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# Syllabus

# Torts

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Revised for **SEPTEMBER 2024**

Candidates are advised that the syllabus may be updated from time-to-time without prior notice.

Candidates are responsible for obtaining the most current syllabus available.



## TORTS

### LEARNING OBJECTIVES

A full understanding of tort law requires not only thorough knowledge of its substantive rules, but also an ability to apply those substantive rules to novel factual scenarios, and to think critically about tort law's theoretical underpinnings.

No comprehensive or unified theory can be said to inform the various rules and heads of liability that constitute Canadian tort law. While the explanation for this may lie in the historical development of tort law as a residual legal category (many texts “define” tort law by stating what it is *not*), it may also be attributable in part to jurists (judges, lawyers or academics) not always recognizing and addressing fundamental questions of tort law when contributing to its development.

There are six learning objectives relevant to this subject. Candidates preparing for the NCA Torts exam should develop:

1. a thorough knowledge of the substantive rules of the key subject areas of Canadian tort law, including, where applicable, key statutes that impact or interact with the common law;
2. the capacity to spot relevant legal issues in a given fact situation and set out the relevant law governing those issues;
3. the ability to clearly **analyze and explain** how the law applies in a given fact situation, including noting nuances and counterarguments and reaching a well-reasoned conclusion;
4. an appreciation of the theories that have been advanced as bases for the torts that currently comprise our system of loss allocation, as well as familiarity with alternative theories that might ground tortious liability, or some other system of loss allocation, in various circumstances; and
5. the ability and willingness to think critically about all of the above and to articulate your own ideas and opinions that arise from that thinking.



## EVALUATION

Candidates will be evaluated solely on a 3-hour, open book examination. A passing grade is 50%.

Exams will generally be graded out of 100 marks in which case a passing grade (50%) will be 50 or more total marks. Regardless of the total number of marks, 50% is considered to be a passing grade.

Exams may consist of short answer questions, multiple-choice questions, fact-pattern questions requiring a written legal analysis of a set of facts, and/or essay questions asking you to explain or comment on aspects of tort law. Not all variations will necessarily appear on every exam, however, you may expect one or more of these styles to appear.

- Short answer, true/false, fill in the blank and multiple-choice questions test candidates' ability to succinctly and correctly evaluate statements about material covered in the syllabus.
- Fact-pattern questions test candidates' ability to identify legal issues, accurately state the applicable legal rules, **explain how those rules apply** to novel situations, and draw conclusions supported by analysis. Fact-pattern questions require the exercise of independent judgment grounded in the application of general rules to specific fact situations. Fact-pattern questions may ask you to take a particular perspective, such as that of a lawyer writing a legal memo or opinion letter to a client or a judge writing a decision.
- Essay questions evaluate candidates' understanding of theoretical issues in tort law, and test whether candidates have critically engaged with the material. These questions may require candidates to form and justify their own opinions about the strengths and weaknesses of the arguments, principles, and doctrines discussed in the assigned materials.

### Further Information re: Fact-Pattern Questions

For fact-pattern questions, candidates should provide a written legal analysis of each of the relevant legal issues. For instance, most torts include a number of distinct **elements of liability** that must be established by the plaintiff. Each of those elements should generally be addressed in your analysis. In many cases, there are also relevant **defences** that may be raised by the defendant. Depending on the question, you may also be asked to assess potential **remedies**. Your analysis should include each potentially relevant issue even if, for example, you believe that a claim is likely to fail on one of the elements (such as the duty of care in negligence).



For each issue, you should:

- 1) identify the issue;
- 2) provide a **concise** statement of the relevant law with a relevant authority (ie: case, statute);
- 3) provide an analysis that actually **explains** how the law applies to the facts of the question; and
- 4) briefly state your conclusion on that issue.

