

Chapter 1

Risk Management & Sources of Law

Why Study Law?

-Why Study Law as Business Students?

- Goal of business is to make money
- Knowledge of Law – leads to greater risk management, reduces potential costs, increases potential profits
- All Business Choices have Legal Consequences
- Legal Education Plays a Critical Role in Risk Management
- Basic understanding of the law makes you a better person
- Law can both hurt and help you

Risk Management:

-What Is Risk Management?

- “The process of identifying, evaluating, and responding to the possibility of harmful events”
- 3 steps to Risk Management:
 1. Identification: recognition of legal risks “can we be held liable for doing something wrong?”
 2. Evaluation: assessment of legal risks “what are the chances of something going wrong?”
 3. Response: reaction to legal risks “what are we going to do about it?”

-Nearly every business decision creates *some* risk

-Risk Strategies:

- Avoidance - not engage in risky business activity (not sell certain product or service ie. cars with exploding fuel tanks)
 - Some risks are so serious that they should be avoided altogether
- Reduction - reduce occurrence of risk by modifying business practices (wiping floor if wet)
 - Some risks can be reduced to an acceptable level
- Shifting – shift risk to another party through contract or through insurance policy (purchase insurance for car accident)
 - If a risk cannot be avoided or reduced, it may be shifted onto another party
- Acceptance – sometimes appropriate for business to accept the risk (lucrative contract)

-Examples of Risk Management:

- Insurance: liability insurance ; property insurance
 - Insurance is a contract in which one party agrees in exchange for a price to pay \$ if another company suffers a loss
- Exclusion and Limitation clauses: contractual terms that exclude liability for certain types of acts / losses, or that limit the amount of compensation available
 - Business makes \$ by selling goods or services, those sales are created by contracts and those contracts are often exclusion of limitations
- Incorporation: “limited liability”: directors and shareholders are not usually liable for debts of the company
 - In order to avoid some risks, many business are set up as corporations/companies
 - ❖ Most significant benefit of incorporation is limited liability

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Introducing to Legal System

-What is a “Law”?

- A rule that can be enforced by the courts
- All laws are rules but not all rules are laws ie. rule against handling soccer ball is not law
- Legal Obligation vs. Moral Obligation (raises ethical considerations as well)
- moral wrongs are informally sanctioned - loss of friendships or damaged reputation
- legal wrongs are formally sanctioned - imprisonment or payment of damages

-not every rule is a law

- Example: there is a rule against moving a bishop horizontally across the chessboard but there certainly is not any law to that effect

-moral issues may arise even if a rule is a law

- Example: clothing manufacturer might be legally entitled to reduce production cost using child labour

-in Canada important to define civil law and common law

- Civil Law: system traces history to ancient Rome
- Common Law: system traces history to England

-The Legal System

- Public Law and Private Law

-Public Law

- concerned with governments and the ways in which they deal with their citizens
- Divided into: Constitutional, Administrative, Criminal, and Tax
 - Constitutional Law: provides basic rules for our political and legal systems, determines who is entitled to create and enforce laws
 - Administrative Law: concerned with the creation and operation of those bodies, impact on business
 - Criminal Law: deals with offences against the states; is concerned with people who break rules
 - ❖ White collar crimes; committed by people in suits, manager who steals money from the cash drawer is a white collar criminal
 - Tax Law: concerned with the rules that are used to collect money for public spending

-Private Law

- concerned with regulating matters between private “persons”
- Government can also be subject to private law (ie. Gov enters into contract to purchase products)
- Divided into: Torts, Contracts, and Property (course focuses on torts and contracts)
 - Tort: provides wrong against a particular person, law of tort covers a great deal of territory
 - ❖ Example: International Tort - such as an assault and false imprisonment
 - ❖ Example: Business Tort – such as deceit and conspiracy
 - ❖ Example: Negligence – covers most situations in which one person carelessly hurts another
- Different Areas of Law Can Overlap (a punch can be a crime and a tort)
- It is possible for a private person to sue a public
 - Example: suppose the municipal government forgot to inspect the foundation of your house while it was being built, if your basement later develops cracks, you could sue the construction company and also sue the city for its failure to enforce its own building regulations

