

# Intentional Torts

**Intent:** *MUST SHOW ON ALL INTENTIONAL TORTS.*

Specific Intent: Conscious desires to cause the consequences of his act, knowledge that the result will occur and volitional act.

- The term that is applied to the conscious intention and premeditation in carrying out an act.
- Example: Setting out with the goal of committing the tort of trespass to chattel of a car and then in fact driving off with a car against the will of the owner.

Transferred Intent: Intent can be transferred from tort to tort to meet the intent requirement. Can be transferred between the 5 torts that have arisen out of common law trespass: assault, battery, false imprisonment, trespass to chattel and land.

- In tort law, when an intent to cause harm to one person results in harm to another person instead of the intended target, the law transfers the intent to the actual harm.
- Example: A Tortfeasor takes a swing at another person, but misses their intended target and lands a punch on the person standing right next to them. Since the intent to harmfully or offensively touch (land a punch) the intended individual was present, whether or not the Tortfeasor did in fact want to end up doing harm to the actually assaulted person, the intent transfers.

Substantial Certainty: Δ knows w/ substantial certainty conduct will cause the result. Usually an objective standard, but can be subjective with respect to IIED.

Insane people - Liable.: Child/Mentally Incapacitated - maturity, experience and training. The majority rule is that an insane person is liable for their torts unless they are incapable of entertaining a requisite specific intent.

## Battery

Harmful or offensive touching to another person, without consent or privilege. Direct or indirect contact - anything connected to P is sufficient (classic example is hitting a book or plate out of a person's hand, or an iPhone is probably a more common and modern example). Look for trespass to chattel when they grab of the body (purse). All elements of assault minus apprehension, but with completed harmful or offensive touch.

Example: Throwing a rock at somebody and hitting them whether there is apprehension or not prior to being hit.

## Assault

Intentionally placing another in reasonable apprehension of imminent harmful or offensive contact to their person without consent or privilege. Apprehension need not be with respect to physical injury. Conditional threat negates apprehension. Reasonable person test, not fear just apprehension, actual apprehension. Words alone are not enough need awareness and future threats.

Example: Pointing a gun at a person or cocking one's arm back with a bottle in the hand.

## **False Imprisonment**

Intentional physical or psychological confinement of another within fixed boundaries for a period of time, without consent or privilege. Invalid use of legal authority is sufficient, police words are ok. P must be aware of the confinement, can be unconscious and recover, there must be no reasonable means of escape. Future threats are not valid. Concept of confinement at heart and means that there must usually be interposed some physical object. The next main method is by using physical force. The bystanders can be held falsely imprisoned by use of force. The P can also be held falsely imprisoned by threat of imminent damage of valuable property. Direct or indirect confinement. Another method is tortious false imprisonment by unlawfully imprisoning immediately connected to and after a period of lawful imprisonment.

Example: Locking a person in a room with only that one door. Holding a person down to the ground.

## **Intentional Infliction of Emotional Distress**

Calculated to cause and extreme and outrageous conduct that results in severe emotional distress. Conduct can be **intentional or reckless**. Look for conduct that is continuous, directed at a certain class of P, or committed by a certain type of D. "Bystander": can recover if present when injury occurred, close relative of injured person, and D knew this, must show intent to cause harm. Children, elder and pregnant acts on sensitivity, handling dead bodies. Outrageous conduct is key and is based on bounds of societal decency.

Example: Torturing a family member in front of somebody.

## **Trespass to Land**

A common-law tort that exists when one enters onto the land of another without his or her consent, or fraudulently obtains consent and interferes with the landowner's interests in the ownership and possession of their land. Invasion can be by a person or object (not intangible matter- see nuisance). Real property includes reasonable amount of airspace and subterranean space. D need only intend to enter the land - mistake is no defense. If asked to move items and not move items from property. Must have actual or right to immediate possession. Owner or Lessee.

Example: Overnight camper on public land walking onto private property without knowing is still Trespass to Land.

# Trespass to Chattels

Intentional interference w/ another's right of possession w/o consent or privilege. Chattel is personal property. Interference can be intermeddling (damaging) or dispossession

remedies: Diminution in value or cost of repair and/or reasonable rental value

Mistake is no defense. Less serious than conversion.

Example: Taking a vital work tool off of a job site during the time when it is needed by lawful owner without right or privilege even if tool is returned undamaged.

