TORTS

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TORTS

Ch. 1: How to Phrase Tort Law Issues

These rules apply to all torts, whether intentional torts or negligence.

1. FIRST ANNOUNCE ONE PLAINTIFF AGAINST ONE DEFENDANT. A tort law answer should consist of issues below a heading that shows the rights of ONE PLAINTIFF against ONE DEFENDANT. Underline this. Often the PLAINTIFF will have a name that begins with "P" and the DEFENDANT'S name will often begin with "D".

Even if the call of the question says "What are Dick and Bob's liability to Peter?" Still do it this way:

For example: Peter v. Dick

Peter v. Bob

ALMOST NEVER COMBINE PLAINTIFFS OR DEFENDANTS! Almost never try analyzing "Peter v. Tom and Dick", and never try analyzing "Peter and Paul v. Mary." It simply won't work and is not what the professor wants to hear.

Instead, start analyzing the rights of the FIRST plaintiff mentioned, or the plaintiff with the MOST SERIOUS INJURY, versus the FIRST defendant mentioned or the defendant that took the MOST ACTIVE PART in committing the torts. Sometimes the NAMES give a clue as to what structure the professor wants -- Are the defendants named ABEL, BAKER and CHARLIE?

After completing analysis of all tort issues relevant to that defendant, the analysis of the remaining defendants usually is reduced to reference back to the prior analysis.

2. DETERMINE THE TYPE OF TORT QUESTION. There are 5 basic types of tort essay questions. No matter which type you have, you should skip issues if the particular question does not call for their discussion.

   1. INTENTIONAL TORTS AND NEGLIGENCE – There are either deliberate ACTS which cause CONFINEMENT, FEAR, OFFENSE or PHYSICAL harm or NEGLIGENCE acts that cause harm. First address whether the acts were INTENTIONAL TORTS and the possible defenses. Then address NEGLIGENCE.
   2. PRODUCTS LIABILITY – Strict liability applies to anyone who "releases into the stream of commerce" a defective product causing personal or property injury – not lost profits.
   3. DEFAMATION AND INVASION OF PRIVACY – False assertions damage REPUTATION and cause EMBARRASSMENT. TRUTH is a DEFENSE to defamation, but not INVASION.
   4. NUISANCE – Interference with the enjoyment and use of public or private LAND.
3. ORDER THE ISSUES. If the CALL of the question does not state and order the issues, you should usually discuss the issues in the ORDER EVENTS TAKE PLACE with the following tips and exceptions:

1. Discuss INTENTIONAL torts (mnemonic = ABC-FITT) before NEGLIGENCE.
2. ALWAYS define INTENTIONAL as part of the rule for the first intentional tort issue discussed.
3. If there is any damage to PERSON or PROPERTY, discuss both intentional torts and negligence UNLESS the question CLEARLY says there was NO INTENTION to cause damage.
4. Say "TORTIOUS ASSAULT" and "TORTIOUS BATTERY" because the definitions are different from "CRIMINAL" assault and battery!
5. One intentional tort often raises the issue of another --
   ▪ Tortious BATTERY suggests ASSAULT.
   ▪ Tortious ASSAULT suggests INTENTIONAL INFLICTION.
   ▪ FALSE IMPRISONMENT suggests INTENTIONAL INFLICTION.
   ▪ CONVERSION suggests issue of TRESPASS TO CHATTELS.
   ▪ DEFAMATION raises an issue of NEGLIGENCE.
   ▪ ABUSE OF PROCESS often raises an issue of DEFAMATION.
   ▪ MALICIOUS PROSECUTION raises an issue of FALSE IMPRISONMENT and INTENTIONAL INFLICTION.
   ▪ DEFAMATION often raises an issue of INVASION OF PRIVACY.
6. Discuss NEGLIGENCE in almost every essay unless intent is clearly shown.
7. Discuss INTENTIONAL INFLICTION and NEGLIGENCE before NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS.
8. If DEFAMATION issues are raised you will have to define and discuss negligence briefly in order to apply Sullivan v. New York Times, etc.
9. Discuss PASSIVE DEFENSES (based on absence of an element of the tort) as part of your analysis of each tort issue itself.
10. Discuss AFFIRMATIVE DEFENSES (such as self-defense) as separate issues following the intentional tort discussion.
11. Discuss the AFFIRMATIVE DEFENSES of CONTRIBUTORY NEGLIGENCE, COMPARATIVE NEGLIGENCE and ASSUMPTION OF RISK following almost every negligence analysis.

For example, if "Ted dared Bob to throw at him. Bob threw at Ted, missed and hit Henry," the structure of the answer would be:

Ted v. Bob

1) TORTIOUS ASSAULT?
2) DEFENSE OF CONSENT?

