

# TORTS MAIN ISSUE SPOTTING CHECKLIST



# 1. INTENTIONAL TORTS

## 2. NEGLIGENCE

### 3. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

## 4. VICARIOUS LIABILITY

## 5. WRONGFUL DEATH/SURVIVAL STATUTE

## 6. LAND LIABILITY

## 7. PRODUCTS LIABILITY



## 8. DEFAMATION & INJURIOUS FALSEHOOD

## 9. MISREPRESENTATION

# 10. PRIVACY

# 11. IMPROPER LITIGATION

## 12. REMEDIES

## 2 TORTS

# TORTS INNER ISSUE SPOTTING CHECKLIST



# 1. INTENTIONAL TORTS



## IDENTIFY THE TORT: (FACT BIT II)

- FALSE IMPRISONMENT
- ASSAULT
- CONVERSION
- TRESPASS TO CHATTEL

- BATTERY
- INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
- TRESPASS TO LAND

- INTERFERENCE WITH CONTRACT
- INTERFERENCE WITH PROSPECTIVE ADVANTAGE

## INTENT:

- SUBSTANTIAL CERTAINTY
- DESIRED RESULT TRANSFERRED INTENT

## DAMAGES:

- GENERAL
- SPECIAL
- PUNITIVE

## DEFENSES: (PLANT SCRAPS)

- PRIVILEGE OF DISCIPLINE

## LAND:

- REENTRY OF LAND
- WRONGFULLY WITHHELD ABATEMENT:
- ENTRY TO ABATE A NUISANCE
- NECESSITY

## THIRD PERSON:

- DEFENSE OF THIRD PERSON

SELF-DEFENSE  
CONSENT  
RECAPTURE OF CHATTEL  
WRONGFULLY WITHHELD ARREST  
PRIVILEGE PROPERTY:  
DEFENSE OF PROPERTY  
SHOPKEEPER'S PRIVILEGE

# 3 TORTS



## 2. NEGLIGENCE

SPECIAL DUTIES: (SOLD)

STATUTE VIOLATION

OMISSION TO ACT

LAND OCCUPIER RULES (TAIL)

TRESPASSER ATTRACTIVE NUISANCE DOCTRINE

(BADD) BALANCING UTILITY/RISK ARTIFICIAL

CONDITION

DISCOVERY OF CHILD BY OWNER

DUTY TO WARN CHILD WHO IS UNABLE TO

RECOGNIZE THE DANGER

- INVITEE

- LICENSEE

- DUTIES OWED BY LESSORS OF LAND

## GENERAL DUTIES: (AACCCC)

- ADULTS WITH DISABILITIES
- ANDREWS VIEW
- CARDOZO VIEW
- COMMON CARRIER
- CHILDREN
- CUSTOM

## BREACH: GENERAL

- CIRCUMSTANTIAL:
- RES IPSA LOQUITUR: (PIA)
- PLAINTIFF DID NOT CONTRIBUTE TO HIS INJURY
- INSTRUMENTALITY IN DEFENDANT'S CONTROL
- ACCIDENT DOES NOT HAPPEN ABSENT NEGLIGENCE

ACTUAL CAUSE: BUT FOR TEST

TWO OR MORE DEFENDANTS:  
(SSC)

- SUCCESSIVE TORTFEASORS
- SUBSTANTIAL FACTOR
- CONCURRENT LIABILITY

# 4 TORTS

PROXIMATE CAUSE: DIRECT:

- FORESEEABLE
- UNFORESEEABLE



INDIRECT: DEPENDANT:

- FORESEEABLE
- UNFORESEEABLE

## INDEPENDENT:

- FORESEEABLE
- UNFORESEEABLE

## DAMAGES: (GUYS SHOULD AVOID CRYING)

- GENERAL
- SPECIAL
- AVOIDABLE CONSEQUENCES
- COLLATERAL SOURCE

## MULTIPLE DEFENDANT DAMAGE ISSUES: (SIC)

- SATISFACTION
- INDEMNITY
- CONTRIBUTION

## DEFENSES: (CLARC)

- CONTRIBUTORY NEGLIGENCE
- LAST CLEAR CHANCE
- ASSUMPTION OF THE RISK
- COMPARATIVE NEGLIGENCE

### 3. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

# NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

## BYSTANDER RECOVERY: (PACE)

- PRESENT AT THE SCENE
- AWARE
- CAUSING INJURY



# 5 TORTS

## CLOSELY RELATED

- EMOTIONAL DISTRESS SUFFERED

## 4. VICARIOUS LIABILITY VICARIOUS LIABILITY:

- EMPLOYER-EMPLOYEE RELATIONSHIP:
- COURSE & SCOPE

- INDEPENDENT CONTRACTOR EXCEPTION:
- NON-DELEGABLE DUTY EXCEPTION:
- INHERENTLY DANGEROUS ACTIVITY

## OTHER RELATIONSHIPS:

- JOINT VENTURE
- BAILOR-BAILEE
- PARENT CHILD

## 5. WRONGFUL DEATH/SURVIVAL STATUTE

# WRONGFUL DEATH

# SURVIVAL DOCTRINE



## 6. LAND LIABILITY

STRICT LIABILITY:

TYPE:

ANIMALS

ABNORMALLY DANGEROUS ACTIVITIES:

FACTORS TO CONSIDER: (HE GAVE ME)

HIGH DEGREE OF RISK OF HARM

- GRAVITY OF THAT RISK
- APPROPRIATE TO THE PLACE AT ISSUE
- VALUE TO THE COMMUNITY
- ELIMINATE THE RISK BY REASONABLE CARE

# MATTER OF COMMON USAGE

# 6 TORTS

- ACTUAL CAUSE
- PROXIMATE CAUSE
- DAMAGES
- DEFENSES:
- ASSUMPTION OF THE RISK
- COMPARATIVE NEGLIGENCE

NUISANCE: TYPE:

- PUBLIC
- PRIVATE



## DEFENSES: TO PRIVATE NUISANCE:

- COMING TO THE NUISANCE
- CONTRIBUTORY NEGLIGENCE
- COMPARATIVE NEGLIGENCE
- ASSUMPTION OF THE RISK

# LATERAL SUPPORT



# SUBJACENT SUPPORT



## 7. PRODUCTS LIABILITY

### THEORIES OF RECOVERY

- BATTERY:
- DAMAGES

DEFENSE: CONSENT

NEGLIGENCE:

DUTY

BREACH:

