

### Limitation Periods:

Because no sexual misconduct is involved in this fact pattern, the limitation period for all of the parties involved is likely to be two years. The alterations are assumed within the past two years.

### Intentional Interference with the Person

**Battery (*Betel v Yim, 1978*):** Kid is throwing matches, D grabs him, shakes him, then his head strikes P's nose.

(1) **Direct** (D's act directed at P), **intentional** (*Betel v Yim*- only have to intend to cause physical contact, not intent to harm), and **physical interference** (*Malette v Shulman*- physical contact tho not just to body, clothing is enough)

(2) **through harmful or offensive contact** (*Malette v Shulman* harm to bodily integrity is enough, not just physical harm). **Actionable w/o proof of damage- once P proves harmful/offensive direct interference, D has burden of proof.**

→ No liability for pure accidents- intent to inflict injuries (whether to person or property) must be proven, or at least failure to exercise proper care

Includes bodily harm but also interference with a person that offends their reasonable sense of honour and dignity

**Defences:** Consent, Self-defence, Defence of property, Necessity and legal authority.

**Assault (*Holcombe v Whitaker, R v Ireland*):** "the *intentional* creation in the mind of another of a reasonable apprehension of *immediate* physical contact"- apprehension (not just fear), actionable w/o proof of damage- only immediate physical contact constitutes assault

(1) **Direct** (D's act directed towards P) and **Intentional act** (motives irrelevant, assumed act intentional, D must prove otherwise) (*Ireland*)

→ even if P misinterprets Ds action, if reasonable person would perceive apparent intent and capacity to carry out threat, can be treated as real intent.

→ Words alone can constitute an assault. If the purpose is to protect plaintiff from fear, the mechanism through which it is achieved is secondary (*Ireland*)

(2) that **Causes** (D's intentional conduct caused P to feel...) P to apprehend **Immediate** (attack/contact shortly after threat, capable of it, not threat of future harm) of **harmful or offensive bodily contact** (*Holcombe v Whitaker*)

→ Conditional/future threats- words alone insufficient to = assault- but maybe if accomp~ physical threat + Assault might constitute a 'show of force' combined with a unlawful/unjustifiable demand, and compliance will avert threatened battery (*Holcombe v Whitaker*)

**Sexual battery tort (*Non-Marine Underwriters v Scalera*):**

→ In the tort of sexual battery, consent operates as a defence and must be **proven by the defendant**

→ Exclusion in the policy should be interpreted as requiring an intent to injure. In an allegation of sexual battery, courts will presume that defendant intended harm

**McLachlin:** if the D does not deny that sexual contact occurred, he bears the burden of proving that the plaintiff consented or that a reasonable person in his position would have thought that she consented

→ **Case law:** settled rule that requires P in a battery case to show only contact through a direct, intentional act of the defendant and places the onus on the defendant of showing consent or lawful excuse, including actual or constructive consent

**Interference is direct if it is the immediate consequence of a force set in motion by an act of the defendant**

→ "Sex is not an ordinary casual contact which must be accepted in everyday life, nor is it the sort of contact to which consent can be implied"

**False Imprisonment (*Bird v Jones*):** Actionable per se, w/o proof of damages

(1) **Direct** (P must prove directness, once established D must prove no negligence/intent) and **Intentional**

(2) **Imprisonment of another person (*Bird v Jones*- complete restraint on P's liberty)**

→ Restraint? barriers, implicit/explicit threat of force, explicit assertion of legal authority

→ Psychological- intimidate P thru show of authority, fear of results if P refuses, apprehended use of force, or even desire to avoid public embarrassment (***Campbell v S.S. Kresge***- false arrest- restraint using legal authority)

→ Escape must be reasonable- not so if it risks serious personal injury, or force P to commit trespass to escape

**Indirect false imprisonment (*Roberts v Buster's Towing Service*)-** B falsely imprisons C on basis of A's info

→ A not liable if B has option/choice to follow A; If B must act on A's info, A may be liable for false imprisonment.

**Defences:** consent, legal authority

***Bird v Jones*:** P wanted to enter public road that had been closed. D (police) prevented him from doing so. D allowed him to remain where he was and to leave, but P refused to leave. P sued D for false imprisonment.  
→ P could have left, but chose not to. D did not totally restrict his movements, merely did not allow P to go where he wanted to go

***Campbell v S.S. Kresge*** (False arrest- restraint thru assertion of legal authority): A customer told D (she thought P had shoplifted. D confronted P w/ badge, asked that she come into his office to avoid embarrassment to them both. D couldn't see witness, and told P she was free to go.

