



The Tortfeasors and Contributory Negligence Act by Douglas A.S. Paterson, Q.C.

A tortfeasor is someone who commits a tort. A tort is a civil wrong, as opposed to a criminal wrong.

Most people are only exposed to or are aware of criminal laws. We all see the news on t.v. and radio and in newspapers and their focus on criminal behavior such as assaults, robberies and murder. Most t.v. shows featuring the police, medical examiners and lawyers relate to crime scenes, jury trials and the like.

But there is a whole other world operating in parallel to this over-exposed criminal world and that is the under-exposed world of torts or civil wrongs. To my mind it is ever-more interesting and challenging.

Criminal charges must be proved by the Crown “beyond a reasonable doubt”. It is relatively easy for the accused to raise a reasonable doubt and defeat the charge.

Torts, or civil wrongs such as defamation, deceit, fraud,

assault and battery, negligence and breach of trust, are required to be proven by the Plaintiff (the alleged wronged-party who sues) on a “balance of probabilities”. Think of the scales of justice. If the Plaintiff has the quality and quantity of evidence to overcome that of the Defendant, the Plaintiff wins. If the Defendant has the better evidence, the Defendant wins.

The Tortfeasors and Contributory Negligence Act is meant to denote certain standing rules in a civil law suit. For example, judgment recovered against one tortfeasor does not prevent suing one or more other parties who may be also liable to pay the damages, in whole or in part.

Also, if more than one suit, for whatever reason, is brought against various liable tortfeasors, they will never have to pay, together, more than the amount of the first judgment in the first suit. In other words, the successful Plaintiff cannot

be compensated for more than 100% of his lawful claim.

It is largely left up to the discretion of a court justice, by reference to the facts and precedent cases, as to how the percent responsibility of a claim will be divided between various defendants. So, if one garage improperly repairs the brakes, and another improperly replaces the tie-rod, and another improperly repairs the car’s steering, and a lady hits a tree through no fault of her own, and recovers from all three garages a \$400,000.00 judgment, each could pay 1/3 of it, or any percent between 1% and 99%, depending on the evidence.

This Act also denotes the fact that if I do something nasty which is both a criminal act and a tort, just because I am found not guilty in the criminal court does not mean I cannot be successfully sued for the loss I caused. O.J. Simpson got off the murder charge, but his wife’s family obtained a multi-million dollar judgment against

him for causing her wrongful death.

Finally, I have never understood why the media covers minor assaults, petty bar fights, small fires, along with petty thefts, when they ignore really interesting trials involving major injuries, bitter family feuds over large estates, partners fighting partners, and neighbors cheating their neighbors and friends (which often do not involve police charges). When banks sue on their security, their customers often raise intricate and interesting defenses, but we never hear of it in the media.