**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
* Served on defendant

How do you defend?

* Statement of defence
* Counterclaim
* Third party claim

Civil Remedies

1. General Damages
   1. Pecuniary p 396
2. General Damages
   1. Non-pecuniary p397
3. Special Damages
   1. Punitive Damages
   2. Nominal Damages p399
4. Specific Performance p400
   1. Injunctions

Why can you sue?

* Breach of contract
* Tort
* Equitable remedy
* Statutory standing (ex. Family Law)

Torts

* Harm caused to a person or property for which the law provides a civil remedy

-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

Intentional Torts: (p441-466)

* Assault
* Battery
* False Imprisonment
* Malicious Prosecution
* Intentional Infliction of nervous shock
* Invasion of privacy
* Trespass to land
* Nuisance
* Trespass to chattels
  + Conversion

Defences to Intentional Torts

* Consent - “Volenti non fit injuria”
  + Voluntary assumption of risk
* Self defence
* Defence of third party
* Legal authority

Defamation of Character

* Injuring a person’s reputation or good name
* Slander - verbal
* Libel - written

Defences to Defamation

* Truth
* Fair comment (honest and without malice)
* Absolute privilege (court and parliament)
* Qualified privilege

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 (Reibl v. Hughes)
    - Emergency consent
    - Malette v. Shulman 1990, p447

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
* Motce 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
    - Volenti non fit injuria
  + Self defence
  + Defence of a third party
  + Legal authority
* Defences to interference with property
  + Consent (Minet v. Kossler p455)
  + 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
* Absolute Privilege
  + Statements made in parliament or in court
* Qualified Privilege
  + Limited protection for statements made without malice in certain relationships
  + Ex. employer reference

Unintentional Torts:

* 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
  + Palsgraf v. Long Island Railroad Co
  + Also look at as “remoteness”

Breach of Duty of Care:

* Standard of care is the degree of caution a reasonable person in your position would exercise
* Reasonable person

Causation:

* The breach must be the “cause in fact” of the damages
* Cause and effect = the “but for” test
* Must not be too “remote”, no “intervening act”

Damages:

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

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
  + At common law, if you bring in something dangerous and non-natural onto your property and it escapes and causes damage, you are liable
  + Rylands v. Fletcher (man-made lake)
  + Cowles v. Balac, African Lion Safari Ltd. p.433

When can you sue?

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