

# Law 122 Notes

## Week 1 – Introduction to Law

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### Introduction To Law

- Why study law?
  - An introduction to the legal system
    - The nature of law
    - A map of the law
    - Sources of law
  - The court system
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### Why Study Law?

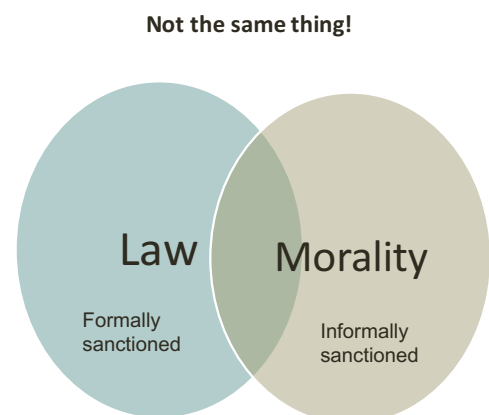
- Various factors affect success and filter in business
    - Decision-making: e.g. location choice, product, marketing
  - Business decisions have legal consequences
    - Negative: ex: dumping pollutants into environment
    - Positive: ex: binding contractual party to promise
  - Legal consequences affect profit and losses
    - Some decisions impose liability, others create opportunities
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### The Nature of Law

- A set of principles and rules that courts will enforce
  - A way of thinking (or reasoning) about these principles and rules
  - It is not just the result of a case (who won?) that matters— The reasons for the result are where law happens
    - **Law is bound up in the reasoning!** So it important to ask why and how not just who won
- 

### Law v. Morality (Not The Same Thing)

- **All laws are rules, BUT not all rules are laws**
- Formal sanctions includes fines or imprisonment



- Informal Sanctions include damaged friendships or reputations
  - **PRACTICE: CASE 1 PAGE 26 CH 1**

### ETHICAL PERSPECTIVE 1.1

- Can I watch someone drown without incurring legal liability? If I can legally do it, should I? Ethically is it okay?
  - **PAGE 6:**

### Canadian Jurisdiction

- Quebec
  - Civil law System
- Everyone else
  - Common Law System
- Some laws apply across Canada
  - Ex: Criminal and Constitutional Law
  - Jurisdiction: a geographic area that uses the same set of laws

### \*Canadian Jurisdictions

Québec	Everyone else
Civil law system	Common law system
	
	Some laws apply across Canada. Examples: criminal law and constitutional law

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### Public and Private Law

- Public Law: Our life in the public square: governs our relationship with the government and with society as a whole
  - Ex: Constitutional Law, Tax, and Criminal Law
- Private Law: Our private lives— governs matters of private concern and the relationships we have with other private individuals
  - Ex:
    - Tort: rules governing wrongs against persons (involuntary)
    - Contract: Rules governing creation and enforcement of agreements (voluntary)
    - Property: Rules governing acquisition, use and disposition of property

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## Hierarchy of Sources of Law

- The Constitution
- Legislation: Law created by Parliament or Legislature
- Courts:
  - Interpret and apply the Constitution
  - Interpret and apply legislation
  - Create and apply “common law” (judge-made law)

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## The Constitution

- Provides basic rules for society, including our legal and political systems
- Highest source of law
  - Any law inconsistent with Constitution no force or effect: s. 52 of the constitution
- Difficult to amend
  - Requires consent of both Parliament and Legislatures of two-thirds of all provinces with at least 50% of population

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## Federalism and Division of Powers

- Two levels of government: federal and provincial
- The constitution divides legislative authority
  - Federal government— ex: crime, bankruptcy, copyright s.91
  - Provincial government— ex: property, civil rights (s.92)
- When a government legislates outside its authority, the law is **ultra vires** ( which means beyond the power of) and the law has no force or effect (s.52)
  - A law can be struck down if it ultra vires
  - Federalism— it may be necessary to explain to students that federalism is a system of governance where the power to make laws is divided/shared between two or more units

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## Charter of Rights and Freedoms

- It has been a part of the constitution since 1982
- Rights and freedoms commonly affection business:
  - Freedom of Religion
  - Freedom of Expression
  - Freedom of Mobility
  - Right to equality: prohibited grounds of discrimination include: race, sex and religion, but not poverty
  - Section 52: Constitution as supreme law

- Law inconsistent with Charter: “of no force or effect”
- Businesses do have some protection under the charter but not too much do we look at it

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## Limitations on Charter Rights

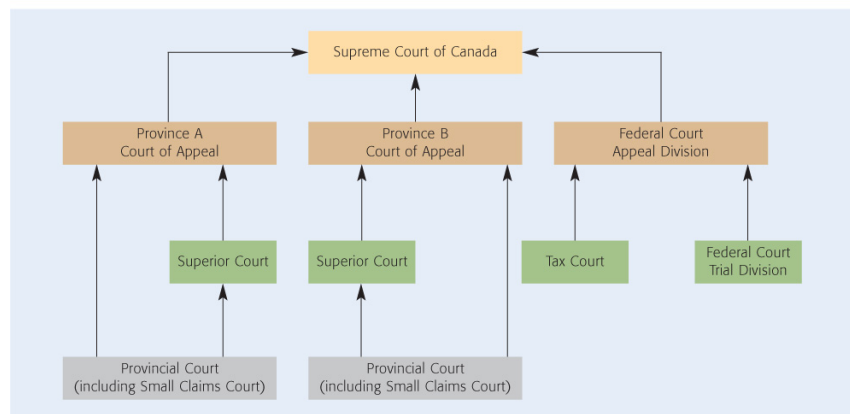
- Charter only applies to government action
  - Not (directly) applicable against private business
- Charter may apply in favour of private business
  - But some provisions only protect “individuals”
- Charter rights subject to “reasonable limitations”
  - S.1 balances individual rights and community interest
- Charter subject to “notwithstanding clause”
  - Government can override some rights and freedoms
  - Very rarely used

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## Canada’s Court System

# Canada’s Court System

FIGURE 2.1 The Court Hierarchy




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## Court Hierarchy

- Hierarchy determines appeal route
- All hierarchies end with Supreme Court of Canada (SCC)

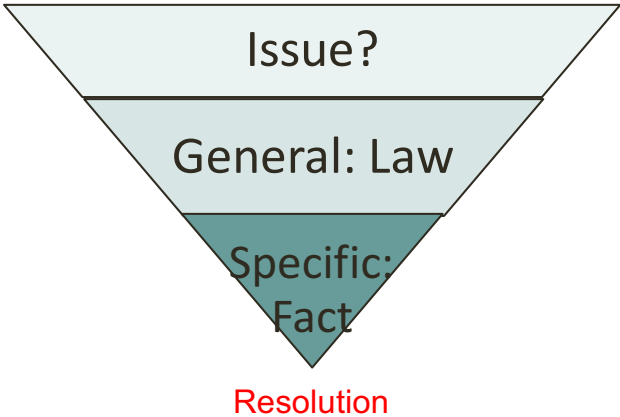
- Also determines what decisions are binding on courts

### The Doctrine of Precedent

- Judges must follow similar decisions from courts higher in same hierarchy
- Other court decisions may be persuasive but not binding
- “Like cases must be decided alike”
- **Rule of Law:** we resolve disputes using the law, not brute force, and not by the private opinion of the judge hearing the case