- MANUFACTURING
- DESIGN
- WARNING

RES IPSA LOQUITUR

# 7 TORTS

## CAUSATION:

- ACTUAL CAUSE
  
- PROXIMATE CAUSE

## DAMAGES

## DEFENSES:

- CONTRIBUTORY NEGLIGENCE
- COMPARATIVE NEGLIGENCE
- ASSUMPTION OF THE RISK



## BREACH OF EXPRESS WARRANTY:

- ACTUAL CAUSE
- PROXIMATE CAUSE

## DAMAGES

## DEFENSES:

- ASSUMPTION OF THE RISK
- MISUSE OF PRODUCT
- DISCLAIMER

## BREACH OF IMPLIED WARRANTY: MERCHANTABILITY

- ACTUAL CAUSE
- PROXIMATE CAUSE

## DAMAGES

## DEFENSES:

- ASSUMPTION OF THE RISK
- MISUSE
- DISCLAIMER

BREACH OF IMPLIED WARRANTY:  
FITNESS FOR INTENDED PURPOSE  
ACTUAL CAUSE PROXIMATE CAUSE  
DAMAGES

DEFENSES:

- ASSUMPTION OF THE RISK
- MISUSE DISCLAIMER

STRICT LIABILITY IN TORT:

ACTUAL CAUSE PROXIMATE CAUSE  
DAMAGES DEFENSES:

- ASSUMPTION OF THE RISK
- COMPARATIVE NEGLIGENCE

# 8 TORTS

## 8. DEFAMATION

DEFAMATION:

FALSE DEFAMATORY STATEMENT

INTENTIONALLY OR NEGLIGENTLY PUBLISHED

UNDERSTOOD ABOUT PLAINTIFF:

- INDUCEMENT
- INNUENDO
- COLLOQUIUM

DAMAGES:

SLANDER

SLANDER PER SE: (CULP)

- CRIME
- UNCHASTE ACT OF A FEMALE
- LOATHSOME DISEASE
- PROFESSION

LIBEL



DEFENSES: (C Q ACT) CONSENT

# QUALIFIED PRIVILEGE

ABSOLUTE PRIVILEGE

CONSTITUTIONAL PRIVILEGE

TRUTH

REPUBLISHER

# INJURIOUS FALSEHOOD: DAMAGES

## DEFENSES:

- CONSENT
- JUDICIAL PROCEEDINGS

## 9. MISREPRESENTATION

# 9 TORTS



INTENTIONAL MISREPRESENTATION:

MISREPRESENTATION OF AN EXISTING FACT

MADE KNOWINGLY

WITH INTENT TO INDUCE PLAINTIFF'S  
RELIANCE

- CAUSING DAMAGE:
- BENEFIT OF THE BARGAIN
- NO DEFENSES

NEGLIGENT MISREPRESENTATION:  
FALSE REPRESENTATION OF A MATERIAL FACT

MADE WITH LACK OF DUE CARE

INTENDING TO INDUCE RELIANCE

CAUSING DAMAGE

DEFENSES:

- ASSUMPTION OF THE RISK
- COMPARATIVE NEGLIGENCE

# 10. PRIVACY

# PUBLIC DISCLOSURE OF PRIVATE FACTS:

DAMAGES

DEFENSES:

- NEWSWORTHINESS
- CONSENT
- CONSTITUTIONAL PRIVILEGE

# APPROPRIATION OF PLAINTIFF'S

NAME/LIKENESS:

DAMAGES

DEFENSES:

- NEWSWORTHINESS
- CONSENT

INTRUSION INTO PLAINTIFF'S LIFE:

DAMAGES

DEFENSES:

- NEWSWORTHINESS
- CONSENT

FALSE LIGHT:

DAMAGES

DEFENSES:

# 10 TORTS



CONSENT TRUTH

# 11. IMPROPER LITIGATION

# ABUSE OF PROCESS

# MALICIOUS PROSECUTION IN CRIMINAL PROCEEDINGS

# MALICIOUS PROSECUTION IN CIVIL PROCEEDINGS

## 12. REMEDIES

IDENTIFY THE TORT(S)

DAMAGES: (GUYS SHOULD PARTICULARLY  
AVOID CRYING NOW)

- GENERAL
  - S PECIAL
  - PUNITIVE
  - AVOIDABLE CONSEQUENCES
  - COLLATERAL SOURCE
- NOMINALS



## MULTIPLE DEFENDANT DAMAGE ISSUES: (SIC)

- SATISFACTION
- INDEMNITY
- CONTRIBUTION

# RESTITUTION FOR THE UNJUST ENRICHMENT: (WEC)

WAIVE THE TORT AND SUE IN

- ASSUMPSIT      EQUITABLE LIEN
- CONSTRUCTIVE TRUST

REPLEVIN

# 11 TORTS

INJUNCTION: (TINY TIM IN FRONT IS RECITING  
HEMINGWAY'S DIALOGUE) TORT ENJOINMENT  
TYPE OF INJUNCTION NEEDED INADEQUACY OF  
THE LEGAL REMEDY FEASIBILITY OF ENFORCING  
IRREPARABLE HARM PROPERTY RIGHT  
HARDSHIP DEFENSES (BLU)

# 12 TORTS

# TORTS DISSECTION CHECKLIST



# 1. INTENTIONAL TORTS



# IDENTIFY THE TORT: FACT BIT II

**FALSE IMPRISONMENT:  
THE INTENTIONAL  
PHYSICAL OR PSYCHOLOGICAL CONFINEMENT  
OF ANOTHER WITHIN FIXED BOUNDARIES FOR  
ANY PERIOD OF TIME  
WHICH IS THE ACTUAL AND PROXIMATE CAUSE  
OF THE INJURY**

**BEWARE OF:**

- **THREATS**
- **NO REASONABLE EGRESS,**
- **NO DUTY TO ESCAPE**

## ASSAULT:

THE INTENTIONAL PLACING OF ANOTHER IN  
REASONABLE APPREHENSION OF AN  
IMMINENT HARMFUL OR OFFENSIVE  
TOUCHING WHICH IS THE ACTUAL AND  
PROXIMATE CAUSE OF THE INJURY  
WORDS ALONE ARE NOT ENOUGH

CONVERSION: THE INTENTIONAL EXERCISE OF  
WRONGFUL DOMINION AND CONTROL OVER THE  
CHATTEL OF ANOTHER WHICH IS THE ACTUAL AND  
PROXIMATE CAUSE OF THE INJURY  
BEWARE: MISTAKE IS NEVER A DEFENSE

TRESPASS TO CHATTEL: THE INTENTIONAL INTERFERENCE WITH ANOTHER'S CHATTEL WHICH IS THE ACTUAL AND PROXIMATE CAUSE OF THE INJURY

**BATTERY:  
THE INTENTIONAL HARMFUL OR OFFENSIVE  
TOUCHING OF ANOTHER WHICH IS THE  
ACTUAL AND PROXIMATE CAUSE OF THE  
INJURY**

## INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS:

THE INTENTIONAL CONDUCT OF AN EXTREME AND OUTRAGEOUS NATURE WHICH IS CALCULATED TO CAUSE, AND WHICH DOES CAUSE, SEVERE EMOTIONAL DISTRESS WHICH IS THE ACTUAL AND PROXIMATE CAUSE OF THE INJURY

