**Torts**

**Assault** – The plaintiff must show (1) an act by the defendant creating a reasonable apprehension in the plaintiff of immediate harmful or offensive cotact to the plaintiff’s person, (2) intent by the defendant of the contact, and (3) causation.

**Battery** – The plaintiff must show (1) an act by the defendant that brings about harmful or offensive contact to the plaintiff’s person, (2) intent by the defendant to bring about such contact, and (3) causation. For purposes of battery, anything connected to the plaintiff’s person is viewed as part of the plaintiff’s person. Furthermore, a person may recover for battery even though she is not conscious of the harmful or offensive contact.

**False imprisonment** – The plaintiff must show (1) an act or omission by the defendant that confines or restrains the plaintiff to a bounded area, (2) intent of the defendant’s part to confine or restrain the plaintiff, and (3) causation. False imprisonment may be accomplished by a threat of force against the plaintiff and it does not matter how short the time period of the restraint was.

**IIED** – The plaintiff must show (1) an act by the defendant amounting to extreme and outrageous conduct, (2) intent by the defendant to cause plaintiff to suffer severe emotional distress or recklessness as to the effect of the defendant’s conduct, (3) causation, and (4) damages (severe emotional distress).

**Trespass to chattels** – (1) An act by the defendant that interferes with the plaintiff’s right of possession in the chattel, (2) intent to do that act, (3) causation, and (4) damages. While actual damages are required, the loss of possession itself is deemed to be an actual harm. If the interference with the chattel is so serious in nature or in consequences as to amount to a claim of dominion over the chattel, the interference will constitute a conversion.

**Conversion** – The plaintiff must show (1) an act by the defendant interfering with the plaintiff’s right of possession in chattel that is serious enough in nature or consequence to warrant that the defendant pay the full value of the chattel, (2) intent to do that act, and (3) causation.

**Trespass to land** – An act of physical invasion that interferes with the plaintiff’s exclusive possession of land.

**Nuisance** – An unreasonable interference with the plaintiff’s use and enjoyment of land. Courts will apply a balancing test. Private nuisance occurs when the land is invaded by intangibles such as odors or noises that substantially and unreasonably interfere with a private individual’s use or enjoyment of her land. In contrast, a public nuisance is an invasion by intangibles that unreasonably interfere with the health, safety or property rights of a broad segment of the community, rather than one or a few individuals. However, recovery is available for public nuisance only if a private party has suffered some unique damage not suffered by the public at large. Interference is substantial when it would be offensive, inconvenient, or annoying to an average person in the community, as opposed to merely the result of the plaintiff’s hypersensitivity. Interference is unreasonable when the severity of the inflicted injury outweighs the utility of the defendant’s conduct. Courts take into account that every person is entitled to use his own land in a reasonable way, considering the neighborhood, land values, and existence of any alternative conduct open to the defendant.

**Consent (torts)** – An affirmative defense to intentional torts, provided plaintiff had legal capacity. Express consent, provided it is not obtained through fraud or duress, or implied consent through custom or defendant’s reasonable interpretation of plaintiff’s conduct. The defense is limited to the scope of the consent.

**Defensive force** – The plaintiff may response to threat only when it is imminent or in progress (no revenge). The plaintiff must have a reasonable belief that the threat is genuine but reasonable mistake is ok. The response must be no more than necessary under the circumstances. Deadly force may be used but not to protect property alone.

**Necessity** – In property torts, defendant may claim public or private necessity. Public necessity occurs where defendant invades the plaintiff’s property in an emergency to protect the community as a whole or a significant group of people. The defendant need not pay damages. Private necessity occurs when the defendant invades the plaintiff’s property to protect an interest of his own. The defendant is liable for actual damages to the property but not for nominal or punitive damages. Moreover, as long as the emergency continues, the plaintiff cannot throw the defendant off the land.

