

# PHILOSOPHICAL FOUNDATIONS OF TORT LAW

DAVID G. OWEN

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# Philosophical Foundations Of Tort Law

**Izhak England**



## **Philosophical Foundations Of Tort Law:**

*Philosophical Foundations of the Law of Torts* John Oberdiek, 2014-03-20 Contemporary philosophy and tort law have long enjoyed a happy union Tort theory today is an exceptionally active and wide ranging field within legal philosophy This volume brings together established and emerging scholars from around the world and from varying disciplines that bring their distinct perspective to the philosophical problems of tort law These ground breaking essays advance longstanding debates and open up new avenues of enquiry thus deepening and broadening the field Contributions cover the major problematic areas of tort law such as the relations between responsibility fault and strict liability the morality of harm compensation and repair and the relationship of tort with criminal and property law among many others **Philosophical Foundations of Tort Law**, 1995 Philosophical Foundations of Tort Law David G. Owen, 1995 This exceptional collection of twenty two essays on the philosophical fundamentals of tort law assembles many of the world s leading commentators on this particularly fascinating conjunction of law and philosophy The contributions range broadly from inquiries into how tort law derives from Aristotle Aquinas and Kant to the latest economic and rights based theories of legal responsibility This is truly a multi national production with contributions from several distinguished Oxford scholars of law and philosophy and many prominent scholars from the United States Canada and Israel A provocative closing essay by one of the world s leading moral philosophers illuminates how tort law enables philosophers to observe the abstract theories of their discipline put to the concrete test in the legal resolution of real world controversies based on principles of right and wrong Philosophy and the Law of Torts Gerald J. Postema, 2001-11-19 When accidents occur and people suffer injuries who ought to bear the loss Tort law offers a complex set of rules to answer this question but up to now philosophers have offered little by way of analysis of these rules In eight essays commissioned for this volume leading legal theorists examine the philosophical foundations of tort law Amongst the questions they address are the following how are the notions at the core of tort practice such as responsibility fault negligence due care and duty to repair to be understood Is an explanation based on a conception of justice feasible How are concerns of distributive and corrective justice related What amounts to an adequate explanation of tort law This collection will be of interest to professionals and advanced students working in philosophy of law social theory political theory and law as well as anyone seeking a better understanding of tort law New Philosophical Foundations of Tort Law? Avihay Dorfman, 2015 In this critical piece I take stock of current understandings of five basic distinctions in the theoretical study of tort law First a meta theoretical distinction between the law s self presentation and a commitment to epiphenomenalism second between the formal and the substantive theory of the morality of tort law third between corrective and distributive justice fourth between ideal and non ideal tort theory and finally between culpability and justice or equality *PHILOSOPHICAL FOUNDATIONS OF TORT LAWS (CANCELLED OUT OF PRINT 07/03)*. DAVID. OWEN, Torts, Egalitarianism and Distributive Justice Tsachi Keren-Paz, 2018-12-20 This book argues from a normative perspective for the

incorporation of an egalitarian sensitivity into tort law and more generally into private law It shows how an egalitarian sensitivity can reformulate tort doctrine with an emphasis on the tort of negligence Rather than a comprehensive descriptive account of existing tort law this book pro actively searches for new approaches and conceptual tools to meet the challenges faced by egalitarians The understanding of tort law offered in this book will bring about better practical results in specific cases It supports the progressive troops in the ongoing philosophical and social battles that take place in the field of tort law and also adds another voice rich nuanced and sensitive to the chorus that is tort theory

**Liability of Corporate Groups and Networks** Christian A. Witting, 2018-01-11 What happens when a corporate subsidiary or network company is unable to pay personal injury victims in full This book sets out to tackle the insolvent entity problem especially as it arises in cases of mass wrongdoing such as those involving asbestos exposure and defective pharmaceuticals After discussing the nature of corporate groups and networks from the perspectives of business history organisation studies and social theory the book assesses a range of rules and proposed rules for extending liability for personal injuries beyond insolvent entities New proposals are put forward for an exception to the rule of limited liability and for the development of a flexible new tort based on conspiracy that encompasses not only control based relationships but also horizontal coordination between companies The book concludes with a general discussion of lessons learned from debates about extended liability and provides guidelines for the development of new liability rules