## TRESPASS TO LAND:

THE INTENTIONAL ENTRY UPON THE LAND IN POSSESSION OF ANOTHER WHICH IS THE ACTUAL AND PROXIMATE CAUSE OF THE INJURY



INTERFERENCE WITH CONTRACT: THE  
INTENTIONAL INTERFERENCE WITH AN EXISTING  
CONTRACT CAUSING DAMAGE

INTERFERENCE WITH PROSPECTIVE  
ADVANTAGE:

DEFENDANT INTENTIONALLY INTERFERES  
WITH PLAINTIFF'S PROSPECTIVE ECONOMIC  
ADVANTAGE

# 13 TORTS

INTENT: SUBSTANTIAL CERTAINTY OR  
DESIRED RESULT OR TRANSFERRED INTENT:

THE DEFENDANT'S WRONGFUL INTENT IS  
TRANSFERRED FROM THE INTENDED  
VICTIM TO THE ACTUAL VICTIM OR FROM THE  
INTENDED TORT TO THE COMMITTED TORT

DAMAGES: GENERAL: PERSONAL OR  
PROPERTY DAMAGE

SPECIAL: LOST MEDICAL, HOSPITAL BILLS,  
WAGES

PUNITIVES: TO PUNISH DEFENDANT FOR HIS  
WRONGDOING

DEFENSES: PLANT SCRAPS

PRIVILEGE OF DISCIPLINE: PARENTS AND TEACHERS MAY USE REASONABLE FORCE OR CONFINEMENT TO CONTROL CHILDREN

LAND: REENTRY OF LAND WRONGFULLY WITHHELD:

MINORITY VIEW ALLOWS REASONABLE NON-DEADLY FORCE TO OBTAIN LAND THAT IS WRONGLY WITHHELD

**ABATEMENT:**

**ENTRY TO ABATE A NUISANCE:  
ONE MAY INVADE LAND OR CHATTEL OF  
ANOTHER TO ABATE A PRIVATE NUISANCE  
BASED ON REASONABLE TIME AND FORCE**

NECESSITY: ONE MAY ENTER LAND OF ANOTHER TO AVERT PUBLIC DISASTER OR OUT OF NECESSITY

FOR PRIVATE NECESSITY, PARTY WILL BE LIABLE FOR ANY DAMAGES CAUSED BY ENTRY



THIRD PERSON:

DEFENSE OF THIRD PERSON: ONE MAY USE FORCE TO DEFEND ANOTHER “STEPS IN OTHER’S SHOES” AS TO AMOUNT OF FORCE

**SELF-DEFENSE: ONE IS PRIVILEGED TO USE  
FORCE OR DEADLY FORCE TO PROTECT ONESELF**

CONSENT: PLAINTIFF VOLUNTARILY AGREES  
TO AN ACT AGAINST HIM

RECAPTURE OF CHATTEL WRONGFULLY  
WITHHELD:

A DEFENDANT WHO TORTIOUSLY DISPOSED  
OF HIS CHATTEL MAY USE REASONABLE  
FORCE TO RECAPTURE THE CHATTEL

ARREST PRIVILEGE:

POLICE: REASONABLE SUSPICION A FELONY HAS BEEN COMMITTED

PRIVATE PERSON: ARREST ONLY IF FELONY COMMITTED AND SUSPECTS PERSON ARRESTED COMMITTED THAT FELONY

PROPERTY: DEFENSE OF PROPERTY: A PARTY IS PRIVILEGED TO USE NON-DEADLY FORCE TO DEFEND HIS PROPERTY

SHOPKEEPER'S PRIVILEGE: A SHOPKEEPER  
MAY DETAIN TEMPORARILY FOR  
INVESTIGATION UPON REASONABLE  
GROUNDS, REASONABLE FORCE AND  
REASONABLE BELIEF PERSON HAS TAKEN HIS  
GOODS

# 14 TORTS

## 2. NEGLIGENCE

DUTY: SPECIAL DUTY: SOLD - IF SPECIAL  
DUTY FAILS, THEN GO TO GENERAL DUTY



STATUTE VIOLATION: INTENT TO LEGISLATE  
TO PROTECT A CLASS OF PERSONS    TYPE  
OF INJURY SUFFERED

OMISSION TO ACT: NO DUTY TO GO TO THE AID  
OF ANOTHER UNLESS ONE UNDERTAKES THE  
DUTY

# LAND OCCUPIER RULES:

TRESPASSER: A PERSON COMES UPON THE  
LAND WITHOUT OWNER'S KNOWLEDGE  
OR CONSENT - THE OWNER HAS NO DUTY TO  
WARN

## ATTRACTIVE NUISANCE: BADD

- BALANCING UTILITY/RISK
- ARTIFICIAL CONDITION
- DISCOVERY OF CHILD BY OWNER
- DUTY TO WARN CHILD WHO IS UNABLE TO RECOGNIZE THE DANGER

**INVITEE: A PERSON WHO COMES UPON THE PREMISES OR LAND WITH THE OWNER'S PERMISSION.**

**THE OWNER HAS A DUTY TO INSPECT, CORRECT OR WARN OF ANY DANGERS**

LICENSEE:

A PERSON WHO COMES UPON THE LAND FOR HIS OWN PURPOSE THE OWNER HAS A DUTY TO WARN OF ANY KNOWN DANGERS

DUTIES OWED BY LESSORS OF LAND:

LESSOR HAS A DUTY TO REPAIR KNOWN  
CONDITIONS THAT ARE UNREASONABLY  
DANGEROUS



OR

GENERAL DUTY: THE DUTY TO  
CONDUCT ONESELF AS A REASONABLE PERSON  
UNDER THE SAME OR SIMILAR CIRCUMSTANCES  
AACCCC

ADULTS WITH DISABILITIES:

REASONABLE PERSON TEST WITH  
ALLOWANCE FOR DISABILITY

ANDREWS' VIEW:

THE DUTY OF DUE CARE IS OWED TO ANYONE  
WHOSE INJURY WAS PROXIMATELY CAUSED  
BY A NEGLIGENT DEFENDANT

# 15 TORTS

CARDOZO'S VIEW:

THE DUTY OF DUE CARE IS OWED ONLY TO  
THOSE IN THE FORESEEABLE ZONE OF  
DANGER

CHILDREN: 0-7 CONCLUSIVE PRESUMPTION -  
NO NEGLIGENCE

7-14 REBUTTABLE PRESUMPTION - NO  
NEGLECT

14+ ADULT STANDARD

EXCEPTION FOR ALL AGES: IF CHILD ENGAGES  
IN ADULT ACTIVITY

COMMON CARRIER: HIGHER DUTY OWED ONLY  
TO PASSENGERS



**CUSTOM: GENERAL RULE IS NO DUTY BUT  
CAN CREATE A DUTY**

BREACH:

GENERAL: THE FAILURE TO CONDUCT  
ONESELF AS A REASONABLE PERSON UNDER  
THE SAME OR SIMILAR CIRCUMSTANCES

LOOK FOR UTILITY VS RISK

OR

CIRCUMSTANTIAL: RES IPSA LOQUITUR: PIA

PLAINTIFF DID NOT CONTRIBUTE TO HIS  
INJURY

INSTRUMENTALITY IN DEFENDANT'S CONTROL

ACCIDENT DOES NOT HAPPEN ABSENT  
NEGLIGENCE

MAJORITY RULE: INFERENCE OF NEGLIGENCE

ACTUAL CAUSE:

BUT FOR TEST:

BUT FOR THE NEGLIGENT ACTS OF ONE OR MORE, PLAINTIFF WOULD NOT HAVE BEEN INJURED RESULTING IN DEFENDANT(S) BEING THE CAUSE-IN-FACT OF PLAINTIFF'S INJURIES

TWO OR MORE DEFENDANTS: SSC

SUCCESSIVE TORTFEASORS:

WHEN THERE ARE TWO OR MORE  
INDEPENDENT TORTFEASORS WHOSE  
SUCCESSIVE ACTIONS RESULT IN A SINGLE  
INJURY TO THE PLAINTIFF



SINCE EACH DEFENDANT IS LIABLE FOR THE PORTION OF INJURY HE CAUSED TO PLAINTIFF, THE BURDEN OF ALLOCATING CAUSATION IS PLACED ON THE DEFENDANT

**SUBSTANTIAL FACTOR: WHERE A  
DEFENDANT'S ACT IS ENTIRELY INDEPENDENT  
BUT HAS CAUSED SUCCESSIVE IMPACTS TO  
PLAINTIFF THAT RESULTS IN A SINGLE  
DIVISIBLE INJURY TO PLAINTIFF**

# 16 TORTS

CONCURRENT LIABILITY: WHEN THERE ARE SEPARATE, NEGLIGENT ACTS OF THE DEFENDANT AND A THIRD PARTY WHICH CAUSE A SINGLE INJURY AND THE PLAINTIFF WOULD NOT HAVE BEEN INJURED BUT FOR THE CONCURRENCE, THEN BOTH THE DEFENDANT AND THIRD PARTY ARE THE ACTUAL CAUSE OF PLAINTIFF'S INJURY.

PROXIMATE CAUSE\*: A DEFENDANT IS LIABLE FOR RESULTS THAT ARE FORESEEABLE

DIRECT: FORESEEABLE:  
NEGLIGENT ACTS OF 3RD PARTY, ANIMALS,  
NORMAL ACT OF GOD

OR

UNFORESEEABLE:  
CRIMINAL ACTS, ABNORMAL ACT OF GOD

OR:

INDIRECT:

DEPENDANT: FORESEEABLE:

NEGLIGENT ACTS OF 3RP PARTY, ANIMALS,  
NORMAL ACT OF GOD

OR



UNFORESEEABLE: CRIMINAL ACTS, ABNORMAL  
ACT OF GOD

OR

INDEPENDENT: FORESEEABLE: NEGLIGENT  
ACTS OF 3RD PARTY, ANIMALS, NORMAL ACT  
OF GOD

OR

UNFORESEEABLE: CRIMINAL ACTS, ABNORMAL  
ACT OF GOD

**\*BEWARE OF THIN SKULL PLAINTIFF: TAKE  
PLAINTIFF AS YOU FIND HIM**

**DAMAGES: GUYS SHOULD AVOID CRYING**

GENERAL: MUST ACTUALLY HAVE PERSONAL  
OR PROPERTY DAMAGE

**SPECIAL:**

**THOSE WHICH ARE FORESEEABLE,  
REASONABLY CERTAIN AND NOT TOO REMOTE**

**LOST WAGES, MEDICAL BILLS, HOSPITAL BILLS**

**NOTE: IF NO GENERAL DAMAGES, THEN NO  
SPECIAL DAMAGES AVAILABLE**

**AVOIDABLE CONSEQUENCES: PLAINTIFF HAS  
A DUTY TO MITIGATE HIS DAMAGES**



COLLATERAL SOURCE:

INDEPENDENT INSURANCE PAYMENT TO  
PLAINTIFF IS INADMISSIBLE AT TRIAL

# 17 TORTS

# MULTIPLE DEFENDANT DAMAGE ISSUES: SIC

SATISFACTION: WHEN ONE TORTFEASOR  
PAYS FOR DAMAGES PLAINTIFF IS PREVENTED  
FROM RECOVERING FROM ANY OTHER  
DEFENDANT IF AMOUNT PAID EQUALS ENTIRE  
AWARD

INDEMNITY: ONE MAY INDEMNIFY ANOTHER  
DEFENDANT IF SECONDARILY LIABLE TO THE  
PRIMARY LIABLE PARTY

CONTRIBUTION: EACH TORTFEASOR'S  
LIABILITY IS APPORTIONED ACCORDING TO HIS  
PORTION OF FAULT

## DEFENSES: CLARC

- CONTRIBUTORY NEGLIGENCE: PLAINTIFF WHO CONTRIBUTES TO HIS OWN INJURIES FALLS BELOW THE STANDARD OF CARE HE OWES HIMSELF

- LAST CLEAR CHANCE:

PLAINTIFF IS EXCUSED FROM CONSEQUENCES OF HIS CONTRIBUTORY NEGLIGENCE; THUS, IT IS NEVER AN ARGUMENT RAISED BY A DEFENDANT BECAUSE IT ONLY BENEFITS THE PLAINTIFF



PLAINTIFF'S CONTRIBUTORY NEGLIGENCE  
WILL NOT BE CONSIDERED A BAR TO HIS  
ACTIONS IF THE DEFENDANT HAD THE LAST  
CLEAR CHANCE TO AVOID THE ACCIDENT

ASSUMPTION OF THE RISK:

PLAINTIFF WHO HAS KNOWLEDGE OF THE RISK AND VOLUNTARILY ENCOUNTERS THAT RISK

NOTE: RESCUER NEVER ASSUMES THE RISK

COMPARATIVE NEGLIGENCE:

PLAINTIFF CONTRIBUTES TO HIS OWN  
INJURIES AND THE DAMAGES ARE  
APPORTIONED ACCORDINGLY

### 3. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

## NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS:

ONE ON ONE INJURY – LOOK FOR:

FORESEEABLE RISK OF INJURY

- COMMON LAW- NEEDED-ACTUAL INJURY
- MODERN LAW – NEED THREAT OF IMPACT

OR

**BYSTANDER RECOVERY: PLAINTIFF SEES  
SOMEONE ELSE BEING INJURED –  
LOOK FOR: PACE**

- **PRESENT AT THE SCENE**
- **AWARE CAUSING INJURY**
- **CLOSELY RELATED**
- **EMOTIONAL DISTRESS SUFFERED**

# 18 TORTS



## 4. VICARIOUS LIABILITY

VICARIOUS LIABILITY:

A PARTY CAN BE VICARIOUSLY LIABLE FOR  
THE TORTIOUS ACT COMMITTED BY A 3RD  
PARTY

(CLASSIFY THE RELATIONSHIP)