**Defamation** – Defamation is a defamatory statement of or concerning the plaintiff, published to a third party that causes damages to the plaintiff.

**Defamatory statement** – A defamatory statement is one that tends to lower plaintiff’s reputation within the community.

**Of or concerning the plaintiff** – A reasonable person must have understood that the statement was of or concerning the plaintiff.

**Published to a third party** – The statement must have been published to a third party who understood the statement,

**Damages (defamation)** – General damages are presumed for libel per se. Libel is written defamation.

**Constitutional defamation** – Whenever there is a matter of public concern, then the plaintiff must also prove the additional elements of fault and falsity.

**Falsity** – Plaintiff is required to prove falsity of the statement.

**Fault** – The type of fault that plaintiff must prove depends on whether plaintiff is a public or private figure. A public figure is one who achieves fame or notoriety or is in government office. If plaintiff is a public figure, he must prove actual malice, which requires a showing of knowledge that the statement was false or reckless disregard as to whether it was false. This is a subject test. If the plaintiff is a private figure then he must prove negligence, which means he need only show negligence regarding the falsity of the statement if that statement involves a matter of public concern. Where defendant is only negligent, only actual injury damages are recoverable. However, if a private plaintiff can show malice on the part of the defendant, damages may be presumed and plaintiff may be able to recover punitive damages.

**Defenses/privileges to defamation** – Consent is a complete defense. Truth – where plaintiff does not need to prove the element of falsity, defendant may prove truth as a complete defense. Absolute privilege – Defendant may be protected by an absolute privilege for the following: remarks made during judicial proceedings, by legislators in debate, by federal executive officials, and between spouses. An absolute privilege can never be lost. Qualified privilege – Speakers may have a qualified privilege for the following: reports of official proceedings; statements in the interest of the publisher, such as defense of one’s actions, property or reputation; statements in the interest of the recipient; and statements in the common interest of the publisher and recipient. This privilege may be lost if the statement is not within the scope of the privilege or it is shown that the speaker acted with malice. Defendant bears the burden of proving that a privilege exists.

**Privacy – Misappropriation** – Misappropriation occurs when the defendant uses the plaintiff’s name or image for a commercial purpose. This tort can apply to everyone, not just famous people. However, if it is a matter of public concern, then it it falls within the newsworthiness exception.

**Privacy – Intrusion** – Invasion of plaintiff’s physical seclusion in a way that would be highly offensive to the average person.

**Privacy - False light** – The widespread dissemination of a material falsehood that would be highly offensive to an average person. Overlaps with defamation (economic damages), but false light allows for social and emotional damages, and the falsehood need not be defamatory.

**Privacy - Publication of private facts** – The widespread dissemination of confidential information about the plaintiff that would be highly offensive to an average person. The newsworthiness exception may apply.

**Negligence** – To prevail in a negligence action, the plaintiff must show that (1) the defendant owed a duty of care, (2) the defendant breached that duty, (3) the breach was the actual cause and the proximate cause of the harm, and (4) the plaintiff suffered damages.

**Duty of care owed to foreseeable plaintiff** – A general duty of care to act as a reasonable person is owed to all foreseeable plaintiffs. Under the majority view, the plaintiff must be within the foreseeable zone of danger from the defendant’s activity to be owed a duty of care. Under the minority view, the duty of care is owed to anyone. The general standard of care is that of a reasonably prudent person under the circumstances.

**Duty to trespassers** – The general rule for property owners is that one who comes onto land without permission or privilege is a trespasser to whom the property owner owes no duty. However, if the property owners knows or reasonably should know of the presence of trespassers regularly entering onto the property, the entrant may be an anticipated trespasser to whom the property owner owes a duty to warn of or make safe artificial conditions that carry the risk of death or serious bodily injury.

