UNIT OUTLINE

1. Tort Law

2. Intentional Torts
   A. Assault and Battery
   B. False Imprisonment and Arrest
   C. Fraud
   D. Intentional Infliction of Emotional Distress
   E. Defamation of Character
   F. Disparagement
   G. Appropriation
   H. Malicious Prosecution
   I. Conversion
   J. Trespass
   K. Infringement

3. Negligence
   A. Duty
   B. Breach of Duty
   C. Causation
   D. Injury

3. Defenses to Negligence
   A. Assumption of Risk
   B. Contributory and Comparative Negligence

4. Strict Liability
   A. Dangerous Animals
   B. Abnormally Dangerous Activities
   C. Defective Products

5. Wrongful Death
TORT LAW

Tort law covers the majority of all civil lawsuits. Essentially every claim that arises in civil court, with the exception of contractual disputes, falls under tort law. The concept of TORT LAW is to remedy a wrong done to a person, usually by awarding them monetary damages as compensation. Generally this means that someone has suffered physical or emotional injuries or damage to property, business, or reputation because of the unlawful acts of another.

Tort law can be split into three categories: intentional torts, negligent torts, and strict liability torts. Intentional torts refer to harm done to people intentionally by the willful misconduct of another, such as assault, fraud, and theft. Negligent torts, on the other hand, encompass harm done to people generally through the failure of another to exercise a certain level of care (usually defined as a reasonable standard of care). Accidents are a good example of negligent torts. Strict liability torts, unlike negligence and intentional torts, are not concerned with the culpability of the person doing the harm. Instead, strict liability focuses on the act itself: therefore, if someone commits a certain act, then that person is responsible for the damages from that act, regardless of the level of care exercised or their intentions.

INTENTIONAL TORTS

Actions taken to deliberately harm another person or their property are called INTENTIONAL TORTS. An intentional tort occurs where the TORTFEASOR (the one committing the tort) acts knowingly and willfully to injure the victim. There are two general types of intentional torts: those causing injury to persons and those causing harm to property. The only required element of intent for committing a tort is to simply complete the forbidden act; thus, a bad motive or desire to cause harm is not generally necessary. Although there are many kinds of intentional torts, some of the most commonly filed ones include: assault, battery, false imprisonment, false arrest, fraud, intentional infliction of emotional distress, defamation of character, disparagement, appropriation, malicious prosecution, conversion, trespass, and infringement.

ASSAULT AND BATTERY

Assault and battery are two distinct torts. An ASSAULT is an intentional act that causes fear or apprehension of some immediate harmful or offensive touching of another. An assault can be completed even if there is no actual contact with the plaintiff, provided the defendant’s conduct creates a reasonable apprehension of imminent harm in the plaintiff. A BATTERY is an intentional harmful or offensive contact or touching of another. Many times, one course of conduct results in both of these torts. Assault and battery are terms used to describe both torts and crimes. In some cases the same act may be both.

FALSE IMPRISONMENT AND ARREST

FALSE IMPRISONMENT is the intentional confinement or restraint by one who has no legal right to do so. The victim may be confined or restrained by physical force, barriers, or threats of physical harm. Since an arrest always involves some sort of detention or confinement, a FALSE ARREST is a type of false imprisonment in which the confinement or restraint is done by one claiming the authority to make a lawful arrest. The most obvious example of a false imprisonment is the situation in which a victim is kidnapped and held against their will.
FRAUD

One of the most omnipresent business torts is fraud. This tort is also known as deceit or intentional misrepresentation. **FRAUD** occurs when a wrongdoer deceives another person out of money, property, or something else of value. A person who has been injured by fraud can recover damages from the wrongdoer.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The tort of **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS** is committed by a person who knowingly uses words or actions to scare someone or cause them extreme anxiety or emotional distress. Actual physical injury is not required for the plaintiff to recover damages; however, courts do require that the defendant’s conduct be truly outrageous and that the plaintiff prove extreme distress. Mere insults are not enough to form the basis of a lawsuit for intentional infliction of emotional distress. Consequently, the courts have always been reluctant to recognize this tort, primarily because of the possibility of abuse and false claims.

DEFAMATION OF CHARACTER

A person’s reputation is a valuable asset. Therefore, every person is protected from false statements made by others during his or her lifetime. This protection ends upon a person’s death. The tort of **DEFAMATION OF CHARACTER** requires a plaintiff to prove that the defendant made an untrue statement of fact about the plaintiff; intentionally or accidentally published it to a third party; and suffered actual damages as a result of the statement. A false statement that appears in writing or other fixed medium is **LIBEL**. A verbal defamatory statement is **SLANDER**.

