

ANSWER KEY TO TORT SAMPLE EXAM

PART ONE (20 marks; 20 answer blanks)

1. Tort is not an easy term to define. It is essentially associated with wrongdoings and breaches of obligations.
2. The Canadian legal system acknowledges multiple forms of wrongdoings, however, only some of these will fall within the realm of tort (i.e. others may be criminal in nature).
3. Tort law is focused on private wrongs. In this context, a person breaches an obligation owed to an individual, instead of the public (i.e. society as a whole).
4. Punishment and deterrence are not one in the same. The former takes a backward-looking approach; whereas, the latter is forward thinking.
5. Deterrence is about prevention and discouraging wrongful behaviour. To be an effectual deterrent, tort law has to explicitly define the detrimental conduct and then offer adequate incentives for discouraging it. Deterrence operates and functions best when the defendant is cognizant or aware of both the mandatory legal standard and the sanctions for its violations.
6. Intent does not involve "motive"; thus, the reason for bringing about a specific result is irrelevant when dealing with intent.
7. It is critical to distinguish between legal and evidentiary burdens of proof. In a civil action (civil law), the legal burden of proof is "balance of probabilities". This is a lower standard than "beyond a reasonable doubt" in criminal law.
8. False imprisonment and malicious prosecution both offer reparation for unfounded interference with individual freedom and the humiliation, harm to reputation and other losses that flow from it. Nonetheless, malicious prosecution originated from trespass on the case.

Sample Torts Exam Answer

G Orfield



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