

# Fundamentals of Anglo-American and Polish Legal Systems – Law of Torts

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# Law of Obligations

- Contracts
- Torts (Delicts)
- Unjust Enrichment

# Wrongful acts

Crimes

Criminal court, Penal law

*guilty or not guilty*

Torts – Delicts – Civil wrongs

Civil court, Civil/Private law

*liable or not liable*

# Parties in tort

- Wrongdoer / Tortfeasor
- Victim

# Liability in tort – essential elements

Infringement of rights

Fault or blame on the part of defendant

Loss suffered by the plaintiff

# Liability in tort – essential elements

- As a rule: Fault or blame on the part of defendant
- Exception: Strict liability torts –
  - dangerous things escaping from land (Rylands v. Fletcher - 1868);
  - dangerous animals;
  - some statutory duties

# Liability in tort – essential elements

- As a rule: Loss suffered by the plaintiff
  - Exceptions: Torts actionable per se, ie: without proof of loss –
    - libel,
    - trespass to land,
- (-> lead only to nominal damages)

# Liability in tort – essential elements

- Damage to the property
- Injury to the person [pain and suffering; loss of ability to pursue previous activities or interest; loss of actual or prospective earnings; medical expenses]
- Financial loss



# Remoteness of damage

- Link between wrongful act and resulting injury.
- Chain of events.
- Reasonably foreseeable damage

*/Wagon Mound Case (1961)/*

- Novus actus interveniens

*/hospital treatment of car accident victim/*

- Defendant must take victims as he finds them.

# Defences

- Statutory authority

*/Noisy railway/*

- Inevitable accident

*/Electric cables damaged  
during excavations/*

- Act of God

*/Bridges broken after lakes  
burst due to rainfall/*

# Defences

- Consent

*/spectator injured while  
watching motor race/*

- Contributory negligence

*/lady locked in toilet/*

# Vicarious liability

Employer is liable for his employee.

Principal – for his agent.

Partner – for his partners in partnership.

Car's owner – for car's driver.

# Vicarious liability

Employer is liable for his employee and not for an independent contractor.

Employer is liable for his employee in the course of his employment.

Limpus v. London General Omnibus Co (1862)

Warren v. Henlys Ltd (1948)

# Vicarious liability

- Vicarious liability does not affect tortfeasor's liability.
- Employer can sue employee for indemnity.

# Joint wrongdoers

- Joint and several liability
- Joint liability
- Several liability
- Indemnity / contribution

# Remedies in tort

- Damages
- Injunction



# Negligence

- Defendant owed plaintiff a legal duty of care.
- The duty was broken.
- Damage was suffered in consequence.

# Duty of care

- Neighbour rule
- *[any person closely affected by your conduct, and whom you should reasonably foresee might be injured by you]*
- Donoghue v.Stevenson (1932)  
*/snail in a bottle/*

# Duty of care

- Hedley Byrne v. Heller and Partners (1963)  
*/careless bank reference  
on client's credit/*
- Rondel v. Worsley (1969)  
*/public policy reasons;  
lawyer not liable/*

# Duty owed to plaintiff

- */1. woman heard collision/*
- */2. mother saw members of her family injured/*

# Breach of duty

- Standard of care
- Reasonable prudent person

*/Bolton v. Stone (1951)/*

- Onus of proof
- Res ipsa loquitor

*/planes usually do not crash/*

# Torts

- Torts against land / goods / person
- Trespass (direct interference with the person or property of another without lawful justification)
- Trespass is actionable *per se*

# Torts

- SPECIFIC TORTS IN ANGLO-AMERICAN LEGAL SYSTEMS

# Torts against Land

- *Trespass (direct interference with the person or property of another without lawful justification); actionable per se*
- Trespass to land (direct interference with the land of another)
- Private Nuisance (unreasonable interference with a person's use or enjoyment of his land)



