

Catherine Tang's Torts Outline

Definition – A tort is a civil wrong, other than breach of contract, for which the law provides a remedy. In all tort cases, D's wrong results in harm to another person. Torts is a fault-based system.

Purposes of tort law:

- to provide a peaceful means for adjusting the rights of parties who might otherwise "take the law into their own hands";
- to deter wrongful action;
- to encourage socially responsible behavior; and,
- to restore injured parties to their original condition, insofar as the law can do this, by compensating them for their injury.

Types of torts:

→ Intentional Torts

◆ injury

- to person

○ body

◆ battery

- intent (actual, or substantial certainty)
- touching
- harm or offense

◆ assault

- intent
- placing another in reasonable apprehension
- of an immediate battery

◆ false imprisonment

- intent
- confinement of another
- to a bounded area

○ emotions

◆ intentional infliction of emotional distress (IIED)

- intent
- extreme and outrageous conduct
- severe emotional distress

○ reputation/privacy

- ◆ intrusion into the plaintiff's seclusion
- ◆ public revelation of private facts
- ◆ commercial appropriation
- ◆ portraying the plaintiff in a false light

- to property

- real
 - ◆ trespass to land
 - ◆ nuisance
 - public
 - private
- personal
 - ◆ trespass to chattel
 - ◆ conversion
- business
 - ◆ deceit
 - ◆ inducing breach of K interference w prospective business advantage

Defenses

- Negligence
 - ◆
- Strict Liability
- Defamation
- Remedies

Intentional Torts

5 elements of INTENTIONAL TORTS:

★ Voluntary act

- Need some act on the part of the defendant that is conscious (as opposed to reflexive)
 - ex: breaking someone's nose during seizure, is not a tort

★ Intent

- Intent may be shown in 2 ways:
 - Desire or actual intent
 - defendant desired the consequences
 - Substantial certainty
 - defendant did not actually intend that result happened but they should have been substantially certain that it would happen
- Transferred intent
 - Applies to battery, assault, false imprisonment, trespass to chattel, trespass to land
 - if defendant intends to do any of these 5 torts but instead, or in addition to, does another of the 5 torts, intent transfers and D is liable.
 - intent to commit one tort satisfies the intent requirement for other tort
 - intent to commit a tort against one victim can transfer to any other victim
 - second restatement accepts transferred intent only between battery and assault (minority view)
- Mistake doctrine
 - if D intends to do acts which would constitute a tort, it is no defense that D mistakes, even reasonably, the identity of the property or person he acts upon or believes incorrectly there is a privilege
- Children and Mentally Insane
 - infancy and insanity are not defenses for intentional torts (unlike criminal law)
 - intent is subjective and requires that D actually desires or is substantially certain the elements of the tort will occur.
 - law of torts shifts economic burdens of loss.

★ Causation

- Has to be causal connection between defendant's conduct and plaintiffs extended consequence

★ Harm or injury

- For some intentional torts, proof of injury or harm is required. Others do not.

★ Without privilege

- Any defense that can asserted by defendant?

Battery

Battery is the 1) intentional causing of 2) harmful or offensive contact to a 3) persons body or something closely physically connected

Elements:

★ Intent

- More likely than not that defendant had the goal to bring upon the contact
- Intent, by definition, is subjective. What did defendant think in his own mind?
- Dual intent v single intent
 - In a single intent jurisdiction, plaintiff only has to prove one element of a battery cause of action (intent to cause contact that was harmful or offensive OR that the contact actually occurred.) In a dual intent jurisdiction, plaintiff has to prove both aspects of the battery claim

★ Harmful or offensive contact

- Causing any amount of physical discomfort is enough to establish harm
- Must be offensive to a reasonable person unless defendant knows of plaintiffs particular susceptibility

★ Person or something closely physically connected

- Without contact, there can be no battery
- Can be physically close to body ie. glasses, walking cane
- Plaintiff does not need to be aware of contact
- Does not need to prove injury for damages

Assault

Assault is the 1) intentional causing of 2) reasonable apprehension of 3) immediate harmful or offensive contact.

