

Torts

Syllabus:

A. INTRODUCTION to TORTS

1. The Concept of Torts

- 1.1 Nature and History of Torts
- 1.2 Functions of Tort Law
- 1.3 Theoretical Approaches

2. Bases and Scope of Liability

3. Standard of Proof and Burden of Proof

- 3.1 *F.H. v McDougall*
- 3.2 Wikipedia, "O.J. Simpson: Legal History"

B. INTENTIONAL TORTS

1. Intention and Related Concepts

2. Remedies in Intentional Torts

- 2.1 Nominal Damages
- 2.2 Compensatory Damages
- 2.3 Aggravated Damages
- 2.4 Punitive (Exemplary) Damages
- 2.5 Disgorgement Damages

i. Trespass to the Person

- 1. Battery
- 2. Assault
- 3. Wrongful ("False") Imprisonment
 - 3.1 Shopkeeper's privilege: *Mann v Canadian Tire*
- 4. Wrongful Prosecution
 - 4.1 Malicious Prosecution
- 5. Intentional Infliction of Psychiatric Harm
- 6. The Innominate Intentional Tort
- 7. Invasion of Privacy
- 8. Breach of Confidence

ii. Trespass to Property

1. Intentional Interference with Personal Property (Chattels)

- 1.1 Historical Roots
- 1.2 Trespass to Chattels
- 1.3 Conversion
- 1.4 Detinue

2. Intentional Interference with Real Property

- 2.1 Trespass to Land
- 2.2 Trespass under Statute
- 2.3 Trespass and Nuisance
- 2.4 Trespass to Airspace and Subsoil

iii. Defences in Intentional Torts

1. Consent

- 1.1 General Principles
- 1.2 Implied Consent
- 1.3 Exceeding Con
- 1.4 Competency to Consent
- 1.5 Factors Negating Consent
- 1.6 Consent to Treatment, Counselling and Care
- 1.7 Legislative Reform

one of the following provincial health care schemes (noted parts only):

- Ontario: *Health Care Consent Act* (Parts I and II)
- British Columbia:
 - *Health Care (Consent) and Care Facility (Admission) Act* (Parts 1,2 and 2.1)
 - *Representations Agreement Act* (Parts 1-4)
- Saskatchewan: *The Health Care Directives and Substitute Health Care Decision Makers Act*

2. Self-Defence

3. Defence of Third Parties

4. Defence of Real Property

5. Defence and Recaption of Chattels

6. Necessity

- 6.1 Public Necessity
- 6.2 Private Necessity

7. Legal Authority

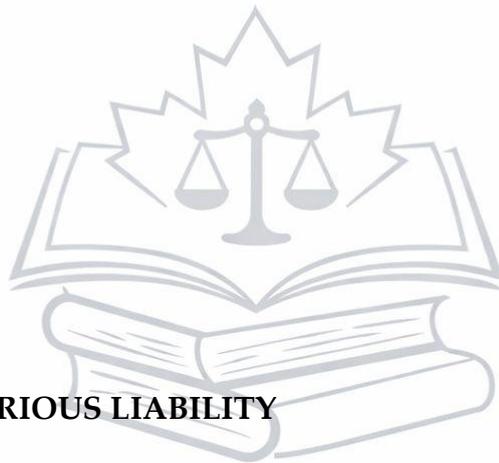
- 7.1 Authority and Privilege to Arrest Without Warrant and *Citizen's Arrest and Self-defence Act*

8. Apportionment of Fault (Liability) in Intentional Torts

- 8.1 Apportionment of Liability

C. NUISANCE

- 1. Introduction**
- 2. Private Nuisance**
- 3. Public Nuisance**
- 4. Remedies**



D. STRICT AND VICARIOUS LIABILITY

- 1. Introduction**
- 2. Strict Liability for Escape of Dangerous Substances**
- 3. Strict Liability for Animals**
- 4. Vicarious Liability**

E. NEGLIGENCE

- 1. Introduction**
- 2. Elements of a Negligence Action**
 - 2.1 Duty of Care**
 - 2.1.1 The General Duty of Care Analysis
 - 2.1.2 Foreseeability
 - 2.1.3 Special Duties: Affirmative Action
 - (i) The Duty to Rescue
 - (ii) The Duty to Control the Conduct of Others

(iii) Gratuitous Undertakings

2.1.4 Special Duties: Miscellaneous

(i) The Duty of Care Owed to Rescuers

(ii) Duties Owed to the Unborn

(iii) Psychiatric Harm

(iv) Health Professional's Duty to Inform

(v) Manufacturer's and Supplier's Duty to Warn

(vi) Duty of Care Owed by a Lawyer and *Central Trust Co v Rafuse*

2.1.5 Special Duties: Negligent Misrepresentation and Pure Economic Loss

(i) Introduction

(ii) Negligent Misrepresentation

(iii) Misrepresentation and Contract

(iv) Negligent Performance of Service

(v) Negligent Supply of Shoddy Goods or Structures

(vi) Relational Economic Loss

(vii) New Categories of Pure Economic Loss

2.2 Standard of Care

2.2.1 The Reasonable Person

2.2.2 Factors Considered

2.2.3 Special Standards

(i) Persons with Disabilities

(ii) Children

(iii) Professionals

(iv) Role of Custom

2.2.4 Statutes and the Common Law Standard of Care

2.3 Factual Causation

2.3.1 The But-For Test

2.3.2 Established Exceptions to the But-For Test

2.3.3 Recent Attempts to Modify the But-For Test

2.3.4 Multiple Causes

2.4 Remoteness (aka Legal Causation)

2.4.1 Directness versus Foreseeability

2.4.2 Modifications to the Foreseeability Test

2.4.3 Intervening Causes

2.4.4 Beyond the Scope of the Risk

3. Categories and Assessment of Damages

3.1 Damages for Personal Injuries

Inflation Calculator

3.2 The Role of Present Value and Discount Rates

3.3 Survival of Actions and Dependents' Claims

3.4 Damages for Property Loss

4. Defences in Negligence

4.1 Contributory Negligence and Apportionment of Liability

4.1.1 Kleeefeld, "The Contributory Negligence Act at Seventy"

4.1.2 Conduct Constituting Contributory Negligence

4.1.3 Joint and Several Liability

4.1.4 Apportionment of Liability

4.1.5 Law Reform

4.2 Voluntary Assumption of Risk

4.3 *Ex turpi causa non oritur actio*

F. TORT LIABILITY OF PUBLIC AUTHORITIES

1. Introduction

2. Special Rules

3. Negligence of Public Authorities

4. Misfeasance in Public Office

5. Other Torts