



## Chapter Six

# The Law of Torts

In the last chapter, we primarily discussed crimes, violations and offences. These acts result in the guilty party being punished by the state. But what if some one commits an act which is neither of these? What if they commit a wrong? Is there a remedy to this?

In essence, law in Canada is primarily divided into two spheres: Criminal Law and Civil Law. As was the case in early England under King Henry I, civil matters involve disputes between two individuals, a group of individuals, a business, a corporation, etc. Within the realm of civil law is the notion of remedy. By this, one party feels that they have been wronged in some way and desire some sort of compensation or restitution. This is normally accomplished by some form of litigation often referred to as “suing”. As we have seen in earlier chapters, the legal process is there in the form of Small Claims Courts, Supreme Court of Nova Scotia or even mediation.

In summary, criminal law is restricted to crimes, violations or offences against the state. Under this, the state charges the person or persons for committing the specific illegal action. The result is often probation, fine or even incarceration. But, in criminal matters, the victim usually gets very little benefit, other than seeing the guilty party being dealt

some form of punishment.

Civil Law, on the other hand, focuses on remedies to individuals who have been wronged in some manner. So, victims in a criminal action often initiate a civil litigation in an effort to get some compensation for their loss.

Loss must be proven. By this, the victim must show the court that they have real or personal property; suffered pain or injury; lost income due to injuries or damage to their reputation; etc.

Civil Law is divided into many different types such as Property Law, Consumer Law, Business & Corporate Law and the Law of Torts. The latter is the focus of this chapter.

**In Law, a wrong is often referred to as a “tort.”** It comes from the Latin word “tortum” which means wrong. “Tortum”, in turn, derives itself from “torquere” which means to twist. Therefore, the legal word “tort” comes into our legal vocabulary from the old French word “tort” which means a wrong.

Today, in law, the word **tort** is seen as a civil wrong of which the courts are prepared to compensate the victim for any loss or damage which results from the commission of a tort by the defendant. A tort is not to be confused with a criminal wrong,

otherwise referred to as a crime. As we have seen, a crime is the commission of a wrongful act against our society as a whole. In tort cases, the victim sues the defendant for damages as the result of a specified wrongful act. In some cases, this act may be the result of a criminal action but this may not always be the case.

Under criminal law, the commission of a criminal wrong or crime requires that the government must prosecute the wrongdoer. However, a tort does not require this. The fact that a person has wrongfully acted and has affected another person in some adverse manner does not mean that the victim is required to sue the wrongdoer. The decision to sue is at the option of the victim. However, whether or not a charge is laid for a criminal offence is not optional. The government and/or its agents (the police) are required to prosecute all violators of our laws.

Often torts are linked to a criminal wrong. Torts consist of two types: **Intentional Torts** and **Unintentional Torts**.



The most common type of **Unintentional Tort** usually occurs as the result of automobile accidents.

For example, Carol drives her car through a stop sign on the corner of Albert and Main Streets. As a result she hits the side of a car operated by Gerry and injures the passenger Kyle. Carol can be charged for the commission of a criminal offence contrary to the Criminal Code of Canada such as dangerous driving or criminal negligence. Under the law, Carol would be formally charged, tried and if found guilty could be ordered to pay a fine, serve a prison term, etc. However, the law deals with the commission of the offence, not injury or losses sustained to Gerry's car or Kyle.

Carol's insurance would probably cover the damage to Gerry's car. But, what if her insurance is not sufficient enough to look after the injuries sustained by Kyle? Under tort law, Kyle can sue Carol for damages he incurred as a result of the accident. Damages would be assessed in relation to the extent of Kyle's injuries. These may include medical expenses (doctor's fees, ambulance expenses, home nursing care, equipment needed for recovery, etc.), lost salary due to being confined at home, legal expenses, etc.

Unintentional torts such as this is the most common type of tort dealt with by the courts. It is obvious that Carol did not deliberately plan on hitting Gerry's car and injuring Kyle. True, she deliberately drove through the stop sign but upon examining

the court records, it could be determined that hitting Gerry and thus injuring Kyle was the last thing on her mind.