Key elements:

★ Intent

- Proven one of two ways: D desired consequences
- D knew apprehension was substantial certainty
- Transferred intent applies

★ Reasonable apprehension

- victim must perceive that harmful or offensive contact is about to happen
 - Kissed while sleeping=no assault (no apprehension), but is battery
- Words spoken by defendant can negate reasonable apprehension
 - • “if cop wasn’t standing here, I’d punch you”= not an assault
- second restatement rejects “reasonable” apprehension. if D have prior knowledge of victim's particular susceptibility, D is liable.
- apprehension does not need to produce fear in victim

★ of an immediate battery (harmful or offensive contact)

- Harm must be carried out almost instantaneously without any significant delay
 - “We will kill you tomorrow”=not an assault
- Conditional statements are still assaults
 - an assault made conditional on victims noncompliance with an unlawful demand still constitutes an assault, even if victim is confident no assault will actually occur if victim complies with the unlawful request.
 - “do this, or I will harm your cat.” assault
 - on the other hand if A assures B that his overt menacing actions will not result into harmful or offensive contact regardless of B’s actions, no assault exists.
- generally assault can’t be carried out by words. Lacks imminence. But verbal statements can occasionally imply sufficient imminence:
 - Walking down dark alley way, “I have pointed gun at your head, prepare to die”=assault

You can have both an assault and a battery, or one without another

it is not necessary that D be the perceived source of harmful or offensive contact. A jokes: “there’s a snake next to you that’s about to strike you”. A has assaulted B.

False imprisonment

False imprisonment occurs when defendant 1) intentionally causes 2) confinement or restraint of victim 3) within a bounded area.

accidental confinement is not included => negligence or strict liability

Arises where D intentionally confines P in bounded area, against P’s will, & P is aware of confinement, or otherwise injured

Created to protect freedom movement.

Key elements

★ Intent

- Desired confinement, or knew with substantially certain
 - Ex. Locked in target overnight, no intent, employees did not intend to lock her
- Motive does not matter

★ Confinement

- confinement may be accomplished by
 - physical barriers
 - force or threat of immediate force against victim (family, prpty etc)
 - omission where d has a legal duty to act
 - improper assertion of legal authority

- victim must be conscious of the confinement at time of imprisonment or otherwise harmed/injured
- no minimum time of confinement ie. 1 minute = false imprisonment

★ bounded area

- victim must be confined within an area bounded in *all directions*. it is not false imprisonment if victim is free to proceed in some direction, even though it's not the direction she wants.
- If prisoner knows a reasonable means of escape then there is no false imprisonment. Actually knows, not should know
 - Ex. Stay in your house or I'll tell everyone you're a virgin- not an adequate confinement
 - Reasonable means of escape creates no risk at all to prisoner
 - Escape by walking naked through gym-not reasonable

Intentional Infliction of Emotional Distress (IIED)-

IIED exists when defendant, by 1) extreme or outrageous conduct, 2) intentionally or recklessly causes the victim 3) severe mental distress.

4 elements:

★ intent or recklessness

- IIED is unique in that it allows either intent or recklessness
- Reckless: D consciously disregarded a high probability of emotional distress.
- NO transferred intent for IIED unlike battery assault and false imprisonment.
- 3rd party can have a claim for IIED because of recklessness

★ extreme outrageous conduct

- conduct is beyond bounds of a civilized society
- rudeness or callous offensiveness is insufficient
- vulnerability of victim & relationship to defendant is critical.
- common carrier (bus driver etc.), innkeeper have lowered standards
- if D has prior knowledge of P's extreme sensitivity or vulnerability then conduct does not need to be extreme
- where you have particularly offensive insults (racist, homophobic, etc) launched by person in authority

★ causation of severe emotional distress

- victim must actually suffer severe mental distress.
- authenticity of severe distress can best be documented by outrageousness of wrongdoer's conduct.

public figures cannot recover without proving statements were made with “New York Times” malice.

First Amendment prohibits an action for IIED for speeches addressing “matters of public concern” ex. picketing about God punishing soldiers for sinning near soldiers funeral = not IIED

Trespass to land

physical invasion of P’s real property in a way that interferes w P’s possessory interest to land.

