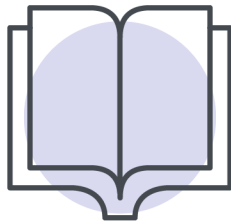

Ryerson

LAW 122
MIDTERM EXAM
STUDY GUIDE



Textbook Notes

Chapter 1: Risk Management and Sources of Law

Why Study Law?

- As consumers we all need to be aware of the rules that govern commercial transactions
- Factors affect success and failure in business, primarily for decision making (choices)
- Business decisions have legal consequences
 - >Negative consequences (dumping pollutants into river)
 - > Positive consequences (decisions to bind contractual party to promise)
- Legal consequences affect profits and losses
 - >Liability imposed for poor decisions
 - >Opportunity exploited by good decisions

Risk Management

Risk Management: The process of identifying, evaluating, and responding to the possibility of harmful events

-There are three 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 be about it”

Forms of Risk Management

Risk Avoidance: Elimination of the risk

Risk Reduction: Minimization of the risk

Risk Shifting: Make the risk someone else's problem

Risk Acceptance: Choose to live with the risk

Examples of Risk Management

-Insurance

->Liability Insurance & Property Insurance

-Exclusion and Limitation Clauses

->Contractual terms that exclude liability for certain types of acts/losses, or that limit the amount of compensation available

-Incorporation

->"Limited Liability: directors and shareholders are not usually liable for debts of the company

->Employees, directors and officers may still be held personally liable for the torts they commit

An Introduction to the Legal System

The Nature of Law

Law: A rule that can be enforced by the courts

-All laws are rules but not all rules are laws, ex rule against handling soccer ball is not a law

Morality and Law

-Moral wrongs are informally sanctioned

->ex. loss of friendships or damaged reputations

-Legal wrongs are formally sanctioned

->ex. imprisonment or payment of damages

-Law is an evolving 'malleable' process, rather than a static list of 'dos' and dont's'

-Laws evolve to reflect changes in society (social beliefs and equality rights, e-commerce, prohibition on alcohol,prostitution, etc)

-Since law evolves, you must know law today and in the future

A Map of the Law

Civil Law: Systems trace their history to ancient Rome, ex.Quebec

Jurisdiction: A geographical areas that uses the same set of laws

Common Law: Systems trace their history to England, ex.Most of Canada

-Some types of laws are the same across Canada, e.g criminal laws and constitutional laws

Public Law

Public Law: Matters of public concern

-Public law includes: constitutional law, administrative law, criminal law, and tax law

Constitutional Law: Provides the basic rule of our political and legal systems

Administrative Law: Concerned with the creation and operation of administrative agencies, boards, commissions, and tribunals

Criminal Law: Deals with offences against the state

Tax Law: Concerned with the rules that are used to collect money for spending

Private Law

Private Law: Matters of private concern

-Private laws are divided into three main parts : law of torts, law of contracts ,and law of property

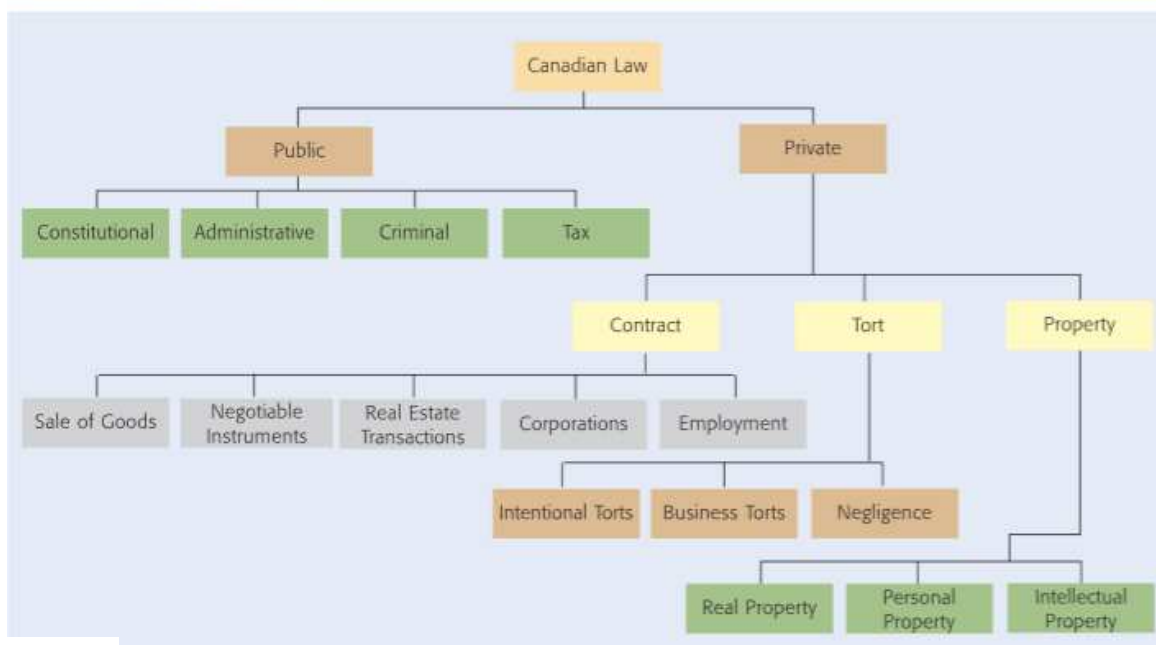
Tort: A private wrong

- > Intentional torts: Assault and false imprisonment
- > Business torts: Deceit and conspiracy
- > Negligence: One person carelessly hurting another

