**SUMMARY NOTE ON THE LAW OF TORT (1st Semester)**

**INTRODUCTION**

The law of torts imposes legal liability on person’s who in certain ways have caused certain kinds of harm to other persons.

In the case of some torts- for example nuisance, which is concerned with interference with the use and enjoyment of land- the usual legal remedy that follows a finding of liability is an injunction. But the more common remedy in torts case, and the one that typifies tort law as a legal regime, is an award of monetary damages.

Damages is a backward-looking remedy that is intended to compensate the plaintiff for the harm suffered. The idea is to put the plaintiff, to the extent that is possible to do so with money, in the position that he or she would have been in, had the tort not occurred. The heart of tort law, then, is a legal obligation to pay compensation for harm caused, where the obligation is owed by the person who caused the harm directly to the person who suffered it. But not all harms and not all ways of causing harm, give rise to such an obligation.

Tortuous liability is a function of both the nature of the defendant’s conduct and the nature of the harm to the plaintiff that conduct caused. When we focus on the defendant’s conducts, we ask what standard of liability should be employed to assess it. However when we focus on the plaintiff’s harm, we ask whether the harm was legally cognizable (recognized) or constituted inference with a protected interest.

Many different torts are recognized by the common law, and the range of protected interest is very wide. We will focus on two protect interests in particular namely, the interest in life and security of the person (that is, the interest in avoiding personal injury or death), and the interest in preserving the physical integrity of one’s tangible property. Both real and personal (that is, in the interest of avoiding physical damage to or destruction of one’s material holdings).

These interests however appear to be the most important interest that tort law protects. They can however be referred to as “the core protected interests’’ or “core interests” for short.

**Economic Theories**

**Deterrence**

The abandonment of internalization theories, instigated by ***Coase*,** shifted attention among economic theorist to the idea that tort law is a mechanism for deterring economically inefficient behavior.

What tort law must do, according to deterrence theorist is to set liability rules so as to give persons incentive to behave in value maximizing ways. In fact, most contemporary deterrence theories do not aim directly at value maximization but adopt instead the complementary goal of cost minimization or total cost minimization. More precisely, the idea is to minimize the sum of expected accident losses and the costs of taking care. Expected accident loss can be defined as the probability that a given type of accident will occur, multiplied by the magnitude of the loss that would result if the accident did occur. The cost of taking care can be understood as the cost of taking steps to reduce or eliminate the probability that an accident of the type in question will occur.

From an economic perspective, negligence is understood as the failure to take care when the cost of taking care is less than the expected loss.

Due care thus defined yields a unique equilibrium, that is, a pattern of conduct to which each party will adhere if the other party adheres to it.

At common law, contributory negligence was traditionally a complete bar to recovery, and the economic version of the defense just described is also all or nothing. Most common law jurisdictions have, however replaced contributory negligence by what is known in the United States as comparative negligence, which require that the loss be shared among the parties in proportion to their respective degrees of fault.

Strict liability? As ***Coase***, in effect, taught us, strict liability cannot coherently be understood as liability simply for losses caused. But under a rule of strict liability, the residuary loss- bearers are injurers. Injurers must be defined by law. This is fairly straight forward when, harm is consistently suffered by only one of two interacting activities rather than by both. Since injurers are the residuary loss-bearers under strict liability they will be induced by this rule not only to exercise due care but also to adopt levels of activity that are socially optimal (that is, utility maximizing).

It should be noted that there is another economic conceptions of strict liability. In addition to the injurer liability” model just considered, this second conception was first described by ***Calabresi***, he calls for accident losses to be placed on the “***Cheapest cost avoider***” the cheapest cost avoider is the party who could take steps to avoid an accident at the lowest cost. The main drawback of the cheapest cost avoider test is that while it will lead to an optimal level of care in alternative care cases, it will not always do so in cases of joint care.

Economic theories of deterrence obviously provide a very powerful model of and potential justification of the institution of tort law. But these theories have themselves been subjected to some very powerful criticisms.

**TRESPASS TO LAND**

What is land?

Land consists of the top soil to a certain extent and the sub soil to a certain extent and all structures on it. In our context, it is a ground space which also includes the subsoil, airspace and all fixed structures on the land, and things that grow on the land.

**Trespass to Land.**

Trespass to land may be defined as an unauthorized, unjustified and illegal entry into land or interference with land belonging to another person. Trespass to land can take one of many forms.

Once your permission on a land expires, you become a trespasser. Trespass ab initio- Trespass from the beginning.

Trespass to land protects possessions; it is only a person who has the rightful possession that is protected in trespass to land.

Where an owner hands over his property to another person he’s liable to trespass to land where he has no permission to come into the land. Interference over time= nuisance, interference which is direct = Trespass. There are instances where an individual though not the owner can bring an action for trespass.

* A person who is in de facto possession. He is not entitled to rightful possession but he can bring an action against a trespassers.
* A person who has an interest in land though not the owner can bring an action in trespass to land.
* Where the damage done to the land that affects reversionary interest in regards to the structure of the land, the landlord can bring an action against a trespasser even where the land has been leased.

Trespass is direct and immediate interference with land. For trespass to land, intention is irrelevant. Also trespass to land is actionable per se. It is also possible to bring an action on trespass to land against and agent of the government. **Major cases on Trespass to Land. See Eze v. Obiefuna, Balogun v. Alakija, Onasanya v. Emmanuel, the Six Carpenters Case etc.**

**TRESPASS TO PERSON**

This is any wrongful or unjustifiable interference with the person or anything on the person of another. This interference is a violation of a person’s right, his dignity. Trespass to person must be direct, it is a tort that has to do with the intention of the tortfeasor. A person is deemed to intend the consequence of his action. Trespass to person can take one of following forms, it could be an assault, battery, false imprisonment and other acts

Intended to cause harm. Trespass to person in Nigeria is a crime and a tort. See **Section 351-356 of the Criminal Code.**

In the law of tort, assault is the putting of another person in the apprehension of imminent danger. In most cases assault precedes battery.

Battery is any form of interference, battery need to be forceful; it is the touching of the person or anything on the person’s body. It involves an intrusion of the person which is unwelcome. When there is a relationship between both parties, an intrusion of the person involving a hug cannot be seen as battery. When there is no relationship between the parties, a cause of battery can be brought against the party. Battery need not be hostile, it is sufficient if it is an intrusion of the person.

False imprisonment, false means untrue, imprisonment, to hold, to detain, a violation of a person’s right to freedom, association. False imprisonment means to detain a person in a place from which he has no means of escape. It is not only the police that can be liable for false imprisonment, any other person can be also liable. It should be noted that the victim must have means of escape and where there is a means of escape that is not practicable. A cause of action will not lie where a person thought he was falsely imprisoned. Where a person is not aware that he is held captive, it will not be an excuse for the tortfeasor. It will also not be possible to be held captive on the main road, but where a person’s life is threatened by a gun, it can be said to be false imprisonment. Officers of the law can also be liable for false imprisonment to refuse a person bail can also amount to false imprisonment because every Nigerian held in prison has a right to bail except in cases like murder. Where a police man arrests a person based on personal vendetta, the police officer will be liable for false imprisonment.

Note:

* A person must be held against his will and he has no means of escape
* A reasonable man is expected to find a means of escape which is reasonable and practicable

**Other Acts intended to cause Harm**

**Harassment Act – Not applicable in Nigeria**

Harassment is made an offence by this Act, it also allows the aggrieved person bring an action against person who harasses him/her.

For other acts intended to cause harm;

It must cause discomfort and it must being displeasure to the victim. Stalking for instance falls under other Acts intended to cause harm.

**Doorstepping**

In the English Harassment Act, once a person has been harassed twice, it’s enough to bring an action against him.

**COMMON CASES ON BATTERY AND ASSAULT**

In the **Cooper’s case**, it was held that when an act is done negligently at first and continues with that act, he will be liable for battery. For assault in **Tuberville v. Savage** it was held that where the words negate the action, it will amount to assault because the expectation of harm or danger is taken away.

The law allows for reasonable chastisement. Reasonable chastisement is sufficient chastisement to inflict discipline, when this chastisement inflicts pain and injury, this chastisement is not reasonable.

Battery can also precede assault and vice versa and both can stand alone

**INTERFERENCE WITH GOODS**

**Trespass to Chattel, Conversion and Detinue**

This involves the interference with a person’s title as regards a good or property.

**Trespass to Chattel**

Chattel is anything capable of being owned and is movable, it is usually tangible. Note that a dead body cannot be owned, except where it is used for research. Trespass to chattel is the unlawful, unjustifiable interference with the goods and property of another person. For an act to amount as trespass to chattel, these must be interference with the goods in possession of a person. Trespass to chattel includes touching, this is because some properties can be damaged by mere touching e.g. pieces in a museum.

By the mere picking touching, moving, damaging or destroying of property belonging to another, then an action for trespass to chattel may arise. Also, to alter the nature of another person’s property will amount to trespass to chattel.

**Tort of Conversion**

For an act to amount to conversion there must be a willful and deliberate act and not only interferes with the goods but it must contradict

and deny the person of his title to the goods. On the other hand, trespass is any form of interference with the goods.