Anyone in possession of the land can bring claim i.e. tenant

Elements:

★ Intent

- Intent to enter the land, not intent to trespass
- All P needs to prove is that D desired to enter the land, or knew that entry of the land was substantially certain to result from D’s conduct
- Bad faith not a requirement
- While a person is trespassing, she is liable for all the harm caused

★ Entry

- Plaintiffs land extends to a reasonable extent above and below land
 - Shoot gun over/above persons house=trespass to land

★ damage to the plaintiff from the trespass

- actual damage not a required element

Trespass to Chattel

intentional harm to personal property

intentionally interferes w plaintiffs personal property, causing it harm.

Elements

★ intent

- Key element. Intent to interfere, not intent to trespass
 - Accidentally taking someone’s jacket= not trespass

★ Interferences/intermeddling

★ Plaintiff’s chattel

★ Harm

- Accidentally taking someone’s jacket= not trespass, harm must be caused

- Taking jacket for 2 weeks, yes but award would be market price of rental of used jacket for 2 weeks

Conversion

trespass to chattel becomes conversion when it becomes “bad enough”
 intentional harm to personal property
 serious and substantial interference to chattel

elements

- ★ intent
 - transferred intent is not applicable to conversion
- ★ exercise of dominion and control
 - innocent buyer of stolen property is also liable for conversion
- ★ substantial interference

Module 6 Torts pre recorded lecture

NEGLIGENCE

6 elements of prima cases, 1 for defense:

Duty

- is there a legal obligation of the defendant to the P?

Standard of Care

- measure of duty owed

Breach of Duty

- Failure to meet standard of care

Cause in Fact

- Connection between the breach and the P’s injury

Proximate Cause

- is there a reason to limit scope of liability?

Damages

- P must prove damages as part of negligence case

Negligence Defenses

- when analyzing negligence, it is fact specific
- ambiguity is your friend, makes room for argument

*For our purposes, we will skip duty for now and assume there is a duty owed

4 Standards of Care

Reasonably prudent person under same or similar circumstances (RPPUSC)

- Objective standard
 - jury will decide what a reasonable person should be expected to do under the circumstances
 - new driver gets into accident... doesn't matter, needs to rise up to standard of community
 - physical conditions are taken into account
 - mental conditions are not.
 - emergency situations considered, provided it is not D's own making
 - someone with extraordinary skill/knowledge, will be expected to use it

Child's Standard of Care

- reasonable child of same age, experience, intelligence & maturity
- part objective, part subjective
- Unless... adult activity & inherently dangerous activity- then will be held to adult standard

Statutory Standard of Care

- aka Negligence Per Se
- mostly criminal/traffic laws that become the standard of care

Standard of care for professionals

- must act as a reasonably prudent person in same or similar circumstances as an average or ordinary person in that profession, in the same geographical region

MODULE 8 PRERECORDED LECTURE

Breach of duty-

once we have identified standard of care, how does one fall below standard?

types of standard of care so far:

- reasonably prudent person under similar circumstances
 - breach is failure to act as RPPUSC
- reasonable person acting in an emergency
- reasonable person with physical disability
- child standard of care- majority approach, reasonable child of same age/intelligence
 - minority approach, children under 7 cannot be found to be negligence
- judge made rule of law
- negligence per se
 - violation of statute is breach of duty

Proof of Breach

- P has the burden to prove each element of negligence by preponderance of the evidence. P also has to show that D did something wrong.
- Just because there is a bad result, by itself, is never enough to establish negligence. Must have evidence of unreasonable conduct on part of D- D must do something wrong
- **Circumstantial evidence**- evidence where an inference may be drawn
 - Slip and Fall
 - Res Ipsa Loquitur
 - “the thing speaks for itself”
 - must be a result of negligence even though we don’t know exactly what D did wrong
 - D has a relationship to the accident, that makes it likely that D is responsible
 - allows case that would normally get thrown out to get to jury
 - no relevance outside of negligence, and only relevant only proving breach of duty
- even if an entire industry doesn’t do a certain thing, you can still be found negligent for not doing it. ex. cheap radio on a tugboat

