

TORT LAW



By Helen Jordan, Elaine Martinez, and Jim Ponce

INTRO TO TORT LAW: WHY?

- What is a tort?
- A tort is a violation of a person's protected interests (personal safety or property)
 - Civil, not criminal
- The purpose of tort law is to provide remedies for these violations
- Remedies are either:
 - Compensatory Damages: compensation for quantifiable loss
 - General Damages: Compensation for nonmonetary aspects, i.e. pain and suffering
 - Punitive Damages: Awarded to plaintiff to punish wrongdoer and deter others from the same wrongdoing.

2 MAIN TYPES OF TORTS

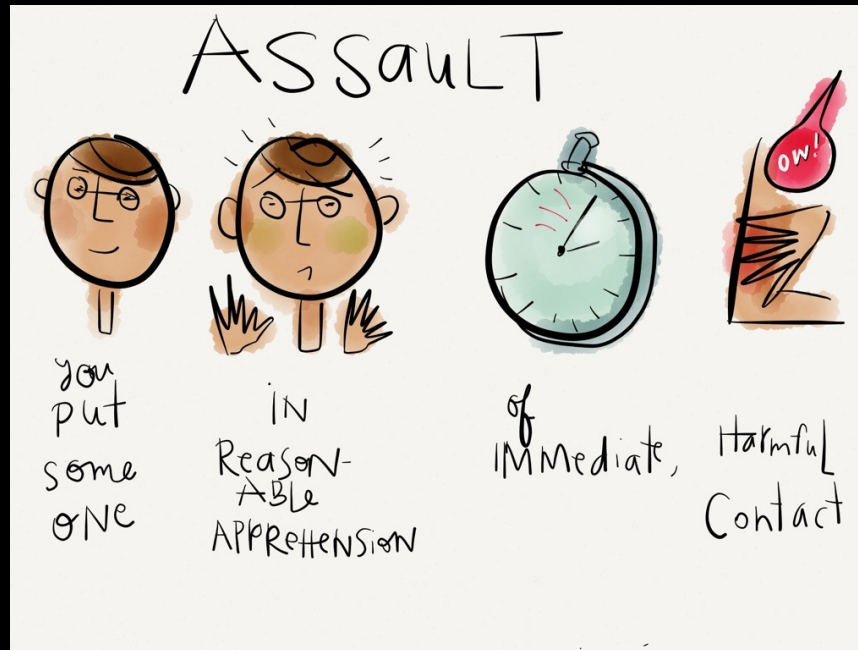
- Intentional Torts: A wrongful act the tortfeasor committed knowingly and with the intent to commit the act (not **necessarily** with the intent to do harm).
- Negligence: A wrongful act the tortfeasor committed without knowing its wrongfulness or without intending to commit the act.

INTENTIONAL TORTS



ASSAULT

- **Intentional** unexcused threat of immediate harmful or offensive contact.
 - **Words or acts**
 - **Doesn't require contact with plaintiff**
 - **Reasonable apprehension of immediate harm**



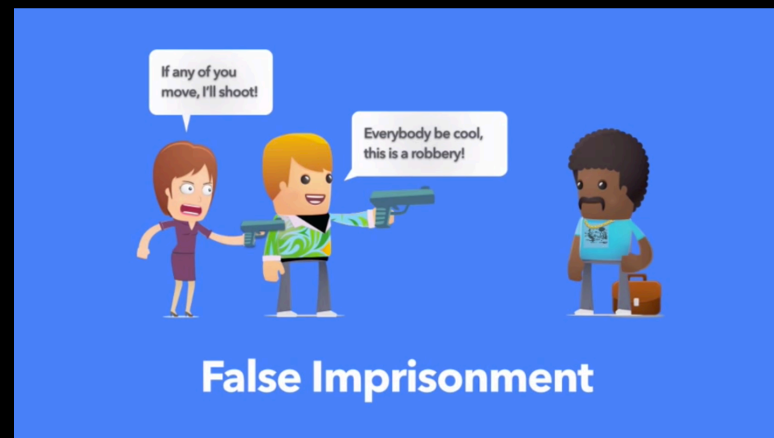
BATTERY

- Unexcused and harmful/offensive physical contact **intentionally** performed
 - Physical injury need not occur (unwanted kiss)
 - Contact can be to body or anything attached to it.



FALSE IMPRISONMENT

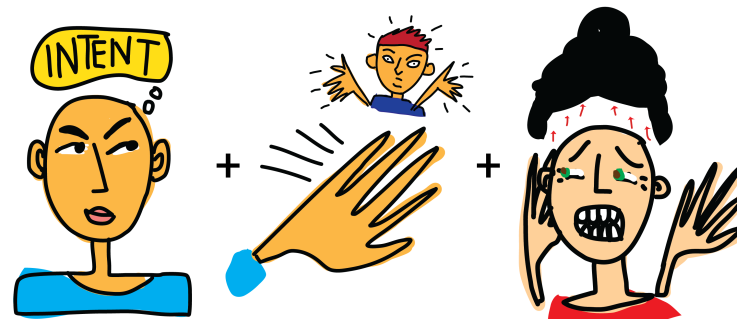
- **Intentional** confinement or restraint of another person's activities without justification.
 - Physical barriers
 - Physical restraint
 - Threats of physical force
 - "Privilege to restrain"



INFLICTION OF MENTAL DISTRESS

- **Intentional** act amounting to extreme and outrageous conduct and resulting in severe emotional distress
 - **Must be so egregious that it goes beyond what society deems proper**
 - **Repeated annoyances couples with threats**
 - **Limited by First Amendment**

Intentional Infliction of Emotional Distress



An intentional act

that is outrageous & extreme

and causes severe mental distress

DEFAMATION

“Although freedom of speech is guaranteed by the First Amendment, it is not absolute.”

