

# Midterm Coverage

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Midterm focus on:

- Chapters 4 and 5 (Torts, with a particular focus on pages 79 to 98)
- Chapters 6 and 7 (Formation of Contracts, with a particular focus on pages 126 – 140 and 146 – 148 and 157 - 159)

Midterm format:

- The first section is 2 fact patterns (choose 2 of the 3)
- the second section is 3 questions (15 marks, 5 marks, and 10 marks)
  - one of them is using our knowledge to help advise a company

## Practice Question

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Tony ran a large turkey farm operation through a company fully owned by him called, "Tony's Gobblers Inc." On the property from which he operated his business were located three separate barns. Each barn was approximately fifty years old. Each Spring Tony would hire Mary's Barn Cleaning Service Inc. to pressure wash the barns.

Approximately one week prior to the annual cleaning Mary, the owner and operator of Mary's Barn Cleaning Service Inc. called on Tony to have their usual standard form contract signed. The contract states, in part;

"Client agrees that Mary's Cleaning Service Inc., its officers, directors, employees shall not be liable for any damages caused by it or its agents in the washing process."

One spring day, Lily an employee of Mary's Barn Cleaning Service Inc. attended at the farm to complete the annual spring wash. Lily had forgotten to ensure one of the electrical power lines leading into one of the barns was shut off before she began the pressure washing. During the washing water from the spray used by Lily during the cleaning trickled into the electrical power box located in the barn and started a fire.

Lily quickly called the regional fire department. The fire department, which was in fact a volunteer brigade arrived forthwith and extinguished the fire. The barn had sustained only minor damage, estimated at less than \$5,000.00. It certainly

was in a useable condition and after the department had left Tony moved his turkeys back into the barn.

Later that same night after the fire department had left, an ember which had not been detected ignited and a roaring fire began. By the time Tony noticed the fire the entire barn was destroyed. It is estimated that to rebuild the bar will cost \$450,000.00. Furthermore, Tony has lost about half of his turkeys and in order to find suitable storage for the remainder while the barn is being rebuilt will cost another \$100,000.00.

1. Discuss the legal actions which may be started by the various parties. Make sure to address the identity of the plaintiffs, the defendants and the elements of each action. Also ensure that you discuss any defences you may see. (twelve marks)
2. Would your answer change if the fire department had not been a volunteer brigade but had been an full time brigade? Why? (three marks)
3. Tony is puzzled. It would seem that his neighbour Rhonda is furious with him. It would seem that during the cleaning water from the spray or from the efforts of the fire department seeped from Tony's property and flooded Rhonda's basement. Does she have any action? Why or why not? (five marks)

## PIRAC Model

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PIRAC Model:

- Parties
  - identify who the plaintiff is and who they are bringing a claim against (if anyone)
- Issue
  - what is the cause of action? (negligence, assault, battery, etc.?)
- Rules
  - what is the rule or test that the plaintiff needs to meet to win in their cause of action
  - ex. if it's battery, the rule would be:
    - intentional
    - touch of another person
    - without their consent
- Application
  - go through each of those elements and apply it to the facts
  - continuing with the example you would first address
    - was it intention?
    - if so, did the defendant touch the plaintiff?
    - if so, then was their consent?
  - don't forget to also go through any affirmative defenses here
    - continuing with the example, there may be facts to support defences of self defence, involuntariness, etc.
- Conclusion
  - is is likely or unlikely that the plaintiff will succeed in their claim?

- why or why not?

