

INTRODUCTION TO TORT LAW

What is a tort?

A civil wrong causing harm to another person other than a breach of contract

What is tort law?

Fault-based system
Shifts losses from the victim to the tortfeasor

Essentialist Account

- a.k.a corrective justice
- Tort law is an end in itself
- Weinrib's view of tort law

Why do we have tort law?

Instrumental Accounts

- Tort law is a tool used to meet certain objectives or aims
- No agreement on what those objectives or aims are

Criticisms of Tort Law

Come from instrumentalist accounts and mostly directed at compensation as objective of tort law

- Inefficient
- Slow
- Unfair
- Arbitrary

Insurance System

- provides compensation to victims that do not require tort law claims
- more efficient and straightforward way of getting compensation
- e.g. liability insurance, first-party insurance, life insurance

Tort Law vs. Alternatives

Alternatives

- more efficient and less costly but less individualized and less value

Tort Claims

- costly and slow but potential to recover more

versus criminal law — **Tort Law** — versus contract law

Tort law

- private
- parties are plaintiff and defendant
- against an individual or group of individuals

Criminal Law

- public
- parties are state and accused
- against society as a whole

Tort law

- obligation arises from general principles
- no need for an agreement between plaintiff and defendant

Contract law

obligation arises from a contract

Compensation

Justice

Education

Deterrence

Ombudsman purpose

Other (Law & economics, psychological benefits)

Arguments Against Compensation as an Objective

- Only a small number of victims in limited circumstances get compensation
- Plaintiffs have to invest money to initiate a claim
- Plaintiffs have to prove fault
- If a defendant has no assets, plaintiff might not recover damages
- Inefficient

Two Types:

1. General - influences other people
2. Specific - deter's defendant

Effective Deterrence

Alternatives to Tort Law

- Insurance system
- No-fault system
- Partial no-fault system

Must:

1. Clearly define undesirable conduct
2. Provide sufficient inducement to avoid the undesirable conduct

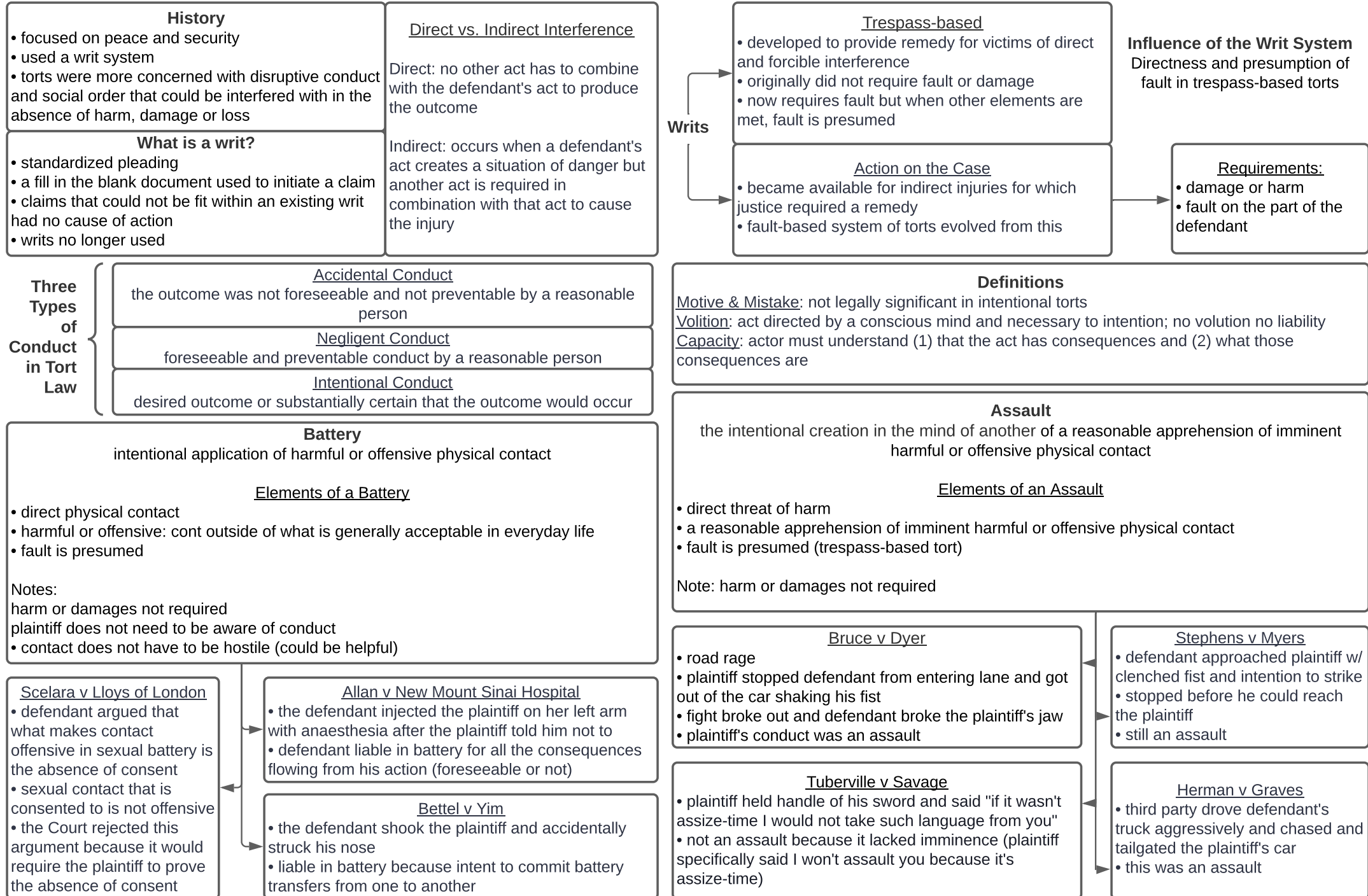
No-Fault System

- plaintiffs are compensated simply because they are injured and not because someone was at fault
- plaintiffs give up their right to sue the individual who injured them
- e.g. Worker's Compensation