# Conversion

Intentional exercise of wrongful dominion and control over the chattel of another without consent or privilege

a) More than interference

b) Look for more than one conversion

c) Innocent converter even receiving stolen goods

d) Remedies - Nature of judgment amounts to forced sale - defendant required to pay full market value of chattel. Replevin and Detinue

Example: Refusing to deliver personal property to person directed to when doing lawful chattel delivery.

# Defenses

## Consent

Consent must be valid (person must be competent); Defendant must not exceed the scope of the consent; express or implied. Under this theory, a person who voluntarily consents to a particular act cannot also claim that the same act is an intentional tort. The law generally recognizes that "to one who is willing, no harm is done."

Example: Consent is argued as valid if it exists in the mind of the person consenting, though they did not communicate it. This is for obvious reasons the most unsafe consent to act upon in any type of situation.

## Self-Defense

Reasonably believe being or about to be attacked (reasonable mistake OK), apprehension of imminent harmful or offensive touching; can use reasonable amount of force to protect against injury. Can use deadly force if Defendant believes life is in danger. Great bodily harm as well. No privilege if danger passed. Must be imminent danger.

Example: Cannot run after somebody who has punched you and punch them in the back of the head a block away from the initial assault.

## Defense of Others

Reasonably believe that the other person could have used force to protect himself (reasonable mistake OK); can use force that is reasonably necessary to protect oneself. Same rules as Self-Defense but as if standing in the other person's shoes.

Example: Kicking a guy in the groin who you happen to see grabbing for an old ladie's purse.

## Defense of Property

Can use reasonable force to prevent commission of a tort (trespass, trespass to chattels, conversion etc.)

Defense only available before and during commission of the tort (hot pursuit).

Must first request to desist or leave, unless it would be futile.

Privilege supersedes the defense.

Deadly force is not reasonable.

Example: Somebody steps out of the roadway so as not to be hit by an oncoming car and steps onto a Defendant's property, the Defendant strikes the Plaintiff claiming that they trespassed.

Two issues, one they did not say leave first and the Plaintiff had the privilege of necessity.

## Necessity

Public - Invades plaintiff's property in an emergency to protect community, public, and or group. Absolute defense.

Example: Mayor demolishes empty building during a large fire to prevent spread of fire.

Private - Invades plaintiff's property in an emergency to protect own interest. Must pay for any damages to plaintiff's property.

Example: Defendant drives their car through a Plaintiff's fence into a big dirt pile to avoid driving off a cliff.

## Privilege of Arrest

Shopkeepers may have the privilege to reasonably detain individuals whom they reasonably believe to be in possession of "shoplifted" goods. In order to avail the privilege, the proprietor or agent must ensure that:

1. The investigation is conducted near or on the premises; the detention itself should be effected either on the store premises or in the immediate vicinity thereof.
2. The shopkeeper has reasonable grounds to suspect the particular person detained engaged in shoplifting.

3. Only reasonable, nondeadly force is used to effect the detention. Such force being justified when the suspect is in immediate flight or violently resists detention.

4. The detention lasts only for a short period of time necessary to make a reasonable investigation of the facts

In cases where a shopkeeper fails to satisfy the aforementioned requisite conditions, s/he loses the privilege and may be held liable.

## **Discipline**

Parent or teacher (in loco parentis) may use reasonable force in disciplining children.

Example: Grounding minor child and confining them to the house only, or sending them to their room but using reasonable force to grab them by the arm first.

## **Legal Authority**

Felony - Police officer - reasonable grounds of belief felony committed even if no felony.

Misdemeanor - Police - breach of peace and believes the person committed.

Felony - Private Citizen - reasonable grounds to detain if felony has been committed.

Misdemeanor - Private Citizen - breach of peace must be committed before detaining

## **Recapture of Chattel Wrongfully Held**

Reasonable force as long as entitled to chattel, demand must be made and fresh pursuit.

## **Entry To Abate a Nuisance**

Privileged to invade land or chattel of another to stop a private nuisance created or maintained on the land or chattel. D must be owner, must make demand, must enter reasonable time and manner.

# **NEGLIGENCE**

## **Definition**

Defendant may be liable to plaintiff for Negligence if it can be determined that the defendant owed a duty of care to the plaintiff, defendant breached the duty, and the plaintiff suffered damages which were actually and proximately caused by defendant's breach.

