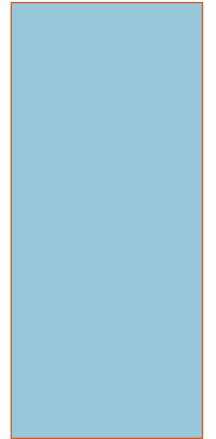


# TORT LAW

## CHAPTER 6



# LEARNING OBJECTIVES

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1. What is the purpose of tort law? What types of damages are available in tort lawsuits?
2. What are two basic categories of torts?
3. What is defamation? Name two types of defamation.
4. Identify the four elements of negligence.
5. When is meant by strict liability? In what circumstances is strict liability applied?



# THE BASIS OF TORT LAW

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- Wrongs and compensation serve as the basis of torts.
- Tort law is designed to compensate those who have suffered a loss or injury to another person's wrongful act.
- The Purpose of Tort Law
  - To provide remedies for the violation of various protected interests.

# THE BASIS OF TORT LAW

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## Damages Available in Tort Actions

- **Compensatory damages:** a monetary award equivalent to the actual value of injuries or damage sustained by the aggrieved party.
- **Punitive damages:** monetary damages that may be awarded to a plaintiff to **punish** the defendant and deter similar conduct in the future.

# THE BASIS OF TORT LAW

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## Classifications of Torts

- Intentional torts
- Unintentional torts (e.g., negligence)

## Defenses

- Legally recognized reasons why the plaintiff should not obtain damages

# INTENTIONAL TORTS AGAINST PERSONS

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**Intentional tort:** requires intent, a wrongful act knowingly committed

**Tortfeasor:** one who commits the tort

- Assault
  - Any intentional and unexcused threat of immediate harmful or offensive contact
- Battery
  - Unexcused, harmful, or offensive physical contact with another that is intentional

# INTENTIONAL TORTS AGAINST PERSONS

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## False Imprisonment

- Intentional confinement or restraint of another person's activities without justification

## Intentional Infliction of Emotional Distress

- An extreme and outrageous act, intentionally committed

Stu's Views

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Satan, they're going to nail you on their "intentional infliction of emotional distress" claim.



# INTENTIONAL TORTS AGAINST PERSONS

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## Defamation

Anything published or publicly spoken that causes injury to another's good name, reputation, or character

- **Slander** is oral, **Libel** is written.
- Statement of fact requirement (not opinion)
- Publication requirement (i.e., a 3<sup>rd</sup> Party)
- Damages for libel (general damages are presumed. Showing an actual injury is not required.)
- Damages for slander (need to prove injury)
- Defenses against defamation (consent to the publication, retraction, the truth, privileged and public officials)

# INTENTIONAL TORTS AGAINST PERSONS

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## Invasion of Privacy

You have the right to privacy. Breach of that duty is a tort.

Four types:

1. Intrusion into an individual's affairs or seclusion
2. False light
3. Public disclosure of private facts
4. Appropriation of identity



# INTENTIONAL TORTS AGAINST PERSONS

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## Fraudulent Misrepresentation

- Intentional deceit for personal gain
  1. Misrepresentation of material facts with knowledge they are false (i.e., **lying**)
  2. Intent to induce another innocent party to **rely** on the misrepresentation
  3. Justifiable reliance on misrepresentation by deceived party
  4. **Damages** suffered as a result of reliance
  5. **Causal connection** between misrepresentation and injury suffered

# INTENTIONAL TORTS AGAINST PERSONS

## Fraudulent Misrepresentation versus Puffery

- Puffery – a salesperson's often exaggerated claims concerning the quality of property offered for sale.
- Such claims involve opinions rather than facts and are not legally binding promises.



Puffery

# INTENTIONAL TORTS AGAINST PERSONS

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## Wrongful Interference

### With a contractual relationship

- Valid, enforceable contract exists between two parties.
- Third party knows about contract.
- Third party intentionally causes either party to **breach** the original contract.

### With a business relationship

- Businesspersons are prohibited from unreasonably interfering with another's business in attempt to gain market share

Defenses to wrongful interference (**bona fide competitive behavior**)

# INTENTIONAL TORTS AGAINST PROPERTY

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Trespass to Land (i.e., real property)

Trespass to Personal Property

- When an individual unlawfully harms another's personal property or interferes with the owner's right to exclusive possession and enjoyment
- The tort may entail acts of damage, dispossession, or both.

