Instructor Manual

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# Purpose and Perspective of the Chapter

 The purpose of this chapter is for students to learn how tort law provides remedies for acts that cause physical or emotional injury, or interfere with physical or emotional security and freedom. Tort law is designed to compensate those who have suffered a loss or injury from another person’s wrongful act. Students will also learn how tort law provides remedies for acts that cause destruction (or damage) of property.

# Cengage Supplements

The following product-level supplements provide additional information that may help you in preparing your course. They are available in the Instructor Resource Center.

* Transition Guide (provides information about what’s new from edition to edition)
* Test Bank (contains assessment questions and problems)
* Solution and Answer Guide (offers textbook solutions and feedback)
* PowerPoint (provides text-based lectures and presentations)
* Guide to Teaching Online (provides technological and pedagogical considerations and resources for teaching online)
* MindTap Educator Guide (describes assets in the MindTap platform with a detailed breakdown of activities by chapter with seat time)

# Chapter Objectives

The following objectives are addressed in this chapter:

1. Describe the goal of tort law.
2. Identify damages available in intentional torts.
3. Determine whether the elements for various intentional torts have been met.
4. Explain negligence per se.
5. Identify defenses available for a negligence action.
6. Explain the defenses available for an intentional tort action.

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# Key Terms

**Actionable**: capable of serving as the basis of a lawsuit; an actionable claim can be pursued in a lawsuit or other court action.

**Actual malice**: the deliberate intent to cause harm that exists when a person makes a statement with either knowledge of its falsity or reckless disregard of the truth; it is required to establish defamation against public figures.

**Appropriation**: in tort law, the use by one person of another person’s name, likeness, or other identifying characteristic without permission and for the benefit of the user.

**Assault**: any word or action intended to make another person fearful of immediate physical harm—a reasonably believable threat.

**Assumption of risk**: a defense to negligence that bars a plaintiff from recovering for injuries or damages suffered as a result of risks that were known and voluntarily assumed.

**Battery**: physical contact with another that is unexcused, harmful or offensive, and intentionally performed.

**Business invitee**: persons, such as customers or clients, who are invited onto business premises by the owner of those premises for business purposes.

**Business tort**: wrongful interference with another’s business rights and relationships.

**Causation in fact**: an act or omission without which an event would not have occurred.

**Comparative negligence**: a rule in tort law, used in the majority of states, that reduces the plaintiff’s recovery in proportion to the plaintiff’s degree of fault, rather than barring recovery completely.

**Compensatory damages**: a monetary award equivalent to the actual value of injuries or damage sustained by the aggrieved party.

**Contributory negligence**: a rule in tort law, used in only a few states, that completely bars the plaintiff from recovering any damages if the harm suffered is partly the plaintiff’s own fault.

**Conversion**: wrongfully taking or retaining possession of an individual’s personal property and placing it in the service of another.

**Damages**: a monetary award sought as a remedy for a breach of contract or a tortious action.

**Defamation**: anything published or publicly spoken that causes injury to another’s good name, reputation, or character.

**Defense**: a reason offered by a defendant in an action or lawsuit as to why the plaintiff should not prevail.

**Disparagement of property**: an economically injurious falsehood about another’s product or property.

**Dram shop act**: a state statute that imposes liability on those who sell or serve alcohol for injuries resulting from accidents caused by intoxicated persons when the sellers or servers contributed to the intoxication.

**Duty of care**: the duty of all persons, as established by tort law, to exercise a reasonable amount of care in their dealings with others; failure to exercise due care, which is normally determined by the reasonable person standard, constitutes the tort of negligence.

**Fraudulent misrepresentation**: any misrepresentation, either by misstatement or by omission of a material fact, knowingly made with the intention of deceiving another and on which a reasonable person would and does rely to that person’s detriment.

**General damages**: in a tort case, an amount awarded to compensate individuals for the nonmonetary aspects of the harm suffered, such as pain and suffering; not available to companies.

**Good Samaritan statute**: a state statute stipulating that persons who provide emergency services to, or rescue, someone in peril cannot be sued for negligence unless they act recklessly and cause further harm.