Liability for Wrongful Interferences with Chattels Simon Douglas, 2011-11-02 The book examines the protection of property rights in chattels through the law of torts focusing on the four actions of conversion detinue trespass and negligence Traditionally these actions have been governed by arcane divisions which have led to unnecessary complexity and arbitrariness The principal argument made in the book is that significant developments in the modern law point towards abolition of these arcane divisions and permit the chattel torts to be understood by reference to a coherent and justifiable structure It is argued that the only division which should be drawn in the modern chattel torts is between intentional interferences with chattels where liability is strict and unintentional interferences with chattels where liability is fault based In order to demonstrate this structure it is first argued that the actions of conversion detinue and trespass amount in substance to a single cause of action which imposes strict liability for the intentional interference with another s chattel It is then argued that the tort of negligence recognises a fault based cause of action for the unintentional interference with another s chattel It is further argued that this basic structure unlike the arcane divisions which have traditionally governed this area of law can be justified

**Torts and Other Wrongs** John Gardner, 2019-12-18 Torts and other Wrongs is a collection of eleven of the author s essays on the theory of the law of torts and its place in the law more generally Two new essays accompany nine previously published pieces a number of which are already established classics of theoretical writing on private law Together they range across the distinction between torts and other wrongs the moral significance of outcomes the nature and role of corrective and distributive justice the justification

*Imposing Risk* John

Oberdiek,2017-09-08 We subject others and are ourselves subjected to risk all the time risk permeates life Despite the ubiquity of risk and its imposition philosophers and legal scholars have devoted little of their attention to the difficult questions stimulated by the pervasiveness of risk When we impose risk upon others what is it that we are doing What is risking's moral significance What moral standards govern the imposition of risk And how should the law respond to it This book highlights these important but neglected questions and offers novel answers to them in a systematic way constructing a normative framework of risk imposition that draws upon a wide range of insights from diverse sources within philosophy and legal theory Oxford Legal Philosophy publishes the best new work in philosophically oriented legal theory It commissions and solicits monographs in all branches of the subject including works on philosophical issues in all areas of public and private law and in the national transnational and international realms studies of the nature of law legal institutions and legal reasoning treatments of problems in political morality as they bear on law and explorations in the nature and development of legal philosophy itself The series represents diverse traditions of thought but always with an emphasis on rigour and originality It sets the standard in contemporary jurisprudence *Corrective and Distributive Justice* Izhak

Englund,2009-02-17 *Corrective and Distributive Justice* From Aristotle to Modern Times retraces the intricate history of the distinction between corrective and distributive justice This distinction is elaborated in the 5th book of Aristotle's Nicomachean Ethics which was rediscovered in Western Europe in the 12th and 13th centuries by the Scholastics and turned into a central topic in legal and theological scholarship After a decline of interest in the wake of the enlightenment and secularization a surprising revival of these notions of justice occurred in U S legal and philosophical discourse during the last four decades that has made this distinction a central issue in tort law restitution and other important fields of private and public law In literally hundreds of articles and a considerable number of books the Aristotelian distinction has been elaborated discussed and applied Englund's unique contribution to this aspect of legal history grants the contemporary reader a historical perspective that is vital for a deepened understanding of the distinction and modern concerns Organized chronologically Englund's research covers Aristotle High Scholastics Late Scholastics Post Scholastics and Modernity The relevant literature is notoriously difficult to access not only because of its Latin language but because of the physical rarity of the relevant books scattered throughout the world This book offers the modern reader a touchstone synthesis of intellectual and legal history **Policy and Pragmatism in the Conflict of Laws** Michael J. Whincop,Mary Keyes,Richard A.

Posner,2018-02-06 This title was first published in 2001 After languishing for decades in the domains of rigid doctrinalism and confusing theory the conflict of laws is increasingly being recognized as an important area of law to a global community To demonstrate its importance Michael Whincop and Mary Keyes transcend the divide between the English pragmatic tradition and the circularity of American policy based theory They argue that the law governing multistage conflicts can minimize the social costs of litigation increase the extent of co ordination facilitate private ordering and limit regulatory

monopolies and cross border spillovers Pragmatic in outlook and economic in methodology they pursue these themes across a broad range of doctrinal issues and offer valuable links to parallel analyses in domestic contexts *Facing Up to Scarcity* Barbara H. Fried,2020 Barbara H Fried presents a powerful critique of the nonconsequentialist approaches that have been dominant in recent Anglophone moral and political thought She argues that nonconsequentialist theories have disastrous consequences in the political domain and are inadequate at dealing with conflicts of individual interests in the moral domain

