

TABLE OF CONTENTS

Preface	v
Table of Cases	xiii

1. Introduction

1. What is a Tort?	1
2. History of the Law of Torts	1
3. Torts and the Common Law	4
4. The Distinction Between Tort Law and Criminal Law	5
(a) Tortfeasors and Criminals	5
(b) Federal and Provincial Jurisdiction	5
(c) A Criminal Charge	6
(d) A Tort Action in the Superior Court of a Province or Territory	7
(e) A Tort Action in the Small Claims Court of a Province or Territory	9
5. The Distinction Between Tort Law and Remedial Law	10
6. Social Functions of Tort Law	11
7. Elements of a Tort	12
(a) Wrongful conduct of the defendant	12
(b) Causation	13
(c) Harm to the plaintiff	13

2. Levels of Guilty Mentality

1. Introduction	15
2. Subjective Intention	15
(a) Express Intention	15
(b) Recklessness	15
(c) Transferred Intention	16
(d) Implied Intention	16
3. Objective Intention	16
(a) Negligence	16
(b) Strict Liability	17
(c) Absolute Liability	17

Table of Contents

3. Intentional Torts

1. Introduction 19

2. Specific Intentional Torts 19

 (a) Battery 19

 (i) Intention in Battery 19

 (ii) Harmful or Offensive Contact 19

 (iii) Another Person 20

 (b) Assault 20

 (i) Reasonable Apprehension 20

 (ii) Imminent 21

 (iii) Examples of Assault 21

 (iv) The Relationship between Battery and Assault 21

 (c) False Imprisonment 21

 (d) Wrongful Interference with Chattels 22

 (i) Trespass to Chattels 22

 (ii) Conversion 23

 (iii) Detinue 23

 (e) Trespass to Land 23

 (f) Nuisance 23

 (g) Defamation 24

 (i) Libel and Slander 24

 (ii) Defences 25

 (iii) SLAPP 26

 (h) Intentional Infliction of Mental Suffering 27

 (i) Malicious Prosecution 27

 (j) Abuse of Process 28

 (k) Invasion of Privacy 28

 (l) Discrimination and Harassment 29

4. Defences to Intentional Torts

1. Introduction 31

2. Consent 31

 (a) Consent Generally 31

 (b) Consent Must be Freely Given 31

 (c) Medical Treatment and Sports 31

3. Self-Defence and Provocation 32

4. Defence of Others 33

Table of Contents

5. Defence of Property 33
6. Legal Authority 33
7. Necessity 34
8. Limitation Period 34

5. Business Torts

1. Deceit (Civil Fraud; Fraudulent Misrepresentation) 35
2. Inducing Breach of Contract (Interfering with Contractual Relations) 36
3. Unlawful Means 36
4. Injurious Falsehood 36
5. Conspiracy 37
6. Passing-Off 38
7. Intimidation 39
8. Breach of Confidence 39

6. Negligence

1. Introduction 41
2. Wrongful Conduct of the Defendant 41
 (a) Duty of Care 41
 (b) Breach of Duty of Care 43
 (c) The Standard of Care and the Reasonable Person 43
 (d) The Level of the Standard of Care 44
 (e) Meeting the Standard of Care 45
3. Causation 45
 (a) Cause-in-Fact 45
 (b) Proximate Cause or Cause-in-Law 46
 (c) Causation in Difficult Cases 46
4. Harm 48
5. Conclusion 49

7. Proof of Negligence

1. Burden and Standard of Proof 51
2. Kinds of Proof 51

8. Defences to Negligence and Limitations on the Defendant's Liability

1. Introduction 55
2. Limitation Periods 55

Table of Contents

(a) Statutes of Limitation 55
(b) The Discoverability Rule 55
3. Contributory Negligence and Illegality 56
 (a) Contributory Negligence 57
 (b) Illegality, or *ex turpi causa non oritur actio* 57
4. Voluntary Assumption of Risk, or *volenti non fit injuria* 57