Sources of Law:

-Three Main Sources of Law: The Constitution, Legislation, the Courts

(1) The Constitution:

- Most important source of law
- Creates the basic rules for Canadian society including political and legal
- Every other law must be compatible with it. (section 52 - no legislation or court decision is allowed to contradict it) ; Constitution is extremely difficult to change
 - Most laws can be changed by a legislature or a court, the constitution is different as a general rule, it can be changed only through a special “amending formula”
 - ❖ Requires the consent of Parliament and the legislatures of at least two thirds of the provinces, where those consenting provinces represent at least 50% of the country’s population
 - ❖ Constitutional amendments are rare
- Division of Powers: 2 levels of government Federal and Provincial; 2 sets of laws
 - Division of powers states the areas in which each level of government can create laws
 - Canada is a Federal country because it has 2 levels of government
 - ❖ Federal: parliament of Canada located in Ottawa governs the country as a whole composed of 2 parts:
 - House of common consists of members of parliament (MPs) who are elected from every province and territory
 - Senate consists of senators who are appointed to their jobs
 - ❖ Provincial and Territorial: Canadians also select politicians to represent them within their own provinces, the elected body is usually called the Legislative Assembly
- Charter of Rights and Freedoms: in 1982 the Charter was written into the Constitution to protect basic rights and freedoms
 - Protects rights and freedoms for persons (i.e. businesses as well as human beings) from actions of government
 - Irwin Toy Case (violation of freedom of expression, but justified under section 1)
 - Sections guaranteeing freedoms and rights: 2 (fundamental freedoms ie. religion, press, speech); 6 (mobility); 15 (equality ie. race, ethnicity, colour, religion, sex, age – and now sexual preference.)
 - ❖ The character protects a large number of rights and freedoms, some deal with democratic rights (section 3-5) and some deal with legal rights that usually arise official languages and minority language education (section 16-23)

-Charter is subject to restrictions:

- section 32 (only applies to complaints about Government behaviour);
- Section 1 (rights and freedoms are subject to reasonable limits...). It is occasionally acceptable to violate a person’s rights (RIDE Program)
- Section 33 (notwithstanding clause). Allows governments to enforce a law notwithstanding the fact that it violates the Charter of Rights and Freedom

-Laws that are inconsistent with the Charter are of “no force and effect”

(2) Legislation:

- second source of law; law that is created by Parliament or legislature
 - constitution including the character is the first course of law, legislation is the second
 - most important kind of legislation are statues or acts

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- ❖ Example: every jurisdiction in Canada has an act that allows companies to be created
- Legislative process: first reading (formal introduction), second reading (discussion, then sent to committee), third reading (final debate and vote); after three readings sent to senate for repeat of process; finally given royal assent
 - Provides an important opportunity for risk management, best strategy is to prevent the creation of law or make sure it is written in a way that causes little trouble
 - Legislative process at the federal level; a bill is introduced to house of commons by an MP, if the majority of the MPs support it, it will pass the first reading, sometimes later the bill reappears for second reading when it is subject of debate with MPs if it has the majority support then it is sent to the legislative committee. The bill reappears for third reading when the MP takes final vote, it bill passes that stage it is sent to the senate when there 3 stage process is repeated, if it goes well and the bill is passed by the parliament it requires one last formality. Since the head of Canada is the Queen the bill must be receive royal assent which is her majesty's approval.

(3)Courts:

- Third source of law; rules that the courts actually create
- Historically rules developed through common law courts, and another set of rules developed through equity courts
- Common Law – rules that are created by judges
 - (use of precedents and interpretation of legislation)
- Equity – fairness
 - (monetary damages vs. specific performance)

Chapter 2

Litigation & Alternative Dispute Resolution

The Litigation Process

-Litigation

- is the system of resolving disputes in *court*

-Risks of litigation:

- expensive
- time consuming
- unpredictable
- frequently fatal to business relationships

-Litigation is rare

- very few cases are decided by judges in court
- Most disputes are settled out of court; we rarely hear about those details
- Fewer than 1% of private disputes are decided by judges

Who Can Sue?