*Negligence is considered to be any type of conduct or behaviour which is below what would be expected of an average person placed in the same circumstances.* In this instance, the average person does not drive through stop signs, thus Carol can be judged as being negligent. However, negligence is a very difficult word to define. Our government has narrowed its definition in areas such as the operation of a motor vehicle or in the handling of gasoline by the creation of laws. But, in most areas, the term is "wide open" for interpretation. This interpretation is left to courts who examine each case and determine whether or not the defendant was negligent in dealings with the victim.

Generally speaking, each of us is expected to behave in accordance with a general standard of normal behaviour dictated by our society. We are expected to work, play and live exercising a reasonable amount of care in how our actions could affect other people.

For example, if a surgeon loses his patient in an operation, even though he has done everything possible to save the patient, he cannot be judged as negligent. In this instance, the surgeon performed with all the reasonable care which could be expected of him in the circumstances. However, if the patient died as a result of the surgeon being intoxicated, then the death could be judged as the result of negligence and a law suit could be initiated by the survivors of the deceased seeking damages. The damages which would be granted to the plaintiffs would be at the discretion of the court. However, if the victim was the sole breadwinner of the family, then the court could order the surgeon to pay to survivors financial support in line with that earned by the victim, medical expenses, legal fees, etc.

As we have discussed, the most common type of unintentional tort stems from automobile accidents. Here, most legal actions are initiated on the grounds of negligence. For the most part, torts stemming from automobile accidents are directed towards two individuals: the owner of the vehicle and the driver of the vehicle. In many cases, these are one in the same. But, in other cases, they are two separate individuals.

In some provinces, the law sees both the owner and the operator as equal partners in the event of negligence or they are believed to hold **vicarious liability**.

In other words, let's say that Carol was driving her neighbour's car when she hit Gerry. Then, the courts could assess the neighbour for 50% of the claim made by Gerry as well as the claim made by

Kyle Thus, Carol would only be responsible for 50% of the claim. This circumstance changes if the operator of the automobile was using the vehicle without the consent and/or knowledge of the owner. Say, Carol was in hurry and simply took her neighbour's car. She knew her neighbour kept a spare set of keys under the driver's seat and felt that the neighbour, who was her best friend, would not mind. In this instance, the neighbour is not liable for any negligence as a result of Carol's accident. The same holds true if the car was stolen.

Another popular area of unintentional torts deals with a **manufacturer's liability for goods**. When you go to a store and buy something from the merchant, you are entering into a contract with the merchant. In exchange for \$1.69, you are receiving from him a bottle of soft drink. The merchant sells you the merchandise in good faith and he believes that the soft drink is safe and of good quality. The merchant, in turn, bought the soft drink from a distributor who in turn bought the soft drink from the manufacturer. The consumer did not buy the soft drink directly from the manufacturer and distributor. Rather, the consumer purchased the soft drink indirectly from the manufacturer and the distributor.



But, what happens if the bottle contained a poison and resulted in the consumer being made blind. Who is responsible?

In this instance, the consumer would first, under tort law, sue the merchant, then the distributor and then the manufacturer. The merchant may sue the distributor and manufacturer, and the distributor may sue the manufacturer. Usually, in cases as this, the manufacturer accepts the responsibility unless, of course, negligence could be proven as the result of an action by the merchant or the distributor. It would have to be proven, in the case, that someone in the employ of the merchant or the distributor broke the seal of the bottle and placed the poison.

In essence, a manufacturer must accept responsibility for any goods which it produces. This can be an automobile, light bulb or lawn mower. If the car's brakes fail injuring the occupants or causing injuries to others; the light bulb explodes cutting the hand of the owner or even causing eye injury; or the blade falls of the lawn mower seriously cutting the feet of the operator of the mower - the manufacturer is usually held responsible if it can be proven that the damage was the result of some flaw in the manufacturing process.

But, this is not always the fault of the manufacturer. Take for example, a store owner who does not

properly refrigerate dairy products. Say, the refrigeration unit breaks down over the weekend without the knowledge of the merchant. The milk is sold, people get sick. The law suits, which could be initiated by those consumers affected, would be directed at the merchant not the dairy which supplied the product. It was negligence on the part of the merchant which resulted in the dairy products going bad.