→ False Imprisonment from when she was confronted outside until told she was free to go. She did not consent to go but went out of fear of consequences. D had no reasonable or probable grounds b/c he did not personally witness her taking something.

**Malicious Prosecution (*Nelles v Ontario*):** P must prove that, (1) **D initiated proceedings against P** (active/instrumental in causing it- usually not just providing info to police) (2) **Proceedings terminated in P's favour** (conviction suggests reasonable/probable cause- and innocence is basis of action) whether exoneration, discharge, appeal, or acquittal); (3) **No reasonable and probable cause (*Miazga v Kvello Estate*- objective-rational basis for belief; P must prove absence of element such as D didn't honestly believe, or reasonable person wouldn't believe it in the circumstances; subjective- actual belief in guilt)** (4) **Malice on the part of the D** (malice=spite, ill-will, vengeance, improper purpose such as coercion, blameshifting, private benefit; inexperience, lack of rsnble grnds, incompetence, negligence aren't same as malice), (5) **P suffered damage** (not actionable w/o proof of damage- loss of reputation, liberty, or financial loss)

### Malicious Procurement and Execution of a Search Warrant

- Similar to malicious prosecution: deals with intentional abuse of processes of court
- Requires plaintiff to establish:
  - D made successful application for search warrant
  - D had no reasonable and probable cause to do so
  - D acted with malice
  - P suffered damage

### Abuse of Process

- Improper use of civil litigation process
- Four elements
  - D must have brought civil action or process
  - Collateral and improper purpose
  - Evidence of some overt act or threat to secure D's improper purpose
  - P must prove damage

**Intentional Infliction of Nervous Shock** (*Wilkinson v Downton*): P must prove that D committed (1) **outrageous and extreme conduct** (fairly subjective, more likely if P is vulnerable and D is aware of that), (2) **Actual or constructive intent to severely impact P's psych~ health** (intent to shock, constructive intent- reasonable person would see it resulting from D's conduct, no need to foresee full extent of harm) (3) and **Nervous shock resulting** (*Radovski v Tomms*- psych. illness or physical harm, grief/worry/emotional distress not enough, visible and provable illness required) but court may still find IINS if D's conduct particularly outrageous and other symptoms present or D acted with reckless disregard to possibility they could cause harm (*Rahemtulla v Credit Union*)

**Exceptions**- marriage breakdowns, custody & access disputes.

→ P can't have predisposition/susceptibility to shock

**Sam v Eccles**- in some circumstances **No need for physical injury**

**Discrimination** (*Seneca College v Bhadauria*)- does it need a tort?:

**Advantages**: Complement existing equality protections established by federal and provincial human rights legislation

→ Tort actions are commenced and controlled by P rather than being dependent upon gov't bureaucracy charged w/ enforcing the code

→ Compensatory remedies may be more generous under tort system (statutes generally have caps)

→ Key challenge: balance equality (right to be free of discrimination) against other legitimate legal interests, such as freedom of contract

-Osborne: existing legislation could serve as guide to courts when it comes to balancing process

Bhadauria decision: **At SCC, overturned CA saying that OHRC already provided comprehensive and exhaustive vehicle for protection against discrimination, so there was no need to recognize and develop a complementary tort remedy**→ Only excludes tort actions founded on breach of human rights code. Possible to argue an action based on an independent tort such as an assault or intentional infliction of nervous shock

**Defamation** (*Hill v Church of Scientology*): P must prove on BoP that **impugned statements** were (1) **Defamatory** (in plain and ordinary sense; by reference to extraneous circumstances- matters beyond the publication- that are known to those receiving the publication and which would give it a defamatory meaning **Vogel**; Legal innuendo or true innuendo-**Sim**) (2) **referenced P** (P must show on BoP- If no reference by name, court will ask 2 Qs (**Knuppfer**): Can the statement be regarded as capable of referring to P? (Q of law) Would the statement in fact lead a reasonable person (who knows P) to conclude that it does indeed refer to him? (Q of fact)) and (3) the **statements were published/disseminated** (not actionable unless they are communicated to someone other than P. P must show that, on BOP, remarks were comm. to 3rd party who understands

