

Book Review: Intentional Tort Litigation in Australia



Author: Corrie Goodhand, Peter O'Brien

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Reviewed by Brian Morgan

The 20th Century saw a substantial increase in claims against public officers for what this book describes as Intentional Torts, which include assault, battery, false imprisonment, wrongful arrest and malicious prosecution, to name a few.

I have defended a police officer who was sued unsuccessfully for damages for assault and wrongful arrest, plus three police officers who were prosecuted but acquitted for wrongful arrest and false imprisonment. So this book was particularly interesting for me.

The book collects together, by State, Territory and the Commonwealth, the relevant legislation together with an extensive consideration of useful authorities.

A crucial question, as indeed it is for all litigation, is "Who is the appropriate defendant"? That question requires the investigation of issues such as vicarious liability (for example, of the police department, the office of the DPP, the State or Federal Government).

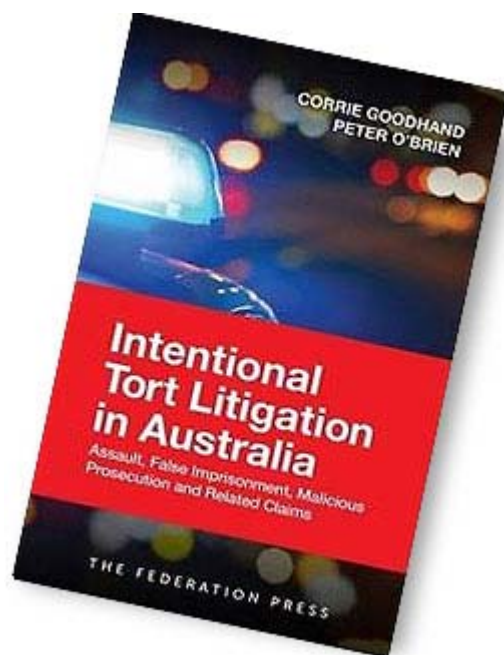
As a plaintiff suing a State or Federal Government, the authors remind us of the Model Litigant policy (with the concomitant obligation to assist the Court to arrive at a proper and just result).

As I read through this book, I quickly realised that it provides a detailed analysis of what is needed when contemplating suing for the various Intentional Torts.

The analysis is not set out as a Ready Reckoner, but is contained, chapter by chapter, under headings, such as, "Causes of Action", "Parties", "Defences and Statutory Regimes", "Limitation Periods" "Damages" and "Obtaining and Using documents".

The "Damages" chapter contains a very comprehensive analysis of General Damages, Exemplary Damages, Special Damages, Legal Costs and limitations on damages, on a State by State basis.

The book is well written and easy to follow. It sets out the pitfalls and traps which lie in wait for the unwary who embark on litigation for a perceived intentional Tort, without preparing a chart (which, may I say, is essential in all civil litigation), which identifies the correct Defendant, or Defendants, spells out the steps required to be proven and how they will be proved, to achieve the required result, identifies the nature of the claim for damages and the heads of damages and grasps the legal impediments in the particular State or other jurisdiction, which must be overcome.



Intentional Torts come in forms as simple as a footballer king hitting another player behind the play or as complicated as a prosecutor bringing and continuing a prosecution for entirely malicious reasons.

This book provides an excellent starting point for your research. [\[1\]](#)

[\[1\]](#) For a case that postdates the publication of Intentional Torts, see [Bulsey & Anor v State of Queensland \[2015\] QCA 187 \(6 October 2015\)](#). The decision of the Queensland Court of Appeal deals with interesting points going to both liability and quantum, including the relationship between damages for personal injury and other damages.