

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

NATIONAL COMMITTEE ON ACCREDITATION

SYLLABUS

TORTS

JANUARY 2010

Required Materials:

Solomon, McInnes, Chamberlain and Pitel, Cases and Materials on the Law of Torts, 7th ed. (Carswell, 2007) ISBN 978-0-7798-1360-5

G.H.L. Fridman, Introduction to the Canadian Law of Torts, 2nd ed. (Lexis-Nexis Butterworths, 2003) ISBN 0-433-44015-5

Suggested Further Reading (Optional):

Beaulac, Pitel & Schulz, eds., The Joy of Torts (2003)

Bruce, Assessment of Personal Injury Damages, 3rd ed. (2004)

Cooper-Stephenson & Gibson, eds., Tort Theory (1993)

Feldthusen, Economic Negligence: The Recovery of Pure Economic Loss, 5th ed. (2008)

Fleming, The Law of Torts, 9th ed. (1998)

Fridman, The Law of Torts in Canada (2002)

Klar, Tort Law, 4th ed. (2008)

Linden & Feldthusen, Canadian Tort Law, 8th ed. (2006)

Neyers, Chamberlain & Pitel, Emerging Issues in Tort Law (2007)

Osborne, The Law of Torts, 3rd ed. (2007)

Owen, ed., Philosophical Foundations of Tort Law (1995)

Rainaldi, ed., Damages and Remedies in Tort (1995)

Rodgers, Ruparelia & Bélanger-Hardy, Critical Torts (2009)

Rogers, ed., Winfield and Jolowicz on Tort, 15th ed. (1998)

Weinrib, ed., Tort Law (2002)

Learning Objectives:

A full understanding and the effective practice of any area of the law require not only a thorough knowledge of its substantive rules, but also familiarity with and an ability to think critically about its theoretical underpinnings.

In that area of the law called “torts”, the latter elements are of particular importance. This is so because the law of torts, as you will see from your readings, is not conceptually “whole”. No comprehensive or unified theory can be said to inform the various rules and heads of liability that presently constitute tort law. While the explanation for this may lie in the historical development of tort law as a residual legal category (notice, for instance, that many texts “define” tort law by stating what it is *not*), such may also be attributable in part to the failure of jurists (whether judges, lawyers or academics) to recognize and address the fundamental questions of tort law when contributing to its development.

It is the discovery in yourself of this ability – to recognize and address the fundamental questions of tort law – that should be your overarching objective in completing the readings and studying for this examination. Along the way, you should also acquire the following:

1. a thorough knowledge of the substantive rules of the principal subject-areas of the Canadian law of torts;
2. the ability to discover, understand and integrate any changes to those rules;
3. the capacity to spot relevant legal issues in a given fact situation, and to apply the knowledge mentioned in 1. and 2. above to same;
4. an appreciation of the various theories that have been advanced as bases for the torts that presently comprise our system of loss allocation;
5. familiarity with alternative theories which might ground tortious liability, or some other system of loss allocation, in various circumstances; and
6. the ability and willingness to think critically about all of the above and to articulate your own ideas and opinions that arise from such critical thought.

Of course, the above list of objectives could as well serve for an entire career as for an introduction to torts. Nevertheless, by the time you sit for this examination you should have developed a substantial degree of proficiency in all of these areas.

Readings:

Following is a course outline with associated reading assignments. “SOL” refers to the required casebook by Solomon, McInnes, Chamberlain and Pitel, whereas “GHLF” refers to the Fridman text.

OUTLINE AND READING ASSIGNMENTS

A. INTRODUCTION

1. The Concept of Torts

- (a) Nature and History of Torts SOL 1-9
.....GHLF 3-8
- (b) Functions of Tort SOL 19-24
.....GHLF 8-11
- (c) Theoretical Approaches SOL 985-1006