**Duty to trespassing children** – If the trespasser is a child, the duty may be more extensive. Under the rule of attractive nuisance, the property owner owes a duty to exercise reasonable care to avoid a reasonably foreseeable risk of harm to children caused by artificial conditions on the property. To establish, the plaintiff must show that (1) there is a dangerous condition present on the land of which the owner is or should be aware, (2) the owner knows or should know that young persons frequent the vicinity of this dangerous condition, (3) the condition is likely to cause injury because it is dangerous and because of the child’s inability to appreciate the risk, and (4) the expense of remedying the situation is slight compared with the magnitude of the risk. The plaintiff does not need to show that the child was lured onto the property by the dangerous condition.

**Duty to invitees** – One who enters onto property for a purpose connected to the business of the property owner is an invitee. The property owner owes an invitee a duty to use reasonable care to keep the property reasonably safe for the benefit of the invitee, which includes making reasonable inspections, duty to warn of or make safe nonobvious dangerous conditions on the premises and to use ordinary care in the conduct of active operations on the property.

**Duty to licensees** – A property owner owes a duty to protect licensees from all known traps on the land, natural or artificial. The condition must be concealed and the property owner must have had prior knowledge of the condition.

**Statutory duty of care and effect** – The standard of care in a negligence case may be established by proving the applicability of a statute providing for a criminal penalty. If so, the specific duty imposed by the statute will replace the general common law duty of care. The plaintiff must show that (1) she is in the class intended to be protected by the statute and (2) the statute was intended to prevent the type of harm that the plaintiff suffered. If a statutory standard of care applies, most courts consider violation of the statute as negligence per se, which is a conclusive presumption of duty and breach of duty. However, even if the class of risk and class of person are met, there is no duty under the statute if compliance would be more dangerous than violation or if compliance would be impossible under the circumstances.

**Breach of duty** – When the defendant’s conduct falls below the level required by the applicable standard of care, he has breached his duty.

**Actual cause** – The defendant’s conduct is the actual cause of the plaintiff’s injury if the injury would not have occurred but for the defendant’s conduct.

**Res ipsa loquitor** – Plaintiff may establish breach of duty when they cannot identify with specificity what the defendant did wrong. Plaintiff must show that the accident is a type normally associated with negligence and an accident of this type would normally be due to the negligence of someone in the defendant’s position, which can be shown if the defendant had control over the instrumentality causing the injury.

**Proximate cause** – The general rule of proximate cause is that the defendant is liable for all harmful results that are the normal incidents of and within the increased risk caused by his conduct. If the defendant’s negligence created a foreseeable risk that an intervening force would harm the plaintiff, the defendant is liable for the harm caused. On the other hand, if another person’s crime or tort is not foreseeable, it will be deemed a superseding force and cut off the defendant’s liability for the harm.

**Damages** – A plaintiff is entitled to be compensated from the tortfeasor for all her damages, even if the extent or severity of the harm is unforeseeable (tortfeasor takes his victim as he finds her).

**Defenses - Comparative negligence** – A plaintiff in a negligence case is also held to a standard of reasonable care. At common law, a plaintiff whose negligence was found to have contributed to her injury was completely barred from recovering under traditional contributory negligence rules. Similarly a plaintiff who knowingly and voluntarily assumed the risk of injury from the defendant’s conduct was barred from recovering damages. Now, most states have replaced the traditional contributory negligence and implied assumption of risk rules with a comparative negligence system, in which the trier of fact weighs the plaintiff’s negligence against that of the defendant and reduces the plaintiff’s damages accordingly. In a pure comparative negligence system, the plaintiff may recover some damages no matter how much at fault she is. In a partial comparative negligence system, the plaintiff may not recover any damages if her negligence rises above a threshold level.

**Abnormally dangerous activity** – There strict liability for an abnormally dangerous activity, which involves a (1) substantial risk of harm (2) no matter how much care is exercised and (3) the activity is not commonly engaged in by the community.

