

TORTS II SPRING 2018

COURSE OUTLINE

Course objectives

The class will build on the knowledge of tort law gained in first year torts and will study how the courts develop and apply the applicable legal concepts and what factual scenarios are particularly significant. The course will focus on the developing Canadian law of tort liability for interference with economic interests.

Students will get a realistic understanding of the judicial decision making process by analyzing how judges decide tort cases.

Students will be expected to develop their own opinions in relation to the issues covered and be prepared to discuss those opinions in class.

Evaluation

Evaluation consists of two components, (1) class participation including an assigned class presentation together worth 45% and (2) a written assignment to be handed in at the end of the term worth 55%. The end of term assignment will be a written decision of a maximum 20 typed pages dealing with an assigned factual problem. This course does not fulfil the major paper requirement.

Class technique

The teaching method relies on class discussion and encourages participation by the students.

Students are expected to read all the referenced materials and cases be prepared to discuss them in class. The cases identified as “Assigned Decisions” are to be decided by the class.

Students will deal with a number of actual factual situations that have to be decided. Students are put in the position of a Judge and are required to develop their thinking and to provide reasoned decisions.

Course materials, including assigned decisions, are posted on the course web page that can be found at <http://johnmerrick.ca>. The address is case sensitive.

Students with Special Needs/Requests for Accommodation

Students seeking special accommodation with regard to any aspect of course evaluation, including deferrals and extensions to deadlines, must make an application to the Studies Committee as soon possible and no later than the date on which the assignment is to be submitted. Students should contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information about requests for accommodation and about the Studies Committee process. Students wishing to discuss arrangements for classroom assistance should see Professor Sheila Wildeman, the law faculty advisor to students with disabilities.

Plagiarism

All students in this course must read the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the plagiarism.dal.ca website, and the Law School policy on plagiarism, as set out in the law school regulations, available online at

http://law.dal.ca/Current_Students/Course_Selection_Materials/Regulations_Handbook/index.php

Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

Course Outline

1 The role and scope of judicial discretion and the concept of reasonable and fair in the determination of tort liability for damage/injury

Assigned Readings

O.W. Holmes “The Path of the Law”

Jerome Frank “Law and the Modern Mind Chapter IV, Judicial Law-Making”

R v. R.D.S., [1997] 3 S.C.R. 484

Assigned factual problem

Peggy's Cove case - The case of Richard Henderson

Assigned decision

Robertson v. Safe Hands Insurance Company

2 The concept of legal causation and the allocation of liability**Assigned Readings**

Farrell v. Snell (1990), 72 D.L.R. (4th) 289 (S.C.C.)

Hollis v. Dow Corning Corp., [1995] 129 D.L.R. (4th) 609

Resurfice Corp. v. Hanke, [2001] 1 S.C.R. 333, 2007 SCC 7

Assigned decisions

Hall v. Cooper Industries (2005), BCCA (Docket CA 31729

Aristorenas v. Comcare Health Services et al. 83 O.R. (3d) 282

Clements v. Clements , 2012 SCC 32

3 The difficulty with the concepts of foreseeable risk, proximity and remoteness as a basis for the imposition of liability**Assigned Readings**

O.W. Holmes, "The Common Law Lecture IV; The Theory of Torts"

Donoghue v. Stevenson, [1932] H.L. 562

Caparo Industries v. Dickman (HL), [1990] 1 All E.R. 568

Cooper v. Hobart, [2001] 3 S.C.R. 537

Mustapha v. Culligan of Canada Ltd. - 2008 SCC 27

Assigned decisions

Palsgraf v. Long Island R. Co. (1928), 248 N.Y. 339

Sauer v. Canada (Attorney General), 2007 ONCA 454

4 The strict liability approach

Assigned Readings

“A theory of Moral Sentiments” Adam Smith

*“The Assault on the Citadel (Strict Liability to the Consumer)”
Prosser*

Rylands v. Fletcher (1868), 3 H.L. 330

Barker v. Lull Engineering Company, 20 Cal. 3d 413

Greenman v. Yuba Power Products Inc. (1963), 59 Cal. 2nd 57

Assigned decision

*Beshada v. Johns-Manville Products Corp. (1982), 447 A (2nd)
539*

5 Contractual relationships as a basis for liability in negligence

Assigned Readings

*Nunes Diamonds (J.) Ltd. v. Dominion Electric Protection Co.,
[1972] S.C.R. 769*

Central Trust Co. v. Rafuse, [1986] 2 S.C.R. 147

Assigned decision

*Bow Valley v. Saint John Shipbuilding Ltd., [1997] S.C.J. No.
111*

6 Should tort law provide a remedy for economic loss resulting from non-dangerous product defect?

Assigned Readings

Junior Books Ltd. v. Veitchi Co. Ltd., [1982] 3 All ER 201 (HL)

Winnipeg Condo, [1995] 1 S.C.R. 85

East River S.S. Corp. v. Transamerica, 476 U.S. 858 (1986)

Assigned decision

M. Hasegawa & Co. v. Pepsi Bottling Group (Canada) Co.
(2002) BCCA 324

7 How should Canadian tort law deal with claims for compensation for interference with economic interests?

Assigned Readings

Canada Cement Lafarge v. B.C. Lightweight Aggregate, [1983] 1
S.C.R. 452

Assigned Decision

A.I. Enterprises v. Bram 2014 SCC 12