The answer should be written in complete sentences and paragraphs, typically with a new paragraph for each issue. It is not sufficient to provide a generic statement of the law that does not link the law to the facts of the question. It is also not sufficient to simply state a conclusion, without explaining how you arrived at that conclusion by the application of the law to the facts.

An example may help. Imagine a question asks you to provide a legal analysis of a claim in negligence brought by a consumer against a manufacturer of goods for injuries resulting from alleged negligence in the manufacturing process. One of the issues you will need to address is whether the manufacturer owed the plaintiff consumer a duty of care. An answer that simply copied out the legal framework for the duty of care, without explaining how that framework applied to the facts of the question, would receive few, if any, marks. The same could be said for an answer that simply asserted, without explanation, that “the defendant owed the plaintiff a duty of care”. Neither of these answers actually explains how the law applies to the facts. A more complete answer would go something like this:

*The first element of liability that must be established by the plaintiff is the duty of care. Where a given relationship falls into an established category of relationships giving rise to a duty of care, a duty of care will be established without the need to engage in a complete duty of care analysis (Cooper v Hobart; Childs v Desormeaux). There is an established duty of care owed by a manufacturer of goods towards consumers to take reasonable care in manufacturing products (Donoghue v Stevenson). Since the facts of this case involve a claim of negligence by a manufacturer of goods giving rise to injury to a consumer, this claim falls into this established category. The duty of care is accordingly likely to be established.*

The above answer identifies the issue, provides a concise statement of the relevant law, **explains** how the law applies to the facts, and sets out a clear conclusion. This example is not intended as a template to be rigidly applied. It is simply one example of an analysis of an issue that includes each relevant component and explains how the law applies to the facts.

**All candidates** should review the following documents:

- [Tips for Writing NCA Torts Exam](#)
- [How to Answer Fact Based Law Exam Questions](#)



## REQUIRED MATERIALS

Robert M Solomon, Mitchell McInnes, Erika Chamberlain and Stephen GA Pitel, *Cases and Materials on the Law of Torts*, 11th ed (Toronto, ON: Carswell, 2023) ISBN 978-0-7798-9966-1

Online resources hyperlinked in the course outline, below.

## SUGGESTED SOURCES FOR FURTHER READING OR STUDY (OPTIONAL)

Samuel Beswick, *Tort Law: Cases and Commentaries*, 2024 Edition (Canadian Legal Information Institute, 2021 CanLII Docs 1859) online: <https://canlii.ca/t/t9st> (open access)

Erika Chamberlain & Stephen GA Pitel, eds, *Introduction to the Canadian Law of Torts*, 4th ed (Toronto: LexisNexis, 2020)

Bruce Feldthusen, *Economic Negligence: The Recovery of Pure Economic Loss*, 6th ed (Scarborough, ON: Carswell, 2012)

GHL Fridman *et al*, *The Law of Torts in Canada*, 4th ed (Toronto, ON: Carswell, 2020)

Cameron Jefferies & Lewis N Klar, *Tort Law*, 7th ed (Toronto, ON: Carswell, 2023)

Allen M Linden, et al., *Canadian Tort Law*, 12th ed (Markham, ON: Lexis-Nexis Butterworths, 2022)

Philip H Osborne, *The Law of Torts*, 6th ed (Toronto: Irwin Law, 2020)

Sanda Rodgers, Rakhi Ruparelia & Louise Bélanger-Hardy, *Critical Torts* (Markham, ON: Lexis-Nexis Butterworths, 2009)



## OUTLINE AND READINGS

“**SOL**” – Robert M Solomon, Mitchell McInnes, Erika Chamberlain and Stephen GA Pitel, *Cases and Materials on the Law of Torts*, 11th ed (Toronto, ON: Carswell, 2023) ISBN 9780-7798-9966-1

- *Notes & Questions*: You will see that the assigned page numbers in Solomon et al, below, often include sections titled “Notes & Questions” that immediately follow the main text and cases on a given topic. These sections offer additional information relevant to the topic at hand including comparative perspectives, additional case law, and suggestions for further reading. **The content of the Notes & Questions sections is not examinable except where a note is specifically assigned in the listed readings (ie: “SOL page 834 note 8”).**
- *Review Problems*: Each chapter in the Solomon et al text includes one or more Review Problems, usually located at the end of topics or chapters. Working through these questions is a great way to test your knowledge and practice answering fact pattern-style questions.

