

INTENTIONAL TORTS

All intentional torts require a volitional act with intent (i.e., intent to do the act, knowledge with substantial certainty that the act will occur, or transferred intent) to cause the act, which was in fact the actual cause and proximate cause of the injury to the plaintiff. To establish an intentional tort, the Plaintiff must prove by a preponderance of the evidence, a wrongful volitional act, done by the Defendant with intent that causes injury to the Plaintiff.

Acts that cause harms to the person:

- ◆ Battery is an act, intended to cause harmful or offensive contact with the person of another that directly or indirectly causes such contact.
- ◆ Assault is an act, intended to cause apprehension of an imminent harmful or offensive contact that directly or indirectly causes reasonable apprehension of such contact.
- ◆ False imprisonment is an act, intended to significantly confine the victim to a bounded area that, directly or indirectly, results in such confinement.
- ◆ Infliction of emotional distress (IIED) is extreme and outrageous conduct that, intentionally or recklessly, causes severe emotional distress.

Acts that cause harms to property interests:

	Trespass to Land	Trespass to Chattels	Conversion or Trover
• Act by D	X	X	X
• Intent	X	X	X
• Cause in fact Interference w/ property	Interference w/ real property	Interference w/ personal property	Appropriation of personal property
• Proximate Cause	X	X	X
• Injury to P	X	X	X
• Injunction (Equitable)	Yes	Yes	N/A (forced sale)
• Damages Available	Nominal, Compensatory, Punitive	Compensatory, Punitive	Compensatory (FMV), Punitive

- ◆ Trespass to land is the intentional, physical invasion of Plaintiff's possessory interest in land.
- ◆ Trespass to chattels is an act that intentionally interferes with Plaintiff's possessory interest in personal property and results in damage.
- ◆ Conversion is a substantial interference with Plaintiff's ownership interest in personal property so severe as to amount to an assertion of dominion and control over the property.

Defenses to Intentional Torts:

- ◆ Consent – A valid consent by P is a complete defense to intentional torts and is a defense to defamation and invasion of privacy claims. The Defendant must be acting within the scope of consent.
 - Expressed (Oral or Written).
 - Implied (Implied in conduct or Implied in Law).
- ◆ Privileges - Justification for D's conduct
 - Self-defense - A person is justified in using reasonable force to prevent what the person reasonably believes is threatened harmful or offensive bodily contact or confinement. Actual or apparent immediate threat to person. Force needed to protect, including death or serious bodily harm.
 - Protection of others - Actual or [apparent] necessity to defend others. Force needed to protect, including death or serious bodily harm.
 - Defense of property - Actual interference with property. Amount needed to protect property, but NOT death or serious bodily harm
 - Felony arrest - Probable cause to believe felony. Amount needed to arrest including death or serious bodily harm [if felony of violence].
- ◆ Immunities - Whether D may be sued for conduct.
 - Interspousal, Parent-Child, Government.
- ◆ Necessity - Justification defense, that is, act is necessary to avoid a greater harm. A person is justified in interfering with the property rights of another when it is necessary to avoid a harm that is substantially greater than the injury caused by the property interference.
 - Public necessity is complete defense. A public necessity occurs when D reasonably believes action is necessary to prevent a public disaster or harm to a large number of people.
 - Private necessity is incomplete defense. Must pay for injury caused. A private necessity occurs when D reasonably believes that action is necessary to prevent harm to self or to a small number of people.

NEGLIGENCE

The essence of negligence is that the D has imposed an “unreasonable” risk of harm on the P, and the P has been injured as a result. A prima facie case of negligence requires: duty, breach of that duty, causation, and damages.

- ◆ **Duty** - A duty of care is owed to all foreseeable plaintiffs. Did D do what a _____ reasonable person would do under the circumstances? Consider physical disabilities (e.g., blind) and age.
 - A child must exercise the degree of care that a reasonable child of like age, education, intelligence, and experience would exercise under the circumstances.
 - A person holding herself out as a learned professional (e.g., physician, lawyer, etc.) is required to possess and exercise the knowledge and skill of an ordinary member of that profession in good standing.
 - Do not consider intoxication or mental disabilities.
 - Affirmative duties to act: contract, relationship between parties, assumption of duty, creation of perilous situation, statute (“CRAPS”).
- ◆ **Breach** - D’s level of conduct fell below what a reasonable person would do.
 - *Res ipsa loquitur* - presumption of negligent act. When direct evidence of D’s negligence is lacking, the court will allow the jury to infer negligence from circumstantial evidence when the circumstances indicate that the accident was, more likely than not, caused by D’s negligence.
- ◆ **Causation** - Actual and proximate cause.
 - “But for” - But for D’s negligent act, harm would not have happened to the P.
 - “Substantial cause” - Several acts of negligence, any one of which would have been sufficient to cause injury.
 - “Alternative causes” - Two negligent acts, only one of which could have caused injury.
- ◆ **Damages** - Actual damages are required for negligence actions. No nominal damages.