**Intentional tort**: a wrongful act knowingly committed.

**Libel**: defamation in writing or another permanent form (such as a digital recording).

**Malpractice**: professional misconduct or the lack of the requisite degree of skill as a professional; negligence on the part of a professional, such as a physician, is commonly referred to as malpractice.

**Negligence**: the failure to exercise the standard of care that a reasonable person would exercise in similar circumstances.

**Privilege**: a special right, advantage, or immunity that enables a person or a class of persons to avoid liability for defamation.

**Proximate cause**: legal cause; it exists when the connection between an act and an injury is strong enough to justify imposing liability.

**Puffery**: a salesperson’s exaggerated claims concerning the quality of property offered for sale; such claims involve opinions rather than facts and are not legally binding promises or warranties.

**Punitive damages**: monetary damages that may be awarded to a plaintiff to punish the defendant and deter similar conduct in the future.

**Reasonable person standard**: the standard of behavior expected of a hypothetical “reasonable person;” it is the standard against which negligence is measured and that must be observed to avoid liability for negligence.

**Slander**: defamation in oral form.

**Slander or quality (trade libel)**: the publication of false information about another’s product, alleging that it is not what its seller claims.

**Slander of title**: the publication of a statement that denies or casts doubt on another’s legal ownership of property, causing financial loss to that property’s owner.

**Special damages**: in a tort case, an amount awarded to compensate the plaintiff for quantifiable monetary losses, such as medical expenses, property damage, and lost wages and benefits (now and in the future).

**Strict liability**: liability regardless of fault, which is imposed on those engaged in abnormally dangerous activities, on persons who keep dangerous animals, and on manufacturers or sellers that introduce into commerce defective and unreasonably dangerous goods.

**Tort**: a wrongful act (other than a breach of contract) that results in harm or injury to another and leads to civil liability.

**Tortfeasor**: one who commits a tort.

**Transferred intent**: a legal principle under which a person who intends to harm one individual, but unintentionally harms a different individual, can be liable to the second victim for an intentional tort.

**Trespass to land**: entry onto, above, or below the surface of land owned by another without the owner’s permission or legal authorization.

**Trespass to personal property**: wrongfully taking or harming the personal property of another or otherwise interfering with the lawful owner’s possession of personal property.

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# What's New in This Chapter

The following elements are improvements in this chapter from the previous edition:

* New introduction scenario on tort liability involving a cannabidiol (CBD) business product and trade libel
* New section on the Defenses to Intentional Inflection of Emotional Distress (IIED)
* 1 New Numbered Example:
	+ on invasion of privacy
* 4 New Numbered Case Examples:
	+ on future pain and suffering damages based on 2016 case
	+ on public figures and defamation based on 2020 case
	+ on appropriation based on 2019 case
	+ on the defense to IIED based on 2017 case
* New Ethical Issue: *Can someone be found liable for a tort if that person ruins the plaintiff’s marriage?*
* 1 New Case
	+ *Sky v. Van Der Westhuizen* (2019) – On whether a plaintiff provided enough proof to receive damages for libel.

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# Chapter Outline

*In the outline below, each element includes references (in parentheses) to related content. “PPT Slide #” refers to the slide number in the PowerPoint deck for this chapter (provided in the PowerPoints section of the Instructor Resource Center). Introduce the chapter and review objectives for Chapter 5. (PPT Slide 3).*

**I. 05-1 The Basis of Tort Law (PPT Slide 5-10)**

* 1. **The Purpose of Tort Law**
		1. To provide remedies for the invasion of various protected interests.