# Torts against Goods

- *Trespass (direct interference with the person or property of another without lawful justification); actionable per se*
- Trespass to goods (direct and unauthorised interference with goods in possession of another)
- Conversion (dealing in the goods of another in such a way that the other's title to the goods is called in question)

# Torts to the Person (1)

- Trespass to the person (intentional direct interference with the person or liberty of another without lawful justification ):
  - assault (person is threatened)
  - battery (application of force)
  - false imprisonment

# Torts to the Person (2)

- Intentional physical harm (a wilful act which is likely to, and actually does, cause physical harm to another)
- Defamation (the publication of a false statement which tends to injure the reputation of another)

# Torts

- REGULATIONS IN POLISH CIVIL CODE

# Torts

- Article 415. Whoever by his fault caused a damage to another person shall be obliged to redress it.

# Torts

- Article 428. If the person who caused the damage is not liable for it because of his age or mental or physical condition, and there are no persons obliged to supervise such person or if the redress of the damage cannot be obtained from them, the person who suffered the damage may demand the full or partial redress of it from the perpetrator if it follows from the circumstances, and in particular from the comparison of the financial position of the perpetrator of the damage and that who suffered it, that the principles of community life so require.

# Torts

- Article 435. § 1. A person who runs on his own account an enterprise or a business set in motion by natural forces (steam, gas, electricity, liquid fuels, etc.) shall be liable for the damage caused to a person or a property by the functioning of the enterprise or establishment unless the damage was due to force majeure or solely to a fault of the person who suffered the damage or a third party for whom he is not responsible.

# Torts

- Article 436. § 1. The liability provided for in the preceding Article shall also be borne by the autonomous possessor of a mechanical means of transport propelled by natural forces. However, if the autonomous possessor gave his means of transport in dependent possession it shall be the dependent possessor who is liable.



# Torts

Article 429. Whoever entrusts another person with the performance of an act shall be liable for the damage caused by that person in the performance of that act, unless he committed no fault in the choice of that person or entrusted the act to a person, an enterprise or an establishment which perform such acts within the scope of their professional activities.

Article 430. Whoever on his own account entrusts the performance of an act to a person who in carrying out that act is supervised by him and has the duty to follow his instructions, shall be liable for the damage caused by that person in the performance of the act entrusted to him.

# Torts

Article 441. § 1. If several persons are liable for a damage caused by a tort, their liability is joint and several.

§ 2. If the damage was a result of an act or omission on the part of several persons, he who redressed the damage may demand from the remaining persons the refund of the appropriate part according to circumstances, especially according to the fault of a given person and the degree in which the latter contributed to the emergence of the damage.

§ 3. He who redressed the damage for which he is liable in spite of a lack of fault shall have a recourse claim to the perpetrator if the latter is guilty of the damage.

# Torts

Article 366.§ 1. Several debtors may be liable in such manner that the creditor may claim the whole performance or a part thereof from all debtors jointly, from several of them or all of them severally, and the satisfaction of the creditor by any of the debtors frees the remaining ones (joint and several liability of debtors).

# Torts

Article 443. The circumstance that the act or omission which caused the damage consisted in the non-performance or improper performance of an earlier obligation shall not preclude the claim for the redress of the damage as due to a tort unless something else follows from the contents of the earlier obligation.

# Torts

Article 361. § 1. The person obliged to pay an indemnity shall be liable only for the normal effects of the act or omission from which the damage resulted.

§ 2. Within the limits specified above, in the absence of a different provision of statutory law or provision in the contract, the redress of the damage shall cover the losses incurred by the injured person as well as the benefits which that person could have obtained had he not suffered the damage.

# Torts

Article 363. § 1. The damage shall be redressed, according to the choice of the injured person, either by the restitution of the previous condition or by the payment of an appropriate sum of money. However, if the restoration of the previous condition were impossible or if it resulted for the person obliged in excessive difficulties or costs, the claim of the injured person shall be limited to a performance in money.