

COMMON LAW & TORTS

Derivation from Roman (Civil) Law

Common law (British)

is customary law deriving from precedent

- focus on damages

Equity is 3d basis for law in British-

relies on fundamental fairness

- sadly, it has become bound by rules and precedents itself

- big focus on injunctive relief

- but also abatement of nuisance

Intentional conduct is generally handled by criminal justice system -

crimes is statutory and considered an offense against all of public

General Areas for Common Law

Torts-Civil wrong

- covers most CL environmental actions

Contracts

Property

Remedies

Damages

Injunctive

Punitive

Nuisance

annoyance in possession of property

a use of your property which interferes with someone else's use of their property

- Public (possible, but usually handled as crime)

- Private

Trespass-

Taking of all or part of land for a period of time

Interference with land or personal property

Strict liability for ultra hazardous activities-

Most torts are fault oriented

But, some activities are so inherently dangerous that liable without fault.

Historically, developed as response of courts to industrial revolution.

Since 1981, used for toxic cleanup

Negligence-

"reasonable person" standard

Creation of unreasonable risk- common problem for parks and public facilities

- attractive nuisance

Workplace Liability

Generally eliminated by workers compensation and OSHA

Respondeat superior- employer liable for acts of employees

Common law duties of:

safe place to work

safe machines

warning & instruction

fellow employees of quality & number

enforcement of workplace rules

[Class Action

Major Tort Issues

1. Causation
2. Apportionment of damages
3. Joint and several liability/Contribution
4. Coming to the "nuisance"
5. Assumption of risk/contributory negligence

Carlton Forge as case study

Insurance

Environmental law dominated by insurance concerns

Premium is to reimburse carrier for spreading risk over a large group of similarly situated people

Contract to indemnify against a kind of risk

Bankruptcy-

elimination of debts

distribution of assets among creditors

secured creditors get priority

Paramount Petroleum example

Public Trust Doctrine

Mono Lake case- public agencies must act in the public interest.