“Developments in the law of assault and Hong Kong’s recognition of a tort of harassment mean that the rule in Wilkinson v Downton no longer serves any useful purpose.”

Discuss

**Introduction**

* Case of *W v D* recognised a new tort where D has willfully done an act calculated to cause harm to P and in fact caused harm to P.
* Elements of the tort have been clarified by the UKSC in *O v Rhodes*. [state them]
* There have been questions about whether this tort serves any useful purpose. In *Wainwright* Lord Hoffmann said the tort is ‘far more discussed than applied’ and there have been very few cases where a claim in this tort has succeeded/argued.
* In this essay, I will examine whether it is indeed the case that it no longer serves any useful purpose in light of developments in the law of assault and Hong Kong’s recognition of a tort of harassment.
* To do this, in the first section I will consider….. I will then examine….. [signposting]

**Assault**

[To what extent do developments in the tort of assault reduce the usefulness of *W v D*]

* Trespass tort – common elements of intention, directness, actionable per se. Definition of assault from Robert Goff LJ in *Collins*.
* Conduct element in W v D – words or conduct directed at P for which there is no reasonable justification or excuse.
* Development in assault – debate over whether it covers words and not just acts. [Cite the cases on this debate]
* Assault might not cover words alone.
* Requirement for apprehension of immediate battery in assault – not present in W v D. Cover threats in the future.
* Words or threats that are harmful but unrelated to a battery. *Janvier* and *W v D* – no assault.
* Mini conclusion – refer back to q. May still have a role.

**Harassment**

[To what extent does Hong Kong’s recognition of a tort of harassment reduce the usefulness of *W v D*]

* *Kadoorie* case etc and elements of the tort of harassment.
* Both cover distressing conduct. Harassment is potentially wider – *W v D* has a stricter requirement (psych injury or phys injury).
* Harassment requires a course of conduct. *W v D* can apply to one-off interferences.
* Mini conclusion – refer back to q. May still be a role.

**Useful purpose?**

* Discuss lack of case law applying it.
* Compare with law of negligence and development of liability for nervous shock. McBride and Bagshaw argument.
* Rachael Mulheron – repurposed to play a useful role.
* Mini conclusion

**Conclusion**

Tie together your mini conclusions and answer whether the statement is convincing overall.