

FACULTY OF LAW, MCGILL UNIVERSITY

EXTRA-CONTRACTUAL OBLIGATIONS / TORTS

2013-2014

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Course Outline

I. INTRODUCTION TO EXTRA-CONTRACTUAL LIABILITY

<p>3 September (Two hours)</p> <p>Class of 5 September is cancelled.</p>	<p>Class 1 – Introduction to the Course</p> <p>What are some of the questions and categories of analysis available in approaching the study of law in general, and of the law of extra-contractual obligations in particular? Note how the notion of “relationship” appears central to this area of law.</p> <ul style="list-style-type: none">❑ Course Syllabus❑ Conaghan and Mansell, “Introduction to a Critical Perspective”, in <i>The Wrongs of Tort</i> [page 83]❑ Article 1457, C.c.Q.
<p>17 September</p>	<p>Class 2 – Introduction: The Nature and Functions of Extra-Contractual Liability</p> <p>What do we do when things go wrong and people have been hurt? As you will have seen during the Integration Week of September 9-13, responding to the needs of those who perceive themselves to have been injured can take many forms; indeed, meeting those needs may require a broad spectrum of approaches. The law of extra-contractual obligations, while understood to be “compensatory” in orientation, offers a particular and limited response to victims’ needs and should be understood in relation to alternative and/or co-existing responses available in law and, more broadly, society. What are the characteristic features of the private law of civil liability as a response to human needs?</p> <p>To be read and discussed during the week of September 9-13:</p> <ul style="list-style-type: none">❑ Canada, Minister of Justice, <i>Restoring Dignity</i> [page 3]❑ Agreement in Principle (Indian Residential School Settlement) [14]❑ Schedule D, Independent Assessment Process [20] <p>For this class:</p> <ul style="list-style-type: none">❑ Trigger, <i>The Children of Aataentsic</i> [page 1] <p>and two of the following:</p> <ul style="list-style-type: none">❑ Viney, <i>Introduction à la responsabilité</i> [page 25]❑ Cane, <i>Atiyah’s Accidents, Compensation and the Law</i> [page 35]❑ Englard, <i>The Philosophy of Tort Law</i> [page 67]❑ G Calabresi, “Torts – The Law of the Mixed Society” [page 69]❑ Posner, <i>Economic Analysis of Law</i> [page 77]❑ Brierley & Macdonald, <i>Quebec Civil Law</i> [page 80]

II. PERSONAL WRONGDOING AS THE BASIS FOR EXTRA-CONTRACTUAL LIABILITY

<p>19 September</p>	<p>Class 3 – Introduction: The Obligation to Act with Care How is the obligation or duty to act with care towards others framed in the law? We find a tendency to generalize this duty both in the civil law and common law traditions. What are the sources of this duty? We also begin to inquire into the kind of behaviour that forms the basis for individual liability in private law; that is, under what circumstances are acts or failures to act characterized as wrongdoing?</p> <ul style="list-style-type: none"> ❑ Articles 1053-1057 CcLC (in Appendix) [p. 555] ❑ Articles 1382-1383 Code Napoléon (in Appendix) [p. 559] ❑ Articles 1457-1469 CcQ ❑ Luke 10.25-37 ❑ <i>Donoghue v Stevenson</i> [volume 2, p. 65] <p>and two more of the readings listed under Class 2</p>
<p>24 & 26 September</p>	<p>Classes 4 & 5 – The Meaning of Fault Attempts to give substance to the meaning of “fault” in the law include an economic approach to wrongfulness and reasonableness. Is it inevitable that some consideration of the “burden” of care be factored into the meaning of reasonableness?</p> <ul style="list-style-type: none"> ❑ Van Gerven, <i>Tort Law: Scope of Protection</i> [page 87] ❑ Holmes, <i>The Common Law</i> [page 90] ❑ Viney, <i>Les conditions de la responsabilité</i> [page 95] ❑ <i>Labelle v Gatineau</i> [page 114] ❑ Posner, <i>The Learned Hand Formula</i> [page 102] ❑ <i>Bolton v Stone</i> [page 103] ❑ <i>Overseas Tankship v Miller Steamship (Wagon Mound 2)</i> [page 108] <p>and the remaining two readings from the Class 2 list.</p>
<p>1& 3 October</p>	<p>Classes 6 & 7 – Critique of the Reasonable Person Standard In subjecting the defendant’s acts to scrutiny, the law demands a level of “reasonable” conduct; in other words, each of us is judged according to the standard of “the reasonable person”. In what ways is the personification of an abstract concept helpful and/or problematic?</p> <ul style="list-style-type: none"> ❑ <i>Oeuvres des terrains de jeux v Cannon</i> [page 131] ❑ Herbert, <i>Fardell v Potts</i> [page 136] ❑ Conaghan, <i>Tort Law and the Feminist Critique of Reason</i> [page 139] ❑ P Cane, “An appraisal of the fault principle” [page 118]

