

Summary Notes

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Glossary

actionable *per se* - actions that do not require proof that damages were suffered to establish a cause of action

as of right - by virtue of an entitlement or authority which arises from certain legal conditions or circumstances

fault-based - proof of fault is required to impose liability on a party

general damages - damages which are incapable of precise calculation

nominal damages - trifling, or derisory damages; damages awarded in recognition that there has been an infringement of right which are often small in value

special damages - damages which are capable of precise economic calculation

strict liability - imposition of liability on a party without proof of fault

substantial damages - damages awarded to compensate a plaintiff for loss suffered

tort - a civil wrong for which a remedy is provided

Introduction to Tort Law

History of Tort

- Originates in common law
 - An organic way of regulating legal relations that develops over time as conditions change
 - A product of particular points in time

Theories of Tort

- **appeasement** - compensates a victim to prevent disruption of society in continuance of the dispute
- **justice** - a moral principle whereby one who, by his fault, has caused damage to another ought to make compensation
 - a) Ethical retribution - payment of compensation is an evil which the offender must suffer
 - b) Ethical compensation - payment of compensation is a benefit which the victim must receive
- **deterrence** - a regime of prevention designed to discourage certain behaviours in the future conduct of the general community
- **compensation** - one who has caused injury to another must make good the damage, whether he was at fault or not
 - The primary purpose of modern tort law

Tort and Other Forms of Law

- Criminal Law
 - Public law
 - Protects peace of society
 - Concerned with punishment and deterrence
- Contract
 - Obligations arise voluntarily
 - Concerned with assuring the promisee the benefit of a bargain
- Restitution
 - Prevent unjust enrichment arising from unintended benefits

Sources of Tort Law

- Common law
 - Largely a fault-based system
 - Few examples of strict liability

- Statutes and legislation

Intentional Torts

Trespass

- A cause of action brought against a direct interference with the person, or the goods or land of another, without lawful justification
- Requires proof of (a) causation between the act and interference with rights and interests; and (b) fault, as intentional or negligent action
- Actionable *per se*

Battery

- The direct infliction of unlawful physical contact with the plaintiff's person by the defendant
 - Concerns an individual's interest in the inviolability of their person
 - Essence - direct interference
- Liability for battery can occur at very low levels
 - The principle way of avoiding liability is to establish that the nature of the contact is generally acceptable in the course of everyday life

Assault

- The intentional creation by the defendant of a reasonable apprehension in the plaintiff's mind of an imminent, unlawful application of force or contact to the plaintiff's person
 - Concerns an individual's interest in being free from fear of immediate physical violence or unlawful contact with their person
 - Essence - apprehension of physical violence
- Establishing assault
 - State of Mind
 - Plaintiff - an objective test of a reasonable third party
 - Defendant - a subjective test of intention
 - ◻ It is immaterial whether the intention is to apply force or simply the intention to create the apprehension of force
 - Immediacy/imminence
 - Conditional threats can amount to assault, depending on whether a reasonable person in the position of the plaintiff would apprehend the application of force is possible under the current conditions
 - Phone calls, silent phone calls and text messages can amount to assault, depending on the circumstances
- Mere words do not constitute assault
- Torts of assault and battery can occur from the same set of circumstances

False Imprisonment

- The direct and total deprivation of the plaintiff's liberty without lawful justification
 - Concerns an individual's interest personal liberty
 - Essence - total deprivation of an individual's liberty
- Establishment of false imprisonment is a question of fact
 - Total deprivation of liberty arises in circumstances where there is no reasonable means of escape
 - If the means of escape by which P could escape from the fact of their imprisonment is at the risk of life or limb, then it is not reasonable
 - Imprisonment can occur where P submits voluntarily but completely to D's authority
 - Mere inconvenience, loss of power or restraint on movement is not imprisonment
 - There is no false imprisonment where a plaintiff has consented to a restraint on liberty for a purpose, period of time or price or under a contract
 - Not necessary elements of false imprisonment: