

Week 4- Module 5

Tort Law and Liability

Law, Ethics and Professional Practice -
ENGI3500

WINTER 2025



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Introduction

- Engineers must possess a comprehensive understanding of tort law due to its direct impact on their professional conduct, liability, and overall risk management.
- Tort law defines the legal responsibilities and liabilities associated with professional negligence or misconduct, establishing the boundaries of engineers' accountability.

Definition of Tort Law/Liability

- Tort law encompasses the legal principles that govern **civil wrongs** or injuries, addressing situations where one party's actions or negligence result in harm to another.
- It does not deal with criminal legal issues, that's left to be resolved under **Criminal Code of Canada**.
- Unlike contractual disputes, tort cases involve harms that arise independently of **any prior agreements**.

Definition of Tort Law/Liability

- **Examples:** Tort liability can arise from various situations, such as automobile accidents, hazardous cargo transportation, sale of unsafe products, and negligent professional services, without requiring privity of contract.
- **Concurrent liability in tort and contract** may occur when both tort liability and liability for breach of contract coexist, as recognized by the Supreme Court of Canada.
- Let's talk through a couple of historical examples from Chapter 4 of the textbook.

Purpose of Tort Law/Liability

- The **primary purpose** of tort law is to **compensate victims** rather than punish wrongdoers, with criminal activities addressed under the **Criminal Code** independently.
- Engineers providing design services to the public, particularly in Ontario, should secure **professional liability insurance** to ensure funds for compensating tort victims.
- While insurance is essential, engineers must carefully assess their practices, considering exclusions in policies, and explore alternative funding methods in areas that may lack coverage.

The Engineer's Standard of Care

- The **standard of care** in tort actions involving engineers is very important, and it is based on **the duty to use reasonable care and skill according to professional standards at the time of service.**
- The Dominion Chain Co Ltd v Eastern Construction Co Ltd case in 1974 established that engineers are liable for incompetence, **negligence**, or carelessness, emphasizing the importance of maintaining an ordinary and reasonable degree of care and skill.

The Engineer's Standard of Care

- **"Negligence"** in engineering is defined in Section 72 of Regulation 941 under the Professional Engineers Act of Ontario, and substantiating negligence in a lawsuit requires a court to examine specific circumstances and rely on expert testimony to determine if there was a breach of the duty of care.
- The definition: *"negligence" means an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances.*

Strict Liability

- Legislations, such as worker's compensation laws, sometimes shifts away from the concept of fault to compensate injured parties, recognizing that **fault or negligence** may not be necessary for compensation.
- While Canadian **products-liability law** has not fully embraced "strict liability" as in the United States, there is an indication that it may be evolving in that direction, **holding manufacturers liable for damages even without negligence**.
- In Strick Liability a party is held responsible for harm or damages caused by their actions, products, or activities, regardless of intent or negligence. In engineering, it applies to cases like defective products or hazardous activities, emphasizing the duty to ensure safety and prevent harm. In such cases the focus is on the product itself, rather than the action s of the manufactures/designer.

Products Liability

Products Liability in Canada: The legal framework for products liability in Canada relies on **negligence principles** rather than **strict liability**, contrasting with some U.S. jurisdictions. Manufacturers can be held liable **if the plaintiff demonstrates damage resulting from proper product use**, and the burden then shifts to the defendant to prove unforeseeability of the defect given the technological state at the time of manufacturing.

Intersection of Contract and Tort: Products liability in Canada evolves from both **contract law** and **tort principles**. The tort concept of fault is applied, expanding the scope of liability, while implied **contractual warranties**, as outlined in statutes like the Sale of Goods Act, play a pivotal role. Conditions such as merchantability and fitness for purpose are implied, and consumer protection statutes may impact warranty limitations.

Relevance for Engineers: Engineers, whether involved in manufacturing or sales, need awareness of **products-liability matters** due to potential professional engagements. Understanding contractual and tort aspects is crucial for engineers acting as both producers and consumers in the marketplace.

Vicarious Liability

- The Canadian legal system has traditionally acknowledged the principle of vicarious liability, **where employers are held accountable for the negligent actions of their employees during employment.** If an employee commits a tort while on the job, the employer assumes vicarious liability for the resulting damages.
- While this may seem burdensome for employers, it aligns with the fundamental objective of tort law: to compensate the injured party. Employers are expected to provide compensation, given the presumption that they are typically in a more stable financial position than their employees.”
- As a preventative measure, the employers must ensure to hire competent employees and provide adequate training.

Duty to Warn

- The **Duty to Warn** refers to the **legal obligation of engineers to communicate potential risks and hazards associated with their professional services or projects.**
- Engineers are required to identify, evaluate, and disclose foreseeable risks to relevant parties, including clients, stakeholders, and end-users.
- This duty emphasizes the importance of transparent communication regarding potential harm, ensuring that those affected are informed and can take appropriate measures to address or mitigate the disclosed risks.
- Failure to fulfill the duty to warn can have legal implications, making it an important aspect of **ethical and professional conduct** for engineers in Canada.

Losses

- In the context of tort law, "losses" refer to the harm, damages, or injuries suffered by a party because of the **wrongful act** or **negligence** of another. These losses can encompass various forms of harm, including physical injuries, property damage, financial setbacks, or other adverse effects.
- The concept of losses is central to tort claims, as the injured party seeks compensation for the harm suffered due to the wrongful actions of the defendant.
- The legal remedy sought typically aims to restore the injured party to the position they were in before the wrongful act occurred, often through monetary compensation for the losses incurred.

Misrepresentation

- **Misrepresentation** refers to the act of **providing false or misleading information** that induces another party to rely on those misrepresentations, resulting in harm or damages.
- Misrepresentation can take various forms, including false statements, omissions, or deceptive conduct, and it is considered a tort when it leads to a loss or injury for the party who relied on the misrepresented information. The injured party may seek legal remedies, such as monetary compensation, to address the harm caused by the false or misleading representations.
- Misrepresentation plays an important role in tort cases, where a party claims that they suffered damages due to the deceptive actions or statements of another party.

Trespass

- **Trespass** refers to the unlawful and **intentional interference with another person's property or land**. Trespass occurs when an individual intentionally enters or remains on another person's property without permission, causing a violation of the property owner's exclusive rights.
- Trespass is a recognized tort, and its legal consequences aim to protect individuals' property rights and maintain the security of their possessions and land.

Mistakes

- **Mistakes** typically refer to **errors or unintentional actions** that result in harm or damage to another person or their property. Unlike intentional torts, which involve deliberate actions, **mistakes involve negligence or a lack of reasonable care.**
- **Mistakes may lead to legal liability if they cause harm to others.** In tort cases involving mistakes, the focus is on whether the individual or party responsible for the mistake failed to exercise the standard of care expected under the circumstances.
- Legal consequences may include liability for damages to compensate the injured party for losses resulting from the mistake. It's important to note that negligence, a common basis for mistakes in tort law, requires establishing a breach of duty, causation, and damages.

Review of Professional Misconduct (Section 72 of the Regulation - O. Reg. 941)

See BB for a digital copy.

Homework Before Next Class

- Complete assigned chapter readings in the Critical Path.
- Study Section 72 (Misconduct) of the Professional Engineers Act. We will be reviewing and discussing a Case Study at the beginning of next weeks class.

THANK YOU.



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References

Marston, Donald L. 2019. *Law for Professional Engineers: Canadian and Global Insights*. 5th ed. New York: McGraw-Hill Education.