→ No publication for statement overheard by accident (**McNichol v Grandy**)

→ Any party that plays part in comm. defamatory remarks may be liable, each repetition is considered new publication and is ind. actionable

→ Establishing that an ordinary person would infer a defamatory meaning from the remarks or statement even without special knowledge of the plaintiff or their circumstances **False innuendo**

**Sim v Stretch** (1936): **Would the words tend to lower the P in the estimation of right thinking members of society?**

→ **If yes, then first element (defamatory statement) is established. There are actually 2 questions:**

Law: is the material capable of being defamatory? Fact: Jury decides if facts are defamatory

**Defences** (1) Justification- (complete) if they can show statements, tho defamatory, were true; intent~ isn't relevant

(2) Absolute privilege - (complete) if they can show that the statements fall into one of three protected categories:

(i) Statement by an executive officer relating to affairs of state (ii) Statement made during parliamentary proceedings (iii) Statement made in the course of a judicial or quasi-judicial proceeding

(3) Qualified privilege - (complete) if they can show they had a moral, social, or legal duty to make the statement. eg. P made to defend own reputation, to protect another persons interest, in the public interest, fair and accurate reporting in proceedings open to the public

*Hill v. Church of Scientology*: SCC says no requirement to show active malice in cases of defamation

(4) **Fair comment** - (complete) if they can show that the material in question was: (i) A comment (as opposed to an accusation or allegation of fact) (ii) Made honestly and in good faith (iii) Based on facts that are true (iv) On a matter of public interest

(5) *Consent* – (complete) if they can show that the statements originated with P, or by someone acting on P's behalf. Defence will also apply if statements made in response to P

### Interference with Real Property:

**Trespass to Land- private-(Turner v Thorne):** (1) **Direct** (direct result of D's actions, eg. not things washed onshore) (2) **intentional** (or negligent) (once P proves intent to intrude/interfere w/ land D must disprove rest, mistake no defence) and (3) **physical interference with land in the poss~** of the P (i. enter land w/o P's permission, ii. places objects on P's property w/o permission, iii. Land possessor revokes visitor's permission to be there and visitor doesn't leave in a reasonable amount of time)→ Actionable without proof of damages

→ Intrusion must be physical- smog, fumes, smoke, noise, odour not actionable under this tort- nuisance maybe.

**Who can sue?** Anyone in legal possession of land actual possession, not ownership (**Possession:** Occupation and control of land + intention to exclude others)

→ Owner (out of poss~) but w/ right to immediate poss~: Can bring an action for recovery of land; Request may be made of person in wrongful poss~ to leave: peaceable entry onto land; Reasonable force may be used to eject

#### Defences:

→ **Consent**- if possessor granted license to enter (implied/express, free/contractual, given to indivd/group/world)  
- license is revocable- and if granted for particular purpose, abuse of purpose may terminate license to enter

→ **Necessity**- emergency situation, D needs to trespass to prevent harm to public, the D, land poss~, or 3rd party

→ **Legal authority**- often authorized by statute for many things, if authorized, no trespass; if entrance thru legal authority abuses or exceeds that authority, entry considered wrongful from moment of entrance

→ **Remedies**- if actual loss occurs, damages will extend to whatever are the results of trespass, not just reasonably foreseeable consequences

- Injunctive relief possible for continuous/continual acts of trespass- equitable remedy, prohibitory- D must cease acts of trespass, Mandatory- D must take +ive steps to cease trespass- may be withheld if damages would be adequate remedy, or where trespass is trivial and injunction would create substantial hardship to defendant

**Trespass to land- semipublic (Harrison v Carswell):** Employee participated in peaceful picket on sidewalk. She was invited to leave b/c picketing not permitted in mall. She refused, and was charged and convicted under Manitoba *Petty Trespasses Act*

→ **Confirmed right of private property owner to control his property and to exclude anyone from it**

**Dissent:** Mall is semi-public property, not private property. It shouldn't trump the right to picket.

→ Modern shopping mall far removed from paradigm of private property some restrictions on power of exclusion is appropriate

→ Members of the public should only be excluded for legit reasons like disorderly conduct, illegitimate activities, or other activities that interfere with effective, profitable, and peaceable operation of the mall

**Trespass and Nuisance (Kerr v Revelstoke Bldg Materials):** Shannon- evidence for cause of action in trespass- land 'invaded' by smoke, ash sawdust, loud noise, fairly severe at times