“**ONLINE**” – online resources with hyperlinks provided

### A. INTRODUCTION to TORTS

#### 1. The Concept of Torts

1.1 Nature and History of Torts .....	SOL 1-18
1.2 Functions of Tort Law .....	SOL 20-25
1.3 Theoretical Approaches .....	SOL 1261-1290

#### 2. Bases and Scope of Liability .....

SOL 18-20

#### 3. Standard of Proof and Burden of Proof .....

SOL 829-853

\* This chapter is titled “Proof of Negligence,” but the concepts apply to tort law more generally, hence their inclusion in the introductory materials

3.1 <i>F.H. v McDougall</i> .....	SOL 834, note 8
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\* *The casebook incorrectly shows the style of cause as “R.C. v McDougall,” but correctly summarizes the case.*

3.2 Wikipedia, “O.J. Simpson: Legal History” .....	<a href="#">ONLINE</a>
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\* *Compare the result in Simpson’s criminal trial for murder and civil trial for wrongful death.*

### B. INTENTIONAL TORTS

#### 1. Intention and Related Concepts .....

SOL 51-63

#### 2. Remedies in Intentional Torts .....

SOL 29-32

2.1 Nominal Damages .....	SOL 32-34
2.2 Compensatory Damages .....	SOL 34-37
2.3 Aggravated Damages .....	SOL 37-38
2.4 Punitive (Exemplary) Damages .....	SOL 38-45



2.5 Disgorgement Damages .....	SOL 45-49
<b>i. <u>Trespass to the Person</u></b>	
1. Battery .....	SOL 63-70
2. Assault .....	SOL 70-75
3. Wrongful (“False”) Imprisonment .....	SOL 76-85
4.1 Shopkeeper’s privilege: <i>Mann v Canadian Tire</i> .....	<a href="#">ONLINE</a>
<b>4. Wrongful Prosecution</b>	
5.1 Malicious Prosecution .....	SOL 86-91
5. Intentional Infliction of Psychiatric Harm .....	SOL 93-101
6. The Innominate Intentional Tort .....	SOL 101-103
7. Invasion of Privacy .....	SOL 103-120
8. Breach of Confidence .....	SOL 120-122
<b>ii. <u>Trespass to Property</u></b>	
<b>1. Intentional Interference with Personal Property (Chattels)</b>	
1.1 Historical Roots .....	SOL 127-133
1.2 Trespass to Chattels .....	SOL 133-138
1.3 Conversion.....	SOL 138-166
1.4 Detinue .....	SOL 167-173
<b>2. Intentional Interference with Real Property</b>	
2.1 Trespass to Land .....	SOL 178-191
2.2 Trespass under Statute .....	SOL 190, note 13 and SOL 903-910
2.3 Trespass and Nuisance .....	SOL 191-196
2.4 Trespass to Airspace and Subsoil .....	SOL 196-201
<b>iii. <u>Defences in Intentional Torts</u></b>	
<b>1. Consent</b>	
1.1 General Principles .....	SOL 203-204
1.2 Implied Consent .....	SOL 204-206



