A defendant can only be held liable for an intentional tort if his/her conduct is both **voluntary** and **intentional**.

* ***Smith v Stone***—case where person was carried onto land, but without their consent
  + Ratio—without volition there cannot be intent
* **intent**—an actor’s desire to bring about the results/consequences of his actions
  + imputed/constructive intent—situation where defendant didn’t’ desire the consequences to occur, but they were substantially certain to result from his act
  + transferred intent—2 kinds
    - when a defendant intends to commit an intentional tort against one person, but unintentionally commits an intentional tort against someone else (plaintiff)
    - when defendant intends to commit one type of intentional tort against the plaintiff, but unintentionally commits another
  + hard to prove subjective mindset, context and timing are important
* **motive**—reason behind human action. Not necessary to show motive, but may help to show intent
  + duress—traditionally can mitigate damages, but won’t get rid of tort
    - ***Gilbert v Stone***—guy steals horse because armed men threatened to kill him if he didn’t, not a defence, judgment for the plaintiff
* **provocation**—intentional response to an awful act/insult to which they instinctively responded
  + mitigating factor, generally not a defence
  + ***Miska v Sivek***—incident causing provocation must have occurred suddenly before the attack
* **mistake**—when defendants intend that consequences of their acts, but the consequences have a different factual or legal significance than that contemplated
  + mistake of fact—by definition has no effect on the issue of intent, can be relevant to proving a lack of intent
  + mistake of law—not a relevant defence (policy reasons) but can be relevant in considering damages

**BATTERY**—(1)Intentionally (2)violating the physical integrity of another person (3)in a way that a reasonable person would consider harmful or offensive

* intent in this case is just the intent to interfere with personal autonomy, and is not limited to the intent to bring about further consequences
* ***Bettel v Yim***—if the defendant is guilty of deliberate, intentional and unlawful violence (or threats of violence), and a more serious harm befalls the plaintiff than was intended by the defendant, the defendant, and not the innocent plaintiff, must bear the responsibility for the unintended result.
* ***Non-Marine Underwriters, Lloyd’s of London v Scalera***—in a sexual battery case (as in a regular battery case) the defendant must prove consent as a defense, lack of consent is not an element of the tort that needs to be proved by the plaintiff

**ASSAULT**—the (1)intentional (2)creation of the reasonable apprehension of **imminent** harmful or offensive contact

* cannot be a conditional threat, but could be about the future if unavoidable
* ***Krawczyk v Peter Kiewit Sons***—cannot use the defense of consent, to say so may reverse the onus of proof

**TRESPASS TO LAND**—the direct and (1)intentional physical (2)intrusion onto the land of another person

* intent is limited to intent to do the conduct, you could still be guilty of trespass if you didn’t know you were trespassing
* ***Entick v Carrington***—if the state trespasses on someone’s land, they must show “by way of justification, that some positive law has empowered or excused him”
* ***Turner v Thorne***—a trespass can be committed by the presence of a structure/chattel/thing which and actor has tortuously placed on the land
  + mistake of fact not a relevant defence
* ***Harrison v Carswell***—SCC decision split 6:3
  + majority—statute says that any person who trespasses on the property of another, and has been requested by the owner not to enter, is guilty of an offence, if the law is to be changed it is up to the legislature
  + dissent—considerations that underlie the protection of private residences cannot apply to the same degree to a shopping centre . . . those amenities are closer in character to public roads and sidewalks than to a private dwelling

**FALSE IMPRISONMENT**—(1)intentional and (2)complete restriction of liberty

* ***Bird v Jones*** (1845)—case where person couldn’t go forward on road, but could go any other direction
  + confinement must be complete, no reasonable means for escape
* ***Campbell v SS Kresge Co***—case where police officer working at department store stopped a woman from walking away from the store by using his police badge and suggesting that an embarrassment if non-compliance
  + can be psychological imprisonment, test: do you feel like you could reasonably walk away?
* ***Herd v Weardale Steel, Coal and Coke***—a man chooses to go down into the mine where he works, and once in the mine he refused to work and demanded to be brought up to the surface
  + you can consent to false imprisonment if you go into a situation knowing that you are expected to stay in that situation for a certain amount of time
* ***Ward v City of Vancouver***—justification for initial investigative detention, not grounds for arrest
  + arrest
    - reasonable and probable grounds that someone has committed or is about to commit a crime, both subjective and objective test
  + investigative detention—can detain someone so they have time to figure out what’s going on
    - reasonable suspicion—lower threshold than for arrest

**MALICIOUS PROSECUTION**—(1)proceedings must be initiated by the defendant (2)proceedings terminated in favour of the plaintiff (3)absence of reasonable and probable cause (4)malice, or a primary purpose other than carrying law into effect

* ***Nelles v Ontario***—part 3 has both subjective and objective tests, part 4 incompetence is not malice
* ***Miazga v Kvello Estate***—part 3 is now only objective, although absence of subjective belief can be one factor weighing in favour of malice, but it is not in itself enough to show malice
  + subjective belief not required at all

**INVASION OF PRIVACY**—currently in BC there is legislation, the *Privacy Act*: (1)It is a tort, (actionable without proof of damages) for a person, willfully and without a claim of right, to violate the privacy of another (2)A person is only entitled to a reasonable nature/degree of privacy (3)in determining whether privacy has been violated, must look at nature/incidence/occasion/relationship between parties (4)eavesdropping or surveillance is a violation of privacy regardless of trespass