<p>8 & 10 October</p>	<p>Class 8 & 9 - Culpability: The Defendant's Abilities</p> <p>In addition to the requirement that the behaviour be wrongful, faulty, or unreasonable, the law also requires capacity on the part of the defendant. Sometimes articulated as the ability to discern right from wrong, capacity is necessary for the defendant to be found culpable under the law. How should the law deal with children who act in ways that cause injury? More generally, when and in what ways does the law take into account the character, context and abilities of the defendant?</p> <p><i>Children</i></p> <ul style="list-style-type: none"> ❑ <i>McHale v Watson</i> [page 151] ❑ <i>Ginn v Sisson</i> [page 155] ❑ <i>Van Praagh, "Sois sage"</i> [page 157] <p><i>Experts</i></p> <ul style="list-style-type: none"> ❑ <i>ter Neuzen v Korn</i> [page 169] ❑ <i>Roberge v Bolduc</i> [page 178]
<p>15 & 17 October</p>	<p>Class 10 & 11– Context: Fault's Relationship to Specific Norms</p> <p>What responsibility do courts have in developing the notion of "reasonableness"? When specific standards of behaviour are already articulated in a given context, either implicitly (e.g. custom) or explicitly (e.g. statute), does or should the private law adopt those standards?</p> <ul style="list-style-type: none"> ❑ <i>Von Bar, The Common European Law of Torts</i> [page 193] ❑ <i>Waldick v Malcolm</i> [page 198] ❑ <i>Canada v Sask. Wheat Pool</i> [page 211] ❑ <i>Morin v Blais</i> [page 224]

III. Other Bases for Extra-Contractual Liability – Modifications of Fault

<p>22 October (2 hours)</p>	<p>Classes 12 & 13</p> <p>Liability for Injury Caused by the Acts of Others: Vicarious Liability of Employers</p> <p>Particularly in the context of the family or the workplace, the law recognizes a particular connection between the defendant (employer or parent) and the actor/wrongdoer (employee or child) that may justify responsibility on the part of the defendant. In this session, you are introduced to the notion of vicarious liability and the reasons and conditions relevant to an employer's responsibility for the harm-producing actions of an employee. In what ways are the requirements for vicarious liability convincing, contingent, and/or problematic?</p> <ul style="list-style-type: none"> ❑ <i>Ira S Bushey v United States</i> [page 273] ❑ <i>Le Havre des Femmes v Dubé</i> [page 277] ❑ Articles 1053-1057 CcLC (in Appendix) (review)
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<p>24 October</p>	<ul style="list-style-type: none"> ❑ Articles 1457-1469 CCQ (review) ❑ Brierley & Macdonald, <i>Quebec Civil Law</i> (review) [page 80] <p>In the following Supreme Court of Canada cases dealing with vicarious liability, how do Justice McLachlin and Justice Binnie differ in their approach to, and use of, “precedent”, “policy” and “principle”? Does fault seem to play an implicit role in the judgments? How far might the notion of “enterprise risk” go?</p> <ul style="list-style-type: none"> ❑ <i>Bazley v Curry</i> [page 282] ❑ <i>Jacobi v Griffiths</i> [page 293] <p>Liability for Injury Caused by the Acts of Others, cont’d: Parental Liability</p> <p>How does indirect liability, illustrated in the context of parental responsibility for the acts of children, differ from vicarious liability? Is the CCQ clear as to the kind of behavior on the part of a child that will trigger potential parental liability? What justifications exist for extending or circumscribing liability for the acts of others, and how are legal principles and social policies intertwined in this area of law?</p> <ul style="list-style-type: none"> ❑ Articles 1053-1057 CcLC (in Appendix) (review) ❑ Articles 1457-1469 CCQ (review) ❑ <i>Gaudet v Lagacé</i> [page 267] ❑ <i>Parental Responsibility Act</i> [page 270] ❑ <i>Ginn v Sisson</i> (review) [page 155] ❑ Van Praagh, “Sois Sage” (review: Part IV) [page 157]
<p>29 October</p> <p>31 October</p>	<p>Classes 14 & 15 – Consolidation Week: Synthesis, Review, Exercises</p> <p>Background readings:</p> <ul style="list-style-type: none"> ❑ Keating, “Personal Inviolability and ‘Private Law’” [page 230] ❑ <i>Lapierre c PG (Qué)</i> (optional) [page 234] ❑ Napoleon, <i>Ayook: Gitksan Legal Order, Law, and Legal Theory</i> [page 255]
<p>5 November (2 hours)</p>	<p>Classes 16 & 17 – Liability for Injury Caused by Things</p> <p>How would you characterize the reasoning that produced the “rule” in <i>Rylands v. Fletcher</i>? That is, what justification is offered for the regime of strict liability found in <i>Rylands</i>, a common law case understood today as the basis for a free-standing and extremely limited tort? Can you find similar thinking in the development of article 1054 (1) of the CcLC in Quebec jurisprudence? What models of liability can be identified in the Quebec cases, and how are they reflected in the CCQ’s current regime (articles 1465-1467)?</p> <ul style="list-style-type: none"> ❑ Articles 1465-1467 CCQ (review) ❑ Josseland, “De la responsabilité” [page 300] ❑ <i>Rylands v Fletcher</i> [page 315]