1.3 Exceeding Consent .....	SOL 206-209
1.4 Competency to Consent .....	SOL 210
1.5 Factors Negating Consent .....	SOL 210-220
1.6 Consent to Treatment, Counselling and Care .....	SOL 222-240
1.7 Legislative Reform .....	SOL 240, note 1 and <b>one of</b>
<b>the following provincial health care schemes</b> (noted parts only):	
• Ontario: <i>Health Care Consent Act</i> (Parts I and II)....	<a href="#">ONLINE</a>
• British Columbia:	
○ <i>Health Care (Consent) and Care Facility (Admission) Act</i> (Parts 1,2 and 2.1).....	<a href="#">ONLINE</a>
○ <i>Representations Agreement Act</i> (Parts 1-4)..	<a href="#">ONLINE</a>
• Saskatchewan: <i>The Health Care Directives and Substitute Health Care Decision Makers Act</i> .....	<a href="#">ONLINE</a>
 <b>2. Self-Defence</b> .....	SOL 241-246
 <b>3. Defence of Third Parties</b> .....	SOL 247-250
 <b>4. Defence of Real Property</b> .....	SOL 255-260
 <b>5. Defence and Recaption of Chattels</b> .....	SOL 260-262
 <b>6. Necessity</b>	
7.1 Public Necessity .....	SOL 262-266
7.2 Private Necessity .....	SOL 266-269
 <b>7. Legal Authority</b> .....	SOL 273-274
8.1 Authority and Privilege to Arrest Without Warrant .....	SOL 278-286 and
<i>Citizen's Arrest and Self-defence Act</i> .....	<a href="#">ONLINE</a>
 <b>8. Apportionment of Fault (Liability) in Intentional Torts</b> .....	SOL 270-272
9.1 Apportionment of Liability .....	see E.4 Defences in Negligence, below

## C. NUISANCE

<b>1. Introduction</b> .....	SOL 981-982
<b>2. Private Nuisance</b> .....	SOL 982-1010
<b>3. Public Nuisance</b> .....	SOL 1010-1019
<b>4. Remedies</b> .....	SOL 1019-1035





## D. STRICT AND VICARIOUS LIABILITY

1. Introduction.....	SOL 1037-1038
2. Strict Liability for Escape of Dangerous Substances .....	SOL 1039-1057
3. Strict Liability for Animals .....	SOL 1057-1073
4. Vicarious Liability.....	SOL 1075-1113

## E. NEGLIGENCE

1. Introduction .....	SOL 307-310
2. Elements of a Negligence Action.....	SOL 310-316
<b>2.1 Duty of Care</b>	
2.1.1 The General Duty of Care Analysis .....	SOL 317-339
2.1.2 Foreseeability .....	SOL 340-355
2.1.3 Special Duties: Affirmative Action.....	SOL 357-360
(i) The Duty to Rescue .....	SOL 360-373
(ii) The Duty to Control the Conduct of Others .....	SOL 373-400
(iii) Gratuitous Undertakings .....	SOL 400-407
2.1.4 Special Duties: Miscellaneous.....	SOL 409
(i) The Duty of Care Owed to Rescuers .....	SOL 409-419
(ii) Duties Owed to the Unborn .....	SOL 419-440
(iii) Psychiatric Harm .....	SOL 440-462
(iv) Health Professional's Duty to Inform .....	SOL 462-469
(v) Manufacturer's and Supplier's Duty to Warn..	SOL 469-482
(vi) Duty of Care Owed by a Lawyer .....	SOL 482-487 and <i>Central Trust Co v Rafuse</i> ..... <a href="#">ONLINE</a>
2.1.5 Special Duties: Negligent Misrepresentation and Pure Economic Loss	
(i) Introduction .....	SOL 489-496
(ii) Negligent Misrepresentation .....	SOL 496-519
(iii) Misrepresentation and Contract .....	SOL 520-534
(iv) Negligent Performance of Service .....	SOL 552-560
(v) Negligent Supply of Shoddy Goods or Structures ..	SOL 560-573
(vi) Relational Economic Loss .....	SOL 573-583
(vii) New Categories of Pure Economic Loss .....	SOL 543-554
<b>2.2 Standard of Care</b> .....	SOL 585-586
2.2.1 The Reasonable Person .....	SOL 587-591



