



Tort Law

Educational Objectives

After learning the content of this assignment, you should be able to:

1. Describe negligence claims in terms of:
 - The elements of negligence
 - The required proof of negligence
2. Describe these defenses against negligence claims: Comparative negligence, releases and exculpatory clauses, immunity, statutes of limitations and repose, and tortfeasor's capacity.
3. Explain how negligence applies to landowners or occupiers of land.
4. Describe these intentional torts, the circumstances under which they can occur, and common defenses to them:
 - Battery
 - Assault
 - False imprisonment and false arrest
 - Intentional infliction of emotional distress
 - Defamation (libel and slander)
 - Invasion of the right of privacy
5. Describe these intentional torts, the circumstances under which they can occur, and common defenses to them:
 - Fraud
 - Bad faith, or outrage
 - Interference with relationships between others
 - Misuse of legal process
 - Trespass



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Educational Objectives, continued

- Nuisance
 - Conversion
6. Explain how liability attaches as a result of the unique circumstances presented by the following:
 - Ultrahazardous activities
 - Ownership and/or possession of animals
 - Escape of toxic substances
 7. Describe these causes of action for products liability and the possible defenses to them:
 - Misrepresentation
 - Breach of warranty
 - Strict liability and negligence
 8. Describe the types of damages a court can award a plaintiff for a tort claim.
 9. Explain how any of these concepts can affect a tort claim:
 - Joint tortfeasor's liability
 - Expanded liability concepts
 - Vicarious liability
 - Good Samaritan issues
 - Class actions and mass tort litigation

Outline

► Negligence

A. Elements of Negligence

1. Legal Duty
2. Breach of Duty
3. Proximate Cause
4. Actual Injury or Damage

B. Required Proof of Negligence

1. Negligence Per Se
2. Res Ipsa Loquitur

► Defenses Against Negligence Claims

A. Comparative Negligence

B. Releases and Exculpatory Clauses

C. Immunity

1. Sovereign, or Governmental, Immunity
2. Public Official Immunity
3. Charitable Immunity
4. Intrafamilial Immunity

D. Statutes of Limitations and Repose

E. Tortfeasor's Capacity

► Liability of Landowners or Occupiers of Land

A. Natural Conditions

B. Artificial Conditions

C. Duties to Those Who Enter the Land or Premises

1. Licensees
2. Invitees
3. Trespassers
4. Hotel Guests and Tenants

► Intentional Torts: Part 1 of 2

A. Battery

B. Assault

C. False Imprisonment and False Arrest

D. Intentional Infliction of Emotional Distress

E. Defamation (Slander and Libel)

1. Slander
2. Libel
3. Commercial Speech

F. Invasion of the Right of Privacy

1. Intrusion on Solitude or Seclusion
2. Physical Invasion
3. Torts Involving Use or Disclosure of Information
4. Defenses to Invasion of Privacy

► Intentional Torts: Part 2 of 2

A. Fraud

B. Bad Faith, or Outrage

1. Damages
2. Insurance Cases
3. Defenses

C. Interference With Relationships Between Others

1. Injurious Falsehood
2. Malicious Interference With Prospective Economic Advantage
3. Unfair Competition
4. Interference With Employment
5. Interference With Copyright, Patent, or Trademark
6. Interference With Right to Use One's Own Name in Business
7. Interference With Family Relationships

D. Misuse of Legal Process

1. Malicious Prosecution
2. Malicious Abuse of Process

E. Trespass

F. Nuisance

G. Conversion

► Liability in Extraordinary Circumstances

A. Ultrahazardous Activities

B. Ownership and/or Possession of Animals

C. Escape of Toxic Substances

► Products Liability

A. Misrepresentation

B. Breach of Warranty

C. Strict Liability and Negligence

1. Types of Product Defects
2. Potentially Liable Parties



Repetition helps students learn. Read, write, and repeat key points for each assignment.



Outline

- 3. Parties Protected
- 4. Defenses
- 5. Damages
- ▶ **Damages in Tort Suits**
 - A. Compensatory Damages
 - B. Punitive Damages
 - C. Damages for Wrongful Death
- ▶ **Liability Concepts Affecting Tort Claims**
 - A. Joint Tortfeasors
 - B. Expanded Liability Concepts
 - C. Vicarious Liability
 - D. Good Samaritan Issues
 - E. Class Actions and Mass Tort Litigation



For each assignment, you should define or describe each of the Key Words and Phrases and answer each of the Review and Application Questions.

Educational Objective 1

Describe negligence claims in terms of:

- The elements of negligence
- The required proof of negligence

Key Words and Phrases

Tort

Tortfeasor

Plaintiff

Defendant

Legal duty

Statute

Common law (case law)

Reasonable person test



6.6 Business Law for Insurance Professionals—CPCU 530

Common carriers

Proximate cause

“But for” rule

Substantial factor rule

Foreseeability rule

Intervening act

Concurrent causation (concurrent causation doctrine)

Negligence per se

Res ipsa loquitur

Exclusive control



Review Questions

- 1-1. Identify the elements of negligence.

- 1-2. At the outset of a lawsuit, what presumption favors the defendant?

Educational Objective 2

Describe these defenses against negligence claims: Comparative negligence, releases and exculpatory clauses, immunity, statutes of limitations and repose, and tortfeasor's capacity.