**Elements of Conversion**

Who is entitled to the goods or had a right/ title to the goods/who is in possession. Trespass protects possession. In conversion protects both possession and ownership. Conversion can take one of many Forms

* Conversion by using- converting a person’s property for your own use
* Conversion by taking- where you have taken a person’s property. Where you have moved a person’s property from one place to another, it won’t amount to conversion, unless there was an intention to take it.
* Conversion by abuse of possession by transfer, purchase or selling that abuses a person’s right of possession.
* Conversion by destroying- altering the nature of the goods. See the case of **Wilkinson v. Downston**.
* Conversion by detaining – this is a form of conversion, that is similar to the tort of detinue with one or two difference

It is important to note that where a person receives goods that were converted, himself and the person who gave him the goods will be liable in conversion lack of intention and knowledge will not be sufficient defence.

**Involuntary Receipt or Reception of Goods, belonging to another Person**: In such a case, the person unaware of the conversion will not be liable in conversion.

**Finder:** A person who finds goods is entitled to keep the goods. He has this entitlement over everyone except the owner of the goods. See the case of **Parker v. British Airways**

If it is a servant that finds the good, he is deemed to have found it on behalf of his employer

The only persons, the finder has no title over;

* Person entitled to the good i.e. the owner of the good.
* The person on whose premises the good/chattel was found e.g. if the chattel is affixed on a structure in the land.
* The occupier of premises, if he has expressed his intention to exercise his control over the entire premises.

**TORT OF DETINUE**

It is very close to the conversion by detention. It is an interference with properly belonging to another person, in detinue, there is a demand for the good and there is refusal. However, some forms of refusal is allowed by law, however some unreasonable refusal exist.

The action for detinue is an action for the recovery of the chattel or for the specific value of the chattel. This trespass can be intentional or negligent. It is actionable per se. where trespass is intentional it is actionable per se, you need not prove damage, where trespass is negligent, the plaintiff has to prove he has suffered some harm.

In detinue, liability is stricter because it is an action for the recovery of the chattel or the specific value of the chattel or the estimated market value of the chattel.

**Cases of Trespass to Chattel, Conversion and Detinue**

1. **Davies v Lagos City Council:** The principle upheld in this case is thattrespass is actionable per se. The court also differentiated between conversion and detinue in this case.
2. **Eriyo v Obi**- There was no evidence to shows that the defendant applied any unreasonable force. Thus, the court held that the defendant was not liable for breaking the side mirror of the plaintiff, thus he was not held liable for trespass to chattel.
3. **Shieldrik v Abery:** The court held here that the feeding of poison to another person’s animal is a direct interference with the good/animal.
4. **Fouldes v. Willoughby** – The defendant was a manager of a ferry boat, the plaintiff was a passenger and he went on board with his horses an argument ensued between them and the defendant removed the horse and kept them onshore and the plaintiff said nothing. However, the defendant was held liable for trespass to chattel, for removing the horses of the plaintiff.
5. **Kirk v Gregory** – the defendant removed the rings belonging to the deceased from one room in the house, the executors of his estate sued on his behalf and the court held that it amounted to trespass to chattel.
6. **North Central Wagon & Finance Co Ltd v. Graham** – The defendant bought a vehicle from the plaintiff on hire purchase while the contract was still subsisting, he sold the car to a third party and the seller sued. The court held that the hire purchaser was liable in tort of conversion.
7. **Ashby v Tolhurst**: The defendant who was a car park attendant, negligently allowed a car thief drive away the plaintiff’s car from the car park while he was on duty. The plaintiff sued for the tort of conversion and the court held that he was not liable for the tort of conversion but he was liable for the tort of negligence…. At the time the tort occurred, the goods were not in his possession, he was merely a bailee and he did nothing to deliver to goods to the car thief.
8. **Youl v Harbottle**: The defendant who was a carrier of goods mistakenly delivered the goods to another person and the court held that he was liable for the tort of conversion for the loss of the goods. This shows that mistake is not a defence in the tort of conversion.
9. **Consolidated company ltd v. Curtis & son**- A client instructed his auctioneer to sell goods which did not belong to him and which he had no right to instruct the auctioneer to so sell. At the sale, the true owner arose and brought in an action against the auctioneer for conversion. It was held that the auctioneer was liable in the tort of conversion and has a right to be indemnified by his client who told him to auction the goods.

**DEFENCES TO TRESPASS TO CHATTEL**

**Inevitable accident:**

This is a defence to the trespass to chattel. In **National Coal Board v.** **Evans and Company**. The council employed the defendant as contractors to carry out some work on land owned by the council. The contractors employed a sub-contractor and while digging, the sub-contractors hit a cable and it caused an explosion. The council sued for trespass to chattel and the court held that it was a case of an inevitable accident since they did not know about the existence of the cable.

**Jus-Tertii:**

It is not a defence to trespass to chattel, where a person interferes with property that is in possession of another, he can bring defence that a third party has a right superior to that of the person suing him. He has to act on the authority of the party with the superior right to the chattel/goods.

**Subsisting Lien:**

This defence may be raised when a person borrows money from another and drops a collateral with the person. A lien is a security over a property. Where the borrower cannot pay the lender, the lender has a lien over a property.

Subsisting Bailment: this is similar to subsisting lien.

Remedies

* Payment of damages
* Replacement of the chattel
* Repair of the damage

**EXTRA POINTS ON TRESPASS TO CHATTEL, CONVERSION AND DETINUE.**

On the issue of finders I addition to **Parker v British Airways** we should take note of **Armory v Delamine**- a chimney sweep found a jewelry and gave it to a jeweler to value and the jeweler refused to give it back and it was held that the chimney sweep had title over the jeweler so he the jeweler was held liable for conversion.

Take note from this case;

* Conversion by detention
* Finder’s right

**Conversion by wrongful disposition/Transfer – Like sale, transfer**

**In Chukwuka v. C.F.A.O Motors Ltd,** the plaintiff took his car to the defendants company for repair and he left it there for a period of 9 months. The company sold the car however the plaintiff came back for his car and the court held the defendants were liable for the tort of conversion since he didn’t give them any title to his goods.

**Innocent Receipt or Delivery of goods.**

**In Unipetrol v. Primatanker Ltd**, the defendants were hired to transfer oil from one place to another and the carrier of oil delivered it to the wrong person. The plaintiff sued them for the loss of the oil. The court held them liable for conversion.

In **C.O.P v Oguntayo**, the plaintiff brought an action against the defendant for the wrongful detention of his vehicle and the court held that the police were liable for the tort of conversion & detention and he was entitled to have his vehicle released to him.

A person possessed of goods as his property has a good title above every stranger including the person who takes the goods from him having no title himself. See the case of **Jeffery v Great Western Rly Co.**

**Bailmen**t – This is a situation whereby a person referred to as the bailor gives his goods to another called the bailee. He (the bailor) is the one in possession. A bailee will be able to bring an action for interference with goods. In **the Winkfield case** – posts were put aboard a ship to be delivered to a destination but the ship ran into trouble and it sank and the post master brought an action for damages in relation to the loss of the mail and the posts. The court held that the bailee is allowed to bring an action for loss or damage done to the goods. As against a wrongdoer, as against the whole world, stranger, the bailee has a title and he would be able to bring an action. The judge in the case said as between a bailee and a stranger, possession brings title.

For detinue in the case of **WAEC v Koroye,** the plaintiff sat for an exam conducted by the council and defendant refused to release his certificate on demand for it and he sued and it was held the council was liable for detinue.

For the plaintiff to sue for detinue, he must have a title or a right of ownership of possession. In **Kosile v Folarin** – the defendant who was a motor dealer, seized and delayed the motor vehicle of the plaintiff who was owing him as he sold the car to him to credit. The plaintiff asked that the car should be released to him and the defendant refused and the court held that having fulfilled the terms of the contract, the defendant was held liable for detinue for a refusal to release the car upon request.

**In Ajikawo v Ansaldo Nigeria Ltd**. A bought a generator from B and B asked C to give the generator to A. A requested for the generator and C refused to deliver it to him because he said he was interested in the generator. The plaintiff sued and the court held the defendant was liable in the tort of detinue.

In **Udechukwu v. Okwuka** the court pointed out that for an action to succeed in detinue, there must have been a demand and a refusal. Where there is a need to recover a property, detinue is the right form of action. In suing the detinue, the value must be specific. It must be recovery for specific value.

Where it is impossible to award the actual value of the chattel, the current market value of the product should be asked for.

Defenses for detinue

* Subsisting lien
* Jus tertii Fowler v. Hollins
* Innocent delivery
* Inevitable accident **National C. board v. Evans**
* Lack of proper title by the plaintiff
* Subsisting bailment

Remedies for detinue

* Claim for the market values (specific)
* Claim for the recovery of the chattel
* Claim for the current market value where the first option is not practicable.
* Recovery of goods by self-help, Note that the law frown at this because there is the likelihood of disturbance of peace and order. The use of self-help will only be allowed if it’s reasonable, safe and will not be resisted by the defendant. See the case of Agbai v. Okogbue.

Any form of trespass done in the cause of self-help that amounts to trespass will make the plaintiff liable.

Replevin – This is an action brought by the owner of the goods, for a re-delivery and for specific damages for goods that have been wrongly seized. Replevin or release on bond, this is until the final determination of ownership of the chattel.

**NEGLIGENCE**

**No material is available on this topic on the blog. Do make reference to standard texts such as Winfield and Jolowicz or Nigerian Texts such as Kodilinye**

**END OF FIRST SEMESTER**

**SECOND SEMESTER LAW OF TORT**

**NUISANCE**

Nuisance- Wrongful harm

It is simply any inconvience interfering with the ordinary physical conduct human existence

Not all inconviences is actionable as nuisance.