### Logical Reasoning and the Law

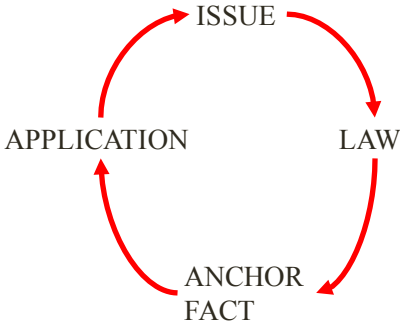
- First, identify the three main steps in legal reasoning
  - Identify the issue: what is the law
  - Apply the law to arrive to the Resolution
  - Resolution : what is the resolution
- Law apply to all people in the jurisdiction as general principles



### IRAC Logic Wheel

- A tool for explaining the process of legal reasoning
- **Issue**
  - Start by identifying the **issue**
  - When we ask “what the issue”, we are asking “what are the parties fighting about? What needs to be resolved?”
  - Purpose: to direct you to the relevant area of the

### IRAC Logic Wheel



law

- **Law**
  - Now identify the **legal principle/ test**
  - Remember: state the principle/rule/test in the abstract as a general principle or rule (no facts!)
- **Anchor Fact**
  - **Anchor Fact**— a fact given that links the law to the fact pattern
  - The anchor fact pivots the discussion from the law to the application and conclusion
- **Application**
  - **Application = law + fact**
  - Drives to your conclusion, which resolves the “issue”

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## Elements of Battery

- **Test:** Defendants intends to cause offensive, physical contact with the plaintiff that causes harm
  - **Intends to Cause**
  - **Offensive**
  - **Bodily Contact**
  - **Harm**
- Battery needs a low level of intent— it does not mean mental intent but just physical control over ones own body
- Actual contact without warning (batter only)
- **Intent**— battery is a general intent offence
  - This means that the actor need not to intend the specific harm that will result from the unwanted contact, but only to commit an act of unwanted contact
  - **The doctrine of transferred intent is also applicable**
    - If one person intends to strike another, but the person moves out of the way to voice being struck, causing the blow to hit a third person, a battery (against the third person) have occurred
- **Offensive**— brushing by someone in the elevator is not offensive but reaching out and touching a person’s thigh is

- **Bodily Contact**— Contact may be made with either a person or that person’s extended personality. This means that if one person leans forward and yanks the jewelry necklace off another, a battery has occurred, even though the first person never actually touched the neck of the second person
- **Harm**— A plaintiff or complainant in case for battery does not have an actual physical injury, rather, the plaintiff must show contacting harmful or offensive manner

### **PRACTICE CASE: BATTERY?**

Suppose Piper and Dana are arguing. Things are getting heated. Dana wants to scare Piper, although she does not want to actually hurt Piper. Dana swings her fist at Piper. Now, Dana meant to miss Piper, not to hit her, so that she would scare Piper. But she ended up hitting Piper, who suffered a broken nose. Piper wants to sue Dana for the tort of battery. Will she be successful?

#### **Issue:**

Has D committed the tort of battery?

#### **Law:**

Battery: intentional imposition of offensive contact that cause injury

#### **Anchor Facts:**

D hit P intentionally swinging her fist; P’s nose is broken

#### **Application:**

-By swinging her fist, D AND she intended to do the action of swinging her first which imposed offensive contact.

- There was harm: P broke her nose

#### **Conclusion**

YES: D has committed the tort of battery

### **PRACTICE CASE , PART 2**

Suppose our facts are a bit more precise. Suppose that D. Comes to you for legal advice. She tells you that she did not mean to hurt P. Sure, she did swing her first, and yes, she did make contact and that contact was not pleasant and cause injury. **But if she didn’t mean to hurt Piper, does she have a defence? Lets try this again now that we can narrow down the issue.**

#### **Issue:**

Has D. Committed the tort of battery?

**Law:**

Battery: level of intent is “did you mean to act”; intent to harm is not relevant

**Anchor Facts:**

D hit P by intentionally swinging her fist; she meant to swing her fist

**Application:**

Because she meant to swing her fist and because battery only requires intent to act D has the required intent

**Conclusion:**

YES. D. Has committed the tort of battery

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“Velcro” Principle

- Legal reasoning is a step-by-step process
- **Your argument has to “stick” together like velcro**
- Each point you make sticks to the one before it and the one after it
  - **Issue:** Has D committed the **tort of battery** given that **she did not mean to hurt P?**
  - **Law: the tort of battery= intentional application of offensive contact** that causes **injury**; it requires low level of intent; only **the intent to act** is relevant, not the intent to harm
  - **Anchor Fact:** D meant to swing her fist, and when she swung her fist she hit P, breaking her nose, she hit P, breaking her nose
  - **Application:** “meant to swing her fist” = intention application, “hit on the nose” = offensive contact, “broke the nose” = caused injury
  - **Conclusion:** because D meant to swing her fist and because she hit P and broke her nose, she committed the tort of battery

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The Law Resides In The Reasoning

- Make sure that your answer includes all the steps in your analysis. You must show how you got from Point A to Point F, (your conclusion)

Point A  
(Identifying the  
Issue)

Point F  
Conclusion



- The resembles that to come have reasoning and to draw a conclusion you cannot skip any steps

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## 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 points you make later
2. Identify the relevant **legal issues**:
  - What do we want to find out— ex: is the contract enforceable?
  - The order of issues matters— ex: was there an offer? Was there an acceptance?
  - Deal with one issue at a time
3. Discuss the **law** relevant to the issue & cite supporting authorities
4. **Apply** the law to the facts and assess what the likely decision would be on this issue

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## What To Avoid?

- Too general introduction and conclusion
- Irrelevancy
- Repeating facts unless incorporates as part of the discussion of the legal issue or application
- Facts of cases cited unless distinguished
- Vague statements and unsupported generalizations since law is a precise and detailed subject

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## How To Answer A Test Question

- Issue: Identify the issue
  - What are the parties fighting about?
  - What questions need to be resolved?
  - The issue helps you to know what area of the law what principles of the law are relevant
- State the Rule (i.e)— remember: we go from general to specific. So state the law a general principle, without referring to the facts
- Apply Facts to Law— anchor your answer, then “connect the dots”

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## Bettel v. Yim 1978

Defendant (Ki Yim) owns a variety store in Toronto. One day, the Plaintiff (Bettel) and 6 other boys enter the store, play on the pinball machine and stay playing with toy guns, football, and other store items. Yim asks them to leave. The boys go outside and start throwing lit matches into the store. Yim goes outside, grabs one of the boys (Bettel) and starts shaking him, trying to get him to confess. While shaking him, Yim ends up hitting Better in the nose. Yim says it was an accident.

**ENTER ANSWER HERE**

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## Elements of Assault

- Assault occurs when the defendant intentionally causes the plaintiff to reasonable believe that offensive bodily contact is imminent (close)
  - Required Elements

- Reasonable belief on the part of the plaintiff
- Of imminent i.e immediate
- Offensive bodily contact (Not necessarily frightening)
- Belief intentionally caused by defendant
- **NO** physical contact is required (contact usually triggers tort of battery)

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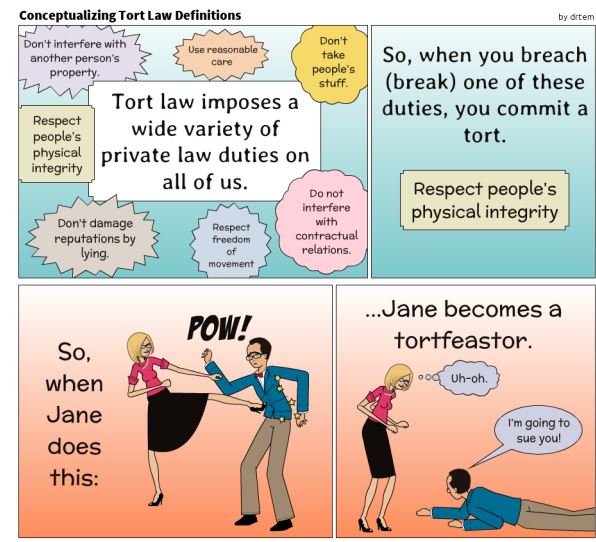
## Is This Assault?