-General Rule: Any person or corporation can sue or be sued

-person who lacks legal capacity can sue or be sued but must act through a representative

- Example: child or adult with mental disability)

-statutory authority required to sue government

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-a corporation is a type of a person

- A company may therefore sue or be sued

-unincorporated organizations such as clubs and church groups are not classified as a legal person

- Normally cannot sue or be sued

Class Actions:

-Purpose: multiple claims against single defendant joined together in one action

-suing on behalf of large group of claimants; allows small individuals to take on large organizations

-small claimants able to share costs of litigation against large defendant

- Example: product liability, mass torts, workplace discrimination

-a company may not worry about thousands of claims worth a few dollars each, but it will worry about a single claim worth \$50 million

-class actions are becoming increasingly common in Canada

- Primary attraction: they allow small individuals to take on a large organization

-class action requirements:

1. Common Issues:

- must be common issues amongst the various members of the class
- Example: there may be a women who received defective breast implants from the same manufacturer as another women, not necessary every claim is to be identical

2. Representative Plaintiff:

- he/she must demonstrate a workable plan for fairly representing the interests of the class member
- Example: this situation will not be true; the plaintiff wants the court to rely on a rule that will help some circumstances that affect some claim acts

3. Notification:

- must have plan for notifying potential class members as members of that class are bound by the decision
- it is not unusual for instance to see class action notices in newspapers or magazines

4. Preferable Procedure:

- class action is the preferable way of dealing with the claims
- considers whether a class action will become too complicated and whether there are enough similarities between the class members

5. Certification:

- court's decision to allow the class action to proceed (allows the claims to be joined together as a class action)
- most important step in the entire process as a class
- it demonstrates that the courts believes that there is a serious and genius claims to be considered

Legal Representation:

-if you have been sued or want to sue it is important that you make a decision regarding legal representation, who will argue for your side?

-question raises an important risk management issue

1. Self Representation:

- right to represent yourself
- usually advisable only in simple matters

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- it is expensive to hire a lawyer however, it may be far expensive to lose a lawsuit in the long because due to the lack of experience
- you can go to the court and argue your case before the judge without being a lawyer

2. Lawyers:

- required to have graduated from Law School, articulated, passed bar
- Law Society regulates the profession
- Law Society establishes and applies Codes of Conduct and investigates/punishes misconduct
 - ❖ Punishes people who do not act responsibly
- Other advantages: lawyers must carry professional liability insurance
 - ❖ If your lawyer acts careless and you suffered a loss, you may sue for professional negligence
- communications are confidential and privileged
- there are a number of advantages of hiring a lawyer:
 - ❖ Example: conversation with your lawyer generally confidential and privileged meaning that your lawyer cannot share your information with anyone without your consent
- Law societies also provide assurance funds which provides compensation to people who have been hurt by dishonest lawyers

3. Paralegals – not a lawyer but provides legal services

- Since 2007, Law Society of Upper Canada has licensed paralegals in Ontario
- Now Paralegals must:
 - ❖ train at an approved institution
 - ❖ complete examinations just as lawyers need to write the Bars
 - ❖ abide by a Code of Conduct (punishable by misconduct)
 - ❖ carry liability insurance
- Restrictions on paralegals:
 - ❖ confined to certain types of work, e.g. representation in Small Claims Court, administrative tribunals
 - ❖ cannot work on a contingency fee basis
- paralegals are common in small claim courts, land lords and tenant tribunals
 - ❖ vast majority are knowledgeable, professional, honest paralegals remain somewhat controversial

Pleadings:

-The documents that are used to identify the issues and clarify nature of dispute

-Needs to be drafted by party, issued by court, served on party

-Plaintiff = person making complaint

-Defendant = person about whom complaint is made

-Need to start pleadings process promptly; limitation periods!

