

**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**

**TORTS**  
**Inner Issue Spotting Checklist**

**1. Intentional Torts**

**Identify the Tort: (FACT BIT II)**

**F**alse Imprisonment

**A**ssault

**C**onversion

**T**respass to Chattel

**B**attery

**I**ntentional Infliction of Emotional Distress

**T**respass to Land

**I**nterference with Contract

**I**nterference with Prospective Advantage

**Intent:**

Substantial certainty

Desired result

Transferred intent

**Damages:**

General

Special

Punitive

**Defenses: (PLANT SCRAPS)**

**P**rivilege of Discipline

**L**and: Reentry of Land Wrongfully Withheld

**A**batement: Entry to Abate a Nuisance

**N**ecessity

**T**hird Person: Defense of Third Person

**S**elf-Defense

**C**onsent

**R**ecapture of Chattel Wrongfully Withheld

**A**rrest Privilege

**P**roperty: Defense of Property

**S**hopkeeper's Privilege

## 2. Negligence

### **Special Duties: (SOLD)**

Statute Violation

Omission To Act

Land Occupier Rules (**TAIL**)

**T**respasser

**A**tractive Nuisance Doctrine

(**BADD**)

**B**alancing Utility/Risk

**A**rtificial Condition

**D**iscovery Of Child By Owner

**D**uty To Warn Child Who Is Unable To  
Recognize The Danger

**I**ntervisee

**L**icensee

Duties Owed By Lessors Of Land

### **General Duties: (AACCCC)**

**A**dults with Disabilities

**A**ndrews View

**C**ardozo View

**C**ommon Carrier

**C**hildren

**C**ustom

### **Breach:**

General

Circumstantial: Res Ipsa Loquitur: (**PIA**)

**P**laintiff Did Not Contribute To His Injury

**I**nstrumentality In Defendant's Control

**A**ccident Does Not Happen Absent Negligence

### **Actual Cause:**

But For Test

Two Or More Defendants: (**SSC**)

**S**uccessive Tortfeasors

**S**ubstantial Factor

**C**oncurrent Liability

## **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 **R**isk  
Comparative Negligence

### **3. Negligent Infliction of Emotional Distress**

#### **Negligent Infliction of Emotional Distress**

#### **Bystander Recovery: (PACE)**

**P**resent at the scene  
**A**ware causing injury

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**)

**H**igh degree of risk of harm

**G**ravity of that risk

**A**ppropriate to the place at issue

**V**alue to the community

**E**liminate the risk by reasonable care

**M**atter of common usage

**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

**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. Defamation

### **Defamation:**

False Defamatory Statement  
Intentionally Or Negligently Published  
Understood About Plaintiff:  
    Inducement  
    Innuendo  
    Colloquium

Damages:

    Slander

        Slander Per Se: **(CULP)**

**C**rime

**U**nchaste Act Of A Female

**L**oathsome Disease

**P**rofession

    Libel

Defenses: **(C Q ACT)**

**C**onsent

**Q**ualified Privilege

**A**bsolute Privilege

**C**onstitutional Privilege

**T**ruth

### **Republisher**

### **Injurious Falsehood:**

    Damages

    Defenses:

        Consent

        Judicial Proceedings

## 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  
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:

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**

**Special**

**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**

**Injunction:** (Tiny Tim In Front Is Reciting Hemingway's Dialogue)

**T**ort Enjoinment

**T**ype Of Injunction Needed

**I**nadequacy Of The Legal Remedy

**F**easibility of Enforcing

**I**rreparable Harm

**P**roperty **R**ight

**H**ardship

**D**efenses (**BLU**)

# **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
- 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

## 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**  
**B**alancing utility/risk  
**A**rtificial condition  
**D**iscovery of child by owner  
**D**uty 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

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 Negligence  
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**  
**P**laintiff did not contribute to his injury  
**I**nstrumentality in Defendant's Control  
**A**ccident 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

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 3<sup>rd</sup> party, animals, normal act of God

**or**

Unforeseeable: Criminal acts, abnormal act of God

**OR**:

Indirect:            Dependant:    Foreseeable:    Negligent acts of 3<sup>rd</sup> party, animals, normal act of God

**or**

Unforeseeable: Criminal acts, abnormal act of God

**OR**

Independent:    Foreseeable:    Negligent acts of 3<sup>rd</sup> 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 to 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



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 primarily 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**

- P**resent at the scene
- A**ware causing injury
- C**losely related
- E**motional distress suffered

#### 4. VICARIOUS LIABILITY

**Vicarious Liability:** A party can be vicariously liable for the tortious act committed by a 3<sup>rd</sup> 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

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**

**H**igh degree of risk of harm;

**G**ravity of that risk;

**A**ppropriate to the place at issue;

**V**alue to the community;

**E**liminate the risk by reasonable care;

**M**atter of common usage

Examples: Look for blasting, transportation of toxic chemicals, crop dusting, and radiation

**Actual Cause**

**Proximate Cause**

**Damages:**

General  
Special

**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)

**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)**

**P**laintiff did not contribute to his injury

**I**nstrumentality in Defendant's Control

**A**ccident 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:**

**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

Special

<b><u>Defenses:</u></b>	<u>Misuse:</u>	Party's use of product was not in the manner intended
	<u>Assumption Of The Risk:</u>	Plaintiff who has knowledge of the risk and voluntarily encounters that risk
	<u>Disclaimer:</u>	Parties agree product has <u>no warranties</u>

**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

<b><u>Defenses:</u></b>	<u>Assumption Of The Risk:</u>	Plaintiff who has knowledge of the risk and voluntarily encounters that risk
	<u>Comparative Negligence:</u>	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

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<sup>rd</sup> 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**

**C**Crime

**U**nchaste Act of a Female

**L**oathsome Disease

**P**rofession

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



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

**Truth:** 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

## 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

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

## 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

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

**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

**Feasibility:** 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

**Defenses:** **BLU**

**BFP:** Must purchase for value without notice

**Laches:** Unreasonable delay that prejudices Defendant

**Unclean Hands:** Pari delicto