TORTS

TABLE OF CONTENTS

I. INTENTIONAL TORTS 1
- A. PRIMA FACIE CASE 1
  - 1. Act by Defendant 1
  - 2. Intent 1
  - 3. Causation 1
- B. PRIMA FACIE CASE—INTENTIONAL TORTS TO THE PERSON 1
  - 1. Battery 2
  - 2. Assault 2
  - 3. False Imprisonment 3
  - 4. Intentional Infliction of Emotional Distress 3
- C. PRIMA FACIE CASE—INTENTIONAL TORTS TO PROPERTY 4
  - 1. Trespass to Land 4
  - 2. Trespass to Chattels 5
  - 3. Conversion 5
- D. DEFENSES TO INTENTIONAL TORTS 6
  - 1. Consent 6
  - 2. Self-Defense, Defense of Others, and Defense of Property 7
  - 3. Privilege of Arrest 10
  - 4. Necessity 11
  - 5. Discipline 11

II. HARM TO ECONOMIC AND DIGNITARY INTERESTS 12
- A. DEFAMATION 12
  - 1. Defamatory Language 12
  - 2. "Of or Concerning" Plaintiff 12
  - 3. Publication 14
  - 4. Damage to Plaintiff's Reputation 14
  - 5. First Amendment Concerns 15
  - 6. Defenses to Defamation 17
  - 7. Mitigating Factors 18
- B. INVASION OF RIGHT TO PRIVACY 18
  - 1. Four Branches 18
  - 2. Causation 19
  - 3. Proof of Special Damages Unnecessary 19
  - 4. Defenses 19
  - 5. Right of Privacy—Miscellaneous 19
- C. MISREPRESENTATION 19
  - 1. Intentional Misrepresentation (Fraud, Deceit) 19
  - 2. Negligent Misrepresentation 20
- D. WRONGFUL INSTITUTION OF LEGAL PROCEEDINGS 20
  - 1. Malicious Prosecution 20
  - 2. Abuse of Process 20
- E. INTERFERENCE WITH BUSINESS RELATIONS 20
  - 1. Privileges 20

III. NEGLIGENCE 21
A. PRIMA FACIE CASE 21
B. DUTY OF CARE 21
1. Foreseeable/Unforeseeable Plaintiffs 21
2. Specific Situations 21
3. Standards of Care 22
4. Duty Regarding Negligent Infliction of Emotional Distress 26
5. Affirmative Duties to Act 27
C. BREACH OF DUTY 27
1. Custom or Usage 27
2. Violation of Statute 27
3. Res Ipsa Loquitur 27
D. CAUSATION 28
1. Actual Cause (Causation in Fact) 28
2. Proximate Cause (Legal Causation) 29
E. DAMAGES 31
1. Personal Injury 31
2. Property Damage 31
3. Punitive Damages 31
4. Nonrecoverable Items 31
5. Duty to Mitigate 31
6. Collateral Source Rule 31
F. DEFENSES TO NEGLIGENCE 31
1. Contributory Negligence 31
2. Assumption of Risk 32
3. Comparative Negligence 32

IV. LIABILITY WITHOUT FAULT (STRICT LIABILITY) 34
A. PRIMA FACIE CASE 34
B. LIABILITY FOR ANIMALS 34
1. Trespassing Animals 34
2. Personal Injuries 34
C. ABNORMALLY DANGEROUS ACTIVITIES 34
D. EXTENT OF LIABILITY 34
1. Scope of Duty Owed 34
2. Defenses 34

V. PRODUCTS LIABILITY 35
A. BASIC PRINCIPLES 35
1. Theories of Liability 35
2. Common Elements 35
B. LIABILITY BASED ON INTENT 36
1. Who Can Sue? 36
2. Damages 36
3. Defenses 36
C. LIABILITY BASED ON NEGLIGENCE 36
1. Duty of Care 36
2. Breach of Duty 37
3. Causation 37

4. Nature of Damages Recoverable 37
5. Defenses 37
D. LIABILITY BASED ON STRICT TORT LIABILITY 37
1. Duty 37
2. Breach of Duty 38
3. Causation 38
4. Nature of Damages Recoverable 38
5. Defenses 38
6. Disclaimers Ineffective 38
E. IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS 38
1. Who Can Sue? 38
2. What Constitutes Breach? 38
3. Causation 39
4. Damages 39
5. Defenses 39
6. Effect of Disclaimers 39
F. REPRESENTATION THEORIES 39
1. Express Warranty 39
2. Misrepresentation of Fact 39

VI. NUISANCE 41
A. PRIVATE NUISANCE 41
1. Substantial Interference 41
2. Unreasonable Interference 41
3. Trespass to Land Distinguished 41
B. PUBLIC NUISANCE 41
C. REMEDIES 42
1. Damages 42
2. Injunctive Relief 42
3. Abatement by Self-Help 42
D. DEFENSES 42
1. Legislative Authority 42
2. Conduct of Others 42
3. Contributory Negligence 42
4. Coming to the Nuisance 42