→ plaintiffs entitled for damages in nuisance- noise particularly damaging to P's business and land use/enjoyment

→ No negligence on part of defendants, just that "the two business operations were not compatible"

→ no injunction but remedy through damages

**Trespass to Airspace (Bernstein v Skyviews & General Ltd):** **Generally landowners rights are limited in favour of facilitating air traffic.** Bernstein suing because believes defendants flew in his airspace and took a picture, invading his right to privacy-they claim it was taken over adjoining land, and/or they had implied permission. Caselaw has protected rights to airspace- most of these cases did not imply- and even refuted- that this right to airspace extended to an unlimited height

→ protection limited to a height that owner could reasonably use "as a natural incident of the user of his land"

- no support for rights to an unlimited height
- restrict rights of owner to air space to the extent is necessary “for the ordinary use and enjoyment of his land and the structures upon it”

### Interference with Chattels

**Trespass to Chattels** (*Fouldes v Willoughby*): the D (1) **Directly and intentionally** - or **negligently** (once P proves interference, D must prove absence of intent) (2) **Interfered with chattel** (damage, taking, unauthorized movement, destruction- conversion better) (3) **In possession of the P** (protects possession not ownership- thus → Traditionally no proof of damage required but this is uncertain- ensures remedy for unauthorized moving of chattels/artwork in museums; but damage strengthens the case.

**Remedy:** Damages- for price drop or for any necessary repairs

- **Mistake is no defence**

**Detinue** (*Gen & Finance Facilities Ltd v Cooks Cars*): P with right to immediate poss. of chattel (1) **demands its return** and (2) **D refuses to return it** (tort fails as soon as D returns goods, must be given reasonable amt of time to do so)- continuing tort arising as soon as D refuses request. Damages assessed at time of judgement- best tort for rising market→ protects P’s right to possess chattel

→ Preferable tort for chattel w/ particular value such that it can’t be replaced or emotional value etc.

**Remedies:** (1) value of chattel and damages for detention, (2) return of chattel/recovery for assessed value + damages for detention or (3) return of chattel and damages for detention

**Conversion** (*Fouldes v Willoughby*): D seriously interferes w/ P’s right to chattel- (1) **D directly and intentionally** (not negligently- that is trespass) (2) **interferes w/ P’s poss~ or right to immediate possession** (taking/withholding/x-ferring poss~, destroy, damage, using it, asserting ownership, criminal action it)

→ Must be serious enough interference w/ P’s right to chattel to hold D liable for full value

→ **Mistake no defence** to conversion- though potentially only nominal damages (*Mackenzie v Scott Lumber*)  
- innocent seller and buyer can both be held liable for conversion

→ Damages assessed at time of conversion (*Aitken v Gardiner*)

→ P must make attempt to mitigate losses from conversion as soon as possible

→ To assess whether temp. taking/movement/use of chattel= conversion, court can consider circumstances,

→ **Key test**= if interference warrants forced sale, conversion’s good. Temp. taking and return upon request, NO.

**Action on the case to protect reversionary interest:** P can bring action on the case to protect reversionary interest when chattel has been destroyed or permanently damaged by the intentional or negligent act of the D- eg. A leases X to B. B is in possession of X, and C interferes with it so A can sue C directly.

→ Protects P who doesn’t have possession or immediate right to possession, but nonetheless wants to protect goods from possible destruction or damage

Most frequently: unexpired bailment for a fixed term- Bailor has neither poss~not a right to immediate poss~

*Mears v London & South Western Ry. Co.:* D negligently caused serious damage to a barge owned by the plaintiff, but leased to a third party→ P succeeded on proof of permanent damage to P’s reversionary interest

→ Rarely used b/c destruction typically the consequence of negligence

### Distress Damage Feasant

- self-help remedy can justify refusal to give up a chattel to a person with right to immediate possession
  - applies if chattel is (1) unlawful on person’s land and (2) it has caused/causing damage
    - damage element is important- right to seizure is only given to compensate damages for losses

### Defences to trespass to Chattels

- similar to defences in other intentional torts
  - defence of consent- eg. sale, bailment and gift of chattels defeat action for conversion
  - defence of legal authorization
  - Defences arising from trespass to land apply to trespass to chattels
  - Consent, legal authorization, legal authority, necessity (narrow circumstances)