- Limitation period is a period of time within which an action must be started

-Limitation Periods because:

- after time evidence gets lost/ becomes murky
- can't hold the threat of litigation over someone forever

-Lawsuit starts w:

- Statement of Claim
 - ❖ A document in which the plaintiff outlines the nature of the complaint, it states facts that the plaintiff intends to rely upon and the remedy it wants to receive

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- Statement of Defense – denies the facts or any liability
 - ❖ Document in which the defendant sets out its version of the facts and indicates how it intends to deny the claim
- Counterclaim
 - ❖ claim that the defendant makes against plaintiff
 - Example: if the plaintiff sues for the price of goods that it delivered to the defendant, the defendant may believe that those goods are defective

Pre –Trial Activity:

-examinations for discovery

- information gathered under oath outside court
- it is a process in which the parties ask each other questions in order to detain information at their case
 - Example: In a case involving a vehicle that exploded on impact, victim's lawyer may ask car manufacturer engineer about the company's products safety studies, discover outside the court; they are conducted under an "oath"

-pre-trial conference

- judge meets with parties to summarize case
- parties outline their positions judges indicate which of them is likely to win if the case goes to trial

-mandatory mediation program

- currently operating in Ontario only

-settlement:

- parties may avoid trial by agreeing to resolution
- process in which a neutral person called mediator helps parties reach an agreement

The Trial:

-person who is accused of a crime generally has the option of appearing before a jury, civil litigation is almost always decided by a judge alone

-civil litigation is decided by judge (not jury)

-plaintiff and then defendant present evidence in favour of their arguments

-ordinary witnesses vs. expert witness

- ordinary witness: testify about facts that they know
 - Example: pedestrian describes a car accident she saw happen
- Expert witness: provides information based on the evidence
 - Example: physician may suggest how the defendant's ability was affected because of drinking

-direct evidence vs. hearsay evidence

- court generally insists upon direct evidence, they will not listen to hearsay evidence
 - hearsay evidence is information that a witness heard from another person rather than directly from the source

-civil standard of proof is on a balance of probabilities

- means that every important part of its claim must be probably true

Remedies:

-*compensatory damages*: compensates plaintiff for a loss

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- Example: provides an injured person with the amount they spent on medical bills
- punitive damages*: punishes the defendant for acting badly
- Example: punishes an insurance company that fabricated an allegation of arson in an attempt to avoid paying a benefit under the insurance policy
- nominal damages*: symbolically recognizes a wrong even if no loss suffered
- Example: recognize the right of a store that sued for trespassing even though the unwanted customer did no harm
- specific performance*: required the fulfillment of a promise
- Example: compel performance by a venter who contractually agreed to sell a piece of land to a purchaser
- injunction*: requires the defendant to act in a certain way
- Example: compel a construction company to remove its equipment from a neighbors property
- rescission*: terminates a contract
- Example: eliminate a contract company to remove its equipment from a neighbors property

Enforcement:

- winning judgment vs. enforcing judgment
- no relief unless judgment debtor actually pays
- enforcement techniques
 - Example: garnishee income
- important to know whether judgment will be enforceable

Appeals:

- lawsuit does not necessarily end after trial
- losing party entitled to appeal to a higher court
- usually 3 judges; minority writes a dissent

Costs:

- litigation is very expensive; most of the expense is on lawyer bills
- judges have discretion to order one party to pay costs to other party
- General Rule: costs awarded to whichever party wins the suit
- Contingency Fees:
 - client only pays its lawyer if the lawsuit is successful
 - Many benefits
 - Detriment is that the client usually ends up paying more

The Court System:

- Supreme Court of Canada ("SCC")
 - Highest court in the country
 - Judges appointed by federal government
 - It is not a trial court; hears appeals from other appellate courts
 - SCC hears appeals if the case has issue of national importance
- Court of Appeal
 - Highest court in each specific province
- Superior Court
 - Main job it to hear appeals from lower courts
- Federal Court

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- Appoints the members of 3 specialized courts that deal with cases that affect the federal government
- Provincial Court
- Appoints members; these are trial courts
- Court Hierarchy
- Doctrine of precedent requires a court to follow any other court above it in the hierarchy
- Small Claim Courts
- is a type of provincial court that deals with disputes involving limited amounts of money
- Benefits:
 - provides easy access to justice
 - ideally suited for small business disputes (ie. repayment of loan, defective goods etc)
 - relatively quicker
 - relatively less expensive
 - relatively informal proceedings
 - Limitations:
 - Geographical Limits
 - Types of Claims
 - Types of Remedies – no equitable relief; just monetary
 - Monetary Limits – limit depending on province

