**INTENTION** (+) **DIRECTNESS**

NECESSARY FOR ALL INTENTIONAL TORTS

Plaintiff only needs to show direct application of force.

Defendant bears onus of showing lack of intent

(Cook v Lewis)

**VOLITION🡪 Mind directing body**

* **VOLITION:** Gilbert v Stone
  + Defendant had volition
  + Forced onto land by gunpoint, but ***mind directed body***
* **NO VOLITION:** Smith v Stone
  + No intent to trespass because no volition
  + Defendant carried onto land
* **CHILD TOO YOUNG:** Tillander v Gosselin
  + No volition because defendant was 3 years old
  + Dragged other infant on foor
* **CHILD OLD ENOUGH:** Garratt v Dailey
  + Volition found – defendant 5 years old
  + Kid had substantial certainty result would happen
* **MENTALLY DISABLED:** Lawson v Wellesley Hospital
  + Profound mental disorder; defendant cannot appreciate nature or quality of act? = NO VOLITION (therefore no intent)
  + Gerigs v Rose: D must prove so mentally disabled they could not appreciate consequences of act

**TYPES OF INTENT** (3 ways)

1. ***Actual Intent***

* Defendant ***DESIRES*** “X” to happen

1. ***Constructed Intent***

* **NO DESIRE:** Garratt v Dailey
  + But defendant knows act is **substantially certain** to lead to X

1. ***Transferred Intent***

* **THIRD PERSON INJURED:** Carnes v Thompson
  + If you intentionally try to strike, throw, or shoot at a person, and unintentionally strike a third person, no excuse (liable assault/battery).
  + Also applies when *intend to commit tort A, but tort B happens*
  + *DEFENDANT KNOWS WITH SUBSTANTIAL CERTAINTY X WILL OCCUR*

**NO INTENT?**

***MISTAKE IN FACT***

* **LIABILITY:** Baseley v Clarkson
  + Cutting hay, accidentally cuts hay on neighbors land
  + Innocent, yes, but someone must pay for damage
  + Tree example: falls tree, mistake about where property line is, still liable
* **NO LIABILITY:** *For trespass 🡪* **PURE ACCIDENT**
  + Tree example: Very poor tree cutter, knows where property line is but tree falls in wrong direction on to neighbors property

TORT: **ASSAULT**

**INTENTION**

(+)

**REASONABLE APPREHENSION…**

* **REASONABLE APPREHENSION:** Stephens v Myers
  + D wanted to strangle someone, stopped before he could but there was still reasonable apprehension
* **MUST BE CONSCIOUS:** (defendant)
  + Otherwise there would be no reasonable apprehension
* **FEAR NOT NECESSARY:** Freitas v Defraga
  + Plaintiff had martial arts training, was not alarmed

Threats of future harm are insufficient to constitutyte the tort of assault

(Tuberville v Savage)

* + Still constituted assault 🡪 unwanted contact

**…OF IMMINENT CONTACT…**

* **CONDITIONAL THREATS:** Mainland Sawmill
  + If you do this, I will hurt you
  + Depends on context, but in Mainland it was an assault
* **NO PHYSICAL MOVEMENT REQUIRED:** Mainland Sawmill
  + Words can be enough, but depends on context
* **DEPENDS ON CONTEXT:** Bruce v Dyer
  + Ongoing assault while dangerous driving
  + Defendant hit plaintiff when they stopped cars
  + It was deemed self-defence
  + BUT: Prof thinks this is going a little too far…

**…OF A HARMFUL OF OFFENSIVE NATURE**

* **DOES NOT NEED TO BE PHYSICALLY DAMAGING**
* **Just needs to be unwanted…**

TORT: **BATTERY**

*When person X* intentionally *causes* harmful of offensive *contact to person Y*

INTENTION

(+)

HARMFUL OR OFFENSIVE CONTACT

Bettel v Yim

Defendant held liable for all physical consequences resulting from his tort, whether intentional or not.

