

Chinese Law Students Society

# Torts Study Session #2

# Agenda

- Assignment/problem solving
- Grand Unified Theory of trespass to land, private nuisance, defences to trespass
- Problem questions
- Questions?

# Solving a problem question

- IRAC: Issues, Rules, Application, Conclusion

# Solving a problem question

- IRAC: **Issues**, Rules, Application, Conclusion
- Issues:
  - Issues arise from the facts
  - What is arguable?
  - What are the causes of action?
  - What are the possible defences?
  - Controversial/contentious issues important

# Solving a problem question

- IRAC: Issues, Rules, Application, Conclusion
- Rules:
  - What are the legal rules applicable to the causes of action or the defences?
  - Common law, statute
  - Undecided or uncertain areas of law?
  - Onus of proof

# Solving a problem question

- IRAC: Issues, Rules, **Application**, Conclusion
- Application:
  - Facts analogous, or distinguished?
  - Elements of cause of action/defence
  - Note which side you are arguing for
  - Apply the law throughout your answer
  - Reasoning of judges in cases?

# Solving a problem question

- IRAC: Issues, Rules, Application, Conclusion
- Conclusion:
  - Conclusion based on application of rules to facts
  - Can causes of action be made out? Defences?
  - Result: damages, injunction?
  - Is it arguable both ways? Assessment of likelihood
  - No one correct answer – explore the set of plausible answers

# Structure

- Note that you are giving advice to a client
- Subheadings usually useful
- Can subdivide based on:
  - Issues
  - Material facts
- Remember that you should be applying the law to the facts throughout – no good to have big chunks of law

# Referencing

- Cite all legal propositions
- Example #1:
  - John is liable for trespass to the person because there was no consent given (*Smith v Jones*<sup>1</sup>).
  - Footnote: <sup>1</sup> (2008) 123 CLR 456

# Referencing

- Cite all legal propositions
- Example #2:
  - John is liable for trespass to the person because there was no consent given (*Smith*<sup>1</sup>).
  - Footnote: <sup>1</sup> *Smith v Jones* (2008) 123 CLR 456

# Referencing

- Cite all legal propositions
- Example #3:
  - John is liable for trespass to the person because there was no consent given.<sup>1</sup>
  - Footnote: <sup>1</sup> *Smith v Jones* (2008) 123 CLR 456

# Referencing

- Cite all legal propositions
- Example #4:
  - In *Smith*,<sup>1</sup> the court held that consent is a defence to trespass.
  - Footnote: <sup>1</sup> *Smith v Jones* (2008) 123 CLR 456

# Problem question example

Firstly, we consider the case where the relevant communication was the information on Cyberguard's website that Lucky viewed on her computer in NSW but initiated by the servers in Alabama. By application of *Diamond*,<sup>32</sup> the place of the tort is NSW.

- Note:
  - Application of case law
  - Different cases based on different assumptions

# Beware!

- Short word limit
  - Don't quote chunks of text from the cases: distil the idea, or state rule and apply together
  - Think of a problem question answer as a proof
- Apply
  - Rules need to be applied
- Do your readings
  - Don't rely on what Bob said about what Jane said about what your lecturer said

# Substantive law

- Two torts
  - Trespass to land
  - Private nuisance
- Trespass to land:
  - Title to sue
  - Underground trespass
  - ...
- Questions?

# Problem Questions

- Let's try out IRAC!
- Let's:
  - Work out the issues
  - Find out the applicable rules
  - Apply the rules to the facts
  - Come to a conclusion
- Think about how you might structure your answer if you got these questions in an exam

# Chinese Law Students Society

- Annual General Meeting:
  - Tuesday, 7 October 2008, 5-6pm
  - Lots of roles, come and see how you can contribute!
- Stay in touch:
  - <http://www.usydclss.com/>
  - [usydclss@gmail.com](mailto:usydclss@gmail.com)