Law of Contracts: Concerned with the creation and enforcement of agreements

Law of Property: concerned with the acquisition, use, and disposition of property

FIGURE 1.1 A Map of the Law



Sources of Law

-Laws generally has three sources: The Constitution, Legislation, and The Courts

The Constitution: The document that creates the basic rules for Canadian society, including its political and legal systems

- >Every other law in the country must be compatible with it
- >The Constitution is very difficult to change
- >Can be changed through amending formula, requires consent of 2/3 of provinces
- >Consenting provinces must represent at least 50% of the country's population

Federalism and the Division of Powers

-Canada is the federal country with two constitutionally recognized levels of government

- >**Federal Gov't** (crime, bankruptcy, copyright, etc)
- >**Provincial Gov't** (property, civil rights, etc)

-When a government legislates outside its authority, law is ultra vires (beyond ones legal power or authority) and has nor force or effect

Division of Powers: States the areas in which each level of government can act

Residual Power: Gives the federal government authority over everything that is not specifically mentioned

Concept Summary 1.1

Division of Powers

Federal	Provincial or Territorial
criminal law	property and civil rights (eg contracts, torts)
taxation	direct taxation to raise money for provincial purposes
employment insurance	the creation of municipalities
banks	matters of a local or private nature within a province
bankruptcy and insolvency	
money	
negotiable instruments (eg cheques)	
international and interprovincial trade and commerce	
navigation and shipping	
copyright	
any matter that is not exclusively given to the provinces	

Charter of Rights and Freedoms

- Part of the Constitution since 1982
- Rights and freedoms commonly affecting business:
 - >Freedom of expression
 - >Freedom of Religion
 - >Freedom of mobility
 - >Right to equality (race, sex, religion are the prohibited grounds of disc)

Property Rights: Rights to own and enjoy asset

Economic Rights: Rights to carry on business activities

Parliamentary Supremacy: Means that while judges are required to interpret constitutional and statutory documents, they must also obey them

Limitations on Charter Rights

- Charter only applies to government action
 - >not (directly) applicable against private businesses
- Charter may apply in favour of private business
 - >some provision are limited to any 'individual'
 - >some provisions are amiable to any 'persons'
- Charter rights subject to 'reasonable limitations'
 - >Balance individual rights and community interests
- Charter subject to 'non-withstanding clause'
 - >Gov't can override some rights and freedoms

Legislation

Legislation: Law that is created by Parliament or a legislature

Subordinate Legislation: The term given to regulations that are created with the authority of parliament of the legislature

Municipality: A town or city

By-Law: A type of subordinate legislation that is created by a municipality

The Common Law

Meaning of 'common law'

- System:** legal system inherited from England
 - >compare civil law inherited from ancient Rome
- Sources:** rules made by judges
 - >compare: rules made by legislators
 - >compare: rules made by constitution drafters
- Courts:** rules made by judges of law
 - >compare: rules made by judges of equity

Courts

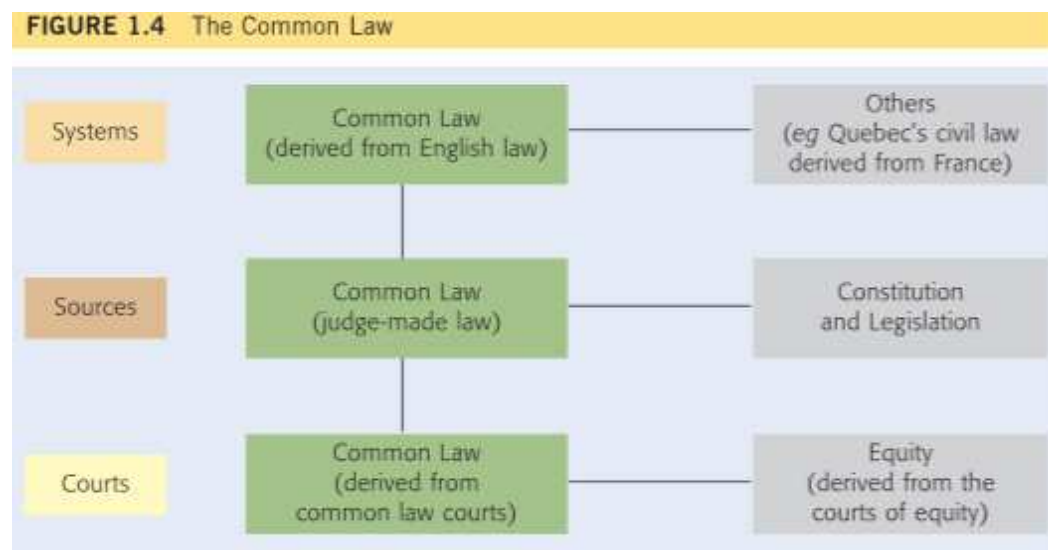
Function of Courts

- Interpret and apply Constitution
- Interpret and apply legislation
- Create and apply 'common law' (judge made law)

Court Hierarchy and Precedent

- Hierarchy determines appeal route
- All hierarchies end with Supreme Court of Canada
- Also determines what decisions are binding on courts
 - >**Doctrine of Precedent:** Judge must follow similar decisions from courts higher in same hierarchy, and other court decisions may be persuasive but not binding