* Hostile intent NOT required
* Common interactions in society in hallways or on buses are not actionable

Goshen v Larin

* Not liable for self-defence
* Context dependant

TORT: **INTENTIONAL INFLICTION OF MENTAL SUFFERING**

Piresferria (+) Prinzo

**FLAGRANT OR OUTRAGEOUS CONDUCT**

**CALCULATED TO PRODUCE HARM**

**Intended with certainty to cause harm** *or*

**Reasonable person in this situation would know his actions would lead to harm**

* Bielitski v Obakiak - Defendant lied to someone that Steve hung himself; Steve’s mom heard and suffered nervous shock. Statement made intending to reach plaintiff.
  + ***Reasonable person would have known this would cause her mental anguish***
* Purdy v Woznesensky – Defendant struck male in front of wife, wife suffers nervous shock
  + Defendant found liable
  + ***Should have foreseen the violent assault would upset plaintiff***

**RESULTS IN VISIBLE AND PROVABLE ILLNESS**

**Causation Factor**

TORT: **FALSE IMPRISONMENT**

**TOTAL OBSTRUCTION**

* **TOUCH NOT REQUIRED**
* **NO NEED TO BE CONSCIOUS**
* **CHAIN OF EVENTS?**
  + Difficult to prove directness

**NO REASONABLE WAY OF ESCAPE**

**PSYCHOLOGICAL IMPRISONMENT APPLIES**

* Feel like you had no choice but to stay
  + Avoid embarrassment (Chaytor)
  + Apparent legal authority

TORT: **MALIOUS PROSECUTION**

**ELEMENTS** (Nelles)

1. Proceedings must be initiated by the defendant
2. Proceedings must terminate in favour of the plaintiff
3. Proceedings must be instituted without reasonable cause
4. Defendant must have been malicious

🡪 MALICE = Ulterior motive

TORT: **INVASION OF PRIVACY**

Jones v Tsige – ***Ontario*** has created common law tort

1. Intrusion was intentional
2. Intrusion amounted to an unlawful invasion of private affairs
3. The intrusion would be viewed as highly offensive to the reasonable person
4. Intrusion caused humiliation or anguish

Hopkins – Ontario Case

* Medical records opened up
* Court followed Jones v Tsige even though the facts in the case fit well with Personal Health Information Protection Act

Demcak v Vo – **No tort of invasion of privacy in BC**

* The City has a statutory authorization to enter and inspect property including residences and uses of property within the City boundaries. The consent of the occupants is not required where valid written notice of the inspection is given.
* The inspections of the property, including the residences or vehicles thereon, were authorized by law. These inspections are outside the scope of the tort created by [s. 1](http://www.canlii.org/en/bc/laws/stat/rsbc-1996-c-373/latest/rsbc-1996-c-373.html#sec1_smooth) of the [*Privacy Act*](http://www.canlii.org/en/bc/laws/stat/rsbc-1996-c-373/latest/rsbc-1996-c-373.html).

Ari v Insurance Corporation (BC Case)

* Plaintiff’s name and residential address enjoy a lesser degree of privacy in comparison to, as an example, confidential banking records (like in Jones v Tsige).

**STATUTORY TORT – BC PRIVACY ACT**

1(1) It is a tort, actionable without proof of damage, for a person, wilfully and without a claim of right, to violate the privacy of another.

(2) The nature and degree of privacy to which a person is entitled in a situation or in relation to a matter is that which is **reasonable in the circumstances**, giving due regard to the lawful interests of others.

(3) In determining whether the act or conduct of a person is a violation of another's privacy, regard must be given to the nature, incidence and occasion of the act or conduct and to any domestic or other relationship between the parties.

(4) Without limiting subsections (1) to (3), privacy may be violated by **eavesdropping or surveillance**, whether or not accomplished by trespass.

**Exceptions**

2  (1) "court" includes a person authorized by law to administer an oath for taking evidence when acting for the purpose for which the person is authorized to take evidence; "crime" includes an offence against a law of British Columbia.

(2) An act or conduct is not a violation of privacy if any of the following applies:

(a) it is consented to by some person entitled to consent;

(b) the act or conduct was incidental to the exercise of a lawful right of defence of person or property;

(c) the act or conduct was authorized or required under a law in force in British Columbia, by a court or by any process of a court;

(d) the act or conduct was that of

(i)  a peace officer acting in the course of his or her duty to prevent, discover or investigate crime or to discover or apprehend the perpetrators of a crime, or

(ii)  a public officer engaged in an investigation in the course of his or her duty under a law in force in BC,

and was neither disproportionate to the gravity of the crime or matter subject to investigation nor committed in the course of a trespass.