**Strict products liability** – A commercial seller who places a product in the stream of commerce may be strictly liable in tort for injuries caused by a defective product. In order to prevail in SL cause of action, plaintiff must show (1) the defendant is a commercial supplier of a product, (2) production or sale of a defective product, (3) actual and proximate causation, and (4) damages.

**Commercial supplier** – SL applies to commercial suppliers who place products in the stream of commerce; it does not apply to casual sellers. Commercial suppliers include manufacturers, wholesalers, assemblers and retailers. Whether or not contractual privity exists between the plaintiff and defendant will not prevent plaintiff from recovering, because any foreseeable plaintiff, including a bystander, can sue any commercial suppler in the chain of distribution regardless of a contractual relationship between them.

**Production or sale of a defective product** – The plaintiff need not prove that the defendant was at fault in selling or producing a defective product – only that the product is defective. Two main categories of defects are manufacturing defect and design defect (which includes inadequate warning). Suppliers must anticipate reasonably foreseeable uses even if they are misuses of a product.

**Manufacturing defect** – If a product emerges from manufacturing different from and more dangerous than the products made properly, it has a manufacturing defect. This can be proven using the consumer expectation test, which says a defendant will be liable if the plaintiff can show that the product failed to perform as safely as an ordinary consumer would expect.

**Design defect** – For a design defect, the plaintiff must show that the defendant could have made the product safer, without serious impact on the product’s price or utility.

**Inadequate warnings** – A product may be defective as a result of the manufacturer’s failure to give adequate warnings as to the risk involved in using the product. For liability to attach, the danger must not be apparent to users.

**Government safety standards** – A product’s noncompliance with government safety standards establishes that it is defective, while compliance with safety standards is evidence, but not conclusive, that the product is not defective.

**Actual cause (SL)** – Plaintiff must show that the defect existed when the product left defendant’s control.

**Proximate cause (SL)** – The type of injury must have been foreseeable at the time the product was placed in the stream of commerce. Defendant will not be held liable for dangers not foreseeable at the time of marketing.

**Assumption of the risk** – Plaintiff may be denied recovery if she assumed the risk of any damage caused by defendant’s act. Plaintiff must have known of the risk and voluntarily proceeding in the face of the risk.

**Contributory/comparative negligence (SL)** – Contributory negligence is not a recognized defense to SL products liability in the majority of jurisdictions. Most jurisdictions follow either partial or pure comparative negligence.

**Negligence (products)** – In order for plaintiff o prevail in a products liability cause of action based on negligence, plaintiff must show duty, breach, actual and proximate causation, and damages.

**Duty (products)** – A duty of care is owed to all foreseeable plaintiffs. A foreseeable plaintiff is anyone in the zone of danger (majority view). Users of products, bystanders, and consumers of the product are all foreseeable plaintiffs. Privity with the defendant is no longer required. Foreseeable plaintiffs are owed a standard of care of that of a reasonably prudent manufacturing company.

**Breach (products)** – Breach is shown by negligence conduct of defendant leading to the supplying of a defective product.

**Proximate cause (products)** - The type of injury must have been foreseeable at the time the product was placed in the stream of commerce. Defendant will not be held liable for dangers not foreseeable at the time of marketing. A wholesaler’s/intermediary negligent failure to discover a defect does not supersede the original manufacturer’s negligence unless the wholesaler’s conduct exceeds ordinary foreseeable negligence.

**Vicarious liability** – An employer may be liable for its employee’s tort if committed within the scope of employment. An intentional tort is usually outside the scope of employment unless the job includes authorization to use force, the job involves friction or conflict, or intentional tort in an effort to advance the interests of the employer. There is usually no vicarious liability for the torts of an independent contractor, unless the contractor hurts an invitee on the property. There is usually no vicarious liability for the torts of a driver unless the driver is doing a favor for the automobile owner.

**Joint liability** – Co-defendants are jointly and severally liable, which means the plaintiff can recover the full amount from any defendant and then each defendant can recover the other defendants.