## Business Torts:

**Deceit (*Derry v Peek*):** D made (1) a false statement (untrue, reasonable person would believe, not just failure to disclose facts unless duty to do so, failure to correct) (2) that D knew was false or was obj. reckless to truth/falseness of (P must prove D acted dishonestly) (3) D made statement w/ intent to mislead P or was subst. certain would do that (P must prove D intended P to rely on it; if event is reasonably foreseeable, court will assume D intended) and (4) P suffered loss as result of reasonably relying on the statement (would reasonable person have relied on it? eg. sales~ exaggerate, you can't rely on predictions about the future or mere opinions)  
→ Damages assessed to restore P to where he would've been if no misrep.~

**Defence:** Honest belief is full defence- if D honestly believed the statement to be true- even if it was false)

**Passing-Off (*Ciba-Geigy Canada Ltd*):** exists to protect P's business by preventing D from presenting their g+s as being those of the plaintiff- aims to protect the reputation and goodwill of producers and to prevent customers from being deceived. P must establish (1) P's goods/ existence of goodwill services (power to attract and retain customers, gained through the quality of their g&s + branding/logo/etc) (2) deception of public due to misrep~ (needn't be int., no deception if only a hurried moron would be deceived; misrep that D's goods are in fact P's, as to origin of goods, that D's are equal quality to P's, that D has bus~ relationship w/ P, that P's g&s are in fact D's) and (3) actual or potential damage caused by diversion of customers/injury to P's rep (potent. loss= injunct?)

**Damage:** court order to pay profits due to passing-off, injunction to stop misrep~

**Intimidation (*Rooks v Barnard*):** (1) D threatens to commit unlawful act (crime, tort, even breach of contract) that (2) was effective (causing someone to act in a particular way) and (3) P suffered loss.

**2 party:** D threatens P w/ breach of K (not to breach K as K has remedies but torts yes- **Central Can. Potash**)

**3 party:** D threatens A to breach K w/ P, P can sue b/c P has no K remedy to prevent this

**Conspiracy (*Poslun v TSE*):** agreement b/w 2+ to do unlawful act or lawful act act through unlawful means  
**Conspiracy to injure**→ if conspirators band together to do an otherwise legal act, they're liable only if main purpose was to hurt claimant. **Daishowa Inc v Friends of the Lubicon**- Ds boycott Ps products but to raise awareness.

**Conspiracy to commit an unlawful act**→ conspirators agree to do an otherwise unlawful act (tort, crime, breach of contract) they may be liable if (1) plan directed at P and (2) they should have know it might have hurt P- and ofc liability if plan WAS to hurt P

**Int. Interference w/ Econ. Relations by Unlawful Means: (*Reach Md Inc. v Pharmaceutical Assn of Canada*):** (1) D intended to harm P (either primary or 2nd purpose) (2) D interfered with P business by illegal/unlawful means (either illegal by statute or broader view- acts that D has no legal justif~ to do)(3) P suffered econ. loss.

**Interference with K Relations (*Poslun v TSE*):** (1) D's knowledge- must have known about contract b/w P and 3rd party, (2) D's intention (must have intended 3rd party to break contract w/ P, though no need for malicious motivation to hurt P-must be aware of that contract) (3) Breach causation (D. must have caused 3rd party to break contract w/ P- difference exists b/w providing information that shows why breach might be a good idea and actually encouraging it)(4) P's loss- P must suffer a loss due to 3rd party's breach (K failure usually enough)

**Injurious falsehood:** (1) False statement- against P's business, trade, or property (protects commercial/business interests- may involve quality of their products, scope/legality/nature/location of the business) (2) Publication of false statement to 3rd party (without proof of this, P can't prove that false statements damaged their business)

(3) Malice- (if D knows they're false/reckless to their truth, and intended to cause damage, or likely to cause damage, usually enough to prove malice) (4) Pecuniary Loss- may be broken contracts or loss of customers)

- Sources of liability in business torts (1) causing or securing contract breach
  - (2) Unlawful interference w/ trade/business

- (3) Intimidation of a 3rd party
- (4) conspiracy

## Defences- Consent:

**Consent tends to be treated as a freestanding defence rather than an element of a particular tort.** It speaks to the right of an individual to exercise his or her autonomy and consent to the intentional interference with his or her person. It was established in *Non-Marine Underwriters* that consent is a defence in “traditional” battery cases. It is for the D to plead and prove consent as a defence. P is not required to prove that there was an absence of consent.