DEFENCE: **CONSENT**

**Defendant** must show that plaintiff consented to the physical contact

**ONUS OF PROOF:** Non-Marine Underwriters (number of sexual batteries on 16 y/o girl from bus driver)

1. PLAINTIFF MUST SHOW DIRECT APPLICATION OF FORCE (does not need to be harmful/offensive)
   * High threshold – must be more than reasonable in a busy world
2. THEN, PLAINTIFF MUST DEMONSTRATE CONSENT (reverse onus)

**OBJECTIVE TEST:** O’Brien

* Woman travelling from Ireland to US on a boat is told she needs to be vaccinated against smallpox or else she will be quarantined
* Told doctor she already had vaccination; doctor did not believe her; she held arm up, doctor believed he had consent to vaccinate her; doctor vaccinated her

1. **Were there overt acts showing withholding of consent?**
2. **What did the woman’s behavior indicate?**
3. **What could the doctor observe in terms of manifestations of her feelings?**

🡪 RULING: A **reasonable person** would have taken her holding her arm out as consent to be

vaccinated. Plaintiff consented.

**POWER IMBALANCE:** Norberg v Wynrib

* Consent must be genuine
  + Not obtained by force; threat of force; or under influence of drugs
* Consent can be vitiated by:
  + Fraud or deceit **as to the nature of** the defendants conduct
    - EX: withholding disclosure of HIV infection (R v Cuerrier)
    - Withholding married status would not suffice
* Genuine consent may be lacking when:

1. Proof of inequality between the parties
2. Proof of exploitation of the inequality by the defendant

**THE YOUNG:** M(M) v K(K)

* Consent not entertained when tort is sexual battery involving adolescents
* Matter of public policy

**SPORTING CONTEXT:** Agar v Canning

GENERAL RULE: in sporting context, you ***give implied consent***

* Assuming the risk, knowing what your getting into, accepting the situation
* Different than waiving the claim (signaling you won’t sue)

BUT: THERE IS A LINE

* Injuries inflicted in circumstances which show a definite resolve to cause serious injury to another
* Goes beyond the scope of even “improper moves” such as penalties (Colby v Schmidt)

**FIGHTING:** Charland v Cloverdale Minor Baseball Association

GENERAL RULE: If right consensual on both parts, parties cannot sure afterwards

EXCEPTION: When the force deployed but one party is excessive or unnecessary

🡪BUT: If other party responds in kind, you are back in the realm of consent

DEFENCE: **CONSENT IN MEDICAL CONTEXT:**

Malette v Shulman

* Plaintiff carries card saying no blood transfusions
* Doctor gives blood transfusion to save life
* Plaintiff sues for batter (no consent) 🡪 Court rules in plaintiff’s favour.
* Would have been different if plaintiff was not carrying the card

**EMERGENCIES:**Doctor has implied consent, or actions of doctor are privileged by reason of necessity

***Requirements:***

1. Plaintiff must be unconscious/incapable of making a decision
2. Time must be of the essence
3. No one legally authorized to act as agent available
4. Under the circumstances a reasonable person would consent

**DIFFERENT OPERATION THAN CONSENTED TO*:*** Marshall v Curry

* Hernia operation, doctor realizes plaintiff has diseased testicle and removes
* Unreasonable to postpone treatment (time of the essence)
* Court finds appropriate and justified in the circumstances (fulfilling duties of doctor)

**CONSENT OF THE YOUNG:**Johnston v Wellesly Hospital

* 20 y/o having acne treatment – age of majority was 21
* CONSENT VALID
* ***TEST:*** must be capable of appreciating fully the nature and consequences of a particular operation of or particular treatment. If so, they can give consent; no guardian consent required.

***Consent or refusal can be investigated if permitted by statutory authority*** (C(A) v Manitoba)

* 15 y/o Jehovah witness refusing blood transfusion: court said child services could investigate to see if coercion was placed on child to refuse treatment

**MENTALLY DISABLED YOUTH*:*** Child Service & Dawson; Re Russell et all

* TEST: What is in the best interests of the child?

🡪View worthwhileness or otherwise of his life in its own context AS DISABLED PERSON

🡪Do not compare with life of a normal person

DEFENCE: **SELF-DEFENCE**

Complete defence 🡪 completely absolved of liability

TEST: Cockcroft v Smith

1. No gap in time between initial event and self-defense
2. Response if “necessary for a person’s defence”

**Provocation**

Only effects damages, does not work as defence

(Hurley v Moore)

Modern Articulation of Above Test: Mann v Balaban

Defendant Must Establish:

1. Assault was JUSTIFIED, and
2. Assault was not made with any unreasonable force

Extent of Defence:

* Can kill attacker if necessary to preserve one’s life or avoid serious bodily injury
* No retreat necessary if defending own home (R v Hussey)
* Covers instances where you **reasonably perceive** someone is being attacked (or imminent threat)

***Citizen’s Arrest and Self-defence Act***

* **Provides guidelines for what can be considered self-defence**
* **Belief on reasonable grounds that to oneself or another, force is being applied, or there is a threat of force**

**34.** (1) A person is not guilty of an offence if

(*a*) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;

(*b*) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and

(*c*) the act committed is reasonable in the circumstances.