<p>7 November</p>	<ul style="list-style-type: none"> ❑ <i>Smith v Inco</i> [page 322] ❑ <i>Doucet v Shawinigan Carbide</i> [page 327] ❑ <i>City of Montreal v Watt and Scott</i> [page 342] ❑ Brierley and Macdonald (paragraphs 498-503, on MyCourses) <p>The context of product liability has received, and continues to receive, special attention given the importance of consumer protection. Whether by defining “reasonable” behaviour by manufacturers in a way that incorporates relevant concerns for the consumer, or by replacing a negligence regime with strict liability, private law has developed focused and widely shared principles in this area. What potential and possible problems can you identify in the European initiative to create a unified product liability scheme? Is the initiative reflected in the CCQ provisions?</p> <ul style="list-style-type: none"> ❑ Articles 1468-1469 and 1473 CCQ ❑ Howells, <i>Comparative Product Liability</i> [page 345] ❑ <i>Lambert v Lastoplex</i> [page 353] ❑ Van Gerven et al., <i>Tort Law: Scope of Protection</i> [page 358] ❑ Viscusi, “Does Product Liability Make Us Safer?” [page 362] (optional)
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<p>12 November (9 30am start)</p>	<p>Class 18 – Neighbourly Peace (Nuisance/Les Troubles de Voisinage)</p> <p>This tort (distinct from negligence) or instance of extra-contractual liability (abuse of rights in the context of neighbours – “troubles de voisinage”) serves to limit the use of property. What elements must be established for a successful claim, and what remedies are appropriate in this context? Does a theory of “risk” rather than of “fault” ground the law of nuisance? How do claims regarding the “value” of particular (and problematic) activities get inserted into the analysis? Is it convincing to argue that the private law of nuisance might be an effective tool in cleaning up the environment?</p> <ul style="list-style-type: none"> ❑ Article 976 CCQ ❑ <i>Drysdale v Dugas</i> ❑ <i>Appleby v Erie Tobacco</i> ❑ <i>Canada Paper Co v Brown</i> ❑ <i>Miller v Jackson</i> ❑ <i>Ciment du Satin-Laurent inc. c. Barrette</i> ❑ Conaghan and Mansell, pp. 124-159 ❑ Keating “Personal Inviolability and ‘Private Law’”
<p>14 November</p>	<p>Class 19 – Bodily Integrity and Individual Privacy</p> <p>Protected interests of the individual include bodily integrity, dignity, and autonomy. Notice the way in which the tort of “battery” (in <i>Malette</i>) operates, and the ways in which the CCQ combines with the Quebec Charter to articulate this particular protection.</p>