Duty, Breach, Damage, Causation = 4 prima facie elements of negligence.

# General Duty

Defendant creates an unreasonable risk of harm where the Plaintiff is foreseeable and is in the zone of danger. Minority view everyone is in the zone of danger. (quote unquote “Andrews” view of duty is that everyone has a duty of due care to all people at all times, but is basically dicta to what his focus was, which was foreseeability in Palsgraf).

## Standard of Care

Reasonable Person Standard of care: Reasonable person under the same or similar circumstances would not have acted in the manner. Is an objective standard.

Custom is not considered a standard but failure to comply with customs may be negligence. Example: Possibly dropping in on a surfer already riding a wave and causing them injury with the fin of your board might be violation of a custom.

Adults with disabilities - reasonable person with their disability. Mental Disabilities - No allowance, Retarded adults reasonability in light of diminished capacities unless engaged in dangerous adult activities.

Professionals: knowledge and skill of member of the profession in good standing in similar communities. Specialties - National Standard. General practioners - Local Standard. Scienter.

Children: Child under the age of 4 not liable over the age 4 compare to child of like age, education, experience and intelligence. If engaged in adult activities then held to adult standard.

Common carriers/innkeepers: higher degree of care for passengers/guests

Vehicle driver: only owes duty of ordinary care to passenger

## Special Duty

### Violation of Statute (Negligence per se)

Is there a statute

Did the defendant violate the statute

Class of persons statute is protecting

Type of harm statute intended to protect against

Example: Reckless Driving by driving 10+ miles over the speed limit and crashing and injuring somebody.

## Guest Statute

If P is a guest must show gross negligence recklessness on the part of the driver in order to recover. Like own family member.

## Omission to Act

No duty to aid another in emergency unless:

Injured by D

Special relationship (wife, child),

Statutory Duty to act

Contractual Duty

Starts to help but puts them into a worse position.

Example: Stopping CPR once started or not starting as a trained CPR person.

## Landowner-Occupier Duties

### Duties owed to persons outside land

1) No duty as to natural conditions, exceptions - Urban areas (tress hanging over). Minority Reasonable care.

2) No duty artificial conditions except - condition abates adjacent land and has duty maintain and reasonably inspect.

Example: Tree on property line.

### Duties coming onto land

Undiscovered Trespasser - No duty;

Trespasser - Known/Anticipated D must use due care if he knows of trespasser is present. If he knows must post signs and give notice and warnings.

Example: Kids cut through path on corner of property on a daily basis on the way to school requires either to put up a fence or to make sure the pathway is safe to walk, ie no dangerous holes to sprain ankles etc.

### Children (Attractive Nuisance Doctrine)

*Must go through all points*

Artificial condition creates unreasonable risk of harm (Example old Spanish Galion on land with rickety floorboards that somebody could easily fall through and they do indeed and are injured.)

Knew or should have known that children are likely to trespass. (Example: rope swings in the trees on the lower 40 or signs of treehouses and paintball forts being build on land)  
Children unable to recognize danger because of youth  
Utility of maintaining the condition vs. eliminating risk

## Licensee

Duty to make safe and warn of known dangers.  
Those entering with permission but not for the purpose for which the property is maintained. (social guest, fire fighters, police, officials). License can be revoked but not for government officials lawfully operating on license.

## Invitee

Duty to **inspect**, make safe and warn of known dangers.  
Those entering with permission for which the land is maintained. Public - enter land for the purpose for which land is open (store). Business - enter land for business dealings with occupier.  
Example: Mats on floors in front of grocery store refrigerators known to condense water from the ambient atmosphere and drip onto the floor.

## Lessors of Land

Duties owed by lessors of land - Landlord owes no duty to person coming onto land with the consent of lessee. Can be sued if landlord knew of dangerous conditions on property, Duty to warn or repair conditions dangerous to persons outside the premises.

## Negligent Infliction of Emotional Distress

In addition to duty and breach, must show:

Non By Standard - Foreseeable risk of physical injury (impact/threat) that might foreseeable result in emotional distress. Majority - Must be in zone of danger. Exceptions are mishandled corpse. Erroneous Telegram.

For By-Stander to recover: P present at scene when family member was hurt.