Henry v. Bob

3) TORTIOUS BATTERY?

4) NEGLIGENCE?

4. PHRASE ISSUES FOR SIMPLE CONCLUSIONS. Phrase the issue so it can be answered simply. Consider if the defendant "can" be "liable" without concluding that he definitely "is liable." Remember, the defendant almost always can be found liable if the elements of a prima facie case are shown by the facts.

For affirmative defenses ask if the defendant can "raise" the defense, NOT whether the defense will be sufficient. Remember, the defendant can almost always raise a defense if the elements of a prima facie claim are shown.

- You can state the issue as a single word like "Negligence?", or you can write it out in more detail like "Can Dick be liable for NEGLIGENCE for the injury to Tom?"

5. STATE THE VICTIM OR OBJECT OF THE CRIME. If there is more than one tortious act, or more than one possible plaintiff, state the object or plaintiff in the issue statement.

- "NEGLIGENCE?" is not as good as "NEGLIGENCE for injury to Tom?"
- "CONVERSION?" is not as good as "CONVERSION of the car?"

6. DON'T COMBINE ASSAULT AND BATTERY.

- NEVER ask if the defendant can be liable for "assault and battery".
- Refer to these torts as "tortious assault" and "tortious battery" OR ELSE refer to "Under tort law..." in the definition to distinguish them from "criminal" assault and battery.

7. AVOID CONCLUDING DEFENDANTS ARE LIABLE

- AVOID finding the defendant "liable". It blocks you from discussing the defenses.
- Just say the defendant "can (or cannot) be found liable" for a tort. Then you can also argue he could raise an effective defense..

8. AFFIRMATIVE DEFENSES AS SEPARATE ISSUES. There are two types of defenses, passive and affirmative.

A passive defense is an argument that a necessary element of a tort cannot be proven. This should be analyzed in your analysis of whether the defendant can be found liable at all.

ALWAYS discuss the passive defenses as part of your analysis of whether the defendant can be liable.

An affirmative defense is an entirely separate issue that the defendant should be excused from liability.
ALWAYS discuss affirmative defenses as separate issues AFTER you have concluded the defendant can be liable.

**For example**, if Dick is lost in a snowstorm and breaks into Paul's cabin, the first issue is, "TRESPASS TO LAND?" The second issue, and it is a totally separate issue, is, "Defense of NECESSITY?"

**Examples of proper Tort issues:**

I personally like issues spelled out, but some professors do not. I like issues stated as follows:

1. **TORTIOUS ASSAULT** on B?
2. **TORTIOUS BATTERY** on B?
3. **CONVERSION** of the car?
4. **FALSE IMPRISONMENT** of B?
5. **INTENTIONAL INFLICTION** on B?
6. **TRESPASS** to B's Land?
7. **TRESPASS** to B's Chattel?
8. **Defense of CONSENT**?
9. **Defense of NECESSITY**?
10. **NEGLIGENCE**?
11. **CONTRIBUTORY NEGLIGENCE**?
12. **DEFAMATION** of B?
13. **Defense of TRUTH**?

If you use a 'one-word' issue statement BE SURE TO MAKE IT CLEAR in your analysis just what you are trying to say. For example, there may be one act in the fact pattern that is an assault and one that is not. So make it clear which act you are concluding to be an assault.

**1. INTRODUCTORY PASSAGE?** If the essay question concerns negligence and nothing but negligence the "overall" issue is negligence but each element of proof (duty, breach, actual cause, proximate cause, damages) become the main issues of discussion. In this case you can start with an introductory passage that defines negligence as the cause of action and then presents these elements of proof as the individual issues. But if there are intentional torts, defamation, nuisance or similar issues presented, negligence is just a single issue and should be addressed as a single issue.

**2. CONSIDER NEGLIGENCE PER SE FIRST.** If a plaintiff violated a statute or rule consider getting negligence per se out of the way first. In this case the DUTY is based on statute and the violation is the BREACH. But this makes essay answer too easy (Yikes!) so usually the purpose of the statute is not to protect the plaintiff from the type of injury suffered.

**3. IF DUTY IS BASED ON PERIL ALWAYS MENTION PALSGRAF.** The whole point of *Palsgraf* is DUTY based on peril is only to those with in the "zone of danger" (both Cardozo and Andrews were in agreement on that), but Cardozo thought LIABILITY should only be to those owed a duty while Andrews felt it should extend to those who were injured, even those who were...
not owed a duty because they were not in the "zone of danger", the same as with the RESCUER DOCTRINE. Your professor may think Palsgraf is about BREACH, but it is not. And she may say Andrews argued "a duty to one is a duty to all", but that is wrong too. But, DO NOT try to correct your professor! Humor her!

