

Wrongdoing & Responsibility	Test	Burden of Proof & Onus
<p>Joint Tortfeasors</p> <p><i>Cook</i> (Hunters - N) Need common Action</p> <p><i>Fish & Fish</i> (Env Boat - Y) Need common design not just facilitation</p>	<ul style="list-style-type: none"> - Common design/common action + acts committed to further common design - Special relationship or participation in common venture involving tortious conduct - 4 categories of joint tortfeasors: <ul style="list-style-type: none"> • <u>instigates or encourages</u> another to commit a tort <u>and the person who commits</u> it are joint tortfeasors • <u>employer and an employee</u>: if tort committed by employee within scope of employment • <u>principal and agent</u>: torts committed by the agent within the actual or apparent authority of the agent • <u>concerted action by 2 or more</u> to commit a tortious act (guilt by participation, not association) 	<ul style="list-style-type: none"> - P: prove a single tortious act by one of the joint tortfeasors - The burden of proof of causation is reversed - D: prove they didn't cause the loss to P - Ds jointly and severally liable for P's loss - plaintiff can recover 100% of the damages from any of the tortfeasors - A number of people may be responsible for the single tortious act of one of them - Proof of a single tort suffices to establish liability against them all - Arises where the defendants have special relationship or they participate in common venture or joint enterprise involving tortious conduct
<p>Vicarious Liability - STRICT</p> <p><i>Sagaz</i> (CT Bribery - N) Contractor</p> <p><i>Danicek</i> (law party - N) Req by job?</p> <p><i>Bazley</i> (kid touching - Y) No fault Req</p>	<ul style="list-style-type: none"> - Requisite relationship: employer/employee (<i>Sagaz</i>) - Salmond test - <i>Bazley / Danicek</i> for course of Employ: <ul style="list-style-type: none"> • employee acts authorized by employer • unauthorized act connected to authorized acts that may be regarded as modes of doing an authorized act - Requires no proof of wrongdoing by VL - Aim: improve employer practices, employer benefit from employee & should cover costs - employers tend to be able to pay 	<ul style="list-style-type: none"> - P: prove single tortious act by 1 of the joint tortfeasors - The burden of proof of causation is reversed - D: prove they did not cause the loss to plaintiff - Does not displace personal liability of tortfeasor <ul style="list-style-type: none"> • provides the plaintiff with alternative defendant who can pay • Important if the tortfeasor judgment proof - <u>Hospitals</u>: <i>Yepremian</i> case - no VL ATM but may come - <u>Parents</u>: no VL, <i>Parental Liability Act</i> (\$10k max)
<p>Joint & Several Liability</p> <p>Negligence Act</p>	<ul style="list-style-type: none"> - Actors may act jointly (J) or independently (S) - Defendants commit series of discrete, independent torts, each of which is a cause-in-fact of the plaintiff's damage - Must be established against each of several concurrent tortfeasors - All jointly and severally liable for P's loss - P can recover 100% of damages from any of the tortfeasors - Payment by 1 D of settlement discharges liability of all other defendants to the plaintiff 	<ul style="list-style-type: none"> - S. 4(2)(b): allows D to seek compensation from other D to reflect their fault; each is jointly and severally liable - S. 1: directions for apportion by fault. If it cannot be determined, liability equal - P can sue all the defendants in the same action, and demand who pays OR - sue 1 D, then D can seek \$ from other Ds - If full payment not made, P can add more Ds but can't exceed the \$ of first award <ul style="list-style-type: none"> • incentive to sue all tortfeasors initially
<p>Victim Contributes to Tort (Contributory Negligence)</p>	<ul style="list-style-type: none"> - failure of P to take reasonable care for own safety, contributes to accident/loss - If negligence of P contributed to loss, court must determine degree of responsibility for that loss and reduce damages accordingly - Appointment of liability related to blameworthiness of conduct, not causation <ul style="list-style-type: none"> • degree of unreasonableness 	
<p>Protecting Property Interests</p> <p><i>Smith v Inco</i></p>	<ul style="list-style-type: none"> - Brought forward 4 claims <ul style="list-style-type: none"> • Private nuisance: <ul style="list-style-type: none"> - Chemical composition change without something else does not constitute nuisance - No evidence that the property was unfit for the purpose for which it was purchased • Rylands and Fletcher: not accidental • Trespass: trespass was not direct, so there is no trespass • Public nuisance: Crime, NOT tort action 	
<p>Private Nuisance - STRICT</p> <p><i>Smith v Inco</i> (N) Physical</p> <p><i>Antrim</i> (truck centre - Y) Indirect nuisance if substantial</p>	<ul style="list-style-type: none"> - Noise, odour, fumes, dust, and smoke - Physical damage OR interference with comfort and enjoyment of land (non-trivial) <ul style="list-style-type: none"> • Interference must be unreasonable - Indirect physical damage almost always an unreasonable interference - Plaintiff must suffer damages - Effect matters: liability depends on nature/ extent of interference - Primary function: balance between D and P's interest in use and enjoyment of land 	<ul style="list-style-type: none"> - Plaintiff must show interference that is unreasonable to the ordinary person - Things to consider: <ul style="list-style-type: none"> • Character of the neighbourhood • Intensity of interference • Duration of the interference • Time and day of the week • Zoning designation • Utility of the defendant's conduct • Nature of the defendant's conduct • Sensitivity of plaintiff