Rule of Law: Solve disputes based on law, not opinion



How to Solve a Legal Question

1. Start with the facts
 - > Read carefully and understand the facts as they determine the relevance of any legal point you make later
2. Identify the relevant legal issues
 - > what do we want to find out
 - > the order of issues matter
 - > deal with one issue at a time
3. Discuss the law relevant to the issue
 - > Cite supporting authors
4. Apply the law to the facts
 - > Assess what the like decision would be on the issue

Ethics MODULE STUFF

Lecture 2: Tort Introduction

Tort: Wrong doing in private law

Tortfeasor: Person who commits a tort

-Tort law includes almost every sort of private law wrong out of breach of contract

Social Purpose: Tort law discourages people from committing private wrongs by requiring them to compensate & restore the wronged party

Tort Vs Crime

Tort = Private Wrong

- breach of obligation to a person
- claim by individual plaintiff
- usual remedy of compensatory damages

Crime = Public Wrong

- breach of obligation to society
- prosecution by Crown
- usual remedy of punishment

-Tort and crime: overlap

-Same event may be tort and crime

Types of Torts

-Torts differ on basis of mental culpability

1. Strict Liability: Liable for any injury sustained by another party regardless of whether the injury was intended

2. Intentional : An intentional act on the part of the tortfeasor

3. Negligence: Failure to exercise the care that a reasonably prudent person would exercise in like the circumstances

Strict Liability

-Tort occurs when the defendant is responsible for an especially dangerous activity that caused harm

- >Transportation of dangerous products
- >Keeping of dangerous animals

Intentional

Intention - liability for deliberate act

- >Deliberate performance for prohibited act, ex (battery, false imprisonment)

—>Deliberate infliction of harm ex (breach of contract, intimidation)

Negligence

Negligence - liability for careless behaviour

—> ex. negligence, product liability, professional negligence, occupier's liability

Liability Insurance

-Risk management issue

—>tort duty (unexpedlty) imposed by law

-Liability insurance contract

—>Insured pays price for protection

—>Insurer protects insured against

Chapter 3: Introduction to Torts

Introduction to Tort Law

Tort: Generally consists of a fail to fulfill a private obligation that was imposed by law

Tort and Crimes

Tortfeasor: A person who has committed a tort

Concept Summary 3.1				
Tort Law and Criminal Law				
	Private law or public law?	Which parties are involved in the obligation?	Who are the parties to the action if that obligation is broken?	What is the usual remedy?
Tort Law	private law	the defendant owes an obligation to the plaintiff	the plaintiff sues the defendant	compensatory damages
Criminal Law	public law	the accused owes an obligation to society	the government prosecutes the accused	punishment (such as a fine or imprisonment)

Torts and Contracts

Concept Summary 3.2				
Comparing Tort and Contract				
	Source of Obligation	Privity	Compensatory Damages	Risk Management
Tort	imposed by law	enforceable regardless of any agreement between the parties	place the plaintiff as if the tort had not occurred	<ul style="list-style-type: none"> may take a person by surprise may require more than a person is able to give
Contract	voluntarily created by the parties	enforceable only by or against a party to the contract	place the plaintiff as if the contract had been performed	<ul style="list-style-type: none"> always possible to know the obligations in advance always possible to limit the obligations to promises that can be fulfilled

Types of Torts

Intentional Tort: Occurs when a person intentionally acts in certain ways. Some torts require proof that the defendant merely intended to act in a certain way, even if they didn't realize the plaintiff would be hurt

Negligence Tort: Occurs when a person acts carelessly

Strict Liability: Occurs when a person does something wrong without intending to do so and without acting careless. It's enough that the defendant was responsible for the situation that resulted in the plaintiffs injury

Concept Summary 3.3	
Forms of Tortious Wrongdoing	
Intentional torts	<ul style="list-style-type: none"> assault battery false imprisonment kidnap or larceny interference with chattels conspiracy intimidation interference with contractual relations unlawful interference with economic relations deceit
Negligence torts	<ul style="list-style-type: none"> occupiers' liability nuisance negligence professional negligence
Strict liability torts	<ul style="list-style-type: none"> Rylands v Fletcher

- Strict liability torts create special problems for risk management
- They do not require proof of any sort of intentional or careless wrongdoing
- Liability is imposed simply because the defendant was responsible for the situation that injured the plaintiff

General Principles of Tort Law

- Liability Insurance, Vicarious Liability, and Remedies

Liability Insurance

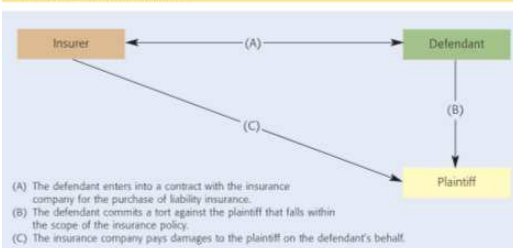
Liability Insurance: A contract in which an insurance company agrees, in exchange for a price, to pay damages on behalf of a person who incurs liability

A Duty to Defend: Requires the insurance company to pay expenses that are associated with lawsuits brought against the insured party

Compensatory Function: Aims to fully compensate people who are wrongfully injured

Deterrence Function: Discourages people from committing torts by treating to hold them liable for the losses they cause