* 1. **Damages Available in Tort Actions**
		1. Compensatory Damages
			1. Special damages
			2. General damages
		2. **Case Example 5.1** Chedrick Starks
		3. Punitive Damages
		4. Legislative Caps on Damages
	2. ***Knowledge Check Activity (1) PPT Slide: 1 minute(s) total (5 minutes with discussion and review of answer).*** *Tests students’ knowledge of which damages are available in a tort action. After answer is provided, review with students the availability of each type of damage for a tort action.*
	3. **Classifications of Torts**
		1. Two broad classifications: intentional torts and unintentional torts.
	4. **Defenses**
		1. Reasons why the plaintiff should not obtain damages.
1. **05-2 Intentional Torts against Persons (PPT Slide 11-16)**
2. **Assault**
	* 1. Any intentional and unexcused threat of immediate harmful or offensive contact—words or acts that create in another person a reasonable apprehension of harmful contact.
3. **Battery**
	* 1. Unexcused and harmful or offensive physical contact intentionally performed.
		2. **Example 5.3** Ivan
4. **False Imprisonment**
	* 1. Intentional confinement or restraint of another person’s activities without justification.
		2. **Case Example 5.4** Justin Mills
5. **Intentional Infliction of Emotional Distress (IIED)**
	* 1. Extreme and outrageous conduct resulting in severe emotional distress to another.
		2. Outrageous Conduct
		3. Defenses IIED
			1. **Case Example 5.5** Towerview Construction
6. **Defamation**
	* 1. Wrongfully hurting a person’s good reputation
		2. Statement of Fact Requirement
			1. **Example 5.6** Vickie
		3. Publication Requirement
			1. **Case Example 5.7** Eddy Ramirez
		4. Damages for Libel
		5. Damages for Slander
		6. Slander *Per Se*
		7. Defenses to Defamation
			1. Privileged Communications
			2. Public Figures
				1. **Case Example 5.9** John Tiegen
7. **Invasion of the Right to Privacy and Appropriation**
	* 1. Invasion of Privacy
			1. Intrusion into an individual’s affairs or seclusion
			2. False light
			3. Public disclosure of private facts
			4. Appropriation of identity
		2. Appropriation
			1. **Case Example 5.13** Groupon, Inc.
8. **Fraudulent Misrepresentation**
	* 1. **Case Example 5.14** Joseph Guido
		2. Statement of Fact versus Opinion
		3. Negligent Misrepresentation
9. **Wrongful Interference**
	* 1. Wrongful Interference with a Contractual Relationship
			1. **Classic Case Example 5.15** Johanna Wagner
		2. Wrongful Interference with a Business Relationship
			1. **Example 5.16** Joe’s and Ultimate Sport
		3. Defenses to Wrongful Interference
			1. **Example 5.17** Antonio’s Meats

**III.05-3 Intentional Torts against Property (PPT Slide 17)**

1. **Trespass to Land**
	* 1. Establishing Trespass
		2. Liability for Harm
		3. Defenses against Trespass to Land
2. **Trespass to Personal Property**
	* 1. **Example 5.18** Kelly
3. **Conversion**
	* 1. Failure to Return Goods
			1. **Example 5.19** Chen
		2. Intention
			1. **Case Example 5.20** Nicholas Mora
4. **Disparagement of Property**

**IV.05-4 Negligence (PPT Slide 18-20)**

1. **The Duty of Care and Its Breach**
	* 1. The Reasonable Person Standard
		2. The Duty of Landowners
			1. Duty to Warn Business Invitees of Risks
				1. **Example 5.22** Liz
			2. Obvious Risks May Be an Exception
				1. **Case Example 5.23** Costco
		3. The Duty of Professionals
			1. Malpractice – professional negligence
	1. **Causation**
		1. Courts Ask Two Questions
			1. Is there causation in fact?
			2. Was the act the proximate cause of the injury?
		2. Foreseeability
	2. **The Injury Requirement and Damages**
		1. **Example 5.25** Passerby Injury
	3. **Good Samaritan Statutes**
	4. **Dram Shop Acts**
		1. **Example 5.26** Monica
	5. **Defenses to Negligence**
		1. Assumption of Risk
		2. Superseding Cause
			1. **Example 5.27** Derrick
		3. Contributory Negligence
		4. Comparative Negligence

**V.05-5 Strict Liability (PPT Slide 21)**

1. **Abnormally Dangerous Activities**
	* 1. Courts apply the doctrine of strict liability in such cases because of the extreme risk of the activity.
2. **Other Applications of Strict Liability**
	* 1. Persons who keep wild animals.
3. ***Knowledge Check Video Activity (2) PPT Slide: 2 ½ minute(s) total (5 minutes with discussion and review of answer).*** *Tests students’ knowledge about intentional torts. After answer is provided, review with students the concept of when an intentional tort is committed and how it is resolved.*

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# Discussion Questions

You can assign these questions several ways: in a discussion forum in your LMS; as whole-class discussions in person; or as a partner or group activity in class.