Another example of an unintentional tort is **dangerous premises**. This is a very confusing area of tort law. Generally, the law maintains that it is up to the occupier of a property to make it safe for all those who visit. Therefore, if some aspect of the property is deemed as dangerous, then it is up to the occupier to make it less dangerous. The owner is, in most cases, the occupier and the law will apply to the owner. But, where the owner is not the occupier, the responsible party is the one who is actually in occupation of the premises.

To complicate it even further, the law sees three classes of people who may enter onto a property. These are **invitees, licensees and trespassers**.

An **invitee** is often a business visitor, an employee or a customer from whom the occupier stands to make an economic gain such as a salesman, postman, water meter reader or someone doing community fund raising. It does not automatically mean someone who has been invited onto the property. The occupier has to exercise reasonable care to ensure that the property does not pose any unusual danger to those invitees. In this instance, an unusual danger may be a slippery wet floor, an icy sidewalk, etc.

A **licensee**, on the other hand, is a person who enters the property with the permission of the occupier. People in this grouping are those who come onto the property for a purpose other than to conduct business with the occupier. In most instances, these are the social guests of the occupier. The occupier, in turn, is not bound by law to make the premises safe for licensees, but they are required to warn them of any concealed dangers known to the occupier. For example, a dangerous dog or shingles falling from the roof. If the visitors were invitees, the occupier would have to fix the roof or chain the dog. But, for licensees, a sign stating there is a dangerous dog or a sign drawing attention to shingles falling from the roof will suffice.



A **trespasser** is a person who enters another person's property without the permission of the occupier. In the past, the occupier has had no obligation

to make a property safe for a trespasser. However, in recent times, this has changed as a result of allurements.

An **allurement** is something which attracts an individual to a property and thus contributes to them trespassing. This most often refers to young children who enter a property because something on the property is attractive to them. In this case, the courts feel that the occupier bears some responsibility in making the property safe for trespassers drawn by allurements.

An example may be a swimming pool which is unfenced and unprotected. Another may be a bush bearing a berry resembling a raspberry but is actually highly poisonous. Should the child eat the berries and die or swim in the pool and drown, the court could favour a suit initiated by the parents of the deceased child that the allurement of the berries or the swimming pool contributed to the child's death thus it could hold the occupier liable for damages under tort law.

Further, there have been some cases in the United States where burglars have successfully sued occupiers for dangerous premises. Even though the burglar was a trespasser, the occupier used unreasonable force in expelling him (for example, the occupier shot the burglar). In this instance, some courts have awarded damages to the burglar.

Secondly, if there is an unusual danger present. For example, Let's say there has been a rash of break-ins in the area. So, an occupier wired his front door to a 1000 volt circuit. A trespasser touches the doorknob and is seriously hurt. If there was no warning sign, then the court would rule that this was an unusual danger and would award damages to the burglar. However, if there was a warning sign posted and the burglar proceeded to touch the door, he would have a great deal of difficulty trying to claim any damages against the occupier.

*But, what if you are involved in a litigation involving an unintentional tort? How do you defend yourself?*

**There are three possible defences: An Act of God or Inevitable Accident, Contributory Negligence and Voluntary Assumption of Risk.**

First, you could argue that the incident took place as the result of an **Act of God or Inevitable Accident**.

Let's say, for example, Carol's car was struck with lightning resulting in her losing control and crashing into Gerry's oncoming car. In this instance, Carol would bear no liability for the accident. Similarly, if Carol was momentarily blinded by the lightning flash and ran through the stop sign, there

would be no liability for damages. However, as you can see, the proof for this is difficult and precise timings, angles and related factors must be provided to the court.

The second defence is **contributory negligence**. This is where both the plaintiff and a defendant jointly contributed to the accident. In other words, both parties did something which resulted in the accident taking place. For instance, Gerry was over the "yellow line" when Carol ran into him. If he had been on his side of the road, there is a possibility that the accident could have been avoided.