It is any unreasonable conduct that interfers with the life safety…… of other, Preventing a person from enjoying what he should enjoy.

Abiola v Ijoma 1970 ALL NLR Pg 569

Ige v Taylor Woodruck 1963 NLR Pg 140

Unlawful interference, unreasonable interference with the comfort of another person is another definition of Nuisance

Types of Nuisance

* Private Nuisance
* Public nuisance

it is possible for some conducts to amount to both.

Public Nuisance is created to protect the general public.

Private Nuisance is created to protect individuals for interference with their comfort.

Public Nuisance is that which materially affects the reasonable comfort and convience of the life of a class of the public. It occurs when a person carries out save harmful activity which affects the general public or a section of the publu. It is both a tort and a crime. Sec 192 and 194 of the Pend Code.

Section 234 of the cordinal code. It is referred to as common nuisance.

AG v PYA Quarries 1975 2 QB Pg 169

The key element in defining public Nuisance in contrast to private nuisance is that the inconvience must affect public right with proof that injury is common to the general public.

Categories of people that can sue

* The attorney General AG v PYA Quarries, AG v liastoria Coaching Ltd
* The police
* A private person

The caveat sys that a private person can only sue if he suffers damages over and above that of the general public.

Amos v Shell Bp (Ng)Ltd 1974 ECSL 486

Element of a Public Nuisance

Nuisance is material- it must be real actual discomfort

Inconvenience – it is subjective to the facts of each case.

Harlsey v Esso Petroleum Company Ltd 1961 2 ALL ER 145

Savage v Akinrimade 1964 LLR 238

Vanterpant v Mayfair Hotel Ltd 1929 ALL ER 296

Not all interference with publc right are common nuisance. The nuisance must produce a common injury or danger to the general public.

The court will consider whether the public will be injured by the conduct while exercisinf the public right.

To be a public nuisance, the interference must be

* Substantial – it cannot be a more annoyance or a disturbance of everyday life
* Objectionable of the ordinary reasonable man
* And one that affect or interfers with the ordinary physical comfort of human existence

private Nuisanc

it is described as an unlawful interference with a person’s use and enjoyment of property, land utility, premisese, right of access.

The interference is not derected to the generality of the public.

Read v Lyons & Co Ltd 1945 KB 216 at 236

According to Lyons in Hunter v Canary Wall, private torts are in three forms

* A direct encroachment on a neighbour land
* A direct physical injury to the land
* Interference with the enjoyment of land

According to Salmond, he sees private nuisance in two deensions

* Any wrongful disturbance of an easemenet or other servitude and appurteland to land
* Act of wrongful causing or allowing escape of deleterious things into another person’s land.

According to Kodilinye, the physical injury to the plaintiff’s property substantial interference with the plaintiff’s use and enjoyment of land, the interference with easement and profit.

Private Nuisance

This may be defined as an unlawful interference with a person’s use or enjoyment of land

* Direct encroachment of neighbour’s land
* Direct physical injury of a neighbour’s land
* Interference with enjoyment of land

The aim of this tort is to protect the person’s land and any interference with the land.

What the court consider in deciding a case private nuisance

* Whether there is physical injury or sensible material damage. St Helens Smelting Co v Tipping
* Whether there is substantial interference with the use and enjoyment of the property
* Unreasonableness of the conduct of the defendant
* Malice or motive of the defendant
* The utility of the act of the defendant

They look at these factors o determines the quatum of damages to be awarded

* Extra sensitivity of the plaintiff or his property
* Duration of the harm or inconvenience
* Prescription or the right to commit the nuisance ]ability of the defendant to avoid the nuisance
* Practicability of the relief sought by the plaintiff
* Unusualness or excessive nature of the conduct
* Carelessness of the defendant
* The state or condition of the plaintiffs land

Who can be sued

He must be a person who bears a degree of responsibility for the nuisance

* The creator – the person who did the conduct
* The occupier
* The handlord

**Defences**

Volenti non fit injuria

Public benefit

Suitable place

Care & Skill contributory act of others

Reasonable use of property

Triviality

Prescription or long use

Statutory authority or town planning permission

Act of God/force of nature

Act of a stranger

Necessity

**Different between Public and Private Nuisance**

S 157 Public Health

1. Any person who
2. Obstructs any highway by any permanent work or erection on it or damage to it, which renders it unusable to the public than it would otherwise be;
3. Prevents the public from having access to any part of a highway by an excessive and unreasonable use of it, or by so dealing with the land in the immediate neighbourable of the highway as to prevent the public from using and enjoying it securely.
4. Does not repair a highway which he’s bound to repair
5. Willfully diverts or obstructs the course of any navigable diver so as to appreciably diminish its convenience for purpose of navigator , or
6. Does not repair a bridge which he’s bound to repair
7. Does any unlawful act or omits to discharge any legal duty, which act or omission obstructs or causes inconvenience or damage to the public in the exercise of right common to the public, is guilty of a misdemeanor and is liable to imprisonment for two (2) years
8. It is immaterial whether the act complained is convenient to a larger number of the public but the fact that the act complained of arise from the lawful exercise of rights by a part of the public may show that it is not a nuisance to any part of the public.
9. The owner of the vessel wrecked in a navigable river is not guilty of a common nuisance for failure refusal to remove it.

**Different between Public and Private Nuisance**

1. Public nuisance usually is a crime, whereas private nuisance may not be a crime
2. Public nuisance may be unlawful, private may be lawful
3. When suing in public nuisance, you must prove damages every other member of the public person, in Private nuisance you need not to prove damage above every other person, you need only to prove interference with you right to enjoyment of land
4. In public nuisance, the conduct complained of must affect a group of people while in private nuisance it must affect just one person.

Remedies

* Abatement – this means to stop or put an end to rules of abatement
* The less mischievous mean should be followed
* Entry not allowed to third persons unless with the permission of the third person
* Notice of intention to adate must be given
* When the nuisance is in your compound, you can abate there and then.
* Damages may be recovered for damage to property
* Injunction may be granted in a civil and criminal proceeding

**STRICT LIABILITY**

Rylands v Fletcher

Liability for animals

Strict liability means liability without fault, it is also known as absolute liability i.e. liabilities attached to you, once you do a conduct the court will regard as strict liability despite the fact that you had no intention to do the act, or you were not negligent.

The principle of strict liability is that a person is liable once you do the acts regarded as strict liability

Motive is irrelevant in strict liability.

The rule of Rylands v Fletcher

Contractor, reservoir, blocked shaft- spillage of water to the plaintiff, land.

Anyone who brings a thing unto his land, collect or kept anything likely to cause mischief when it escapes, does so at his own peril, whether or not, the defendant does everything to prevent the escape of that thing

.

**Elements of the Rule in Rylands & Fletcher**

* Bringing in of non natural users on a land
* Something likely to cause mischief
* Duty to keep it at my own peril.
* Escape

Non- Natural users = things that are not ordinarly found I that location. Humanc being can be regarded as natural users of land.

The general rules in Rylands v Fletcher is that the degree of case ust be proportionate to the harm irsked. i.e. care expected must e equal to the risk posed by the non-natural thing brought into the land. Tis is the rile of proportionality

North Western Utilities Limited v London Gurranty & Accident Co Ltd.

The cours held that the degree of care to be shown to the defendant must be proportiaed to the risk invlobed

Where a statutory body is carryinf ourt a statutory duty, the statutory body wll not be held liable unless negligence is shown.

NEPA v Alli, NEPA v Apate

In the former case, NEPA was held liable for the fire outbreak as it was as a result of their negligent act.

In the latter cae, NEPA was held liable by the court of appeal.

**NON NATURAL USERS**

* Something that was naturally on the land
* Something used for a special use, bringing danger with it

In order to establish

* Re plaintiff must establish that a non natural user was brought into his land, there must be a bringing or keeping of the natural user by the defendant.

A non natural user of land depends on a lot of prevailing social, economic and cultural environment

Where a natural user increases on their natural habitation due to the negligence of the defendant or conduct of the defendant escape and cause mischief, the defendant will be hold liable, e.g water

**Escape**

To succeed in a claim under the rule in Rylands v Fletcher, the plaintiff must prove that the non natural user escaped from where it was originally kept.

**Damage**

The plaintiff must establish that the thing that escaped caused damages to him. These must be an actual damage. Hence damage needs to be proved. It is not actionable per se.

Remedies

Damages

Injunction

Defence

Act of God Nicols v Marsland – a defendant is not liable, if he can prove that the damage was as a result of an act of God

* Fault of the plaintiff
* Contributory negligence
* Consent of the plaintiff
* Act of a third party- a defendant can escape liability if he can proved that the escape was due to the independent act of a third party. A third party in this regard can be a trespasser, a stranger, but basically a person who has no control over.
* Statutory authority

Shell Petroleum (Dc Ltd Otoko 1960 NWLR Pt 159 Pg 673 SC- Act of a stranger. It was held that since the act was of a third party which shell had no control over, they were not liable

Liability of animals

This means the person is under strict liability for any injury or damage caused by the act of a person animal.

Generally, an animal is any creature fish, reptile or any creature excluding human beings and plants.

The keeper of an animal includes the owber of an animals or anyone keeping the animal for hi in proxy.

The general rule is that the keeper of the animal is liable for any injury caused by the animal.

Mc Quaker v Gollard

Anything Keeping an animal is keeping it at his own peril

**Division of Animals**

* Livestock/cattle
* Dangerous animals
* Non dangerous animals

Cattle

Animals that full under this included cows, cattle, pigs, poultry, normally dogs & cats are not included in this category because it is not desirable or reasonable to retrain their movement also any damage done by the is usually not serious.

