**1. The Intent Requirement**

**I The meaning of Intent**

*Garratt v. Dailey*🡪 5yo pulls chair; no assault/ bat (no intent); Intent = purpose/ knowledge w/ substantial certainty

*Carnes v. Thompson*🡪 unlawful blow; Intent is transferred

*Smith v. Stone*🡪carried onto land; trespass must be voluntary

*Basely v. Clarkson*🡪Mistakenly cut grass; intent to break law irrelevant, intent to act is; Cook v. Lewis

*Gilbert v. Stone*🡪Threatened by 12 armed men; duress is no defence (can mitigate damages)

**II. Capacity: Youth**

*Tillander v. Gosselin*🡪3yo drag baby; no inten tort b/c D not understand nature/consequences of actions

*Pollock v. Lipkowicz*🡪13yo N acid; D G battery; could reasonably know consequences; no malice (punitive)

**III. Capacity: Mental Abnormality**

*Gerigs v. Rose*🡪cop enters gun wielder house, shot; no mental incap; D must be unaware of consq aim&pull trigger

**2. The Forms of Action-Trespass and Case**

*Cook v. Lewis*🡪2 hunters fire, man hit; clear trespass, uncertain who; onus on Ds to show harm not intent/negligent; if can’t prove who & both negligent, both liable

*Fowler v. Lanning*🡪P said “he shot me”; P must show inten/negl; uninten shootng now negl (not trespss anymore)

*Larin v. Goshen*🡪D ref, P “battery”; in trspss (where P proves D injured) onus on D to prove no intent & neg

**3. Battery and Assault**

**I. Battery**

*Cole v. Turner*🡪 Least touching of another in anger = battery

*Fillipowich v. Nahachewsky*🡪P herds cattle pound; defence must be proportional; joint tortfea=common purpose

*Bruce v. Coliseum Mgmnt*🡪D kicked P from club (trspss, self-D); provocation no def to batt (mitigates damage)

**II. Assault**

*I. de S. and Wife v. W. de S*🡪D tried to punch P, missed; still assault b/c threat of harm (not actual harm for assault )

*Stephens v. Myers*🡪D advance to P, stopped; assault tho not in touch distance; sufficiently imminent, apprehension

*Tuberville v. Savage*🡪 P *if not assize*; D stabs; not self-D b/c no assault to look threat while say no int imnnt harm

*Bruce v. Dyer*🡪road rage P cuts D off; D punches glass jaw P; force used in self-D v. assault ok if proportionate

*M(K) v. M(H)*🡪incest dad; told people but no counsel til 20s; statute limits exp?; no, reasonable discoverability

**III. Remoteness of Damage**

*Bettel v. Yim*🡪 shopkeeper hurts P, intending harm but not such harm; this is battery, thin skull

**IV. Damages**

*Holt v. Verbruggen*🡪 Hockey, P slash D, D break P arm; battery/implied consent? No, provocation reduce damages

*Y(S) v. C(FG)*🡪 Sexual abuse; high compens, agg, punitive; No cap for sex assault but $ relative; punitive to deter

**4. Intentional Infliction of Mental Suffering**

*Wilkinson v. Downtown* 🡪D joke-your hus in accident; Action (lie) & Intention (of consequence) by D, Harm to P

*Wainwright v. Home Office* 🡪bad strip search; batt, invsion priv, inten inflic mntl; latter show intnt (sloppy)& physical symptoms (none); batter only

**5. False Imprisonment**

**I. What constitutes Imprisonment or Arrest**

*Bird v. Jones*🡪 D blocked bridge, P could go back; only imprisonment if totally confined in boundaries

*Chaytor v. London*🡪 P price checking/ shopping; D turns over to Police; free but psychological imprisoned

*Murray v. Minister of Defence*🡪 P held prisoner w/out knowing; actionable, don’t have to be aware of imprison

**II. Legal Justifications: Enforcing the Criminal Law**

*Lebrun v. High-Low Foods*🡪suspicious shopper, D tells police P shoplifter, police search car; D gave bad info so police not liable but D liable for false imprison P (consent but fear: alternative w/ police? Authority?)