Someone who witnesses a severely traumatic event, such as a bystander at the scene of a violent crime, may be able to make a claim for negligent infliction of emotional distress (NIED). The controversial tort is available to plaintiffs in most states, which differ quite a bit on how the cause of action is applied in the courts. Unlike intentional infliction of emotional distress, in which intent is the central consideration, NIED assumes the defendant has a legal duty to use reasonable care with regard to the plaintiff.

# Breach

Breach of duty occurs when the defendant's conduct falls short of that level required by the applicable standard of care owed to the plaintiff.

4 ways to show Breach

Direct – Failed to meet standard, exposing others to unreasonable risk of harm

Circumstantial - showing the evidence, inference.

Violation of Statute - Negligence Per Se

Res Ipsa Loquitur - The thing speaks for itself

Accident does not normally occur absent negligence

Does D have exclusive control

Inference of Negligence

Example: Driving too fast through a city, taking a turn and running over several kindergartners with their teacher walking through a cross-walk, surviving kindergartners have NIED Claim.

# Actual Causation

Actual: “But For” test;

Concurrent - Separate negligent acts occur and P injured but for the concurrence (both D's liable).

Joint Tortfeasors - Several defendants engaged in negligent conduct, all held liable even if one caused injury.

Successive tortfeasors - Act independently and have caused successive impacts.

Substantial Factor test (for joint causes); Where several causes bring about an injury, and any one alone would have been sufficient to cause the injury, defendant's conduct is cause in fact if it was a substantial factor in causing the injury.

Alternative Liability (burden shifting) - two negligent defendants where only one of the two was responsible, the other is not, but it is unknown which defendant caused the injury.

Example: 3 men fire their rifles across a highway simultaneously and a passing motorist is stuck with 1-2 bullets, all liable but may work out an apportionment of the cost of damages amongst themselves or must absolve themselves of causation based liability.

# Proximate Causation

Is the injury foreseeable?

Conduct will be deemed to be the proximate cause of harm if the harm was a foreseeable result of the conduct, and if the harm was not brought about by an extraordinary or unforeseeable sequence of events.

Direct causes – uninterrupted chain of events, no intervening cause, Foreseeable results.

An eggshell thinned skull case (defendant takes the person of plaintiff as he finds it) is not an unforeseeable result case.

Indirect causes - An indirect cause is one where after the first negligent act but before the injury there is an intervening affirmative act on the part of a third party or act of God. If the intervening act is foreseeable then the defendant will be held liable.

Criminal Acts cut off liability unless it is foreseeable. If it is act of God not liable

Liable for injuries to rescuers.

# Damages

**General Damages** - Past, present and future pain and suffering

**Special Damages** - Past, present, future economic losses, medical bills, loss of wages and profits. Pure economic not allowed.

**Personal Injury** - Plaintiff is to be compensated for all damages (past, present and future), both special and general.

**Property Damages** - Measure of damage is reasonable cost of repair or, if property nearly destroyed, fair market value at time of accident.

**Punitive Damages** - Plaintiff may recover punitive damages if defendant's conduct is wanton, and willful, reckless or malicious.

**Duty to Mitigate** - Plaintiff has duty to take reasonable steps to mitigate damages (seek appropriate treatment).

**Collateral Source Rule** - Damages are not reduced just because plaintiff received benefits from other sources, eg health insurance.

**Loss of Consortium** - requires loss of companionship and intercourse between wife and husband. Minority to parents/child and grandparents.

**Multiple Defendants** - two or more joint tortfeasors liable for entire amount.  
Contributions - Each joint tortfeasors liable for other tortfeasors proportionate share if one tortfeasor pays full judgment.

**Indemnity** - One secondary liable is entitled to indemnification against defendant primarily liable.

**Satisfaction** - Recovery for full sum from one joint tortfeasor bars recovery from other tortfeasor.

**Release** - CL release one release all. Majority - Release one does not release all.

Defenses

## **Contributory Negligence**

P contributes to his or her injuries. Common Law bars recovery.  
States: Maryland, Virginia, North Carolina & Alabama.

## **Comparative Negligence**

Compares the Negligence of plaintiff and defendant solely in terms of blameworthiness and apportions the damages accordingly. Most States.

Pure - recovers no matter how great the negligence. Recovers for what the others are liable subtract P's liability. Ex. Total damages is \$10,000, P is liable is 20%, two D's each liable 40%. P collects \$8,000.

Partial - Denied if equal or more than defendant.

