

Negligence

Trespass

DUTY OF LAND POSSESSOR TO THOSE ON PREMISES— STATUS APPROACH				
STATUS OF ENTRANT	DUTIES OWED			
	ARTIFICIAL CONDITIONS	NATURAL CONDITIONS	HARMFUL ACTIVITIES	
UNDISCOVERED TRESPASSER	No duty, but may not intentionally or wantonly injure trespasser	No duty	No duty, but may not intentionally or wantonly injure trespasser	
DISCOVERED OR ANTICIPATED TRESPASSER	Duty to warn of or make safe known conditions if nonobvious and highly dangerous	No duty	Duty of reasonable care	
CONSTANT TRESPASSER UPON A LIMITED AREA (“CTULA”)	Duty to warn of or make safe known conditions if nonobvious and highly dangerous	No duty	Duty of reasonable care	
CHILD TRESPASSER (IF PRESENCE ON LAND FORESEEABLE)	Duty to warn of or protect from if foreseeable risk to child outweighs expense of eliminating danger and child would not appreciate danger	No duty	Duty of reasonable care unless undiscovered trespasser (see <i>supra</i>)	
LICENSEE (INCLUDING SOCIAL GUEST)	Duty to warn of or make safe known conditions if nonobvious and dangerous	Duty to warn of or make safe known conditions if nonobvious and dangerous	Duty of reasonable care	
INVITEE (e.g., MEMBER OF PUBLIC, BUSINESS VISITOR)	Duty to make reasonable inspections to discover nonobvious dangerous conditions and warn of or make them safe	Duty to make reasonable inspections to discover nonobvious dangerous conditions and warn of or make them safe	Duty of reasonable care	
PUBLIC ENTRANT	If on business purpose, same as invitee; otherwise, same as licensee	If on business purpose, same as invitee; otherwise, same as licensee	Duty of reasonable care (<i>but see</i> firefighter’s rule, <i>infra</i> , p. 172)	
RECREATIONAL LAND USER	No duty	No duty	Avoid willful or wanton injurious conduct	

Actual Cause

COMPARISON OF RULES FOR ESTABLISHING ACTUAL CAUSE		GILBERT
"BUT FOR" RULE	Plaintiff would <i>not</i> have been injured <i>but for</i> defendant's <i>negligent</i> act.	
CONCURRENT CAUSES RULE	Plaintiff would <i>not</i> have been injured <i>but for the combination of</i> defendant's and a third party's <i>negligent</i> acts.	
SUBSTANTIAL FACTOR RULE	Plaintiff is injured as a result of several causes, <i>any one of which would have been sufficient</i> to cause the injury, and defendant's negligent act was a <i>substantial factor</i> in causing the injury.	
ALTERNATIVE CAUSES RULE	Plaintiff is injured by the negligent act of one of several possible defendants, <i>but it is not known which one</i> . Burden of proof <i>shifts</i> to defendants to show each one's negligence is <i>not</i> the actual cause.	

Breach

Application of Balancing Test—Risks vs. Benefits Analysis

The defendant's conduct will be considered unreasonable—and therefore negligent—if the magnitude of the risk that would be perceived in advance by a reasonable person in the defendant's position outweighs its utility.

Judge Hand stated this analysis as a formula: $\text{Breach} = \text{Probability} \times \text{Loss} > \text{Burden on the defendant of taking the risk}$ (commonly abbreviated $\text{PL} > \text{B}$). [United States v. Carroll Towing Co.,supra]

Obviously, this determination will vary in each case, depending on the specific circumstances involved.

