-579
  - alternative causes of, 579
  - exacerbation of, 634-639
  - gravity of injury, 442
  - likelihood of injury, 441-442
  - material increase in risk of injury approach, 561-563
  - redefined, 575-577
  - successive accidents, 589-593
  - thin skull, 617-623
  - third party causing, 625-634
- inmates, 271, 626-627**
- instruments of danger, control of, 270-271**
- insurers, negligence of, 543**
- intellect/knowledge/experience, reasonable person and, 427-433**
- intentional battery, 65**
- intentional conduct, 36-39**

- intentional false imprisonment, 70-76**
- intentional infliction of mental suffering,**  
*Wilkinson v. Downton* and  
 act or statement, 95-98  
 calculated to produce harm, 98-100  
 generally, 94-95  
 harm, 101-102
- intentional torts**  
 abuse of process, 89-91  
 action for damage to reversionary  
 interest, 131-132  
 assault, 49-52  
 battery, 53-68, *See also* battery  
 champerty, 92-94  
 conduct of defendant, 36-39  
 conversion, 120-131, *See also* conversion  
 criminal law, relationship with, 44-49,  
*See* criminal law  
 damage, remoteness of, 147-149  
 defences, 155-194, *See* defences to intentional  
 interferences  
 defendant's conduct, 36-39  
 detainee, 115-120, *See also* detainee  
 directness requirement, 33-36  
 false imprisonment, 68-77, *See also* false  
 imprisonment  
 generally, 31-32  
 intentional infliction of mental suffering,  
 94-102, *See also* intentional infliction of  
 mental suffering  
 invasion of privacy, 102-109  
 maintenance, 92-94  
 malicious prosecution, 77-89  
 punitive damages, 149-154  
 remoteness of damage, 147-149  
 replevin, 132  
 trespass to chattels, 109-114, *See also*  
 trespass to chattels  
 trespass to land, 132-147, *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,  
 472-473**
- intimidation**  
 intention, 877  
 submission to threat, 876
- threat, 873-874  
 unlawful act, 874-876
- invasion of privacy, 102-109**
- invitees, *See* occupiers' liability**
- joint tortfeasors, 688-692**
- judges, 404-408**
- land, *See* trespass to land, *Rylands v. Fletcher***
- landlords, 757-758, 776**
- last clear chance, 648, 656-659**
- lawyers, *See* solicitors, professional negligence**
- Learned Hand formula, *See also* standard  
 of care**  
 cost of avoidance, 443-444  
 formula, 440-444  
 gravity of injury, 442  
 likelihood of injury, 441-442
- learned intermediary rule, 476-480**
- legal authority, 179-186**
- legislative acts, immunity for, 403-404**
- liability, *See* strict liability, vicarious liability**
- libel, *See* defamation**
- licensees, *See* occupiers' liability**
- likelihood of injury, 441-442**
- limitation periods, 62, 64-65, 203, 483-485,  
 701-702, 705**
- locality rule, 494-496**
- loss of a chance, 505-506, 576-577**
- loss of consortium, 346-349, 656**
- loss of profit, 352-353, 354-355, 585**
- loss of services, 350-353**
- maintenance and champerty, 92-94**
- malice, *See* defamation**
- malicious prosecution, 77-89**
- malpractice, *See* professional negligence,  
 solicitors, physicians**
- master-servant relationship, *See*  
 employer-employee relationship**

**material contribution test, 557-574**

- “but for” test unworkable, 559-560
- defendant’s negligence, 557-559
- English mesothelioma judgments, 563-567
- Resurfice Corp. v. Hanke*, elaboration on test, 570-571
- risk of injury, materially increasing, 561-563
- “robust and pragmatic” 567-570, 539-541
- Walker Estate v. York Finch General Hospital*, 560-561

**material increase in risk of injury approach, 561-563****media, See defamation****medical treatment, 165-171, 638-639 See also consent****mental suffering, intentional infliction of, 94-102****mesothelioma judgments, English, material contribution test and, 563-567****misfeasance in public office**

- intentional wrongdoing, 412-417
- public official, 409-410
- wrongful conduct, 410-412

**multiple causation, 557-559, 578-579, 582****mutual fights, 164****necessity, 190-194****negligence law, See also contributory negligence**

- analysis of negligence action, 199-200
- concurrent actions, defamation and negligence, 1021-1025
- degrees of negligence, 459-462
- duty concept, purpose of, 201-203
- duty of care, *See* duty of care
- history, 196-199
- immunities from suit, 201-203
- importance, 195-196, 779
- limits on action, 203
- professional negligence, *See* professional negligence
- standard of care, *See* standard of care