## **Last Clear Chance doctrine**

(P uses this as a defense if P is liable for contributory negligent).

If the defendant had a "last clear chance" to avoid the accident and because defendant did not take the "last clear chance", plaintiff should be relieved of the consequences of his earlier contributory negligence.

A negligent plaintiff may recover damages if they can show that the defendant had the last clear chance to avoid the accident. A defendant may also use the doctrine as a defense by showing that the plaintiff had the last clear chance to avoid the accident.

## **Assumption of Risk**

P voluntarily proceeded having **knowledge** and **comprehension** of the risk. Rescuer never assumes risk. (express or implied)

## **Survival Statute**

Survival Statute - CL - No cause of action. ML - Allow cause for injuries to property and person to survive death for pain, suffering, medical, lost wages. Same as PI but cut off at death. Victim dies instantaneously no pain and suffering. Defamation and ect not available.

## **Wrongful Death**

Wrongful Death (by statute) - Same as above but brought by estate.

# **Strict Liability**

## **Animals**

Domesticated - Defendant has knowledge of the danger propensities of the animal; one free bite and then put on notice.

Wild - Strictly liable for harm to another animal, chattel or person even if D used the utmost care. Liability for only dangerous propensities.

Zoo - look for negligence. Trespassing cattle - strict for trespass and damages. Trespassers - warning if dangerous animal.

Duty - Owed to Foreseeable plaintiff from the kind of danger anticipated

Breach - breached an absolute duty to make sage.

Actual and Proximate Causation

Damages - must be more than economic recovery.

Defenses - Assumption of Risk and Contributory and Comparative.

Harambe comes to mind, but I believe the issue was the ineffective barrier. A better example is a person with a pet tiger in their house when the tiger injures a guest, this makes the owner of the tiger strictly liable.

## Ultra Hazardous Activity

One who maintains an abnormally dangerous condition or activity on his or her premises, or engages in an activity that involves a high risk of harm. *Must go through all 4 points.*

(1) Is there a risk of serious harm; (2) Cannot be performed without such risk; (3) Not commonly engaged in that community, (4) Balance – danger vs. value to community.

Duty - Owed to Foreseeable plaintiff from the kind of danger anticipated

Breach - breached an absolute duty to make safe.

Actual and Proximate Causation

Damages - must be more than economic recovery.

Defenses - Assumption of Risk and Contributory and Comparative

Example: damage to nearby buildings from dynamite to a permitted demolition.

## Inherently Dangerous Condition

Inherently Dangerous Activity: Ultra-hazardous activity triggers vicarious liability (i.e., respondeat superior)+independent Contractor.

Duty - Owed to Foreseeable plaintiff from the kind of danger anticipated

Breach - breached an absolute duty to make safe.

Actual and Proximate Causation

Damages - must be more than economic recovery.

Defenses - Assumption of Risk and Contributory and Comparative

Maritime Salvage Diving is an Example.

## Vicarious Liability

Employer is vicariously liable for the torts of an employee that occur within the course and scope of employment.

Look Frolic way out of scope and detour short time but can be foreseeable. Is it furthering the Employers business.

Independent contractors (principal not liable unless inherently dangerous activity or duty is non-delegable)

Partners/joint ventures (liable for conduct committed in scope and course of partnership/venture);

Automobile owner not liable for conduct of driver (unless imposed by “Family Car” lends to family or “Permissive Use” doctrine, lends to person who commits a tort)

Parents are not vicariously liable Child's tortious conduct. However if parent knows of children's wrongdoings, or fails to exercise proper control, or had notice (can be liable for negligent supervision of child)

# Product Liability

## Strict Product Liability

*Seven Step process must go through all: 1) Type of defects, 2) Commercial Seller 3) Inherently Dangerous, 4) Defective when it left seller's hands 5) Foreseeable Use by P 6) Causation 7) Defenses*

## Type of Defects

There are three types of defects Manufacturer Defect, Defective Design, Warning Defect.

Manufacturing Defect - One of the product differs from all others products on the assembly line that makes it dangerous.

Example: matchbox car with wheels not properly glued to tiny axles and a kid puts the car in it's mouth, the wheels fall off and he chokes.

Design Defect - The product was not safe for intended use and product could have made safer in a cost effective way. Alternative design available.

Example: toys with needlessly tiny parts upon which kids choke.