# EMPLOYER-EMPLOYEE RELATIONSHIP



**COURSE & SCOPE: LOOK FOR FROLIC AND  
DETOUR BY EMPLOYEE**

INDEPENDENT CONTRACTOR:

WHERE THE OWNER HAS NO ABILITY TO  
CONTROL THE INDEPENDENT CONTRACTOR  
THE LIABILITY SHIFTS TO HIM

EXAMPLES: TIME, TOOLS, OR MANNER IN  
WHICH TO COMPLETE THE JOB

**EXCEPTION: NON-DELEGABLE DUTIES: SHIFTS  
LIABILITY BACK TO THE EMPLOYER**

EXCEPTION: INHERENTLY DANGEROUS  
ACTIVITIES:

SHIFTS LIABILITY BACK TO THE EMPLOYER

OTHER RELATIONSHIPS:



**JOINT VENTURE: WHERE THERE IS A MUTUAL  
RIGHT OF CONTROL AND A COMMON PURPOSE**

BAILOR-BAILEE: WHEN THE BAILOR OF CHATTEL PERMITS THE BAILEE TO USE THE CHATTEL, BAILOR WILL BE LIABLE FOR THE ACTS OF THE BAILEE WHILE USING THE CHATTEL IS IN USE

PARENT-CHILD: GENERAL RULE: NO LIABILITY  
FOR CHILD'S TORTS

EXCEPTIONS: FAILURE TO CONTROL CHILD

WHEN PARENT HAS ABILITY TO DO SO, AND  
FAILING TO WARN OF KNOWN DANGEROUS  
TENDENCIES NEGLIGENT ENTRUSTMENT

## 5. WRONGFUL DEATH/SURVIVAL STATUTE

WRONGFUL DEATH:

COMMON LAW: NO CIVIL ACTION COULD BE  
BROUGHT FOR WRONGFULLY CAUSING THE  
DEATH OF A HUMAN BEING

MODERN LAW:

CAUSE OF ACTION EXISTS WHERE THE  
DECEDENT HIMSELF MIGHT HAVE MAINTAINED  
AN ACTION INCLUDING FOR DAMAGES  
SUSTAINED BY HIS ESTATE BECAUSE OF HIS  
DEATH

ALLOWS SURVIVING RELATIVES TO BRING  
CAUSE OF ACTION AND ONLY PERMITS  
RECOVERY OF THE PECUNIARY LOSS  
SUSTAINED BY THE RELATIVES

# 19 TORTS



PECUNIARY LOSS INCLUDES THE LOSS OF THE VALUE OF THE COMPANIONSHIP, SUPPORT, VALUE OF LOST INHERITANCE, SERVICES AND CONTRIBUTIONS THAT THEY WOULD HAVE RECEIVED FROM THE VICTIM HAD HE NOT BEEN KILLED

## SURVIVAL STATUTE:

- COMMON LAW: NO ACTION AS TORT ACTION DID NOT “SURVIVE” THE DEATH OF EITHER THE TORTFEASOR OR THE PERSON INJURED
- MODERN LAW: THE ACTION SURVIVES AND THE ESTATE CAN BRING A CLAIM ON VICTIM’S BEHALF FOR PERSONAL INJURIES INCURRED UP TO THE TIME OF DEATH AS WELL AS PROPERTY DAMAGE

SPLIT OF AUTHORITY AS TO WHETHER  
PLAINTIFF CAN RECOVER FOR DECEDENT'S  
PAIN AND SUFFERING

CANNOT RECOVER FOR INVASION OF  
INTANGIBLE PERSONAL INTERESTS  
(DEFAMATION, PRIVACY)

CANNOT RECOVER PUNITIVE DAMAGES

## 6. LAND LIABILITY

**STRICT LIABILITY: ONE WHO ENGAGES IN  
ABNORMALLY DANGEROUS ACTIVITIES IS  
STRICTLY LIABLE.**

**ANIMALS: WILD ANIMAL:**

**STRICT LIABILITY FOR HARM CAUSED BY  
KNOWN PROPENSITY**

OR

DOMESTIC ANIMAL: STRICT LIABILITY ONLY  
FOR KNOWN DANGEROUS PROPENSITIES

OR



## ABNORMALLY DANGEROUS ACTIVITIES:

FACTORS TO CONSIDER: HE GAVE ME

- HIGH DEGREE OF RISK OF HARM;
- GRAVITY OF THAT RISK;
- APPROPRIATE TO THE PLACE AT ISSUE;
- VALUE TO THE COMMUNITY;
- ELIMINATE THE RISK BY REASONABLE CARE;
- MATTER OF COMMON USAGE

EXAMPLES: LOOK FOR BLASTING,  
TRANSPORTATION OF TOXIC CHEMICALS,  
CROP DUSTING, AND RADIATION

ACTUAL CAUSE

PROXIMATE CAUSE

DAMAGES:

- GENERAL
- SPECIAL

# 20 TORTS

DEFENSES :

## ASSUMPTION OF THE RISK:

PLAINTIFF ASSUMES THE RISK OF INJURY  
WHEN HE HAS KNOWLEDGE,  
COMPREHENSION,  
AND AN APPRECIATION OF THE DANGER,

AND VOLUNTARILY ELECTS TO ENCOUNTER IT

## COMPARATIVE NEGLIGENCE:

THE DOCTRINE OF COMPARATIVE NEGLIGENCE COMPARES THE NEGLIGENCE OF THE PLAINTIFF AND DEFENDANT SOLELY IN TERMS OF DEGREE OF BLAME AND DAMAGES ARE APPORTIONED ACCORDINGLY



**NUISANCE: PARTY SUFFERS A SUBSTANTIAL AND UNREASONABLE HARM AS A RESULT OF A NON-TRESPASSORY INTERFERENCE WITH THE USE AND ENJOYMENT OF HIS PROPERTY**

PUBLIC: WHO IS BRINGING THE SUIT?  
ATTORNEY GENERAL

PLAINTIFF SUFFERING HARM DIFFERENT IN  
KIND THAN USUAL OR

PRIVATE: ACTS CAN BE:

- INTENTIONAL
- NEGLIGENT
- OR STRICT LIABILITY:

UNREASONABLE INTERFERENCE WITH  
POSSESSORY INTEREST OF USE AND  
ENJOYMENT OF LAND

## DAMAGES:

- MONEY DAMAGES
- INJUNCTION
- ABATEMENT

DEFENSES : COMING TO THE NUISANCE:  
GENERALLY NO DEFENSE - STILL NEED TO  
ARGUE

**CONTRIBUTORY NEGLIGENCE: APPLIES ONLY  
TO NEGLIGENCE AND NUISANCE**

COMPARATIVE NEGLIGENCE: APPLIES IF  
ABNORMALLY DANGEROUS ACTIVITIES

# ASSUMPTION OF THE RISK: RESULTS IN THE NUISANCE



LATERAL SUPPORT: A HOMEOWNER IS STRICTLY LIABLE WHEN CHANGES MADE ON HIS LAND CAUSED HIS NEIGHBOR'S LAND TO SLIP OR FALL.