Cox v Burbridge – Aldham v United Daltes Lld.

Where liability will arise

* Keeps of animals
* Keeping of diseased animals
* Straying independently on its aim to the land of the plaintiff
* Failure to take good care of the animal

Liability for dangerous animals, R v Bezzina, Smith v Ainger.

These include wild dogs, buffons

A dangerous animals esp when dey are grown are likely to cause death or serious injury.

“Scienter action”

**Rule regarding dangerous animals**

* Where an animals is regarded as dangerous is a question from the crust to decide
* It is not necessary to establish that the anima has done such damage before, it is enough to show that the animal has such a tendencies to be dangerous
* Knowledge of the dangerous tendency of the animal.
* It is immaterial where the animal carried pour the attack
* Liability lies in the person who has control or custody of the animal.

**Liability for Non- dangerous animals.**

* They are called mansuetal natural which means tamed by nature
* They are animals that have been tamed by nature like cattle.

**Remedies**

* Beating or chasing of animals
* Self defence
* Damages
* Defence of property
* Restitution or paying the market value for the damaged foods
* Isolation
* Order of injunction
* Arrest
* Seizure or confinement in a zoo
* Order of Abatement
* Slaughter esp if it is a disease animal that can spread an epidemic
* Repatriation of the country of origin

**Defence for act of animals**

* Fault of the plaintiff
* Contributory negligence
* Consent of the plaintiff
* Act of a third party e.g. thief trespasser, stranger
* Act of God

Vicarious liability

It means the liability of one person for the conduct or act or omission of another person, it is normally the liability of a superior for the act, conduct or omission of the subordinate. Vicarious liability is as a result of the relationship of the parties e.g. employer, employee, master servant, principal agent, employer contractor etc.

**Keys things to note in vicarious liability**

* There must be a relationship which must be in existence not severed
* There is a superior & subordinate
* The tort complained about must be done in the cause of employment

This liability is based on social policy

Why will somebody be held liable for the tort of another Person?

* The superior ordered the activities, actions or inactions of the employee
* The profit, or benefit of such conduct business is accruable to the superior
* He generally exercise control over the employee
* He dictates for direction of the business or assignment
* He chose the agent, he should compensate the victim for the act or conduct of the employee
* A company acts through the employee, so the act of the employee is deemed as the act of the company/employer based on the principle he who acts through another acts himself
* The superior had greater ability to pay for damages for the tort than the servant
* The doctrine of vicarious liability is to encourage an employer to properly manage and supervise his employees.

**Who is a servant?**

According to Salmond, a servant may be defiend as any person employed by another, to do work for him on the term that he, the servant is to be subject to the control and direction of his employer.

A servant is a person engaged to obey his employers orders, from time to time.

An independent contractor is a person engaged to do certain work, but to exercise his own discretion as to the mode and time of doing it. He is bound by his contract and not by his employers orders.

At times, an independent contractor does not fall under vicarious liability.

**Element to be Proved by the Plaintiff**

* The plaintiff must prove vicarious liability
* The plaintiff must prove these is a master servant relationship
* The employer is responsible for the tort
* The tort was committed during the cause of employment.
* The servant must be found liable for the tort

In Young v Box Ltd 1951 ITLR 789, According to Lord Denning.

To make a master liable for the conduct of the servant, the 1st question is to determines whether the servant is liable, the second question is to determine whether the master is to be held liable for the conduct of the servant.

In James v. Mid-motors Ng Ltd 1978 2 LRN Pg 189. According to Aniagolu vicarious liability of the master arises only on the primary liability of the servant.

However, in some cases, though negligence is established……

In Cassidy v Ministry of Health & Anox 1951 2 KB 343, the plaintiff suffered harm due to medical negligence and if was different to pin point the negligent party, hence the hospital was held liable.

The tort was committed in the cause of employment. In this situation an employer is liable. Cause of employment means within the scope of duty. When a servant is on a foolick of his own, it is no longer during the cause of employment.

When an ac is regarding as being done in the cause of employer;

* The act was expressly/impliedly authorized by the master/employer
* The act is an unauthorized way of doing something the master authorized.

Factors of determing a master & servant relationship

They are not exclusive, idependent or absolute. Each case will be reqarded according to the facts or circumstance of case.

The control test: if the employee is told how to do his jon, he is a servant of the employe and not an independent contractor.

This test may fail is some instance. In Collius v Herfordshire country council, the court distinguished between a servant and an independent contractor. According to Hallenbury, the distinction between a contract for servise and the service, in the latter case, the employers can order how the work is to be done, how, where and when, but in the former case, the employer cannot control the contractor by telling him how, when and where to do the job, the contractor us allowed to use his discretion in carrying out his job.

Nature of the employment test

* Test of ownership power of hire and fire
* Test of ownership of the working tool
* Test of payment of wages, salary or contract sum
* Intergral part of the business test
* Test of power to sub-delegate performance
* Test of power to demand exclusive service- for instance, if you are civil servant, you are not expected to work elsewhere
* Test of the place of work
* Test of power to determine hour of work and holiday

What the plaintiff must prove to succeed

* There must be a correlation between the two parties, there must be a master servant relationship between them.
* That there is liable for the tort
* That the tort was committed in the course of the employment.
* If the tort was impliedly or express authorized by the master.
* The act is an unauthorized way of doing something authorized by the master
* That the act is necessary in carrying out the duty or incidental in carrying our the duty
* To be considered in determining whether an act of a servant will be the responsibility of the master
* The manner of doing the work the servant was employed to do
* Authorized limit of time and place- an employer is free to determine the specified time and place, if the employee word outside this specification, the employer will not be liable expected at the time when the tort was committed, it was closed to the specified time given by the employer.

Joel v Morrison 1834 Pg 1338

Note: Frolic of his own – his own business

Different between Public and Private Nuisance

If an employee goes on a frolic of his own, the employer will not be held liable for the tort of this employee.

Not all acts of decoy is a frolic at his won, a frolic of his own depends on the degree of the case.

Frolic of his own-when the employee venture completely out of the business of his employer, either for himself or for a third party.

Whatman v Rearson, 1868 MR 3cp Pg 422, Contrast with Storey v Ashto- the court held that the employer was not vicariously liable for the tort of the employee as he was on a frolic of his own.

AG v Dadey 1971 IGLR 228

Express prohibition by Master

A prohibition not to do wrong does not exonerate a Master from the tort of hos employee except the tort is done outside the scope of employment.

Limpus v London General Omnibus Co, 1862 158 ER 993- the employers were held liable because the tort was committed within the course of his employment despite the fact that the employee had been expressly prohibited from racing against other bus drivers. Contract with; Twine v Beans Express Limited 1946 176 LT – the employers were not liable as the employee was doing two things at a time.

As a general rule, when an employee combines his employers business with his own or that of a third party. He relieves his employer of vicarious liability.

Connection of the employer act with the employer’s business

Polland v Parr 1927 1KB 236- the employer was held to be vicariously liable.

Danies v whetstone Entertainment Ltd 1962 2 Lloyds Rep 1- the court held that the employer’s were liable for the first assault but they were not liable for the 2nd attack as it could be regarded as an act of vengeance Warren v Heiley Ltd 1948 ALL ER 935- the employer was not held to be vicariously liable for the act of the employee.

Ogundana v Akinwumi 1961 2 ALR COMM Pg 398.

An employer is not liable for the tort of an independent contractor or the tort of the independent contractor of the servant of the employee

Exceptions.

* Where an independent contractor is to commit a tort. Ellis v Sherfield Gas Consume company.
* If an independent contractor is where a contractor commits a strict liability tort
* Where an IC is employed to do an extra hazardous work.
* Where an employer has been negligent
* If he did not employ someone capable
* Failure to undertake reasonable inspection of the work
* Where an employer delegates a non delegable duty to an independent contractor.

**Defences**

* Frolic of his own
* Plead of a publication of a disclaimer
* The tort is the act of an independent contractor
* Act of the stranger or thirty party over whorn the employer had no control over

**Remedies for the plaintiff**

* Injunction and damages

**Remedies of an employer against an employee**

* Claim of indemnity
* Dismissal of the employee
* Other disciplinary measures

**OCCUPIER’S LIABILITY**

Generally, it is held that the occupier of a premises owes everyone who comes into his premises a duty of care

Who is an occupier?

The person who is in physical possession of the property

The person who is in physical possession and who has authority, over the property?

The person who has control over the premises

A key word in determining who the occupier of a premises is, is that the person is in control of the premises

To determine what premises is, the following should be taken into consideration:

* It is capable of human entry and exit
* It is capable of human habitation
* It is capable of human business, dwelling

To qualify as premises, it includes a living space but it is much more than that.

It is anything capable of being controlled, which can be used for human dwelling, it can me movable or immovable

The occupier of premises owes a duty to lawful visitors, licencee and trespassers. A licencee- is one who as permission to be one the premises

The occupier owes trespassers, the duty of common humanity.

**OCCUPIER’S LIABILITY (COMMON LAW POSITION)**

Different authority & writer have different views Australia- sees occupiers as a head under negligence

Other jurisdictions believe occupiers liability should be treated on it own. The occupier of a premises owes a duty of care to the people on his premises.. he must take steps t see that they are free from danger to themselves & their property.

Occupier’s liability has a root in common law.