*Bahner v. M Hotel*🡪German wino won’t pay; inten detain in flse belief crime=false imprisn; mistake law no excuse

*Hudson v. Bratford Police*🡪D arrest P, failed stay at accident; flse imprison (mistake of law); s25 if mistaken fact

*Koechlin v. Waugh*🡪2 boys stopped ID’ed by police, one refuses, police arrest; no reas grounds thus false imprison

**6. Abuse of Legal Procedure**

**I. Malicious Prosecution**

*Casey v. Automobiles Renault*🡪 P store cars for D, sold & didn’t pay; D information; MP when arrest/ information

*Watters v. Pacific Delivery*🡪 4 elements MP: prosecution, prosecution fails, absence reas/prob grounds, malice evidnc

*Nelles v. Ontario*🡪 P charged murder infants, discharged; absolute immunity for crown, not AG & agents

*Norman v. Soule*🡪 MP in civil? No malicious prosecution in civil, restricted to criminal

**II. Abuse of Process**

*Grainger v. Hill*🡪 P mortgaged ship to D; P arrested to force return; abuse of process: inten use legal for alterior

*Guildford Ind v. Hankinson*🡪bad buildr D; lien 2prevent P sell; blackmail-sttlmnt; AOP:D threat improper courts

*Pacific Aquafoods v.Koch*🡪D counter-claim AOP;AOP must show suit w/inten alt motive;

**6.1 Misfeasance in Public Office**

*Odhavji Este v. Woodhouse*🡪police kill; MPO = pub official, deliberate unlawful, aware unlawful & injurious to P

**7. Trespass to Land**

*Turner v. Thorne*🡪Deliver-man mistake address, leaves boxes, P injures; negligence & trespass (despite mistake)

*Costello v. Calgary*🡪improper expropriation; P sue trespass, city says “tech”-uninten; intent not issue in trespass

*Anderson v. Skender*🡪D cut (on P ppty) P trees extend to D ppty = trespass; physical proof; nuisance allows trim

**10. Defences to Intentional Torts**

**I. Consent**

**A. The need for Consent**

*Mulloy v. Hop Sang*🡪D injure hand; expressed refus dr to amputate (at peril); D counterclaim trspss to person wins

*Malette v. Shulman*🡪Jehova P card refse bld; doc transf; exprs refusl 2 batt must comply; no infmd cnsnt dsnt=cnst

*Marshall v. Curry*🡪hernia surg, dr D remve tstcle; no batt&trspss b/c emerg dr. preserve life&health, consnt imprac

**B. Informed Consent**

*Halushka v. U of Sask*🡪P rsrch trial almost dies; not fully informed of risk; batt b/c consent must be informed

*Reibl v. Hughes*🡪surg to remove art block; P stroke (unknown risk); negl if consent; batt no consent; modified obj test: reas person conset “if u told me, would’ve refused”?

*Arndt v. Smith*🡪chickpox while preg; disable child; sue D dr (would’ve refused); no, she wouldn’t have refused

*Van Mol v. Ashmore*🡪16yo surg, paralyzed, D doc didn’t get consent; reas person tst: would have selected safeguards; surg not negligent but negligent re informed consent of minor able to make decision

**C. Improperly Obtained Consent**

*Norberg v. Wynrib*🡪Doc gives drugs for sexual; D says implied consent; no consent w/inequal: unequal& exploit

**II. Self-Defence and Defence of Others**

*Cockroft v. Smith*🡪D bites off P finger in fight; D self-D? No, mayhem (trespass) b/c self-D force not proportionate

*MacDonald v. Hees*🡪P enters room thinks invited but not; D says self-D; not b/c force not necess or porportionate

*Gambriell v. Caparelli*🡪P strangling D son; D harms P; force in defence ok if reas: necessary & proportionate

**III. Defence of Property**

*Green v. Goddard*🡪if someone forcibly enters your land, may use force in turn

*Bird v. Holbrook*🡪P chases fowl over fence, shot by sprng gun; not legit def of prop; can’t do indirect what can’t do direct; intent of gun to harm not deter

**IV. Necessity**

*Dwyer v. Staunton*🡪snow rd close; D drives on P prop (P says not to); no trespass b/c pub good>prop right

**V. Provocation of Wrongdoer by Injured party**

*Bruce v. Coliseum Management*🡪see previous

*Holt v. Venbruggen*🡪see previous

**11. Defamation**

**I. Slander Distinguished from Libel**🡪libel to sight (written), slander to ears (spoken); libel damage presumed; slander must prove (loss of friends, money)

**II. Elements of Defamation**

**A. Defamatory Matter/ communication**

**B. Reference to the Plaintiff**🡪 “published of & concerning P…”

**C. Publication**🡪 communication/ statement to at least 1 person who isn’t the defamed (e.g. 2 people talking to ea other and one calls other a liar, not defamation) 🡪 once publish proved, onus on D to prove truth

*McNichol v. Grandy*🡪D slander P, overheard; publication when >1 hears; onus on P prove pblcation: defame, about P, published; D liable prma fcie, must prove: no inten publish & not neg/recklss; pblication even if careless