	<ul style="list-style-type: none"> ❑ Article 10 CCQ ❑ Article 1 <i>Charte des droits et libertés de la personne</i> ❑ <i>Malette v Shulman</i> <p>The right to privacy also receives protection, most recently through a new tort created/recognized by the Ontario Court of Appeal.</p> <ul style="list-style-type: none"> ❑ <i>Von Hannover v Germany</i> ❑ <i>Campbell v MGN</i> ❑ <i>Jones v Tsige</i>
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IV. ESTABLISHING A CAUSAL LINK

<p>19 November</p>	<p>Class 20 – Approaches to Assessing a Factual Link</p> <p>The law requires a factual link between the defendant’s wrongful action and the plaintiff’s injury in order to establish liability. In any given case, the plaintiff must show, on a balance of probabilities, the existence of such a link. While there are always numerous factors at play in the creation of damage, it will usually suffice to say that the plaintiff would not have suffered <i>but for</i> the defendant’s act. In what circumstances might there be inherent uncertainty in identifying the causal link? In such circumstances, what mechanisms are available to help establish the requisite connection? Is it enough to argue that the “risk” of harm has been increased due to the defendant’s wrongful behaviour?</p> <ul style="list-style-type: none"> ❑ Articles 2803-2804 CCQ ❑ <i>Barnett v Chelsea</i> ❑ <i>Gburek v Cohen</i> ❑ <i>St-Jean v Mercier</i> ❑ <i>Athey v Leonati</i> (optional) ❑ <i>Clements v Clements</i>
<p>21 November</p> <p>PLENARY:</p> <p>Prof. Khoury</p>	<p><u>PLENARY</u> *Starts at 9:30am (2 hour-long class)</p> <p>Class 21 – Inherent Uncertainty in the Connection</p> <p>In reading <i>Snell v. Farrell</i>, would you say that the spirit of <i>McGhee</i> is alive and well in Canada? Or, is there an important distancing from the approach taken by Lord Wilberforce? Do you think the “loss of chance” could or should be labeled an injury?</p> <ul style="list-style-type: none"> ❑ Article 2849 CCQ ❑ <i>McGhee v National Coal Board</i> ❑ <i>Snell v Farrell</i> ❑ <i>Laferrière v Lawson</i> ❑ <i>Clements v Clements</i> (review) ❑ <i>St-Jean v Mercier</i> (review) ❑ <i>Gburek v Cohen</i> [(review)

<p>26 November</p>	<ul style="list-style-type: none"> ❑ <i>Bailey v Ministry of Defence</i> (optional) <p>Class 22 – Inherent Uncertainty in Identifying the Wrongdoer In some situations, and for various reasons, it is impossible to determine the identity of the wrongdoer (indeterminate defendants). What mechanisms are available in the law to deal with this particular problem? In what ways are they particularly problematic or appropriately creative?</p> <ul style="list-style-type: none"> ❑ Article 1480 CCQ ❑ <i>Cook v Lewis</i> ❑ <i>Fairchild v Glenhaven Funeral Services</i> ❑ <i>Sindell v Abbott Laboratories</i>
<p>28 November</p>	<p>Class 23 – Mass Torts Can we transplant the discussion of responsiveness to uncertainty to the context of mass torts (that is, uncertainty on a large scale due to indeterminate defendants and indeterminate plaintiffs)? Or, are there insurmountable obstacles to trying to make private law (based on a two-party “accident”) meet the challenges posed by mass tort situations?</p> <ul style="list-style-type: none"> ❑ Weinstein, “Ethical Dilemmas in Mass Tort Litigation” (1994) 88 Northwestern Univ L Rev 469

DELIMITING THE SPHERE OF EXTRA-CONTRACTUAL OBLIGATIONS

A. According to the nature of the injury

<p>10 January</p>	<p>Class 1 – Injury: <i>Restitutio in Integrum</i></p> <p>Injury—or “damage” or “harm”—is a <i>sine qua non</i> in civil liability. However egregious a defendant’s behaviour, the plaintiff can complain only if harm has been suffered. What kinds of interests seem to be protected through civil liability? How are they reflected in categories of awarded damages? That is, what gets compensated and how are damages determined in general?</p> <ul style="list-style-type: none"> ❑ <i>Hite v Jim Russell</i> (505) ❑ <i>Ouellette v Tardif</i> (515) ❑ <i>Augustus v Gosset</i> (522) ❑ <i>Chamallas & Wriggins, The Measure of Injury</i> (542) ❑ <i>Parker v Richards</i> (551)
<p>13 January</p>	<p>Class 2 – Injury: Limits of Recovery</p> <p>What is the significance of a “cap” on non-pecuniary damages? What do these cases tell us about the nature and functions of private law? Even if the objective of compensation is not punishment, can it be argued that in some sense, and in some contexts, money awards may be punitive?</p> <ul style="list-style-type: none"> ❑ <i>ter Neuzen v Korn</i> (509)