When someone wrongfully hurts a person's good reputation it is called DEFAMATION of character.

To prove defamation, a plaintiff must prove that:

1. The defendant made a false statement of fact.
2. The statement was understood as being about the plaintiff and tended to harm the plaintiff's reputation.
3. The statement was published to at least one person other than the plaintiff.
4. If the plaintiff is a public figure, she/he must prove ACTUAL MALICE.

STATEMENT-OF-FACT VS. STATEMENT OF OPINION



For defamation to occur there has to be a false statement of fact.

Example: My boss Charlie cheats on his wife. (when that in fact is not true)

A statement of opinion is something that you say or write but isn't necessary factual.

Example: Professor Jordan says you're stupid for missing a quiz question

THE TORT OF LIBEL VS. TORT OF SLANDER

False defamatory statements in writing or other permanent forms.



False defamatory statements made orally



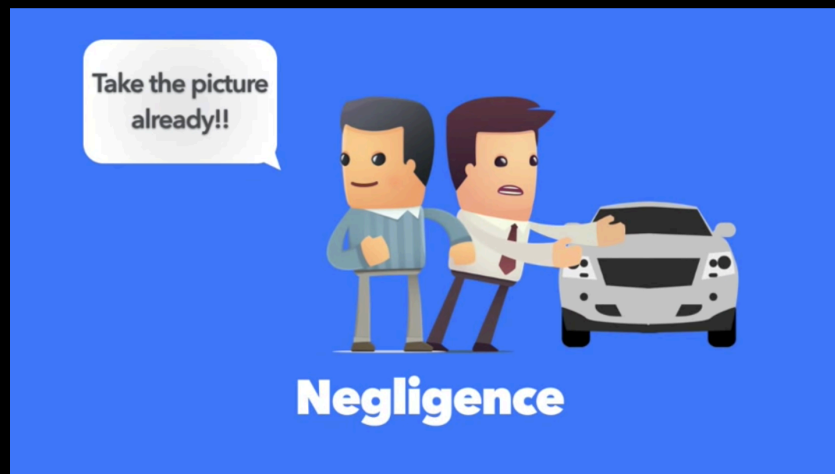
DEFENSES TO DEFAMATION

- ❖ **Truth:** Truth is normally an absolute defense. In other words, if the allegedly defamatory words were objectively true, the defendant cannot be held liable for publishing them.
- ❖ **Privilege:**
- ❖ **Absolute Privilege:** Statements made or actions taken in judicial and certain legislative proceedings (e.g., statements made by attorneys during trial, statements made by legislators during floor debate) are privileged against any claim of wrongful conduct.
- ❖ **Qualified Privilege:** In other situations, statements or actions made in good faith and, in the case of statements, made only to those who have a legitimate interest in the statement, are privileged.
- ❖ **Absence of Malice:** Generally speaking, otherwise false and defamatory statements made about public figures are privileged unless they are made with actual malice – that is, with either knowledge of falsity or reckless disregard of the truth or falsity.



NEGLIGENCE

1. Defendant must have owed a **duty** to someone.
2. Defendant must have **breached** that duty by failing to exercise due care and therefore defendant's actions (or omission) caused plaintiff harm
3. Defendant's breach must have been the **actual and proximate cause** of plaintiff's injuries
4. Plaintiff must have suffered **actual harm** to plaintiff or plaintiff's property.



DUTY OF CARE

- People are free to act as they please as long as their actions don't infringe upon the interests of others
 - Fail duty of care by either action or omission
 - Can be careless or carefully performed
 - Courts consider
 - the nature of the act: outrageous v. common
 - the manner performed: careless or cautious
 - The nature of injury: serious v. slight
- to determine whether there is a breach
- Reasonable Person Standard

INTENTIONAL TORTS V. NEGLIGENCE

Intentional Tort

- Defendant liable for deliberate or intentional invasion of plaintiff's legally protected interests
- Volitional act with **intent**
- **Intent** is key in establishing intentional tort
- Even hurting sense of dignity or feelings sufficient

Negligence

- Defendant liable for unreasonable (but not deliberate) invasion of plaintiff's interests.
- Based on non-volitional act
- Duty and breach together establish wrongfulness of defendant's conduct
- Actual harm must be shown

DEFENSES AGAINST

Intentional Torts

- Consent
- Self-defense
- Defense of others
- Defense of property

Negligence

- Assumption of Risk
- Superseding Cause
- Contributory Negligence
- Comparative Negligence
 - 50% Caps

BATTERY OR NEGLIGENCE?



GREAT VIDEO SERIES ON NEGLIGENCE

- <https://www.youtube.com/watch?v=K8x9x1G6Sa8>