

Volition: conscious direction of your physical actions. (**Smith v Stone**; carried unto land)

Intent: actor's desire to bring about action/consequences of action. (**Bettel v Yim**)

Imputed Intent: D didn't intend outcome, but RP in D's position would have b/c conseq was certain or substantially certain to follow, so intent is constructed. (IINS: **Purdy v Woznesensky**, **Bieltski v Obadiak**)

Transferred Intent: D's intent from 1st tort transferred to unintentional 2nd tort to make 2nd tort intentional, allow recovery

Motive: reason for wanting to bring about action/consequence; not element of tort; defence of public necessity; damages

Duress: D's tort was due to being under pressure/coercion. Doesn't negate volition or intent (**Gilbert v Stone**; land gunpt); damages

Provocation: RP would have lost control due to event occurring closely before tort (**Miska v Sivec**); damages

Mistake: D intends consequences of act, but they have diff factual/legal sig./impact. Not tort element; mitigates damages

(**Hodgkinson v Martin**; minister throws P out). [absence of intent distinguishes mistake from **accident**]

Liability of Children/Mentally Ill: act must be intentional, voluntary, & must appreciate nature and quality of their act

Battery: intentional interference w/ body in form of harmful or offensive contact w/out consent (**Bettel**); protects interests of security and dignity of person; D must intend contact, not consequence of harm/offence; D responsible for all consequences of contact (**Bettel**); **Lack of consent is assumed** (**Non-Marine Underwriters of London v Scalera**); consciousness not req.

Assault: intentional creation in mind of another of reasonable apprehension of immediate harmful/offensive contact (**Sawmills v. USW Local**); Conditional threats are assault if D threatens P w/ st he has right not to do or not doing st he has right to do (**Sawmills**,

Holcombe v Whitaker: D threatens if P goes to divorce court); entirely verbal threats can constitute assault if given all circumstances they create in P's mind reasonable apprehension of immediate physical harm/contact (**Sawmills**)

False Imprisonment: when an individual's movement is restrained totally, even if momentary, (**Bird v Jones**) totally meaning no reasonable means of escape, inc. commission of tort (**Wright v Wilson** [trespass]); (**Campbell v SS Kresge**, **false arrest**: subtype of false imprisonment using legal authority to impose restraint); **consensual restraint** (**Herd v Weardale Steel**; mine/cage); consciousness not req. (**Murray v. Ministry of D**)

Intentional Infliction of Nervous Shock: D's calculated behavior. inflicts nervous shock on P, D must intend consequence of psy. harm, P must have visible phys./psychopathological harm (**Wilkinson v Downton** [recognition of tort]; **Frame v Smith**, **Radovskis v Tomm** [req. of visible injury]; intent can be imputed (**Purdy** [husband hit in front of wife], **Bieltski** [rumour suicide son]); liability broadened now D need not intend conseq. of nervous shock, but can be in reckless disregard of causing conseq., pattern of abusive behaviour (**Rahemtulla v Vanfred credit Union**); too remote (**Victorian Railways v Coultas**)

Privacy: unsettled law; BC Privacy Act (no def.); no tort of invasion of privacy; recog. new category of invasion of privacy by abuse of telephone under category of nuisance (**Motherwell v Motherwell**); wilful action w/out claim of right can lead to breach of privacy under BCPA (**Hollinsworth v BCTV**) **Claim of Right**: honest belief in facts which if they existed would make the action legal.

Defence of Consent: D must prove BOP that P gave consent (**Non-Marine Underwriters**); consent valid only if given competently (understand and appreciate nature and consequence of action)

Implied Consent: present in all players in sport context as long as game is fair, rule-based, non-malicious (**Wright v Mclean**)

Exceeding Consent: if D intends serious bodily harm in sporting contexts outside the rules of the game, D exceeds P's implied consent; actionable (**Agar**)

Fraud: vitiates consent if D knowingly deceives P, or acts in disregard for truth, D's action causes P's misapprehension & fraud re: nature of act, not its collateral conseq. (**Williams** [sex for music, vitiates], **Papadimitropoulos** [sex in fake marriage, not vitiates])

Mistake: vitiates consent if D is responsible for mistake which led P to consent (**Guimond v Laberge**; all teeth removed)

Duress (Coercion): consent given under duress invalid, must have fear of threat (**Latter v Braddell**) → decided diff. today

Public Policy: consent vitiates in consensual fight is serious phys. harm intended (**R v Jobidon**, **R v Paice**); consent vitiates if given in unequal power relationship (proof of inequality & exploitation) (**Norberg v Wynrib**, Dr./drug addict)

Consent to Medical Treatment: free, informed, voluntary consent req.; exceptions (ER, part of broad treatment program, therapeutic privilege); informed consent doesn't expand to informed refusal (**Malette v Shulman**-J's Witness, wallet card); competency minors is appreciating nature and risk of treatment (**C v Wren**-16, abortion); ER req.s (**Marshall v Curry**, hernia, testicle) → patient unconscious/unable to consent; no authorized legal agent; time limited; RP would consent in circumstances

Self-Defence: honestly/rsnly believe assault is imminent & force used reasonable (**Wackett v Calder**); pre-emption is allowed

Defence of 3rd Parties: honest/rsnly (even mistaken) belief that 3rd person is in danger; esp. if one's child (**Gambriell c Caparelli**)