In regards to Palsgraf ust say that,

"Under Palsgraf Cardozo said that defendants that create peril do not owe a duty to protect those outside the zone of danger created by their acts so they should not be liable to them. But Andrews said defendants who breach duties based on peril should be liable to everyone actually and proximately caused injury, even if they are outside the zone of danger, the same as is true under the Rescuer Doctrine."

Don't misspell "Cardozo". It is NOT "Cardoza". Remember "Cardozo was a Bozo."

4. CONSIDER RES IPSA LOQUITUR (RIL). If there is no witness to the cause of an accident consider RIL as a means of proving BREACH. It creates a presumption of breach when there are no actual facts to prove a breach by the defendant. It is a negligence issue and also arises often in product liability when there are no facts to prove if the product was always dangerous or became dangerous because of mishandling while being passed from manufacturer to wholesaler to retailer. Look for vague facts like these

- "an accident occurred"
- "a plane crashed in the ocean"
- "the engine malfunctioned"
- "there were no witnesses"
- "everyone was killed"
- "the plaintiff cannot remember the accident"
- "the product was discovered to be defective"

5. HOW MUCH TIME AND ANALYSIS? If the negligence issue is combined with some intentional tort issues, spend twice as much time on the negligence issue as on any intentional tort issue. But analyze DUTY, BREACH, ACTUAL and PROXIMATE CAUSE and DAMAGES as elements within your one negligence issue. Be sure to analyze CONTRIBUTORY and COMPARATIVE NEGLIGENCE as separate issues.

But if the WHOLE question involves NEGLIGENCE and there are no intentional torts, then you should analyze each element of negligence as a separate issue.

6. PHRASE ISSUES FOR NEGLIGENCE AS FOLLOWS:

I like clear issue statements like the following but they are not absolutely necessary:

1. NEGLIGENCE for injury to plaintiff?
2. DUTY?
3. BREACH?
4. RES IPSA LOQUITUR?
5. ACTUAL CAUSE?
6. PROXIMATE CAUSE?
7. **DAMAGES?**
8. **CONTRIBUTORY or COMPARATIVE NEGLIGENCE?**
9. **ASSUMPTION OF THE RISK?**
Ch. 2: Tort Law Issues

The following show how to phrase and answer the most common issues presented by law-school intentional tort essay questions. Analyze each issue by Nailing the Elements as explained elsewhere. A full analysis and conclusion of the first issue is presented below as an example. The analysis and conclusion of the remaining issues has been omitted for brevity.

Further, a few of these rules are very important. You must know them, so memorize them verbatim. These are marked as follows: **Important!**

1. **ASSAULT?**

   Under tort law ASSAULT is an intentional act done to cause and that does cause reasonable apprehension of a battery, a harmful or offensive touching of the person. **Important!**

   [Every “intentional tort” has the element of INTENTIONAL ACT! Always DEFINE “intentional act” in the definition of the FIRST intentional tort issue as follows:]

   An INTENTIONAL ACT is one done for the purpose of causing or with knowledge with reasonable certainty that it will cause the result that produces injury. **Important!**

   [ALWAYS state this in your discussion of the first intentional tort. For TORTS an act is intentional if it is done for the PURPOSE of producing a RESULT, or if the actors knows that result will almost certainly occur! But the result does not necessarily have to be injury. All that matters is that the result CAUSES injury.]

   Here ... because...

   Therefore, the defendant may be liable for tortious assault.

2. **BATTERY?**

   Under tort law BATTERY is an intentional act to cause and does cause a touching of the person of the plaintiff resulting in harm or offense to the plaintiff. **Important!**

   Here ... because...

   Therefore the defendant may be liable for battery.

3. **CONVERSION?**

   Under tort law CONVERSION is an intentional act to cause and that does cause interference with the chattel of the plaintiff resulting in substantial deprivation of possession. The proscribed legal remedy is forced purchase by the defendant, but the plaintiff may “waive the tort” and seek restitution instead. **Important!**
Here … because… Therefore the defendant may be liable for conversion.

4. **FALSE IMPRISONMENT?**

Under tort law FALSE IMPRISONMENT is an intentional act to cause and that does cause the plaintiff to be confined to a defined area without any reasonably apparent means of reasonable exit. Plaintiffs must actually know they are confined, but do not have to know the confinement is illegal. **Important!**

Here … because… Therefore the defendant may be liable for false imprisonment.