In the United States, freedom of speech and freedom of the press are very important. Therefore, courts balance a person’s right to protect his or her reputation against the public’s interest in receiving a wide range of information. For this reason, the U.S. Supreme Court has established rules making it difficult for public figures to win damage awards against the media. In a sense, famous people sacrifice some protection of their reputations.

In addition, statements made by legislators on the floor of Congress and statements made in a court of law are immune from liability, even those made with malice. These privileged statements protect the open debate of legislative and judicial matters and are therefore not subject to a defamation suit.

DISPARAGEMENT

Not all torts result in personal damage to the victim. Some are geared toward damage to a person’s property or business interests. Thus, slander of title and trade libel are the business counterparts to defamation of character; they are sometimes called disparaging statements. **DISPARAGEMENT** is an untrue statement made by one person or business about the products, services, or reputation of another business. The result of a disparaging statement causes another person or persons to refrain from dealing with the business.
APPRIOPRIATION

Each person has the exclusive legal right to control and profit from the commercial use of their own name, likeness, and identity during their lifetime. This is a valuable right, particularly to well-known persons such as sports figures and movie stars. Any attempt by another person to appropriate a living person’s name or identity for commercial purposes is actionable. The wrongdoer is liable for the tort of APPROPRIATION.

In such cases, the plaintiff can recover the unauthorized profits made by the offending party and obtain an injunction preventing further unauthorized use of his or her name or identity. Many states provide that the right to publicity survives a person’s death and may be enforced by the deceased’s heirs.

MALICIOUS PROSECUTION

Persons or businesses generally have a right to sue when they have been injured. In recent years, however, an increasing number of meritless lawsuits are being filed—simply to harass the defendant. Defending oneself in legal proceedings can be costly, time consuming, and emotionally draining. Tort law recognizes that people have a right not to be sued without a legally just and proper reason, and therefore it protects individuals from the misuse of litigation.

Filing an unjustified criminal complaint against an individual leads to the tort of malicious prosecution. A criminal complaint is not justified where there is no probable cause to believe that the defendant committed the crime. This tort requires that the outcome of the criminal case be favorable to the defendant as well as a malicious intent by the tortfeasor. Maliciously instituting a civil action is also a tort requiring the same elements as malicious prosecution. The action must have no factual or legal basis, it must be maliciously filed, and it must terminate favorably for the defendant (the victim of the tort). Although the term malicious prosecution technically refers only to initiating criminal actions, the term is widely used to include civil actions. MALICIOUS PROSECUTION, for both criminal and civil actions, relates to the wrongful initiating of a legal proceeding. Liability may also be imposed on an attorney who knowingly assists a client in filing such malicious claims.

CONVERSION

CONVERSION is the wrongful exercise of control over the personal property of another. Personal property is property that is movable. The exercise of control can involve taking the property, destroying it, damaging it, or substantially interfering with the owner’s use of the property. The acts that constitute the tort of conversion also frequently constitute a crime, primarily theft. The remedy for conversion is usually in the form of damages equal to the value of the property.

TRESPASS

TRESPASS is defined by the act of knowingly interfering with or entering onto the real property of another without permission. Real property is land and anything that is permanently fixed to the land. Under tort law, a property owner may bring a civil lawsuit against a trespasser in order to recover damages or receive compensatory relief for injury suffered as a direct result of a trespass. To successfully do so, the plaintiff must prove that the offender had knowingly violated a legal duty to respect another person’s right to property, which resulted in direct injury or loss to the plaintiff. Trespass actions protect a property owner’s legal right to enjoy the benefits of land ownership.
A type of property that has become very important today is intellectual property. Intellectual property includes such things as trademarks, copyrights, and patents. Intellectual property law promotes progress because it provides an incentive for engaging in creative pursuits; consequently, most people think it is fair that creators profit from their creations. Taking or interfering with intellectual property is known as **INFRINGEMENT**. Violations of these statutes have increased since the advent of the Internet, especially in the area of copyright infringement of music. Technology allowed sites such as the famous Napster and MP3 sites to make music available to visitors who download and copy the music without cost. As a result, numerous music companies and artists filed suits alleging copyright infringement.

**NEGLIGENCE**

Most injuries that result from tortious behavior are actually the product of negligence, not intentional wrongdoing. **NEGLIGENCE** is the term used by tort law to characterize behavior that departs from the conduct ordinarily expected of a reasonably prudent person under the circumstances. A person acts negligently when their behavior creates unreasonable risks of harm to persons and property. In general, the law requires jurors to use their common sense and life experience in determining the proper degree of care and vigilance with which people must lead their lives to avoid endangering the safety of others.

Not every accident producing injury gives rise to liability for negligence. Some accidents cannot be avoided even with the exercise of reasonable care. An accident that results from a defendant's sudden and unexpected physical ailment, such as a seizure or a blackout, generally relieves the defendant of liability for harm caused during their period of unconsciousness. However, defendants who have reason to know of such medical problems are expected to take reasonable precautions against the risks the problems create. In some jurisdictions, unavoidable accidents are called acts of God.