# Chapter 2: Tort Law

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## Tort

- improper behaviour by one person that causes injury to another, intentionally or unintentionally
- the injury may be physical, emotional, or financial

### Purpose of Tort Law

- compensate victims for harm caused by the activities of others
- Note: punishment is left to criminal law, if the activity amounts to crime

### Principles of tort law

- the fault of the defendant
  - whether the behaviour was improper
- the causation of harm
  - whether the plaintiff's injury was the result of the defendant's conduct

## The basis for liability

### Fault

- unjustifiable injurious conduct that intentionally or carelessly disregards the interests of others
- blameworthy/culpable conduct
- Advantages:
  - act as a deterrent, people will care more if they knew they have to pay for their carelessness
- Disadvantages:
  - victims who cannot establish fault go uncompensated
  - victims may be overcompensated when fault is established, especially where the plaintiff is sympathetic, or the defendant is a large corporation, or conduct is considered particularly bad.
- Note: Most but not all tort liability is based upon fault

### Strict liability

- liability that is imposed based upon causation, regardless of fault

### Public policy

- economic, social, and political consideration or objectives that are believed to be beneficial to society as a whole
- examples of fault alternative compensation system:
  - no-fault insurance
    - a system of compulsory (legally required) insurance that eliminates fault as a basis for compensation
  - workers' compensation
    - a scheme in which employers contribute to a fund used to compensate workers injured in industrial accidents, regardless of how the accident was caused

- tribunals (specialized courts dealing with narrow area of law) decides the compensation, rather than courts

### Vicarious liability

- strict liability of an employer to compensate for torts committed by an employee during the course of his/her employment

#### Example:

an employer may instruct an employee to perform a dangerous task in an improper way or fail to properly train an employee

the employer is at fault in this case, and it may be that there is no fault on the part of the employee

- public policy reason for this approach
  1. although employee is personally liable, they often do not have enough assets to pay the compensation
  2. it seems fair that the person who makes the profit from an activity should also be liable for any loss

## Intentional Torts

- the intention only relates to the behaviour, not the harm, which may be unexpected

### Trespass

- unlawful entering, or remaining, on the land of another without permission
- most of the time very little damage is done
- no point in suing unless the landowner could establish some loss

### Assault

- the threat of violence to a person

### Battery

- unlawful physical contact with a person without consent
- the defence most often presented to a battery is consent, either express or implied

### Nuisance

- Public nuisance
  - unreasonable interference with the lawful use of public amenities or the public interest

#### Examples:

- Blocking public roads

- Interfering with the use of parks
- emitting dangerous substances in public places

- Government agencies usually sue wrongdoers on behalf of the public as a whole
- Private nuisance
  - substantial and unreasonable interference with an occupier's use and enjoyment of land

Examples:

- noxious fumes
- excessive noise, contaminating liquids poured into rivers
- seeping through the soil

- The term "occupier" includes not only the owner of land, but tenants as well
- requires proof that the interference is substantial and also unreasonable
- the defense often advanced is that although interference might be substantial, it is not unreasonable

### False imprisonment & Malicious prosecution

- False imprisonment
  - unlawfully restraining or confining another person
  - actual physical restraint is not necessary, or even the threat that it will be applied

Example:

store manager who detains a suspected shoplifter when no shoplifting had in fact occurred might not have a defense against an action for false imprisonment, even if he believed the suspect had stolen goods

- False arrest
  - causing a person to be arrested without reasonable cause

Note:

store manager tells police potential shoplift --> police arrest --> no shoplift

- store manager not liable for false imprisonment if suspect is innocent
- store manager might be liable for malicious prosecution if there is no honest belief that a crime was committed

- Malicious prosecution
  - causing a person to be prosecuted for a crime without an honest belief that the crime was committed
  - Elements:
    - unsuccessful charges against the plaintiff
    - initiated by the defendant
    - without reasonable and probable grounds
    - with malice or other improper purpose

## Defamation

- making an untrue statement that causes injury to the reputation of another person
- the courts will not award damages unless the plaintiff can demonstrate that the defendant's remarks, taken as a whole, would discredit the plaintiff's reputation in the mind of an ordinary person
  - over exaggerations, generalizations, and unbelievable remarks are less likely to cause injury as the ordinary person would not be influenced
- requires publication, meaning the communication of the offending statement to someone other than the person defamed
- libel
  - written defamation
- slander
  - spoken defamation
- Potential Defence: the alleged defamatory statements are true
- Absolute privilege
  - complete immunity from liability for defamation
  - words spoken in parliamentary debate, in proceedings in law courts and inquests, and before royal commissions
- qualified privilege
  - immunity from liability for defamation provided a statement was made in good faith

### Example:

A is asked to disclose information/give an opinion about B.  
A would be reluctant to express an honest opinion if he might later have to prove everything he had stated in a court of law.