	<ul style="list-style-type: none"> ❑ <i>Curateur Publique v Hôpital St-Ferdinand</i> (530) <p>While full reparation to the victim of wrongdoing is a guiding principle, recovery is sometimes limited. As we have seen with “moral” injuries, some types of loss are characterized as particularly problematic or even non-recoverable. How do the issues of wrongful life and birth illustrate the way in which the law’s definition of injury is inevitably rooted in broader cultural norms and concerns?</p> <ul style="list-style-type: none"> ❑ <i>MacKay v Essex Area Health Authority</i> (46) ❑ <i>McFarlane v Tayside Health Board</i> (48) ❑ <i>Suite v Cooke</i> (51) ❑ Radé, “Être ou ne pas naitre?” (60) ❑ Jourdain, “Loi anti-Perruche” (62)
B. According to the nature of the relationship between the parties	
<p>20 January</p> <p>*Plenary*</p> <p>Professor Van Praagh</p>	<p>Class 3 – Introduction to “Duty of Care” and its Counterpart, “Causation in Law”</p> <p>The 1928 New York Court of Appeals <i>Palsgraf</i> judgment embodies two approaches to delineating the scope of liability that can be found throughout the law of civil liability. As you read and reread the case, try to articulate how Justice Cardozo and Justice Andrews understand the problem presented by the case, how they articulate the principal question, and how it is possible to justify (and challenge) their approaches and answers. In addition to focusing on the substance of the case, ask yourself how the style of writing and argumentation influence your sense of the “right” answer.</p> <ul style="list-style-type: none"> ❑ <i>Palsgraf v Long Island Railroad</i> [67]
<p>27 January</p> <p>Plenary with Prof. Smith</p>	<p>Class 4 – The Concept of the “Duty of Care”</p> <p>There are different ways of thinking about the duty or obligation to others. That is, the duty may be conceived of as “relational” (my obligation to behave properly to someone else), or as “prescriptive” (my obligation to behave properly). What do the words of article 1457 CCQ and <i>Donoghue</i> suggest as to the nature and scope of the individual obligation to take precautions or to act reasonably? What is emphasized in the reformulation of <i>Donoghue</i> in <i>Anns</i> (and <i>Kamloops</i> in Canada), and how does the House of Lords work with the notion of “duty of care” in <i>Dorset Yacht</i>?</p> <ul style="list-style-type: none"> ❑ Article 1457 CCQ ❑ <i>Donoghue v Stevenson</i> (review) [64] ❑ <i>Home Office v Dorset Yacht</i> [71] ❑ <i>Anns v Merton</i> [84] ❑ <i>City of Kamloops v Nielson</i> [84] ❑ <i>Childs v. Desormeaux</i> – paragraphs 9-26 [174]
<p>3 February</p>	<p>Class 5 – Approaches to Relational Loss: “Secondary Victims”</p>