For a plaintiff to win a negligence lawsuit against the defendant, the following elements must be proven by a preponderance of the evidence: duty, breach of duty, causation, and injury.

**DUTY**

The outcomes of some negligence cases depend on whether the defendant owed a duty to the plaintiff. Such a duty arises when the law recognizes a relationship between the defendant and the plaintiff, and due to this relationship, the defendant is obligated to act in a certain manner toward the plaintiff. A judge, rather than a jury, ordinarily determines whether a defendant owed a duty of care to a plaintiff.

**BREACH OF DUTY**

Liability for negligence occurs when the defendant breaches the duty that they owed to the plaintiff by failing to exercise reasonable care. Unlike the question of whether a duty exists, the issue of whether a defendant breached a duty of care is decided as a question of fact. Tort law measures duty by the reasonable person standard, which is meant to be objective.
In determining whether a duty of care has been breached, the courts simply ask how a reasonable person would have acted in the same circumstances. The **REASONABLE PERSON** signifies a hypothetical and sensible person in society who exercises average care, skill, and judgment in conduct while serving as a comparative model for determining liability. If the so-called reasonable person existed, he or she would be careful, conscientious, even tempered, and honest. In court, the trier of fact, either a judge or jury, will set this standard to help determine possible liability.

**CAUSATION**

A plaintiff must prove that the defendant's actions actually caused them injury. In other words, if it were not for the defendant's actions, the plaintiff's injury would not have occurred. However, a defendant in a negligence case is only responsible for those harms that they could have reasonably foreseen through his or her actions. If a defendant has caused damages that are outside of the scope of the risks that they could have foreseen, then it cannot be proven that the defendant's actions were the proximate cause of the plaintiff's damages.

**INJURY**

A plaintiff in a negligence case must prove a legally recognized harm, usually in the form of physical injury to a person or to property. It is not enough that the defendant failed to exercise reasonable care. The failure to exercise reasonable care must result in actual damages to a person to whom the defendant owed a duty of care. Unlike intentional tort victims, those who are harmed by negligent acts are not eligible to recover punitive damages—only compensatory damages for injuries caused.

**DEFENSES TO NEGLIGENCE**

A Defendant often defends against negligence claims by asserting that the plaintiff failed to prove the existence of one or more of the required elements for negligence. Additionally, there are other basic affirmative defenses that can be utilized in negligence cases: assumption of risk and contributory or comparative negligence. These defenses can be used to avoid liability even if the facts are as the plaintiff states.

**ASSUMPTION OF RISK**

If a plaintiff knows of and voluntarily enters into or participates in a risky activity that results in injury, the law recognizes that the plaintiff assumed, or took on, the risk involved. Thus, the defendant can raise the **ASSUMPTION OF RISK** defense against the plaintiff. This defense assumes that the plaintiff had knowledge of the specific risk and voluntarily assumed that risk. This defense is frequently asserted when the plaintiff is injured during recreational activities that involve known risk, such as skiing and skydiving. Note that assumption of risk can apply not only to participants in sporting events, but also to spectators and bystanders who are injured while attending those events.
CONTRIBUTORY AND COMPARATIVE NEGLIGENCE

Sometimes plaintiffs are partially liable for causing their own injuries. In such cases, the law usually penalizes the plaintiff for their negligence. States apply one of the two following standards: contributory negligence or comparative negligence.

**CONTRIBUTORY NEGLIGENCE** states that a plaintiff who is partially at fault for their own injuries cannot recover against a negligent defendant. Under this rule, no matter how insignificant the plaintiff’s negligence is relative to the defendant’s negligence, the plaintiff is prohibited from recovering any damages. This is indeed a very harsh principle of law and in many instances is unfair to people who are probably entitled to recover something, but may not be deserving of 100% compensation. Today, only a few jurisdictions still hold to this doctrine.

To avoid the all-or-nothing outcomes, many states, including Michigan, have replaced the contributory negligence with comparative negligence, also called comparative fault. Under this doctrine, damages are allocated according to fault. Therefore, when **COMPARATIVE NEGLIGENCE** is utilized, both the plaintiff’s and the defendant’s negligence are computed, and the liability for damages is distributed accordingly. In other words, the plaintiff’s recovery is reduced by the percentage of his or her own negligence.

Several states have adopted partial comparative negligence, which provides that a plaintiff must be less than 50 percent responsible for causing their own injuries to recover under comparative negligence; otherwise, contributory negligence applies.