(a) General Rule Where the risk of injury is low and the cost of alternative (safer) methods is high, the defendant's conduct is more likely to be considered reasonable (i.e., nonnegligent). [McCarty v. Pheasant Run, Inc., 826 F.2d 1554 (7th Cir. 1987)]

Products

TESTS FOR DESIGN DEFECTS—A SUMMARY		
RISK/UTILITY TEST	A design is defective if its <i>risks outweigh its utility</i> ; in particular if it was possible to <i>remove the danger without serious adverse impact</i> on utility and price.	
CONSUMER EXPECTATION TEST	A design is defective if the product did not perform <i>as safely as an ordinary consumer would have expected</i> (widely applied in food cases; but not applicable in some states in cases where a bystander is injured).	
COMBINED APPROACH TEST	Recovery is permitted if <i>either</i> of the above tests is satisfied (but the consumer expectation prong may apply only in situations in which the everyday experience of consumers would allow a valid opinion regarding safety).	
REASONABLE ALTERNATIVE DESIGN TEST (REST. 3D)	A design is defective if a <i>reasonable alternative design</i> would have reduced the foreseeable risks of harm posed by the product.	

Defamation

ABSOLUTE PRIVILEGE	CONDITIONAL PRIVILEGE
<ul style="list-style-type: none"> • Legislators—<i>anything</i> uttered by legislator on floor of state or federal legislature or in committee; <i>no relevancy</i> requirement • Policymaking executive officers—statements made by high-rank, policymaking state or federal executive officers acting within scope of discretionary duties; <i>must be relevant</i> to duties • Participants in judicial proceeding—defamation uttered by <i>anyone</i> in the course of a judicial proceeding; <i>must be relevant</i> to the proceeding • Spouses—defamations about third parties uttered by spouses to each other 	<ul style="list-style-type: none"> • Inferior legislative bodies—statements made by inferior legislative bodies (modern trend—absolute privilege) • Inferior executive and administrative officers—statements made by lower-rank executive and administrative officers (modern trend—absolute privilege) • Public interests—statements reasonably necessary to protect a legitimate public interest (e.g., “X just robbed the bank!”) • Private interests—relevant statements protecting private interests (e.g., truthful reviews of former employee when prospective employer calls)

Contract

SUMMARY OF PAROL EVIDENCE RULE

gilbert

GENERAL RULE: PAROL EVIDENCE IS NOT ALLOWED IF:

- ☑ There is a **fully integrated contract** (final and complete expression of agreement);
- ☑ The evidence is of an **earlier written or oral** agreement **or** a **contemporaneous oral** agreement within the scope of the contract; and
- ☑ The evidence attempts to **vary, add, or contradict** the terms of the contract.

EXCEPTIONS: PAROL EVIDENCE MAY BE ADMISSIBLE IF:

- ☑ Offered to show **lack of consideration, fraud, duress, or mistake**;
- ☑ Offered to show a **condition precedent to effectiveness** of the final contract;
- ☑ Offered to **explain or interpret** terms of the contract;
- ☑ It concerns a **modification** of the contract (*i.e.*, later agreement);
- ☑ It concerns a **"naturally omitted" term**; or
- ☑ **Separate consideration** was given for the parol agreement.

**FAULT AND DAMAGES RULES IN CONSTITUTIONAL
DEFAMATION ACTIONS**



TYPE OF PLAINTIFF/ DEFAMATION	FAULT REQUIRED	DAMAGES RECOVERABLE
PUBLIC OFFICIAL OR PUBLIC FIGURE	Actual malice (knowledge of falsity or reckless disregard as to truth or falsity)	Presumed damages under common law rules (and punitive damages where appropriate) if other state law damages requirements are met
PRIVATE PERSON/ MATTER OF PUBLIC CONCERN	At least negligence as to statement's truth or falsity	Damages only for proved "actual injury" (if plaintiff proves actual malice, presumed and punitive damages may be available) if other state law damages requirements are met
PRIVATE PERSON/ MATTER OF PRIVATE CONCERN	No fault as to truth or falsity need be proved	Presumed damages under common law rules (and punitive damages where appropriate) if other state law damages requirements are met