2.2.2 Factors Considered .....	SOL 591-605
2.2.3 Special Standards	
(i) Persons with Disabilities .....	SOL 609-615
(ii) Children .....	SOL 616-619
(iii) Professionals .....	SOL 620-627
(iv) Role of Custom .....	SOL 629-635
2.2.4 Statutes and the Common Law Standard of Care ..	SOL 911-929
<b>2.3 Factual Causation .....</b>	<b>..SOL 637-638</b>
2.3.1 The But-For Test .....	SOL 638-642
2.3.2 Established Exceptions to the But-For Test.....	SOL 642-644
2.3.3 Recent Attempts to Modify the But-For Test .....	SOL 645-662
2.3.4 Multiple Causes .....	SOL 662-677
<b>2.4 Remoteness (aka Legal Causation) .....</b>	<b>SOL 679-680</b>
2.4.1 Directness versus Foreseeability .....	SOL 680-685
2.4.2 Modifications to the Foreseeability Test .....	SOL 685-705
2.4.3 Intervening Causes .....	SOL 706-718
2.4.4 Beyond the Scope of the Risk .....	SOL 718-722
<b>3. Categories and Assessment of Damages .....</b>	<b>SOL 723-733</b>
<b>3.1 Damages for Personal Injuries .....</b>	<b>SOL 733-761 and</b>
Inflation Calculator .....	<a href="#">ONLINE</a>
* This website can be used, for example, to convert the <i>Andrews</i> cap on non-pecuniary damages for personal injury awards into a value expressed in today's dollars.	
<b>3.2 The Role of Present Value and Discount Rates .....</b>	<b>SOL 752-755 and</b>
Khan Academy, "Present Value" .....	<a href="#">ONLINE</a>
*Review the first four (4) short videos related to: (i) "Time value of money"; (ii) "Introduction to present value"; (iii) "Present value 2"; and (iv) "Present value 3".	
<b>3.3 Survival of Actions and Dependents' Claims .....</b>	<b>SOL 762-774</b>
<b>3.4 Damages for Property Loss .....</b>	<b>SOL 774-780</b>
<b>4. Defences in Negligence</b>	
<b>4.1 Contributory Negligence and Apportionment of Liability ..</b>	<b>SOL 788-791</b>
4.1.1 Kleefeld, "The Contributory Negligence Act at Seventy"....	<a href="#">ONLINE</a> at 31-59
4.1.2 Conduct Constituting Contributory Negligence .....	SOL 792-800
4.1.3 Joint and Several Liability .....	Kleefeld at 41-46
4.1.4 Apportionment of Liability .....	SOL 800-810
4.1.5 Law Reform.....	Kleefeld at 111-126
<b>4.2 Voluntary Assumption of Risk.....</b>	<b>SOL 810-817</b>



**4.3 *Ex turpi causa non oritur actio***..... SOL 817-824

## **F. TORT LIABILITY OF PUBLIC AUTHORITIES**

<b>1. Introduction</b> .....	SOL 855-856
<b>2. Special Rules</b> .....	SOL 856-867
<b>3. Negligence of Public Authorities</b> .....	SOL 867-886
<b>4. Misfeasance in Public Office</b> .....	SOL 886-899
<b>5. Other Torts</b> .....	SOL 899-902



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## Online Resources

The majority of case law and legislative resources needed by NCA students are available on CanLII, the free legal information resource funded by the Federation of Law Societies of Canada ([www.canlii.org](http://www.canlii.org)). That includes all decisions of the Supreme Court of Canada, and all federal, provincial, territorial and appellate courts.

Your exam registration fee also includes free access to the Advance Quicklaw resources of Lexis Nexis. Your ID and password will be arranged and emailed to your email address on file a few weeks after the end of the registration session.

Sign in to Quicklaw via <http://www.lexisnexis.com/ca/legal>. The first time you sign in to Quicklaw you will be asked to change or personalize your password. Remember your User ID and password are personal and should not be shared with anyone.

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