Tort Law (droit de la responsabilité civile)

Plan:

I. ANGLO-AMERICAN COMMON LAW TORT LAW

Definition – Torts are wrongdoings that are done by one party against another. The injured person may take civil action against the other party to recover damages. The purpose of tort law is to compensate the injured party. Punitive damages may be awarded if the defendant’s behavior was intentional or grossly negligent. A tort is a breach of civil duty owed to someone else.

Difference Crime / Tort – Criminal actions are brought by the government and a prosecutor, while tort actions are initiated by private citizens. A crime is an offence against the public: it involves a breach of a duty owed to society.

There are 3 types of torts:

- Intentional torts
- Negligence torts
- Strict liability torts

II. COMMON LAW INTENTIONAL TORTS

The plaintiff must prove 3 things:

- An act by the defendant: means a volitional movement by the defendant;
- Causation (lien de causalité): there must be a causal relationship between conduct and result;
- Intent (intention): the injured person must prove that the person who injured him either (= soit … soit…) meant to do it, understood it would happen.

III. INTENTIONAL TORTS TO THE PERSON (trespass to the person = atteinte à l’intégrité physique)

Battery (= délitis de coups et blessures) – Battery is when a person uses force against another without his or her consent. Physical contact is required for this tort.

Assault (= agression) – Assault doesn’t require that the defendant make contact with his or her victim. It is an intentional act or threat which instills fear of imminent physical harm in an individual.

False imprisonment (= séquestration) – False imprisonment is when a person prevents another from moving without consent.
**Intentional infliction of emotional distress** (= détresse émotionnelle infligée intentionnellement) – It involves some kind of conduct that is so terrible that it causes severe emotional trauma in the victim.

**Invasion of privacy** (= violation de la vie privée) – It is the intrusion into the personal life of another without consent.

**Defamation** (= diffamation) – It occurs when one person makes a false statement about another person and the statement harms (= nuit à) that person’s reputation in some way.

**Deceit** (= tromperie) – The defendant makes a false representation of a fact to the victim with the knowledge that it is false.

**Improper use of legal procedure** (= action dilatoire / abusive) – It refers to the improper use of a civil or criminal legal procedure for an unintended, malicious, or perverse reason.

### IV. INTENTIONAL TORTS TO PROPERTY

**Trespass to land** (= violation du droit de propriété) – It occurs where a person directly enters upon another's land without permission, or remains upon the land, or places any object upon the land.

**Nuisance** – A nuisance is some sort of interference that affects either an individual plaintiff or the public at large. Nuisances are generally in the form of things like noises, odors, smoke or other kinds of pollution.

**Trespass to chattels** (= atteinte illicite aux biens) – It is the intentional interference with a chattel in someone else’s possession.

**Conversion** (= détournement du droit de propriété d’autrui à des fins personnelles) – It is when someone converts property for his/her own use.

### V. DEFENSES TO INTENTIONAL TORTS (= les défenses invoquées contre les délits intentionnels)

**Consent** (= consentement) – When a tort is committed, the plaintiff’s consent may excuse the defendant from liability (express or implied consent).

**Self-defense** (= légitime défense) – Tort law recognizes the personal right to defend oneself when attacked, using reasonable force. Reasonable force means that a person must defend himself using a justifiably proportionate level of force to that of the attacker.

**Defense of others** – The defense of others can also be used by a defendant. The defendant must prove that he used only a reasonable amount of force in order to protect the victim.

**Defense of property** – A person can use a certain amount of physical force in order to protect his property from real and imminent danger. The defendant must prove that he used a proportionate amount of force when defending his property.

**Recapture of chattels** (= récupération de biens volés) – The defendant is entitled to regain possession of stolen property. Recapture of chattels can only be claimed if the property was wrongfully taken from the defendant.