MODULE 10 prerecorded

Cause in Fact / Actual Cause

- connection between defendant's tortious conduct and plaintiff's injury
- **“but for” test**
 - Plaintiff must show by a preponderance of the evidence, but for the defendant's conduct/negligence, P would have not have been injured
- **substantial factor test**- for multiple negligent fires (two separate fires, burn house)
 - joint and several liability applies
- **market share liability**
 - a generic product that P can’t show which manufacturer is responsible for injury
 - limited in application
 - each defendant becomes liable based on its market share
- **loss of chance**
 - usually medical malpractice cases

MODULE 11

Proximate Cause/Legal Cause/Scope of Liability

- Sometimes even though there is duty, breach, and cause in fact, there is reason to limit scope of liability

usually comes up in 3 different contexts:

- unforeseeable type of harm
 - unforeseeable is decided by jury
- unforeseeable extent of harm
 - extent doesn't matter, as long as type of harm is foreseeable
- unforeseeable manner of harm
 - the way this harm came out
 - is the intervening harm so bizarre that it cuts out liability?

MODULE 13 PRERECORDED LECTURE

Defenses to Negligence

:

Contributory Negligence

- D must prove (same as comparative fault):
 - P fell below relevant standard of care and by so doing contributed to P's injury
 - duty is not an element
- *any* fault of the part of the p that contributes to p's injury bars p from recovery
- all or nothing on damages
- rare & strict, only a few states have contributory negligence

Comparative Fault (MAJORITY)

- D must prove (same as contributory negligence):
 - P fell below relevant standard of care and by so doing contributed to P's injury
 - duty is not an element
- pure comparative fault
 - even if p is at fault 99%, he still recovers 1%
- modified comparative fault

- if p is more than 50% of the fault, he is barred from recovery

Assumption of the Risk

- **express assumption of the risk**
 - contract law- P by words, usually written waiver, agrees to relieve the D of liability for negligence
 - valid provided that the language is clear
 - only for negligence,
- **implied assumption of the risk**
 - based on conduct to relieve D of liability
 - must prove 3 elements:
 - P knew the risk
 - P comprehended that risk
 - P voluntarily elected to expose himself to that risk
 - key differences from implied assumption and comparative fault- focus of implied assumption is a subjective one.

Avoidable Consequences

Module 14 prerecorded lecture

Professional Negligence

- who falls under professional negligence?
 - depends on level of knowledge, training, usually doctorates
 - doctors, lawyers, accountants, architects etc
- custom of profession is the standard
 - what do professionals in good standing customarily do is what D is expected to do
 - any well accepted customary practice will do if there are several customs
 - if professional D deviates from custom, D will be negligent.

MODULE 15 prerecorded- DUTY

Judges are the ones empowered to make that determination of whether duty exists

5 areas where duty is a significant issue:

1. **D is a land possessor or landlord.**
 - a. duty owed by land possessor to people who come on to the land (land entrant) who are injured by a condition on the land

- i. rules do not only apply to land owner, but whoever is in possession of the land. ie tenant
- ii. **measure of duty owed**- significant differences among jurisdictions on how they deal with this issue
 - 1. traditional approach (maybe still majority)- status of person who comes onto land determines measure of duty owed
 - a. **invitee**
 - i. someone who comes onto the land with the express or implied consent of the land possessor and either
 - 1. is there to potentially confer an **economic benefit** on the land possessor (customer)
 - 2. land is held open to **public at large** (person who goes to a museum)
 - 3. person who goes to restaurant for the sole purpose to use the restroom is still an invitee
 - ii. duty to invitee is one of **reasonable care**
 - 1. exception: kentucky river case- if there is an open and obvious condition on the land, there is an argument that no duty is owed. HOWEVER this no longer makes sense with comparative fault
 - b. **licensee**
 - i. someone who is on the land with the express or implied consent of the land possessor. (**social** guests)
 - ii. other factors of invitee are not there.
 - iii. duty of land possessor is to warn of concealed **non-obvious dangers known** to the land possessor
 - 1. doesn't have to look for dangers, repair them, unless land possessor actually knows of them
 - c. **trespasser**
 - i. those on the land without express or implied consent of the land possessor
 - ii. measure of duty: avoid inflicting willful or wanton harm