**Evidential Uncertainty in Causation in Negligence** Gemma Turton,2016-05-19 This book undertakes an analysis of academic and judicial responses to the problem of evidential uncertainty in causation in negligence It seeks to bring clarity to what has become a notoriously complex area by adopting a clear approach to the function of the doctrine of causation within a corrective justice based account of negligence liability It first explores basic causal models and issues of proof including the role of statistical and epidemiological evidence in order to isolate the problem of evidential uncertainty more precisely Application of Richard Wright s NESS test to a range of English case law shows it to be more comprehensive than the but for test that currently dominates thereby reducing the need to resort to additional tests such as the Wardlaw test of material contribution to harm the scope and meaning of which are uncertain The book builds on this foundation to explore the solution to a range of problems of evidential uncertainty focusing on the Fairchild principle and the idea of risk as damage as well as the notion of loss of a chance in medical negligence which is often seen as analogous with increase in risk in an attempt to bring coherence to this area of the law Public and Private Enforcement of Securities Laws Michael Legg,2022-02-10 This book undertakes unique case studies including interviews with participants as well as empirical analysis of public and private enforcement of Australian securities laws addressing continuous disclosure Enforcement of laws is crucial to effective regulation Historically enforcement was the province of a government regulator with significant discretion public enforcement However more and more citizens are being expected to take action themselves private enforcement Consistent with regulatory pluralism public and private enforcement exist in parallel with the capacity to both help and hinder each other and the achievement of the goals of enforcement in a range of areas of regulation The rise of the shareholder class action in Australia backed by litigation funding or lawyers has given rise to enforcement overlapping with that of the government regulator the Australian Securities and Investments Commission The ramifications of overlapping enforcement are explained based on detailed analysis The analysis is further bolstered by the regulator s approach to enforcement changing from a compliance orientation to a Why not litigate approach The analysis and ramifications of the Australian case studies involve matters of regulatory theory and practice that apply across jurisdictions The book will appeal to practitioners regulators and academics interested in regulatory policy and enforcement and the operation of regulators and class actions including their interaction Street on Torts John Murphy,Christian Witting,Harry Street,2012-03-08 Well established and highly regarded Street on Torts provides a detailed yet clear overview of tort law with strong analysis of case law and

contextualisation of individual torts The highly praised broad coverage and logical structure are maintained ensuring the book remains a classic 50 years after publication of the first edition      *The Humanity of Private Law* Nicholas McBride, 2018-12-27 The Humanity of Private Law presents a new way of thinking about English private law Making a decisive break from earlier views of private law which saw private law as concerned with wealth maximisation or preserving relationships of mutual independence between its subjects the author argues that English private law's core concern is the flourishing of its subjects THIS VOLUME presents a critique of alternative explanations of private law defines and sets out the key building blocks of private law sets out the vision of human flourishing the RP that English private law has in mind in seeking to promote its subjects flourishing shows how various features of English private law are fine tuned to ensure that its subjects enjoy a flourishing existence according to the vision of human flourishing provided by the RP explains how other features of English private law are designed to preserve private law's legitimacy while it pursues its core concern of promoting human flourishing defends the view of English private law presented here against arguments that it does not adequately fit the rules and doctrines of private law or that it is implausible to think that English private law is concerned with promoting human flourishing A follow up volume will question whether the RP is correct as an account of what human flourishing involves and consider what private law would look like if it sought to give effect to a more authentic vision of human flourishing The Conceptual Foundations of Transitional Justice Colleen Murphy, 2017-04-19 Many countries have attempted to transition to democracy following conflict or repression but the basic meaning of transitional justice remains hotly contested In this book Colleen Murphy analyses transitional justice showing how it is distinguished from retributive corrective and distributive justice and outlines the ethical standards which societies attempting to democratize should follow She argues that transitional justice involves the just pursuit of societal transformation Such transformation requires political reconciliation which in turn has a complex set of institutional and interpersonal requirements including the rule of law She shows how societal transformation is also influenced by the moral claims of victims and the demands of perpetrators and how justice processes can fail to be just by failing to foster this transformation or by not treating victims and perpetrators fairly Her book will be accessible and enlightening for philosophers political and social scientists policy analysts and legal and human rights scholars and activists      *Unravelling Tort and Crime* Matthew Dyson, 2014-07-17 Tort law and criminal law are closely bound together but their relationship rarely receives sustained and rigorous scrutiny This is the first significant project in England and Wales to address that shortcoming Building on growing interest amongst both academics and practitioners in the relationship between tort and crime it draws together leading experts to chart the field and explore key points of interest It uses a range of perspectives from legal theory doctrine legal history and comparative law to address