2. Bases and Scope of Liability SOL 17-19GHLF 13-30

3. Intention and Related Concepts SOL 43-55

4. Remedies SOL 25-39GHLF 213-219

5. Vicarious Liability SOL 862-884GHLF 31-36

6. Trespass vs. Case SOL 9-17

B. TRESPASS TO PERSONS

1. IntroductionGHLF 39-50

2. Battery SOL 55-61 SOL 686-688

3. Assault..... SOL 61-66

4. False Imprisonment..... SOL 66-75

C. INTENTIONAL INTERFERENCE WITH PERSONS

1. Malicious ProsecutionSOL 75-81GHLF 151-156

2. Abuse of Process SOL 81-82

3. Intentional Infliction of Nervous Shock SOL 82-90

4. Intentional Infliction of Harm..... SOL 90-92

5.	Discrimination	SOL 105-109
D. TRESPASS TO PROPERTY		
1.	Trespass to Chattels	SOL 111-118
	.....	GHLF 50-52
2.	Trespass to Real Property	
	(a) Trespass to Land	GHLF 52-56
	.....	SOL 145-156
	.....	SOL 740-741
	(b) Trespass versus Nuisance	SOL 156-160
	(c) Trespass to Airspace and Subsoil	SOL 160-165
E. NUISANCE		
1.	Introduction	SOL 795-796
	.....	GHLF 57-67
2.	Private Nuisance	SOL 796-814
3.	Public Nuisance	SOL 814-820
4.	Invasion of Privacy	SOL 92-99
	.....	GHLF 145-150
F. INTERFERENCE WITH ECONOMIC INTERESTS		
1.	Deceit	SOL 889-897
	.....	GHLF 165-169
2.	Passing Off	SOL 897-903
	.....	GHLF 177-179
3.	Intimidation	SOL 903-907
	.....	GHLF 189-193
4.	Conspiracy	SOL 907-912
	.....	GHLF 181-187
5.	Interference with Contractual Relations	SOL 912-921
	.....	GHLF 195-200

6.	Interference with Economic Relations	SOL 921-928
	.....	GHLF 201-204
G.	DEFENCES	
1.	Consent	
	(a) Implied Consent.....	SOL 167-170
	(b) Exceeding Consent	SOL 170-174
	(c) Competency to Consent	SOL 174
	(d) Vitiating Consent	SOL 174-183
	(e) Consent to Medical Procedures	SOL 186-204
2.	<i>Ex Turpi</i>	SOL 183-186
	.....	SOL 670-675
	.....	GHLF 95-96
3.	Self Defence	SOL 205-209
4.	Defence of Third Parties	SOL 209-212
5.	Defence of Real Property	SOL 217-222
6.	Defence and Recapture of Chattels	SOL 222-223
7.	Necessity	
	(a) Public Necessity.....	SOL 224-227
	(b) Private Necessity	SOL 227-231
8.	Discipline	SOL 212-217
9.	Legal Authority	
	(a) Introduction.....	SOL 235-237
	(b) General Powers of Arrest.....	SOL 239-246
	(c) Duties in Effecting Arrest.....	SOL 246-253
	(d) Search of the Person	SOL 253-257
	(e) Forced Entry	SOL 257-263
H.	NEGLIGENCE	
1.	Introduction	SOL 265-270

- (iii) Multiple Independent Causes.....GHLF 207-211
 - (aa) Insufficient SOL 546-552
 - (bb) Sufficient..... SOL 552-560

(d) Remoteness

- (i) Introduction.....GHLF 82-85
- (ii) Directness vs. Foreseeability SOL 561-567
- (iii) Foreseeability Test Modified SOL 567-582
- (iv) Intervening Causes SOL 582-594

(e) Damages

- (i) Introduction..... SOL 595-602
- (ii) Personal Injury SOL 602-625
- (iii) Survivor and Dependent Claims SOL 625-637
 -GHLF 221-224
- (iv) Property Loss SOL 637-642
- (v) Collateral Benefits SOL 642-646

3. Particular Categories of Negligence

- (a) Negligent Misrepresentation..... SOL 419-424
 - (i) Causing Pure Economic Loss SOL 424-434
 -GHLF 102-105
 - (ii) Misrepresentation and Contract..... SOL 434-447
- (b) Negligence Causing Pure Economic Loss SOL 449-450
 -GHLF 80-82
 - (i) Negligent Performance of Service SOL 458-462
 - (ii) Negligent Supply..... SOL 462-472
 - (iii) Relational Economic Loss SOL 472-481
 - (iv) New Categories SOL 450-458

4. Special Defences to Negligence Actions

- (a) Contributory Negligence..... SOL 647-664
 -GHLF 90-92
- (b) Voluntary Assumption of Risk SOL 665-670
 -GHLF 92-95

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Access to Quicklaw (Lexis Nexis)

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Internet Sites for Provincial Legislation

www.canlii.org

This is a listing for all the provinces and is highly recommended

Ontario:

<http://www.attorneygeneral.jus.gov.on.ca/english/legis/>

British Columbia (Queen's Printer):

<http://www.bclaws.ca/>

Alberta (Queen's Printer):

<http://www.qp.alberta.ca/>

Supreme Court Judgments:

<http://scc.lexum.umontreal.ca/en/index.html>