Torts

Previously, the majority of laws and regulations we studied are "laws of rights" - what legal rights one has.

- Establish a lawsuit
- Incorporation
- Securities regulations

Now, let's shift our focus to **laws of wrongs**. They include

- **Criminal Law**: **Severe** wrongs, enforced by the state on behalf of **society**
- **Tort Law**: Interpersonal wrongs, **injured party** gets to decide whether to hold her tortfeasor accountable

Not every harm is a wrong, and not every wrong is a tort.

The remedy to a tort is usually some kind of monetary compensation for the damages made.

Defamation

Defamation is a type of tort. To prove defamation of character, a plaintiff needs the following:

1. False statement
2. Damages
3. Publication

We will cover these factors in depth.

There are two types of defamation we will cover

1. Slander
    - Transitory or oral
2. Libel
    - Permanent or written

False Statement

To simply put, this means that a statement that the one makes is **objectively untrue**. Note that **opinions** or any subjective statements are not classified as statements, which includes phrases like

- "I think, IMO, etc."

Publication

The statement needs to be made in or to the presence of a third-party (which can also be an agent of the defendant) at least verbally or in writing.

- The third-party could be anyone, including one's family and friends
- This includes social media by default

Damages

The false statement causes real harm to plaintiff's personal life or reputation that demands some form of compensation.

> **Note**
>
> By Section 230, Title 47 of the United States Code, social media are **NOT** liable for wrongful content posted on the social media platform by third-parties. It provides immunity from liability for social media platforms.

Slander Per Se

In some circumstances, plaintiff **DOES NOT** need to claim damages made by the false statement, and slander/libel (libel per se) would be automatically granted.

> **Important**
>
> **Definition 5.1**: Defamation Per Se
>
> There are four main ways to classify false statements that the law presumes to be harmful to a person's reputation.
>
> - Statement regarding someone committed a crime or immoral conduct
> - Statement regarding someone had a contagious, infectious, or "loathsome" disease
> - Statement regarding someone engaged in sexual misconduct

- Harmful Statement regarding someone's business or profession

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Public Disclosure of Private Facts

The tort of public disclosure of private facts requires that a plaintiff needs to prove that the disclosed information is

1. **Non-news** worthy facts
    - Publication about private matters - intuitively this does not apply to celebrities
2. Facts that are reasonable personal privacy that could be offensive if disclosed

Intrusion (on seclusion)

Another privacy-related tort. This requires that a plaintiff needs to prove that there is

1. Objectionable prying
    - E.g. eavesdropping, wire-tapping, snooping, and any objectionable prying
2. Reasonable expectation for privacy in which the intrusion takes place
    - E.g. Home, private spaces

Negligence

This is the **CORE** of tort laws. In essence, negligence is about the some party's negligent act exposing risks and damages on the other party.

Elements of a negligence claim includes

- Duty
- Breach
- Causation
- Harm

Duty of Care

Important

Definition 5.2: Duty of Care

> Generally, duty of care requires a person with a **legal duty** to another must act like a **reasonable person** to avoid harming the other person.

For example, drivers have a duty not to text and drive.

Duty of Property Owners

Apart from the owner of the property, there are three types of people when discussing acts related to property.

- Licensees
  - People who had the owner's consents to visit
  - E.g. friends and family, salesperson (if having conversation with them)
- Invitees
  - People who visit for business purposes
  - E.g. pizza delivery person
- Trespassers

Property owners have duty to invitees that they need to **protect** invitees from **ALL dangerous** conditions that they know or should've known.

Property owners have duty to licensees that they need to **warn** licensees from **KNOWN and hard-to-find dangers**.

Property owners do **NOT** have any duty to trespassers.

- With the exception of kids

Causation and Harm

There are two types of causation that needs to be established to determine the causation-harm relationship. The plaintiff need to show that **breach of duty** is the **actual and proximate cause** that imposes the harm to hold the defendant liable.

Actual Causation

Also called *cause in fact*. It is the event that was the **immediate** and **direct** cause of an accident. We use the **but-for test** to determine actual causation. The test asks

- "but for (without) the existence of X, would Y have occurred?"

- If it would, that conduct is **NOT** the cause of the harm

Proximate Causation

It is an event **sufficiently related** to an injury that the courts deem the event to be the cause of that injury. We use the **foreseeable test** to determine proximate causation. The test asks

- How likely it was that the plaintiff could have anticipated the potential or actual results of their actions? This breaks down to
  - Were the consequences foreseeable?
  - Was the plaintiff foreseeable? (zone of danger)

Negligence Per Se

Similar to defamation, there is also a quick way to go about establishing negligence.

Important

Definition 5.3: Negligence Per Se

If there is a law statute that prohibits a negligent act, it is inherently identified as **negligent** regardless of being "**reasonable**" or not.

Res Ipsa Loquitur

This is another way to prove duty, breach, and causation **indirectly**. In Latin, this translates to "the thing speaks for itself".