**III. Defences**

**A. Justification/ Truth**🡪 D must prove true BOP, if can’t prove true, aggravated b/c defamation “republished”

**B. Absolute Privilege**🡪communication of extreme importance, even if outrageous, malicious

1. Parliamentary privilege

2. Lawyer-client privilege

3. Communications between officers of state

**C. Qualified Privilege**🡪 conditional immunity if made w/out malice;

-malice will rebut

-must be honest

-reciprocity: communicator has interest (legal, social, moral) to communicate to person & person has duty to receive (or communicator has duty, recipient has interest or both have common interest in making & receiving)

1. Documents before parliament

2. Reports of parliamentary proceedings

3. Reports of Court proceedings

4. Special relationship between publisher and recipient

*Jones v. Bennett*🡪 Prm BC defame P; no priv, aware reporters present=publish to world; if priv, defeated by malice

*Hill v. Church of Scientology*🡪 lawyer D defame lawyer P, knew false; D covered by qualified priv but malice vitiate; privileged where communicator has interest/ duty to receiver (who has interest/duty)

6. Fair and Accurate Reports of Public Meetings🡪right of citizen to comment on public interest. Must be:

-public interest – judge decides

-expression of opinion, not fact

-comments rest on fact

-no malice

-publisher honestly believes

**D. Fair Comment**

*Vander Zalm v. Times Publishers* 🡪 Cartoon VZ pick wings off flies; fair commnt, test – pub believed

*Moises v. CDN Newspaper*🡪defamed D “terrorist”; no qualified priv for P (no reciprocal duty-interest)