- Dave plays a joke on Henry. He sneaks up behind him and pokes him in the back with his finger and snarls, “stick em up!” Henry is terrified. He thinks there is a real gun to his back.
  
- Gunther is deadly allergic to shrimp. Ella does not know about Gunther’s allergy. One day at lunch, Ella sat next to Gunther and took out her shrimp salad. Gunther was shocked and frightened.
  
- Delilah has a secret crush on her roommate, Samson. Samson does not share Delilah’s feelings and Delilah knows it. One night, when Samson is asleep, Delilah creeps into his bedroom and cuts a small lock of his hair.

## Week 2— TORTS

### Tort Law Definition

- A **tort**— is a failure to fulfill a private obligation imposed by law
- **Tortfeasor** is a person who commits a tort
- **Tort Law** includes almost every sort of private law long outside of breach of contract
- **Social Purpose:** Tort Law discourages people from commuting private wrongs by requiring them to compensate & restore the wronged party
- A harm leads to liability



### Types of Torts

- **Intentional**— committing battery by shoving someone or throwing something on another's person's lawn
- **Negligence**— when harm is caused carelessly, such as when a medical team accidentally amputates the wrong limb of a patient
- **Strict Liability**— applies to very risky activities and injuries caused by wild or exotic pets or wandering cattle
  - So if your pet tarantula bites someone or if your battles wanders off your property and tramples your neighbours yard, you are strictly liable

### Starting The Legal Analysis

- Facts— Issue— Law— Application
- Suppose you are given a set of facts and you asked to “spot the issue”. Where do you start?
- Ask yourself: is this a tort or a different type of legal wrong?
- If it is a tort, what kind of tort is it? (intentional, negligent, strict liability)
- Now, what tort specifically is involved?
- Now remember: this is just the start

Types of  
Torts Pt.  
2

Concept Summary 3.3	
Forms of Tortious Wrongdoing	
Intentional torts	<ul style="list-style-type: none"><li>• assault</li><li>• battery</li><li>• false imprisonment</li><li>• trespass to land</li><li>• interference with chattels</li><li>• conspiracy</li><li>• intimidation</li><li>• interference with contractual relations</li><li>• unlawful interference with economic relations</li><li>• deceit</li></ul>
Negligence torts	<ul style="list-style-type: none"><li>• occupiers' liability</li><li>• nuisance<sup>10</sup></li><li>• negligence</li><li>• professional negligence</li><li>• product liability</li></ul>
Strict liability torts	<ul style="list-style-type: none"><li>• animals</li></ul>
	<ul style="list-style-type: none"><li>• <i>Rylands v Fletcher</i><sup>11</sup></li></ul>

Strict Liability Torts for Extraordinarily Dangerous Activity

- **A tort occurs when the defendant is responsible for an especially dangerous activity that caused harm**
  - Transportation of Dangerous Products
  - Keeping of Dangerous Animals
- Create special problems for risk management
  - Liability regardless of intention or carelessness
  - Precautions undertaken to reduce risk might impact liability. There is no guarantee
  - Teaching purpose: Contrast with negligence

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## Negligence (Chapter 6)

- Tort occurs when a person acts carelessly
- But actions/activity is protect if it is reasonable in the circumstances
- Examples
  - Negligence, product liability, occupiers liability, nuisance (reasonable standards)

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## Intentional Torts— Chapter 4 and 5

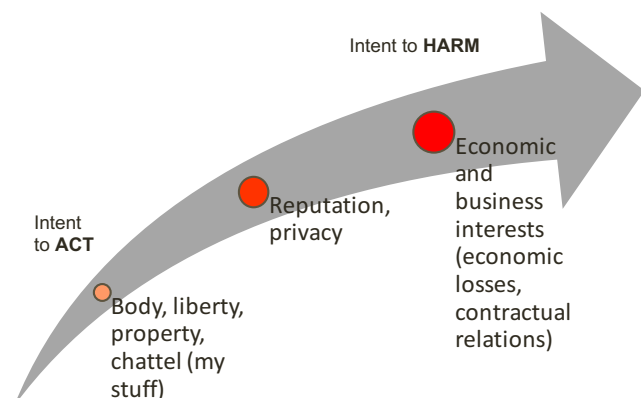
- A tort occurs when a person intentionally acts in a defined wrongful way
  - Meaning of “intention” differs depending on the tort:
    - Intent to Harm
    - Intent to Act

### Notes:

- Instructors should introduce intentional torts very generally and can provide examples such as false imprisonment or intrusion upon seclusion.
- Some intentional torts require proof that the tortfeasor intended to harm plaintiff (See Chap. 5). Example: intimidation
- Some require only proof that tortfeasor intended physical action (Chap. 4). Example: invasion of privacy, false imprisonment, trespass to land
- Definitions/Tests – Chapter 5 (Business Torts)
  - Induce Breach of Contract: One person directly persuades a third party to break its contract with a the plaintiff
- Definitions/Tests – Chapter 4
  - Battery: Offensive Bodily Contact
  - Privacy: person, willfully and without a claim of right, violates the privacy of an individual
  - False Imprisonment: Confined a person within a fixed area without justification
  - Trespass: Improper Interference with Plaintiff’s Land

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### Intentional Torts: Level of Intent



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## Intentional Tort of Trespass To Land

- Trespass= Improper interference with land
- Elements of Test
  - Intentional Act— Causing person or object to interfere with land
    - Has to be **intentional**, but low test (intention to act)
    - **Land**: above, on, or below
    - Interference: wide definition
    - Has to be “improper”
      - Consent= not “improper” (a defence)
      - Legal Authority= not “improper” (a defence)

