**Torts Quicksheet**

**Establish on balance of probabilities**

1. Volition (*smith v stone: actions were not voluntary*)
2. Intent
3. Transferred: Intends to commit one type of tort to one party and intentionally committed another type of tort to another party.
4. Imputed: did not desire consequences of actions but they were certain or substantially certain to result.
5. Motive (Praiseworthy? 🡪 Public necessity, Blameworthy🡪 will affect damage award)
6. **Provocation** (*Miska v Sivec*)
   1. Loosing self-control sub. & Obj.,
   2. Immediate
7. **Durress** (*Gilbert v Stone*)
8. Mistake (D intends the consequences, but they have diff. factual or legal significance)
   1. of Fact *Ranson v Kitner🡪 cost of the killed dog*
   2. of law *Hodgkinson v Martin🡪 nominal damages*
9. Inevitable Accident🡪 Unintentional and without Negligence

|  |  |  |
| --- | --- | --- |
|  |  | **DEFENCES/DAMAGES** |
| **Battery**  (*Bettel v Yim*: D responsible for unintended consequences) | * Direct & intention contact physical contact (not necessarily harmful) * Actionable per se * Direct injury🡪onus on D to prove absence of intent and negligence (*Cook v Lewis*) * Can recover damages even if not physical harm🡪(*Mallette v Shulman*) | * Consent * **Self-defence** (*Bruce v Dyer:* it reasonable to strike the first blow if there is fear of imminent assault   *Wackett v Calder* don’t need to measure proportionality with complete nicety)   * **Third party defence** (*Gambreilli v Caparelli)* * Legal authority * Discipline * **Defence of property** (*Macdonald v Hees*) * Recaption of chattles * Public and Private Necessity |
| **Assault**  *Holcombe v Whitaker:* words alone not enough but can give meaning to an act+ unlawful demand  *Police v Greaves:* conditional threat can be assault, if D has means to carry out | * Conduct which intentionally causes an apprehension of an imminent battery * Words alone, without overt acts, doesn’t constitute assault but courts more focused on impression created on the mind of P. | * Self-defence (*Bruce v Dyer:* it reasonable to strike the first blow if there is fear of imminent assault |
| **False imprisonment**  *Bird v Jones* (not imprisoned unless complete restraint of movement)  *Hanson v Wayne Café:* not imprisoned if there is a reasonable way to escape | * Actionable per se * Intentional and complete restraint on the plaintiff’s movements * By physical barriers, imp & Exp. * You don’t need to be aware that you are imprisoned in Canada (JMI v Grieve) | -**Consensual restraint:** *Herd v. Weardale Steel, Coal and Coke Co. Ltd.* Consented to the restraint so no imprisonment  Legal authority: Statue etc. |
| **False Arrest**  *Campbell v. S.S. Kresge Co.* | * Psychological impression on the mind of P by Threat of force or assertion of legal authority * Ordering someone else to falsely imprison Plaintiff, both will be liable in false imprisonment * Peace officer needs to have reasonable and probable grounds to arrest, * Citizen’s arrest requires that they be found committing the offense. * Even if the plaintiff willingly goes with a store’s security officer, they can be held liable for subsequently detaining them (*Twan v Hudson’s Bay Company*) * Person can be held liable for not only restraining the plaintiff but also ORDERING another person to do so *(Lebrun v High-Low Foods Ltd.)*. But if a manager only provides information, and the police officer assesses it and decides to make the arrest. Only police officer is liable. |  |
| **Intentional infliction of Emotional Distress**  ***Samms V Eccles* (test)**  1.a) With a purpose of inflicting emotional distress b) reasonable person would consider that someone would suffer emotional distress  **2.** Actions are Need outrageous and intolerable  3.(additional step from *Radovski*) Although we don’t need it to satisfy the test, there is visible + provable illness (depression) | *Rahemtulla(1984)* Visible and provable illness required but not fatal to the claim  *Mustapha v Cullingan(2008):* Court does not recognize, upset, ager, digust etc or other mental illness that fall short of injury  *Saadati (2017)*  -expert advice not needed for visible and provable illness  -Don’t need diagnosed psychiatric condition |  |