Trespass Torts	Test	Burden of Proof & Onus
<p>Rylands v Fletcher - STRICT</p> <p><i>Smith v Inco</i> (N)</p>	<ul style="list-style-type: none"> Show non-natural use of land Escape of something likely to do mischief Damage No fault needed - non negligent escape 	<ul style="list-style-type: none"> Non natural: dangerous, extraordinary, special & no benefit to the community <ul style="list-style-type: none"> Creation of increased danger Can only recover if an accident, no strict liability damages if intentional action
<p>Trespass - STRICT</p> <p><i>Smith v Inco</i> (N)</p>	<ul style="list-style-type: none"> Must be direct voluntary (intentional or negligent) physical 	<ul style="list-style-type: none"> P: Show direct interference to land <ul style="list-style-type: none"> No proof of damages required D: No intent to trespass or negligently trespass
<p>Assault</p> <p>“Reasonable apprehension of immediate or imminent battery.”</p> <p><i>Scalera</i> (Bus drivers - Y) Cad Reverse BOP</p>	<ul style="list-style-type: none"> Immediate or imminent threat D only needs to intend subjective desire to cause apprehension of battery, not the intention to cause the battery D does not have to / be able to follow through on threat Must be reasonable in the circumstances 	<ul style="list-style-type: none"> P: reasonable apprehension of <u>immediate or imminent</u> battery <ul style="list-style-type: none"> does not need to be afraid no damages needed must be aware of assault Reverse partial onus of proof on D D: did not assault intentionally or negligently
<p>Battery</p> <p>“Direct and offensive physical contact”</p>	<ul style="list-style-type: none"> Actual bodily contact not essential The plaintiff does not need to be aware of the battery at the time that it takes place Must be direct Intentional, negligent or accidental (intended consequences or contact) 	<ul style="list-style-type: none"> Reverse onus of proof P: defendant directly interfered in harmful or offensive way D: conduct was not intentional, negligent, consent, self defence or some other legal defence No proof of damages required
<p>D - Consent to Treatment (Adult)</p> <p><i>Battery - Malette v Shulman</i> (card - Y) Need consent</p> <p><i>Negligence - Reibl v Hughes</i> (surgery gone wrong - Y) Not fully informed consent</p>	<ul style="list-style-type: none"> Requires consent for treatment <ul style="list-style-type: none"> Mentally competent patient Consent given voluntarily Not obtained through fraud Informed adequately & fully of risks Modified objective test: P show reasonable person in P’s circumstances would not consent if fully informed Patient can revoke consent at any time 	<ul style="list-style-type: none"> Exceptions: <ul style="list-style-type: none"> Emergency situations Preliminary examinations If substitute decision maker gives consent <i>Acts</i>: How and when consent needed P: must prove all elements <i>Shulman</i> card indicated she did not want any blood administered to her ever. Was clear, limited in scope, and unequivocal