The third defence is **voluntary assumption of risk**. There are many activities which we are involved in which carry a certain amount of risk. For example, if we attend a baseball game and get hit by a ball, we cannot sue for damages since we knew that it is a regular facet of the game to have a ball flying into the stands. But, on the other hand, should a fight break out between the batter and the umpire and the batter, in a fit of rage, hurls his bat into the stands injuring a spectator; the spectator could sue for damages as the action of the batter is not reasonable behaviour expected of a player in the game.

In order for the voluntary assumption of risk defence to work, it must be proven that the victim must of had full knowledge to be encountered and also must have had a choice as to whether or not to avoid taking this risk. An example is a skier who skis into a dangerous area, triggers an avalanche and dies. If it can be proven that the skier knew there was dangerous areas and that the skier disobeyed suggestions to avoid these areas, then there would be no liability. In cases of sports where there is definite risk such as white-water rafting, mountain climbing, race car driving, bungee cord jumping etc. the participant may have to agree to the risks involved and thus accept full responsibility for any injuries or damages.



Another area of tort law concerns **strict liability**. In some areas of activity, the chances of someone getting hurt are so severe that the person engaging in them is held fully responsible for all damages or injuries as a result. This is referred to as strict liability. In these cases, it is not necessary to prove absence of intention or negligence. It is an automatically the fault of the participant should damages result. Good examples of this include cliff diving, daredevil acts in the circus or stuntmen in movies.

Tort cases deriving from strict liability usually

centre around either dangerous animals or dangerous activities.

The law classes animals into two categories: wild animals and domestic animals. Wild animals are always regarded as dangerous and anyone



owning one must accept strict liability for the actions of their animal. Domestic animals are generally seen as harmless but the law accepts that they do possess certain

dangerous characteristics. So, if you are bitten by a wildcat owned by a neighbour, you are entitled to compensation, as the owner must accept strict liability since a wild cat is deemed as a wild animal.

But, what if your neighbour's dog, Fifi, bites you. The old rule: "Every dog is entitled to one bite." still holds. In other words, if the owner has no knowledge of the dog biting anyone else and if you cannot find anyone else who has either complained about or has been bitten by Fifi, then the owner bears no liability. However, if Fifi is known by neighbours to bite others, then the owner must accept strict liability and must pay compensation to the victim.

With regards to dangerous activities, this pertains to a person or company using their property in a dangerous way. For example, your neighbour buys an old 500 gallon oil drum and fills it with gasoline. The gasoline leaks out. You inform your neighbour about this but nothing is done. One day a passer-by flips his cigarette butt onto your neighbour's gas-saturated lawn. An explosion results injuring the passer-by, burning down your neighbour's house and destroys your garage and trees. Both you and the passer-by can sue for compensation because the neighbour has accepted strict liability for this dangerous activity.

**But can you be liable in tort law for the acts of others?**

The answer in many tort cases before the courts is, yes. First of all, parents may be held responsible for the actions of their children in some instances. However, this area of law has changed over the years.

In most cases, parents can be held responsible for their child's tortious acts if it can be proven that the parent was negligent in some way which led to the child's action. Take, for example, a five year old boy who fired a slingshot given to him by his

father. As a result of the firing, a seven year old girl sustained serious eye injury. In this case, the court would rule the parent responsible in that the father should not have given such a dangerous weapon to such a young child.

However, if the young boy was fifteen, then the courts would rule that the child is responsible, not the parents. Generally, the law holds that a child is liable for intentional torts if the child is old enough to be capable of forming such an intention. In other words, if the child knows what he was doing, realized the seriousness and consequences of his action. Similarly, a child is liable for negligence if it can be shown that the average child of his or her age would not behave in such a manner. As a result, children as young as seven years of age have been held responsible for committing torts. However, unless a child is financially independent, it is hardly worth the expense or effort to seek financial compensation from them. Any judgement placed against such a child could not be enforced.