Administrative Tribunals:

- resolves issues and disputes that arise in administrative law
- examples: Human Rights Tribunal, Ontario Municipal Board
- similar to courts as they make binding decisions
- generally: more informal, the decision makers are usually not judges
- decisions are highly respected and not easily overturned
- Judicial Review:
- asking the courts to review a tribunal's decision
 - 2 standards of judicial review
 - (1) Reasonableness:
 - the court defers to the tribunals expertise and experience
 - only overturn decisions that are unreasonable
 - (2) Correctness:
 - court does not defer to the tribunal; decides if the tribunal acted *correctly*
- Privative clause – inserted in legislation to prevent courts from J.R
- ADR – any process that allows the parties to resolve dispute without going to court
- general advantages of ADR: quicker, cheaper, controlled, cooperative, private
- 3 major types: negotiation, mediation, arbitration
1. Negotiation
 - discussion between parties, most common form
 - no intervention by third party
 - no guarantee of binding resolution
 2. Mediation
 - neutral party helps the parties reach an agreement
 - mediator generally chosen by parties
 - mediator suggests resolution
 - either party may reject mediator's suggestion

- mediator's decision non-binding
3. Arbitration
- neutral third-party (arbitrator) imposes decision on the parties
 - arbitration often required by prior contract
 - arbitration clause may settle details (e.g. time, place)
 - arbitrator usually chosen for expertise in area
 - arbitrator imposes decision on parties
 - arbitrator hears witnesses and reviews evidence
 - decision usually binding and enforceable

Chapter 3 Introduction to Torts

Introduction to Tort Law:

-Tort = generally consists of a failure to fulfill a *private* obligation that was imposed by law

-Tortfeasor = a "person" who has committed a tort

- Example: I owe you an obligation personally not to make defamatory statement about your part, obligation will be broken if I tell your employer that you were once convicted of murder, therefore, I will be a tortfeasor if I break the tort

Torts and Crimes:

-Tort = private wrong (person breaks *private* obligation)

- breach of obligation to a person
- claim by individual plaintiff
- usual remedy of compensatory damages (\$\$\$)

-Crime = public wrong (person breaks *public* obligation)

- breach of obligation to society
- prosecution by Crown
- usual remedy of punishment (fine or imprisonment)

-both overlap; same *event* may be both tort *and* crime (ie a beating: crime of assault, tort of battery)

-Examples:

- if I hit you, I will commit the tort of battery and the crime of an assault
- if I take your car without permission, I will commit the tort of conversion and the crime of theft
- if I sneak into your house, I commit the tort of trespass to land and crime of break and enter

Torts and Contracts:

-sued are the parties to contract

-contracts are created by the parties, rather than imposed by law

-similarity between torts and contracts:

1. Structure: both involve *primary* and *secondary* obligations
 - Primary: tells people how to act
 - Example: tort of battery says "do not touch another person in an offensive way"
 - Secondary: obligation are remedial, they tell people how they must act after primary

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- the breach of the primary duty creates the secondary obligation
- tort: primary duty = do not harm another ; secondary duty = damages
- contract: primary duty = fulfill promise; secondary duty = damages

-differences between torts and contracts:

1. Source of Primary Obligations:

- Is simply imposed by the law, even though you never promised to behave, even if we are complete strangers you must not commit a battery against me
- torts: obligations imposed by law (not promises)
- contracts: obligations created by the parties

2. Privity:

- Because obligations in tort are simply imposed by law there is no need for the parties to create a special relationship for themselves, I can sue you for battery even if you never promised to hit me
- torts: no need to create a special relationship; imposed duty to others
- contracts: only people who can sue or be

3. Typical Compensation:

- Compensation is calculated by the difference for both tort and contract purpose is to prevent harm
- torts: to be put back in position as if tort never occurred; *backwards* looking
- contracts: to be put in position that was expected once promise fulfilled; *forward* looking