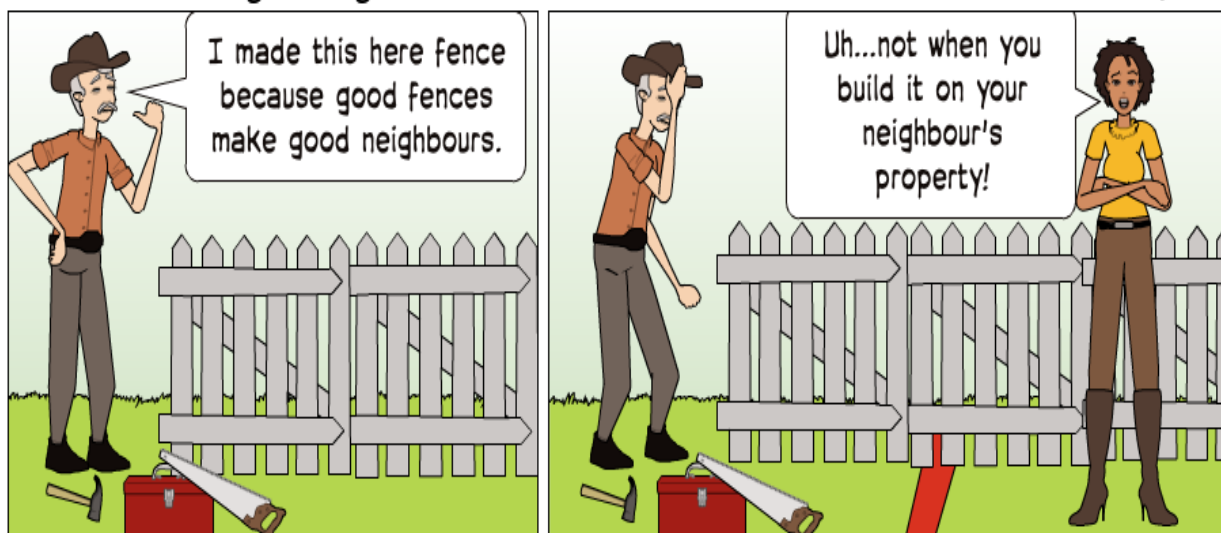
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## Continuing The Legal Analysis

- Remember we start with the Facts, then we move to the Issue (ex: has x committed a tort against y?) , then we started the Law (legal test)
- **What is the legal test?** The elements (factors/ingredients/checklist) to show that a particular tort has occur
  - STOP! Say it “in the abstract” as a general principle. NO FACTS YET
- Now that we have the Law, stated as the general principle, lets move to the specifics of this case. Lets APPLY the law
  - Identify the “anchor facts”
  - Apply the law to these facts
  - Application = Law + Anchor Facts
  - Your application is your conclusion, and the answer to the “issue” question

### Good fences make good neighbours....

by drtem



## **EXAMPLE**

- Still had the intent to build the fence, whether or not you knew it was on my land or not – the tort of trespass to land
- 

## What About “Public” Places

- So, what are we able to go into stores, malls, restaurants, cinemas, and so on? How does that work? – public places have IMPLIED CONSENT, and that consent can be withdrawn
- 

## Russo. V. Ontario Jockey Club

### **Facts:**

Russo, the plaintiff was a very skilled bettor and had won a lot of money horse racing tracks owned by the defendant, the Ontario Jockey Club. So the defendant served her with a notice while she was at the Woodbine Race Track in TO that required her to leave the premises. The notice also said that if she returned to any of the defendant's premises, she would be charged as a trespasser. Russo sued.

### **Issue:** What is the issue

- So, what are the parties fighting about? What questions need to be resolved here?
- Can the Ontario Jockey Club legally keep Russo off their property (Woodbine Race Track and other race tracks owned by the Club)?
- The property is open to the public

### **What is the legal test?**

The law says that there is implied consent to be on property that is open to the public. BUT that consent can be withdrawn with notice, as long as a person is not excluded for reasons that violate the Human Rights Act.

### **Anchor Facts**

- The Jockey Club= privately-owned property, open to the public
- Russo was told to stay away
- The reasons for excluding her do not violate human rights codes

### **Application**

- Now apply the law to these facts
  - Since the club is private property and since it withdrew consent for Russo to be on the property, Russo no longer has the right to be there
  - The Club can now exclude her, and if she returns, she is trespassing

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## Trespass To Land

### General Approach to Legal Analysis

1. What is the Legal Issue?
  - i.e. what kind of tort do these facts prompt me to think about? (make a short list)
2. What is the Legal Test?
  - i.e. when I know which tort it is, what do I have to prove to argue that one side will win? What are the elements that I listed in the slide?
3. Do My Facts Meet the Legal Test?
  - Which facts support each element?

### Specific Approach: Trespass to Land

1. Trespass to Land
  - i.e. D physically goes on, over, or under; builds/grows/puts something on, over or under; takes something from on, over, or under another person's property.
2. Legal Test
  - Was there improper interference with land? Was it (the act) intentional?
  - Do any of the Defences Apply?
    - Did D get Consent
    - Did D have Legal Authority (some public officials have authority)

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## Remedies For Trespass To Land

- **Damages**
  - compensatory, nominal, or punitive
- **Injunction**
  - Preventing ongoing trespass
  - Requirement to remove trespassing structure
- **Removal of Trespassers**
  - Arrest of Trespassers
  - Use of reasonable force in arrest

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## Employer Risk in Tort Law

- **Legal Issue:** Vicarious Liability
- **Definition:** Employer is responsible for a wrongful act done by an employee when it is done in the course of employment
- **Test:**
  - Did the tort occur in the course of employment i.e while EE was doing an ER authorized closely related act?

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## Effects of Vicarious Liability

- Company will be held liable even though they didn't do anything tortious:
  - Victim can sue both employee & employer for their torts:
    - Employees are directly liable for their own tort
    - Employer may also be directly liable if it committed a separate and independent tort – ex: careless training of careless employee or failure to properly screen candidates for a position
  - **Vicarious Liability is Different**
    - **Employers may be vicariously liable for employee's tort, even if the employers was not careless.**
  - Delivery case example— illustrates how vicarious liability

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## NO Vicarious Liability When...

1. Employer is not vicariously liable for independent contractors (non employees)
2. Employee tort occurred completely outside the employment relationship

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## Independent Contractors

- Control over when, where, and how the work is done
- Whose equipment and premises are used?
- How is the worker paid? (Salary or lump sum at the end of a project?)
- Level of integration into employer's business. Does the worker have other clients?

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## Vicarious Liability

### General Approach

1. What is the Issue?
2. What is the Legal Test?
3. Do My Facts Meet the Legal Test?

### Specific Approach: Vicarious Liability

1. Is ER Vicariously Liable?
2. Test:
  1. Is this an EE?
  2. If so, did the ER authorize the EE to do the tortious act; or
  3. Did the ER authorize the EE to do any other closely connected act?

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## Bazley V. Curry

Charitable organization operated a residential care facility for emotionally troubled children. It employed for emotionally troubled children. It employed Curry to act as a substitute parent (bathing and putting children to bed). They screened and investigated all employees properly but failed to discover he was a pedophile. Curry sexually assaulted a number of children within the facility. The P sued the organization as vicariously liable.

### **Issue**

- Is the organization vicariously liable?

### **Law (Legal Test)**

- Employer is liable for torts committed during the course of employment i.e.
  - 1. Acts the company authorized an employee to do;
  - 2. A tortious act closely connected to employment relationship

### **Application**

Nature of Employee's authorized activities (intimate parenting) increased the risk of wrongdoing combination of job-created power and job created intimacy

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## Occupiers Liability Act

- Definitions [s.1]
  - “Occupier” is any person having *possession* or *control over* and *responsibility* for premises or activities on premises’
    - May have multiple “occupiers” for the same premises
  - The term “premises” is broadly defined to include, land, buildings, other structures, water, planes, trains, automobiles and other vehicles
- Common Law Duty of Care superseded [s.2] (section 2 overrules section 1)
  - “Subject to section 9, this Act applies in place of the rules of the common law that determine the care that the occupier of premises at common law is required to show for the purpose of determining the occupier’s liability in law in respect of dangers to persons entering on the premises or the property brought on the premises by those persons.”
- Occupiers Duty of Care [s.3]
  - “An occupier of premises owes a duty to take such care as in all the circumstances of the case is *reasonable* to see that persons entering on the premises, and the property brought on the premises by those persons are reasonable safe while on the premises”
  - “The duty of care... applies whether the danger is caused by the *condition* of the premises”;
- Occupier’s Liability Act