Conversion

- Conversion is trespass to personal property but more serious in terms of duration and use.
- Unlawfully taking property is trespass; unlawfully retaining it is conversion.

Disparagement of Property

- Slander of quality (trade libel)
- Slander of title

# NEGLIGENCE

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**Negligence** is the failure to exercise the standard of care that a reasonable person would exercise in similar circumstances.

## Four Elements of Negligence

- Duty of Care
- Breach of the Duty
- Causation (the breach must have caused the injury)
- Damages (a legally recognizable injury)

# NEGLIGENCE

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## Duty of Care and Its Breach

- People in society are free to act as they please so long as their actions do not infringe on the interests of others
- Reasonable person standard
- Duty of landowners
  - Duty to warn business invitees of risks – (slip and falls)
  - Obvious risks are an exception
  - Duty of Professionals – higher standard and malpractice





# NEGLIGENCE

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## CAUSATION

- To hold defendant liable, plaintiff must show the tortious act was both the actual and proximate cause of the injury.
- **Causation in fact:** “but for” defendant’s act, injury would not have occurred
- **Proximate cause:** defendant’s act created a foreseeable risk of injury to plaintiff (sufficient strong connection).

# NEGLIGENCE

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## Injury Requirement and Damages

- Plaintiff must suffer a legally recognizable injury for damages to be awarded.
- Plaintiff must show she or he suffered loss or harm to legally protected interest.

I bump into you and you fall down the stairs but land on your feet.... Can I sue you and win damages?

# NEGLIGENCE

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## Defenses to Negligence

Assumption of risk: Plaintiff may not recover for injuries or damages from risks he or she knows of and has voluntarily assumed

Superseding cause: Unforeseeable intervening event may break the connection between wrongful act and injury to another



# NEGLIGENCE

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**Contributory negligence:** Bars the plaintiff from recovering **any** damages if the damage suffered is partly the plaintiff's own fault (only used in a few states)

**Comparative negligence** (more common):  
Reduces the plaintiff's recovery in proportion to the plaintiff's degree of fault, rather than barring recovery completely



# NEGLIGENCE

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## Special Negligence Doctrines and Statutes

### ***Res ipsa loquitur***

- the facts speak for themselves (don't need to prove negligence)
- burden shifts to the defendant
- Example - Sponge left in a person after surgery or load of bricks fall from construction site

### **Negligence *per se***

- violate a law designed to protect the public
- Examples - Drinking and driving or speeding and hit pedestrian, violate building code and building collapses

### **“Danger invites rescue” doctrine**

- the tortfeasor is liable not only for the harm caused to the victim, but also the harm caused to any person injured in an effort to rescue that victim.
- Example – Dave pushes you into a river and you and your rescuer drown

# NEGLIGENCE

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## Special Negligence Doctrines and Statutes (cont'd)

### Good Samaritan statutes

- persons who are aided voluntarily by others cannot sue them for negligence.

### Dram shop acts

- tavern owner or bartender may be liable for injuries caused by a person who became intoxicated while drinking at the bar or who was already intoxicated when served.
- In some states, statutes impose liability, without proof of negligence, on social hosts (persons hosting parties) for injuries caused by guests who became intoxicated at the hosts' homes.

# STRICT LIABILITY

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Liability **without being at fault**

Courts apply strict liability based on activities involving extreme risk of injury.

- Abnormally Dangerous Activities
  - The person who is engaged in an abnormally dangerous activity and benefits from it, is responsible for paying for any injuries caused by that activity (e.g., dynamite).
- Wild animals
- Dangerous domestic animals
- PRODUCT LIABILITY FOR HARMFUL OR DEFECTIVE PRODUCTS





# LIEBECK V. MCDONALD'S RESTAURANTS

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How would have you voted if you were on the jury or the judge?

Comment on the compensatory and punitive damages and whether the result was reasonable.

In what way was either the plaintiff or defendant negligent?

How does the doctrine of comparative negligence apply?

Do you think McDonald's assumption of risk defense should have been applied in this case?