

Business Law
TORTS – Analysis frameworks/ patterns

All elements need to be satisfied in order to establish that a particular tort has taken place.

Strict Liability:

The tort is a strict liability tort in a given state

The acts prescribed by the law have taken place

[The Intent of a tortfeasor is irrelevant and so is not subject to analysis]

Major types:

Product liability (liability of a manufacturer for defective product)

Liability of operators of motor vehicles

Liability of those involved in extremely dangerous activities

Liability of holders of animals

Negligence:

Duty (what was the duty of a reasonable person in a similar situation? How should such a person have acted?)/
DIFFERENT from the Duty to Act

Breach of duty (has the defendant complied with the duty or not?)

Causation (was damage/ injury caused by defendant's actions or not? BUT/FOR connection – if the injury would still occur, even if the defendant won't act, the defendant is not liable)

Proximate cause (was the result foreseeable to the defendant? Has anything else intervened/ contributed to the injury/damages [more])?

Injury/ Damages (was there injury of damages)

Defenses to Negligence

Contributory negligence: both parties were negligent and contributed to the injury. Result: Nobody recovers

Comparative negligence: both parties were negligent and contributed to the injury. Result: the recovery might take place proportionally to the degree of fault (50:50, 60:40, etc)

Assumption of risk: the plaintiff (the party suing the other for negligence) knew the activity is risky, yet, still decided to get involved therein and got harmed. Result: the plaintiff does not recover

Defamation:

INTENT!

Untrue statement (if the statement is true – no defamation)

About identifiable person (can you reasonably guess about whom is the statement?)

Publication (disclosure to the third party, any)

Damages (without damages – no defamation)

Defenses:

Statement v. Opinion

Privileged speech

Assault:

INTENT!

Threat of

Immediate

Physical harm

Battery:

INTENT!

Unwanted
Physical contact
Important: Injury/ Damages is NOT a necessary element

Intentional Infliction of Emotional Distress

INTENT!
Outrageous conduct
[Resulting in] strong emotional suffering of a victim (at times medical proof might be needed)

Nuisance

INTENT!
Non-trespassory (so nobody steps on your land)
Interference with the enjoyment of property by the victim
Causing serious harm

Trespass

INTENT!
Trespassory (so somebody steps on your land)
Interference with the enjoyment of property by the victim
Important: the trespasser should be on notice that he is on smb. else's property. If this is not clear – no trespass

Invasion of Privacy

INTENT!
Unauthorized
Intrusion into smb. else's private affairs
Important: Injury/ Damages is NOT a necessary element
Main Types:
Appropriation
Intrusion
Public Disclosure of Private Facts

False Imprisonment

INTENT!
Detention of smb.
Against his will
Shop keeper's privilege:
[Available to a] Shopkeeper only
Reasonable suspicion
Of theft
[for reasonable time only]

Contract Interference

INTENT
Existent contract
Third party interfering
Breach of termination if a contract
Causation (this termination/ breach has taken place because of the interfering third party, and not for any other reason)