Another area of parental responsibility concerns the use of the family car. What happens if a sixteen year old male is sued for injuries sustained to a pedestrian as a result of an accident caused by the young man driving the family car. This case is somewhat different in that the parents become liable for damages not because of their parental relationship to the driver of the car, but as the owners of the car. As we have discussed under vicarious liability, the courts may rule a split on the compensation for the damages: 50% to the driver and 50% to the owner.

Another individual who may be held liable for the tortious actions of others is an employer. If an employee is acting under the terms of his or her employment when the tortious act is committed, then liability for the action could fall to the employer. In such cases, the victim or plaintiff often sues the employer simply because the employer has more financial resources to settle the



claim. For example, let's say the cook in a restaurant serves a meal which has been reheated several times in the kitchen and thus becomes a haven for salmonella. The meal is served and a customer gets sick and sues. In this instance, the customer would sue the restaurant, not the cook since it could be believed that the restaurant would have more resources at its disposal than the employee.

A third party liable for the tortious acts of others is the owner of an automobile. We have already reviewed this under unintentional torts.

Finally, partners in a business are responsible for any tort committed by any of the other partners during the course of ordinary business in the partnership. Two men are partners in an incorporated roofing business. They work on separate jobs, each man having a work crew of their own. All earnings are pooled into the partnership. One of the partners is sued for putting on a slate roof on which some slate shingles came detached and hit the homeowner on the head. The owner would sue the partnership since the chances of getting a larger settlement would be greater by suing both partners rather than one.

**But what about intentional torts? What are they?**

Unlike an unintentional tort which, as we have seen, can be sometimes defended as being accidental, an intentional tort is a type of wrongful conduct deliberately undertaken by the defendant to harm the plaintiff or victim. An intentional tort also occurs when one person does something to another and it can be proven that such an action can virtually cause harm to the other person. Such conduct could include things as libel, slander, assault, trespass, etc.

However, for a tort to be intentional, one of two factors is taken into consideration by the courts. First, the court must determine **intent**. Did the defendant intend on harming the plaintiff in some way? Did the boy intend on placing the rock into the snowball and throw it at the little girl knowing that it would cause harm? Second, there is  **motive**. Although not a critical ingredient in a tort action, the court could be swayed to the side of the plaintiff if the victim could prove that the defendant had some reason for the action undertaken. For example, the star hockey player had his leg broken in the locker room by his team-mate as the team-mate saw it as a way he could finally get more ice time.

**The following are considered as being intentional torts:**



**Intentional Interference with the Person:**

Our society insists that no one should be beaten, confined or otherwise threatened by another. **Assault** is a term used to describe both the actual threatening to hurt another as well as the action of hurting another. In some areas, assault is considered as the threat of bodily harm while **battery** is when actual physical contact takes place. Thus assault can be verbal, physical, or both verbal and physical. Also, physical harm does not necessarily have to take place for a tort action to be initiated. In the past the courts have held that a kiss is battery if the person so kissed felt

it both unwanted and offensive.

In the case of verbal assault, if the person can prove that the threats made or statements made resulted in the victim incurring mental suffering, then a tort action could be initiated. However, in this case, the defendant's actions would have to be so severe that the court would accept that it would cause a similar reaction from a normal person. Often suits stemming from verbal assault are dismissed by the courts as being far to frivolous.

Further, if a person is improperly detained, arrested or even imprisoned, they are entitled to compensation for such an action from the person who undertook the detention, arrest or imprisonment.

**Intentional Interference with Land:**



One of the earliest rights recognized by our society concerned the right of someone to enjoy their land without any interference. As a result, the law of torts prohibits the entry of one person onto another person's land without permission or authority. If damage is done, the courts may award special, general or even punitive damages. If no damage is done, nominal damages may be awarded. Further, the law dictates that anyone trespassing onto another's property must leave upon request and further the law protects the owner to forcibly remove the trespasser as long as only reasonable force is used.



**Intentional Interference with Goods:**

Just as was the case with intentional interference of land, the law further protects a person's goods or assets or chattels from interference or damage by another individual. If a person takes another person's chattels without permission or authority, then the person who took the goods is required by law to either return them in good order or pay all the damages. The same holds true if someone intentionally damages someone else's assets. They too must pay damages.