2. Distinguish conditions from activities

- i. if land possessor is engaging in an activity, a duty is owed to invitee, licensee, AND trespassers (cutting down trees)
 - 3. EXCEPTION to the duty owed: **attractive nuisance doctrine/** child trespasser doctrine/child land entrant doctrine
 - a. if a child is injured on the land, there is a special rule that softens the hard traditional approach
 - i. are children too young to appreciate the danger
 - 1. older the child, less likely
 - ii. does D know or have reason to know there are trespassing children?
 - iii. does D know or should know there is a dangerous artificial condition on the land
 - iv. is the burden of protecting the child not too great
 - b. duty owed by land possessor to people outside the land injured by a condition on the land
 - i. traditional common law- land possessor owes a duty of reasonable care regarding artificial conditions but no duty regarding natural conditions except for trees in urban areas.
 - c. liability of landlords for conditions on the leased property
 - i. generally no liability except:
 - 1. where dangerous condition is in a common area (area where landlord retains control ie. laundry room, etc)
 - 2. where there are negligent repairs even if landlord did not have to make repairs. he if chooses to repair and it causes injury
 - 3. at time property is leased landlord knows there is a non obvious dangerous condition.
 - 4. where landlord knows the property being leased is going to be open to the public at large.
- 2. D is government entity or a utility
 - 3. Nonfeasance / failure to act (Mod 20 torts)
 - generally no duty unless special relationship, foreseeability, and public policy
 - Foreseeability- P must show something like this has happened in the recent past in that place, or somewhere nearby
 - how big is the burden?
 - 4. Unforeseeable Plaintiff
 - 5. Where P's injury is something other than personal injury or property damage

MOD 20 torts

Nonfeasance

- generally no duty unless special relationship, foreseeability, and public policy
 - Foreseeability- P must show something like this has happened in the recent past in that place, or somewhere nearby
 - how big is the burden?

Duty to Control and Warn

- one generally has no obligation to warn another on impending harm, even if it could be easily done
- only arises when there is special relationship, where D has control over the party who causes the harm and knowledge of their dangerousness

Negligent Entrustment

- where D negligently provides something to a 3rd person whom the D knows or should know is incompetent to handle that dangerous instrumentality
 - **Dram shop act**
 - liability for those who provide alcohol to minors. usually commercial establishments but in some states social hosts

Mod 21 torts

NIED/Loss of Consortium /Wrongful Death

Negligent Infliction of Emotional Distress (NIED)

- Historically courts had an impact rule, now most courts have moved from impact rule to:
- **Zone of Danger Test**
 - Direct plaintiff that suffers ED must be in the zone of danger- that place where the P is in danger of suffering physical injury.
 - Some **physical manifestation of the ED**- heart attack, miscarriage, etc to prove the genuineness of his ED
 - **exceptions**
 - negligent transmission of death information of a loved one, mishandling of corpses
 - If there is a preexisting duty owing from D to P, then a duty is owed and even without a physical manifestation, P can recover.

ex. baby abducted from hospital after birth, mother can recover, father cannot

- **fear of health risk in the future due to negligence-**
 - some jurisdictions require that P must show actual exposure. Others require reasonable fear, >50% risk of getting x(ex. cancer) you cannot recover unless defendant acted very bad

Bystander NIED

- Must be closely related (if it is 3rd person) or in the zone of danger (if first person or not related)

28MIN

Wrongful Conception, Wrongful Birth, Wrongful Life- Usually child would never have been conceived, or pregnancy would have been terminated.

Wrongful Conception

- Parents are suing for a healthy but unwanted child.
- Most courts reward birth related costs.