Warning Design - Failure to warn of non apparent danger that a consumer should have been warned of.

Example: choking hazards for kids toys with small parts.

## Commercial Seller

Is the distributor/seller/manufacture engaged in the business and sells/rents that product.

# Inherently Dangerous

Two tests to determine that the product is inherently dangerous. The two tests are consumer expectation test and Risk vs. Utility.

Consumer Expectation Test - The product is more dangerous than an ordinary consumer would reasonably expect.

Recent Example: The US Army's newly commissioned Sig Sauer P320 had a defect that caused it to fire when dropped. Though it was caught early, it was not a type of defect that a modern firearm consumer would normally reasonably expect.

Risk vs. Utility - Risk of the product vs the cost to change the product. Were there alternative designs available at a minimum cost.

Example: The movie Fight Club's main character Tyler Durden is an insurance adjuster who applies "the equation" wherein manufacturer defects in automobiles are only fixed in a recall if the cost of paying out damages to the sometimes fatally injured Plaintiffs outweighs the cost of the recall.

## Defective when sold

The product was defective when it left the hands of the distributor/seller/manufacture. Plaintiff cannot unreasonably cause the product to become defective when it was not truly defective as sold.

Example: Kid chewing on a matchbox car v. a dad taking a matchbox car apart and putting it back together with a wheel loose so that the wheel comes off and the kid chokes.

## Foreseeable use by P

P made foreseeable use of the product. If it is not for what the product was made for then it is a valid defense.

**Causation** - Actual and Proximate

**Defenses** - Misuse a defense, with other defenses

## Negligent Product Liability

**Duty** - Foreseeable consumer use defective product. Reasonable inspection would reveal the defect.

**Standard of Care** - Reasonable distributor/seller/manufacture would act in the same or similar circumstances.

**Breach** - Defective product failed to meet the ordinary commercial expectations of the average reasonable consumer. Also state what type of defect. (Manufacturer Defect, Defect in Design, Defective Warning).

**Causation** - Actual and Proximate, Argue the use, but if foreseeable then still the cause.

**Damages** - Person and Property. Punitive if reckless.

**Defenses** - Contribution, Comparative, Assumption of Risk. NO MISUSE

*NOTE: Retailers are strictly liable as they are in the marketing chain. However they are not liable for Negligent product unless they had knowledge or notice (complaints and open products).*

Have to be substantiated claims to create knowledge and not just initial rumors about product defectiveness.

## **Warranties in Product Liability**

### **Express Warranty**

Statement of fact or promise by a commercial seller creates an express warranty that becomes part of the basis of the bargain.

### **Implied Warranty**

Implied in law from seller to buyer in which a contract must exist between each party.

### **Implied Warranty of Merchantability**

Goods are of fair & average quality; fit for normal use. Look to similar products on market, fit for intended purpose with emphasis on safety.

### **Implied Warranty of Fit for Particular Purposes**

Product must be fit for its intended use and  
Buyer must rely on seller's special knowledge and skills

### **Intentional**

P will have to establish that manufacturer/distributor/supplier knew that the product would cause harm.

## Misrepresentation

Commercial seller is liable for material misrepresentations of fact. Justifiable Reliance.

## Intent Battery

Commercial seller is liable for injuries caused by an unsafe product if  $\Delta$  intended the consequences.

Must show D intended the consequences (substantial likelihood test).

Example: Vape Shop still selling flavored vapes in CA after new laws have passed.

# CROSS OVER TORTS

## Nuisance

**Private:** Substantial and unreasonable interference with another's use or enjoyment of his land. Substantial (offensive to average person in community), Unreasonable (balance severity with harm) interference with use or enjoyment (not possession) of private property.

A private nuisance is when the plaintiff's use and enjoyment of her land is interfered with substantially and unreasonably through a thing or activity.

**Public:** Unreasonable interference with the general public: health, safety, or property rights of the community

A public nuisance is when a person unreasonably interferes with a right that the general public shares in common.

**Remedies:** damages; injunction; abatement by self-help (for private nuisance; after notice)

**Defenses:** legislative authority; conduct of others; "coming to the nuisance" (for purpose of bringing harassing lawsuit)

## Misrepresentation

A statement made by the defendant, with the intent to deceive, that is known to be false or made recklessly and without regard to whether it is true or not.