Key Words and Phrases

Comparative negligence

Contributory negligence

Last clear chance doctrine

Assumption-of-risk defense



6.8 Business Law for Insurance Professionals—CPCU 530

Pure comparative negligence rule

50 percent comparative negligence rule

49 percent comparative negligence rule

Slight versus gross rule

Release

Gross negligence

Immunity

Sovereign immunity (governmental immunity)

Proprietary function

Governmental function



Administrative act (discretionary act)

Ministerial act

Charitable immunity

Interspousal immunity

Parent-child immunity

Statute of limitations

Statute of repose

Review Questions

- 2-1. Why is the pure comparative negligence rule the maximum departure from the contributory negligence rule?



2-2. When are exculpatory agreements void?

2-3. Upon what does the extent of public official immunity depend?

Educational Objective 3

Explain how negligence applies to landowners or occupiers of land.

Key Words and Phrases

Trespasser

Nuisance

Attractive nuisance doctrine

Licensee

Invitee



Express license

Implied license

Public invitee

Business invitee

Review Questions

3-1. Would a landowner who digs a deep pit that is difficult to see on his land have a duty to warn trespassers of this condition?

3-2. Does a landlord have a duty to protect tenants from intruders?



Educational Objective 4

Describe these intentional torts, the circumstances under which they can occur, and common defenses to them:

- **Battery**
- **Assault**
- **False imprisonment and false arrest**
- **Intentional infliction of emotional distress**
- **Defamation (libel and slander)**
- **Invasion of the right of privacy**

Key Words and Phrases

Intentional tort

Battery

Assault

False imprisonment

False arrest

Intentional infliction of emotional distress

Negligent infliction of emotional distress



Defamation

Slander

Libel

Publication

Product disparagement, or trade libel

Invasion of privacy

Review Questions

4-1. What is the primary difference between the torts of battery and assault?



4-2. To what do defenses to false imprisonment and false arrest relate?

4-3. What are the defenses for libel and slander?

Educational Objective 5

Describe these intentional torts, the circumstances under which they can occur, and common defenses to them:

- **Fraud**
- **Bad faith, or outrage**
- **Interference with relationships between others**
- **Misuse of legal process**
- **Trespass**
- **Nuisance**
- **Conversion**

Key Words and Phrases

Bad faith (outrage)

Injurious falsehood

Malicious interference with prospective economic advantage



Malice

Unfair competition

Interference with employment

Wrongful-life action

Wrongful-pregnancy action (wrongful-conception action)

Malicious prosecution

Probable cause

Malicious abuse of process

Trespass

Personal property



Private nuisance

Public nuisance

Intentional nuisance

Nuisance per se

Conversion

Review Questions

5-1. In insurance cases, upon what duty is the tort of bad faith based?

5-2. Identify the torts relating to interference with relationships between others.



5-3. How can a defendant defend against a claim of trespass to real or personal property?

Educational Objective 6

Explain how liability attaches as a result of the unique circumstances presented by the following:

- **Ultrahazardous activities**
- **Ownership and/or possession of animals**
- **Escape of toxic substances**

Key Words and Phrases

Strict liability (absolute liability)

Ultrahazardous activity (abnormally dangerous activity)

Toxic tort

Environmental law



Review Questions

- 6-1. A use or an activity is ultrahazardous or abnormally dangerous under what three circumstances?
- 6-2. On what basis does the law differentiate between domestic and wild animals for liability questions?

Educational Objective 7

Describe these causes of action for products liability and the possible defenses to them:

- **Misrepresentation**
- **Breach of warranty**
- **Strict liability and negligence**

Key Words and Phrases

Products liability

Express warranty

Implied warranty



Active negligence

Assumption of risk

Passive negligence

Review Questions

- 7-1. A breach of warranty lawsuit can involve either of what two categories of warranties?

- 7-2. Contrast the proof required of a plaintiff in a general negligence case involving products liability with that required in a strict liability case involving products liability.

- 7-3. What factors should a manufacturer consider in deciding whether a product requires a warning of unreasonable danger?



7-4. How do courts determine who has standing to sue in a products liability case?

Educational Objective 8

Describe the types of damages a court can award a plaintiff for a tort claim.

Key Words and Phrases

Special damages

Loss of wages and earnings

General damages

Pain and suffering

Emotional distress

Wrongful death action

Survival statute



Review Questions

8-1. What basic categories of damages are included in compensatory damages?

8-2. When can a court award punitive damages?

Educational Objective 9

Explain how any of these concepts can affect a tort claim:

- **Joint tortfeasor's liability**
- **Expanded liability concepts**
- **Vicarious liability**
- **Good Samaritan issues**
- **Class actions and mass tort litigation**

Key Words and Phrases

Joint tortfeasors

Contribution

Enterprise liability (industry-wide liability)



Alternative liability

Market share liability

Concert of action

Conspiracy

Joint venture

Vicarious liability

Negligent entrustment

Negligent supervision

Family purpose doctrine

Good Samaritan law



Class action (class action lawsuit)

Mass tort litigation

Review Questions

- 9-1. How does the common law differ from a legal trend concerning the application of joint tortfeasor liability?

- 9-2. What must a plaintiff prove to prevail in a lawsuit under the expanded liability concept of concert of action?

- 9-3. Identify three relationships that can give rise to vicarious liability.