He owes a duty to different set of people

At common law, the duty of the occupier is to the following people:

* Trespasser – one who is not invited to be on the occupier’s premise
* Licencee- he is allowed to carry out some activities, he is there for his own interest
* Invitee- he is on the occupier’s premises because there is a common interest between him and the occupier.
* A contractual entrance- in some other places, it is referred o as entrance as of right – he comes on the premises by virtue of an existing contract between himself and the occupier, the person is there as the right.

Duty and the occupier at common law.

* The premises must be as safe as reasonable care & skill is concerned – contractual entrance
* Duty to be kept safe from unusual danger that the occupier knows or ought to know about – Invitee
* Duty to be made aware of danger, the occupier knows about duty to be made aware of certain things on the premises that could amount to foreseeable danger- licencee
* Duty of common humanity – trespasser
* The test of an occupier is that he is control of the premise and he can make managerial decisions relating to the premises.
* Common humanity- duty not to deliberately put him in harm’s way

Duties of the occupier extends

* With respect to the state of the premises
* With respect of the activities carried on the premises

We can have more that one occupier

At common lwa, the liability of the occupier extended a little bit- he owed a duty of care to a child.

Initially, in common law, no duty was owed to children, as it was the same duty that was owed to adults that was equally owed to children.

Allurement principle … take a further step and not lead the into temptation or entice them, there is a higher duty to children not to deliberately put them in harm’s way or to tempt them. As time went on in common law, the child trespasser was treated as a child visitor

The occupier of the premises owes a higher dutyof care to a child where the child is little, the minder of the child will be held liable for any harm done to the child.

In a case where there are more than one occupier, you will look at the injury, that is it was the result to the act of one of the occupier or is it as a result of the inactivity or inaction of the other occupiers.

The liability of the occupier towards special people is greater than the liability for a normal person.

Liability for means of access

The handlord is regarded as the occupier in respect to liability relating to liability for means of access.

**Occupiers liability Act of 1957**

The state of the premises and the activities carried out on it- how it regulated in common law- duty.

The Occupier Liability Act 1957 provides for;

* Visitors
* Contractual entrance

The Act also provides that the occupiers owes a duty to children.

At Act does not say anything about the trespasser, hence the provision in common law applies.

Section 7, 8, 9 of the Lagos State Law reform Torts law.

Statutority, the occupier owes a common duty of care to visitors, contractual entrance and trespasser. The law allows the occupiers to limit his liability out he would not be allowed to free himself of all duties

The Acts as to

* Regulate his obligation with respect t his premises
* His obligation with respect to damage of the property.

Sec 8- Extent of the occupiers duties

The only different here is with respect to children

In the cares of adults, there is a degree of care owed by the occupier.

The law speaks of another category of people-professionals does not extend to dangers incidental to their profession.

Check up;

Duntar v Ablot 1953 2 ALL ER 172

Salmond v Seaferra 1983 2 ALL ER 729

The cargerth 1927 P 92 CA

Gould v McAuliffe 1941 2 ALL ER 527 CA

Wheat v Lacon

Glassglow Corporation v Taylor.

While a public officer suffers jobs on your property, he cannot be seen a trespasser. Sec 2(6) Occupiers Liability Act.

Where a person enters a premises to carry out certain acts, it he goes outside his licence, he is a trespasser.

If he goes outside where he is supposed to be on the premises, he is deemed a trespasser.

Position of the Occupier vis a viz that of an independent contractor.

**Assignment**

Issues places which would give use to liability – in your option who would be held responsible- Give authorities

Gould v McAluliffe- The plaintiff went to a public hose to meet her husband and while waiting for him, she had occasion to look for a lavatory. She did not inquire where she could find one, but went to where she thought the lavatory will be since she had been there before, but it wasn’t there. Looking for where she will find one, she stepped beyond the gate and she was attacked by a dog belonging to the licensee of the premises, the defendant. It was found in the court

1. That there was an invitation to the plaintiff to enter the garden but not to pass beyond it through the gate.
2. The plaintiff intended to be a customer of the public house. The defendant knew the dog had attacked too person before then, it was however held that the defendant was an invitee, not only when she went into the garden, but also when she went through the gate into the yead where she was bitten.

Dunstar v Abbott- Liability of occupier

The defendant was the owner and occupier of premises bordered by an unlighted country road. The only means of access to the dwelling house from the road was a concrete bridge over a ditch and a drive leading to the house. The plaintiff entered the premises after then with the intent of selling advertising space to the defendant who refused to do business. As he left thje premises, the plaintiff tripped and fell into a ditch and suffered injuries. He complained that the defendant had turned off a light too soon. In an action for damages for personal injuries, it was held that the defendant was not negligent, therefore the plaintiff was entitled to recover damages, on appeal, the plaintiff was awarded 460 pounds damages.

Wheat v E Lacon & Co Ltd, the respondent brewers owned a public house which they tan through the agency of a resident manager and his wife , who had their own quarter I the public house and were allowed to take lodgers. The manager’s contract of service endowed that his occupation of the premises was as an employee and not as relevant. One of the lodgers tried to get to the bar by way of an emergency staircase form the living accommodation, fell and was killed.

The court of appeal held that the brewer were not the occupiers of the private part of the premises, as control is the relevant test. The house of Lord’s view different, it was held that the brewers had a sufficient degree of control to render them liable.

There can be more than one occupier for the purposes of ascertaining liability.

Glasgow Corporation v Taylor- a seven year old picked and ate some berries in the defendants’ park. The berries were poisonous and the child dir=ed. The berries looked like cherries and they were tempting to any child. It was held that the berries constituted an “allurement” to young children. The defendants had knowledge of the propensities of the shrub and had given no warning or fenced it off. The house held a good cause of action had been disclosed.

Liability will only arise with respect to whatever the persion was invited to the premises to do.

When you are a trespasser, you

The trespasser and the common duty of humanity

At common law, the position of the trespasser was not to deliberatedly cause him harm

In the case of Railway Corporation v Herrington- a boy strayed on the railway track and he suffered injury. It was established that toward a trespasser, the occupiers woes him a common duty of humanity and it extents not to put the trespasser no to deliberately put him in harm’s way where the occupier is aware of danger on his premises, he owes him a duty to warm him.

The liability of the occupier to the trespasser only relates to the state of the premises and not as a result of what the trespasser intedn to use the premises for.

The duty if the occupier will only arise when he is aware that trespasser strayed to his compound or there is likelihood for trespasser to get into his compound.

The occupier of this premises decided to keep watch ever his house as a result of previous burglary, one a fateful night, he shot at the trespasser and the one got hit, he was taken to court and it was held that since he was aware of their presence, he owed them a duty.

When the occupier of a duty of care –Principle

Roles v Nathan- Chimney sweeps – exclusion of liability they acted as professional their field

**Point to Note**

* The occupier must be aware that there is something on his premises which attract trespasser.
* The occupier must be aware f the presence of the trespasser.

**Defence**

A person cannot benefit from his wrong

Exclusion of liability

A duty forwards the trespasser is based on public policy

Section 8(i) of the law Reform (Tort) Policy

The occupier is allowed to exclude, limit his liability Sec 2 (i) of the Occupiers’ Liability Act of 1957 provides that an occupiers free to restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise.

In Anya v Imo Concord Hotel Ltd., it was held that the inscription “Cars are Parked at Owner’s Risk” was sufficient to exclude liability for any loss or damage to property.

Defence- violence non fit injuria for the defendant.

The unfair Contract Terms Act of 1977, applies in England and not in Nigeria.

Where there is an existing contract between teo parties, it is implied that the parties to the contract have the right to enter the premises of the other and occupiers are not allowed to enable liability in this situation especially where the danger is detrimental to life.

**White v Blackmore 1972 23 ALL ER 158 CA,** a group of people orgainsaed a racing event, at the gate into the premises, people were informed that the racing vehicles could veer off the track and injury the spectators,. However, one of the vehicles veered off the track and injured the plaintiff, the court however held that since he was informed of the risk involved at the gate, the organizers were not liable.

**The occupier of premises and the independent contractor**

The occupier of the premises is generally not liable for the acts of independent contractors. Except he has not taken diligent care in employing a competent contractor, he did not supervise the contractor, where he authorized the activity of the contractor that leads to the injury suffered as a result of the act or tort.

See: Green v Fiverglass Ltd 1958 3 WLR 71

Haseldin v Daw 1941 2KB 343.

Where the activity of the independent contractor involves some technical knowhow the occupier will not be held liable for the activity of the independent contractor, where it is a simple duty like clearing the floor, the occupier will have more liability and he will have agreater duty to ensure the independents contractor elves his duty.

Distinguish between the case of Woodward & Mayor of Hasting 1954 KB 174 and Green v Fiverglars Ltd.

**Defences**

* Contributory Negligence
* Violent non fit injuria
* The fact that a person cannot benefit from his or her wrongdoing

Where there is a notice on a premises before entrance into the building, it is taken to mean that he take the building as it is.

**DEFAMATION**

Defamation is any publication made whether spoken, written or in any order way recorded that causes a person to be individual, contempt, annoyance or to be shunned by right thinking members of the society.

It could be in a permanent or temporary form

Permanent – libel

Temporary/spoken form – slander

Libel has gone beyond writer form, it is anything in the form of a permanent form, which results to injury to a person.

From an act of quality as defamatory, it must be communicated to one another person apart from the claimant.

The act must be something that lowers the reputation of a person in the eyes right thinking members of the society.

Certain things can be said about a person in a group, which would not only lower him in the sight of his member but also in the sight of right thinking member of the society.