**PRINT OUT MODULE 3 OCCUPIERS LIABILITY ACT  
(15 SLIDES)**

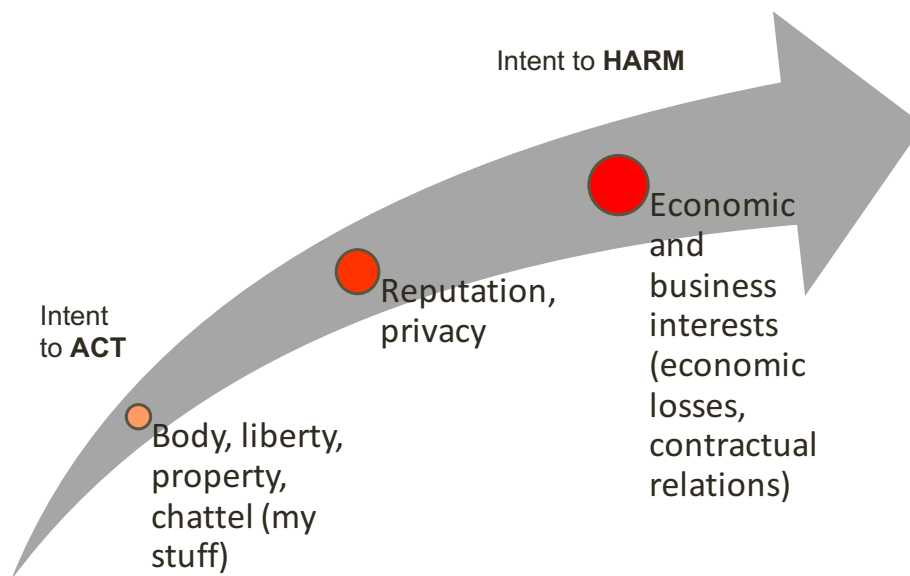
## Business Torts Class 3

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### Chapter 4 and 5 Business Torts

- Deceit
  - Defamation
  - Interference with Contractual Relations
  - Defences to Intentional Torts: complete and partial
  - Land-based torts (negligence-based/ reasonableness standard)
    - Nuisance
    - Occupiers' Liability
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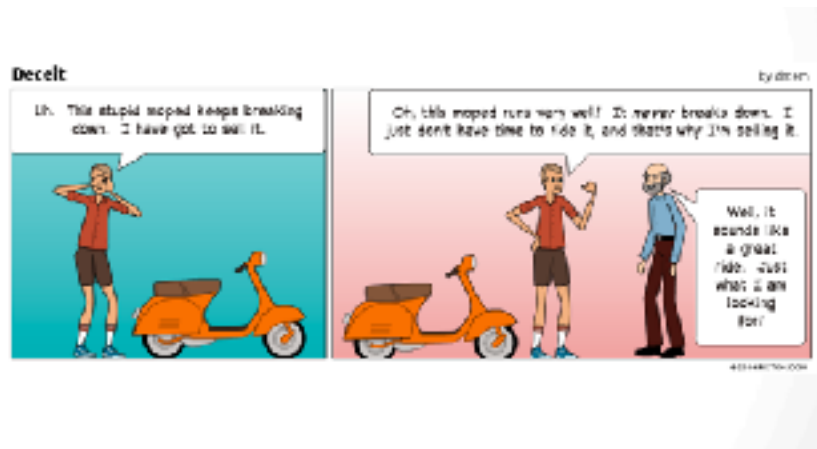
### Intentional Torts



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## Deceit: A Definition

- **Deceit:** occurs when the defendant makes a false statement that the Defendant knows is false/untrue and with which the Defendant intends to mislead the Plaintiff and which cause causes the Plaintiff to suffer a loss as a result of having reasonable relied on the false statement
- **The Legal Test**
  - Plaintiff must prove:
    - 1. Defendant made false statement
    - 2. Defendant knew statement was false (when s/ he made it) or was reckless in determining truth
    - 3. Defendant intended to mislead the plaintiff
    - 4. Plaintiff suffered loss as a result of reasonably relying upon statements



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## Perceptions Matter!



- A rabbit or duck?
- To avoid the tort of deceit, be careful not to create the wrong perception

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## Case Example: Derry v. Peek (1889)

The Defendants were directors of a company that had published a statement in a prospectus to the effect that the company had obtained government authorization to use a new technology (steam). In fact, the Defendants had not yet actually received the authorization, although they believed that they would. The Plaintiff, Derry invested in the company, relying on that statement. The government ultimately denied the authorization and the company went bankrupt. The plaintiff sued for the tort of deceit.

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## Defamation

- **Test:**
  - Defendant makes a false statement that could lead a reasonable person to have lower opinion of plaintiff
- **Elements of Defamation**
  - Plaintiff must prove
    - 1. Statement reasonable refers to plaintiff
      - Irrelevant that defendant did not intend reference
      - Plaintiff must be living person
      - Group statement must refer to plaintiff personally
    - 2. Statement could hurt plaintiff's reputation
    - 3. Statement was published to third party
- Includes any communication (ex 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 risk to employers

- Vicarious liability for employees' defamation, and directly as potential publisher of defamatory material
  - Pg. 132 Q 9 and Q10
- 

## Defences to Defamation

- Include:
    - Justification (ie. that the statement is true)
      - Honest reasonable belief in truth insufficient
    - Privilege: encourages free speech
      - Absolute Privilege
      - Qualifies privilege
    - Fair comment: encourages useful debate on significant issues
- 

## Defence: Absolute Privilege

- Complete immunity from liability
  - No liability even if statement made in bad faith
  - Limited to statements made:
    - During parliamentary proceedings
    - Between high government officials dealign with government business
    - By a judge, lawyer, litigant, or witness in legal proceedings
    - Between spouses
- 

## Defence: Qualified Privilege

- Applies when 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 bath faith or motivated by malicious purpose
  - Important application of this defence arises under the label of "public interest responsible journalism" (journalists may publish a defamatory statement but must show good methods to research it)
- 

## Defence: Fair Comment

- Expression of an onion on a matter of public importance:
  - Opinion must be informed
  - Opinion must relate to issue of public interest
  - Defence applies as long as the opinion in the question could honestly be held by some person— even if the defendant is prejudiced or opinionated

---

## Remedies For Defamation

- Usually compensatory damages to repair losses and sometimes for personal distress
- Sometimes punitive damages for outrageous conduct
- Injunction to prevent defamation
  - Rarely awarded due to concern for free speech
  - Requires clear evidence that defamation is likely
- Case 9 Page 132

---

## Nuisance

- Test: Defendant unreasonably interferes with the plaintiff's use and enjoyment of their own land
  - Examples:
    - Plain language example
    - Case Example
    - Test Example

---

## Self-Defence and Third Party Defence

- **Definition**— right to protect oneself from actual and threatened violence
- **Elements**
  - Defence to torts of assault and battery
  - Available only if person at immediate risk
  - **Limit on Defence**— cannot use more force than necessary in circumstances
- Also allowed to defend third party
  - Ex: parent protecting child

---

## Limits to Defence Of Property

- Self-defence and defence of third party are broadly defined because they protect human life and well-being
- Defence of property less generous
- Must use only reasonable measure to protect property
- If only threat is to land and chattels, may never be reasonable to deliberately cause or serious injury

