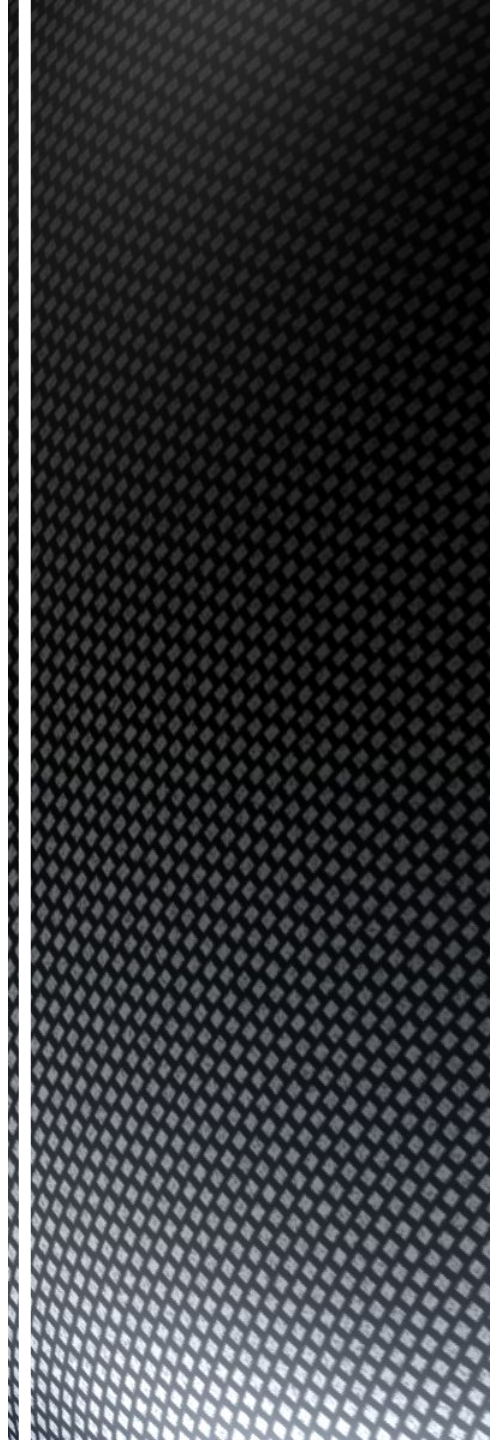


LAW 104: BUSINESS LAW

LAW OF TORTS
INTENTIONAL TORTS



- Concept of civil wrong vs. criminal act

Note:

- The same act may give rise to both criminal and tortious liability.
- How are each types of wrong remedied?
- What is the underlying right that each tort aims to vindicate?

WHAT IS A TORT?

Intentional vs. Unintentional Torts

▪ **Vicarious liability:**

One person (e.g. a business) can be held legally responsible for the wrongful (tortious) actions of someone else (e.g. an employee) owing to an underlying legal relationship between them.

Bazley v. Curry – Page 71

Joint and Several Liability:

Two or more persons may each individually have full (several liability) responsibility for wrongful conduct and its consequences or may be collectively (joint liability) responsible for such conduct.

IMPORTANT
LEGAL CONCEPTS

Liability may be imposed even in the absence of fault.

What are the underlying reasons for this?

Cowles v. Balac- Page 68

STRICT LIABILITY

False Imprisonment:

Elements:

- Deprivation of liberty
- Without lawful authority
- Against will of person detained

Note:

- Physical restraint may suffice but is not necessary.
- Threat of physical restraint may suffice

**INTENTIONAL
TORTS:**

**FALSE
IMPRISONMENT**

- Provides a remedy in cases where a Defendant has caused a Plaintiff to be improperly prosecuted:

Elements:

- (i) Defendant caused Plaintiff to be arrested and charged
- (i) Prosecution terminated in Plaintiff's favour
- (iii) Presence of improper motive in Defendant (malice – no reasonable grounds for causing the “prosecution”

MALICIOUS PROSECUTION

Elements:

- Entry onto land without owners permission or some lawful right to do so. (Improper interference with land)
- Implied vs. express permission to enter onto land.
- Permission to enter which was initially granted might be revoked (e.g. shopping malls)
- Might be committed innocently
- **Defence: permission to enter land**

TRESPASS

Assault:

Elements:

- Threat of imminent physical harm (violence)
- Causing reasonable belief that offensive bodily contact is imminent
- Immediate possibility of carrying out threat

Issue: Does the Plaintiff have a reasonable belief that physical contact will occur? (The unloaded gun)

INTENTIONAL
TORTS:

ASSAULT

Physical contact without permission
(offensive bodily contact)

Note: battery in medical cases (no
consent of Plaintiff to treatment)

Defence: Self Defence but note issue
of proportionality.

- To prove self defence Plaintiff must
prove genuine fear of injury from
Defendant (honest belief)

BATTERY

- Wilful (intentional) violation of privacy by doing something which is wrong (without legal justification)

Jones v. Tsige – Page 86

Hollinsworth v. BCTV – Page 87

INVASION OF PRIVACY

Elements:

- Unauthorized use of or interference with the property of another
- Immaterial whether property initially came into Defendant's possession lawfully.

CONVERSION

Elements:

- Damaging reputation of another person by making untrue statement
- Test is “does the statement made cause other persons to think less of the Plaintiff?”
- May be in two forms: libel and slander.
- **Defamatory statement must be published**

INTENTIONAL
TORTS:

DEFAMATION

- Innocent dissemination (libraries etc)
- Absolute privilege
- Qualified privilege
- Fair comment

DEFENCES TO DEFAMATION

Marketing product (based on physical characteristics, labeling etc) in such a manner as to confuse public that is that of another person or is associated with another company (piggybacking on business reputation of another)

Passing off is misrepresentation of origin of product or service


INTENTIONAL
TORTS:


PASSING OFF

False statements about a business
which causes the business to suffer a
Loss (E.g- disparaging a competitor's
product)

**INJURIOUS
FALSEHOOD**

Elements:

 Intention on part of defendant to injure business of another person.

 Interference by illegal or improper means

- Quantifiable harm

Examples:

- Inducing breach of contract
- Business intimidation which affects business interests
- Inducing breach of duty to maintain information confidential.

See: **Lumley v. Gye – Page 110**

Reach MD – Page 111

UNLAWFUL INTERFERENCE WITH ECONOMIC RELATIONS

- Unreasonable interference with use and of enjoyment of property

E.g:

Loud noises

Smells

Fumes

INTENTIONAL
TORTS:

NUISANCE

- Defendant strictly liable for escape of something from his property arising from non-natural use of the property

RULE IN RYLANDS V. FLETCHER

- Consent
- Self Defence
- Legal Authority
- Necessity
- Voluntary assumption of risk

DEFENCES TO INTENTIONAL TORTS