<p>D - Consent to Treatment (Child)</p> <p>SJB (Mature minor? - N) Leg can overturn MM</p>	<ul style="list-style-type: none"> Guardian’s consent needed parens patriae doctrine: court in parental role <ul style="list-style-type: none"> no overturning mature minor by doctrine but CAN by legislation (SJB) 	<ul style="list-style-type: none"> Mature Minor: has ability to understand risks, benefits of having or not having the treatment, appreciate the consequences <u>and</u> have the maturity to make the decision <i>Acts</i>: child can consent & how to force consent
<p>D - Consent in Sport</p> <p><i>Colby</i> (rugby - Y) beyond ordinary = tortious</p>	<ul style="list-style-type: none"> implied consent to the degree of physical contact expected of the game in an ‘ordinary’ game 	<ul style="list-style-type: none"> intent to injure and a breach of the rules are required to bring a claim often coupled with battery & negligence claims
<p>D - Consent to Sexual Contact</p> <p><i>Norberg</i> (junkie - Y) Onus to prove consent</p> <p><i>Scalera</i> (Bus drivers - Y) Cad Reverse BOP</p>	<ul style="list-style-type: none"> Duress, unconsonability & undue influence negate ‘consent’ Assumed to be intentional for insurance Battery, assault & non-trespass torts No limitation dates 	<ul style="list-style-type: none"> P: show offensive physical contact D: onus of proof that it was consensual <ul style="list-style-type: none"> different from most CL jurisdictions Fiduciary duty (<u>not a tort</u>): set self-interest aside and to act, in best interest of beneficiary
<p>Intentional Infliction of Mental Suffering</p> <p><i>Wilkinson</i> (fake accident - Y) create tort</p> <p><i>Boucher v Wal-Mart</i> (dismissal - Y) add ought</p>	<ul style="list-style-type: none"> Intentional conduct that causes harm, but isn’t assault Outrageous or extreme act or statement <u>intended</u> or calculated to produce harm <ul style="list-style-type: none"> ought to have known - <i>Wal-Mart</i> Must be substantial harm caused 	<ul style="list-style-type: none"> Hybrid: part of trespass and negligence P: prove everything Causation can be indirect Reasonableness test Harm has to be demonstrable / provable Can also be part of negligence claim
<p>False Imprisonment</p> <p><i>Lumba</i> (UK deportation - Y) Authority must be known even if inevitable</p> <p><i>Swanson</i> (Vic Jewellery store - Y) confinement must be total & illegal</p>	<ul style="list-style-type: none"> Imprisonment <ul style="list-style-type: none"> must be total can be psychological: Intimidation, fear of consequences of refusal, apprehended by force, avoid public embarrassment Intentional or negligent Directness required Detention must be false / unlawful 	<ul style="list-style-type: none"> Damages not required P: doesn’t have to be aware of imprisonment P: must prove imprisonment and directness, but not unauthorized or legally wrong Partial reverse onus of proof D: there was no imprisonment OR they had lawful authority