**negligent battery, 65-68****negligent conduct, 36-39****negligent false imprisonment, 76-77****negligent misrepresentation cases, public authorities, 372-374****negligent misrepresentation, liability for**

- advice, nature of, 308-310
- advisee, skill of, 305
- advisor, skill of, 302-305
- Canadian approach, 293-301
- contributory negligence, 318-320
- director’s personal liability, 328-329
- disclaimer, 310-311
- employee’s duty, 325-327
- general rule, 287
- Hedley Byrne*, 291-293
- inaccurate/misleading statement, 312-313
- limited class, reliance by, 307
- nature of problem, 287-291
- negligence, 314-315
- occasion, nature of, 306
- policy reason for negating duty, 300
- pre- and post-contractual misrepresentation, 320-325
- public authorities, 372-374
- reliance, 315-317
- request for advice, 306-308
- requirements for successful claim, 293-294
- special relationship, 293-305
- standard of care, 314

**negligent performance of services, liability for**

- direct undertakings to perform gratuitous service, 329-332
- indirect undertakings to perform service, 332-339

**negligent trespass, 51, 59, 77, 114, 147****negligent trespass to chattels, 114****negligent trespass to land, 147****neighbour principle in *Donoghue v. Stevenson*, 204-206****nervous shock**

- claims based on pure nervous shock, 97, 101
- foreseeability, 218, 219-220
- negligent misrepresentations, 288
- recovery, 617-623

**non-natural use of land, 782-788*****novus actus interveniens***

- generally, 623-624
- original injuries exacerbated, 634-639
  - medical treatment, subsequent, 638-639
  - second accident, 634-636
  - suicide cases, 637-638
- third parties, responsibility for acts of, 625-634



- injuries caused by strangers, 628-634
- injuries caused by those under one's control and supervision, 625-627
- nuisance**
  - generally, 897, 909-913
  - public nuisance, 897-909, *See also* public nuisance
  - private nuisance, 909-945, *See also* private nuisance
- occupiers' liability**
  - affirmative steps to prevent damage, 280-281
  - child trespassers, 742, 747, 749-750, 772
  - common duty of care, 759-767
  - common law, 738-754
  - contractual entrants, 745-746, 754
  - contractual restrictions, 774-776
  - control requirement, 738-741
  - Crown liability, 777
  - duties of occupiers
    - contractual entrants, 754
    - invitees, owed to, 752-754
    - licensees, owed to, 751-752
    - trespassers, owed to, 747-750
  - duty of common humanity, 749-750
  - entrants, types of, 741-746
    - contractual, 745-746
    - invitees, 744-745
    - licensees, 742-744
    - trespassers, 741-742
  - generally, 737-738
  - invitees, 744-745, 752-754
  - landlords, 757-758, 776
  - legislation, 755-777
  - licensees, 742-744, 751-752
  - negligence of independent contractors, 775
  - occupier (common law), defined, 738-741
  - occupier (legislation), defined, 755-759
  - railway accident cases, 748-749
  - restrictive duties, 771-774
  - risks, acceptance of, 767-771
  - trespassers (common law), 741-742, 747-750, 759
  - trespassers (legislation), 771-774
- parent and child, 257-263, 625, 667, 672**
- passenger-carrier relationship, 268-269**
- physical abilities, reasonable person and, 433-435**
- physical abuse, vicarious liability for, 827-833**
- physicians**
  - causation, 521-524
  - duty to assist, 271
  - duty to disclose alternative treatments, 531-532
  - duty to disclose results of treatment, 529-531
  - duty to disclose risks, 517-529
  - extensions of duty, 529-533
  - errors of judgment, 500
  - failure to inform, 518-523
  - generalists and specialists, 496-498
  - malpractice, 724-725
  - res ipsa loquitur*, 724-725
  - subsequent medical treatment, 638-639
  - therapeutic privilege, 520
  - wrongful life/birth, 533-541
- police officers, duty to assist, 272-276**
- policy/operational dichotomy, policy reasons to limit *prima facie* duty, 387-400**
- powers of arrest, 181-186**
- presumptive duty, 208, 209, 257, 294, 300, 333**
- privacy, invasion of, 102-109**
- private nuisance**
  - accident compensation and loss distribution, 928-930
  - acquiescence/consent, 940
  - bona fides* of parties, 921-922
  - character of neighbourhood, 917-918
  - continuing or adopting nuisance, 925-927
  - contributory negligence, 940
  - damages, 942
  - defences, 934-938, 939-942
  - deliberate and continuing nuisances, 913-924
  - environmental pollution, riparian rights and, 931, 933-934
  - excessive noise/odours, 918-919
  - generally, 909-913
  - Hunter v. Canary Wharf Ltd.*, 923-924
  - injunctive relief, 942-943
  - landlord/tenant situation, 924
  - loss distribution, 928-930
  - natural use of land, 894-895
  - normal husbandry, acts of, 940-941
  - occupier inheriting nuisance, 925-927
  - physical injury to property, what constitutes, 916
  - prescription, 939-940
  - remedies, 942-945
  - riparian rights, 933-934
  - self-help, 944-945
  - statutory authority, defence of, 934-938