- fair comment

- publication of a researched and reasonably held opinion that is honestly believed to be true
- given to journalists
- responsible communication on matters of public interest
  - a statement that is published in the public interest and is done responsibly

### Other intentional torts related to business

- inducing breach of contract
  - intentionally causing one party to breach her contract with another
  - popular in the employment context
- unlawful interference with economic relations
  - attempting by threats or other unlawful means to induce one person to discontinue business relations with another
  - Elements
    - intention to interfere
    - unlawful means used against a third party
      - conduct triggering civil liability under common law
  - influence customers, suppliers, and investors form the basis for many lawsuits
- product defamation
  - making false and damaging statements about the products of another person

## Unintentional Torts

### Negligence

- carelessly causing injury to the person or property of another
- Elements
  - The defendant owed the plaintiff a duty of care
    - a relationship so **close** that one could reasonably **foresee** causing harm to the other
  - The defendant breached the required standard of care
    - the level of care that a person must take in the circumstances
    - not all care, only reasonable care
  - The plaintiff suffered injury or damage
    - loss must be real, not hypothetical
    - proof of mental injury does not require diagnosis of a specific psychiatric disorder. Just show that the mental, psychological, or cognitive impact is serious and long lasting
  - The defendant's conduct caused the plaintiff's damage
    - show the "but for" relation, if the defendant breach standard of care, injury would not have occurred
    - causation
      - connection between injury and the breach of the standard of care
    - remoteness of damage
      - not all damages resulted from negligent act will be compensated
- Defense
  - contributory negligence
    - a partial defence to a negligence action when the plaintiff's or another defendant's conduct also contributed to the injury



- a plaintiff is expected to act reasonably to minimize, or mitigate, any damage suffered
- voluntary assumption of risk
  - a defence to a negligence action when the plaintiff was aware of the risk and continued with the activity anyway
- Relevance of insurance
  - subrogation
    - where one person becomes entitled to the rights and cause of action of another
    - if plaintiff recovers first from insurance company, the right to claim against the defendant passes to the insurance company

### Product liability

- a negligence tort imposing liability on manufacturers for harm caused by defective products
- circumstantial evidence principle
  - an initial case of negligence may be established by drawing reasonable inferences from the circumstances surrounding the product manufacture and failure

### Inherently dangerous products

- duty to warn
  - manufacturer's responsibility to make users aware of the risks associated with the use or misuse of the product

### Occupier's liability

- a negligence tort imposing liability on occupants of land for harm suffered by visitors to the property
- occupier
  - whoever physically or legally control premises
- invitee
  - a person permitted by an occupier to enter premises for business purposes
- licensee
  - a visitor (other than an invitee) who enters premises with the consent of the occupier
- the occupier owed duty of care to an invitee - prevent injuries from hazards or dangers of which the occupier is aware, and also those of which a reasonable person would ought to be aware
- the occupier owed duty of care to a licensee - remove concealed dangers of which the occupier had actual knowledge

### Remedies

- damages
  - sum of money awarded as compensation for loss or injury
- punitive damages
  - damages awarded with the intention of punishing a wrongdoer
- special damages
  - money to compensate for quantifiable injuries
- general damages
  - money to compensate for injuries that cannot be precisely expressed in monetary terms
- restitution
  - an order to restore property wrongfully taken

- injunction
  - a court order restraining a person from doing, or continuing to do, a particular act
- mandatory injunction
  - an order requiring a person to do a particular act
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