Intentional Fraud or Deceit - Misrepresentation of an existing material fact made knowingly, with the intent to induce P's reliance, causing P to justifiably rely to his damage. Active Concealment, Knowingly for deceit.

Liability extends to those whom D intended to induce.

Damages - Benefit of the Bargain - Between actual value received and what have been received had representation been true. Out of Pocket, Punitive Damages.

## **Negligent Misrepresentation**

A careless or inadvertent false statement in circumstances where care should have been take.

A false misrepresentation of a material fact which is made with a lack of due care intended to induce reliance to, which cause damages.

Special business relationship or contractual relationship

Liability extends to those whom D intended to induce.

Damages out of pocket cost.

## **Injurious False Hood – Trade Libel**

Makes disparaging comments about a business products, services, or relationships which negatively affects the plaintiffs business.

Must prove loss of customer and business.

Injurious falsehood is essentially interfering with the sale of the plaintiff's property by virtue of the disparagement of either the plaintiff or his property.

In order to prove a prima facie case of injurious falsehood, the plaintiff must prove that:

- The defendant intentionally made false statements disparaging the plaintiff's property or business interests
- The statements were published to third persons
- The defendant's statements were the cause of the harm suffered by the plaintiff

- The plaintiff suffered "special damages". Special damages are a legal term for actual economic damages

## Interference with Business Relations

Substantial interference with a contract of another's that causes a breach.

When a business owner enters into a formal or informal agreement that will benefit their company, they do not usually expect an outside party to interfere with that relationship. Business owners depend on relationships and contracts with insurers, lenders, vendors, distributors, and contractors to successfully run their businesses. If a third party interferes with a contract or business relationship, it can be devastating to a business's bottom line. Some examples of interference may include convincing a shared supplier to renege on a contract or a third party interrupting the sale of property to a business. If a third party unfairly interferes with a business contract or relationship, there is a legal remedy available in the form of an action known as tortious interference.

## Interference with Prospective Advantage

Interference with something expected (job, money).

The elements of that tort of are: '(1) an economic relationship between [the plaintiff and some third person] containing the probability of future economic benefit to the [plaintiff], (2) knowledge by the defendant of the existence of the relationship, (3) intentional acts on the part of the defendant designed to disrupt the relationship, (4) actual disruption of the relationship, [and] (5) damages to the plaintiff proximately caused by the acts of the defendant.' (Buckaloo v. Johnson (1975) 14 Cal.3d 815, 827.)

## Dignitary Torts

Civil wrongs that don't result in physical harm can fall into a category called dignitary torts, which are torts that have caused harm to a person's reputation or dignity. A few examples of dignitary torts are defamation, malicious prosecution, and abuse of process.

## Malicious Prosecution

*Must go through all steps.*

Institution of legal proceedings (criminal, civil or calling the police).

Termination of previous case in P's Favor  
Absence of probable cause  
Improper ulterior purposes  
Damages

**Malicious prosecution** is a civil cause of action in California that you bring when a person **files a frivolous claim against you** – a lawsuit was filed not based on merits of the claim, but rather **for some ulterior purpose – and you suffered damages as a result.**

## Abuse of Process

Wrongful use of process for an ulterior purpose, and definite act or threat against plaintiff in order to accomplish an ulterior purpose.

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### **Abuse of Process**

Abuse of process refers to a person using the legal system in a way that is not necessarily serving the underlying legal action, but rather to achieve another purpose. Although this tort may sound similar to malicious prosecution, an abuse of process claim can be brought against someone even if the underlying cause of action for the lawsuit was valid.

### **The Elements of Abuse of Process**

Abuse of process is an intentional tort that arises when a person deliberately misuses a court process that is not justified by the underlying civil or criminal legal action. As with most torts, the elements that a plaintiff must prove in order to win his or her case will vary from state to state. However, the typical elements that a plaintiff must prove in an abuse of process lawsuit are:

- The existence of an ulterior motive or purpose in using the process, and
- An act in the use of the process that is not proper in the regular prosecution of the legal proceedings.

For example, if a person uses a deposition for an ulterior motive that is not related to the lawsuit, then there may be an abuse of process claim available. Again, the lawsuit itself may be perfectly valid (as well as the cause of action involved), but the deposition in this example does not serve the purpose of the lawsuit.