→ The defence of consent is typically **framed in terms of the tort complained of**. D will have to prove that P consented to the specific act that gave rise to the tort action. When a person consents to an act, it is generally assumed they consent to all risks which are normally associated with the act.

→ It is a **complete** defence.

→ Consent must be freely and voluntarily given. It may be explicit (writing, verbal consent, consent by way of gesture). IT can also be given implicitly through participation, demeanor, or behaviour.

→ A reasonable person would believe the plaintiff had given consent.

→ Consent is vitiated by drug use, violence, threat of violence, duress, etc.

**Implied Consent in games (*Wright v Maclean*):** Those engaging in a sport or game consent to the ordinary risks associated with the activity. Provided there is no malice, anger, or mutual ill will, the court will assume that those participating in a sport or game consent to the ordinary risks associated with that activity

**Exceeding Consent-** Whether participation in a game or sport can be implied consent to certain kinds of conduct outside reasonable constraints of the game. Generally in sporting cases, participation in a game amounts to implied consent to certain types of conduct but not outside the ordinary rules of the game

**Rule:** Someone who plays a sport is assumed to be consenting to the ordinary risk of injury. There is implied consent of participants to physical interference that is an integral part of the sport: (*Agar v Canning*)

→ Conduct of a player in the heat of a game is often instinctive and unpremeditated, and it should not be judged by the standards of polite social intercourse.

→ **Limit:** limit on immunity from liability is such that contact sport is not a licence to inflict serious harm on an opponent. The Court will look at the case facts to determine whether the conduct exceeded normal expectations.

**Agar v Canning- Consent does not give unlimited immunity to liability.** Conduct exceeding consent (breach of rules, intention to injure) renders D liable for resulting injuries (**Sports context**)

**R v Paice-** SC clarified *Jobidon* - consent may be negated if accused both intends and causes serious bodily harm in the context of self-defence in a fight

→ **Using a gun or knife in fist fight exceeds opponent's consent**

**Competence-**To have valid consent, consentor must be capable of understanding the consequences of the act.

→ Consent is not valid if, due to age, mental disability, inebriation, etc., they cannot be found to have given consent-

The underlying idea is the respect of individual autonomy and right to make choices

In certain circumstances, **valid consent may be vitiated** as a result of the defendant's actions

→ **Fraud-** D must be aware of P's misapprehension and fraud must be related to tortious act, not a collateral act

(*R v Williams*) - teacher gained consent by telling student sex would improve her singing= fraud, consent vitiated;

*R v Cuerrier-* consent vitiated has undisclosed HIV

→ **Mistake-** P's consent is only vitiated by a mistaken belief if the D is responsible for creating that belief

→ **Duress-** Where consent is obtained through duress or coercion, it is vitiated (**Latter v Bradwell**)

→ **Public Policy-** can't consent to being killed (**Lane v Holloway**), seriously injured, or having sex w/ person exploiting position of authority. **OLD MAN OR EXTREME MISMATCH?**

**C v Wren-** Age is not a barrier to consent. All that matters is that the person is able to understand the risks/benefits of treatment (child chooses to have abortion, minor can consent provided she understands)

**Medical Context (*Marshall v Curry*):** In this case, surgeon had a higher duty that justified operation though no express consent, and possibly no implied consent, surgeon acted in patient's interest and to protect his health/life



**Defences:**

**Self-defence (*Wackett v Calder*):** complete defence (negates all liability- loss goes to innocent P), incomplete defence (excuses wrongness of act, prevents punitive/nominal damages, D must pay comp. for damage to P)  
 → Self defence is considered a complete defence as it provides justification for the defendant's conduct  
 To invoke this defence, the **D must establish on a BoP** that: (1) **D honestly** (subjective) **and reasonably** (object~) **believed that an assault was imminent**; and (2) **amount of force used to avert the risk was reasonable in context**  
**Reasonable force** used to repel actual violence or threat of immediate violence?  
 → Consider: nature of attack, size and strength of opponent, force needed to repel attack, use of weapons, availability of non-violent means of defence  
 → the situation needs to be examined from the perspective of the D, and then judged as to whether a reasonable person would have used the same level of force: (objective/subjective test) ***Beckford v R***  
***Wackett v Calder*:** Repelling an (apprehended) attack needn't be measured perfectly

**Defence of Property (*Macdonald v Hees*):** In some circumstances, the possessor of land may use physical force to protect his property from unlawful entry by another- force used must be reasonable  
**Peaceable entry:** must request trespasser to leave. If he refuses, then you may use reasonable force.  
**Forcible entry:** no requirement to make preliminary request.  
**Public Necessity (*Surocco v Geary*)-** complete defence- lets someone interfere w/ another's property rights if they do it to save lives or protect public interest from "external threats of nature"

**Legal Authority:** Defence of legal authority can be raised in response to actions in battery, trespass to chattels, trespass to land, conversion, and other intentional torts.