- Every tort requires damages EXCEPT for trespass torts
- **Tortfeasor:** a person who has committed a tort
- **Strict liability:** tort liability based solely on the causation of damage rather than proof of the defendant's intent or negligence
- **Negligence:** A tort based on careless conduct or conduct that creates a reasonably foreseeable risk of harm
- **Intentional Conduct:** a subjective desire to cause the consequences of one's actions. Conduct is also intentional if the consequences, while not desired, are substantially certain to result from the defendant's conduct
- **Jointly and several liabilities:** all tortfeasors are collectively and individually liable for the plaintiff's loss. The plaintiff may choose which tortfeasor against whom to execute his judgment
- **Severally liable:** where two or more tortfeasors independently cause the same harm to the plaintiff and each is individually liable for the plaintiff's loss
- **Directness:** "but for test": would the plaintiff's damage have occurred BUT FOR the defendant's negligence?
 - **No:** it is direct
 - **Yes:** damage would have occurred whether or not the defendant was negligent

TORTS (Law 108C) 2014-2015 Syllabus – Part I

Morland-Jones v. Taerk, CPI p 1

Cyber-safety Act, SNS 2013, c 2, ss 3, 21 & 22, CPI p 5 Coleman & Mendlow, "Theories of Tort Law", WEB

2. Wrongdoing and Responsibility

. 2.1 Joint Tortfeasors

Cook v. Lewis, CPI p 6

Fish & Fish Ltd v. Sea Shepherd UK & Ors, CPI p 9

. 2.2 Vicarious Liability

671122 Ontario Ltd. v. Sagaz Industries Canada Inc, CPI p 19 *Danicek v. Alexander Holburn*

Beaudin & Lang, CPI p 28 *Bazley v. Curry*, CPI p 35

Note on Hospitals and Doctors, CPI p 50

Note on Parental Liability, CPI p 52

Parental Liability Act, SBC 2001, c 45, ss 1, 3, 6 & 9, CPI p 53

. 2.3 Joint and Several Liability

Negligence Act, RSBC 1996, c 333, s 4, CPI p 55

. 2.4 Victim Contribution (Contributory Negligence)

Negligence Act, RSBC 1996, c 333, ss 1, 2, 8, CPI p 56

3. Actionable Harm

3.1 Protecting Property Interests

Smith v. Inco – Facts, CPI p 57

. 3.1.1 Private Nuisance

Smith v. Inco, CPI p 63

Antrim Truck Centre v. The Queen, CPI p 72

. 3.1.2 *Rylands v. Fletcher* *Smith v. Inco*, CPI p 84

. 3.1.3 Trespass

Smith v. Inco, CPI p 94

3.2 Protecting Physical Security and Integrity

3.2.1 Assault & Battery

Non-Marine Underwriters, Lloyd's of London v. Scalera, CPI p 96

3.2.2 Defences: Consent

3.2.2.1 Consent to Medical Treatment (Adults)

Malette v. Shulman, CPI p 100

Reibl v. Hughes, CPI p 109

Health Care (Consent) and Care Facility (Admission) Act, RSBC 1996, c 181, s 1 "close friend", "health care", "major health care", "minor health care", "near relative", ss 4-6, 9-16, 18-19.2, 19.7-19.91, 33-33.1, 33.4, CPI p 114

Health Care Consent Regulation, BC Reg 20/2000, ss 4 & 5, CPI p 125

3.2.2.2 Consent to Medical Treatment (Children)

Infants Act, RSBC 1996 c 223, s 17, CPI p 126

Child, Family and Community Service Act, RSBC 1996, c 46, s 1 "child" & s 29, CPI p 127

S.J.B. (Litigation Guardian of) v. B.C. (Director of Child, Family and Community Services), CPI p 128

3.2.2.3 Consent to Contact in Sport

Colby v. Schmidt, CPI p 135

3.2.2.4 Consent to Sexual Contact

Norberg v. Wynrib, CPI p 139

Non-Marine Underwriters, Lloyd's of London v. Scalera, CPI p 164

3.3 Protecting Mental and Emotional Security and Integrity

Intentional Infliction of Mental Suffering

Wilkinson v. Downton, CPI p 179 *Boucher v. Wal-Mart*, CPI p 182

3.4 Protecting Liberty Interests

False Imprisonment

Lumba v. Secretary of the State for the Home Department, CPI p 190 *Jeeves (Guardian of) v. Swanson*, CPI p 195

- no fact pattern for sexual assault
- reibl v hughes not informed of ALL risks
 - negligence not battery
- Exam
 - includes syllabus
 - 1 fact pattern with targeted questions
 - 1.5 hours, no reading period
 - varying valuation per question
 - if running out of time, use point form
 - each tort with each of the elements
 - don't forget about
 - vicarious liability
 - joint and several
 - Duty, standard, causation, damages, VL
 - make sure you know where damages have to be shown