### **Abuse of Process vs. Malicious Prosecution**

Abuse of process and malicious prosecution are closely related, but each requires the plaintiff to prove different elements. A person may have a claim for malicious prosecution if someone maliciously starts or continues a criminal or civil proceeding against him or her without having

probable cause. Abuse of process, on other hand, occurs when there is a valid reason or probable cause for the lawsuit, but a legal tool or process has been misused for ulterior purposes.

In order to be successful in a malicious prosecution lawsuit, the plaintiff must also show that the legal action was dismissed in favor of him or her. In comparison, an abuse of process lawsuit can be brought against someone regardless of whether there is an underlying legitimate cause of action for the legal action and whether or not the original case was dismissed.

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## Defamation

Defamation, also commonly referred to as defamation of character, is a false statement that harms another person's reputation. It can be further broken down into:

- **Libel** — Defamation in written form, both printed and digital. This can include a defamatory social media post, newspaper article, online post, or even a handwritten letter.
- **Slander** — Defamation that is spoken aloud. This can include someone verbally spreading rumors or saying false things about you to others.

P must prove that the statements are defamatory (false), published to a third person, understood by a 3rd person, and that P suffered damages.

### Defamatory Statements

False factual assertions not protected  
Opinions bearing public concern are protected  
Does it lower the persons reputation in the community

### Published to a 3rd Person

Intentionally tells them or prints it.  
Negligently where it is overheard by someone

### Understood by a 3rd person (of and concerning P)

Innuendo - meaning that results from the statement  
Colloquium - No specific mention of P, but indirectly is mentioning P. P must prove it is P that D is talking about.  
Groups - Large group cant prove of and concerning P

Small Group - If it targets whole group liable, if not the whole group then must prove it by showing reasonable person would know that they are defaming P.

## Damages

### Slander

Slander is spoken defamation. Plaintiff must prove special damages, unless special damages falls within the slander per se categories CLUB: Crime, Loathsome Disease, Unchaste woman, Business ones conduct in profession.

### Libel

Is written or printed publication of defamatory language. Need not prove special damages and general damages are presumed.

**Republisher Liability** - Anyone who takes part in the publication and furthers may be liable.

**Retraction** - May limit amount of general damages recoverable

## Constitutional Privileges

Public Official/Figure

P must prove actual malice (knowledge of falsity or reckless disregard for the truth) New York Times

Private Figure

Matter of public concern: P must prove falsity AND negligence with actual injury; P must show malice to recover punitive damages

Matter of private concern: P must only show negligence with actual injury; P can recover punitive damages without showing malice

## Defenses

Truth

Consent

Absolute Privilege - Protected speech when made during judicial and legislative proceedings or by officers of the government, between spouses.

Qualified - Speech occurs during a socially useful purpose. The comments must be relevant to the purpose, good faith and loses the privilege if exceeds the publication. It applies to letter of recommendations, credit evaluation, police.

# Invasion of Privacy

*Torts: must show causation ("AFLIP")*

**Appropriation of Name/Picture:** unauthorized use, unjust enrichment Appropriation of plaintiff's picture or name for commercial advantage.

**False Light:** Unauthorized use of P's name or likeness attributing to him/her ideas which are false, Knowledge or reckless disregard as to the falsity, highly offensive to reasonable person, Truth Valid defense. Example: Misleading Paparazi Headlines coupled with actual photo (also photos might have been taken from an invasive place where the photographer should not have been making it misappropriation of likeness for commercial purposes to boot.)

**Intrusion Upon Seclusion/Affairs:** Unreasonable invasion of another's reasonable expectation of Privacy. Public places no intrusion. Example: Paparazi taking photos from sidewalk v. hopping backyard fence and taking photos of famous people in their houses.

**Public Disclosure of Private Facts:** disclosure of private information that would be objectionable to a reasonable person if the matter is public interest, then probably need to show malice. Example: HIPAA Violations.

**Damages** - No requirement of special, Injunction.

**Defenses:** consent; absolute privilege; qualified privilege, Newsworthiness - press can report on matters of legitimate public concern and interest. Truth no defense.

## Remedies

Compensatory - put the plaintiff in its original position.

General Damages - flow from tort specific measures

Special (economic) Loss and profit, Reasonable certainty of money amount, proximate cause, remoteness

Punitive - Willful and malicious Conduct. Is conduct worthy of punishment, not just liability.

Nominal - For rights. Example: Equitable Remedies