VII. GENERAL CONSIDERATIONS FOR ALL TORT CASES 42
A. VICARIOUS LIABILITY 42
1. Doctrine of Respondeat Superior 43
2. Independent Contractor Situations 43
3. Partners and Joint Venturers 43
4. Automobile Owner for Driver 43
5. Bailor for Bailee 44
6. Parent for Child 44
7. Tavernkeepers 44
B. PARTIES—MULTIPLE DEFENDANT ISSUES 45
1. Joint and Several Liability 45
2. Satisfaction and Release 46
3. Contribution and Indemnity 46

C. SURVIVAL AND WRONGFUL DEATH 47
1. Survival of Tort Actions 47
2. Wrongful Death 47
D. TORTIOUS INTERFERENCES WITH FAMILY RELATIONSHIPS 47
1. Husband-Wife 47
2. Parent-Child 47
3. Nature of Action 47
E. TORT IMMUNITIES 47
1. Intra-Family Tort Immunities 48
2. Governmental Tort Immunity 48
3. Charitable Immunity 48

TORTS

I. INTENTIONAL TORTS

A. PRIMA FACIE CASE

To establish a prima facie case of intentional tort, plaintiff must prove:

1. Act by Defendant

The act required is a ***volitional movement by*** defendant.

2. Intent

Intent may be either (i) ***specific*** (the goal in acting is to bring about specific consequences) or (ii) ***general*** (the actor knows with "substantial certainty" that these consequences will result).

a. Transferred Intent

1) General Rule

The transferred intent doctrine applies when the defendant intends to commit a tort against one person but instead (i) commits a different tort against that person, (ii) commits the same tort as intended but against a different person, or (iii) commits a different tort against a different person. In such cases, the intent to commit a certain tort against one person is transferred to the tort actually committed or to the person actually injured for purposes of establishing a prima facie case.

2) Limitations on Use of Transferred Intent

Transferred intent may be invoked only if both the tort intended and the tort that results are one of the following:

a) Assault;

b) Battery;

c) False imprisonment;

d) Trespass to land; or

e) Trespass to chattels.

Exam Tip Everyone is "capable" of intent. Incapacity is not a good defense. Thus, young children and persons who are mentally incompetent will be liable for their intentional torts.

3. Causation

The result must have been legally caused by defendant's act or something set in motion by him. Causation is satisfied if defendant's conduct was a ***substantial factor*** in bringing about the injury.

B. PRIMA FACIE CASE—INTENTIONAL TORTS TO THE PERSON

1. Battery
Elements of the prima facie case:

(i) ***Harmful*** or ***offensive contact***;

(ii) To plaintiff's person;

(iii) Intent; and

(iv) Causation.

a. Harmful or Offensive Contact

1) Judged by Reasonable Person Standard
Harmfulness and offensiveness are judged by a reasonable person standard.

Exam Tip Contact is considered offensive only if it has not been consented to. However, consent will be ***implied*** for the ordinary contacts of everyday life (*e.g.,* minor bumping on a crowded bus).

2) Direct or Indirect Contact
Contact can be direct (*e.g.,* striking plaintiff) or indirect (*e.g.,* setting a trap for plaintiff to fall into).

b. Plaintiff's Person
Plaintiff's person includes anything connected to the plaintiff (*e.g.,* clothing or a purse).

2. Assault
Elements of the prima facie case:

(i) An act by defendant creating a ***reasonable apprehension*** in plaintiff;

(ii) Of ***immediate harmful or offensive contact*** to plaintiff's person;

(iii) Intent; and

(iv) Causation.

a. Distinguish Fear
Apprehension should not be confused with fear or intimidation (*e.g.,* a weakling can cause apprehension and thus assault a bully).

b. Apparent Ability Sufficient
If defendant has the ***apparent ability*** to commit a battery, this will be enough to cause a reasonable apprehension.

c. Effect of Words
Words alone are not sufficient. For the defendant to be liable, the words must be coupled

with conduct. However, words can ***negate*** reasonable apprehension (*e.g.,* the defendant shakes her fist but states that she is not going to strike the plaintiff).

d. Requirement of Immediacy
Plaintiff must be apprehensive that she is about to become the victim of an immediate battery.

3. False Imprisonment
Elements of the prima facie case:

(i) An act or omission on the part of defendant that ***confines or restrains*** plaintiff;

(ii) To a ***bounded area***;

(iii) Intent; and

(iv) Causation.

a. Sufficient Methods of Confinement or Restraint
Sufficient acts of restraint include: (i) physical barriers, (ii) physical force, (iii) threats of force, (iv) failure to release, and (v) invalid use of legal authority.

b. Insufficient Methods of Confinement or Restraint
Insufficient acts of restraint include: (i) moral pressure and (ii) future threats.

c. Time of Confinement
It is irrelevant how short the period of the confinement is.

d. Awareness of Confinement
Plaintiff must ***know*** of the confinement or be ***harmed*** by it.

e. What Is a Bounded Area?
For an area to be "bounded," freedom of movement must be limited in all directions. There must be no ***reasonable*** means of escape ***known*** to plaintiff.

4. Intentional Infliction of Emotional Distress
Elements of the prima facie case:

(i) An act by defendant amounting to ***extreme and outrageous conduct***;

(ii) Intent or recklessness;

(iii) Causation; and

(iv) Damages—***severe*** emotional distress.