**Civil Law PPT Guided Notes**

Why Sue?

* Money (damages)
* Justice
* Injunction (Court Order)

Who are the parties?

* Litigants
* Plaintiff (person suing)
* Defendant (people being sued)
* Third parties (people being sued by the defendant)

How do you sue?

* Writ of Summons
* Statement of claim with remedy (relief sought by plaintiff)
* Served on defendant

Balance of Probabilities:

* The weighing of evidence to decide whether the plaintiff’s or the defendant’s version of events is more convincing or likely to be correct.
* different from criminal law where the state must convince the judge beyond a reasonable doubt.

How do you defend?

* Statement of defence
* Counterclaim
* Third party claim

Why can you sue?

* Breach of contract
* Tort - harm caused to a person or property for which the law provides a civil remedy
* Equitable remedy (forced action instead of a fine)
* Statutory standing (ex. Family Law)

Torts

* Harm caused to a person or property for which the law provides a civil remedy
* You can be deemed liable - legally responsible for a wrongful action

-Two Types:

1. Unintentional Torts - Injuries caused by accident or an accident not intended to cause harm (negligence)
2. Intentional Torts - actions intended to cause injury with others

Alternative Dispute Resolution: Settling out of Court

* Negotiation: between the 2 parties, no third party is required
* Mediation: a third party is there to bring the opposing parties to an agreement. This isnt always voluntary. This is often quicker, cheaper and more private than the courts.
* Arbitration: a neutral third party hears both sides of the dispute and makes a binding decision. Usually is quicker and cheaper than court and is a compromise rather than a win-lose as in court.

**Law 12: Tort Law - Civil Law PPT Guided Notes** Name:

Why Sue?

* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Justice
* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Who are the parties?

* Litigants
* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Defendant (people being sued)
* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

How do you sue?

* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Counterclaim
* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Balance of Probabilities:

* The weighing of evidence to decide whether \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ version of events is more convincing or likely to be correct.
* different from criminal law where the state must convince the judge \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

How do you defend?

* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Counterclaim
* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Why can you sue?

* Breach of contract
* Tort:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Statutory standing (ex. Family Law)

Torts

* Harm caused to a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for which the law provides a civil remedy
* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

-Two Types:

1. Unintentional Torts - \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (negligence)
2. Intentional Torts - \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Alternative Dispute Resolution: Settling Out of Court

* Negotiation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Mediation: a third party is there to bring the opposing parties to an agreement. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Arbitration: a neutral third party hears both sides of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Intentional Torts:**

* A tort is a harm for which the law provides a “civil remedy”
* Something someone else does that you can sue them for
* Actions that cause intentional injury to another person or their property
* Often these are also crimes
* The harmed person can sue, apart from any criminal proceedings

Types of Intentional Torts

* Interference with the person
	+ Assault
	+ Battery
	+ False imprisonment
	+ Malicious prosecution
	+ Intentional infliction of nervous shock
	+ Invasion of privacy
* Interference with property
	+ Trespass to land
	+ Nuisance
	+ Trespass to chattels

Assault

* Words or actions that case a *reasonable* belief that the person intends to case imminent harm
* Belief must be genuine
* Belief must be reasonable
* Can sue even if no harm is caused

Battery

* Intentional harmful or offensive contact with another person without their consent
* Sub-categories
	+ Sexual abuse (ex. FH v. McDougall 2008, p446)
	+ Medical battery
		- Emergency consent

False Imprisonment

* Detaining a person without consent or legal authority
* Most commonly occurs in store arrest cases

Malicious Prosecution

* Charged with a crime with no reasonable grounds
* Motive must be malice or a desire to harm
* Criminal proceedings must be resolved in the defendants favour
* Defendant must have suffered damages

Intentional Infliction of Nervous Shock\*

* Deliberately shocking someone through words or actions
* Shock causes victim to suffer mental or physical harm
* Wilkinson v. Downton 1897, p448

Invasion of Privacy

* Filming or observing someone without their consent in a place where they have a reasonable expectation of privacy
* Does not apply to public places
* Does apply to homes and washrooms
* Governed by the *Privacy Act* in BC
* LAM v. JELI 2008, p449

Interference with Property:

-Trespass to land

* Intentionally entering onto another person’s land
	+ Without permission
	+ Without legal authority
* OR staying after being asked to leave