9. Special Categories of Negligence

1. Occupiers' Liability 59
 (a) Occupiers' Liability: A Shifting Balance Between the Rights of Occupiers and Entrants 59
 (b) Occupiers' Liability at Common Law 60
 (i) Definition of Occupier 60
 (ii) Classes of Entrants 60
 (c) Duties of Occupiers 61
 (i) Duties Owed to Trespassers 61
 (ii) Duties Owed to Licensees 63
 (iii) Duties Owed to Invitees 63
 (iv) Duties Owed to Contractual Entrants 63
 (d) Occupier Liability Legislation 63
 (i) Definition of Occupier 64
 (ii) Duty of Care Owed to Entrants 64
 (iii) Entrants' Acceptance of Risk 65
 (iv) Restrictions on Occupiers' Duties 65
 (v) Miscellaneous Provisions 66
2. Product Liability 66
 (a) Duty of Care for Product Liability 67
 (b) Standard of Care in the Design, Manufacture and Marketing of Products 67
 (c) Problems of Proof and the Doctrine of *Res Ipsa Loquitur* 69
3. Professional Liability and Negligent Misrepresentation 69
 (a) Professional Liability 69
 (i) Standard of Care 70
 (ii) Liability for Medical Negligence 72
 (iii) Liability for Lawyer's Negligence 73
 (iv) Liability for Other Professional Negligence 76
 (b) Negligent Misrepresentation 76

Table of Contents

(i) The Principle in Hedley Byrne & Co. v. Heller & Partners Ltd. . . .	77
(ii) The Requirements for a Successful Claim for Negligent Misrepresentation	77
(iii) Recent Developments in Liability for Negligence Misrepresentation	79
4. Crown Liability	80
(a) Statutory Aspects of Actions against the Crown	80
(i) Crown Liability Legislation	80
(ii) Express Statutory Liability	81
(b) The Duty of Care Owed by the State	82
(i) The Policy/Operation Distinction	82
(ii) Legislative and Judicial Immunity	84

10. Strict Liability

1. Strict Liability	85
(a) The Doctrine in Rylands v. Fletcher	85
(i) Dangerous Objects	86
(ii) Non-Natural User and Use	86
(iii) Accumulation and Escape	87
(iv) Damages Flowing from Breach of Duty	88
2. Defences	88
(a) The Plaintiff's Conduct	89
(i) Consent	89
(ii) Acts of the Plaintiff	89
(b) Act of God or Third Parties	89
(c) Statutory Authority	90

11. Vicarious Liability

1. Vicarious Liability, The Law of Agency and the Doctrine of Respondeat Superior	93
2. Vicarious Liability and Employment Law	94
(a) Definition of an Employee	95
(b) Acting in the Course of Employment	97
(c) Non-Delegable Duties	98
3. Statutory-Based Vicarious Liability	99

Table of Contents

12. Damages in Tort

1. Damages — Introduction	101
(a) Compensatory Damages	101
(i) Special Damages	101
(ii) General Damages	102
(b) Exemplary or Punitive Damages	102
(c) Aggravated Damages	103
(d) Injunctions	103
2. Damages in Intentional Tort Actions	103
(a) Trespass to Persons	103
(b) Trespass to Chattels	104
(i) Conversion	104
(ii) Detinue	105
(c) Trespass to Land and Nuisance	105
3. Damages in Negligence Actions	107
(a) Personal Injury	107
(i) Determination and Structure of Damage Awards	107
(ii) Loss of Income and Employment Benefits	108
(iii) Pre-Trial Care	109
(iv) Future Care	109
(v) Compensation for Pain and Suffering	110
(b) Fatal Injury	111
(i) Claims by the Estate of the Victim	111
(ii) Claims by Dependents of the Victim	112
(c) Damage to Property	113
(i) Real Property	113
(ii) Chattels: Repair, Value and Use	114
4. Special Issues Concerning Damages	114
(a) Damages for Pure Economic Loss	114
(b) Apportionment of Liability Among Tortfeasors	115
(i) At Common Law	115
(ii) Under Contributory Liability Legislation	116
Index	119