statutory immunity, 8941-942/index >  
 unreasonable interference with personal  
 sensibilities, 917  
 who can sue, 923-9

**product liability, See also economic loss,  
 recovery of**

causation, 472  
 design defects, 468-469  
 duty of care, 466-467  
 duty to warn of risks, 473-480  
 economic losses, 353-362, 480  
 generally, 464-466  
 generic drugs, 467  
 intermediate examination, 472-473  
 learned intermediary rule, 476-480  
 manufacturing defects, 361, 471-473  
 proof, problems of, 480  
*res ipsa loquitur*, 480, 714-717  
 "risk utility" approach, 470-471  
 standard of care, 440-453  
   design, 468-471  
   manufacture, 471-473  
   marketing, 473-480  
 warranties, 464-466

**professional advice-givers, 871**

**professional negligence**

accountants/auditors, 543  
 architects, 541-542  
 bankers, 543  
 beginners, 498-499  
 concurrent liability, 481-485  
 doctors, *See* physicians  
 engineers, 541-542  
 errors of judgment, 500  
 general practice, 486-488, 490-493  
 generalists/specialists, 496-498  
 insurers, 543  
 invariable practice, 500-501  
 lawyers, *See also* solicitors  
   collectibility of judgment, 506-507  
   duty to third parties, 507-511  
   immunity from suit, 501-504  
   lost cause, 506  
   malpractice, 513-516  
   retainer, effect of, 511-512  
   trial within a trial, 504-507  
 locality rule, 494-496  
 realtors, 543  
 standard of care, 486-494

**proof, See burden of proof, res ipsa loquitur**

**property, defence of, 176-179**

**property damage**

adjoining landowners, *See* private nuisance,  
*Rylands v. Fletcher*  
 suffered by third party, 339-345

**provocation, 186-189, 652**

**proximate cause, 597-604, See also remoteness**

**proximity, duty of care, and, 223-230**

**public authorities, See also Crown liability**

Crown liability, 363-367  
 duty of care, 368-408  
 English approach, 401  
 express statutory liability, 369-372  
 generally, 368-369, 400-402  
 legislative/judicial immunity, 402-408  
 misfeasance in public office, 408-417, *See*  
   *also* misfeasance in public office  
 negligent misrepresentation cases, 372-374  
 policy reasons to limit duty, 387-400  
*prima facie* duty of care  
   establishing, 374-387  
   reasons to limit, 387-400  
 proximity, 374-387, 400-403

**public nuisance**

activities, types of, 898-903  
 criminal offence comparison, 900  
 environmental harm, statutory intervention,  
 908-909  
 generally, 897-898  
 negligence requirement, 903-905  
 nuisance, definition, 900-903  
 public, definition, 899-900  
 special damages requirement, 905-908  
*Wagon Mound (No. 2)*, 904

**public office, misfeasance, See misfeasance in  
 public office**

**puffery, 853**

**punitive damages**

breach of contract, inducing, 868  
 criminal law sanctions and, 47-48  
 deceit, 857  
 defamation, 1013-1018  
 intentional torts, 146, 149-154  
 provocation and, 187-188

**pure economic loss, See economic loss,  
 recovery for**

**pur negligent garder son few, 801-802**

**qualified privilege, *See also* defamation**  
 protection of another's interests, 985-986  
 protection of common interests, 986-988  
 protection of one's own interests, 984-985  
 protection of public interest, 988-990

**question of law/fact, negligence as, 420-424**

**railway accident cases, 748-749**

**reasonable foreseeability test, 147-148, 325, 597, 599-604, 607-60** *See also* remoteness

**reasonable person**

age, 435-439  
 generally, 426-427  
 general practice of those engaged in similar activity, 448  
 intellect/knowledge/experience, 427-433  
 professionals, 486-494  
 physical abilities, 433-435