Nuisance

* Unreasonable interfering with another person;s right to “enjoyment of their property”
* Must be more than transitory

Trespass to chattels\*

* Intentionally interfering with someone’s private property (ex. possessions)
* If deprived of it, even temporarily, it becomes conversion (tort equivalent of theft)

Defences to Torts

* Very similar to criminal law
* Defences to interference with the person
	+ Consent
	+ Self defence
	+ Defence of a third party
	+ Legal authority
* Defences to interference with property
	+ Consent
	+ Legal authority
	+ Statutory authority (with respect to nuisance)

Defamation of Character

* Defamation means injuring a person’s reputation of “good name” by spreading untrue and damaging information about them
* Two types
	+ Slander
		- Defaming someone through oral statements or gestures
	+ Libel
		- Defamation in permanent form - usually in writing

Defences to Defamation

* Truth
* Fair comment
	+ Personal opinion on a matter of public interest
	+ Must be fair
	+ Must be made without malice

**Intentional Torts:**

* A tort is a harm for which the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Something someone else does that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Actions that cause \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or their property
* Often these are also \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* The harmed person can \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Types of Intentional Torts

* Interference with the person
	+ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
	+ Battery
	+ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
	+ Malicious prosecution
	+ Intentional infliction of nervous shock
	+ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Interference with property
	+ Trespass to land
	+ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
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Assault

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* Can sue even if\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Battery

* Intentional \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with another person without their consent
* Sub-categories
	+ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (ex. FH v. McDougall 2008, p446)
	+ Medical battery
		- \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

False Imprisonment

* Detaining a person without \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Most commonly occurs\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Malicious Prosecution

* Charged with a crime with no \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Motive must be malice or a desire to harm
* Criminal proceedings must be resolved in the defendants favour
* Defendant must have suffered \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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* Unreasonable interfering with another person’s right to “enjoyment of their property”
* Must be more than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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	+ Defence of a third party
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		- Defamation in permanent form - usually in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Defences to Defamation

* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Fair comment
	+ Personal opinion on a matter of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
	+ Must be fair
	+ Must be made without malice

**Unintentional Torts:**

* Injuries caused by an accident or an action that was not intended to cause harm
	+ Negligence
	+ Special types of liability
		- Strict liability
		- Occupiers liability
		- Vicarious liability

Negligence:

* Is careless conduct that causes foreseeable harm to another person
* Must prove
	+ Duty of care
	+ Breach of duty
	+ Causation
	+ Damages

Duty of Care:

* You owe a duty to foresee and avoid actions that might cause harm to others
* FORESEEABILITY is key
	+ Also look at as “remoteness”
* Liability Insurance: insurance that covers part or all of the damages awards in a tort case
* Good Samaritan Law: a legal principle that prevents a rescuer who has voluntarily helped someone in distress from being sued if he or she actually causes that person harm - does have some limitations.

Breach of Duty of Care:

* Standard of care is the degree of caution a reasonable person in your position would exercise
* Reasonable person - a person who exercises a sensible level of reason, intelligence and care

Causation:

* The breach must be the “cause in fact” of the damages
* Cause and effect = the “but for” test

Damages:

* Defendant is liable for all damages caused by negligence
* “Thin skull rule” - only liable for hastening of deterioration

Negligence:

* Social and commercial hosts
* Read childs v. Demorneaux p.428

Special Types of Liability

* Occupiers Liability
	+ Invitees & licensees - must ensure property is reasonably safe and warn of dangers
	+ Trespassers - must not set traps or create deliberate dangers or act with reckless disregard
	+ Children - reasonable precautions to protect from allurements
* Vicarious Liability
	+ Employers are liable for the negligence of employees acting within the normal course of their duties
* Strict Liability
	+ If you bring in something dangerous and non-natural onto your property and it escapes and causes damage, you are liable
	+ Cowles v. Balac, African Lion Safari Ltd. p.433
	+ Product liability: deals with negligence on the part of manufacturers
* Defences to Negligence
	+ Contributory negligence: Negligent acts by the plaintiff that helped cause the plaintiff’s injuries
	+ Waiver: a document signed by the plaintiff, releasing the defendant from liability in the event of an injury
	+ Inevitable accident: a defence that claims an accident was unavoidable due to an uncontrollable event (ex. Act of God)