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## Defence of Necessity

- Definition— Defendant's actions are justified by an emergency
- Elements
  - Immediate action must be required to avoid calamity
  - Benefits flowing from conduct weighted against harm
    - Eg: doctor giving urgent medical care to unconscious patient
    - Ex: tearing down house to prevent spread of fire
- Usually a complete defence but sometimes only partial defence
- Consider American case:
  - Emergency caused by storm caused ship to moor to dock
  - Damage caused to dock during storm
  - Trespass was justified, however compensation required for damages

---

## Partial Defences To Intentional Tort

- Allows court to reduce damages on basis of plaintiff's own responsibility for injury
- Applies even though defendant committed an intentional tort
- Includes (among others)
  - Provocation
  - Contributory negligence

---

## Provocation

- Definition
  - Words or actions that would cause a reasonable person to lose self control
- Typically defendant "snaps" after being taunted or insulted
- Ties to torts of assault and battery
- Defendant liable for attack, but plaintiff's damages are reduced

---

## Contributory Negligence

- Definition— occurs when plaintiff partially responsible for injury defendant tortiously caused
- Damages reduced to reflect plaintiff's contributions to harm
- Elements of the defence through Canadian jurisdictions
  - Some divide responsibility on basis of parties' fault
    - Allows defence to apply to any tort, including intentional
  - Some divide responsibility on basis of parties' negligence
    - Courts have found the defence difficult to apply to intentional torts as concept of negligence does not naturally fit intentional torts

---

## Interference with Contractual Relations

- Definition
  - Disruption of contract between plaintiff and another
- Risk management
  - Danger in luring away competitors customers
  - Danger in luring away competitors workers
- Forms of interference with contractual relations
  - Direct inducement to breach of contract
  - Indirect inducement breach of contract

---

## Direct Inducement To Breach Contract

- Directly cause breach with plaintiff
  - Ex: convince customer to break agreement, or employee to quit job
  - Ask: did D encourage P to commit a breach of K?
- Plaintiff must prove
  - Defendant knew about contract
  - Defendant intended to cause breach of contract
  - Defendant actually caused breach of contract
  - Plaintiff suffered loss

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## Application

- Lumley v. Gye p 110
- Example Case 2 page 131

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## Indirect Inducement To Breach Contract

- Indirectly cause breach with plaintiff
  - Ex: prevent employees from going to work or steal worker's tools to prevent performance
- Plaintiff must prove
  - Same factors as direct inducement
  - Plus defendant's actions were themselves were unlawful
  - Not a tort: union legally calls strike that causes co. To break K with customer
  - Customer uses union

## CLASS 4 – NEGLIGENCE

- **Purpose**— to compensate for harmful risky actions conducted carelessly, but to allow for careful risk taking
- 

### Negligence

- Negligence is an unintentional word
    - **Basic Elements:**
      - The defendant owed the plaintiff a duty of care
      - The defendant breached that duty
      - The plaintiff suffered a loss
      - The breach of duty by the defendant was the proximate cause of the plaintiff's loss
    - Negating any element will be a complete defence to a claim of negligence
- 

### Professional Negligence— Emergency Surgery

- Unconscious patient arrives in emergency room needing open heart surgery to survive. Physicians operate. The surgery is performed incompetently, causing permanent impairment
  - Result?
    - Negligence
  - Why?
    - The hospital and physicians had a duty to perform the surgery competently and they did not, resulting in damages.
    - Consent is irrelevant
- 

### Duty of Care— Explained

- Was the Harm to the Plaintiff **Reasonably Foreseeable** by the defendant? (should the defendant care about the plaintiff)
  - **Are they proximate (close)?**
    - Physical proximity
    - Social proximity (parent and child)
    - Commercial proximity (bar and drunk driver) (manufacturer and consumer) (Donoghue v. Stevenson))
  - **Is there a public policy reason to deny?**
    - Will it: open the floodgates for litigation; lead to broad market loss; interfere with political decisions; interfere with professional regulatory bodies; hurt a valuable type of relationship (mother and unborn child)

---

## Duty Owed By Professionals

- Professionals owe a tort duty of care to the owner even if there isn't contractual relationship with the owner ex: when an engineer is hired by the architect
  - A consultant who prepares specifications owes a duty of care to bidders
  - Generally consultants hired by the owner do not have a duty of care to the contractor, to the contractor's employees, but if the consultant supervises the construction, such duties may arise
  - Third parties to the construction process may have tort claims against consultants if the harm was foreseeable

---

## Breach of the Duty

- A breach of duty occurs when the standard of care is not met
- The standard of care is defined by what a reasonable and competent member of that occupation would have done in the situation
  - Reasonable Person Test: how would a reasonable person act in this situation? (not how would this person act)
- Expert evidence is used to establish the standard of care in a particular case
- The standard of care is determined considering the state of the art **at the time of the alleged breach (no hindsight)**

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## Learned Hand Test

- Determination of "reasonable" standard based on risk management
  - P— probability of harm if risk occurs
  - L— magnitude of loss if risk occurs
  - R— cost of risk management
  - S— actual money spent on risk management
- It is reasonable to spend R, as long as  $R < \text{or } = P \times L$
- It is reasonable NOT to spend R, if  $R > P \times L$
- Courts compare S to R and decide

### Example

- Meteor hits this classroom and kills professor
  - P- 1 million
  - L - \$100 million
  - $P \times L = 100\$$
  - It is reasonable to spend up \$100 (R)
  - It is reasonable NOT to spend more than \$100
  - If insurance costs me 75\$
    - Reasonable to purchase



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## Limits to Professional Standard

- Remember hindsight cannot be used
  - Medication side-effects
- “Errors of judgement” are different than carelessness
  - Choice of medical procedure
- Compliance with approved or statutory standard
- Continuing professional education programs guard against incompetence
- Checklists and other quality control procedures should be used to prevent lack of care

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## Standard of Care for Products

- Product Liability
  - Harm caused by manufactured products
  - Strict Liability in the US
    - Manufacturer liable for any defects
  - Negligence in Canada
    - Manufacturer Liable only for careless defects

---

## Causation

- Third Element: Who caused the harm?
- The but-for test
  - Would the plaintiff still have suffered harm, “but for” the defendant?
  - What happens if you take the defendant “out of the picture”?
    - If nothing changes, plaintiff still suffers:
      - Defendant did NOT cause loss
    - If plaintiff does not suffer then:
      - Defendant IS cause of loss

---

## Professional Negligence— Harm

- Patient gives permission to surgeon to operate on left ear
- While patient is under anesthetic, surgeon decides to operate on right ear. Right ear is made better
- Result? No negligence
- Why? No damages. A prima facie case for negligence requires damages

---

## But For Example

- Poisoned professors and careless doctor
- Evil law professor mixes rat poison into the coffee of two other professors
- Some poison into the other
- Both rushed to hospital, treated by same doctor in same careless way
- Instead of pumping stomach gives pill
- First professor dies
- Second Professor dies

---

## The Good Doctor

- Imagine both used to hospital, treated by same doctor in same **caring** way
- Doctor pumps stomach
- First professor now lives!
- Second professor still dies
- Did the careless doctor cause the death of the first professor?
  - Do but for test
  - Yes
- Did the careless doctor cause the death of the second professor?
  - Do the but-for test
  - No

