

## ISSUE CHECKLIST – TORTS

### NEGLIGENCE

- Duty of care
  - Foreseeability
  - Standard of care
    - Children
    - Professionals
    - Common carriers
    - Trespassers – undiscovered, discovered/anticipated
    - Attractive nuisance doctrine
    - Licensees
    - Invitees
    - Statutory standard – negligence per se
    - Affirmative duty to act
    - NIED
  - Breach
    - Res ipsa loquitur
    - Custom or usage
  - Causation
    - Actual causation: but-for test
    - Proximate cause
      - Intervening cause/foreseeability
      - Eggshell skull rule
  - Damages
  - Defenses
    - Contributory/comparative negligence
      - Last clear chance
      - Contributory negligence jurisdictions
      - Pure comparative negligence jurisdictions
      - Partial comparative negligence jurisdictions
    - Assumption of risk
      - Implied assumption of risk
    - Omission to act
      - D caused peril
      - Special relationship
      - Volunteer to rescue

### STRICT LIABILITY

- Abnormally dangerous activity
  - Trespassing animals
  - Domestic animals
  - Wild animals
- Causation
  - Actual cause
  - Proximate cause
- Damages
- Defenses
  - Assumption of risk

### PRODUCTS LIABILITY

- Strict products liability
  - Absolute duty - Commercial supplier
    - Merchant
    - Wholesaler
    - Retail manufacturer
    - Supplier
  - Defective product/inherently dangerous
    - Manufacturing defect
    - Design defect
      - Consumer-expectation test
      - Risk-utility test
    - Inadequate warnings
  - Causation
    - Unreasonably dangerous defect
    - Actual cause
    - Proximate cause
  - Foreseeability of P/use
  - Damages
    - Personal injury
    - Property damage
  - Defenses
    - Contributory negligence
    - Assumption of the risk
- Negligent products liability
  - Duty
    - Reasonable standard of care
    - Foreseeability of P
  - Breach
  - Causation
    - Same as strict products liability
  - Damages
    - Same as strict products liability
  - Defenses
    - Same as strict products liability
- Warranties
  - Express warranty
  - Implied warranty of merchantability
  - Implied warranty of fitness for a particular purpose
  - Defenses
    - Assumption of the risk
    - Unreasonable misuse
    - Failure to give notice
- Misrepresentation
  - Intention misrepresentation
  - Negligent misrepresentation

## DEFAMATION

- Defamatory language
- Publication to a third person
- Of or concerning plaintiff
- Publication
- Damage to P's reputation
  - Libel
  - Slander
    - Slander per se
- Constitutional defamation
  - Public figure
  - Private figure, public concern
  - Defenses
    - Truth
    - Consent
    - Absolute privilege
    - Qualified privilege

## INVASION OF RIGHT TO PRIVACY

- Misappropriation
  - Newsworthiness exception
- Intrusion upon seclusion (no publication required)
- False light (published facts)
  - Public interest – malice requirement
- Public disclosure of private facts (published private facts)
  - Newsworthiness exception

## INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONS

- Contractual relationship
- Knowledge of relationship/expectancy
- Intentional interference
- Induces breach
- Damages
- Defense
  - Commercially acceptance means

## INTENTIONAL TORTS

- Battery
- Assault
- Intentional infliction of emotional distress
  - Extreme and outrageous conduct
  - Severe emotional distress
  - Intent
  - Damages
- False imprisonment
  - Intentional
  - Confinement
  - Bounded area
  - Knowledge/injury
  - Causation
  - Defenses
    - Shopkeeper's privilege
    - Arrest by police – misdemeanor/felony
    - Arrest by citizen

- Trespass to land
  - Physical invasion
  - Intent
  - Causation
- Trespass to chattels
  - Act of interference
  - Intent
  - Causation
  - Damages
- Conversion
  - Act of interference
  - Intent
  - Causation
  - Damages
- Nuisance
  - Private nuisance
    - Substantial interference
    - Unreasonable interference
  - Public nuisance
    - Unreasonable interference
  - Defenses
    - Coming to the nuisance
    - Regulatory compliance
  - Remedies
    - Injunctive relief
    - Damages
    - Abatement
- Defenses to intentional torts
  - Consent
  - Self-defense
  - Defense of others
  - Defense of property
  - Necessity
    - Public necessity
    - Private necessity

## VICARIOUS LIABILITY

- Respondeat superior
  - Scope of employment
  - Intentional torts
  - Independent contractors
  - Liability for employer's own negligence
- Parents and children
- Partnership
- Indemnification

## MULTIPLE DEFENDANT ISSUES

- Joint and several liability
- Contribution
- Indemnity