Wrongful Birth

- Parents action for the birth of an unhealthy child.
- They wanted a baby but they took steps to make sure child was healthy but D commits malpractice and deprives parents of opportunity to terminate pregnancy or not to conceive.
- Either not allowed or awarded cost of extraordinary costs to the unhealthy condition of the child

Wrongful Life

- Childs claim who is suing for the injury of existing.
- Not allowed

38MIN

Survival Statute

- An action continues even if the victim dies.
- The lawsuit becomes an asset of the estate

Wrongful Death Statute

- defines which heirs can make their own claim against the tortfeasor

Loss of Consortium

- recognized it when it is a spouse.
- one spouse can sue negligent defendant for harm of the other spouse.
- loss of comfort, companionship etc. while victim is alive.
- some jurisdictions allow parent & child. most limit between spouses

Module 23 lecture

Nuisance

- arises where D creates a substantial and unreasonable interference with P's use and enjoyment of her land.

Strict Liability

1. Animals

- keeper of a **wild animal** is strictly liable for harm caused by that wild animal that is part of the animal's dangerous propensity
- keeper of a **domestic animal** is strictly liable only once he knows or should know of the animal's dangerous propensity
 - every dog gets one free "attempt" at a bite, but once a dog tries to bite, owner should know about dog's dangerous liability

2. Engaged in **abnormally dangerous activity**

- Judge decides if activity is abnormally dangerous
- blasting, fumigating, crop dusting, transporting large quantities of toxic agricultural waste
- activity which involves an unavoidable risk of serious harm which is not a common activity
- no proof of fault is required
- 2nd Restatement Dire Approach (majority): judge does balancing
- injury suffered by P must be one that makes the activity dangerous in the first place (foreseeable based on nature of the activity)

- Defenses: P's unreasonable conduct is not a defense unless it constitutes an assumption of the risk
- many jurisdictions now allow reduction of the recovery if P was acting unreasonably (but did not assume the risk)

3. Defective products/ Products Liability

- umbrella theory
- Negligence
- **Contract**
 - Express Warranty
 - representation of the quality of a product that becomes the basis of a bargain
 - Implied Warranty
 - implied warranty of merchantability- fit for its intended use.
 - limited by privity and disclaimers
- **Strict Product Liability (SPL)**
 - focus on product and evaluate the product to ask whether the product is defective. in negligence, we evaluate D's conduct and if it was reasonable.
 - If P shows that there was a defect in the product, he can recover without proving fault
 - Strict liability applies when a manufacturer places an article on the market, knowing it will be used without inspection for defect, proves to have a defect that harms a human being.
 - 8 elements:
 - **Proper Plaintiff**
 - any user or consumer of the product, or any bystander suffering physical harm
 - **Proper Defendant**
 - key diff b/w negligence and strict liability
 - in SPL: anyone who is 1) part of the marketing chain 2) in the business of dealing with the product
 - manufacturer, wholesaler, and retailer
 - **Proper Context**
 - context of SPL, must have a product.
 - if it's a service, no SPL
 - hybrid: part product, part service
 - depends which dominates
 - **Defect**
 - **Manufacturing Defects**

- product comes out in a way that is not intended by the manufacturer (an aberration)
 - toe in chewing tobacco, exploding soda boxes
- defective if it is more dangerous than the ordinary consumer would expect when using the product in its intended or foreseeable manner
 - ex. lee case with the coke bottle
- **Design Defects**
 - entire product line is defective
 - comes out as intended by the manufacturer
 - 2 tests:
 - **consumer expectation test**
 - product is defective because it is more dangerous than the ordinary consumer would expect
 - with complex products, consumer has no expectations so must use risk/utility
 - more obvious the flaw, the less likely it will meet this test
 - **risk utility balancing**
 - risk of product as designed outweighs utility as designed
 - **Common K**
 - extraordinary social utility
 - such great social utility, can't make them completely safe, they are exempt
 - prescription drug, vaccine, medical device are exempt
 - "state of the art"- at the time it was manufactured there was no safer design. P must prove there was a safer reasonable alternative design (RAD)
- **Warning Defects**
 - 2 types:
 - **Inadequate Warning**
 - an adequate warning will warn foreseeable users of significant risks
 - language in warning, font size, placement, think about how users may use the product
 - **Failure to Warn**
 - majority require to warn of risks that are significant and manufacturer reasonably should have known
 - don't need to warn about obvious dangers
 - must warn how to avoid danger of the product

