Index

Admissibility, 33-37 Agent Orange litigation, 37, 90, 52, 195, 244, 256 Anns/Cooper test, 102, 103, 206, 207 Assault, 96, 97, 302 Balance of Probabilities, 25, 151, 127, 128 Battery, Definition, 83 Directness element, 83, 84 Harmful or offensive contact, 95, 96 Intention, 84 Burden of Proof, 24, 129, 130, 153, 198, 134, 146 But for test, (see Causation) Causation, Factual causation, 111, 123-157, 214 Alternate liability, 146 Burden of proof, (see Burden of Proof) But for test, 128, 129, 130-132, 151, 152 Conspiracy, 147 Clements v. Clements, 127, 258, 137-140 Cook v. Lewis, 146

> Crumbling skull plaintiff, 145, 146 Enterprise liability, 147, 148 Generic/general causation, 124 Independently sufficient causes, 145

Legislative reform, 155

Aboriginal Claims in toxic torts, 54, 80, 81, 303

Market share liability, 148-151
Material contribution to injury, 143-145
Material contribution to risk, 132-140
Reverse onus, 129, 130, 153
Risk-based liability, 140-143, 153-155
Scientific uncertainty, 124-127
Snell v. Farrell, 130, 131
Specific causation, 124
Standard of proof, 127, 128
Thin-skulled plaintiff, 145, 146
Use of experts/Role of science, 151, 152
Legal causation, (see Negligence)

Chemical spraying, 70, 89, 90, 127, 196, 235

Chemical violence, 85-97

Charter of Rights and Freedoms, 218

Class Actions,

Certification test, 233-235

Cause of action, 240-244

Common issues, 250-260

Identifiable class, 244-249

Litigation plan, 264, 265

Preferable procedure, 260-264

Representative plaintiff, 264, 265

Definition, 232

Purposes, 235-239

Remedies, 265, 266

Social context, 231

Clements v. Clements, 127, 258, 137-140

Climate Change litigation, 267-294

California v. GM, 273

Comer v. Murphy Oil, 273

Connecticut v. American Electric Power, 272

Climate change nuisance claims, 283-286

Climate change negligence claims, 287-290

Climate change trespass claims, 286, 287

Other climate tort claims, 291, 292

Overview of existing climate tort cases, 272

Index IN-3

Justiciability, 275
Purposes of tort-based climate litigation, 269, 271, 272
Remedies in climate tort litigation, 292, 293
Standing, 278-281
Statutory climate torts, 290, 291

Compensatory Damages, (see Damages)

Contamination, (see Pollution)

Conversion, 81

Crumbling Skull, 145, 146

Damages, 179-191

Compensatory damages,

Diminution in market value, 185-188

Ecological damages, 190, 191

Medical monitoring, 181-185

Personal injury, 179-185

Property damage, 185-191

Remediation damages, 188-190

Stigma damages, 186-188

Disgorgement damages, 156, 200-202

Nominal damages, 178, 179

Punitive damages, 191-193

Defences, 159-176, 215-218

Act of God or a third party, 175, 176

Consent, 171, 172

Contributory negligence, 165-168

Limitations Acts, 172-174

Necessity, 174, 175

Private necessity, 174

Public necessity, 175

Policy considerations, 159, 160

Statutory authority, 161-165

in nuisance, 163, 164

in Rylands v. Fletcher, 164, 165

Statutory immunity, 160, 161, 219

Voluntary assumption of risk, 168-170

Donoghue v. Stevenson, 45-47

Duty of Care, (see Negligence)

Emotional Distress, (see Intentional infliction of nervous shock; negligent infliction of nervous shock)

Environmental governance, 298-300

Environmental justice, 303, 304 Intergenerational equity, 304 Precautionary principle, 302, 303 Right to environment, 300-302 Sustainable development, 304, 305

Epidemiology, (see Science)

Expert Evidence, 6, 25, 32, 33-37

Admissibility of evidence, 33-37

Fear of Future Illness, 112-117, 154

Genetically Modified Organisms, 71, 242

Governmental toxic torts, 205-230

Causation, 214

Constitutional toxic torts, 218, 219

Defences, 215-218

Parens patriae doctrine, 219-222

Proximity, 206-212

Policy-operational distinction, 212, 213

Standard of care for governments, 213, 214

Statutory immunity, 219

Statutory torts, 222-230

Tobacco cost recovery statutes, 222-230

History of toxic torts, 39-50

Early toxic torts scholarship, 47-49 History of environmental torts, 39-44 History of products liability, 45-47

Informed Consent (medical treatment), 87

Injunctions,

Interlocutory injunctions, 194-198 Permanent injunctions, 200 Index IN-5

Intention,

Imputed intent, 73, 81, 84 Transferred intent, 83, 81, 84

Intentional Torts,

Assault, (see Assault)