LATERAL SUPPORT IS SUPPORT THAT LAND RECEIVES FROM THE ADJACENT LAND

**SUBJACENT SUPPORT: A HOMEOWNER WILL BE STRICTLY LIABLE FOR ANY SUBSIDENCE OF THE LAND**

**SUBJACENT SUPPORT IS SUPPORT THAT LAND RECEIVES FROM THE UNDERLYING STRATA (BENEATH IT)**

7. PRODUCTS LIABILITY (APPLIES TO  
MANUFACTURER, DISTRIBUTOR AND/OR  
RETAILER NOT ENDORSER)

# 21 TORTS

**BATTERY: PLAINTIFF MUST SHOW THAT THE  
HARM WAS KNOWN TO DEFENDANT**

## DAMAGES:

- GENERAL
- SPECIAL
- PUNITIVES

DEFENSES:

CONSENT: WILLINGNESS THAT THE ACT  
OCCUR

NEGLIGENCE: REQUIRES A SHOWING A DUTY WAS OWED, THE DUTY WAS BREACHED, AND THE BREACH WAS THE ACTUAL AND PROXIMATE CAUSE OF DAMAGES



DUTY: DUTY TO INSPECT, DISCOVER AND  
CORRECT AND WARN - OWED TO ALL  
FORESEEABLE USERS

BREACH\*: TYPES:

MANUFACTURER:

A MANUFACTURING DEFECT IS WHERE THE PRODUCT IS DIFFERENT THAN OTHERS IN THAT LINE OF PRODUCTS

**DESIGN : A DESIGN DEFECT IS WHERE THE PRODUCT IS INHERENTLY DANGEROUS IN DESIGN**

**WARNING : A WARNING DEFECT EXISTS WHEN THE MANUFACTURER FAILS TO WARN OF ANY POTENTIAL HARM THAT MAY RESULT FROM THE USE OF THE PRODUCT**

\*BEWARE OF RES IPSA LOQUITUR TO ESTABLISH BREACH (PIA)

- PLAINTIFF DID NOT CONTRIBUTE TO HIS INJURY

- INSTRUMENTALITY IN DEFENDANT'S CONTROL

- ACCIDENT DOES NOT HAPPEN ABSENT NEGLIGENCE

MAJORITY RULE: INFERENCE OF NEGLIGENCE

CAUSATION: ACTUAL PROXIMATE

## DAMAGES:

- GENERAL
- SPECIAL

## DEFENSES:

- CONTRIBUTORY NEGLIGENCE:

PLAINTIFF CONTRIBUTES TO HIS OWN INJURIES AND FALLS BELOW THE STANDARD OF CARE OWED TO HIMSELF

- COMPARATIVE NEGLIGENCE:

PLAINTIFF CONTRIBUTES TO HIS OWN INJURIES AND DAMAGES ARE APPORTIONED ACCORDINGLY

- ASSUMPTION OF THE RISK:

PLAINTIFF WHO HAS KNOWLEDGE OF THE RISK AND VOLUNTARILY ENCOUNTERS THAT RISK



WARRANTIES:

# 22 TORTS

## EXPRESS WARRANTY:

PROMISE OR REPRESENTATION OF A FACT  
MADE BY A COMMERCIAL SELLER WHICH  
RELATES TO THE QUALITY OF GOODS THAT  
CAUSED RELIANCE AND DAMAGE

## CAUSATION:

- ACTUAL
- PROXIMATE

## DAMAGES:

- GENERAL
- SPECIAL

DEFENSES: (MAD)

MISUSE:

PARTY'S USE OF PRODUCT WAS NOT IN THE  
MANNER INTENDED

ASSUMPTION OF THE RISK:

PLAINTIFF WHO HAS KNOWLEDGE OF THE  
RISK AND VOLUNTARILY ENCOUNTERS THAT  
RISK



**DISCLAIMER:**

**PARTIES AGREE PRODUCT HAS NO  
WARRANTIES**

IMPLIED WARRANTY:

MERCHANTABILITY:

AN IMPLIED WARRANTY THAT THE PRODUCT IS  
OF FAIR, AVERAGE QUALITY

CAUSATION:

- ACTUAL
- PROXIMATE

## DAMAGES:

- GENERAL
- SPECIAL

## DEFENSES: MISUSE:

PARTY'S USE OF PRODUCT WAS NOT IN THE MANNER INTENDED

ASSUMPTION OF THE RISK:

PLAINTIFF WHO HAS KNOWLEDGE OF THE  
RISK AND VOLUNTARILY ENCOUNTERS THAT  
RISK

**DISCLAIMER:**

**PARTIES AGREE PRODUCT HAS NO  
WARRANTIES**

IMPLIED WARRANTY:

FITNESS FOR INTENDED PURPOSE:

SELLER KNOWS OF BUYER'S INTENDED USE  
AND BUYER RELIES ON SELLER'S  
REPRESENTATION TO PURCHASE PRODUCT

## CAUSATION:

- ACTUAL
- PROXIMATE

# DAMAGES: GENERAL



# 23 TORTS

SPECIAL

DEFENSES: MISUSE:

PARTY'S USE OF PRODUCT WAS NOT IN THE  
MANNER INTENDED

ASSUMPTION OF THE RISK:

PLAINTIFF WHO HAS KNOWLEDGE OF THE  
RISK AND VOLUNTARILY ENCOUNTERS THAT  
RISK

**DISCLAIMER:**

**PARTIES AGREE PRODUCT HAS NO  
WARRANTIES**

STRICT LIABILITY IN TORT:

IF A DEFECTIVE PRODUCT IS PLACED IN THE  
STREAM OF COMMERCE, THE

MANUFACTURER,

DISTRIBUTOR

OR RETAILER

WILL BE STRICTLY LIABLE TO ALL  
FORESEEABLE USERS

ACTUAL CAUSE:

PROXIMATE CAUSE:



## DAMAGES:

- GENERAL
- SPECIAL

DEFENSES:

ASSUMPTION OF THE RISK:

PLAINTIFF WHO HAS KNOWLEDGE OF THE  
RISK AND VOLUNTARILY ENCOUNTERS THAT  
RISK

COMPARATIVE NEGLIGENCE:

PLAINTIFF CONTRIBUTES TO HIS OWN  
INJURIES AND DAMAGES ARE APPORTIONED  
ACCORDINGLY

## 8. DEFAMATION

**DEFAMATION:**

**FALSE DEFAMATORY STATEMENT :**

**UNTRUE STATEMENT LOWERING PLAINTIFF'S  
REPUTATION IN THE COMMUNITY AND  
CAUSING INJURY**

**NOTE: OPINIONS ARE NOT FALSE STATEMENTS**

INTENTIONALLY OR NEGLIGENTLY PUBLISHED  
TO A THIRD PERSON:

STATEMENT PUBLISHED BY

DEFENDANT'S INTENT

OR FAILURE TO EXERCISE DUE CARE

UNDERSTOOD ABOUT PLAINTIFF:

LIBEL PER QUOD WHERE THE WRITING IS  
INNOCENT ON ITS FACE UNTIL EXTRINSIC  
FACTS SHOW THE STATEMENT TO BE  
DEFAMATORY

- Inducement : If a statement is not defamatory on its face Plaintiff must introduce extrinsic facts to show statement was defamatory because extrinsic facts establish the statement's meaning



# 24 TORTS

INNUENDO:

DEFAMATORY IMPLICATION AND EXTRINSIC  
FACTS COME TOGETHER TO PROVE  
STATEMENT IS DEFAMATORY THE MEANING OF  
THE STATEMENT RESULTS FROM THE  
INDUCEMENT

COLLOQUIUM: DEFAMATORY STATEMENT  
MAKES NO REFERENCE TO PLAINTIFF -  
PLAINTIFF MUST SHOW 3 RD PARTY  
UNDERSTOOD IT TO APPLY TO HIM

P PROVES IT WAS UNDERSTOOD IT WAS  
ABOUT P

DAMAGES: SLANDER: DEFAMATORY  
STATEMENT IS ORAL (SPOKEN)

FACTORS TO OBTAIN DAMAGES:  
PERMANENCE OF THE PUBLISHED  
STATEMENT; EXTENT OF THE PUBLICATION;  
WHETHER IT WAS DELIBERATE OR  
PREMEDITATED PUBLICATION

DAMAGES: ONLY IF P HAS SPECIAL DAMAGES  
– THEN IF P HAS GENERAL DAMAGES TOO  
P CAN RECOVER THESE AS WELL.  
OR SLANDER PER SE: CULP

- CRIME
- UNCHASTE ACT OF A FEMALE
- LOATHSOME DISEASE
- PROFESSION

DAMAGES: GENERAL DAMAGES ARE  
PRESUMED OR

**LIBEL: DEFAMATORY STATEMENT IS WRITTEN  
OR PHOTOGRAPHED**

**DAMAGES: IF DEFAMATORY ON ITS FACE  
GENERAL DAMAGES ARE PRESUMED**

SPECIAL DAMAGES ARE NOT REQUIRED BUT IF  
PROVED P CAN RECOVER THEM.  
\*EXTRINSIC FACTS DEFINED ABOVE.



DEFENSES : C Q ACT

CONSENT: PLAINTIFF AGREES TO BEHAVIOR

**QUALIFIED PRIVILEGE: ALLOWS ONE TO  
DEFAME ANOTHER IF: LEGISLATIVE BODIES**

# EXECUTIVE AND ADMINISTRATIVE OFFICERS

# 25 TORTS

# PROTECTION OF PRIVATE INTEREST

# PROTECTION OF PUBLIC INTEREST

FAIR COMMENT



# RECORD LIBEL PRIVILEGE

**ABSOLUTE PRIVILEGE:**

FEDERAL/STATE LEGISLATIVE MEMBERS:  
MEMBERS CAN SPEAK FREELY ON THE FLOOR

**JUDICIAL PROCEEDINGS: ALLOWS RELEVANT  
STATEMENTS DURING PROCEEDINGS**

**EXECUTIVE PRIVILEGE: PRIVILEGE IS GIVEN  
TO POLICY MAKING EXECUTIVE OFFICERS  
WHEN ACTING WITHIN SCOPE OF THEIR  
DUTIES**

CONSTITUTIONAL PRIVILEGE :

PUBLIC OFFICIAL OR PUBLIC FIGURE:

MUST SHOW ACTUAL MALICE

PRIVATE PERSON/PUBLIC CONCERN:

WHEN MATTER IS OF PUBLIC CONCERN MUST  
PROVE NEGLIGENCE STANDARD

PRIVATE PERSON/PRIVATE CONCERN:

MATTER IS NOT OF PUBLIC CONCERN NO  
FAULT AS TO THE TRUTH OR FALSITY



T RUTH: GENUINENESS OF THE STATEMENT

## REPUBLISHER:

A REPUBLISHER IS ONE WHO REPUBLISHES A DEFAMATORY STATEMENT AND WILL BE LIABLE FOR ANOTHER'S DEFAMATORY STATEMENT ABOUT PLAINTIFF

## INJURIOUS FALSEHOOD:

A PUBLICATION OF A FALSE STATEMENT  
DISPARAGING PLAINTIFF'S BUSINESS,  
PROPERTY OR FINANCIAL INTEREST WHICH  
PREVENTS OTHERS FROM DEALING WITH  
PLAINTIFF

## DAMAGES:

- GENERAL
- SPECIAL

DEFENSES:

CONSENT:

WILLINGNESS OF THE ACT THAT IS ABOUT TO  
OCCUR

# JUDICIAL PROCEEDINGS



# 26 TORTS

## 9. MISREPRESENTATION



**INTENTIONAL MISREPRESENTATION: -  
MISREPRESENTATION OF AN EXISTING FACT**

**-MADE KNOWINGLY**

**-WITH INTENT TO INDUCE PLAINTIFF'S  
RELIANCE**

**-CAUSING DAMAGE: BENEFIT OF THE  
BARGAIN**

-NO DEFENSES

**NEGLIGENT MISREPRESENTATION: -FALSE  
REPRESENTATION OF A MATERIAL FACT**

**-MADE WITH LACK OF DUE CARE**

**-WITH INTENT TO INDUCE PLAINTIFF'S  
RELIANCE**



**-CAUSING DAMAGE: OUT OF POCKET**

-DEFENSES: ASSUMPTION OF THE RISK:  
PLAINTIFF WHO HAS KNOWLEDGE  
OF THE RISK AND VOLUNTARILY  
ENCOUNTERS THAT RISK

COMPARATIVE NEGLIGENCE: PLAINTIFF  
CONTRIBUTES TO HIS OWN INJURIES AND  
DAMAGES ARE APPORTIONED ACCORDINGLY

# 10. PRIVACY

PUBLIC DISCLOSURE OF PRIVATE FACTS:  
PRIVATE FACTS DISCLOSED THAT ARE HIGHLY  
OFFENSIVE TO REASONABLE PERSON

## DAMAGES:

- GENERAL
- SPECIAL

DEFENSES:

NEWSWORTHINESS:

A PUBLICATION THAT IS OF INTEREST TO THE  
PUBLIC IS NEWSWORTHY

CONSENT: PLAINTIFF AGREES TO BEHAVIOR



CONSTITUTIONAL PRIVILEGE: PUBLIC  
OFFICIAL: MUST SHOW ACTUAL MALICE

# 27 TORTS

PRIVATE : MATTER OF PUBLIC CONCERN,  
MUST PROVE NEGLIGENCE STANDARD

PRIVATE: MATTER IS NOT OF PUBLIC  
CONCERN, NO FAULT AS TO THE TRUTH OR  
FALSITY BUT GOES TO OFFENSIVE  
NATURE OF THE DISCLOSURE