4. Risk Management:

- Obligations in contract that are created should never be taken to the parties by surprise
- torts: imposed obligations tougher to manage (can take a person by surprise)
- contracts: voluntary obligations easier to manage (can limit obligations to promises you know you can fulfill)

Types of Torts:

-Tort law covers a great deal of territory

-Tort law tries to strike a balance between competing interests:

- respect efficiency of business vs. compensating consumers
- respect freedom of choice vs. discouraging dangerous behaviour
- Torts differ on basis of *mental culpability*: 3 possibilities:
 1. Intentional Torts:
 - occur when a person intentionally acts in a certain way; liable for deliberate act
 - Example: assault, intimidation, trespass to land
 - Some torts require proof that the defendant intended to hurt the plaintiff, others are satisfied by proof that the defendant intended to act in a certain way even if they didn't realize that the plaintiff would be hurt
 2. Negligence:
 - occurs when a person acts carelessly; liability for *careless behaviour*
 - balance freedom of action with freedom from harm
 3. Strict Liability:

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- occurs when person does something wrong without intending to do so and without acting carelessly;
- liability *without* intention or negligence
- restricted to unusually dangerous activities
- Example: mauling by wild animal (no need to prove intention or negligence)
- these types of torts are very rare; it would be unfair to impose liability on a person who did not intentionally or carelessly cause the injury
- creates problems for risk management
- defence of voluntary assumption of risk

General Principles of Tort Law:

-There are various general principles that apply throughout tort law

-We will concentrate on 3 concepts:

(1) Liability Insurance:

- very important tool in risk management
- business protects itself with insurance against liabilities that arise
- definition: contract where insurance co. agrees, in exchange for a price/premium to pay damages or defend claim
- includes the duty to defend (significant b/c litigation costs expensive)
 - a duty for defend requires the insurance company to pay the expenses that are associated with lawsuits brought against the insured party
- liability insurance creates tension between
 - compensatory function of torts vs. deterrence function of torts
 - ❖ Compensatory function: aims to fully compensate people who are wrongfully injured
 - ❖ Deterrence function: discourages people from committing torts by threatening to hold them liable for the losses

(2) Vicarious Liability:

- vicarious liability = being liable for another's torts
- occurs when an *employer* is held liable for a tort committed by its *employee*
 - serves compensatory function by allowing plaintiff to claim damages from both employee (no \$) and employer (\$/insurance)
 - serves deterrence function by encouraging employers to avoid hazardous activities and to hire best people
 - fairness – requires business to bear responsibility for the losses that its activities create
- no vicarious liability if tort occurred outside the employment relationship
- employer will not be held liable for an independent contractor
- vicarious liability does not relieve the employee (from plaintiff or from employer)
- employer can be vicariously liable *and* personally liable

(3) Remedies:

-Compensatory Damages

- the standard remedy
- defendant is required to pay for the loss it caused
- plaintiff monetarily placed as if tort never occurred (backward looking)
- compared to damages for breach of contract (forward-looking)

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- if suing for both, plaintiff can only recover for one of those actions, even if both are successful (YBJ 3.1)

-Remoteness: court will not award damages if connection between tort and loss is *too remote* (unfair to hold defendant responsible in such case)

- concept of remoteness does not apply to intentional torts

-Mitigation: plaintiff needs to take steps to minimize the losses that result from the defendant's tort

- compensation is not available for losses that plaintiff *unreasonably* failed to mitigate

-Punitive Damages

- punitive damages are intended to punish the defendant
- punish outrageous or reprehensible behaviour ("harsh, malicious..")
- less common and less generous than in America

-Nominal Damages

- symbolically recognize commission of tort
- awarded for some torts if plaintiff suffered no loss

-Injunctions

- if damages are inadequate ; it is a non-monetary award
- it is a court order that requires the defendant to do something or refrain from doing something (example: stop building billboard, close pig farm etc.)