Battery, (see battery)

Intentional infliction of nervous shock, (see Intentional Infliction of Nervous Shock)

Trespass to land, (see Trespass to land)

Intentional Infliction of Nervous Shock, 97, 98

Involuntary experimentation, 87-90

Joint and Several Liability, 151

Joint Tortfeasors, 147

Legal Causation, (see Remoteness)

Market Share Liability, 148-151

Material Contribution to Risk, (see Causation)

Medical Monitoring, 118-120, 181-185

Negligence, 101-121

Actual loss (damage), 117-120

Medical monitoring, 118-120, 181-185

Psychiatric harm, 118

Risk exposure, 117, 118, 120

Duty of care, 102, 103

Factual causation, (see Causation)

Foreseeability generally, 101, 102

Legal causation/remoteness, 111-117

Thin-skulled plaintiff rule, 145, 146

Standard of care, 103-111

for manufacturers, 104-109

for emitters, 109, 110

historical wrongs, 110, 111

Negligent Infliction of Nervous Shock, 112-117

Mustapha v. Culligan, 113-115

Ordinary fortitude test, 114, 115

Secondary victims, 116, 117

Nervous Shock, (see Intentional infliction of nervous shock; Negligent infliction of nervous shock)

Nominal Damages, (see Damages)

Nuisance.

Private Nuisance, 56-70

Amenity nuisance, 61-64

Antrim Truck Centre v. Ontario, 59-61

Character of the locale, 62

Definition, 56, 57

Examples of environmental nuisances, 64

Material chemical damage, 67-69

Material physical damage, 64-67

Role, 58, 59

Sensitivity of plaintiff's use, 63

Severity of harm, 61, 62

Scientific uncertainty in nuisance, 68, 69

Utility of defendant's conduct, 62

Public Nuisance, 52-56

Defined, 52, 53

Role, 52, 53

Special injury requirement, 53-46

Occupational exposures, 44, 92-93

Pharmaceuticals, 22, 32, 91, 104, 252, 262, 263, 265

Polluter Pays principle, 44, 191, 203, 302

Pollution, 3, 6, 41, 52, 58, 64, 67, 72-75, 80, 87, 93-96, 109, 110, 199, 121, 202, 212, 236, 238, 247, 248, 252, 261, 262, 284, 297, 299, 300-302

Precautionary principle, 120, 190, 197, 198, 203, 302, 303

Private Nuisance, (see Nuisance)

Product Liability, 104-109

Design defects, 107, 108

Failure to warn, 108, 109, 168

Strict liability, 104-106

Manufacturing defects, 105, 106

Index IN-7

Profit à Prendre, 80, 81

Property Damage, (see Damages)

Proximate Cause, (see Remoteness)

Proximity, (see Causation)

Psychiatric Injury, (see Intentional infliction of nervous shock; Negligent infliction of nervous shock)

Public Nuisance, (see Nuisance)

Punitive Damages, (see Damages)

Purposes of toxic tort law, 1-3, 8, 295-297

Remedies, 177-203

Compensatory, nominal, punitive damages, (see Damages)

Deterrence effect, 177

General principles, 177

Injunctive relief, (see Injunctions)

Medical monitoring, 181-185

Waiver of Tort, 200-202

Remoteness, (see Negligence)

Riparian Rights, 79, 80

Risk Perception, 95, 96

Rylands v. Fletcher, 74-79

Escape, 75

Chronic releases, 74

Non-natural use, 74, 75, 77, 78

Relationship with other torts, 76-78

Science, 5, 6, 9-37

Environmental fate and transport, 16, 17

Epidemiology, 11, 12

Medicine, 15

Pharmacology, 16

Toxicology, 13-15

Weight of evidence, 30, 31

Science Policy, 32

Scientific Uncertainty, 17-26, 124-127

Scientific Paradigm, 26-31

Signature Illness/Disease, 23, 140

Statute of Limitations, (see Defences)

Statutory Standards, 6-7

Standard of Care, (see Negligence)

Standard of Proof, 25, 28, 151, 127, 128

Sydney Tar Ponds, 93, 185, 208, 251

Thin-Skull Rule, 145, 146

Tobacco, 222-229, 244, 291, 292

Tort Law Functions, (see Purposes of toxic tort law)

Toxic Battery, (see Battery)

Toxicology, (see Science)

Trespass to Land,

Application to chemical contamination, 69-72

Defined, 70

Directness element, 70-74

Intent, 73, 74

Voluntary Assumption of Risk, (see Negligence)

Waiver of Tort, 156, 200-202