---

## Proving Causation and Shared Liability

- More than one defendant
- Proof and share of blame not the same!
- Each defendant— more likely than not threshold
  - But can be responsible only for some of harm
- “joint and several” liability
  - Still legally liable for ALL of harm
  - Careless doctor and careless nurse

---

## Remoteness

- No liability if loss was too remote
  - Reasonable foreseeability of harm in specific case
  - Unlike proximity which is about general relationships
  - Foreseeability of harm that occurred in the end
  - Not the chain of events that led to harm
    - Boy burnt by gas lamp case

---

## Exceptions to Remoteness

- Thin Skull
- Thin Wallet
- Intervening Act

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## Defences

- Contributory negligence
- Voluntary assumption of risk “volenti”
- Illegality— see book

---

## Contributory Negligence

- Loss is caused partly by defendant and partly by plaintiff own carelessness
  - Same tort elements, looking at plaintiffs conduct
  - Proportional liability
  - Damages reduced to reflect plaintiffs contribution
    - Drunk Driver

---

## Voluntary Assumption of Risk

- Plaintiff freely accepted both physical and legal risk of injury (gave up right to sue)
  - Complete defence (not proportional)
  - Courts interpret this narrow because of harsh result
- Risk Management
  - Disclaimers and waivers

## Class 5— Business Organization

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### Overview

- Types of Business Organizations
  - Sole proprietorships
  - General Partnerships
  - Limited Partnerships
  - Corporations
- Liability and benefits of entrepreneurs and other stakeholders differ depending on type used

---

### Sole Proprietorship

- Arises once person begins to conduct business
  - Ex: start cutting someone's lawn for money
- No separation between business and proprietor
  - Proprietor entitled to all income
  - Proprietor liable for all obligations
  - Proprietor's assets available for business debts
  - Business income (loss) on personal income
  - Proprietor cannot be employee of business

### ADVANTAGES AND DISADVANTAGES

- Advantages
  - Simple to start; simple to administer
  - Possible tax advantages
- Disadvantages
  - Unlimited *personal* liability
  - Can only raise money by personal borrowing
  - As business grows, these problems continue to grow
- Conclusion: A sole proprietor is best suited for small businesses

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### Legal Requirements

- No formal registration as a "sole proprietorship" is required (compare this to incorporation, where formal steps are required)
- But sole proprietors must comply with the general requirements imposed on all businesses
  - Ex: May need to register a "doing business as" (DBA) name
  - Ex: May need to acquire a particular license, ex hot dog vendor permit or spectrum licence

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## Partnerships: Typology

- Three main types of partnerships
    - Partnership (sometimes called “general partnership”)
    - Limited liability partnership (or “LLP”)
    - Limited partnership
- 

## General Partnerships

- **Exists when two or more people carry on business together with a view to profit**
  - Explain the test (carry on a business together + with a view to profit) and provide a simple example: You and James agreed that he will buy a lawnmower, you will cut the lawns for interested homeowners and you will split the profit
  - You created a partnership even if you never made any money
  - **CAUTION!**
    - There are no formal requirements for creating a partnership
    - **The creation of a partnership is automatic: a partnership comes into existence in law when two or more people carry on business together with a view to profit, without the need for any further formality**
    - This means that a person can become part of a partnership without realizing it
  - This is a huge risk management issue, especially in the entrepreneurial context where things move fast
  - Encourage students to think about all the ideas and plans and projects that happen around TRSM... some of the projects could actually be partnerships
  - So this is an issue directly relates to their own lives
- 

## Partnerships and Profit

**PROFIT = [GROSS REVENUES] LESS [COSTS]**

- Q: Where does a person’s interests and capacities lie? In receiving money from revenues or in profits (implying some control over the costs)?
- 

## Partnerships and Relationships

- **“Carrying on business together”**: Not a causal, one-off transaction
- 

## Desire for Business Success Not Enough For Partnership

- Employees who make commission
- Loan repaid out of profits
- An advance on a contract
- Repayment to seller as part of a purchase price

---

## Factors Indicating Partnerships

- Sharing profits (not just revenues) or losses
- Jointly owning property or jointly contributing capital
- Involvement in business— especially management
- Joint authority for contracts and bank accounts
- Equal access to business information
- Holding each other as partners or acquiescing
- Engaging in ongoing activity rather the one project
- Consider the risks of unintended partnership
- Page 540— Groscki v. Durocher — What factors suggest it was partnership?

---

## Partnership Characteristics

- **No separation between partner and partnership**
  - Partner cannot be employed by partnership; all benefits accrue to partners; each partner responsible for all partnership debts
    - Partner cannot be employed by partnership; all benefits of partnership accrue to partners' each partner responsible for all partnership debts; fiduciary out to act honestly and with good faith with a ceil to the best interests of the partnership
- **Partners have unlimited personal liability for obligations**
  - Personal assets available to satisfy partnership debt; creditworthy partners make a creditworthy partnership
    - Test: Each partner is an agent of the partnership when acting in the usual course of partnership business
    - Exception: If partner did not have authority to act and 3rd party knew then no liability
  - Personal assets available to satisfy partnership debt; creditworthy partners amen a creditworthy partnership
- **Income to partnership is personal income to partners**
  - Eli and Taylor page 538
- **Ontario Partnership Act**
  - Provides default rules, which can be supplemented or modified by partnership agreement
- The importance of addressing key issues in partnership agreement (as risk management) exL criteria for admission of partners, capitalization, profit division, management and dissolution procedure
  - This extends risk of unauthorized obligations and torts to all partners

---

## Ending a Partnership

- Unless the partners agree otherwise, the default termination rules are:
  - Any partner may terminate partnership on notice
  - Termination on death or insolvency of partner
  - Case 1 and 4 on page 554

---

## Risk Management: Front End Strategies

- Don't enter into partnership agreements
- Be careful to avoid creating the impression that you are in a partnership
- Get compensated for the risk that you may be held to be a partner
- Have a lawyer review the contract

### **PARTNERSHIP STRUCTURES**

- Enter into partnership agreements that protect your interests
  - Ex: ensure that the agreement provides for a right to indemnification
- Consider creating a limited liability partnership or a limited partnership to manage the risks
- Consider incorporation as an alternative to a partnership
- Page 545— look at advantages and disadvantages

---

## LP v. LLPs

- **Limited liability partnerships (LLPs):** aimed at certain professions that cannot carry on business as corporations. Partner's risk of liability for professional negligence of a fellow partner is essentially limited to the non-negligent partners' investment in the partnership.
- **Limited Partnership:** A form of partnership where the liability of at least one partner is limited to that partner's investment in the partnership. LP must be registered
  - An LP must have at least one general partner whose liability is not limited
  - Limited partners have very limited rights to manage the partnership

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## Risk Management: Other Legal Tools

- **Qualifying the scope of liability:** “in the ordinary course of the business of the partnership”
- **Fiduciary Duty:** Partners must act honestly and with a view to the best interest of the partnership

---

## Corporations

- A corporation is a legal person, with a separate legal existence from its directors, shareholders, and officers