1. **Discussion – Intentional Torts against Persons** (PPT Slide 11-16). **Duration** 20 Minutes.
2. **Which torts protect against the intentional interference with persons?**
3. Assault – An intentional, unexcused act that creates in another person a reasonable apprehension or fear of im­mediate harmful or offensive contact.
4. Battery – An unexcused, harmful, or offensive physical contact intention­ally performed.
5. False imprisonment – The intentional confinement or restraint of another person without justification.
6. Infliction of emotional distress – An intentional act that amounts to extreme and outrageous conduct resulting in severe emotional distress to another.
7. Defamation – Wrongfully hurting another’s reputation is defamation. (Doing so orally is slander; doing it in writing or in a form of communication that has the potentially harmful qualities characteristic of writing is libel.)
8. Invasion of privacy – Using a person’s name or picture or other likeness for commercial purposes without permission; intruding into an individual’s affairs or seclusion; publishing information that places a person in a false light; publicly disclosing private facts about an individual that an ordinary person would find objectionable.
9. Misrepresentation (fraud) – Misstating facts or conditions with knowledge that they are false or with reckless disregard for the truth, and an intent to deceive resulting in in­jury.
10. **What are defenses to charges of assault and battery?**
11. Consent – There is no liability for damage done by an act to which the injured person consented.
12. Self-defense – An individual defending his or her life or physical wellbeing can use whatever force is rea­son­ably necessary to prevent harmful contact. “Whatever force is reasonably necessary” is whatever force the in­dividual believes is about to be used against him or her. Force cannot be used once danger has passed and cannot be used in revenge.
13. Defense of others – An individual can act to defend others who are in danger to the same extent that he or she can act in self-protection.
14. Defense of property – To defend property, individuals can use reasonable force—which does not include force that is likely to cause death or great bodily injury.
15. **What is the basis for the tort of defamation?**
16. The publication of a statement that holds an individual up to contempt, ridicule, or hatred. Publication means that the statements are made to or within the hearing of persons other than the defamed party (statements dictated to a secretary, for example). Republication is also defamatory—thus, a person who repeats defamatory statements is liable.
17. **What are defenses to charges of wrongful interference with the business rights of others?**
18. The interference was permissible. Bona fide competitive behavior is permitted even if it results in the breaking of a contract. Public policy favors free competition. Absent associated illegal activity, a businessperson will not incur in liability for negotiating secretly behind a rival’s back, refusing to do business with a competitor, or refusing to deal with third parties until they stop doing business with a rival.
19. **What is appropriation?**
20. The use of one person’s name or likeness by another, without permission and for the benefit of the user, is appropriation. An individual’s right to privacy includes the right to the exclusive use of his or her identity.
21. **Discussion – Intentional Torts against Property (PPT Slide 17). Duration 5 Minutes.**
22. **Which torts protect against the intentional interference with property?**
23. Trespass to land – When a person, without permission, enters onto another’s land, or causes anything or anyone to enter onto the land, or remains on the land, or permits anything to remain on it. (Harm to the land is not required.)
24. Trespass to personal property – When an individual unlawfully harms another’s personal property or otherwise interferes with the owner’s right to exclusive possession and enjoyment.
25. Conversion – When the owner or rightful possessor of personal property is deprived of its use (in other words, a trespass to personal property so serious that a converter can be forced to buy the property—unlawfully taking property is trespass; unlawfully retaining it is conversion).
26. **Discussion – Negligence (PPT Slide 18-20). Duration 10 Minutes.**
27. Suppose that George, the owner of a softball park, has a duty to provide a backstop to protect spectators who want the protection against the risk of being hit by a ball. Nikita, a visitor from Eastern Europe, sits in the stands behind the plate where the backstop should be. Nikita has never seen softball, knows nothing about it, and does not understand the danger. **During the game, Nikita is struck and injured by a ball.** **Can Nikita recover from George for the injury?** Nikita can recover from George for the injury. Assumption of risk involves the question of what an injured person knew, understood, and was willing to accept. Because Nikita knew nothing about softball, Nikita did not understand the risk and thus Nikita could not have willingly assumed it.
28. Under the circumstances described in the previous question, Eldon, another spectator, also sits in the stands behind the plate where the backstop should be. Unlike Nikita, Eldon is fully aware of the risk. During the game, Eldon is struck and injured by a ball. **Can Eldon definitely recover from George for the injury?** Eldon may not be able to recover from George for the injury, despite George’s violation of the duty to provide protection for spectators. Unlike Nikita in the previous question, Eldon was aware of the risk and voluntarily assumed it.
29. **Discussion – Strict Liability (PPT Slide 21). Duration 10 Minutes.**
30. Large damages awards in tort litigation have to be paid by someone. If the defendant is insured, then insurance companies foot the bill. Ultimately, though, high insurance rates are passed on to consumers of goods and services in the United States. Consequently, tort reform that reduces the size and number of damages awards ultimately will mean lower costs of goods and services to consumers. The downside of these lower costs, though, might be higher risks of medical malpractice and dangerous products. **Do you believe that this trade-off is real? Why, or why not?** Insurance often covers damages awards in the United States, and the premiums can be adjusted to reflect increased amounts of awards. But insurance premiums can also go up simply to increase the profits of the insurance companies. Such increases may also be passed on to consumers. If damages awards have been curtailed, businesses and consumers would thus be paying higher prices without a tradeoff. If insurance premiums were lowered to reflect lower damages awards—this seems unlikely, at least in the long run—it is not likely that a business would be willing to take higher risks with dangerous products. The business’s reputation could suffer, and its profits could as easily disappear as if they were paid to insurance companies as premiums. If tort liability is a businessperson’s primary concern, then locations in which damages awards are fewer in number and lower in amount might be appropriate places in which to choose to do business.
31. **Considering that punitive damages are intended in part to punish, should a defendant’s financial situation be taken into account in setting the amount?**
32. Yes, because the “punishment” might otherwise be disproportionate to the “wrong”—too small in a case involving a large, profitable corporation, or too big in a case involving a smaller business, which might then be left with nothing to compensate others who might be injured. No, because the focus should be on the harm suffered and the reprehensibility of the conduct, not the financial circumstances of the tortfeasor.