**Necessity** – The defendant injures a plaintiff in order to prevent a greater harm.

**Arrest** (= arrestation) – In some cases, an officer and a private citizen can make an arrest without a warrant. The citizen must be absolutely sure that a felony or breach of the peace has occurred in order to make a citizen’s arrest. He must use reasonable force in making an arrest.
VI. NON INTENTIONAL TORTS – NEGLIGENCE

You are negligent if you unintentionally cause injury to someone in a situation where you should have known your action could cause harm.

The plaintiff must prove 4 elements:

- **Duty of care and standard of care** – The defendant owed the plaintiff a duty of care (= avait une obligation de diligence à l'égard de la victime). The plaintiff must prove that the defendant failed to provide the proper standard of care (= les normes adéquates/ se conduire en bon père de famille) that a reasonable person would have provided in a similar situation;

- **A breach of duty** – The plaintiff must prove a breach of duty (= manquement à une obligation) : it means that the defendant has failed to act in the same manner as a reasonable person under the same or similar circumstances;

- **Causation** – The plaintiff must prove that the actions of the defendant were the cause of the plaintiff’s injuries;

- **Damages** – The plaintiff may recover damages for the financial losses sustained. The plaintiff should be placed in the same economic position he or she would have been, if the wrong had not occurred. There are 4 categories of damages: damages for injury to person, damages for injury to personal property, damages for injury to real property, and punitive damages.

VII. DEFENSES TO NEGLIGENCE

The 3 majors defenses to the tort of negligence are:

- **Contributory negligence** (= le plaignant a contribué à la négligence du défendeur) – The defendant may be able to prove that the plaintiff contributed to the cause of the injury. The conduct of the plaintiff cooperates with the defendant's negligence in causing harm to him/her;

- **Comparative negligence** – This doctrine reduces a plaintiff's recovery by the percentage in which the plaintiff is at fault for his or her damages;

- **Assumption of the risk** (= acceptation du risque par la victime) – The defendant may be able to prove that the plaintiff knowingly assumed the potential risk normally associated with a particular activity;

- **Immunity** – Certain individuals and entities are granted immunity.

VIII. STRICT LIABILITY (= responsabilité de plein droit, sans faute)

Strict liability is a special kind of liability that applies in situations where an activity is so dangerous that the defendant is automatically liable in the case of injury.

It is known as liability without fault.

In common law, strict liability applies in cases involving leaking toxic waste or harmful fumes or fires.

Keepers of wild or domestic animals are strictly liable for the damage done by the trespass of their animals.

The defendant is also strictly liable for ultra hazardous activities (example : manufacturing highly flammable products).
IX. PRODUCT LIABILITY

Products liability concerns the responsibility of the manufacturer or vendor of a product to ensure that products are safe and do not cause injury. The liability may be based on negligence or on a warranty or it may be strict liability.

VOCABULARY:
- torts = délits civils
- wrongdoings = actes répréhensibles
- to recover damages = obtenir des dommages-intérêts
- to compensate the injured party = indemniser la victime
- grossly negligent = d’une négligence grave
- owed = dû à (quelqu’un)
- volitional movement = mouvement volontaire
- meant to do it = avait l’intention d’agir de la sorte
- threat = menace
- fear = crainte
- imminent physical harm = préjudice physique imminent
- a false statement = une fausse déclaration
- a justifiably proportionate level of force = une riposte proportionnée et justifiable
- wrongfully = à tort, de manière illicite
- in order to prevent a greater harm = pour prévenir un préjudice à l’ensemble de la société
- a warrant = un mandat
- felony = crime / délitt
- breach of the peace = une violation de la paix
- harm = préjudice
- the financial losses sustained = les pertes financières subies
- real property = biens immobiliers
- knowingly = sciemment
- leaking toxic waste = fuite de déchets toxiques
- harmful fumes = émanations toxiques
- the trespass of their animals = les dommages causés à leurs animaux
- ultra hazardous activities = les activités extrêmement dangereuses
- to ensure = pour s’assurer
- a warranty = une garantie