

INTENTIONAL TORTS AND MISCELLANEOUS TORTS IN BUSINESS

Overview

- An **intentional tort** is an action intentionally undertaken by a person that causes injury or damage to another.
- There are two well-known intentional torts:
 1. **Battery** is the act of purpose physical contact; not necessarily with the intention of causing physical harm.
 2. **Assault** is the belief of intensive physical contact; it has to be reasonable and imminent.

Invasion of Privacy

- There are more than twenty distinct privacy-related statutes.
- The most famous invasion of privacy tort is **Intrusion Upon Seclusion**, which was confirmed in the case of **Jones v. Tsige** (2011).
- The elements of the torts are:
 1. The offending party's conduct must have been intentional or reckless;
 2. The offending party must have invaded the victim's private affairs or concerns without lawful justification; and
 3. A reasonable person would regard the invasion as highly offensive, causing distress, humiliation, or anguish.
- There are two types of damages for intrusion upon seclusion:
 1. Proven pecuniary (i.e., financial) loss suffered by the victim;
 2. In the absence of pecuniary loss, damages for intangible harm (e.g., distress).

False Imprisonment

- **False Imprisonment** is when a person is confined within a fixed area without justification; the detention may be psychological.
- Voluntary consent to confinement is a **complete** defence.

Trespass to Land

- **Trespass to Land** is an improper interference with another party's land.
- It does not include lawful interference (e.g., the right of the city to come onto your property to fix hydro-related issues).
- The matters to consider with this tort include:

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1. Whether the trespass was deliberate or unintentional;
2. The cost of eliminating the trespass;
3. The attitude or response of the trespassing party;
4. The extent of the trespass.

Interference with Chattels

- A **chattel** refers to moveable property.
- There are three torts related to chattels:
 1. **Trespass to Chattels**: Occurs when the tortfeasor interferes with a chattel in the possession of the injured party.
 - The test of “interference” is met if the chattel is damaged, taken, or used by the tortfeasor.
 - The remedy is compensation in damages.
 - **Example**: Spilling coffee on someone’s laptop.
 2. **Conversion**: The tortfeasor’s interference with another party’s chattel is sufficiently terrible to require its forced sale to the tortfeasor.
 - The factors for determining conversion include:
 - (1) The extent to which the tortfeasor exercised control over the chattel;
 - (2) The extent to which the tortfeasor intended to assert a right to the chattel inconsistent with the injured party’s rights;
 - (3) The duration of the interference;
 - (4) The resulting expense and inconvenience to the injured party.
 - The remedy is forced sale of chattel to tortfeasor.
 3. **Detinue**: The tortfeasor fails to return the chattel to the party entitled to its possession (“wrongful detention”).
 - For a tort to arise, the injured party is obliged to demand return of the chattel; unless it is obvious the tortfeasor would refuse.
 - If the chattel is returned, the injured party is entitled to damages for any loss incurred during its detention.
 - If the tortfeasor refuses to return it, the court may order that it do so.
 - The remedy is either to return the chattel and/or provide compensatory damages.

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Defences to Intentional Torts

- There are absolute (or complete) and partial defences.
- Under absolute defences:
 1. **Consent**: The alleged injured party agreed to the action of the tortfeasor;
 - Here, consent may be expressed or implied.
 2. **Legal Authority**: The alleged tortfeasor had lawful authority for the act;
 3. **Self-Defence**: A party protects itself or another against violence or threats;
 4. **Defence of Property**: A party acts to defend its property.
- Under partial defences:
 1. **Provocation**: The injured party used words or actions that would reasonably cause the tortfeasor to commit the act;
 2. **Contributory Negligence**: The injured party is partially responsible for the injury caused by the tortfeasor.

Business Torts

- **Conspiracy** occurs when two or more parties agree to act together with the primary purpose of inflicting a financial loss on another.
- **Intimidation** is when the affected party suffers a loss due to the offending party's threat to commit an unlawful act against the affected party (two-party intimidation) or against a third party (three-party intimidation).
 - In order to prove intimidation, one must show that:
 1. The offending party threatened an unlawful act;
 2. The affected party acceded to the threat.
 - There is no need to prove the offending party intended to cause a loss.

Interference with Contractual Relations

- **Interference with Contractual Relations** occurs when the offending party disrupts or interferes with a current agreement between the affected party and another.
 - This is often referred to as a **Breach of Contract**.
- **Direct Inducement** occurs when the offending party directly persuades a third party to break its contract with the affected party.
 - The necessary requirements include:
 1. The offending party knows of the contract;
 2. The offending party intends to cause its breach;
 3. The offending party actually causes the breach;
 4. The affected party suffers a consequential loss.

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- **Indirect Inducement** occurs when the offending party indirectly persuades a third party to break its contract with the affected party.
 - The same four factors for Direct Inducement apply in addition to proof that the offending party's action was itself unlawful.

Deceit

- **Deceit** occurs when the offending party makes a false statement, knowing it to be false, which is intended to mislead the affected party and cause a loss to the affected party.
- A **false statement** is the failure to provide updated and accurate information; it may arise from omission as well as commission.

Nuisance

- **Nuisance** is when the offending party unreasonably interferes with the affected party's use and enjoyment of its land.
- The relevant factors include:
 1. Any physical damage;
 2. The nature of the neighbourhood;
 3. The time when the nuisance occurs;
 4. The intensity and duration; and
 5. The offending party's motivation.
- The remedies for nuisance include damages and/or an injunction to stop the nuisance.

Defamation

- **Defamation** occurs when the offending party makes a false statement that could lead a reasonable person to have a lower opinion of the affected party.
- It includes both verbal and written communication.
- The following are defences to defamation:
 1. **Justification**: The statement was true; the onus to prove it was true resides with the offending party;
 2. **Absolute Privilege**: Immunity from liability when a statement is made by a judge, lawyer, litigant, or witness in a formal proceeding;
 3. **Qualified Privilege**: Applies when the offending party had a legal, moral, or social obligation to make the statement to someone who had a similar duty to receive it.
- There are two remedies for defamation:
 1. Compensation for financial loss and perhaps for an individual's distress;
 2. Punitive damages for particularly outrageous conduct by the offended party.

Injurious Falsehood

- **Injurious Falsehood** occurs when the offended party makes a false statement about the affected party's business, causing the affected party to suffer a loss.
- The required elements include:
 1. **False Statement:** The statement was made to a third party about the affected party's business or property;
 2. **Malice:** The offending party must have had intent to hurt the affected party or knew, or was reckless about, the truth of the false statement;
 3. **Loss:** The affected party must have suffered a loss.