FIGURE 3.1 Liability Insurance

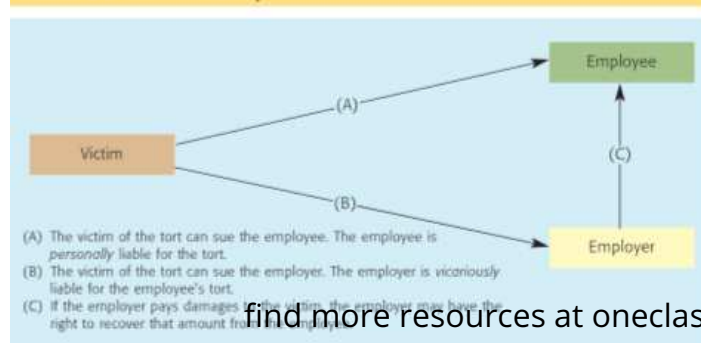


Vicarious Liability

Vicarious Liability: Occurs when one person is held liable for a tort that was committed by another person

Independent Contractor: A worker who is not as closely connected to the employers business as is an employee

FIGURE 3.2 Vicarious Liability



Remedies

Covers the most important responsibilities: compensatory damages, punitive damages, nominal damages, and injunctions

Compensatory Damages

Punitive Damages

Nominal Damages

Injunctions

Chapter 4: Intentional Torts

Intentional Torts: Involve intentional, rather than merely careless, conduct

Assault and Battery

Assault: Occurs when the defendant intentional causes the plaintiff to reasonably believe that offensive bodily contact is imminent

-Firstly assault is not based on physical contact, but it is based on a reasonable belief that such contact will occur

-Secondly it is enough if the plaintiff reasonably believed that bodily contact would occur

-Third the plaintiff must have believed that the bodily contact was imminent

-Fourth, an assault can occur even if the plaintiff was not frightened, offensive contact alone is enough

Battery: Consists of offensive bodily contact

-First the requirement of bodily contact, is not strictly applied, it is enough if the defendant causes something such as a knife or a bullet to touch the plaintiff

-Second, not every form of contact is offensive, normal social interactions are allowed, ex brushing past someone in a elevator

False Imprisonment

False Imprisonment: Occurs when a person is confined within a fixed area without justification

-An actual prison is not necessary, this tort can be committed if a person is trapped in a car, locked in a room, etc

Malicious Prosecution: Occurs when the defendant improperly causes the plaintiff to be prosecuted

Trespass to Land

Trespass to Land: Occurs when the defendant improperly interfere with the plaintiffs land

- >Intentional act
- >Causing person to object
- >To interfere with land
- >Lack of consent
- >Lack of legal authority

Ex. Intent to build a fence whether or not you knew it was on my land (tort of trespass to land)

-Business allow consent for customers to enter during business hours but may revoke that for some individuals

-Remedies

- >damages
 - compensatory, nominal, or punitive
- >Injunction
 - prevent ongoing trespass

-Removal of trespassers

- >legislation allows arrest of trespassers
- >case law allows use of reasonable force in arrest

Concept Summary 4.1		
Communication Rules		
Tort	Protected Interest	Elements of Proof
Assault	freedom from fear of offensive bodily contact	<ul style="list-style-type: none"> ▪ intentional act ▪ causing a reasonable belief that offensive bodily contact is imminent
Battery	freedom from offensive bodily contact	<ul style="list-style-type: none"> ▪ intentional act ▪ causing offensive bodily contact
False imprisonment	freedom of movement	<ul style="list-style-type: none"> ▪ intentional act ▪ involving physical or psychological forces ▪ causing person to be confined within fixed area without justification
Malicious prosecution	freedom from improper prosecution	<ul style="list-style-type: none"> ▪ criminal proceedings commenced for malicious or improper purpose, without honest belief on reasonable grounds that crime was committed ▪ resulting in acquittal of accused
Trespass to land	right to exclude trespassers from land	<ul style="list-style-type: none"> ▪ intentional act ▪ causing person or object to interfere with land

Interference with Chattels

Chattels: Moveable forms of property, ex horses, books, and cars

Trespass to Chattels: Occurs when the defendant interferes with chattels in the plaintiff's possession

Conversion: Occurs when the defendant interferes with the plaintiffs chattels in a way that is serious enough to justify a forced sale

—>That may be true if the defendant takes, detains, uses, buys, sells, damages, or destroys the plaintiffs property

—>If so the defendant will be required to buy the item by paying the market value that the chattel had at the time of the tort

Defences to International Torts

Complete Defences: Protects the tortfeasor from all liability

Four defences

Consent: Exists if a person voluntarily agrees to experience and interference with their body, land, or goods

—>Consent may be express or implied

Legal Authority: Provides a person with lawful right to act in a certain way

Self-Defence: Consists of the right to protect oneself from violence and the threat of violence

Necessity: Applies if the defendant's actions are justified by an emergency

Partial Defences

Partial Defence: Allows a court to reduce damages on the basis of the plaintiffs own responsibility for a loss or an injury

Two defences

Provocation: Consists of words or actions that would cause a reasonable person to lose self-control

Contributory Negligence: Occurs when the plaintiff is partially responsible for the injury that the defendant tortiously caused

