# Business Law Class Notes

## Definitions

* **Bifurcated –** The court system in the USA is bifurcated. We have both a state and federal court system.
* **Jurisdiction –** If the court has jurisdiction over the case it means it has the authority to make a binding decision.
* **Jury –** You will only have a jury at the trial level. Their job is to determine what the true facts are.
* **Judge –** The judge in a case of no jury is the finder of facts and determines what the punishment is.
* **Appellate –** Filed the appeal, the one who asks the intermediate court to review the case.
* **Appellee –** The person who did not file the appeal to the intermediate court.
* **Petitioner –** The one who petitions the high court to review the decision of the intermediate court. They may have been the appellate or apple.
* **Respondent –** The one who has to respond to the petitioners’ request.
* **State Court System** – If it’s not a subject of dispute, federal question, or diversity of citizenship (all parties from Texas) then it has to be filed in the state court.
* **Malice –** Intentional or reckless disregard for another persons rights.
* **Battery** – Requires touching, non-consensual, and reasonably offensive.
* **False Imprisonment** – An intentional detention without consent of the person detained.
* **Affirmative Defenses** – The burden of establishing justification is on the defendant.
* **Libel** – A defamatory statement that has a characteristic of permanence. The harm is presumed if libel.
* **Slander** – The harm must be established.
* **SLAPP** – Strategic Lawsuit Against Public Participation, a suit to get you to shut up.
* **Trespasser** – Someone who comes onto your property without authorization.
* **Business Invitee** – Someone who comes onto your business premise for the mutual benefit of you and him or her.
* **Licensee** – Someone who comes onto your business premise, with your permission, but is not there for the mutual benefit of you and them.
* **Vicarious** – Through someone else.
* **Theory of Second Liability** – The plaintiff didn’t do anything wrong but the liability arises because of the relationship with the employee.
* **Lobbying** – Advocating for a specific interest, or even a corporation through campaign contributions, perks, etc.

## IRA Methodology

* Issue:
* Rule:
* Application:
* Example Case:
  + **Issue:** Conversion
  + **Rule:** 
    - Misappropriating the use of someone’s property – the police authorized the towing so no.
    - Use of property
    - Refusing to return the property – No proper request to return the item. What is the proper price?
  + Application
    - Use of property didn’t apply in this case but it didn’t have to.

## Source of Law

* **Constitutional Law**
  + Gives state or U.S. the authority to act.
  + Two Clauses to Know
    - Supremacy Law – Any federal or state statute that violates the constitution is null and void. Article VI of the U.S. Constitution.
    - Commerce Clause – Article I Section 8. Gives the federal government the right to regulate interstate commerce and activities that effect interstate commerce. Activities that do not affect interstate commerce are passed onto to the state.
* **Statutory Law**
  + Commonly referred to as statutes. Come from congress at federal or state level. State statutory law varies state to state. Anybody can propose legislation. The bill can be introduced into the House of Representatives or senate or both simultaneously. Subject to political interest.
* **Administrative Law**
  + Laws that come from administrative agencies at the state and federal level.
  + An Agency can do:
    - Promulgates rules and regulations within it’s limitations.
    - Enforce those rules and regulations. May require periodic reporting. If they believe you are in violation they can impose fines or penalties. If you dispute the administrative agency you can go to an administrative law judge.
    - Tiered system, adjudicate disputes.
* **Common Law**
  + Comes from the judicial branch. You only have state common law. It obviously will vary state to state. You have to find the degree of control to see if they could of controlled the outcome in the case of whether or not a student should be able to retake a missed exam.
* **Outcomes of an Intermediate Appellate Court**
  + Affirm - To say they got it right
  + Reverse – To say the trial court may of applied it wrong
  + Reverse and Render – Here’s what the outcome should be
  + Reverse – Send it back to the trial court

## Tort Law

* Definition –
* Intentional Torts
  + Required intent, can be broken down into 3 categories
    - Personal
    - Business Relationships
    - Against Property
* Negligence
  + Failure to use reasonable case
* Strict Liability
  + Culpability
* The intent is required, establishing an intentional tort. Not the intent to do the harm but the intent to do the action, which results in the harm.

## Intentional Torts

* **False Imprisonment**
  + Definition – An intentional detention without the consent of the person detained. There does not have to be a physical detention, rather simply saying “will you wait here please” is still detention. It has to be stopping someone from going on.
* **Shopkeepers Privilege**
  + Retailer has to establish he detained the plaintiff based upon a reasonable suspicion of shoplifting
  + The detention has to occur in a reasonable manner
  + The duration must be only for a reasonable time
  + These are called affirmative defenses, the burden of establishing them are on the defendant.

## Defamation

* **Definition** – A false statement of fact, communication to a 3rd party, harm, and malice for a public figure.
* The plaintiff is required to prove *at least one* of the above, called prima facie case
* **Libel** – A defamatory statement that has a characteristic of permanence. Harm is presumed if libel.
* **Slander** – The harm must be established
* **Defenses against defamation for the defendant**
  + Truth
  + Qualified Privilege
  + Consent
* False Statement of Fact
  + The statement has to be false, if it’s true it is not defamation.
* Is it a fact or opinion?
  + Look at Webster vs. Wilkins & Schueller vs. Swan

## Negligence

* **Requirements**
  + Duty of Care
  + Breaching of Duty
  + Must cause injury / harm to the plaintiff
  + Causation – There has to be a link between the defendants failure to use reasonable care and injury
    - Actual Cause (Fact)
    - Proximate Cause (Theory)
* **When does a duty exit?**
  + A duty to use reasonable care is going to exist when two things happen
    - When there is a foreseeable risk
    - When the defendant has control over that risk
* **What constitutes reasonable care?**
  + **Trespasser** – Someone who comes onto your premise without authorization. You have an obligation to not hurt the trespasser, but you can use reasonable force to protect your property or others on your property. If the trespasser is a child (under 18), then the trespasser is treated as a business invitee.
  + **Business Invitee** – Someone who comes onto your business premise for the mutual benefit of you and him or her. The business has an obligation to mitigate the risk of any unreasonably dangerous conditions. You have to have actual knowledge or constructive knowledge
    - **Constructive Knowledge** – What you should have known. There is a premise defect, the exercise of reasonable care, you should of found it.
  + **Licensee** – Someone who comes onto your business premise, with your permission, but is not there for the mutual benefit of you and them. Primarily there for their own purpose, such as to have lunch with one of your employees. Warn the licensee of latent (non-obvious) defects of which you have actual knowledge.
  + Note: If the plaintiff assumes a known risk, then the defendant isn’t responsible for harm as a result of the risk.
* Comparative Negligence
  + Sues for negligence, defendant is comparatively negligent. They share the damage award.
* Strict Liability
  + One should be liable for the damage of ones conduct, for the conduct is unreasonably dangerous.
    - No culpability whatsoever.
* **Vicarious Liability**
  + When can an employer be liable for conduct of his employee?
  + **Vicarious** - through someone else (employee).
  + **Theory of Second Liability** – The plaintiff didn’t do anything wrong but the liability arises because of the relationship with the employee.
    - **Two parts of the rule:**
      * Tortfeasor must technically be an employee
      * The employee must be acting within the scope of their employment.
  + **What does it mean that the employee is acting within the scope of their employment?**
    - Was the employees’ act authorized? If the employer authorized the conduct at issue, that’ll weigh in favor of the plaintiff.
* **Negligent Supervision**
  + Failure to use reasonable care and supervising employees
  + Negligent hiring or retention.