**Interference with Advantageous Relationships** is another type of intentional tort. If a person or a business interferes with another person business's relationship, then such action can be deemed a tort. For example, if Restaurant A starts to spread untrue stories about Restaurant B having "dirty" kitchen, and this story results in Restaurant B losing business, compensation can be sought under the law of torts.

In these four types of intentional torts, **there are**

### several defences one can use.

First, one can claim the defence of **consent**. If you have consented to another person using your land or goods, then you cannot claim that you have been wronged. This defence often comes up in trespassing suits. For example, say you own some land on a lake. At the edge of your property, but not on your property, is a sandy beach. For the past number of years, you have allowed people to cross your land to get to the beach. But, last summer, you had enough with the litter, noise and lack of privacy. You decided to clamp down so, as an example, you charge Mr. J. with trespassing. In this case, Mr. J. could use the defence of consent in that you consented to allow him to cross your land in the past. You posted no signs advising to the contrary nor did you inform him or others, either orally or in writing, about your withdrawal of consent.

A second defence is necessity. **Necessity** fits within two categories: **public necessity** and **private necessity**.

Say, for example, a serious fire breaks out in Yarmouth. In order to check the fire, the fire department wants to build a firebreak between the spreading blaze and the rest of the town. The only way to do this is to destroy your house by leveling it with a bulldozer. The action had to be done out of **public necessity** in order to save the town. So, you would be unable to sue the fire department for its action. In cases as this, the town would probably compensate you, out of court, for any losses sustained.

As for **private necessity**, the best example would be if you were hopelessly lost in the woods for several days. You came upon a cabin. You broke into the cabin and ate some food which you intended to replace after you are found. In this case, the courts would rule that you acted out of private necessity and thus the owner of the cabin, although inconvenienced, would have little or no grounds for a law suit.

A third defence is **self-defence**. The law recognizes that every person has the right to defend himself, those under his care, his goods and his land from others. However, the law stipulates that only reasonable force is to be used in order to complete this defence. As we discussed a little earlier in this chapter, you cannot go to extremes. For example, if two members of a local charity came to visit as licensees and you greet them with hand grenades, machine-guns and axes, the courts would rule that this was unreasonable (after they ship you off for a thirty day mental examination) and would award damages, even if it was just for verbal assault.

Another defence, although often unsuccessful is **mistake**. For example, if a hunter is being sued for

shooting a cow instead of a deer, he cannot escape paying damages to the farmer. Although the shooting of the cow was clearly a mistake, the defence cannot be used. However, say a police officer arrests and detains a young woman who he believes committed a serious action. The woman has an identical twin. The woman being held did not commit the action, the twin did. In this instance, the police officer made a mistake and could use it as a defence. However, this could only be used if the woman being held did not have any means of identification to prove her identity as being the wrong person to be detained.

Finally, the defence of **lawful authority** may be used. Parents have the right to discipline their children as do teachers who are expected to act in the judicious role of the parent. But, again, the law states this care must be reasonable. Peace officers also have the lawful authority to exercise their rights to protect society from the illegal actions of others. If a person has been arrested or detained, under lawful authority, no right to compensation exists. However, as was the case with Donald Marshall Jr., if the person is wrongfully held then compensation must be paid.

### **Nuisance - Unreasonable use of Land:**

The term nuisance refers to the use of property or land by one person in such a way that it interferes with the enjoyment and/or usage of adjoining properties.

In our society, we must learn to live in harmony with our neighbours and thus, from time to time, we may have to put up with burning leaves, garbage or even the neighbour's kids walking across our flower garden. However, a factory polluting the community, noisy dogs or an automobile junkyard do not fit within typical daily neighbourhood activity. These three are examples of nuisances.

If the nuisance has been covered by a law, for example, the location of the train tracks near your backdoor, then there is no right to any compensation. In addition, if the nuisance has been in the area for twenty years or more and has operated in a similar uniform manner over those twenty years, then it is a nuisance by **prescription**. However, the key word here is uniform. It is impossible to prove that noise, smoke or odours have been uniform over twenty years. But, on the other hand, it is possible to prove that rain running off your garage roof onto your neighbour's lawn has been doing so in a uniform manner for the past twenty years. The fact that he is now angry that he gets water in his basement is meaningless.