	<p>When someone is hurt or killed as a result of another’s wrongdoing, the people who suffer loss go beyond the immediate victim and the defendant wrongdoer’s responsibility may properly extend to these secondary plaintiffs. Why is the common law so concerned with limiting the possibility of recovery in these circumstances? How do you characterize and respond to mechanisms employed to circumscribe liability based on the foreseeability of the victim? While the civil law doesn’t restrict the kinds of relationships that will qualify for potential recovery (note the language of “another” in article 1457) and therefore is much more open in principle to relational losses, is it possible to say that the quality of the relationship at stake does (implicitly) play a significant role in assessing liability?</p> <ul style="list-style-type: none"> ❑ Article 1056 CCLC ❑ Van Praagh, “Who Lost What? Relationship and Relational Loss” [94] ❑ <i>Régent Taxi c Congrégation des petits frères de Marie</i> [104] ❑ <i>Augustus v Gosset</i> (review) [522] ❑ <i>Alcock v Chief Constable</i> [108] <p>As with emotional loss, economic loss has traditionally been viewed with concern. Again, we see certain devices employed, particularly and most explicitly by the common law, to limit the perceived risk of “opening the floodgates” to such claims. How is the duty of care delineated in this context, and how does the civil law guard against “inappropriate” claims for “pure economic loss”?</p> <ul style="list-style-type: none"> ❑ <i>Elliott v Entreprise Côte Nord</i> [42] ❑ <i>Weller v Foot and Mouth Disease</i> [45]
<p>10 February</p>	<p>Class 6 - Acts and Omissions: Good Samaritan / “Duty to Rescue”</p> <p>To what extent does the law expect us to take positive steps to protect others from harm? If we fail to come to the aid of someone, can it be that we have breached an obligation recognized by law? The law is generally reticent to impose a duty in situations of “pure omission”, preferring to leave such behaviour to the moral persuasion of the Good Samaritan parable. In particular, the common law has been characterized as embodying a “mind your own business” philosophy in the name of individual freedom. While the civil law is generally understood to be more generous in theory, it is interesting to note that a (limited) Good Samaritan provision is explicitly included in the Quebec <i>Charter</i> leaving open the question as to whether article 1457 implicitly subsumes such a responsibility. In what ways does the law encourage “rescue” and in what ways does it suggest that its preoccupation is not with being “good” but rather with “liability”?</p> <ul style="list-style-type: none"> ❑ Article 2 <i>Charte des droits et libertés de la personne</i> ❑ Articles 1457, 1471 CCQ ❑ Van Gerven, <i>Tort Law: Scope of Protection</i> (excerpt) [156] ❑ <i>An Act to Promote Good Citizenship</i>, articles 2 & 12 [159] ❑ <i>The Good Samaritan Protection Act</i> [1160]

	<ul style="list-style-type: none"> ❑ N Kasirer, Agapè [161] ❑ <i>Childs v Desormeaux</i> [174] ❑ <i>Crocker v Sundance</i> (skip sections 4, 5, 6 of the judgment) [250]
<p>17 and 24 February</p>	<p>Class 7 and 8 - Revisiting the Causal Connection: Directness and Foreseeability</p> <p>We have examined the necessity of a causal link between the defendant’s wrongful action and the plaintiff’s injury. We now discover that it is not enough to establish only a factual link; rather, the law may limit or expand liability based on a sense of whether it is appropriate to hold the defendant responsible for the outcome of the wrongdoing. Thus, liability can be shaped by the nature of the harm caused. Some injuries may not be understood to be the “direct” result of the fault; alternatively, the characterization of the injury as “unforeseeable” may suggest that no connection in law can or should be established between the defendant’s wrongdoing and the plaintiff’s loss. What flexibility exists in the language of the law, allowing for decision makers to play an important role in shaping the appropriate allocation of responsibility in each case? What assumptions lie beneath the various theoretical ways of understanding the scope and stretch of individual responsibility? Do you think it is fair that a victim may be denied compensation because the injury that happened was one that could not be foreseen by the defendant who, after all, has acted wrongly? Is it just and/or consistent to demand that a defendant compensate a plaintiff who, because of an individual susceptibility, suffers more than another person would have?</p> <ul style="list-style-type: none"> ❑ Article 1607 CCQ ❑ Hart and Honoré, <i>Causation in the Law</i> [182] ❑ P Cane, Chapter 5, pages 118-129 [185] ❑ <i>In Re Polemis and Furness, Withy & Co</i> [191] ❑ <i>Overseas Tankship v Morts Dock (Wagon Mound 1)</i> [192] ❑ Starck, Roland & Boyer, <i>Obligations: Responsabilité Délictuelle</i> [194] ❑ <i>Brisson c Potvin</i> [199] ❑ <i>Morrissette v McQuat</i> [206] ❑ <i>Joly v La Ferme Ré-Mi</i> [208] ❑ <i>Hughes v Lord Advocate</i> [page 226] ❑ <i>Palsgraf</i> (reread) [67]

