

TORTS

- 1) Observation and analysis of facts (conduct).
- 2) Legal definition of torts.
- 3) Determination if there is a match between facts (conduct) and legal requirements of the tort in question.
 - a. If so, determination of compensation.

Tort constitutes a breach of a legal duty, other than under contract, with liability for damages.

The elements of Canadian Tort: (i) conduct: intentional, negligent, strict liability; and (ii) damage.

THE NEGLIGENT TORTS

- The negligent act
 - Defendant creates a reasonably foreseeable and substantial risk of its consequences.
 - The negligent act is determined by identifying the appropriate standard of care and applying it to the facts of the case. The standard of care is that of a reasonable –careful- person. It is an objective standard focused on the defendant’s conduct with reference to that of a reasonable person.
 - The central element in applying the standard of reasonable care is the concept of a reasonably foreseeable risk.
 - The deviation from the standard of care creates a reasonably foreseeable risk.
- Causation: a link between the defendant’s negligent act and the plaintiff’s damage.
 - Cause-in-fact: the plaintiff must prove that the defendant’s negligence caused her loss. Determined by the but-for-test.
- Damage: no liability can arise in negligence unless the plaintiff suffers damages as a result of defendant’s wrongful act, but not all losses may be compensated. Remote damages are NOT compensated.

- Defendant is liable only for the **REASONABLY FORESEEABLE CONSEQUENCES OF ITS NEGLIGENCE.**
- **Defendant is liable only to plaintiffs who are within the proximate zone of danger.**
- Special remoteness issues: **The Thin-Skull rule:** as long as some physical injury to the plaintiff was foreseeable, the defendant is liable for all the consequences of the injury arising from the plaintiff's unique physical or psychological make-up whether or not those consequences were foreseeable.

Defences:

- Contributory negligence: partial defence leading to a reduction in the quantity of damages.
- Voluntary assumption of risk: complete defence where the plaintiff consents to the defendant's negligence and its consequences.
- Illegality: it denies the claim.
- Inevitable accident: a complete defence.

THE INTENTIONAL TORTS

Intentional torts tend to be static, and are characterized by orthodoxy, convention, and conservatism. The courts have been slow to discard historical technicalities, and there has been a reluctance to recognize new interests deserving protection from intentional interference.

INTENTIONAL ACT:

- The defendant desires the consequences of his/her actions.
- If the consequences, while not desired, are substantially certain to result from the defendant's conduct, e.g., bomb in an airplane.
- Transferred intent.

DAMAGES

- Compensatory (broader than negligent torts and generally uninsurable)
 - Physical harm: foreseeable and unforeseeable damages.

- Trespass: liability for all direct results and liability for removing property.
- Punitive
 - To punish defendant for outrageous conduct.

TYPES OF INTENTIONAL TORTS

A. Intentional interference with the person (protects the plaintiff from the intentional interference of a personal interest)

- Battery (bodily security)
- Assault (threats of violence)
 - The threat of an immediate battery
- Wrongful death
- False imprisonment (liberty)
- Intentional infliction of nervous shock (psychological security)
- Invasion of privacy (privacy)

B. Intentional interference with land

Trespass to land

It provides a remedy for the direct, intentional, and physical interference with land in the possession of the plaintiff. It is actionable without proof of damage.

- To enter personally onto land without permission.
- To place objects on the plaintiff's property.
- When the possessor revokes a visitor's permission or licence to be on the property.

C. Intentional interference with chattel

- Trespass to chattels:
 - The intentional damage to a chattel in plaintiff's physical control.
- Detinue
 - Defendant refuses to return the plaintiff's chattel.
- Conversion
 - Defendant has taken plaintiff's chattel, eg. theft, shoplifting, etc.

STRICT LIABILITY

No need to prove that defendant was guilty of any wrongful (intentional or negligent) conduct. Strict liability does not play a significant formal role in modern Canadian tort law. Strict liability torts arise mostly from dangerous activities.