TORTS

Intentional:

**Assault:** intentional threat, attempt to inflict injury/cause harm to person of another together with an apparent present to ability to do so and without consent of that other person

Criminal law of assault involves harmful physical contact

**Battery**: the unlawful touching or striking of another person. Any touching is considered battery (least touching is battery) ex: weapon, vehicle, intoxicating drug.

**False imprisonment** (kidnapping/abduction): *intentional* confinement/restraint of another person without that person’s consent and without lawful excuse. (Doesn’t require physical restraint).

**Defamation:** intentional interference with a person’s reputation through publication of false statements. 2 torts exist to protect reputation:

**Libel:** published, written defamation (always intentional) ex: email, text, tweet

**Slander:** spoken defamation

Defenses to tort:

* If truthful, not protected by tort (person simply embarrassed)
* Absolute privilege: protection given to people who know things that we as a society want to find out. Allow them to say things in parliament chamber (given absolute privilege to speak freely). Not liable if later found out information was untrue
* Qualified privilege: available to someone who honestly believed in truth to what they said

**Tort of trespass:** injury of a person, the entry on the lands of another without permission or the seizure of damage of goods of another without consent

**Tort of nuisance:** interference (noise, smoke, pollution) with a person’s enjoyment of their property or physical comfort, difficult to precisely define. Parties subjected to nuisance might appeal to court for remedy, issuing an **injunction:** orders the person named to refrain from doing certain acts.

Unintentional: failed to foresee consequences of actions, causing unintended injury

**Negligence:** lack of care/attention, required elements that plaintiff must prove:

* A duty of care: comes from statute (legislature law) or neighborhood principle (alert to those who could be affected
* Breach of duty: negligence per se (of itself) best for proof, break of statutes
* Causing harm: plaintiff suffered a loss or injury as a result of defendant’s actions
* Damages

- Compare what defendant did or failed to do to a hypothetical/average person: **reasonable person test** (measures acts of negligence, determined by court).

- Defendant’s carelessness is what caused the injury, no one is responsible for accidents (outside the realm of human fault). **Proximate cause:** cause of injury directly related to act of defendant, can’t be responsible for what happens at hospital, must connect between tortfeasers using *rational logic.* **Foreseeablility test:** whether a reasonable person would anticipate (and thus avoid) the consequences of his/her actions

- **Contributory negligence:** negligence of injured party that is partially responsible for the injury suffered.

- Ways to refute negligence: didn’t owe a duty of care; I was as careful as an average member of society; I didn’t cause the injuries there was an earthquake

- Defenses: **act of God**: unanticipated event prevents performance of contract/causes damage; **waiver:** express/implied renunciation of a right; **release:** promise not to sue from any further responsibility to act; plaintiff must take legal action in reasonable time; lawful right (ie police officers) have duty to protect public.

**Strict liability:** occurs when landowner brings something dangerous on land that *escapes* and causes injury. Plaintiff doesn’t prove intention; there are no defenses to this tort. Ex: explosions, poisons, dangerous animals.

Ways to refute strict liability: my dangerous thing did not escape it was someone else’s (difficult to refute this tort).

\*Answer exam question to is it a tort? Have any torts been committed on these facts:

* In principle, there will be liability in tort when the plaintiff can prove on the balance of probabilities the required elements of the respected tort. For the tort of (name), the plaintiff must prove (definition of tort). Begin analysis (there is or isn’t a tort based on these facts and *explain*).

Chapter 1:

**Law:** a rue of civil conduct prescribed by the supreme power in a state commanding what is right and prohibiting what is wrong. Reveals that law is about *morality*.

Law comes from:

Cases or statutes (legislation) and has substantive entitlement:

1. Right
2. Duty
3. Privilege

And procedural law: how to claim or assert substantive entitlement (more about procedure “how to”)

1. Right: something we can do without interference from others with support of the state. Ex: free speech (3 constraints in notes), self-actualization (to be left alone), etc.
2. Duty: obligation to behave in certain way, may or may not be consequence if failure to do something. Ex: yield to pedestrians
3. Privilege: something we can do without interference from others and only with permission from the state. Ex: any behavior that is licensed, university

Role of law:

* Provides **dispute resolution:** should be universally accepted method to resolutions

1. Fairness: absence of biased, corruption, dishonesty, discrimination, conflict of interest, pre-judgment of the case
2. Accessibility (financial): justice is affordable, criminal justice side legal assistance will be provided, in civil justice (ie contract, tort breaking) legal assistance will *not* be provided and is expensive
3. Subrogation: right to step into another’s shoes, must co-operate with insurance company ex of Erin Brokovich and ICBC no fault benefits

Efficiency: justice delayed is justice denied

Rule of law:

* Respected that everyone is equal under the law and equal to benefits of the law, no double standards
* Loser has to pay winner’s costs as a way of reducing the number of cases (solve dispute before court), and a way of reducing mischievous cases

Common Law:

**Case law:** judge made/precedent juris prudence; accumulation in writing reasons for judgment of dispute in reasons taken to court since 1066.

**Stare decisis:** let the decision stand/doctrine of precedent. There exists a legal duty on a judge that if in a current dispute the facts are identical or substantially the same to the facts in a dispute that has occurred in the past, judge must follow the same method of problem solution that was done in the past.

System is **slow to change** (drawback), **conservative, consistent with past, predictable** (easy for lawyers to give advice to client) and **promotes economic proficiency.**

If not the case, judge must use **inductive reasoning** from precedents that are similar to the case, not contradictory to anything in the past and induction becomes a precedent.

Steps of legitimacy (page 9)

1. Ideas for laws are published in a document called a bill

-Introduction of bills, taking an idea and transforming it into a law: *First Reading*

**-**Vote is then immediately taken in order to pass First Reading, more than 50% of those physically present in commons must agree/assent

1. Second reading stage: debate in principle, those in party speak in oral debate, motion of closure/guillotine stops debate and vote is taken to stop negotiating
2. Reading is a clause by clause debate

\*Most legislation is brought to end by government; they control what becomes a law in our society and what doesn’t (final say)

\*Money bills can only be introduced by ministers “no taxation without representation” -Magna Carta