→ Largely statute based- used to protect police or governmental officials for actions in tort

Charter ss.8-9, if the gov't violates those rights, they must justify their actions under s.1

→ S. 8: right to be secure against unreasonable search and seizure

→ S.9: right not to be arbitrarily detained or imprisoned.

**Rights and Arrest Process (*Koechlin v Waugh and Hamilton*):**No general right to ask individuals to identify themselves.

→ Police can rely on a recognized power, such as that inferred from S.450 of the CC (need to have reasonable and probable grounds to suspect the individual being questioned).

→ Police need to tell individual why arrested- entitled to know on what charge or on suspicion of what crime.

→ Failure to inform the individual of the reasons for arrest can result in claim for false imprisonment

→ If individual not informed, they are entitled to resist the unlawful arrest.

Person in custody should never be denied the right to communicate with relatives at the earliest reasonable opportunity so that he may avail himself of their advice and assistance

**Rights to enter houses (*Eccles v Bourque*):** Entry may be made against the will of the householder only if (1) there are reasonable and probable grounds for the belief that the person sought is within the premises and (b) proper announcement is made prior to entry

**Defence of another/3rd Party (*Gambrielli v Caparelli*):**The same rules as in self defence, with the requirement that the use of force be reasonable: (1) **D honestly** (subjective) **and reasonably** (object~) **believed that an assault was imminent**; and (2) **amount of force used to avert the risk was reasonable in context**

**Discipline (*R v Dupperon*):** Discipline of minors is a defence to battery IF the force is both (1) corrective and (2) reasonable.

**Authority and Privilege to Arrest without a Warrant**

- If cop turns to defence of legal authority when sued w/ false imprisonment/battery, they have to prove that their tortious act was legally authorized (common law or statute)
- ss.494/495: Anyone can arrest without a warrant, someone found committing an indictable offence, or a person they believe on reasonable grounds to have committed a criminal offence, or is escaping for person w/ lawful authority to arrest that person (note **citizens have narrower scope- can't arrest for past crimes**)

## Judicial Remedies:

**Damages** → Available in most tort actions. Damages are usually awarded in order to return the claimant to the position they would have been in had the tort not taken place (corrective justice)

**General (non-pecuniary)** damages are awarded for non-monetary harms. They aim to compensate the claimant for things like pain, suffering, loss of amenity (reduction in one's ability to do something), disfigurement, loss of enjoyment of life, etc → It is meant to symbolically reassert the position of the plaintiff.

**Special (pecuniary)** damages are awarded for monetary losses. They aim to compensate the claimant for the quantifiable monetary losses suffered as a result of the tort

→ Compensate hospital bills, lost earnings, cost of repairing or replacing damaged property

→ Can be: nominal damages, compensatory damages, aggravated damages, punitive damages, or disgorgement (restitutionary) damages.

**Nominal Damages (The Mediana):** Nominal damages is a technical phrase meaning that you have negated anything like real damage, but you are affirming by your nominal damages that there is an infringement of a legal right which, though it gives you not right to any real damages at all, yet gives you a right to the verdict or judgment because your legal right has been infringed. Mainly symbolic.

**Aggravated Damages (Vorvis v ICBC):** Compens.(NOT punitive) damages that recognize that the malicious, high-handed, and outrageous nature of the D's conduct may add a degree of humiliation, loss of dignity, and embarrassment to P.