Invasion of Privacy

FOUR CATEGORIES OF PRIVACY TORTS—A SUMMARY



PRIVACY TORT	DESCRIPTION	EXAMPLES
INTRUSION INTO PRIVATE LIFE	An <i>intentional invasion</i> into an area of plaintiff's life that plaintiff reasonably expects will not be intruded upon that would be <i>highly offensive</i> to a <i>reasonable person</i> .	Secretly photographing nude tanning salon patron.
PUBLIC DISCLOSURE OF PRIVATE FACTS	An <i>intentional publication</i> of facts about plaintiff's life that have <i>not</i> already received some <i>publicity</i> , are <i>not</i> a matter of <i>public record</i> , are <i>not newsworthy</i> , and publication of which would be <i>highly offensive</i> to a <i>reasonable person</i> .	Newspaper article disclosing that the first female ever elected as student body president had a sex-change operation, where that fact had previously been disclosed only to a few friends and plaintiff's family.
APPROPRIATION OF PLAINTIFF'S NAME OR LIKENESS	An <i>intentional unauthorized use</i> of plaintiff's name or likeness for <i>commercial purposes</i> .*	Using a picture of a celebrity in an advertisement without the celebrity's consent.
PUTTING PLAINTIFF IN A FALSE LIGHT	An <i>intentional publication</i> about plaintiff that gives a <i>false impression</i> that would be <i>highly offensive</i> to a <i>reasonable person</i> .	Publishing in <i>Hustler</i> magazine a picture of a model who has not consented to the publication, where the photo implies that the model was associated with the magazine.

Notes FYLSE Brownie Pts:

Tort Products:

Negligence

Products:

Proper parties, exchange of money, chain of commerce> paying clients> privity

What action? Learned Hand

Reasonable Alternative design

Recent activity design

Proper plaintiff proper defendant

Malfunction

Defect

Chain of commerce

Reasonable measures: negligence only

State of the art defense

'all reasonable measures' only defense to negligence

Did not know and understand defense if prove negligence

Negligence : due diligence, tried and true

Privity no longer required

Crimes:

Intent

Deadly weapon doctrine

Heat of passion> voluntary manslaughter

Intended> attempt> substantial step

Aggravated crime(assault, battery) when against a police, woman, child, elderly or used weapon

Causation issue in murder

Bark(burglary, rape, robbery, larceny, arson, kidnapping)

Red Line Theory

Agency Theory

Proximate Cause Theory

Superseding Cause: bullet ricocheted, this and

Year and a day, modernly 3 years what as time period? Does not say

Contracts: Owner Rights & Remedies:

1,2 or 3 contracts?

Graveman

Predominate Factor

One Contract which is modified

One contract modified plus another contract,

'valid written contract' > mention formation

Governing Law

'oral' > sof and parol evidence

Oral modification? (collateral to first) cannot stand alone

Sof > needs writing? Predominate factor was goods now service needs predominate factor test

Does need new consideration other than good faith under U.C.C. , or now service contract?

No writing if falls outside of sof

Had this been one contract for X amount of dollars with half being for goods and half being for service, you would need to look to predominate factor test

'collateral' > afterthought ' modification

Two weeks later, makes an offer ... new contract

Breach and offer:

Delegation

Anticipatory repudiation > impossibility defense

collateral" to (i.e., related to the subject matter but not part of the primary promise) the written integration and does not conflict with the integrated writing. This test is not very helpful, because a determination whether the agreement was "collateral" is conclusory.

Under the Restatement, a term will be treated as naturally omitted if: (i) The term does not conflict with the written integration; and (ii) The term concerns a subject that similarly situated parties would not ordinarily be expected to include in the written agreement.

sof: part performance

perfect tender rule: sellers right to cure

accommodation:

can accept, can reject, can bill for difference, can accept some, reject some

condition precedent: implied?

Partial performance

Anticipatory repudiation: demand for assurances or bring suit immediately

Torts: Tresspass

Intermeddling: when someone "intermeddles" with a chattel in the possession of another.

Intermeddling: intentionally bringing about a physical contact with the chattel.

The actor may commit a trespass by an act which brings him into an intended physical contact with a chattel in the possession of another."

Intentional torts to property

Volitional act:

Trespass theory