Concept Summary 4.3

Defences in Intentional Torts

Complete Defences

Consent	voluntary choice to allow acts that otherwise would be tortious
Legal authority	statutory or common law right to perform acts that otherwise would be tortious
Self-defence	right to protect oneself, or a third party, or perhaps property, from an attack by a person
Necessity	right to protect oneself, or a third party, or perhaps property, from a natural disaster or general threat

Partial Defences

Provocation	words or actions that cause a reasonable person to lose self-control
Contributory negligence	plaintiff is partially responsible for the injury that the defendant tortiously caused

Deceit

-Defendant makes a false statement which they know to be untrue with which they intend to mislead the plaintiff and which causes the plaintiff to suffer a loss

-TEST: Plaintiff must prove

—>Defendant made false statement

-sufficient if half truth

-sufficient if failure to update information

-sufficient if duty to disclose and silence

—>Defendant knew that statement was false or was reckless in determining the truth

—>Defendant intend to mislead plaintiff

—>Plaintiff suffered loss from reasonably relying on it

Defamation

Test: Defendant makes a false statement that could lead a reasonable person to have lower opinion of plaintiff

Elements: plaintiff must prove

- >Statement reasonably refers to plaintiff
 - irrelevant that defendant did not intend reference
 - plaintiff must be living person
 - group statement must refer to plaintiff personally
- >statement could hurt plaintiff's reputation
- >statement was published to third party

-Includes any communication (e.g. spoken, written gestures, documents, and puppet shows)

-Risk management:

- >Business faces special risk when trying to enhance own reputation by disparaging competitors
- >Social media presents risks to employers
 - vicarious liability for employees? defamation
 - directly as potential publisher of defamatory material

Defences to Defamation

-Justification (truth)

- >Honest and reasonable belief in truth insufficient

-Absolute privilege

- >Complete immunity from liability
- >No liability even if statement made in bad faith
- >Limited to statements made:
 - during parliamentary proceedings
 - by a judge, lawyer, litigant, or witness in legal proceedings
 - between spouses

-Qualified Privilege

- >legal, moral or social obligation to make a statement to someone with a similar duty or interest in receiving it
- >Liability if statement made in bad faith
- >Important application of this defence arises under the label of “public responsible journalism” (journalists may publish)
- >defamatory statements but must show good methods to research it

-Fair Comment

- >Informed opinion expressed regarding matter of public importance
- >Applies if opinion in question could honestly be held by some person, even if prejudiced or opinionated

Remedies for Defamation

- >Compensatory damages to repair losses
- >Punitive damages for outrageous conduct
- >Injunctions to prevent defamation
 - rarely awarded due to concern for free speech
 - requires clear evidence that defamation is likely

Nuisance

Test: Defendant unreasonably interferes with the plaintiff's use and enjoyment of their own land

-Forms of nuisance

- >physical damage
 - e.g. vibration cause house foundations to crack
- >Impaired enjoyment
 - e.g.

Determinants of Nuisance

- Nuisance only if unreasonable interference
- Relevant factors

Chapter 5: Miscellaneous Torts Affecting Business

Other Important Torts

Conspiracy: Usually occurs when two or more defendants agree to act together with the primary purpose of causing the plaintiff to suffer a financial loss

Intimidation: Occurs when the plaintiff suffers a loss as a result of the defendants threat to commit an unlawful act against either the plaintiff or third party

Two Party Intimidation: Occurs when defendant directly coerces the plaintiff into suffering the loss

Three Party Intimidation: Occurs when the defendant coerces third party into acting in a way that hurts the plaintiff

Interference with Contractual Relations: Occurs when the defendant disrupts a contract that exists between the plaintiff and a third party

Direct Inducement to Breach of Contract: Occurs when the defendant directly persuades a third party to break its contract with the plaintiff

Indirect Inducement to Breach of Contract: Occurs when the defendant indirectly persuades a third party to break its contract with the plaintiff

Unlawful Interference with Economic Relations: May occur if the defendant commits an unlawful act for the purpose of causing the plaintiff to suffer an economic loss

Concept Summary 5.1		
Business Torts—A Summary		
Name of Tort	Unlawfulness	Intent to Harm
Conspiracy	defendant's act may be lawful or unlawful	<i>lawful act</i> —hurting plaintiff must be defendant's primary purpose <i>unlawful act</i> —hurting plaintiff must be foreseeable
Intimidation	defendant must threaten unlawful act	defendant's act must be directed at plaintiff—but hurting plaintiff need not be defendant's primary purpose
Interference with contractual relations	<i>indirect</i> inducement to breach of contract—defendant's act must be unlawful <i>direct</i> inducement to breach of contract—defendant's act may be lawful or unlawful	defendant's act must be directed at plaintiff—but hurting plaintiff need not be defendant's primary purpose
Interference with economic relations	defendant's act must be unlawful or unauthorized	defendant's act must be directed at plaintiff—but hurting plaintiff need not be defendant's primary purpose

Deceit: Occurs if the defendant makes a false statement which they know to be untrue, with which they intend to mislead the plaintiff, and which causes the plaintiff to suffer a loss

Half Truth- Ex selling my business to someone else and providing figures representing my gross profits as if they reflect net profits

Failing to Update Info- Ex I am selling my business to someone and I provide them with info that is accurate when I give it but later becomes inaccurate because of dramatic change in the environment

Occupiers Liability

Occupiers Liability: Requires an occupier of premises to protect visitors from harm