→ They are awarded to compensate for "intangible emotional injury" where there has been aggravation of an injury by the D's high-handed conduct: (*T.W.N.A. v Clark*)

→ **To award aggravated damages**, the Court must be satisfied that: (1) P suffered some damage to feelings as a result of the tort (2) The D's conduct was not merely tortious, but also highly offensive or repugnant

→ Courts will tend to infer (1) from (2) if particularly outrageous, assume feelings injured

→ Aggravated damages are compensatory in nature and may only be awarded for that purpose

**Punitive Damages (Vorvis)-** According to Vorvis:, punitive damages are "punitive in nature and may only be employed in circumstances where the conduct giving the cause for complaint is of such nature that it merits punishment" **backwards looking.**

→ This reflects the traditional approach to punitive damages taken by Canadian courts, which have tended to limit punitive damages to situations where D's conduct warrants punishment

→ Punitive damages has having a **deterrence** function?

→ As a general rule, punitive damages are **awarded very rarely**, and only if the award of compensatory and aggravated damages is insufficient to punish the D.

**B(P) v B(W) (1992 Gen. Div.):** If courts aim to draw particular attention to something, may distinguish b/w non-pecuniary and aggravated damages. Where tortious acts are also criminal, and conduct has already been sanctioned, awarding punitive damages would amount to double jeopardy.

→ Aggravated damages may be taken into account in overall assessment of non-pecuniary general damages, but where there is a gross breach, it will be dealt with separately for symbolic purposes

**(Whiten v Pilot Insurance) Binnie on punitive damages:** not limited to certain cases/scenarios. May be awarded to punish, deter, or denounce the D (and others), or strip D of profits

→ awarded where D's conduct merited condemnation by the Court

→ only very serious misconduct warrants punishment or deterrence – and therefore punitive damages

→ That D may also have received a criminal sanction doesn't preclude punitive damages

→ Should be used w/ restraint- only if compens~ and aggravated damages are insufficient to punish D

→ No cap, but award must be based on the underlying goal. IT should be the lowest sum necessary to goal

**Aggravated vs punitive damages:** aggravated damages as a part of compensatory damages; compensatory is for the tangible loss, aggravated damages part is for the intangible/additional losses such as feeling/emotional states; Punitive damages can only be awarded if D's conduct is vindictive, malicious, spiteful, etc.

**Disgorgement Damages-** aim to strip Ds of any of the benefits they obtained from their own wrongdoing (eg. that they wrongfully acquired)

**Injunctions:**

**Prohibitive-** requires a person to stop doing a particular act

**Mandatory:** requires person to do a particular act. Similar to order of specific performance in K law.

→ Failure to comply with an injunction places a person in contempt of court, which may lead to imprisonment. It is typically granted in cases of nuisance, or where there has been some sort of ongoing trespass to land/chattels.

These are **equitable remedies**, so they are subject to the principles of equity.

→ Remedy is discretionary: Court is not obliged to impose an injunction, even where there is liability

→ Clean hands principle: court will not assist a claimant who is himself in the wrong or acting for improper motives

→ An injunction will not normally be granted where damages would be an adequate remedy

**Order of Specific Restitution:** Court makes an award that aims at preventing someone from profiting from a wrong. The profit may exceed the amount that would have been paid in damages

**Extra-Judicial Remedies**

**Recapture of Chattels-** P allowed to use reasonable force to regain or recapture his personal property when D tortuously took the chattel from P's possession, or obtained it as a result of duress or fraud

**Re-entry onto land-** P is allowed to use reasonable force to re-enter land where D has, by way of trespass, entered and taken possession of land

**Abatement of nuisance-** P may use reasonable force to prevent or stop a nuisance

→ Must be exercised w/i a reasonable time, and that the P should give notice to D

→ P is obliged to avoid any unreasonable or unnecessary damages

**Apportionment of Fault in Intentional Torts**

- Most provinces introduced legislation in negligence actions so that losses are divided between P and D, depending on their degrees of fault
  - May apply to intentional torts as well - P's or D's damages reduce if they were also contributorily negligent
  - **Boma Manufacturing** court ruled that contributory negligence could not apply to strict liability torts, though its not certain if this means all intentional torts and that "apportionment legislation" shouldn't apply
    - Later clarified in *Cowles v Balac*, contributory negligence could be a defence for strict liability torts
  - apportionment applies when 2+ parties contributed/cause same loss/injury
- Where damages have been caused or contributed to by the fault or neglect of two or more persons, the court shall determine the degree in which each persons is at fault or negligent and indemnify each in the degree in which they are respectively found to be at fault or negligent.
- The apportionment legislation only applies when two or more parties have caused or contributed to the same loss or injury → the issue is often framed in terms of whether the loss or injury is "indivisible".