Who is a right thinking member of a society?

There are some people in the society who have special tendencies, e.g. sadists, people who love to be on their own etc. people who do not see anything as wrong, pious people etc. cynical person, sensorious persons.

Standard of these people cannot be applied as the standard of right thinking members of the society.

People who are usually pious, sensorous, naïve, people who always inputs meaning to actions.

The test of right thinking members is that of the reasonable man.

**Note**: in determining what is regarded as defamatory, the society of the person should be put into consideration. Where words used falls into accepted usage of the community, it will not be regarded as defamatory.

**The elements of defamation**

* The statement must be defamatory
* The statement must refers to the claimant or plaintiff specifically
* The statement must be published or communicated to at least one other person.

**Note:** for a publication to amount to defamation

* It must lower the plaintiff in the estimation of right thinking members
* It must expose him to contempt, ridicule or cause other to shun or avoid him.
* It must discredit him in his office, trade, profession or injure his financial credit

Right thinking person – Average reasonable,

Libel is actionable person – the plaintiff need not show that the he as suffered damage. In slander, there is a need to prove that the plaintiff has suffered damage, in slander, where the damage is too remote, damage may not be awarded.

**The elements of Defamation**

There must be a direct link between the slander and the damage.

* In certain cases, slander will be actionable perse;
* Imputation of crime publishable by imprisonment
* Imputation of an infection disease
* Imputation of unchastely on a girl or a lady
* Imputation of unfitness or incompetence in a profession or trade. Egbe v. Adefarasin

**The statement must be published or communicated**

Defamation goes beyond the realm of speaking and writing, where such a representation is made. The plaintiff must show the publication or communication refers to him in particular. The use of initial, an appellation, nickname or a description.

In case of libel, it is been established by the court, where the defamatory statement is in a book or newspaper, it suffices once it is been published.

**The statement must refer to the claimant**

Innuendos- where statements are made which do not expressly point out who the statement refers to. It is an indirect reference to a person. It can be true or legal false. It can also be regarded as an indirect from of criticism.

It refers to when words are use in a different meaning other than what they should ordinarily mean on a day to day basis.

True or legal innuendos: when something is said, but there are certain members of a society, who understand are prior to certain information, read a deeper meaning towards what has been said. Sometimes, it is difficult to draw the line between a true and false innuendo.

In relating to true in nuendos, you are not “sugarcoating” anything, but where people have a deeper knowledge, they read various meaning to it.

Usually, where there is no malice, the action of defamation may not be sustained.

Malice- a statement made in a unjustifiable manner with ill-will. **Newbleed Org Ltd v Eromosele.**

E.g. Our last LSS president in an “Ibori”

Fase or popular innuendo. Where words have no special meaning and are used in their usual meaning but defamatory conclusions can be gotten from such word.

The statement must be defamatory.

For an action in defamatory to “fly”, the statement made must be true, if a true statement is said to be defamatory, the defence of justification will rise on behalf of the defendant.

For a statement to be defamatory there must be an element of untruth.

The basis for the tort of defamation is that every person has a right to self preservation, privacy, dignity, the right to association without fear of discrimination.

On the other hand is the right of expression on the part of the defendant. In relation to a person with an infection disease, it would by defamatory to publicize the status of the person, whether or not he is infected with the disease.

The truth of the statement published is an outright defence. There must be an element of malice.

Where there is an element of malice the act of publication will be regarded as defamatory.

**Okolie v Marrinho 2006 15 NLWR pt 1002 316**

**MTS Ltd v Akinwumi 2009 16 NLWR pt 1168 at pg 633**

**Newbreed v Eromosele 2006 5 NLWR 974 at 499**

**Ayene v Adeshina 2009 7 NLWR pt 1033 at 233**

**FBN Plc v Aboko 2007 1 NWLR pt 1014 at 129**

**Labati v Badmos 2007 1 NWLR pt 1014**

**Dairo v UBN Plc 16 NLWR**

**Zipy Industries Ltd v Sabotex Ltd**

**Omega Bank Plc v Gov Ekiti State 2007 16 NLWR pg 445**

**Maman v Salawudin 2005 18 NWLR pt 958 pg 478**

**Iloabachie v Iloabachie 2005 13 NWLR pt 943 at 695**

**Nnesirim v Nnerisim 1990 3 NWLR pt 138 at pg 285**

**Registered Trustees of Amok v Awoniy 1991 3 NWLR pt 178 at 245**

**Osayande v Etuk 2008 1 NWLR pt 1068 pg 211**

**Dean v African Newspaper Ltd 1990 3 NWLR 139 at 392**

It will not amount to defamation where there is communication between spouses. E.g where Mr. A tells Mrs. A about C, it will not be regarded as defamation. It is be;ieved that where two people are married, they become an indivisible unit.

Where a third party says something about the wife to the husband, it is seen as defamation

Generally, it is believed that when a company is corporate, it is regarded as a legal entity, where something defamatory is said anout a company, the company can institute an action in defamation.

Generally, with respect to groups, they cannot bring an action in defamation. Where group is small, a member of the group can sue when something defamatory is said about the group where a group is large and they are on easily ascertainable, a member of a group cannot bring an action in defamation where reference is made to a group or class, an individual cannot bring an action in defamation except particular reference is made to a member of the group.

The following is put into consideration, when a member of a group can bring an action

* Whether the words particularly pointed to the plaintiff among other group member
* Where the words refers to member of the group in particular

Knuppfer v London Express Newspaper Ltd 1944 AC 1116

The publication must be made in a language the third party understands.

* Where a person (the complainant) shows a defamatory note sent to him to another person, the defendant will not be liable Pullman v Hill 1891 1 QB 524
* Where the information gets to the third party as a result of the defendant carelessness, the defendant will be liable
* Where a person portrays a character, which is absolutely fictions to his own mind, he will be liable in defamation to the plaintiff.

However, the law says, the person who carries out an innocent defamation, has an option to amend. See section 6(1) of the Defamation Law of Lagos State.

Where an offer of amends has been made, the defendant can raise it as a defence where the plaintiff wants to institute an action against the dec

The offer of amends contains

* Reinstating that the story told did not refer to the plaintiff
* Correcting the impression
* Apologizing to the plaintiff

It must be made through the same mediums through which the defamatory statement was made.

The law states that the offer of amends be published through a medium through which the people, the defamatory statement was made to, can see it.

**Distribution or Dissemination of Defamatory materials**

* All the people who help to spread defamatory material will be liable for defamation.
* Where there has been innocent distribution, such people will be exempted & excluded from liability.

**Condition to be met, to be excused from liability**

* They innocently did not know the material contained something defamatory
* There not knowing must be as a result of their negligence
* No circumstance to show them the book/materials contained something defamatory.

Where, a boss dictates to defamatory letter to his secretary, it will be regarded as defamatory, but where she does not communicate it to a third party, it will not be regarded as defamation. That the defamatory statement did not originate from you, will however reduce liability. Where a person uses your medium to disseminate his libel or slander, you will not be liable if it was due to no fault of yours, if he immediately apologues through an offer of amends provided in section 6 of the defamation law of the Lagos State. The offer of amends is the procedure thoroughly which the innocent disseminator will escape liability.

Dean v African Newspaper Ltd- Defence of Justification and Fair comment.

This case deals with a man who was contesting for a political office and he claimed that he was returning from the army after nine years of mendacious service, this he passed across through a newspaper conference, the army also called another press conference countering what Mr. Dean said, by letting the public know that he was dismissed an coveted for a irimerial offence as against what he originally alleged.

For a defence of fair comment to stand, the defamatory statement merely commenting, on information already known about. The defence will avail a person it is made for public interest.

Osayonde v Etuk – where a defamatory publication is shown to the spouse of the party involved, it will not be regarded as defamatory.

Defamatory publication must be made to a third party, not just the complainant as seen in Registered trustees of Amok v Awoniyi, Nnesirim v Nuesirim.

Mamman v Salawadin- Defence of qualified privilege

**DEFENCE FOR DEFAMATION**

The defence are four in number

* Qualified privilege
* Absolute privilege
* Justification – Truth of the statement
* Fair comment

**JUSTIFICATION**

The defence of justification will avail the defendan event if he is motivated by ill-will or spite as long as it is the truth. The justification is that if people hear the truth about the plaintiff, he is merely reduced to his proper reputation, hence no defamatory act has been committed against him.

Academic debate- The defence should not be absolute but judicially the defence is absolute

Kada v Bever Books Newspaper Ltd

Sec 7 of the Defamatory Law- as long as the defendant can prove part of the statement as the truth and as long as it does not change the truth of the statement he has been able to prove.

The law will not allow a person to claim a character for reputation from defamatory matters when he in fact has a tainted reputation.

**FAIR COMMENT**

It will avail the defendant if the defamatory statement is a fair comment on a matter of public interest.

Conditions to be fulfilled before this defence can avail the defendant.

* It must be a matter of public interest- public office, security, public funds, public morality, public health, judicial decision, issues of global corporations, international security, anything that falls within the public domain. This defence is usually used by journalists.
* It must be as a result of existing facts- the facts must be a existence, making comment on existing facts. Christine v Robertson 1889 19 NSLWR 157 at 161, the distinction was made between a comment and a statement of fact.
* The comment made must be fair and not based on malice. Malice is an act done out of spite or ill-will so as to cause damage to the plaintiff.

This defence is not based on the best of the reasonable man but on the test of the honest man.

