



Federation of
Law Societies
of Canada

NCA National Committee
on Accreditation

Syllabus

Torts

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 five 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”	ONLINE
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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
i. <u>Trespass to the Person</u>	
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>	ONLINE
4. Wrongful Prosecution	
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
ii. <u>Trespass to Property</u>	
1. Intentional Interference with Personal Property (Chattels)	
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
2. Intentional Interference with Real Property	
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
iii. <u>Defences in Intentional Torts</u>	
1. Consent	
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 one of
the following provincial health care schemes (noted parts only):	
• Ontario: <i>Health Care Consent Act</i> (Parts I and II)....	ONLINE
• British Columbia:	
○ <i>Health Care (Consent) and Care Facility (Admission) Act</i> (Parts 1,2 and 2.1).....	ONLINE
○ <i>Representations Agreement Act</i> (Parts 1-4)..	ONLINE
• Saskatchewan: <i>The Health Care Directives and Substitute Health Care Decision Makers Act</i>	ONLINE
 2. Self-Defence	SOL 241-246
 3. Defence of Third Parties	SOL 247-250
 4. Defence of Real Property	SOL 255-260
 5. Defence and Recaption of Chattels	SOL 260-262
 6. Necessity	
7.1 Public Necessity	SOL 262-266
7.2 Private Necessity	SOL 266-269
 7. Legal Authority	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>	ONLINE
 8. Apportionment of Fault (Liability) in Intentional Torts	SOL 270-272
9.1 Apportionment of Liability	see E.4 Defences in Negligence, below

C. NUISANCE

1. Introduction	SOL 981-982
2. Private Nuisance	SOL 982-1010
3. Public Nuisance	SOL 1010-1019
4. Remedies	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
2.1 Duty of Care	
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> ONLINE
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
2.2 Standard of Care.....	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
2.3 Factual CausationSOL 637-638
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
2.4 Remoteness (aka Legal Causation)	SOL 679-680
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
3. Categories and Assessment of Damages	SOL 723-733
3.1 Damages for Personal Injuries	SOL 733-761 and
Inflation Calculator	ONLINE
* 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.	
3.2 The Role of Present Value and Discount Rates	SOL 752-755 and
Khan Academy, "Present Value"	ONLINE
*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".	
3.3 Survival of Actions and Dependents' Claims	SOL 762-774
3.4 Damages for Property Loss	SOL 774-780
4. Defences in Negligence	
4.1 Contributory Negligence and Apportionment of Liability ..	SOL 788-791
4.1.1 Kleefeld, "The Contributory Negligence Act at Seventy"....	ONLINE 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
4.2 Voluntary Assumption of Risk.....	SOL 810-817



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

F. TORT LIABILITY OF PUBLIC AUTHORITIES

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

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