* ***Motherwell v Motherwell***—tort of private nuisance—undue interference with the comfortable and convenient use of land—based on the idea that you could not tell who was phoning you until you answered
* ***Hollinsworth v BCTV***—video of man getting hair surgery was played on public TV without his permission, plaintiff was awarded damages from doctor’s company and person who assured BCTV that they could use video, but claim against BCTV was dismissed because there was no evidence that they had known or should have known that the video was confidential
  + **willfully**—“intention to do an act which the person doing the act knew or should have known would violate the privacy of another person”
  + **mistake of fact**—court says that they may, in future, look into test of honest but reasonable mistake of fact
* ***Watts v Klaemt***—under *Privacy Act* of BC, it is reasonable to expect telephone conversations in your home are private, regardless of ease of access, defendant took several steps to invade privacy including duration, recording and sharing the information.
  + judge said it was not justified as being incidental to protecting himself as he went too far
  + ***ex turpi causa***—court will not assist a plaintiff whose action arises out of a legal or immoral act, but that this doctrine would only be applicable if plaintiff used that confidential information to procure a benefit and then sued to recover a benefit
  + court says that she consented to her loss of job because she had knowledge of risk

**consent**—a defense to intentional torts that must be proved by the defendant

* ***Wright v McLean***—implied consent, where defendant was invited to join game by others and there was no ill will, a reasonable mistake of fact (didn’t know there was a rock in the mud), and was within the scope of what could be expected for this activity, this is implied consent and a complete defence
* ***Agar v Canning***—there is a point where an activity becomes so dangerous that you cannot consent to it, and injuries inflicted in circumstances that show a definite resolve to cause injury
* fraud—will only vitiate consent if it relates to the nature and quality of the act, instead of collateral matter
* ***Norberg v Wynrib***—no consentsd where there is power imbalance and exploitation of drug addiction

medical consent—medical procedures without consent are considered battery

* ***Marshall v Curry***—3 principles:
  + where there is an opportunity to obtain consent it must be had
  + consent can be express or implied, if patient says no, no implied consent, compliance is not consent
  + consent may be implied from the conversation preceding operation or antecedent circumstances
    - was unanticipated, and removal was necessary to save life, “despite the absence of express and possibly implied consent”
* ***Malette v Shulman***—case where unconscious lady was Jehovah’s witness and card in her wallet said that she wouldn’t accept blood donation, doctor gave her blood donation anyway
  + doctor tried to argue that she was not informed of the risks of refusing blood, court said no such thing as informed refusal
* ***C v Wren***—at common law, so long as minors are capable of understanding the nature/risks of the proposed treatment, there is no specific age limit on consent

**Self defence**—3 central factors, all considered both subjectively and objectively, important way of limiting defence

1. honest and reasonable belief that you are subject to battery or that you are about to be subject to battery
2. no reasonable alternative to the use of force
3. the force used is reasonably proportional to the battery

* ***Wackett v Calder***—only issue is whether the blows by the appellant were more than reasonably necessary
  + trial judge said yes, majority of court of appeal said no
* ***Pollard v Simon***—you can strike first and still plead self defense, and can’t just look at level of injury to determine whether too much force was used.

**DEFAMATION**—(1)statements were defamatory (2)statements referred to the plaintiff (3)statements were published

* ***Sim v Stretch***—a case where a reasonable meaning is harmless, and the defamatory meaning can only be given by inventing a state of facts that are undisclosed and untrue🡪statements not defamatory
* ***Knuppfer v London Express Newspaper***—2 part test for whether statements refer to plaintiff:
  + Law: is it objectively capable of referring to the plaintiff? (if no, no defamation)
  + Fact: does the article, in fact, lead reasonable people, who know the plaintiff, to the conclusion that it does refer to him
* ***Crookes v Wikimedia***—hyperlinks are only defamatory if they repeat the defamatory statement

**justification**—the truth defense, works if the “sting” of the statements are true even if the comments themselves not perfectly accurate

* ***Williams v Reason***—the defendant’s calling the plaintiff a “shamateur” was justified because he took boot money even though the plaintiff said it was because of the book he was writing—the “sting” was true, facts were not exactly

**absolute privilege**—immunity conferred to anyone involved in a judicial or quasi-judicial proceeding, and includes proceedings leading up to and following the trial, and is not defeated by malice

* ***Hung v Gardiner***—complaint maid to law society was privileged even though they did not begin judicial proceedings because of it

**qualified privilege**—situations where (1) the speaker has an interest or duty to make the statement and (2)the recipient has a reciprocal interest in receiving the statement (3)defeated by malice

1. applies where statements are made by the defendant to protect his/her own interests
2. applies where defendant publishes statements to protect the interests of another person
3. applies to communications made in the furtherance of common interest
4. applies to communications made in the protection of the public interest

* ***Hill v Church of Scientology***
  + qualified privilege can be defeated when the limits of the duty or interest have been exceeded

**fair comment**—comment is (1)on a matter of public interest (2)based on fact (3)recognizable as comment (4)objective test—could any man honestly express that opinion on the proved facts (5)defeated by malice

* ***WIC Radio Ltd v Simpson***—fair comment defense succeeds

**responsible communication**—defendant must show that (1)publication was on a matter of public interest and that (2)publication was responsible in that he/she was diligent in trying to verify the allegations having regard to all the relevant circumstances

* ***Grant v Torstar Corp***
  + public interest—judges don’t draw a clear line between what is and is not public interest
  + was publication responsible—principled approach, no natural hierarchy, just weigh all the factors
    - seriousness of allegation—the more serious, the higher the degree of diligence
    - the public importance of the matter—what’s reasonable varies on the situation
    - the urgency of the matter—the more urgent, the lower the expectation
    - the status and reliability of the source—the less trustworthy the source, the greater need to verify
    - did you try to get the other side of the story
    - was the inclusion of the defamatory statement justifiable—generous scope
    - reportage—exception to the repetition rule🡪where the public interest lies in whether the statements were made, not whether they were true/false