**relational economic loss**

personal injuries suffered by third party, 346-353  
 consortium, loss of, 346-349  
 services, loss of, 350-353  
 property damage suffered by third party, 339-345

**reliance relationships, 277-280, 315-317**

**remoteness**

directness test, 598-599  
 duty of care, 218, 223-230  
 economic losses, 576-588  
 foreseeability, scope of, 600-604  
 generally, 595-597  
 intentional torts, 147-149  
 mental injury, 606-617  
 nervous shock, 616-617  
*novus actus interveniens*, 623-639, *See also novus actus interveniens*  
 policy considerations, 604-606  
 proximate cause, tests for, 597-604  
 pure economic losses, 606-617  
 reasonable foreseeability test, 147-148, 599-600, 604  
 rescuers, duty to, 639-643  
*Rylands v. Fletcher*, 793-794  
 suicide cases, 637-638  
 thin skull rule, 617-623

**replevin, 132**

***Re Polemis and Furness, Withy & Co.***  
 directness test, 598-599

*Wagon Mound No. 1*, test rejected, 599-600

**rescuers, duty to, remoteness and, 639-643**

***res ipsa loquitur***

automobile accidents, 727-729  
 cause of occurrence not known, 729-731  
 circumstantial evidence, 714, 715, 718, 726, 727, 730, 731, 732, 733, 735  
 control requirement, 717-720  
 elements, generally, 715-717  
 event not happening without negligence, 720-729  
 expiration of maxim, 715, 732  
 fires, 721-724  
 generally, 714-715  
 indirect evidence, 714, 715, 732, 735  
 medical malpractice, 724-725  
 negligence requirement, 720-729  
 procedural effect, 731-735  
 product liability, 725-727

**restitution orders, 48-49**

***Resurfice Corp. v. Hanke*, elaboration on material contribution test, 570-571**

**reversionary interest, permanent damage to, 131-132**

**riparian rights, 931, 933-934**

**risks, acceptance of, occupiers' liability and, 767-771**

**risk-utility approach, 470-471**

***Rivtow Marine Ltd. v. Washington Iron Works*, 354-356**

**road rage, 51-52**

**robust and pragmatic approach, causal connection and, 567-570**

***Rylands v. Fletcher***

act of God, 795, 796-797  
 act of plaintiff, 797  
 act of stranger, 797-798  
 compensable damage, 792-793  
 consent, 795  
 defences, 794-800  
 discharge of dangerous substances, intentional, 791  
 escape requirement, 788-792, 795-797  
 fires, 801-806  
 general benefit of community, 799-800  
 generally, 780-782

- intentional discharge of dangerous mischief, likelihood of, 792
- non-natural use requirement, 783-788, 791, 792, 793, 800
- personal injuries, and, 792
- remoteness, 793-794
- special action on the case, 801-802
- statutory authority, 798-800
- scienter action, 807-811**
- Searle v. Wallbank, rule in, 812-813**
- seat belt cases**
  - failure to use safety device, contributory negligence, 667-672
  - parent and child, duty to assist, 260, 261-262, 422
- second accident case, remoteness and, 634**
- secondary picketing, 893-895**
- self-defence, 171-173**
- self-help, 178-179, 190, 944**
- services, loss of, 346, 348, 350-353**
- sexual wrongdoing, vicarious liability for, 61-65, 827-831**
- slander, distinction between libel and, 949-951**  
*See also* defamation
- slander of goods, 1018-1020, See also** defamation
- social host, 229, 249, 253-257, See also** duty to assist
- solicitors**
  - collectibility of judgment, 506-507
  - disappointed beneficiary cases, 335-338, 335-338, 507
  - duty to third parties, 507-496-498
  - immunity from suit, 501-504
  - land transactions, 509-510
  - locality rule, 494-496
  - lost cause, 506
  - malpractice, 513-516
  - real estate transactions, 516
  - retainer, effect of, 511-512
  - settlements, 514-515
  - standard of care, 486
  - testamentary capacity, determining, 516
  - trial within a trial. 504-507
- special action on the case, 801-802**
- special relationship, liability arising out of, 293-305, See also** economic loss, recovery of
- sports, defence of consent and, 162-164**
- stalemate solution, 648**
- standard of care**
  - bad faith, 462-463
  - degrees of negligence, 459-462
  - emergencies, 444-448
  - generally, 419-420
  - general practice, 448-451
  - good faith, 462-464
  - gross negligence, 459-462
  - judge and jury, role of, 420-425
  - Learned Hand formula, 440-444, *See also* Learned Hand formula
  - negligent misrepresentation by advisor, 303
  - product liability, 464-480, *See also* product liability
    - design, 468-471
    - manufacture, 471-473
    - marketing, 473-480
  - professional negligence, 420, 422
  - question of fact/question of law, 420-424
  - reasonable person, 426-439 *See also* reasonable person
  - risks, reasonable/unreasonable, 439-448
  - similar activity, 448
  - statutory standards, breach of, 451-458
- statutory authority, defence of, 934-938**
- statutory standards, breach of, 451-458**
- strict liability**
  - act of God, plaintiff and stranger, 795-798, 802
  - animals, 806-813
  - consent, 795
  - defences, 794-800
  - fires, 801-806
  - generally, 779-780
  - Rylands v Fletcher*
    - compensable damage, 792-793
    - escape, 788-792
    - generally, 780-783
    - mischief likely, 792
    - non-natural use, 783-788
    - remoteness, 795-794
  - statutory authority, 798-800
  - vicarious liability, *See* vicarious liability
- strong connection test, 827-833**
- subsequent medical treatment, 638-639**