Occupier: Any person who has substantial control over premisses

Visitor: Any person who enters onto premises

Premises: Include more than land

-There are both the common law rules (which are made by judges) and the statutory rules (made by legislators) to consider

Common Law Rules

-Common law rules recognized four categories of visitors:
 —>Trespassers, Licensees, Invitees, and contractual Entrants

-There are a number of problems with the common law systems
 —>First, it can lump together different types of people
 —>Second, it is often difficult to distinguish between the different categories
 —>Third, a visitors status may change from one moment to the next
 —>Fourth, it often is difficult to decide whether a danger is hidden or unusual

Concept Summary 5.2

Traditional Rules for Occupiers' Liability

Type of Visitor	Description of Visitor	Occupier's Obligation
trespasser	a person who does not have permission to enter the premises (eg a burglar)	not to <i>intentionally or recklessly injure</i> a trespasser (eg by setting a trap for a burglar)
licensee	a person who has permission to enter the premises but who does not further the occupier's economic interest (eg a social guest)	to protect a licensee from <i>hidden dangers</i> that were <i>actually known</i> to the occupier
invitee	a person who has permission to enter the premises and who furthers the occupier's economic interests (eg a business customer)	to take reasonable care to protect an invitee from <i>unusual dangers</i> that the occupier <i>knew or should have known</i> about
contractual entrant	a person who enters into a contract to use the premises, rather than to receive services that are offered on the premises (eg a hotel guest, but not a restaurant diner)	a contractual obligation to make sure that the premises were as safe as <i>reasonably possible</i>

Statutory Rules

Nuisance

Nuisance: Occurs when the defendant unreasonably interferes with the plaintiff's use and enjoyment of their own land

-A nuisance can also occur if the defendant creates a smell or a sound that impairs the enjoyment of the plaintiff's property

-It may even be possible to commit a non-intrusive nuisance, without causing anything to reveal not the plaintiff's property

-A nuisance occurs only if the defendant's interference is unreasonable, the most important factor is the nature of interference if it causes substantial physical damage

-Other factors the courts also consider the nature of the neighbourhood, time and day, the intensity and duration of the interference, the social utility of the defendant's conduct, and the defendant's motivation

Defences to Nuisance

Statutory Authority: Means that the defendant caused a nuisance while acting under legislation

Remedies for Nuisance

-The most common remedies for nuisance are compensatory damages and injunctions

-The injunctions are more complicated, a judge will usually grant one to stop a nuisance

Concept Summary 5.3

Torts Involving the Use of Land

Tort	Basis of Liability
Occupiers' liability	the defendant, who is the occupier of the premises, fails to take adequate precautions to protect the plaintiff, who is visiting those premises
Nuisance	the defendant unreasonably interferes with the plaintiff's use and enjoyment of their own land
Rule in <i>Rylands v Fletcher</i>	the defendant uses their land in a non-natural way with the result that something escapes and injures the plaintiff
Trespass to land	the defendant intentionally interferes with the plaintiff's land

Defamation

Defamation: Occurs when the defendant makes a false statement that could lead a reasonable person to have a lower opinion of the plaintiff

-First, it can be satisfied even if the defendant did not intend to refer to the plaintiff

-Second, a claim for defamation can be made by any sort of living person

-Third, defamation may be difficult to prove if the defendant made a statement about a group of individuals

Slander: Defamatory statement that is spoken

Libel: Defamatory statement that is written

Publication: Occurs when a statement is communicated to a third party

Defences to Defamation

Justification: Occurs if the defendant's statement is true

Privilege: Immunity from liability

—>absolute privilege provides a complete immunity

Public Interest Responsible Journalism: Occurs when a journalist, despite getting some facts wrong, acted in accordance with the standards or responsible journalism in publishing a story that the public was entitled to hear

Fair Comment: An expression of an opinion regarding a matter of public importance

-The defence may apply if the court is satisfied on three elements

1. The defence is intended to protect informed opinions, the defendant has to prove that a reasonable person would have interpreted the statement as an opinion based on fact,
2. The defendant's opinion must concern an issue of public interest such as a cultural, religious, or political matter
3. A comment was not considered fair unless it was honestly held by the defendant

-The usual remedies for defamation is compensation

Concept Summary 5.4	
Defamation Defences	
Defence	Elements
Justification	<ul style="list-style-type: none"> • statement must be true
Absolute privilege	<ul style="list-style-type: none"> • any statement made in circumstances where people must speak <i>without fear of liability</i>: <ul style="list-style-type: none"> • parliamentary proceedings • high government officials discussing government business • judges, lawyers, parties, and witnesses during court proceedings • spouses
Qualified privilege	<ul style="list-style-type: none"> • statement made <i>without malice</i> • by a person with a legal, moral, or social <i>duty to speak out</i> • to a person with a <i>duty to receive</i>
Public interest responsible journalism	<ul style="list-style-type: none"> • statement <i>by a journalist</i> • meets <i>standards of responsible journalism</i> • story that <i>public was entitled to hear</i>
Fair comment	<ul style="list-style-type: none"> • statement made <i>without malice</i> • regarding issue of <i>public interest</i> • statement of <i>opinion</i> rather than fact • opinion <i>could be honestly held</i> by someone

Injurious Falsehood

Injurious Falsehood: Occurs when the defendant makes a false statement about the plaintiff's business that causes the plaintiff to suffer loss