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

(*a*) the nature of the force or threat;

(*b*) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;

(*c*) the person’s role in the incident;

(*d*) whether any party to the incident used or threatened to use a weapon;

(*e*) the size, age, gender and physical capabilities of the parties to the incident;

**(*f*) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;**

(*f.1*) any history of interaction or communication between the parties to the incident;

(*g*) the nature and proportionality of the person’s response to the use or threat of force; and

(*h*) whether the act committed was in response to a use or threat of force that the person knew was lawful.

(3) Subsection (1) does not apply if the other person is doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully.

DEFENCE: **LEGAL AUTHORITY Umbrella defence** 🡪 **Key: REASONABLENESS**

**TEST:**

1. **Is authorization granted to defendant through a valid legislative instrument?**
2. **Was the defendant acting within that authority?**

**25.** (1) Every one who is required or authorized by law to do anything in the administration or enforcement of

the law

(*a*) as a private person,

(*b*) as a peace officer or public officer,

(*c*) in aid of a peace officer or public officer, or

(*d*) by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

(2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that

person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using

force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person’s protection from death or grievous bodily harm.

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is

intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

(*a*) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;

(*b*) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;

(*c*) the person to be arrested takes flight to avoid arrest;

(*d*) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and

(*e*) the flight cannot be prevented by reasonable means in a less violent manner.

(5) A peace officer is justified in using force that is intended or is likely to cause death or grievous bodily

harm against an inmate who is escaping from a penitentiary within the meaning of subsection 2(1) of

the *Corrections and Conditional Release Act,* if

(*a*) the peace officer believes on reasonable grounds that any of the inmates of the penitentiary poses a threat of death or grievous bodily harm to the peace officer or any other person; and

(*b*) the escape cannot be prevented by reasonable means in a less violent manner.

**494.** (1) **Any one** may arrest without warrant

(a) a person whom he finds committing an indictable offence; or

(b) a person who, on reasonable grounds, he believes

(i) has committed a criminal offence, and

(ii) is escaping from and freshly pursued by persons who have lawful authority to arrest that person.

**495.** (1) A **peace officer** may arrest without warrant

(a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;

(b) a person whom he finds committing a criminal offence; or

(c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

DEFENCE: **NECESSITY**

Dwyer v Staunton

* Snowstorm blocking main road, employees of oil company bulldoze through plaintiff property
* Defedant drives through bulldozed path. Plaintiff told him not to. Defendant did it again
* **OUTCOME**: You can trespass as long ad there is no unnecessary damage

JUSTIFYING RULE:

1. Regard for public welfare is the highest law (EX: public transport)
2. There must be immediate urgency of the occasion (NECESSITY)
3. Must be proportionality between what you are trying to avoid and the tort you are committing

Vincent v Lake Erie Transportation

* Tied up boat at plaintiff’s private dock in storm. Dock damaged.
* Defence of necessity IS NOT limited to public interest – can be private interest in EMERGENCY situation with no other option
* Here, no reasonable person would have sailed away
* **BUT: Someone has to pay 🡪 defendant liable for damages**

Southwark London Borough Council

* Homeless cannot claim necessity because otherwise no ones house would be safe

Perka (Criminal Case)

1. Imminent peril
2. Absence of any legal alternative
3. Proportionality etween harm inflicted and harm avoided

IMMEDIATE URGENCY FAILS: They were shipping pot and that is illegal.

OTHER: **LIMITATIONS**

**DISCOVERABILITY RULE:**  M(K) v M(H)

* Limitation starts running when you realize the harm was done to you

**BC STATUTE –** Limitation Act, SBC 2012

* Generally 2 years for a civil action
* BUT: in some sexual wrongdoing cases, SC has decided there should be no limitations

OTHER: **VICARIOUS LIABILITY**

**PERSON WHO COMMITS TORT IS:**

* DEAD
* OLD
* POOR

🡪 Institution/enterprise who hired them is held liable in their place (generally employers)