Alternative Compensation Schemes:

-tort law is not the only avenue to seek compensation

-Alternative Compensation Scheme:

- a system that allows a person who has suffered an injury to receive compensation *without* bringing an action in tort
- compensation based on injury rather than wrong
- paid by central fund rather than tortfeasor
- 2 examples: workers compensation and no-fault insurance

-Advantages:

- compensation available without proof of wrong
 - for victim financial and physical consequences are the same even if injury occurs *innocently*
 - quicker and less expensive process

-Disadvantages:

- generally less than full compensation; easier access to compensation but smaller reward (full value of loss vs. capped)
- no deterrence of blameworthy behaviour

Chapter 4 **Intentional Torts**

Intentional Torts:

-intention = intention to commit act

- no need to prove intention to commit tort

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- no need to prove intention to cause harm
- Intentional torts
- interference with person
 - assault and battery
 - invasion of privacy
 - false imprisonment
 - trespass to land
 - interference with chattels
 - trespass, conversion, detinue
- Defenses to Intentional Torts
- Complete defence
 - Partial defence
- protection of personal interests
- physical well-being (Example: assault and battery)
 - liberty (Example: false imprisonment)
 - dignity (Example: invasion of privacy)

Assault and Battery:

-Assault:

-definition: to intentionally create the perception of imminent and offensive bodily contact

-purpose: discourage threats and maintain peace

-elements of assault:

- reasonable belief that contact will occur (swing fist at me)
- reasonable belief of bodily contact (unloaded gun)
- belief of imminent bodily contact (distant threat insufficient)
- threat of offensive bodily contact (no need for defendant to be frightened)

- Battery:

-Battery: seldom sue for assault alone; usually joined w/battery

-definition: offensive bodily *conduct*

-elements:

- “bodily conduct” loosely defined (example: knife or bullet can touch P)
- bodily contact generally needs to be considered offensive (as opposed to harmful)
 - normal social interaction is allowed (example: elevator jostle)

-understanding tort of battery is important for businesses that control crowds (example: bouncers, security)

-can't use more than reasonable force; even if crime or other wrong was first committed on you (example: catching thief)

Invasion of Privacy:

-with new technologies emerging people concerned with their privacy interests

-tort law has yet to catch up with such technological advances

Ogenerally there is no independent tort of invasion of privacy (people are not required to look away or keep quiet about what they see)

-reasons for reluctance:

- courts want to support freedom of expression and information

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- difficult to find balance (example: celebrities)
- difficult to calculate compensatory damages for the harm such as embarrassment
- privacy is *indirectly* protected (example: trespass to land, misappropriation of personality etc.)
- courts are coming around to it; Criminal Code - voyeurism
 - voyeurism is a crime of secretly observing or recording a person in circumstances that gives rise to a reasonable expectation of privacy

False Imprisonment:

-occurs when a person is confined within a fixed area without justification

-scope of the tort is wide; elements include:

- *confinement* within fixed area
 - actual prison is not necessary; could be trapped in car, room etc
- the confinement must be practically *complete*
 - no easy escape available
- physical force is *not* necessary; could be psychological detention
 - embarrassed and believing there is no other option
 - ❖ Example: caught stealing and told to go to the back room
- *unjustified* confinement
 - did plaintiff consent to be confined (bus passengers)
 - consent is a complete defence for all intentional torts

-Powers of Arrest and Detention:

- Police Officers:
 - reasonable belief in commission of crime (current or past)
 - no liability even if no actual crime
- Private Citizens:
 - rules are much narrower (including for security guards)
 - can make arrest only if crime is actually being committed
 - liable if reasonable but wrongful belief of crime
 - law favours a customer's freedom of movement

-Risk Management:

- Business may reduce the risk of liability by calling a police officer, instead of directly arresting a suspect
- Liability may still be imposed if a business directs a police officer to make an arrest, rather than merely state the facts

Trespass to Land:

-definition: intentional interference with land

-broad interpretation of intent: enough if plaintiff *intended* to do the act even if it *did not intend* to do wrong or cause damage

- Example: building fence on neighbours property

-elements of trespass to land:

- lack of consent
 - guests and customers have consent
 - assumed that business consents to the customer's intrusion
 - business can usually revoke consent as long as it does not violate human rights
 - if business revokes consent, a customer who remains becomes a trespasser
 - business can then use *reasonable* force to remove them

