

Name: _____ Date: _____

Torts

1. assault, battery, intentional infliction of emotional distress, and false imprisonment. The other three are trespass to chattels, conversion, trespass to property, and

A. Misrepresentation

2. A duty owed, a duty breached, the breach is the actual and proximate cause of damages.

B. Tort Defenses

3. Foreseeability Rule - The defendant must have been able to reasonably foresee that his or her actions would have caused the emotional distress (followed by most states). Zone of Danger Rule - The plaintiff was in a specific "zone of danger" and at risk of physical harm, causing fear.

C. NIED

4. The most important such relationship for practical purposes is that of employer and employee; a form of a strict, secondary liability that arises under the common law doctrine of agency, respondeat superior, the responsibility of the superior for the acts of their subordinate or, in a broader sense, the responsibility of any third party that had the "right, ability or duty to control" the activities of a violator.

D. Wrongful D. Survival Statute

5. another form of secondary liability, which is rooted in the tort theory of enterprise liability because, unlike contributory infringement, knowledge is not an element of vicarious liability.[1] The law has developed the view that some relationships by their nature require the person who engages others to accept responsibility for the wrongdoing of those others.

E. Negligence

6. Defenses Assumption of risk Comparative negligence Contributory negligence Consent Necessity Statute of limitations Self-defense Defense of others Defense of property Shopkeeper's privilege

F. Intentional T

7. claims must be filed within two years from the date of the deceased's death. However, survival actions must be filed within two years from one of the following, whichever is later: The date the injury occurred. Six months after death.

G. Privacy

8. A trespasser enters your property without permission and has no right to be there. How much risk depends on your relationship with the person on your land, and the level of care (what the law calls “duty of care”) that relationship requires. your duty of care is higher if the trespasser is a child. According to something called the attractive nuisance doctrine, if some feature on your property—a dock, shed, or piece of machinery, for example—might attract a child’s attention, you may be required to keep that area reasonably safe. A licensee is a person who visits your property with permission but doesn’t pay you to use it. The duty of care for licensees requires that you warn them of any known dangers on your land. An invitee is someone who enters your land for your financial benefit. Anyone who pays a fee to hunt, fish, camp, or otherwise spend time in your woods is an invitee. According to the law, they’re owed the highest duty of care.

H. Land Liability

9. claim is when the injury-causing product was defectively manufactured. ... As a result, the injury-causing product is somehow different from all the other ones on the shelf. Examples of a manufacturing defect include: a swing set with a cracked chain.

I. Vicarious Liability

10. There are two different claims that you can bring to court. Defamation occurs when someone publishes false statements that harm your reputation. In comparison, injurious falsehood is when someone has published false statements maliciously which financially damage to you or your business. Someone could publish defamatory statements in a number of places, including: over email; on social media; in person; or in print. To bring a claim of defamation, the statement must: be communicated or published to a third party (someone other than the target); include defamatory information; be about the target of this information; and not have a lawful excuse for publishing the information.

J. Remedies Tort

11. A misrepresentation is an untrue statement of fact that induces a party to enter a contract. Furthermore, to pursue a claim against the person who made the misrepresentation, the claimant must show that he or she relied on the untrue statement of fact when deciding to enter the contract and that the misrepresentation led to damages to the claimant. An opinion, it is important to keep in mind, even if considered false, is not the same as a fact and generally does not figure in cases surrounding misrepresentation. Fraudulent misrepresentation occurs when a party to a contract knowingly makes an untrue statement of fact which induces the other party to enter that contract. A party that is trying to induce another party to a contract has a duty to ensure that reasonable care is taken as regards the accuracy of any representations of fact that may lead to the latter party to enter the contract. If such reasonable care to ensure the truth of a statement is not taken, then the wronged party may be the victim of negligent misrepresentation. Negligent misrepresentation can also occur in some cases when a party makes a careless statement of fact or does not have sufficient reason for believing in that statement's truth. As with fraudulent misrepresentation, claimants can pursue both damages and a rescission of the contract. In innocent misrepresentation, a misrepresentation that has induced a party into a contract has occurred, but the person making the misrepresentation had reasonable grounds for believing it was true at the time the representation was made. A claimant who has been the victim of innocent misrepresentation can still pursue damages, but he or she cannot pursue rescission. Again, to pursue damages it must be shown that the claimant suffered a loss because of the misrepresentation.

K. Improper Litigation

12. Invasion of privacy is a tort based in common law allowing an aggrieved party to bring a lawsuit against an individual who unlawfully intrudes into his/her private affairs, discloses his/her private information, publicizes him/her in a false light, or appropriates his/her name for personal gain.

L. Products Liability

13. As the Restatement (Second) of Torts explains, "absolute privileges are based chiefly upon a recognition of the necessity that certain persons, because of their special position or status, should be as free as possible from fear that their actions in that position might have an adverse effect upon their own personal interests."² The nature of the modern practice of law necessitates that attorneys be among those "certain persons" protected by an absolute, or at least, qualified privilege:

M. Def. Injurious Falsehood

14. I. DAMAGES A. Compensatory Damages: Plaintiff is entitled to compensatory damages to put her in the position she would have been had the wrong not occurred. Must show: a. Causation: “But for...” b. Foreseeability: The injury must be foreseeable at the time of the tortious act c. Certainty: The damages cannot be too speculative. i. Applies to economic losses (special damages), but not non-economic damages (general pain and suffering, disfigurement) ii. All or Nothing Rule: For future damages, plaintiff must show that they are more likely to happen than not. d. Unavoidability: The plaintiff must take reasonable steps to mitigate the damage e. Calculation: single lump sum payment, discounted to present value. Forget inflation. B. Nominal Damages: Where the plaintiff has no actual injury, the court may award nominal damages to serve to establish or to vindicate the plaintiff’s rights. C. Punitive Damages: Where the plaintiff’s injury results from “willful, wanton, or malicious conduct” on the part of the defendant, the court may award punitive damages to punish the defendant. a. Plaintiff must first have been awarded compensatory, nominal, or restitution damages. b. Calculation: Must be relatively proportional to actual damages. USSC: single-digit multiple of actual damages unless the defendant’s conduct is extreme.

N. Enterprise Liability