some of the most important and interesting links between tort and crime Examples include how the illegality defence operates to avoid stultification of the law the difference between criminal and civil causation how the Motor Insurers Bureau not only insures but acts to enforce laws and alter behaviour and why civil law only very rarely restores specific property but the criminal law does it daily



## Enjoying the Tune of Phrase: An Psychological Symphony within **Philosophical Foundations Of Tort Law**

In some sort of eaten by screens and the ceaseless chatter of instant transmission, the melodic elegance and psychological symphony developed by the written term frequently disappear into the backdrop, eclipsed by the relentless noise and disruptions that permeate our lives. Nevertheless, set within the pages of **Philosophical Foundations Of Tort Law** a marvelous literary treasure overflowing with natural thoughts, lies an immersive symphony waiting to be embraced. Constructed by a wonderful composer of language, that charming masterpiece conducts readers on an emotional journey, well unraveling the hidden melodies and profound impact resonating within each carefully crafted phrase. Within the depths with this emotional assessment, we can examine the book is central harmonies, analyze their enthralling publishing style, and submit ourselves to the profound resonance that echoes in the depths of readers souls.

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### **Table of Contents Philosophical Foundations Of Tort Law**

1. Understanding the eBook Philosophical Foundations Of Tort Law
  - The Rise of Digital Reading Philosophical Foundations Of Tort Law
  - Advantages of eBooks Over Traditional Books
2. Identifying Philosophical Foundations Of Tort Law
  - Exploring Different Genres
  - Considering Fiction vs. Non-Fiction
  - Determining Your Reading Goals
3. Choosing the Right eBook Platform
  - Popular eBook Platforms
  - Features to Look for in an Philosophical Foundations Of Tort Law
  - User-Friendly Interface
4. Exploring eBook Recommendations from Philosophical Foundations Of Tort Law
  - Personalized Recommendations

- Philosophical Foundations Of Tort Law User Reviews and Ratings
- Philosophical Foundations Of Tort Law and Bestseller Lists
- 5. Accessing Philosophical Foundations Of Tort Law Free and Paid eBooks
  - Philosophical Foundations Of Tort Law Public Domain eBooks
  - Philosophical Foundations Of Tort Law eBook Subscription Services
  - Philosophical Foundations Of Tort Law Budget-Friendly Options
- 6. Navigating Philosophical Foundations Of Tort Law eBook Formats
  - ePub, PDF, MOBI, and More
  - Philosophical Foundations Of Tort Law Compatibility with Devices
  - Philosophical Foundations Of Tort Law Enhanced eBook Features
- 7. Enhancing Your Reading Experience
  - Adjustable Fonts and Text Sizes of Philosophical Foundations Of Tort Law
  - Highlighting and Note-Taking Philosophical Foundations Of Tort Law
  - Interactive Elements Philosophical Foundations Of Tort Law
- 8. Staying Engaged with Philosophical Foundations Of Tort Law
  - Joining Online Reading Communities
  - Participating in Virtual Book Clubs
  - Following Authors and Publishers Philosophical Foundations Of Tort Law
- 9. Balancing eBooks and Physical Books Philosophical Foundations Of Tort Law
  - Benefits of a Digital Library
  - Creating a Diverse Reading Collection Philosophical Foundations Of Tort Law
- 10. Overcoming Reading Challenges
  - Dealing with Digital Eye Strain
  - Minimizing Distractions
  - Managing Screen Time
- 11. Cultivating a Reading Routine Philosophical Foundations Of Tort Law
  - Setting Reading Goals Philosophical Foundations Of Tort Law
  - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Philosophical Foundations Of Tort Law
  - Fact-Checking eBook Content of Philosophical Foundations Of Tort Law

- Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
  - Utilizing eBooks for Skill Development
  - Exploring Educational eBooks
- 14. Embracing eBook Trends
  - Integration of Multimedia Elements
  - Interactive and Gamified eBooks

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