1. **What is a tort? Who bears the onus of proof in a tort action? How much proof is required?**

A tort is a breach of a duty of care for another party where the breach causes injury or loss to that party, independent of whether the two parties involved have a contract for which the law provides a remedy [1]. A tort is considered a private matter where the victim of the injurious conduct sues the person responsible for the injury [2].

The standard of proof follows the standard of proof for a civil trial; this is based on a “balance of probabilities” test. The plaintiff onus the burden of proof in a tort case.

The modern law of negligence developed out of a famous English case (Donoghue v. Stevenson, 1932). In that case, Donoghue was injured by the contents of a bottle of ginger beer, which included a decayed snail. The bottle was purchased by a friend of Donoghue’s from a shop that had in turn purchased it form the manufacturer, Stevenson. Hence, there was not contractual relationship between Donoghue and Stevenson and therefore no legal claim. However, the English House of Lords chose to create the law of negligence in large part. The Court held that even though there was no contract between the ultimate consumer of the contents of the bottle and its manufacturer, the manufacturer ought to have considered that consumer when it filled the bottle and ought to have taken reasonable care to avoid causing that consumer injury [1].

2. **Why is the employer being sued when it was the employees who tackled and detained the customer?**

The concept of vicarious liability helps to understand why the employer could be sued when it was the employees who tackled and detained the customer.

An employer is vicariously liable for the actions or inactions of employees as long as the employees are acting within the course and scope of their employment. Vicarious liability is the liability of one party for the fault of another. This liability is based on the premise that those who profit from an activity should also be liable for losses that result from that activity.
3. What is false imprisonment? What is battery? What must be established to prove each of these torts? Are there any defences applicable?

False imprisonment occurs when people are intentionally restrained against their will and the person doing the restraining has not lawful authority to do so. This may be in the form of complete imprisonment, where the person is held in a cell or room, or in the form of an arrest. In either case, the person’s liberty to go where he pleases must be totally restrained. Even a person who submits to authority or threat can be considered imprisoned, since in this mind he has been restrained. The second requirement is that the restraint be unlawful. When a security guard arrest someone found shoplifting, there has been no false imprisonment. Generally, a private person has the power to make an arrest, but only when she finds someone in the process of actually committing a crime, such as shoplifting. An accidental or inadvertent confinement, such as when someone is mistakenly locked in a room, also does not constitute false imprisonment; the individual who caused the confinement must have intended the restraint. An individual alleging false imprisonment may sue for damages for the interference with her or his right to move freely [2][3].

To prove false imprisonment should be proven complete imprisonment and unlawful. Defence is applicable for false imprisonment, s.494 of the Criminal Code states the condition under which a person may arrest other person without warrant. Basically anyone may arrest without warrant a person whom he finds committing an indictable offence; a person who he believes has committed a criminal offence, and is escaping. Also the owner or a person in lawful possession of property or with the authorization of the owner could arrest someone. Finally, anyone could arrest a person without warrant shall forthwith deliver the person to a peace officer.

A battery takes place when someone intentionally makes unwanted physical contact with another person. Battery is both a tort and a crime. To prove battery should be proven that the conduct of the person would cause to feel threatened with imminent harm or even simply unwanted contact, it constitutes an assault/battery. The anticipated contact might be anything from a physical blow, to unwanted medical treatment, to a kiss. The motive or good will of the person attacking is not relevant. Finally, the words are taken into consideration as well as the gestures and actions [2][3].

For battery/assault, consent is a defense. This means that a person who expressly or implicitly consents to conduct that would otherwise constitute an assault or battery losses the right to sue. In addition, self-defence can be raised to counteract an assault and battery accusation. The law entitles people who are being attacked to use necessary force to defend themselves.

4. Why is the customer suing the business owner and not just the employees?

The concept of vicarious liability gives to the customer to sue both the employees (who commit the fault) and the employer. The opposite is not possible, if the employer commits the fault, the employees cannot be sued.
An employer is vicariously liable for the actions or inactions of employees as long as the employees are acting within the course and scope of their employment. Vicarious liability is the liability of one party for the fault of another. This liability is based on the premise that those who profit from an activity should also be liable for losses that result from that activity.

5. **Can Mark counter-sue since the customer threatened Mark physically with the broken bottle?**

A broken bottle is a dangerous weapon. The person could be charged with possession of weapon for dangerous purpose according to the s.88 Criminal Code [4]. It means it constitutes an aggravated assault (s.267 and s.268 of the Criminal Code), which belongs to the Criminal Code area (e.g.: *R. v. R. A. G. et al* (R. v. R. A. G. et al, 2007 BCPC 294 (CanLII))).

In addition, if he suffers any kind of damage (e.g.: psychological problems that they don’t allow to him to work), he could sue for compensation. In this direction we have the case *Logan v. Smetaniuk, 2003* [5], where in which the plaintiff was awarded $15,000. We can see as one of the plaintiff claims: “[14] Of course there was significant pain, terror and some psychological sequelae from that very early on. However, she did heal quite quickly in terms of her physical injuries to her face and the rest of her body. In terms of certain psychological injuries, what one could think of as almost phobic reactions to driving and that sort of thing, those also disappeared fairly quickly.”

6. **Has the customer not brought all this trouble on himself? Should the courts allow a criminal to sue if the criminal gets hurt while committing a crime or while attempting to escape?**

This is a very general question. More details could aim to different results. If the criminal is escaping, and nobody impedes that (not damages, threats, etc), the hurt that the criminal suffers could be considered part of her own risk in the action and she could not sue for these injuries. The by-side case *Clements (Litigation Guardian of) v. Clements, 2009* [7], we could read: “It is not now necessary, nor has it ever been, for the plaintiff to establish that the defendant's negligence was the sole cause of the injury. There will frequently be a myriad of other background events which were necessary preconditions to the injury occurring. To borrow an example from Professor Fleming (*The Law of Torts* (8th ed. 1992) at p. 193), a "fire ignited in a wastepaper basket is . . . caused not only by the dropping of a lighted match, but also by the presence of combustible material and oxygen, a failure of the cleaner to empty the basket and so forth”. As long as a defendant is part of the cause of an injury, the defendant is liable, even though his act alone was not enough to create the injury. There is no basis for a reduction of liability because of the existence of other preconditions: defendants remain liable for all injuries caused or contributed to by their negligence.”

In other case, if the criminal is captured; at this moment the captor uses an excessive force to retain her; this actions derive in the hurt; so, the criminal could sue for damages.
Other example is when the criminal action is in a circus, tamer of lions is who capture the criminal and put her in the cage of the lions. The criminal (if survive) could sue for damages (physiological, excessive force, etc) (e.g.: Chopra v. T. Eaton Co. Ltd., 1999).

So, the courts should, shouldn’t, allow a criminal to sue if she gets hurt while committing.

**Works Consulted**