Another type of intentional tort concerns **defamation**. This is where one party injures another

er party's reputation by the uttering of defamatory statements - **slander** ; or the publishing of written defamatory statements - **libel**, then the law of torts provides a remedy to the injured party.

A defamatory statement is considered as one which lowers the standards of a person in the eyes of others.

In Nova Scotia, libel law has been at the centre of controversy in that it appears to be somewhat antiquated in comparison to other areas of law. Presently, in Nova Scotia, a party named in a libel suit must prove their innocence before the law. In other words if A publishes a defamatory statement about B then A must prove his innocence of the charges. In other words, if Albert tells Bob a story about Carl, Carl could sue Albert for damages of the story is untrue and damaging. It would be up to Albert to prove the story as being true. This is the direct opposite to normal legal procedures where the accused is automatically considered innocent until proven guilty. In a normal litigation, guilt must be proven. But in a Nova Scotia libel litigation, innocence must be proven.

Compensation, in the form of damages, may be made to the victim by the courts for defamation. There are exceptions to this, however, through the use of justification, absolute privilege, qualified privilege and fair comment.

**Justification** simply means that the statements made were true. This can even go so far to mean that if the defendant mistakenly believed the statements were true then the defendant had justification in saying what he did.

**Privilege** is best seen in the House of Commons where members of the House may make statements about other members without fear of a tort action. Members are permitted to speak freely about each other and the leaders of the country without fear of punishment or legal action.

A **qualified privilege** exists when a false statement is made by one person but without ill intentions. For example, your boss may send in a report on you containing some false information. You cannot sue your boss for damages under tort law unless you can prove that the statements were deliberately made to hurt you or your career.

Finally, members of the media can make **fair comment** on any facet of public life including government, art, books, movies, etc. The media's comments may involve reputations and may even adversely affect them. Even so, a suit cannot be initiated under the law of torts unless it can be proven that the comments were made with the deliberate intention to harm to person involved.

Intentional torts also involve the **invasion of**

**Privacy.** The question of privacy is still evolving in the courts. In general, it has been often defined as the right of every individual to be left alone. It means that we have (1) the right of not having to be subjected to unwanted publicity; (2) the right of not having our physical appearance or voice used in advertising without our consent; (3) the right to communicate with others without having any fear of being eavesdropped; (4) the right to maintain and keep papers without having them read by others without our consent; etc. Any infringement is considered contrary to the law.

But in other provinces, a violation of privacy is still looked after under the law of torts. If, for example, you open someone else's letter, you can be sued for interference or trespass to someone else's goods. If you publish someone's picture without their consent, they could sue for defamation since they could maintain that you falsely asserted that they had endorsed the product in question.

As for eavesdropping, the courts realize that this is an important method used by police in an effort to gain information about a suspect. As a result, it is permitted if there is consent of one of the parties involved or if their is authorization given by a judge. If neither of these two conditions are met, then the evidence gained cannot be used in court and further the victim may be successful in seeking compensation under tort law.

#### **What will result as the result of a successful tort action?**

Generally, the victim of a successful tort action is provided with a remedy to the situation. More often this remedy takes the form of damages. There are **four types of damages** awarded by the courts. First, there are **special damages**. These are often referred to as out of pocket expenses incurred by the victim. These include medical expenses, legal fees, replacement of damaged goods, lost wages, etc. These damages tend to be more immediate and in the short term.

First, there are **general damages**. These are monetary awards granted by the court to the victim to compensate for things such as pain and suffering, disability, loss of salary and related benefits in the future such as lost future income, disfigurement, etc.

**Punitive or exemplary damages** are those damages, usually in money, given to the victim and meant as a punishment to the wrongdoer. Such damage awards are normally given in the case of intentional torts. Often, punitive or exemplary damages are awarded if the tortious act was committed in a high-handed or flagrant manner.