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- lack of legal authority
 - some public officials have authority (example: building inspector, meter reader)
- remedies can be compensatory, punitive, or nominal damages
- plaintiff can also ask for injunction remedy to stop the trespass (example: tear down billboard)

Interference with Chattels:

-tort law not only protects people and land, also *chattels*

-*Chattels* are moveable forms of property (ie. cars, books, horses, \$)

-*intentional* tort therefore “innocent” purchaser of stolen goods liable

-torts include:

1. Trespass to Chattels

- occurs when the defendant interferes with chattel’s in the plaintiff’s position
- interference = damage, destroys, takes, or uses plaintiff’s chattels/goods
- general remedy = compensatory damages
 - ❖ Example: destroy car, pay value of car
 - ❖ Example: damage car, pay for repairs

2. Conversion

- occurs when the interference is so serious as to justify a forced sale
- defendant required to buy the item by paying market value at time of tort
- how do we know if actions were serious enough to justify a forced sale
- conversion is committed if a thief steals chattel or vandal destroys it
- tort may be committed even if defendant did not intend to do anything wrong
- remedy = defendant must buy chattel from plaintiff (“forced sale”)
- Risk Management:
 - ❖ need to use reasonable effort to ensure you buy goods from people who are actually entitled to sell them
 - ❖ law holds the rights of the *owner* over the rights of *innocent purchaser*
 - ❖ innocent purchaser of stolen goods may be held liable
 - ❖ why forced sale as opposed to return of goods

3. Detinue

- occurs when defendant fails to return a chattel that plaintiff is entitled to possess
- detention of chattel after demand for return
- remedies = usually compensatory damages or return of chattel to plaintiff
- only tort that generally allows court to order the return of chattel

Defenses to Intentional Torts:

-Complete defenses:

-Protects the tortfeasor from all liability

- Example: consent, legal authority, self-defense, necessity

-Partial defences:

-Allows court to reduce damages on the basis of plaintiff’s own responsibility for a loss or injury

- Example: provocation, contributory negligence

-it is never a defence to plead *mistake*

- Example: trespass to land occurs even if D thought it owned the property
- Example: conversion occurs even if D thought they were buying from owners

-Risk Management: “*intentional torts require you to not only be careful, but also correct*”

Complete Defenses:

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-protects tortfeasor from all liability

(1) Consent:

- most important defence
- exists if person voluntarily agrees to experience an interference with their body, land, or goods
 - Example: borrow friend's car w/out committing conversion
- consent may be express or implied
- it is only effective if it is *free and informed*; can't be given under duress
- consent is *revocable*; you may withdraw it

(2) Legal Authority:

- provides a person with a lawful right to act in a certain way
 - Example: police have powers of arrest,
 - building inspectors can enter one's property
 - gas meter readers

(3) Self Defence:

- connected with only a few of the intentional torts
- right to protect oneself from violence and the threat of violence
- tied to the torts of assault and battery
- available only if person is at immediate risk
- person acting in self-defence cannot use more force than necessary in the circumstances; must be reasonable amount of force having regard to the situation
- also applies to defence of a third party
 - Example: parent using reasonable force to protect a child

(4) Necessity:

- defendant's actions were justified by an emergency
- restricted to situations where immediate action was necessary
- court decides whether benefits outweigh the harm that was caused
 - doctor provides urgent medical care to unconscious patient

Partial Defenses:

-allows court to reduce damage on the basis of plaintiff's own responsibility for a loss or injury

(1) Provocation:

- consists of words or actions that cause a reasonable person to lose control
- defendant "snaps" after being taunted and insulted
- tied to torts of assault and battery
- the defendant will still be held liable for the attack, but the plaintiff will not be entitled to *full compensation*
- legal system recognizes that people can only be pushed so far; reduces damages

(2) Contributory Negligence:

- Occurs when the plaintiff is partially responsible for the injury that the defendant tortiously caused
- responsibility is *shared* between parties; damages are therefore reduced to reflect the plaintiff's contribution to the injury
 - Example: plaintiff intoxicated when damage occurred; not wearing seatbelt

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