**STRICT LIABILITY**

In some cases tort law imposes liability on defendants who are neither negligent nor guilty of intentional wrongdoing. Known as **STRICT LIABILITY**, or liability without fault, this branch of torts seeks to regulate those activities that are useful and necessary, but that create abnormally dangerous risks to society. Both intentional torts and negligence are based on the concept of fault. If a person does something wrong, either intentionally or negligently, and causes injuries, that person must pay. However, strict liability is not based on fault, but rather on public policy. Individuals and entities that engage in certain types of activities or conduct that cause an injury must compensate the injured party. This is true even without intentional wrongdoing or negligence. The activities that give rise to strict liability are maintaining a dangerous animal, engaging in an abnormally dangerous activity, and manufacturing or distributing a defective product.

**DANGEROUS ANIMALS**

A person who keeps a dangerous animal that injures another person must compensate the injured person. Dangerous animals fall into two categories: wild animals that by their nature are dangerous, and domestic animals that for some reason become dangerous. Liability for maintaining a wild animal is absolute. However, liability for a dangerous domestic animal may not arise until the owner learns about the dangerous propensities of the animal. Traditionally, it was said that every dog was entitled to one bite. Until the dog bit someone, there were no known dangerous tendencies and hence no liability. However, many jurisdictions today have special dog-bite statutes that impose liability even when no prior acts have occurred, particularly for certain breeds of dogs with aggressive traits.
ABNORMALLY DANGEROUS ACTIVITIES

Abnormally dangerous activities are unsafe types of activities where the risk of injury is high even if all due care is used. Activities such as crop dusting, blasting, fumigation, burning of fields, storing explosives and dangerous substances, and transporting hazardous materials are usually considered activities to which strict liability applies. Since companies conducting dangerous activities know they are strictly liable for any harm they cause, they generally pass along these costs to their customers in the fees they charge. Additionally, compensating injured persons must simply be considered a cost of doing business.

DEFECTIVE PRODUCTS

Harm caused by defective products is a significant social problem. In a typical year, more than one million consumers suffer product-related injuries and nearly half of them sue to recover damages. Product liability is meant to create a strong incentive for companies to design safe products, test products thoroughly before placing them on the market, and include clear directions and warnings on products.

If a product is negligently manufactured or sold, the negligent party is liable for injuries. However, negligence need not even be shown. Anyone who manufactures or distributes a defective product that causes injuries is responsible for the injuries as long as the product was being used in a foreseeable manner. Strict liability applies to both the manufacturer and the distributor. This is true even though the distributor or seller has nothing to do with the making of the product and even though the distributor is a completely separate entity from the manufacturer. Nonetheless, liability arises when there is a defect in the product. Some states require that the defect render the product unreasonably dangerous. The defect can be in the design of the product, in the way it was made, or in the warnings that may accompany the product. Products include almost anything that can be purchased by a consumer, such as automobiles, appliances, and even drugs. Liability extends to the individual who purchased the product, to one who uses the product, or to a bystander who is injured by the product. Before liability attaches, the injured party must show that he or she was using the product in a foreseeable manner although it does not necessarily have to be used in the intended manner. For example, a chair is intended for sitting but it is foreseeable that one will stand on a chair. If the chair were to collapse when an individual stood on it, assuming that all the other elements were present, strict liability still applies.

WRONGFUL DEATH

When someone is killed as a result of intent, negligence, or strict liability, a WRONGFUL DEATH claim may entitle the surviving beneficiaries to monetary damages because of the defendant's unlawful conduct. Persons, companies, and governmental agencies can be legally at fault for acting negligently and for acting intentionally. Wrongful death statutes vary from state to state, but in general define who may sue for wrongful death and what, if any, limits may be applied to an award of damages. Michigan does not put a limit on the damages that may be awarded as long as they are deemed to be “fair and equitable under all the circumstances.” Compensatory damages, which are intended to make restitution for the amount of money lost, are the most common damages awarded in wrongful death actions. These typically consist of solace and grief experienced by the survivors, loss of earnings suffered by the dependents from the decedent's subsequent inability to generate income, and medical and funeral expenses. Punitive damages may also be awarded if the defendant's actions were particularly reckless or heinous.
Both a wrongful death case and a criminal homicide case involve the death of a person. In a wrongful death case, the decedent's estate pursues the claim in civil court to recover damages from the death. In a criminal homicide case, the state prosecutes the case in a criminal court and seeks a jail or prison sentence. One case does not disqualify the other—both may occur.

A wrongful death case and a criminal prosecution for the same death may yield different outcomes that are, nonetheless, consistent. In the wrongful death case, the plaintiff must prove by a preponderance of evidence—more likely than not—that the defendant is liable. In contrast, the prosecution in a criminal homicide case must prove the elements of the criminal homicide charge beyond a reasonable doubt, which is a higher burden of proof than required in civil cases. The varying burdens of proof explain why a defendant may be civilly liable for wrongful death, but not guilty of criminal liability.