- Slander of title
- Slander of Quality
- Other Situations

- The plaintiff must prove three elements
 - >False statements, malice, and loss

Concept Summary 5.5	
Elements of Business Torts	
Tort	Elements of Proof
Conspiracy	<ul style="list-style-type: none"> • <i>two or more people act together</i> to cause <i>economic injury</i> to plaintiff • if otherwise <i>lawful</i> acts . . . <ul style="list-style-type: none"> • defendants' <i>primary purpose</i> is to hurt plaintiff • if otherwise <i>unlawful</i> acts . . . <ul style="list-style-type: none"> • defendants <i>should know</i> that acts might hurt plaintiff
Intimidation	<ul style="list-style-type: none"> • defendant <i>threatens</i> to commit an <i>unlawful act</i> • threat <i>directed</i> against <i>plaintiff or third party</i> • threatened party <i>gives in</i> to the threat • plaintiff <i>suffers a loss</i>
Interference with contractual relations	<ul style="list-style-type: none"> • defendant <i>induces</i> a <i>third party</i> to <i>break contract</i> with plaintiff • if defendant <i>directly</i> induces third party . . . <ul style="list-style-type: none"> • defendant <i>knows</i> of contract • defendant <i>intends</i> for third party to <i>breach</i> contract • defendant <i>actually causes</i> third party to breach contract • plaintiff <i>suffers loss</i> • if defendant <i>indirectly</i> induces third party . . . <ul style="list-style-type: none"> • same four elements <i>plus</i> • defendant's actions are otherwise <i>unlawful</i>
Unlawful interference with economic relations	<ul style="list-style-type: none"> • defendant performs <i>illegal, unlawful, prohibited, or unauthorized</i> act • defendant <i>intends</i> to hurt plaintiff • plaintiff <i>suffers economic loss</i>
Deceit	<ul style="list-style-type: none"> • defendant makes <i>false statement</i> • defendant <i>knows</i> that statement is false • defendant <i>intends</i> to <i>mislead</i> plaintiff • plaintiff <i>suffers a loss</i> as a result of <i>reasonable reliance</i> on the statement
Nuisance	<ul style="list-style-type: none"> • defendant <i>unreasonably interferes</i> with plaintiff's use of land
The rule in <i>Rylands v Fletcher</i>	<ul style="list-style-type: none"> • <i>strict liability</i> • defendant makes <i>non-natural use</i> of their land • something associated with that use <i>escapes</i> from defendant's land • plaintiff <i>suffers harm</i>
Defamation	<ul style="list-style-type: none"> • defendant makes <i>false statement</i> • <i>publication</i> to a third party • plaintiff's <i>reputation lowered</i> in eyes of <i>reasonable person</i>
Injurious falsehood	<ul style="list-style-type: none"> • defendant makes <i>false statement</i> about plaintiff's <i>business or property</i> • <i>publication</i> to a third party • defendant acted with <i>malicious intent</i> • plaintiff <i>suffers economic loss</i>

Chapter Summary

In this chapter, we examined 10 torts that are particularly important for business people.

Conspiracy usually occurs when two or more defendants agree to act together with the primary purpose of causing a financial loss to the plaintiff. The conspiring parties can be held liable even if their actions are otherwise lawful. However, the courts are more willing to impose liability if the defendants acted in an otherwise unlawful way.

Intimidation occurs when the plaintiff suffers a loss as a result of the defendant's threat to commit an unlawful act against either the plaintiff or a third party. Two-party intimidation occurs when the defendant directly coerces the plaintiff into suffering a loss. Three-party intimidation occurs when the defendant coerces a third party into acting in a way that hurts the plaintiff.

Interference with contractual relations occurs when the defendant disrupts a contract that exists between the plaintiff and a third party. A direct inducement to breach of contract occurs when the defendant directly persuades a third party to break its contract with the plaintiff. An indirect inducement to breach of contract occurs when the defendant indirectly persuades a third party to break its contract with the plaintiff.

Unlawful interference with economic relations occurs when one person intentionally does an unlawful (or unauthorized) act that causes the plaintiff to suffer a loss.

Deceit occurs if the defendant makes a false statement, which it knows to be untrue, with which it intends to mislead the plaintiff, and which causes the plaintiff to suffer a loss.

130 PART 2 Torts

The law of occupiers' liability requires an occupier of premises to protect visitors from harm. Some provinces and territories rely on the traditional common law rules. Others rely upon occupiers' liability statutes.

Nuisance occurs when the defendant unreasonably interferes with the plaintiff's ability to use and enjoy its own land. The defence of statutory authority may protect a defendant from liability, but it has been narrowly interpreted by the courts. The courts often award injunctions to stop or prevent nuisances.

The rule in *Rylands v Fletcher* states that the defendant may be held strictly liable for its non-natural use of

land if something escapes from its property and injures the plaintiff.

Defamation occurs when the defendant makes a false statement that could lead a reasonable person to have a lower opinion of the plaintiff. Liability may be avoided through the defences of justification, privilege, and fair comment.

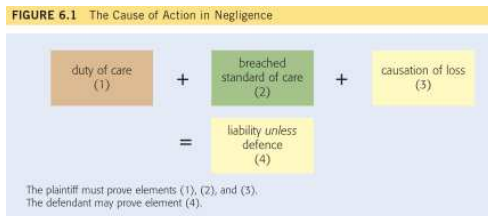
Injurious falsehood occurs when the defendant makes a false statement to a third party about the plaintiff's business in a way that causes the plaintiff to suffer a loss.