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# Additional Activities and Assignments

1. **MindTap** – Why Do Business Torts Matter to Me?
	1. Online auto-graded activities connect the upcoming chapter to an authentic, real-world scenario designed to pick engagement and emphasize relevance. Consists of 1 multiple choice question in each.
2. **MindTap** – Learn It: Common Business Torts; Tort Law-Intent; Elements of Intentional Torts; Reasonable Person Standard; Negligence-Elements
	1. Online auto-graded activities that review foundational concepts presented in this chapter and assesses students’ comprehension of the topics. Consists of 2 multiple choice questions in each.
3. **MindTap** – Check Your Understanding: Fundamentals of Tort Law
	1. Online auto-graded activity that assesses students’ foundational knowledge of the concepts presented in this chapter. Consists of 10 multiple choice questions.
4. **MindTap** – Case Problem Analysis: Wrongful Interference
	1. Online auto-graded activity that first walks students through a fact pattern, and then asks them to answer similar questions with slight variations in the fact pattern. Consists of approximately 5 fill-in-the-blank questions.
5. **MindTap** – Brief Hypotheticals: Court Procedures
	1. Online auto-graded activity that presents 5 fact patterns in which students are asked to apply the concepts of the chapter, and to come up with a legal conclusion. Consists of 5 multiple choice questions.

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# Additional Resources

## Cengage Video Resource

* MindTap Quick Lesson Video:
	+ Intentional Torts. Duration 2:30 minutes.
	+ Reasonable Person Standard. Duration 1:03 minutes.
	+ The Difference Between Assault and Battery. Duration 1:56 minutes.

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