Turner v Metro Goldwyn Mayer 1950 1 ALL ER 499 at 461- it was said that would any host man however prejudiced he might be or however obtained he might be have made such criticisms in all honesty?

Slim v Daily Telegraph Ltd 1968 2 QB 157 at 170. Lord Denning reinteracting this, stated that. If the defendant was an honest man…. He has a good defence in fair comment.

The comment must be based on true facts that were already in existence when the comment was made. It must be a comment of the facts already in existence as at the time the comment was made.

Distinction between fair comment and malice – Campbell v Spotishwoode 1863 32Ly QB 185 at 199.

**ABSOLUTE PRIVILEGE**

It avails a defendant for a defamatory statement made in judicial and legislative proceedings.

Statement made in judicial process by judge, counsel, parties to the suit or witness have absolute privilege.

The defence not only covers statements made during judicial proceedings but it covers all document filed in relation to the suit.

It will also extend to al judicial bodies including tribunals but it does not extend to administrative bodies, illegally constituted courts.

Statements made in legislative proceedings based on the **Parliamentary Privilege Act 1770 of England**, Legislative proceedings extend to committees of the house.

Communication between certain officers of the state. **Chatterton v Sec of state for India**. This privilege does not extend to all cadres of civil service. It applies to only high, raking officers of the state.

**QUALIFIED PRIVILEGE**

It will avail the defendant, provided it is a defamatory statement made for the general welfare and in the common interest of members of the public.

If the defendant is propelled by malice or ill-will, the defence will fail.

It will avail when communication is made as a result of a legal, moral, social, duty or communication is made to the appropriate authorities to reliers public grievance or when it is made in self defence.

**ECONOMIC TORTS**

* Passing off
* Deceit
* Injurious false lord

**ECONOMIC LOSS**

The underlying principle/ factor is that they are torts that are to do with the damage or injury to a interest or person’s economic interest.

* Deceit
* Injuries falsehood/ malicious falsehood
* Passing off
* Unlawful interference with business
* Passing of (The Imitator)

It is a tort that generally deals with protecting the economic interest of one party against damage from another party.

Competition between people in business must be fair, hence there must be no undue advantage.

Passing off involves misrepresenting the product of an established business person. It could be based on the appearance of the product

Factors in the tort of passing off

There is a misrepresenting

The misrepresentation must be made by a trader in the course of his business

The misrepresentation is not made to any one in particular, it is made to prospective customers

The misrepresentation is calculated to injure or harm the goodwill of another trader/business person

And the trader/business person suffers damager

The damage suffered must be pecuniary or economic loss. These are 3 parties in this tort, the honest, trader, the imitator and the customer.

**Deceit the (Can Man)**

There is a misrepresentation, it deals with two players’ “the can man and his victim”.

A person makes a misrepresentation to another persons, which result in the economic loss of the victim/other person.

Elements of deceit

The misrepresentation must be done knowingly or recklessly (not caring if the statement is true or false. Derey v Peak – for a statement to qualify as false representation, the statement must be made;

* Knowingly
* Without belief in his truth
* Recklessly (caring less whether it is true or not)
* The representation must be made expressly or impliedly
* The statement must be made with the intention that the other party should act on it and this other party must act of it.
* He must suffer economic loss as a result of this misrepresentation

Pasley v Freeman, Landridge v Levy.

**Injurious Falsehood**

It looks somewhat like the tort of defamation. In this tort.

* There must be a misrepresentation by a party to another party which causes economics loss or injury to the claimant or plaintiff.
* The statement must be made with the intention that a third party will act on it to the detriment of the plaintiff.
* The statement party must be made with malice.
* The third party must have acted based on the statement to the detriment of the plaintiff. It affects the economics interest of the plaintiff.

To establish a claim of injurious falsehood.

A statement must have been made. This statement must not be made in vacuum. It must be made to a person who has an economic interest with the plaintiff/complainant.

Hedley Byine v Heller Brothers

**DECEIT**

In order to established an action in deceit, the plaintiff must be able to establish the following

There must be a false representation of facts which may be oral, written or by conduct. Ward v Hobbs 1878 4 APP. Cas 13

For an action to lie in deceit, the statement must be false, where a statement is made in honest belief it will be negligent misstatement.

It will also suffice, if the statement is made deliberately to mislead the plaintiff/claimant, he will be liable for the tort of deceit.

To deliberately conceal a act will amount to deceit and amount to situation, silence will amount to deceit. Silence will also amount deceit when the tort fears or made an earlier representation of fact, which he most probably did not know were true, if however he to know that it is untrue and he fails to inform the plaintiff, it will amount to deceit.

Generally, where a person makes a promise and fails to keep the promises, it will not amount to deceit but a breach of promise. However, where his promise is based on false facts, it will give rise to liability under the tort of deceit. **Edgington v Fitzaurice 1885 29 Ch.D 459 at 483-** the director of a company issued a prospectus and they were inviting people to buy stocks and they said in the prospectus that they would use the money to buy something, however when people bought stocks, they used the money to settle some debts. It was held that it went beyond a breach of promise, they were held liable for deceit as from the beginning it had a false undertone.

Where a person acts as a professional and another goes to seek his opion based on his expectise, and he gives false opion or advice deliberately, it amount to deceit.

Suppression of the truth is a expression of falsity, where you deliberately choose not to say the truth is an expression of falsity or you speak ony half the truth. Peek v Gurney- it was stated that half the truth will sometimes amount to real falsehood. “A cocktail of truth, falsity and evasion is a more powerful instrument of deception than undiluted falsehood – Smith New Court Securities Ltd v Sarimgeous Vickers (Asses managers)

The tort of deceit does not occur at the point of giving the information, it will only occur at the point when the information is acted upon.

* The statement must be made without an honest belief in what was said – there must be an intention to deceive or misrepresent facts.
* The statement must be made on the intention that the plaintiff should act on the information provided.
* The plaintiff must suffer damage- where a person suffers emotional trauma. It will not be a tort of deceit; the person must suffer on economic or pecuniary loss.

The tort of deceit occurs at the point where he suffers damages. The starting point must be economic loss, before the plaintiff can prove special damages

Note that the underlying factors in this tort are falsehood.

The different between defamation and deceit is that one affects the economic interest of a person while the other affects his reputation in the eyes of right thinking persons in the society.

**PASSING OFF**

It is based on the principle that a person is not to sell his goods/present his goods or services under the pretext that they are those of another

The tort is aimed at protecting the goodwill of one trader against the infringement by another trader

Passing off s when one trader present his good of service misleading the public into believing that they are the goods and services of another trader causing the plaintiff economic or pecuniary loss.

Principles of passing off established in the case of Erwen Warrick B.V v J. Townend & Son (Hull) Ltd.

**These elements**

* There must be a misrepresent
* It must be made by one trade in the course of trade or business
* It must be made to prospective r ultimate consumers of his goods or service
* It must be calculated or intended to injure the goodwill or business of another trader
* It must cause or threaten actual damage to the business or goodwill of the plaintiff trader

Not that the distinguishing factors is the misrepresent must cause confusion in the mind of prospective customer between the goods of the tort fear and that of the plaintiff/clainmant.

**Forms of passing off**

* Trading under a name that so closely resembles that of the plaintiff or claimant
* Imitating the appearance or distinctive features of the claimant goods and service s
* Presenting inferior goods as those of the plaintiff to the extent that the goodwill of the plaintiff is affected.
* Imitating the plaintiff’s trade mark
* Marketing products as those of the plaintiff

See Francis Day Hunter Limited v 20th. Fox Company Ltd 1939 4 ALL E.R 192 at 199.

**Trading under a name.**

Niger Chemist Ltd v Nigeria Chemist – the court held that as a matter of common sense when two firms trade in the same town, street and line of business one calling itself Niger chemist and Niger chemist, there is a great risk of confusion and deception. Hendrick v Montagu 1881 15 L.J ch 456- it was held that the names were so close that they would be confusing to prospective customers.

Where the defendant is engaged in the same type of business as the plaintiff and he uses a name so closely resembling, that of the public in order to deceive the public, there would be passing off.

Marketing goods with a name that resembles that of plaintiff

It will amount to the tort of passing off to the defendant produce, present or to market his goods with a name closely resembling that of the plaintiff as it causes confusion in the minds of the customer and the goods are mistaken as that of the plaintiff.

This, where one person produce his goods and uses a name that so closely resembles that of the complainant.

A person is entitled to trade under his name, however he will be liable for this tort where these is another trade existing by the same name na dhe does not make an effort to distinguish his product from that of the plaintiff.

Parker Knoll Ltd v Parker Knoll International Ltd- the court held that where there is an existing product in that name, there is a need for a distinguishing feature- furniture making.

Brimsmead v Brimsmead 1913 30 RPC 493.

A distinctive feature means a differentiation in labeling, colouring, an essential element which distinguished a product from another, this could also be symbols, words or shape or anything done to avoid the risk of confusion. Ferod Ltd v Ibeto Industries Ltd 2004 5 NWLR pt 866 frm pg 317

Note that a generic name cannot br appropriated by anyone i.e. a name generally descriptive of goods of that nature. Reddaway v Benham the plaintiff had been producing Camel hair belting, and he was already known with it, and a former employer of the plaintiff, started a business using the plaintiff business mane this confusing the public. It was held that though the descriptivw words had come to refer to the plaintiff’s goods and the action was sustained , it was based on long usages rather than good will. In essence, where a person has enjoyed long usage of a descriptive name, ever other trader has a duty to differenciate and distinguished his product.