Important

Definition 5.4: Res Ipsa Loquitur

The plaintiff can create a rebuttable presumption of negligence by the defendant by proving the following:

1. The plaintiff was harmed by something **controlled exclusively** by the defendant
2. Generally people don't get harmed in situation like this unless someone is **negligent**
3. The plaintiff is **NOT** negligent

Defense to Negligence

There are two main ways that the defendants could argue about the case, even after negligence has been established.

1. Assumption of risk
    - The plaintiff voluntarily chooses to undertake activities knowing the risks beforehand
2. Comparative negligence
    - The plaintiff is **ALSO** negligence
    - Then the fact-finders determine what percentage of damage each party is responsible for, then base the compensation on the percentage

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Product Liability

There are two ways to determine product liability:

1. Breach of Warranty (focus later this semester)
2. Negligence (Previously covered)
3. **Strict Liability** - California 1963
    - Applies to products only
    - Easier to establish compared to negligence

> **Important**
>
> **Definition 5.5**: Strict Product Liability
>
> A seller or manufacturer being held responsible, **regardless of intent or negligence**, for selling or placing a defective product into the hands of a consumer.

To claim strict liability, a plaintiff needs to claim that

1. Plaintiff **harmed** by defendant's product
2. Injury **caused** by a defect in the product, and
3. The **defect existed** at the time the product left the defendant and **DID NOT** change substantially along the way

Note that (1) and (2) are essentially the **causation-harm** clause in negligence.

Defects can be broken down into the following categories.

- **Manufacturing Defects**
  - Units **failed to meet the internal specification** of that product because of some kinds of **flaws in the manufacturing** products.
    - E.g. incomplete components, incorrect installation, any evidence that shows divergence from the product specficiation
- **Warning Defects**
  - There is **NO** adequate warnings to the foreseeable **risks** that are inherent to the product
    - Warning defects exist to cover the **residual risk** that exists but cannot fix fundamental defects
    - The more riskier the product, the more warning there should be
    - E.g. lawn mower **MUST** have some warning sign as it carries inherent ris
- **Design Defects**
  - Different states apply different tests to determine
    - **Risk-Utility Balancing Test**
      - `[](risk > utility) -> { defects : !defects }`
    - **Reasonable Alternative Design Test**
      - Plaintiff needs to **bring an alternative design to court**, proving that the original has defects
      - **OR**, shows that the defendant has considered choosing an alternative design but went with a different one
        - This is done through discovery

Defense to Product Liability

There are two main ways that the defendants could argue about the case, even after strict product liability has been established.

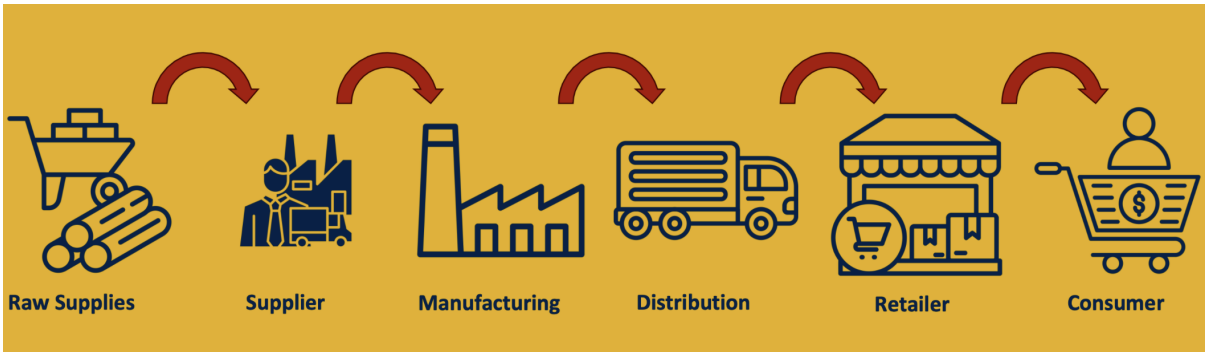
1. Assumption of risks
   - If customer keeps using it, it is implied that they **deliberately choose** to take on the risk
2. Comparative fault
   - Discount the damage if plaintiff is also negligent

Note that these are the same ones as what we've seen in negligence.

Product Liability & Supply Chain

As long as **defect existed** when products left a party's hand, that party can be held **liable**.

- This implies **ALL** upstream parties are joint and severally liable for the injury



To mitigate such risks, producers can

- Establish **contracts** with suppliers
  - Suppliers are liable for any defects occurred during their manufacturing stage
- Vertical integration

> **Note**
>
> Sellers of **used-goods CANNOT** be sued for strict liability. However, this only excludes the salesperson in the chain; if defects exist beforehand and there is **NO** significant change, then all upstream suppliers can still be sued.

In recent era, there has been dispute as to whether **software** is a product or a service.

- By recognizing it as a service, software companies can avoid strict product liability
- However, the trade-off is that stock price of a software "product" company is 5x to 8x higher than a software "service" company