TRUTH: IS NOT A DEFENSE SINCE THE  
DISCLOSED FACT IS TRUE

**APPROPRIATION OF PLAINTIFF'S  
NAME/LIKENESS:**

**APPROPRIATION EXISTS WITH UNAUTHORIZED  
AND UNPAID COMMERCIAL USE BENEFITING  
DEFENDANT FOR A COMMERCIAL ADVANTAGE**

## DAMAGES:

- GENERAL
- SPECIAL

DEFENSES: NEWSWORTHINESS:

A PUBLICATION THAT IS OF INTEREST TO THE PUBLIC IS NEWSWORTHY

CONSENT: PLAINTIFF AGREES TO BEHAVIOR



INTRUSION INTO PLAINTIFF'S LIFE:  
INTENTIONAL INTERFERENCE WITH ONE'S  
REASONABLE EXPECTATION OF PRIVACY –  
REASONABLE PERSON'S STANDARD

DAMAGES:

- GENERAL
- SPECIAL

DEFENSES: NEWSWORTHINESS:

A PUBLICATION THAT IS OF INTEREST TO THE  
PUBLIC IS NEWSWORTHY      CONSENT:  
PLAINTIFF AGREES TO BEHAVIOR

FALSE LIGHT: INTENTIONAL PUBLICATION  
ABOUT PLAINTIFF PORTRAYED IN A FALSE  
LIGHT IN THE PUBLIC

## DAMAGES:

- GENERAL
- SPECIAL

## DEFENSES:

CONSENT: PLAINTIFF AGREES TO BEHAVIOR  
TRUTH : A COMPLETE DEFENSE

# 28 TORTS

# 11. IMPROPER LITIGATION

ABUSE OF PROCESS:

WRONGFUL USE OF PROCESS WITH THREATS  
AGAINST A PARTY FOR AN ULTERIOR PURPOSE

CIVIL



OR: (ACT DONE INTENTIONALLY – LOOK FOR MALICE)

CRIMINAL

## MALICIOUS PROSECUTION IN CRIMINAL PROCEEDINGS:

- INITIAL PROCEEDING TERMINATES IN PLAINTIFF'S FAVOR
- NO PROBABLE CAUSE
- CAUSING PLAINTIFF DAMAGE

## MALICIOUS PROSECUTION IN CIVIL PROCEEDINGS:

- INITIAL PROCEEDING
- TERMINATES IN PLAINTIFF'S FAVOR
- NO PREPONDERANCE OR
- CLEAR AND CONVINCING EVIDENCE
- CAUSING PLAINTIFF DAMAGE

## 12. REMEDIES IDENTIFY THE TORT(S)

**DAMAGES: GUYS SHOULD PARTICULARLY  
AVOID CRYING NOW**

GENERAL:

DAMAGE OF PERSONAL PROPERTY:

DIMINISHED VALUE OR COST OF REPAIR  
(LOOK FOR TRESPASS TO CHATTEL,  
TRESPASS TO LAND)

DESTRUCTION OF PERSONAL PROPERTY:

FAIR MARKET VALUE AT TIME AND PLACE OF  
DESTRUCTION OR TAKING

(LOOK FOR CONVERSION)



**SPECIAL:**

**FORESEEABLE AND NOT TOO SPECULATIVE**

**PUNITIVE:**

**TO PUNISH FOR DEFENDANT'S WRONG DOING**

**AVOIDABLE CONSEQUENCES: PLAINTIFF HAS A  
DUTY TO MITIGATE DAMAGES**

# 29 TORTS

**COLLATERAL SOURCE:**

**INDEPENDENT INSURANCE MAKING PAYMENT  
FOR DAMAGES INADMISSIBLE AT TRIAL**

**NOMINALS:**

**DECLARATION OF PLAINTIFF'S RIGHTS**

# MULTIPLE DEFENDANT DAMAGE ISSUES: SIC

SATISFACTION:

WHEN ONE TORTFEASOR PAYS FOR DAMAGES, PLAINTIFF IS PREVENTED FROM RECOVERING FROM ANY OTHER DEFENDANT



INDEMNITY: ONE MAY INDEMNIFY IF  
SECONDARILY LIABLE FROM THE PRIMARILY  
LIABLE PARTY

CONTRIBUTION:

EACH TORTFEASOR'S LIABILITY IS  
APPORTIONED ACCORDING TO FAULT

# RESTITUTION FOR THE UNJUST ENRICHMENT: WEC

WAIVE THE TORT AND SUE IN ASSUMPSIT:  
USED TO PREVENT UNJUST ENRICHMENT  
MONEY HAD & RECEIVED GOODS SOLD &  
DELIVERED

EQUITABLE LIEN:

MUST DISCUSS BOTH CONSTRUCTIVE TRUST  
AND EQUITABLE LIEN ON EXAM TRACE THE  
RES

IDENTIFY THE RES NO INCREASE: LIMITED TO  
AMOUNT TRACED

CONSTRUCTIVE TRUST:

MUST DISCUSS BOTH CONSTRUCTIVE TRUST  
AND EQUITABLE LIEN ON EXAM

TRACE THE RES

IDENTIFY THE RES

INCREASE IN VALUE PLUS AMOUNT TRACED

REPLEVIN: AN ACTION TO OBTAIN THE  
PROPERTY WRONGFULLY WITHHELD



# 30 TORTS



INJUNCTION (TINY TIM IN FRONT IS RECITING  
HEMINGWAY'S DIALOGUE)

# TORT ENJOINMENT: CAN ENJOIN PROPERTY AND EMPLOYMENT CONTRACT ISSUES

TYPE OF INJUNCTION NEEDED: TRO:

THREAT OF IRREPARABLE HARM, LIMITED TO  
10 DAYS

PRELIMINARY: APPLIED DURING ADVERSARIAL  
HEARINGS

PERMANENT : COURT RENDERS IF  
APPROPRIATE

INADEQUACY OF THE LEGAL REMEDY:

MULTIPLICITY OF SUITS/JUDGMENTS

LAND/ITEM IS UNIQUE

DAMAGES ARE TOO SPECULATIVE

**F EASIBILITY:**

**THE ABILITY OF THE COURT TO ENFORCE THE  
DECREE**

**IRREPARABLE HARM: WHAT PLAINTIFF WILL  
SUFFER WITHOUT RELIEF**

PROPERTY RIGHT:

INTEREST IN REAL OR PERSONAL PROPERTY



HARDSHIP:

THE COURT MUST BALANCE PARTIES RIGHTS  
ABSENT BAD FAITH

**D EFENSES: BLU**

**BFP : MUST PURCHASE FOR VALUE WITHOUT  
NOTICE**

LACHES :

UNREASONABLE DELAY THAT PREJUDICES  
DEFENDANT

# UNCLEAN HANDS : PARI DELICTO