Defenses to Negligence Actions:

- ◆ **Contributory negligence**: including common law contributory negligence and last clear chance, and the various forms of comparative negligence
 - At common law, it was a complete defense to a negligence claim that the plaintiff’s negligence contributed to the injury.
- ◆ In a comparative fault jurisdiction, the contributory negligence of the plaintiff will not bar recovery, but the negligence of the plaintiff will be taken into account in assessing damages. In a pure

comparative fault regime, Plaintiff’s damages are reduced by Plaintiff’s fault regardless of whether Plaintiff or Defendant was more at fault in causing the accident. In a modified comparative fault regime, the Plaintiff will be barred from recovery if her fault exceeds that of the defendant.

- ◆ **Assumption of risk**: in a contributory negligence jurisdiction, it is a complete defense to negligence claim that plaintiff assumed the risk of the injury.

STRICT LIABILITY

For reasons of public policy, courts will impose liability in certain situations; regardless of how careful defendant has been and even if defendant’s activities are socially useful. Strict liability is also known as liability without fault. A prima facie case of strict liability requires: an absolute duty, breach of that duty, causation, and damages.

- ◆ **Abnormally dangerous activities** - involves a risk of serious harm which cannot be eliminated by the exercise of utmost care and is not a matter of common usage.
- ◆ **Liability for Animals**
 - Strict liability for wild animals (i.e., any animal that by nature is wild, even if the particular animal has been tamed).
 - No strict liability for domestic animals (e.g., dogs, cats, or horses).

Defenses to Strict Liability:

- ◆ **Assumption of the Risk**

PRODUCTS LIABILITY

- ◆ **Based on Negligence** – A defendant can be held liable under a negligence products liability theory when her failure to exercise due care causes a product to differ from its intended design and this difference causes the product to be more dangerous. For example, manufacturing or mishandling of product.
- ◆ **Based on Strict Liability** – Strict liability requires that the product has been marketed in a defective condition that is unreasonably dangerous. For example, manufacturing defect, failure to warn, design defect.
- ◆ **Based on Misrepresentation** – A commercial seller’s public misrepresentation of a material fact concerning the character or quality of a product is actionable if the plaintiff is injured thereby.
- ◆ **Based on Warranty Theory** – Under the UCC: Express Warranty § 2-313; Implied Warranty of Merchantability § 2-314; Implied Warranty of Fitness for a Particular Purpose § 2-315

MISCELLANEOUS TORTS

- ◆ Misrepresentations – Deceit versus Negligent Misrepresentation. Deceit, Plaintiff must prove that the Defendant made a misrepresentation of a material fact. Negligent Misrepresentation occurs if in the performance of his trade or profession, Defendant negligently provides erroneous information to the Plaintiff, who reasonably relies upon it to his detriment.
Defenses – Assumption of the Risk
- ◆ Invasion of privacy – (1) Unreasonable intrusion on the seclusion of another; (2) Appropriation of another's name or likeness; (3) Unreasonable publicity given to another's private life; (4) Publicity which unreasonably places another in a false light before the public.
- ◆ Nuisance – Plaintiff must show that: (1) Defendant's conduct with respect to the use of neighboring land substantially interferes with the use and enjoyment of the Plaintiff's property and (2) that such interference is unreasonable.
 - Private nuisance is intentional or otherwise actionable conduct that causes a substantial and unreasonable interference with the use and enjoyment of land.
 - Public nuisance is conduct or a condition caused by Defendant that presents a harm to the public in general. Public nuisances are generally dealt with by the criminal law. However, a private plaintiff may assert a public nuisance claim against Defendant.
 Defenses – Contributory negligence and compliance with statute or administrative regulation.
- ◆ Intentional interference with business relations – (1) existing contract; (2) knowledge; (3) intentional interference; (4) privilege; (5) damages
- ◆ Defamation – Wrongful and unprivileged invasion of the interest in reputation of a person. At common law, defamation is a falsely defamatory statement by the defendant that is "of and concerning the plaintiff," is published to a third person, and results in damages to the plaintiff.
 - A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.
 Libel (written) v. Slander (spoken).
Defenses – Privilege

GENERAL CONCEPTS

- ◆ Compensatory damages - Compensatory damages for personal injury include the elements of loss of earnings, medical expenses, and pain and suffering.
- ◆ Collateral source rule - At common law, Plaintiff's compensation from collateral sources (e.g., insurance, government benefits) does not reduce Plaintiff's recovery of compensatory damages from Defendant.
- ◆ Mitigation - Plaintiff's recovery will be reduced by the amount of damages that Plaintiff could have avoided by reasonable conduct.
- ◆ Joint and several liability - Joint and several liability holds joint tortfeasors responsible for plaintiff's entire injury, allowing plaintiff to pursue all, some, or one of the tortfeasors responsible for the injury for the full amount of the damages.
- ◆ Contribution - Under the theory of contribution, a tortfeasor who pays more than that tortfeasor's share of Plaintiff's damage has a right of recovery from the other Defendants.
- ◆ Indemnity - An agreement whereby one party agrees to secure another against an anticipated loss or damage.
- ◆ Vicarious liability - An employer will be vicariously liable for the torts of an employee committed in the course of employment.