**C. Consent**

**D. The Palliatory Defence of Apology**

**IV. Damages**

*Hill v. Church of Scientology*

*“Torts” a “Poem” by Alisa Bell*

*Intent is purpose or knowledge with certainty*

*Since young Dailey had none at all,*

*No tort of assault bent Garratt’s fall*

*Intent may be transferred*

*As with an unlawful blow*

*This is what Carnes to Thompson did show*

*When carried unwilling*

*As Stone said he’d been*

*No trespass to land did Stone to Smith sin*

*His intent to cut grass*

*But not break the law*

*Was Clarkson’s mistake when he trespassed the lawn*

*Poor Mr. Stone, surrounded by thugs*

*Was a trespasser in duress?*

*Yes! But a trespassed no less*

*When 3 year old Gosselin dragged baby by hair*

*With consequence-understanding unknown*

*No intentional tort was shown*

*But 13 year old Lipkowicz*

*Knew the acid would hurt*

*When he battered Pollock with an acid squirt*

*Mental incapacity was his pretence*

*When Rose shot a cop*

*But his knowing the consequences made his defence flop*

*When 2 hunters trespassed by firing*

*As poor Lewis learned*

*The onus to show no intent or negligence is what the hunters earned*

*Fowler said, “He shot me!”*

*But must show intention or negligence*

*As unintended shooting isn’t trespass, it’s negligence*

*In trespasses like battery*

*Where Larin proved it was Goshen*

*The onus to prove no intention and negligence was on Goshen*

*In Cole v. Turner*

*We learn that the least touching of another in anger*

*Is to battery, no stranger*

*When your cattle are herded*

*Off to the pound*

*Don’t go punching the herder with a disproportionate pound*

*When Bruce was kicked form the club and hurt*

*Provocation was no defence*

*But it mitigated damages, what was compensed*

*The wife was assaulted*

*When she opened the door*

*And feared W de S’s punching fist, which missed its score*

*And also did Myers*

*When not in grasping reach*

*Assaulted Stephens, whose apprehension Myers beseeched*

*When Savage stabbed Assize man*

*He said he’d faced assault*

*But the court saw no threat and found Savage at fault*

*When Dyer punched Bruce*

*His glass jaw unbuckled*

*But the assault made the punch a proportionate scuffle*

*The incestuous dad*

*Said the statute of limitations had passed*

*But reasonable discovery meant the statute would last*

*Shopkeeper Yim intended to harm*

*And with this intent*

*Battered Bettel to a thin skull extent*

*Poor hockey Holt*

*Had his arm broken*

*But Holt’s provocation meant the damages weren’t smoking*

*There’s no cap*

*For abuse of the sexual kind*

*But relative damages are what you’ll find*

*Practical jokes are all fun and good*

*But his harm and intention*

*Leaves Downtown’s joking days in suspension*

*For intentional infliction of mental suffering*

*The strip search wasn’t enough*

*It was just sloppy and caused no emotional fuss*

*When Jones blocked a bridge*

*Bird wasn’t totally confined*

*Thus imprisonment wasn’t what the court would find*

*The price checkers were apprehended*

*But were free to go*

*But imprisoned, psychologically, they did not of freedom know*

*Murray unaware*

*Was imprisoned – unfair!*

*This is actionable because of freedom courts care*

*Misinforming the police*

*Like a suspicious storeowner did*

*Leaves the storeowner liable for false imprisonment committed*

*The German wino who wouldn’t pay*

*Was falsely imprisoned for a crime that didn’t exist*

*A mistake of fact is ok but not law, that’s the twist*

*When Hudson was arrested at home*

*For fleeing an accident he’d seen*

*A mistake of law was made thus falsely imprisoned he’d been*

*Two boys were stopped for ID*

*One refused and was arrested*

*With no reasonable grounds, false imprisonment he contested*

*Malicious prosecution*

*Can happen to you*

*If an arrest or information is served on you*

*The four elements of this*

*Seem to be tailored:*

*No reasonable grounds, malice, prosecution, its failure*

*When Nelles was discharged*

*From murdering toddlers*

*The AG, not Crown, was malicious prosecutions fodder*

*But Malicious prosecution*

*Norman could not prove*

*In Civil, malicious is not generally sued*

*Abuse of process was found of Hill*

*When his intentional use of legal for devious was contested*

*By poor Grainger who he’d had, to return his ship, arrested*

*Bad builder Hankinson*

*Used a lien and improper threat as his forces*

*Which the court called abuse of process*

*In Koch’s counter claim of the same*

*No such shame*

*Without intention of ulterior motive could he claim*

*When the police killed a man*

*Misfeasance in public office was found*

*With deliberate unlawful and awareness of harm around*

*Delivery man Thorne*

*With addresses mistaken*

*Was not to negligence or trespass forsaken*

*Expropriated improper*

*The city cried “unintentional” makes the trespass technical*

*The court disagreed with the city’s spectacle*

*While nuisance allows the cutting of trees*

*Make sure not to be caught*

*Cutting on your neighbours lot*

*Expressly refusing amputation*

*At great peril no less*

*Is, if ignored by the doctor, a case in trespass*

*The Jehova’s card*

*Showed refusal to battery transfusion*

*No informed consent equaling consent is an illusion*

*It seems that in operating on a hernia*

*To preserve life it’s ok to remove a testicle*

*It’s not battery or trespass if in saving life consent is impractical*

*Not fully informed of the risk*

*Halushka joined an anesthetic trial*

*Where he was battered vile*

*Suffering a stroke in surgery*

*He was battered with lack of consent to prove*

*And the objective test, “if you told me, I would have refused”*

*She had chicken pox when pregnant*

*But she couldn’t blame the doctor or prove*

*That she wouldn’t have, with knowledge, refused*

*The doc who paralyzed the 16 year old boy*

*Should repent*

*For his negligence in not getting informed consent*

*Seedy doc Wynrib gave drugs for sex*

*Then argued consent implied – for real*

*The court said unequal, exploiting, no deal*

*When Smith bit a finger in a fight*

*He claimed self defence*

*But his bite was disproportionate so the claim made no sense*

*Hees wasn’t pleased to see MacDonald*

*In his hotel room at night*

*And the beating he gave, not necessary or proportionate, wasn’t his right*

*The driver who wanted to strangle the boy*

*Met the reasonable protection of his mom*

*Which was necessary and proportionate to protect her son*

*If someone forcibly*

*Enters your land*

*You may use force to eject him; fight with your hand*

*When chasing a fowl over a fence*

*Bird was shot*

*You can’t do indirectly what direct you cannot*

*No trespass to land*

*Was committed*

*When necessity of storm meant the public benefited*

*Libel is written and slander to the ears*

*But only in libel are damages presumed*

*In slander damages must be prove, they’re not subsumed*

*The elements of defamation are*

*Communication, reference to plaintiff and publication*

*And once published the onus is on the defence to prove the derogation*

*If the plaintiff proves publication*

*Prima facie, the defence must prove*

*Intent to publish wasn’t his move*

*The defences to defamation are clear*

*Consent, fair comment, privilege and justification*

*For the potentially liable false information*

*When the premier defamed Jones*

*Qualified privilege was disallowed*

*He was aware of the press and with malice spoke proud*

*The Churches lawyer*

*Was covered by qualified privilege*

*But malice vitiated his Osgood Hall pilgrimage*

*The Vander Zam cartoon*

*Picking the wings off flies*

*Was fair comment, not defamation, it’s ok to believe lies*

*There was no qualified privilege found*

*When Moises was called a terrorist*

*There was no reciprocal duty-interest*