Discipline: s.43 CC 'by way of correction'; rsnly force (**Dupperon**); other req.s: for ed.; child must understand; no teens; no belts/rulers (**Canadian Foundation v Canada (AG)**); trend is (-)

Defence of Legal Authority: D must have legal authority (statute/CL), be legally privileged, meet all obligations during process; CL: prove crime is committed, D rsnly believed P committed crime, and prove someone has committed it, while CC: prove a crime is committed, P is person who committed it. (**Nichols v Wal-Mart**; crime by 'someone' (LL) proven, P rsnly believed to have stolen)

Damages: compensatory (aggravated), punitive

Intentional Tort: must be intentional and voluntary

Negligence: legally recog. duty of care owed by one person/class to another person/class (**Mallister v Donohue**; ginger beer snail; duty of manufacturers to consumers/customers)

Anns Test: (1) Is relationship of sufficient proximity/neighbourhood? (implicitly raises issue of rsnbly foreseeability)

→ If yes, prima facie duty of care arises.

(2) Are there considerations to negative/reduce scope of duty, class of person, and/or damages?

Kamloops: embraces Anns Test in Canada; makes suing gov easier; cited/confirmed in **Canadian National Railway**

Elements of Negligence Action: eg in **Dunsmuir v Deshield** [Hardex lenses]

Cooper: Restated Anns/Kamloops Test w/ fleshed out policy concerns

(1) Proximity-Is P and D's relationship close enough that it would be just and fair to place a legal duty of care?

a. Reasonable foreseeability- is relationship a type where D can reasonably foresee his actions harming P?

b. Policy considerations re: relationships and categories/classes

(2) Residual Policy Considerations- which would negate prima facie duty of care from stage 1

➤ If category is est., usually no need to run through test (**Childs**)

Reasonable Foreseeability: either rsnbly foresee risk [**Moule** (-); **Amos** (+)] or rsnbly foresee plaintiff is type who can be harmed (**Palsgraf** (-)).

Duty to Control Conduct of Others: CL/statutory duty; (-) duty for D who directly created risk; or (+) duty for bystander to help.

Invitor-invitee commercial relationship: in alcohol-serving est.; making \$ off services; (+) duty to control conduct of drunk patrons. (D aware of patron's drinking history; aware of P's intoxication; fed intoxication; in violation of liquor laws; set up dangerous event)

(**Jordan House** [hotel, patron leaves, gets hit on dark st.], **Crocker** [ski resort, tubing, paraplegic])

➤ Social Hosts do not owe a duty of care to control their drunks guests (**Childs**); unsettled area of law; option open

Commercial Hosts v Social Hosts (**Childs**)

(1) CH have greater ability to monitor patrons

(2) SH are not heavily regulated

(3) SH do not profit from activities

➤ Obligation extends to 3rd parties injured by drunk patron (**Stewart v Pettie**)

➤ Serving past point of intoxication not enough, rsnbly foreseeability needed (**Stewart v Pettie**)

➤ Knowledge of intoxication needed for both SH and CH (**Calliou**); know.req. part of special relationship (proximity)

Duty to Prevent Crime/Protect Others: Police gen. duty to protect public; duty to warn if harm is rsnbly foreseeable & sufficiently proximate relationship exists w/ person/class of ppl (**Jane Doe**); owner's duty to maintain land/lot (**Okanogan Exteriors** [hobo, fire])

Duty to Perform Gratuitous Undertaking: If you undertake s.t., you owe a duty of care to do it rsnbly (**Zelenko**; med. care in store); otherwise not recog. (**Soulsby**; train tracks unmanned)

Pre-Conception Wrongs: D intentionally/negligently causes parent to suffer injury which detrimentally affects subsequent child

(**UAW**, factory exposes women to toxins). Drs don't have duty of care to unborn future children (**Paxton** [unforeseen effects of acne med.; lack of proximity w/ future child; mother's autonomy; conflicting duties on Dr. not desirable])

Wrongful Birth/Life: Dr negligently fails to inform mother re: high risk of birth defects. Mother's claim (Birth); Child's claim (Life); no wrongful life claim in BC (**Arndt**, mum chicken pox); WL fails again (**Bovingdon**, fertility drug causes multiple birth & defects); sanctity of life, 'loss/injury' is child's existence, mum's autonomy.

Wrongful Pregnancy: parents take steps to prevent pregnancy/birth but fail due to Dr.'s negligence; unsettled law.

Courts' options (**Cattanach**); Canadian courts usually pick 3

(1) Healthy child → no damage

(2) Damages for pregnancy and delivery

(3) Damages until child is econ self-reliant w/ discounts for benefits

(4) Full Damages w/out discounts

➤ Damages for wrongful pregnancy placed under non-pecuniary heading (**Roe v Dobbs**)

➤ Child-rearing costs are pure economic loss (**Kealey**)

Pre-Natal Injuries: duty to unborn child to avoid negligent action causing it harm in utero; no duty of care from mother to unborn child for negligence b/c of policy: intrusion into mum's autonomy, standard of care?, uncontrollable lifestyles, mum exposed to unacceptable court scrutiny, emo suffering (**Dobson**); mostly 'friendly' action when child sues mum b/c mum wants insurance \$