| **Invasion of Privacy:** | * Wrongfully accessing private information.   Test to make out a claim of intrusion on seclusion in Canada (*Jones v Tsige*)   1. Intrusion was unauthorized 2. The intrusion was highly offensive to a reasonable person. 3. The matter intruded upon was private (employment, heath record, sexual record, financial record etc.) 4. The intrusion caused anguish and suffering (No financial harm has to occur)  * American Law institute, in restatement , second, Torts (1977) in comment section mentions this tort includes physical intrusion into private spaces as well as listening or looking into with or without mechanical aids into private affairs of the plaintiff   *Hollinsworth v BCTV:* Tort brought under statue “Privacy Act”. Parient information used without his consent | **Damages:** Capped at $20,000.00  In assessing that we will look at the   1. Nature of the wrongful act 2. Relationship between the parties 3. Effects on the plaintiff (Health, welfare, well being) 4. Conduct of the parties afterward   In *Jones v Trige* $10,000.00  In *Hollinsworth v BCTV (1999)*  P got $15000.00 against look International |
| Breach of confidence | Wrongful disclosure of information. Test for breach of confidence (*LAC Minerals ltd. V International Corona Resources Ltd.)*   1. Information was confidential in nature 2. It was disclosed in circumstances creating an obligation of confidentiality 3. Its unauthorized use was detrimental to the confider | **Damages:** Disgorgements damages |
| **Trespass**  when D enters the land owned by or in lawful possession of another without consent or lawful justification (*Entick V Carrington*)  **Note:** The decision in Kerr is inconsistent with both *Masanto (seeds flew)* and *Execotel Hotel Corp. (woodchips few).* Both these cases say to find trespass intrusion has to be direct and intentional | * Actionable per se * Can be committed by   + Entering the land in person   + Propelling an object or third person (*Turner v Throrne: left cartons)*   + Failing to leave when permission is revoked * Trespasser to land if liable for all consequences including indirect and consequential *Turner v Thorne (1959)* * **Continuing process of trespass**, if you don’t move the object, will affect damage award (*William v Mulgrave; every day is a new trespass*), or even disgorgement idea (Car rent idea) * Requires possession of the land (not necessarily legal title) at the time of intrusion **(***Townsview Properties Ltd*) * Must be a direct intrusion on the land of another (Hoffman v Monsanto Canada) | **Defences**   * **Defence of property** (*Mcdonald v Hees*) * Defence of legal authority * Mistake is not a defence in Turner and thorpe did not * Recaption of chattel * Public or private necessity   **Damages: in** *Turner v Thrope* $9626.00 |
| **Trespass to Airspace** | landowner had rights in airspace to such as height necessary for ordinary enjoyment of the land (*Bernstein v Skyviews & General Ltd.)* |  |
| **Trespass to Subsoil** | * US authority, landowner’s title to subsoil only extends to reasonable depth of use *(Boehringer v Montalto*) * Damage not necessary, landowners can deny entry for any reason and have no obligation to accommodate (*Austin v Rescon Construction*) |  |
| **Nuisance**  substantial and unreasonable interference with the use and enjoyment of land in the possession of another (*Kerr v Revelstoke Bldg. materials ltd.)* | * Not actionable per se, requires proof of loss, actual damage * substantial and unreasonable interference with the use and enjoyment of land in the possession of another * Protects quality of possession * Protects quality of possession * In Nuisance, courts see if the damage was foreseeable or not. Natural use of land that do not pose foreseeable risk is unlikely to succeed (*Doucette v* Parent: no nuisance, as it was not foreseeable) * Substantive and unreasonable interference is one that is offensive and unreasonable for normal person. (*Angerer v Cuthbert, 2017 YKSC*) | **Damages:**  *Kerr(1976):* awarded $30,000.00 |