VII. DEFINING THE SCOPE OF CIVIL LIABILITY

<p>10 March</p> <p>Plenary: Professor Geneviève Saumier</p>	<p>Class 9 – Civil Liability and the State</p> <p>Can the relationship between an individual and the State be the source of civil liability? Can the state be civilly liable to individuals and therefore be ordered by courts to pay compensation for harm caused? Is there any distinction to be drawn between civil liability for private parties and for state parties? How do</p>
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	<p>the courts address this question? Is civil liability the appropriate legal route to challenge government action or inaction? If the state is declared to be liable and required to pay large sums of money, what implications does this have for public policy and resource allocation?</p> <ul style="list-style-type: none"> ❑ W.H. van Boom & A. Pinna, “Liability for Failure to Regulate Health and Safety Risks...” (2005) [page 110] ❑ W.H. van Boom, “Torts, Courts and Legislatures...” [page 121] ❑ <i>Bernèche v. Canada (Procureur général)</i> [page 128] ❑ <i>Williams v. Ontario</i> [page 149] ❑ <i>Reference re Broome v. Prince Edward Island</i>, [2010] 1 SCR 360 (myCourses)
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<p>17 March</p>	<p>Class 10 – Complicating the Story: Multiple Wrongdoers and Multiple Causes</p> <p>It may be appropriate to restrict an individual’s responsibility given the intervention of another wrongdoer or the existence of a number of established and co-existing “causes”. When confronted with multiple causes or wrongdoers, the law employs mechanisms to overcome hurdles both of factual connection and of the appropriate scope of responsibility. The way in which intervening acts/faults are characterized has significant implications for the extent of a defendant’s responsibility. What factors appear important in the assessment of “causation” or, more accurately, the appropriate allocation of responsibility as among multiple defendants?</p> <ul style="list-style-type: none"> ❑ <i>Deguire v Adler</i> [page 224] ❑ <i>Q v Minto Management</i> [page 232] ❑ <i>Caneric Properties v Allstate</i> [page 233] ❑ <i>Home Office v. Dorset Yacht (reread)</i> [page 71]
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<p>24 March</p> <p>Note: Discussion of this material may</p>	<p>Class 11 – Placing the Victim/Plaintiff under Scrutiny: Predisposition of the Victim</p> <p>We continue the discussion by investigating further complications to the story of “defendant injures plaintiff”. Here we focus on ways in which the plaintiff ends up suffering in a more serious way than would be “expected” and whether/when it’s appropriate to modify the scope of the defendant’s responsibility.</p> <p><i>Smith v Leech Brain</i> [page 239] <i>Marconato v Franklin</i> [page 241] <i>Corr v IBC Vehicles</i> [page 242] <i>Athey v Leonati</i> (review) [vol 1, page 450] Viney, <i>Les conditions de la responsabilité</i> (review) [volume 1, page 95]</p> <p>Victim’s Behaviour</p> <p>In determining the scope of the defendant’s responsibility, the law</p>
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<p>extend to Class 12</p>	<p>considers the plaintiff's actions as well, and may distribute the loss between defendant and plaintiff. We have already seen that the plaintiff's characteristics may shape the defendant's liability; now we examine how the plaintiff's behaviour is examined and the way in which it may be relevant to the allocation of responsibility. What does it mean to act "negligently" as a victim? Is it ever the case that a victim acts so as to accept another's harmful behaviour and its consequences?</p> <p><i>Hydro v Girard</i> [page 247] <i>Contributory Negligence Act</i> [page 249] <i>Crocker v Sundance</i> (reread in entirety) [page 250] <i>Waldick v Malcolm</i> (reread) [vol 1, page 198] <i>Gaudet v Lagacé</i> (reread) [vol 1, page 267]</p>
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<p>31 March</p> <p>Note: Discussion will extend to Class 13</p>	<p>Class 12 – Conclusions: The Promise and Limits of Private Law</p> <p>We end with the same questions with which we began. What assumptions and values are reflected in this area of private law concerned with restoring an appropriate and "just" equilibrium between two individuals whose lives have become intertwined? More specifically, can (should) the private law of extra-contractual obligations respond to violations of the fundamental rights held by every human being?</p> <ul style="list-style-type: none"> ❑ Rupert Ross, <i>Returning to the Teachings: Exploring Aboriginal Justice</i> [page 258] ❑ R.L. Abel, "A Critique of Torts" [Page 264] ❑ Joanne Conaghan & Wade Mansell, "Concluding Thoughts" [page 275] ❑ Thibierge, "Libre propos sur l'évolution du droit de la responsabilité" [page 280] ❑ <i>Seneca College v Bhaduria</i> (mycourses) ❑ <i>Curateur Publique v Hopital St-Ferdinand</i> (review) [vol 1, page 530]
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7 April - Class 13 – Overview, Review, Exam preparation.