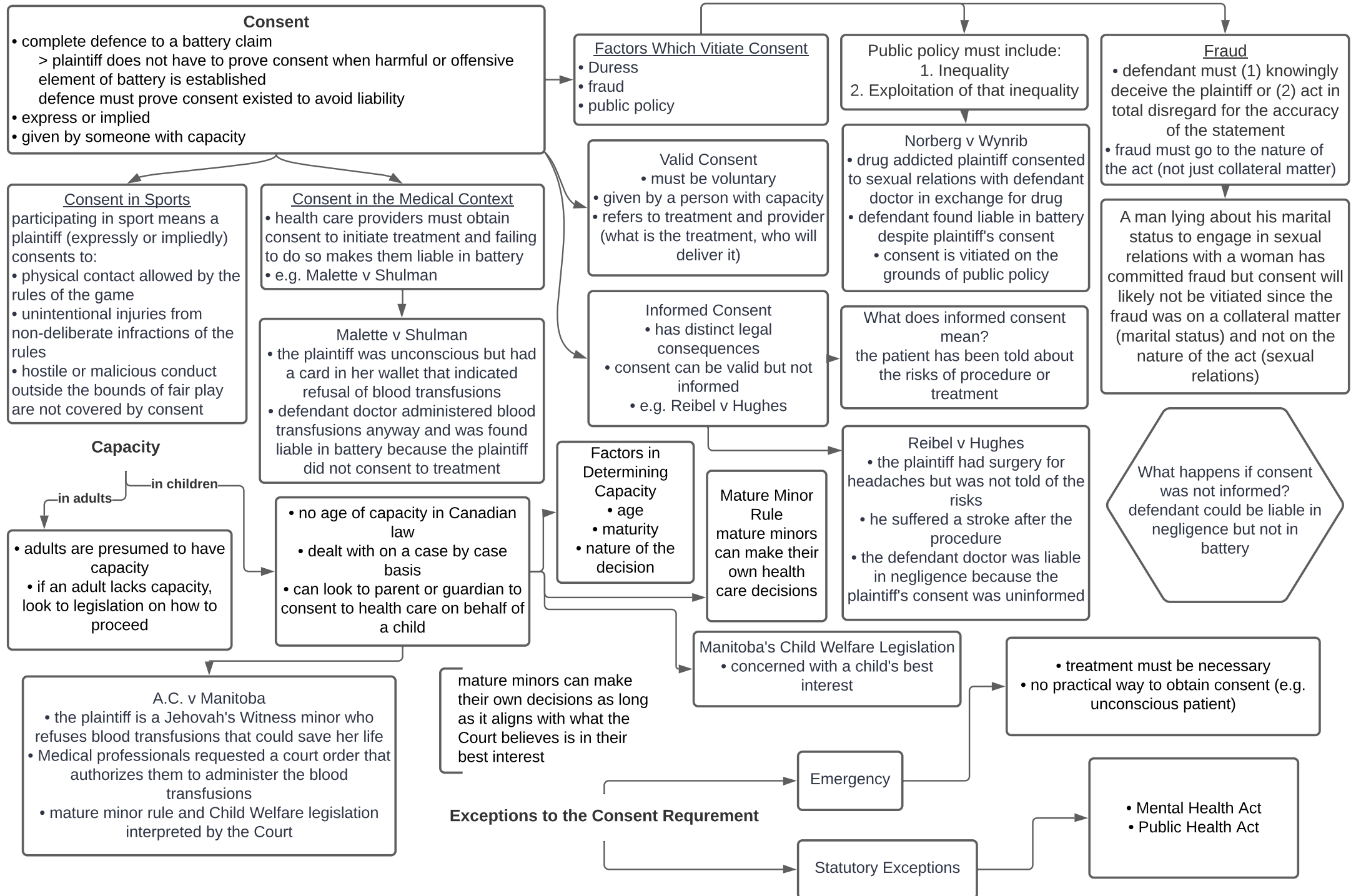
Partial No-Fault System

- extinguishes the right to sue to an extent
- e.g. Threshold No-Fault Scheme (below the threshold is covered by the no-fault scheme but tort claims can be made for more serious injuries); Blended System (some benefits are provided for no fault, others are only available through tort claims)

INTENTIONAL TORTS



INTENTIONAL TORTS CONTINUED...CONSENT



INTENTIONAL TORTS CONTINUED...PRIVACY

no specific tort for invasion of privacy but aspects of privacy are protected by other torts

Statutes that protect aspects of privacy in Alberta

Freedom of information and protection of privacy act
Personal information protection act
Health information act
Personal information protection in electronic documents act (federal statute)

Prosser's 4 Categories of Privacy

1. Intrusion upon the plaintiff's seclusion or into private affairs
2. Appropriation of the plaintiff's name or likeness
3. Publicity which places the plaintiff in a false light
4. Public disclosure of embarrassing facts about the plaintiff

Elements of Intrusion Upon Seclusion

- intentional (or reckless)
- invaded the plaintiff's private affairs without lawful justification
- a reasonable person would have regarded the invasion highly offensive

Elements of Unauthorized Public Disclosure of Embarrassing Facts

- public disclosure of facts
- facts are private in nature
- facts are highly offensive to a reasonable person
- facts not a legitimate concern of the public

Cases Involving Invasion of Privacy

Roth v Roth

- plaintiff and defendant were neighbours and had a fight
- defendant harassed the plaintiff
- the Court took steps to recognize the tort of invasion of privacy

TW v Seo

- the defendant was an ultrasound technician and recorded the plaintiff in a changing room
- defendant liable in battery but not for invasion of privacy

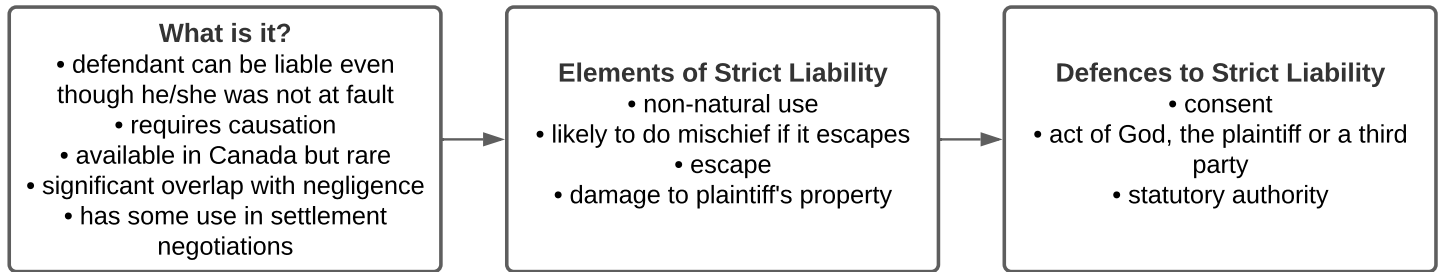
Jones v Tsige

- defendant looked at the plaintiff's bank records multiple times
- the Court recognized a tort claim for intrusion upon seclusion

