**Chapter 3:** **Tort Law**

**Tort** – a wrongful act done to the person or property of another

- the role of this law is to **compensate** victims for harm suffered from the activities of others  
- punishment is left to the criminal law

**Strict Liability** – liability that is imposed regardless of fault  
- a person should not be responsible for harm caused to another if he acted without *fault*

Ex. Manufacturer stores chemicals and someone punctures the chemical container which destroys a neighbour’s crops (or transporting explosives)  
- manufacturer is held liable since they are storing the chemicals on their land

Tort law takes into account:  
1. Fault – fault of the defendant  
2. Causation – whether the defendant’s conduct could be considered the cause of the harm

**“No-Fault” Insurance** – a system of compulsory insurance that eliminates the fault as a basis for claims

**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

However, in most areas of tort law, liability is imposed on a fault basis.

**Vicarious Liability** – the liability of an employer to compensate for harm caused by an employee  
- an employer may be personally at fault for an act committed by en employee  
- ex. may instruct an employee to perform a dangerous task for which they are not trained to do

Based on two principles:  
1. An employee often has limited assets to pay compensation for harm done to others (train crash)  
2. Fairness – person who makes the profit should be liable for a loss

**Negligence** – the careless causing of injury to the person or property of another

Plaintiff must prove:  
1. The defendant owed the plaintiff a *duty of care*  
2. The defendant breached that duty  
3. The defendant’s conduct caused injury to the plaintiff

**Duty of Care** – a relationship so close that one must take reasonable steps to avoid causing harm to the other

- should the defendant have foreseen that his actions might do harm to the victim?

**Standard of Care** – the level of care that a person must take in the circumstances  
- ex. standard expected of a brain surgeon rather than a person in a subway

**Causation** – injury resulting from the breach of the standard of care

Ex. negligence of a renovations worker installing a faulty motor caused a shutdown of a factory, and injury to a person who had to drive somewhere to find a replacement part who was in a collision

- no matter how blameworthy a person’s conduct may be, they will not be held liable for damage that they did not cause

- ex. passenger falls overboard, boat operator cannot rescue them  
- not liable because even under proper procedures, the passenger would have died anyways

A person will not be held liable for consequences of his acts that are considered to be too *remote*.

**Remote** – unrelated or far removed from the conduct

A court undertakes an objective assessment of what a *reasonable* defendant would foresee as likely injury to the *average* defendant.

**Damages** – a sum of money awarded as compensation

Burden of proof can shift to the defendant and will be held liable unless he produces evidence to satisfy that he was not at fault. This can be known as res ipsa loquitur

**Res Ipsa Loquitur** – the facts speak for themselves

**Contributory Negligence** – negligence of an injured party that contributed to her own loss or injury

Ex. A truck driver had been drinking and the plaintiff was injured when the truck crashed on a sharp curve. The plaintiff was held 15%, the driver 50% and the municipality 35% for not having a sign.

**Mitigate** – duty to act reasonably and quickly to minimize the extent of damages suffered

Ex. A plaintiff refuses to undergo safe and simple surgery and aggravates their condition.

**Subrogation** – where one person becomes entitled to the rights and claims of another

When an insured party recovered from their insurance company, their right to claim against the wrongdoer passes to the insurance company.

Manufacturers who choose to reduce costs by omitting necessary safety features become responsible for harm that results.

**Duty to Warn** – To make users aware of the risks associated with the use of the product

If the manufacturer becomes aware of potential dangers in its use, it must issue appropriate warnings to the public.

**Invitee** – a person permitted by an occupier to enter premises for business purposes  
- should take care to prevent injuries from hazards of which the occupier is aware

**Licensee** – a visitor (other than an invitee) who enters premises with the consent of the occupier

**Trespasser** – a person who enters premises without the permission of the occupier

Overview: Negligence  
Elements of basic negligence:  
- duty of care is owed  
-standard of care is breached  
- injury is caused

Elements have been refined to address common situations  
- product liability  
 - defective/dangerous products causing injury/duty to warn  
- occupier’s liability

Defences to negligence include:  
- contributory negligence  
- failure to mitigate damage

Other Torts

**Intentional Torts** – torts involving conduct that was *not* accidental

**Inducing Breach of Contract** – intentionally causing one person to breach his contract with another

**Deceit** – knowingly making a false statement with a view to its being acted upon by another person

**Conversion** – dealing with the goods of another in a manner that is inconsistent with the other’s ownerships

**Public Nuisance** – interference with the lawful use of public amenities  
- ex. blocking public roads

**Private Nuisance** – interference with an occupier’s use and enjoyment of their land  
- ex. excessive noise, contaminating liquids poured into rivers

**Product Defamation** – making false and damaging statements about the products of another person

**Passing Off** – representing one’s own goods as those of another

Remedies

**Punitive or Exemplary Damages** – damages awarded with the intention of punishing a wrongdoer

**Special Damages** – damages to compensate for quantifiable injuries  
- ex. medical bills, actual lost wages

**General Damages** – damages to compensate for injuries that cannot be expressive in monetary terms  
- ex. suffering, future loss of earnings due to disability

**Restitution** – an order to restore property wrongfully taken

**Injunction** – an 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

**Legal Risk** – a business risk that may involve legal proceedings

May involve the business in being sued or in having to commence legal proceedings in order to enforce its rights.