- **learned intermediary**- if a manufacturer of a drug gives an adequate warning to a doctor, that ends his duty to warn
- **Cause in Fact**
 - P must show but-for cause or substantial factor
 - any time there is a warning defect, there is a big causation issue
 - **heeding presumption**: assumption that warning would have been read if it had been there. D has burden to prove it would not have been read.
 - market share liability could apply in the context of defective products for cause in fact
- **Proximate Cause**
 - intervening forces that are superseding that are unforeseen
- **Damages**
 - personal suffers harm other than product itself, P can recover damages.
 - where injury is only to product itself w possible economic losses, warranty is the only claim available
- **SPL Defenses**
 - P unreasonable conduct is not a defense unless it constitutes **assumption of the risk**.
 - the stupider the conduct, the less likely it is an assumption of the risk
 - trend towards using **comparative fault** principles
 - **misuse**- if P uses the product that is neither intended or foreseeable, then product is not defective thus is treated as a defense.
- where the injury is only to the product itself, the only claim the plaintiff can bring, is a breach of warranty claim.
- if there is property damage separate from product damage itself, then P may bring a claim in tort

Defamation

false communications that lead to reputational harm

- 1. is communication **defamatory**?
 - must subject plaintiff to scorn, ridicule, contempt, or deter 3rd persons from dealing with them
 - someone knowing a drug dealer is not defamatory
 - has to lower the plaintiff's reputation in the eyes of some respectable or right thinking group

- 2. are there **pleading issues** to deal with?
 - communication must be believable
 - cannot be pure opinion (can't be proven to be true or false)
- 3. **Publication**
 - intended or was negligent that someone other than the plaintiff would come into contact with the defamatory communication
 - anyone who repeats the publication is going to be deemed to have published and will be liable for defamation
- 4. Libel/Slander
 - **Libel**
 - traditionally treated as a very serious form of defamation. usually written defamation with permanence
 - permanence and significance of the injury
 - **Slander**
 - oral defamation
 - less serious
 - typically have to prove special damages
 - special economic losses that flow from the defamation
 - **Slander Per Se**- 4 special situation where economic losses
 - Crime of Moral Turpitude
 - Current lousage? or disease
 - lack of chastity of a woman
 - business or professional incompetence
- 5. **Common Law Privileges or Defenses**
 - Falsity was presumed and truth was a defense
 - D had to prove substantial proof
 - Modernly, plaintiff has to prove falsity
 - **Absolute Privileges**
 - absolute right to speak what they want
 - communications between spouses, high level executive officials, part of the judicial process, statements made on the floor of the legislature
 - **Qualified Privileges**
 - some protection but not blanket protection
 - job references, members of a group,
 - not liable for defamation unless:
 - know what they're saying is false or recklessly disregarded the truth and falsity
 - excessive publication. shared with people who don't need to know that information.
- 6. First amendment concerns
 - a public official must prove a high level of fault before that public official can recover. that level of fault is Actual Malice- clear and convincing evidence

Privacy Torts

Commercial Appropriation

- someone's name picture, voice or likeness for commercial gain

Intrusion into Seclusion

- D intentionally inappropriately interferes in the P's sphere of privacy in a manner that would be highly offensive to a reasonable person

Public Disclosure of Private True Facts

- 1) disclosure of 2) private facts 3) highly offensive to a reasonable person 4) which is not newsworthy (of legitimate public interest)
- Sharing truthful information and making it tortious
- cannot come from public records
 - ex. private medical person

False Light

- Publication of false information about the plaintiff, highly offensive to a reasonable person
- Similar to Defamation
- Doesn't lead to reputational harm
- poor, cancer, victim of a crime= not leading to scorn ridicule or contempt

Economic Torts and Damages

Negligent Economic Loss

- no damages awarded for pure economic loss
- Special Fiduciary Duty- lawyers in will drafting situation

Misrepresentation or Deceit-

intentional material misrepresentation of past or present fact made with scienter on which the plaintiff justifiably relied to her economic detriment.