- successive accident cases, 589-593**  
**sudden emergency doctrine, 445-446**  
**suicide cases, 621-623, 637-638**  
**teacher and pupil, duty to assist, 263-266**  
**the things speaks for itself, *See res ipsa loquitur***  
**thin skull rule, 617-623**  
**third parties, responsibility for acts of, 625-634**  
**threats, 873-874**  
**tort law, generally**  
 accident compensation law, as, 11  
 basic rationale, 13  
*Charter*, and, 8-10  
 compensation, and, 12-14  
 constitutional issues, 4-7  
 definition, 1-2  
 deterrence, and, 17-19  
 education, and, 19-21  
 expansion of, 4  
 fault/no-fault debate, 22-28  
 justice, and, 14-17  
 ombudsman, 21  
 purpose of fault-based compensation, 10-22  
 religious beliefs, and, 17  
 sources of, 2-4  
***transit in rem judicatam*, cause of action against joint tortfeasors, 692**  
**trespass**  
 accidental, 39  
 chattels, to, *See* trespass to chattels  
 innocent, 39  
 land, to, *See* trespass to land  
 negligent, 59, 114, 147  
**trespass to chattels**  
 damage requirement, 113  
 intentional, 110-113  
 negligent, 114  
 self-help, 178  
**trespass to land**  
 consent,  
 defence of property, 176-179  
 environmental context, 144-146  
 generally, 132-133  
 intentional, 133-146  
 land, definition, 142-143  
 “leave and licence”, 160-61  
 negligent, 147  
 remedies, 146  
 removal of trespassing objects, 178  
 right to eject trespassers, 176-179  
 self-help, 178  
**trespassers, *See* occupiers’ liability**  
**unborn children, 235-237**  
**undertakings to perform service**  
 direct undertakings, 329-332  
 indirect undertakings, 332-339  
**“unlawful means” tort, 889-893**  
**vicarious liability**  
 control test, 818-820  
 course of employment, 824-827  
 employee or independent contractor,  
 818-824, 834-835  
 generally, 813-817  
 horseplay, 827  
 independent contractor, 834-835  
 intentional wrongdoing, 831  
 intrinsically dangerous activities, 839  
 joint tortfeasors, 688  
 non-delegable duties, 835-839  
 personal duties, 835  
 physical abuse, 827-831  
 professional employee, 819  
 sexual abuse, 827-831  
 statutory, 688, 840  
 strong connection test, 827-833  
 unauthorized activity, 825-827  
***volenti non fit injuria*, 74, 156, 645, 672, 768, *See also* voluntary assumption of risk**  
**volition and capacity, 39-44**  
**voluntary assumption of risk, *See also* consent, defences to negligence**  
 basis of defence, 672-675  
 consent, 795  
 express agreements, 676-678  
 implied agreements, 678-682  
 occupiers’ liability, and, 753, 767-771  
*volenti non fit injuria*/consent, contrasted, 156  
***Wagon Mound No. 1***  
 reasonable foreseeability test and, 599-602,  
 617, 623  
 second accident and, 634-636  
***Wagon Mound No. 2***  
 possibility of injury, 602-604  
 psychiatric injury, 614  
 public nuisance, negligence requirement, 904

warranties, product liability and, 464-466

wild animals (animals *ferae naturae*), 807-808

*Wilkinson v. Downton*, intentional infliction of  
mental suffering, and, 94-102

willing passenger/drunk driver situation,  
678-682

wrongful life/birth, 533-541