British vacuum cleaner Company Ltd v New Vaccum Cleaner Company Ltd.

Generally, descriptive words will not entitle a trader to monopoly, however, where there has been long usage, the new trader has a duty to distinguish his goods in some way.

**Marketing goods with the Plaintiff’s Trademark**

A trademark is used or proposed to be used in relation to goods indicating or so as to indicate a connection in the course of trade between the goods and a person with the right to use the mark.

A distinctive mark will indicate to a purchaser, the means of getting the same article in future, by getting an article with the same mark on it.

A mark includes a brand, heading, label, name, signature, word, letter, numeral, or any combination of the above

Ferodo v Ibeto

IT Nigeria Ltd v BAT Nig Ltd

And it is registered by virtue of the **Trademarks Act**

Whereas an action for passing off is an action for an imitation of a distinctive feature adopted by the plaintiff for which he attained a reputation with the aim of misleading or deceiving members of the public.

Virgin Enterprises Ltd v R Beverages Nig Ltd 2009 12 NWLR pt 1156 Pg 498

**Imitating the appearance of the Plaintiff’s goods**

Reckitt and Coleman v Borden Incorporated (lemon juice in plastic lemon containers) – imitation of appearance

It will amount to passing off where the defendant copies the likeness or appearance of the packaging of the plaintiff. De facto Works Ltd 1959 LLR 33, the plaintiff had been manufacturing bread in particular manner, using chocolate colour and the defendant copied the exact appearance of the plaitiff’s bread. He was held liable in passing off because his act was intended to deceive, as the customer is not supposed to scrutinize the goods in order to know the difference in the name, or look into details.

In determining whether confusion is likely to occur, the customers should be taken as they are, theyr are not required to bet extra careful and vigilant, it would not be a defence that the customer should be vigilant. The likelihood of deception varies with the intelligence and interacy of customers. The applicable test is not whether the customer can distinguish the goods side by side but when on his own, his ability to distinguish the goods.

UK Tobacco Company Ltd. V Carreard

IT Nig Ltd v BAT Nig Ltd 2009 6 NWLR pt 11 38 pg 577

In imitating the apprearance, where the defendant copies or imitates the plaintiffs advertisement, there is a likelihood of passing off where advert so resembles that of the plaintiffs to as to mislead the customers to patronize the defeandents goods as that of the plaintiffs.

An action will not lie, where the defendant catches in on an advert concept created by the plaintiff. As nobody can claim monopoly over a concept. See Cadbury Schweppes Ltd. Pub Squash Co Ltd 1981 1 ALL ER 213

In determining whether or not there is a similarity between the business of two parties, certain factors would be taken into consideration .

* Uses of the goods/service
* Users of the goods/service
* Nature of the goods/service
* Channels through when the services reach the market
* Extent of competitiveness between the two parties

Harold’s stores Ltd v Haroldian school, where Haroldian school wanted to register their name, the plaintiff objected to it, the Haroldian school was a school for children, where there were taught gymnastics, Harold’s Ltd sought to register their school based on etigutters. The court said in determining whether or not there is a similarity or clash, the court held that there was no similarity between their services to be rendered by both parties.

**Selling inferior or expired goods of the Plaintiff**

This will amount to passing off as it is based o the principle that the tort of passing off seeks to protect the goodwill and reputation of plaintiff.

It will however not be passing off when the old product or second hand product of the plaintiff are sold off without presenting then as new ones

There is another form of passing off known as Reverse Passing off, this is where the defendant sells the plaintiff’s product as his own. DeBollinger v Coster Braver wine Co. Ltd 1960 CH 262 aka The Champagne case, the defendant manufactured something substandard and referred to it as champagne which it was not.

There is something referred to as Innocent Passing Off and it occurs usually I imitating, where the defendant was not aware of the existence of the plaintiff’s product.

It is not an absolute defence, but it will reduce liability

Liability in passig off is strict, hence defences are not likely to be absolute.

**Defence**

* Functional design or package
* Descriptive name or generic name
* Licence of consent or produce or market the plaintiffs goods and services
* Using natural names

**INJURIOUS FALSEHOOD**

Ratcliff v Evans, it was held that an action will lies for written or oral falsehood, where they are maliciously published, calculated to cause damage or actually cause damage to the plaintiff, in the course of things

There are time when statement are not defamatory but nonetheless damaging, thus it is an actionable misrepresent made knowingly or recklessly.

Thus, injurious falsehood can be defined as the making o a false statement with malice, to some person other than the plaintiff as a result of which the plaintiff suffers damages.

**Elements**

There must be a misrep that is discrediting or damaging to the plaintiffs business interest.

There must be the element of malice, and this requirement will be satisfied if the defendant acted without honest belief and he was motivated by an improper motive with the aim of injuring or causing damage to the plaintiff. The rest applicable is that of a reasonable man.

Mere puffs will not amount to injurious falsehood.

**White v Merlin 1895 App cases 154 Hl**

The statement must be damaging and disparaging

A clear identification of malice is anything due in bad faith (Malafide)

**Ordinary adverts will not amount to malice.**

* The statement must be not false, the plaintiff has a duty to established that the statement made by the defendant about his goods or service is untrue and the establishment of falsehood raise the issues of malice
* The statement must be published or communicated to another people like the customer and prospective customers of the plaintiff. Rardiff v Evans.
* The plaintiff must have suffered damage-pecuniary lss which would be satisfied if the plaintiff can show a general loss of business or financial loss.

In determining the presence of malice, the court will consider

* Improper motive
* Intention of cause harm
* Lack of honest belief in the truth of the statement
* Knowledge of its falsity
* Ill-will

**Defences**

* Justification
* Legislative/ statutory immunity
* Absolute privilege

Once truth is determined, the tort cannot be regarded as a tort of injurious falsehood.

**MALICIOUS PROSECUTION**

See balogun v Amubikabun 1989 3 NWLR 14 107 at Pg 187

Elements of the offence

Prosecution of the plaintiff

No reasonable or protable cause for the offence (the test of objective and subjective – what the general public thinks and what you think.

Malicious intent.

The defendant must have prosecuted the plaintiff or set the motion up against the plaintiff.

A private person is allowed to imitate criminal proceeding against a person based on the law of Nigeria, to satisfy this requirement. The defendant must have actively set the law in motion against the plaintiff, a deliberate and active instigation against a judicial body to prosecuted the plaintiff.

An action will not lie where a person supplies information to the police.

Where the prosecution of the plaintiff arose as a result of what the defendant told the police, he will be liable for malicious prosecution. Ojo v Lasisi.

To set law in motion in the case of private person will mean to make a report and purse the matter till the plaintiff is arrested based on the mischievous lies or malicious report and further prosecuted by a person having judicial authority to do so, in essence, to be liable under thus tort, the defendant need not be the prosecutor, it will be sufficient if he instigated the arrest and laid a charge as well as suborning witnesses to testify against the plaintiff. Ehimanpayin v Adiaba Aliyha 1953 14 WACA 267.

Reasonable and probable cause.

There must be a reasonable and probable cause, in determining this, it will be considered, whether the facts available to the defendant would have led an ordinary reasonable man to the conclusion that the plaintiff was guilty of a criminal offence, further, the defendants belief in the criminal culpability of the plaintiff must be proved. There must be a belief founded on reasonable grounds in relation to a set of facts, which true, would lead every reasonable person to believe the plaintiff committed the offence.

The set of facts or circumstance must lead a reasonable man to believe that the plaintiff is probable guilty of the offence he I said to have committed. Hermiman v Smith 1938 AC 305 .

Malice

The information providing by the defendant must be false and baseless to his knowledge, coupled with the presence of ill-motive. Tewarin v Sirigh 1908 24 TLR 884

Where there is conviction, the issue of malicious prosecution cannot arise. The proceedings must have been terminated in the plaintiff favour. It is not necessary for him to be proved innocent it will suffice that there is a pronouncement of guilt.

The proceeding will be said to have terminated in the plaintiffs favour, where

* The AG enter a nolle prosegus
* Dismissal (discharge &acquittal of the accused person on the merits
* Proceeding are discontinued at the instance of the prosecutors or claimant
* Discharger of the accused person or prosecution dismissed for lack of dilligent prosecution
* Acquittal of the charge but convicted of a lesser offence
* The indictment against him is squashed
* Conviction of a lower court is reversed in a hight court due to procures irregularities

It will not amount to proceedings ending in the accuse favour, ifthe accused person bargins with the prosecutor- it is not favourable termination.

The plaintiff must prove the prosecution ended his favour.

Where the plaintiff is convicted by a lower cour and it is upturned in his favour in a higher court based on the substance of the case, he cannot bring an action for malicious prosecution, but where it is upturend because of the procedural irregularities and technicalities of the case, he can ring an action for malicious prosecution.

He must have suffered damages and it can be to his person, reputation or other proprietary interests.

Tewari v Singh- if the defendant knowingly makes a false accusation to the police or a judicial offer with the result an innocent man is sent for trial, he will be liable as prosecutor, even though the prosecution was not technically conducted by hi.

Payin v Aliuah- the defendant had made a knowingly false report to the police to the effect that the plaintiff had stolen some coconut from a plantation. The plaintiff was subsequently prosecuted for the offence and acquitted. In an action for malicious prosecution brought against him, the defendant argued that it was not him but the police who had preferred the charge of theft, and he had merely given information. The WACA upholding the decision of the trial court rejected this contention and held the defendant liable as prosecutor, since his report to the police was a complete fabrication.