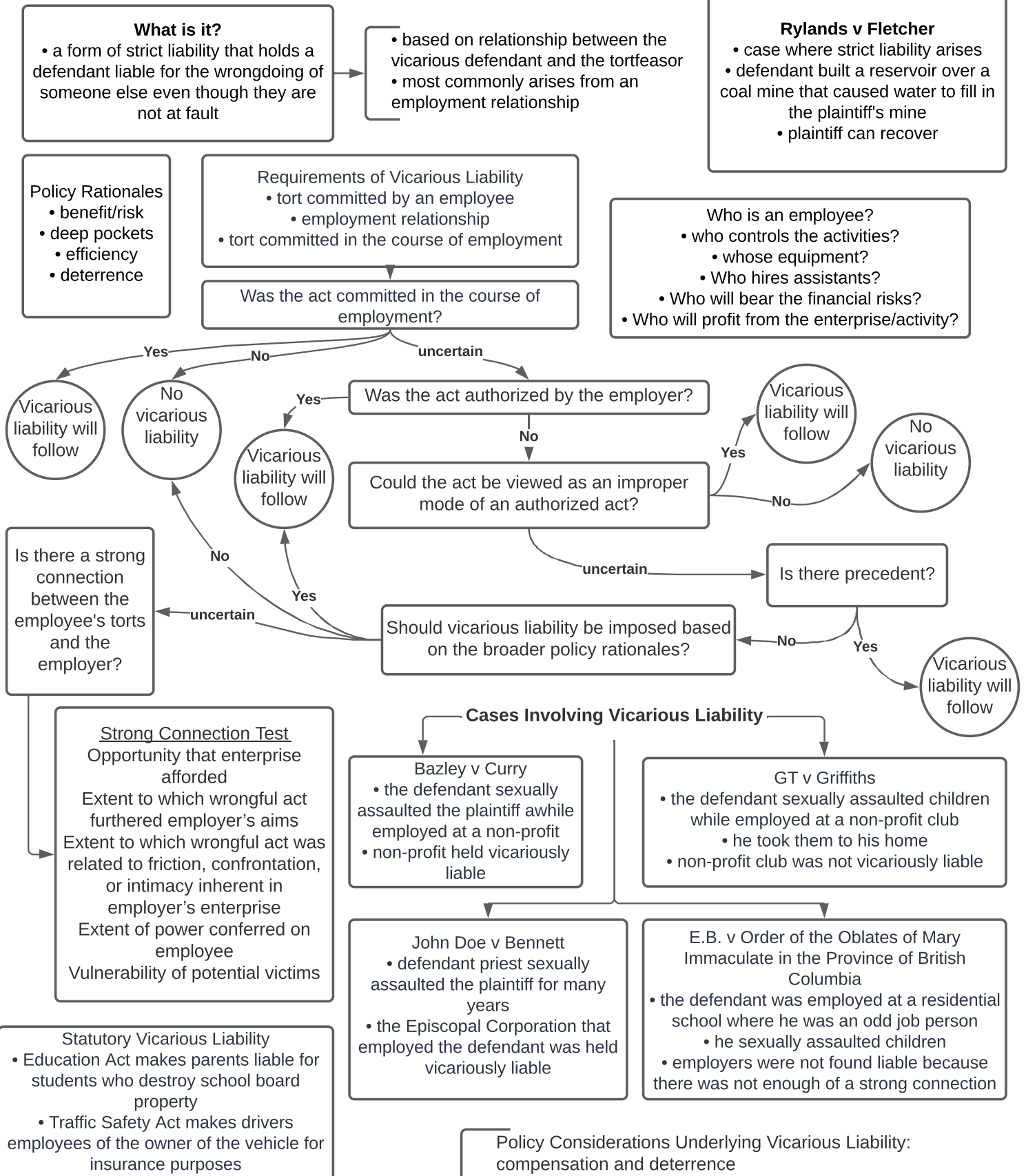
Doe 464533 v ND

- the plaintiff sent an intimate video to the defendant
- the defendant posted the video online
- the Court recognized a tort for invasion of privacy
- no longer as relevant in Alberta because privacy for intimate images is now protected by statute

STRICT LIABILITY



VICARIOUS LIABILITY



DEFAMATION