## Three Separate Actors and Roles

Shareholders, Directors and Officers

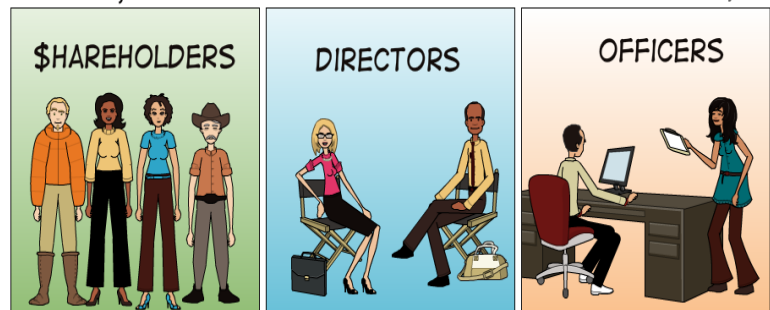


Image courtesy of T. Miedema and Pixton.com

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## Basic Definitions

- **Shareholders:** residual claimants to the assets of the corporation and elect directors
- **Directors:** responsible for managing or supervising the management of the corporation business and its internal affairs
- **Officers:** appointed by directors and usually exercise substantial management powers delegated by directors
- **Shares:** represent a claim on the residual value of the corporation after the claim of all creditors have been paid
- Partners and shareholders are not the same

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## Shares are “Bundles of Rights”

- Rights include:
  - The right to receive whatever assets of the corporation are left after all the creditors have been paid when and if the corporation is dissolved (right to residual value);
  - The right to vote for the election of directors; and
  - The right to receive dividends when declared by the board of directors

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## Residual Value

- Residual Value= value of the corporation after all the debts and other claims have been paid off

At winding-up, ABC Corp.  
is worth: \$100,000

Creditors:  
Smith (\$10,000)  
Jones (\$10,000)

**Residual Value of Corporation** **\$80,000**

Therefore, shareholders of ABC Corp. are entitled to \$80,000 upon the winding up of ABC Corp.

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## Corporations: Incorporation Process

- Created upon filing with government agency
- Governed by laws of jurisdiction of incorporation
  - Provincial or federal
- *Canada Business Corporations Act* requirements:
  - Articles of incorporation
  - Name search report (unless numbered company)
  - Fee

---

## Articles of Incorporation

- The proposed name of the corporation
- The minimum number and maximum number of directors that the corporation may have;
- The total number of shares and the classes of shares that the corporation is authorized to issue;
- Any restrictions that may be imposed on the transfer of shares'
- The objects or purpose of the corporations any restrictions on the corporations activities; and
- The registered office address of the corporation

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## Post-Incorporation Organization

- Director's meeting
    - Issue shares
    - Adopt general by laws
    - Designation of officers
  - Shareholder's meeting
    - Approve bylaws
  - Shareholder's agreement to customize relationship
  - Prepare minute book
- 
- The corporation needs:
    - Shareholders
    - Any required government licences and registrations
    - Form of securities
    - Banking arrangements
    - By-laws (not requires but usually adopted)
    - Officers (not required but usually appointed)
  - Post incorporation organization is about filing out the skeleton created by the articles of incorporation
- 
- Director's Meeting
    - Issue shares
    - Adopt general bylaws
    - Designation of officers
  - Shareholder's meeting
    - Approve bylaws
    - Elect directors
  - Shareholders' agreement to customize relationship
  - Prepare minute book

- **Corporate by laws:** sets out the arrangements for carrying on the business of the corporation
- **Shareholder’s agreements:** contract among shareholders that customizes their relationship
- **Corporate Records:**
  - Minute book— binder or book in which you place the corporate records
- **Separate Legal Persons:**
  - The corporation: a legal person
  - What the shareholder actually owns: a bundle of rights

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## Separate Legal Existence

- Corporation is a separate legal person
  - Ex: corporation (not shareholder) carries on business
  - Ex: corporation owns the property (not shareholders)
  - Ex: corporation (not shareholder) incurs liabilities
- Implications
  - Shareholder can be employee or creditor or corporation
  - Corporation and shareholder and separate taxpayers
    - Shareholders taxed only when paid dividend
  - Corporation unaffected if shareholder dies
- They key point to emphasize is the limited liability aspect of the corporation
- **Dividend—**

---

## Liability of Shareholders

- Shareholders have “limited liability”
  - No direct liability for obligations of corporation
  - Can lose investment but no more
- Rare exception: piercing the corporate veil
  - Serious fraud, wrongdoing, or unfairness
  - Court willing to impose liability on true culprit
    - Court pierces corporate veil
    - Court imposes liability on shareholder
- Page 550

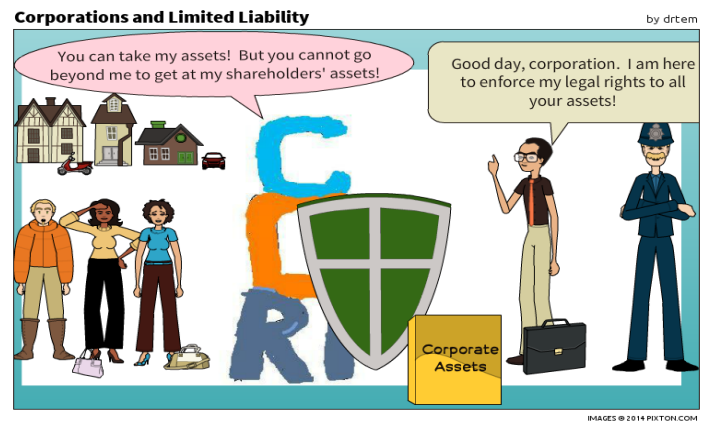


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## Separation of Ownership and Management

- **Directors manage or supervise the management of the corporation**
  - May delegate to officers
  - Only directors can (a) issue shares and (b) declare payment of a dividend
- **Shareholders elect directors to manage**
  - Shareholders have no inherent right to manage
  - Exercise control through election of directors, appointment of independent auditor
- **Roles may be blurred in small company**

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## Corporate Finance

- **Debt:** loan to corporation. Claim for fixed amount
  - Creditor's rights if non-repayment
    - Sue for breach of contract or put corporation into bankruptcy
- **Equity:** shareholder's investment
  - Claim on corporation's residual value after other claims paid
    - Value therefore depends on value of business
    - Cannot sue to enforce obligations or put corporation into bankruptcy if not paid

---

## Shares

- Corporation can have different classes (set in articles)
- Shares must have three basic rights
  - Vote for the election of directors
  - Receive dividends
  - Receive property on dissolution after debts paid
- Common shares usually have all basic rights
- Preferred shares may also exist

### **THREE BASIC SHAREHOLDER RIGHTS**

- The right to residual value of the corporation, as we have been discussing;
- The right to elect directors and
- The right to receive dividends when declared by the Board of Directors

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## Common V. Preferred Shares

- Common Shares
  - Right to elect directors
  - Right to dividends only when declared by the Board of Directors

- Right to residual value after Preferred shareholders are repaid
- Preferred Shares
  - Right to receive fixed dividends at regular intervals
  - Right to be repaid on dissolution before the balance of the residual value is distributed to the other shareholders
  - No right to elect directors
- Different shares cater to different interests that may exist among investors. For example, an investor may want the certainty of regularly paid dividends and the knowledge that he or she will get invested money back when shares are sold, if the company is still solvent. This investor might opt for a preferred share. Preferred shares offer certainty and less risk. Of course, this is less opportunity for reward, which is the flipside. Preferred shareholders get their money back when they divest, but that is it. While preferred shareholders avoid the risk of capital loss, they also lose the potential benefit of capital gains on the value of the shares. Common shares come with more risk and, correspondingly, more potential for reward.