Chapter 6: Negligence

Negligence: Determines whether the defendant can be held liable for carelessly causing injury to the plaintiff

- The tort of negligence requires the plaintiff to prove that the defendant
 - >Owned a duty of care
 - >Breached the standard of care
 - >Caused harm to the plaintiff

- The defendant may show that the plaintiff
 - >Was guilty of contributory negligence
 - >Voluntarily assumed the risk of being injured by the defendant
 - >Was injured while engaged in some form of illegal behaviour



Duty of Care

Duty of Care: Exists if the defendant is required to use reasonable care to avoid injuring the plaintiff

Test For Determining the Existence of Duty of Care

1. The judge will first ask whether or not the duty of care question has already been answered for the type of case being litigated
2. If the duty of care question has not already been answered for the particular type of case, then it will be necessary to answer three questions
 - Was it reasonably foreseeable that the plaintiff could be injured by the defendants carelessness?
 - Did the parties share a relationship of sufficient proximity ?
 - If an injury was reasonably foreseeable, and if the parties shared a relationship of sufficient proximity, then a duty of care presumably will exist, but the judge may still deny a duty of care, on the basis of policy reasons

Reasonable Foreseeability

-Reasonable foreseeability test is objective

-The issue is not whether the defendant personally knew that its activities might injure the plaintiff, it is whether a reasonable person in the defendant's position would have recognized that possibility

-The test is intended to strike a balance between the parties, the plaintiff should not have to suffer simply because the defendant was not paying attention

Proximity

-A duty of care will not be recognized unless there was also a relationship of proximity

-Proximity is that there must somehow be a close and direct connection between the parties, in simple the court will focus on physical proximity

-The court may ask:

—>Whether the parties shared a social relationship (parent looking after a child)

—>Whether the parties shared a commercial relationship (bar and drunk driver)

—>Whether there was a direct causal connection between the defendant's carelessness and the plaintiff's injury

—>Whether the plaintiff relied on the fact that the defendant represented that they would act in a certain way

Policy

-The court will also ask whether liability should be denied on policy grounds

-Policy is concerned with the effect that a duty of care would have on the legal system and on society generally

What effect would a duty of care have on society and legal system?

Duty of Care for Statements

Breach of the Standard Care

Standard Care: Tells the defendant how they should act

Breached: When the defendant acts less careful

Reasonable Person Test: Requires the defendant to act in the same way that reasonable person would act in similar circumstances

- The reasonable person test is said to be objective, it does not make allowances for the defendant's subjective or personal characteristics
 - >The reasonable person takes precautions against reasonably foreseeable risks
 - >The reasonable person is influenced by both the likelihood of harm and the potential severity of harm
 - >The reasonable person is more likely to adopt affordable precautions
 - >The reasonable person may act in a way that has great social utility, even though it creates a risk
 - >The standard of care requires the defendant to act as the reasonable person would act “in similar circumstances”

The Standard of Care for Professionals: Professional Negligence

The courts pay special attention to five factors when they are dealing with professionals:

- First, it is not enough for a professional person, while engaged in a professional activity, to meet the standard that would be applied if a layperson performed the same task
- Second, hindsight cannot be used: focus on information reasonably available to defend at the time
- Third, carelessness is different from mere errors of judgment
- Fourth, a professional who follows an approved practice generally cannot be held liable
- Fifth, just a compliance with professional standard usually protects from liability, so too compliance with a statutory standard may protect a defendant

The Standard of Care for Manufactured Products: Product Liability

Product Liability: Can occur when a person is injured by a product

Strict Liability in the US

—>Manufacturer liable for any defects

Negligence in Canada:

—>Manufacturer usually strictly liable for manufacturing defects (strict liability)

—>Manufacturer liable only for careless defects in design and warning

Causation of Harm

-The this element of the claim in negligence is causation of harm

-Who caused the harm?

—>The defendant carelessness must be a cause in fact and in law of the plaintiff's injury:

But-For-Test: Requires the plaintiff to prove that they would not have suffered a loss but for the defendant's carelessness

Concept Summary 6.1			
The But-For Test			
Question	Answer	Result in Fact	Result in Law
But for the defendant's carelessness, would the plaintiff have suffered the same loss?	Yes—the plaintiff would have suffered the same loss even if the defendant had not acted carelessly.	The defendant did <i>not</i> cause the plaintiff's loss.	The defendant <i>cannot</i> be held liable.
	No—the plaintiff would not have suffered the same loss if the defendant had not acted carelessly.	The defendant <i>did</i> cause the plaintiff's loss.	The defendant <i>may</i> be held liable.

Applying the But-For-Test

What happens if we take the defendant out of the picture?

1. If nothing changes (still has the injury) the plaintiff still suffers the same injury, then the defendant did not

Remoteness

Remote: It would be unfair to hold the defendant responsible for it

Thin Skull: Case occurs if the plaintiff was unusually vulnerable to injury

Intervening Acts: An event that occurs after the defendant's carelessness and that causes the plaintiff to suffer an additional injury

Defences

-The plaintiff is usually entitled to compensatory damages once the court is satisfied that there was duty of care, a breach of the standard of care, and a causation of harm

Contributory Negligence

Contributory Negligence: Occurs when a loss is caused partly by the defendant's carelessness and partly by the plaintiff's own carelessness