Finally, **nominal damages** are those of a small or petty amount. These are normally of one dollar and are awarded for to the victim when no actual

losses have been incurred. These are awarded to show the victim that the court agrees with the litigation but the court cannot award loss for a variety of reasons including not being satisfied that a loss had actually occurred.

Besides damages, the court may order that the wrongful act is to be stopped. In this case, the court may issue an **injunction** ordering the defendant to stop doing something which is affecting the plaintiff or victim. The issuance of an injunction may accompany an awarding of damages as a result of the tortious act.

If the defendant refuses to obey the injunction, then it is treated as a **contempt of court**, punishable by imprisonment.

But even if the victim wins his or her case and a judgement is levied against the defendant to pay damages, the next problem is the collection of these damages. If the defendant has no resources, then the judgement is practically useless. It cannot be enforced. Let us say that Carol has been successfully sued by Kyle, and Kyle has been awarded \$1,000,000.00 in general damages. But, Carol has assets totaling less than \$100,000.00. How would she ever pay this debt?



First of all, the courts can provide for the assets of Carol to be seized and sold in order to settle all or part of the judgement awarded to Kyle. But, there would still remain \$900,000.00. In addition, there are procedures where the wages of the judgement debtor, in this case Carol, could be seized to settle the judgement over a period of time. This procedure is called a **garnishee**. In most provinces, only a percentage of the wages may be garnisheed.

However, in most cases, people carry insurance protecting them for liability for torts. A homeowner usually carries insurance protecting them from any claim which may result from an unintentional tort stemming from someone being injured on the property. The same is true for an automobile owner who carries insurance protecting him from claims stemming from an accident. Many doctors carry malpractice insurance. Big corporations carry insurance of all types and retain lawyers to handle any type of tortious possibility which may arise.

Insurance companies, in these cases, only pay the injured party when it is clearly determined that the insured party was liable for the injuries sustained. Then, the insurance company will pay up to the maximum amount specified in the insurance policy. In some cases, the defendant may have to use all their savings and sell assets in order to make up the difference.

Some provinces, such as Nova Scotia, have

funds to compensate victims of criminal acts. In these cases, a person has suffered injury or loss, but a civil tort case is hardly worth the effort since the defendant has little or no resources. In this instance, the government provides compensation to people so affected helping them in some way to get over the financial loss or personal trauma of the crime. The amounts of the awards vary and in some cases seem small in comparison to the suffering or loss sustained to the victim. However, such compensations are seen by some as better than nothing at all. In deciding on compensation, the Board takes into consideration whether or not the individual contributed in any way to his or her injury. Such contribution can have a significant bearing on the amount of compensation which may be awarded to a victim.

Over the past number of years, the Nova Scotia Criminal Injuries Compensation Board has awarded in excess of one million dollars in compensation. This money comes from the "Victims Surcharge" charged by the courts in criminal matters.

Some examples of compensation included a nine-year old boy who lost sight in one eye as a result of another child shooting him with a BB gun. In this case, the injured child received an award of \$15,000.00. An 18-year old student was granted \$10,495.00 after he was assaulted with a broken bottle and suffered from permanent disability to his arm. A 15-year old female high school student was awarded \$4,500.00 after she was sexually assaulted, suffering bruises and abrasions over much of her body long with mental shock. In this case, the assailant committed suicide shortly after the incident. A man collecting rent was assaulted by a former tenant. As a result, the man had his right leg broken, required a bone graft and the insertion of a steel plate in his leg. In all, he received \$5,020.00 in compensation.

In Nova Scotia, as well as most provinces who have similar Compensation Boards, the limit on benefits is set at around \$20,000.00. However, the government has been reviewing these amounts. In some cases, such as abuse at the Shelburne School for Boys, the compensation may be as high as \$50,000.00 - \$75,000.00. Monthly payments are around at \$500.00 - \$750.00, although these too are under review. Finally, the Board does not pay for damages totaling less than \$250.00.

In summary, the Law of Torts allow people who have been wronged by others to seek compensation in some form for these wrongs. By using the law courts of Canada, the victim can actually triumph over an injustice.