5. **INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS?**

Under tort law IIED is an intentional, outrageous act by the defendant which causes the plaintiff severe emotional distress. **Important!**

[Note: Here "intent" may be shown by EITHER the intentional commission of an outrageous act, regardless of intent, or by almost any act for the purpose of causing emotional distress. Any act is "outrageous" per se if the actual intent is to cause severe emotional distress. And a lack of intent to cause emotional distress is not a defense if the act itself is outrageous. But in any case the plaintiff must almost always present evidence to show they suffered extreme emotional distress (more than mere embarrassment).]

Here … because… Therefore the defendant may be liable for intentional infliction.

6. **TRESPASS TO LAND?**

Under tort law TRESPASS TO LAND is an intentional act by the defendant causing an unauthorized entry onto, over, or under the land of the plaintiff. The defendant is liable for nominal damages and all actual damages caused by the entry.

Here … because…

Therefore the defendant may be liable for trespass to land.

7. **TRESPASS TO CHATTELS?**

Under tort law TRESPASS TO CHATTEL is an intentional act by the defendant causing unauthorized interference with or damage to the chattel of the plaintiff. The defendant is liable for actual damages measured as the lost rental value of the chattel, the rental costs for temporary replacement of the chattel, and the repair costs to repair the chattel, but usually not more than the actual cash value of the chattel.

Here … because… Therefore the defendant may be liable for trespass to chattels.
8. **TRANSFERRED INTENT?**

Under the tort doctrine of TRANSFERRED INTENT, a defendant who commits an intentional tort towards anybody generally becomes liable for every injury inflicted on everybody, even if the injury caused or the person caused injury is not the original intent. **Important!**

An exception is that Courts generally will not find IIED based on transferred intent, and Courts may find only negligence and not an intentional tort by transferred intent if the original intent of the defendant was not malicious.

Here … because… Therefore the defendant may be liable for trespass to chattels.

9. **DAMAGES for INTENTIONAL TORTS?**

Every defendant that commits an intentional tort is liable for all actual damages actually and proximately caused. Damages consist of SPECIAL DAMAGES, compensation for monetary losses, and GENERAL DAMAGES, compensation for pain, suffering, anxiety, emotional distress, inconvenience, etc. Defendants may also be liable for PUNITIVE DAMAGES if the Court finds they acted with MALICE, an evil or wrongful intent.

10. **DEFENSE of DISCIPLINE?**

Under tort law a person with recognized authority (schoolteacher, bus driver, airplane pilot, policeman, parent, etc.) is privileged to act reasonably given the circumstances in a manner that otherwise might constitute a battery or false imprisonment.

Here…because…Therefore…

11. **DEFENSE of AUTHORITY OF LAW (PREVENTION OF CRIME)?**

Under tort law a person is privileged to act reasonably to prevent or stop a FELONY from being committed in their presence. Police may arrest for misdemeanors committed in their presence and for felonies otherwise if based upon reasonable suspicion.

Here…because…Therefore…

12. **DEFENSE of RECAPTURE?**

Under tort law a person has a qualified privilege to use reasonable force to RECAPTURE their own chattel if 1) they have asked for and have been refused return of the chattel, and 2) they are in fresh pursuit of wrongfully taken chattel, or 3) they lost possession of the chattel through no fault of their own.

Here…because…Therefore…
13. **DEFENSE of NECESSITY?**

Under tort law a person is privileged to act *reasonably as NECESSARY* to protect their own safety, the safety of others, and the safety of property. For defense of property to be “reasonable” the value of the property being protected must exceed the damages caused by the efforts to protect it. Reasonable acts done to protect the *property of others* is a PUBLIC NECESSITY and absolutely privileged. Reasonable acts done to protect the defendant’s own property are a PRIVATE NECESSITY and only a qualified privilege. The defendant remains liable for actual damages to the plaintiff.

Here...because...Therefore...

14. **DEFENSE of CONSENT?**

Under tort law **FULLY INFORMED CONSENT** from a person with legal capacity is a defense to most intentional torts, but is not a defense to a battery that causes foreseeable great bodily injury.

Here...because...Therefore...

15. **DEFENSE of OTHERS?**

Under tort law a person is privileged to act *reasonably as necessary to defend others* who are NOT AGGRESSORS from harm. Aggressors are people who have unreasonably created or increased dangers to others. Courts are split when a defendant unknowingly acts to defend an AGGRESSOR. Under one view the defendant STEPS INTO THE SHOES of the aggressor and has no privilege because the aggressor could not claim self-defense. In other Courts defendants are privileged to defend aggressors in confrontations if they act with a **REASONABLE BELIEF** they are acting to defend an innocent victim of aggression.

Here...because...Therefore...

[Note that while very old common law may have held that one is only privileged to protect a family member, that idea was abandoned so long ago it is not worth mentioning.]

16. **DEFENSE of PROPERTY?**

Under tort law defendants are privileged to use **reasonable force** to protect their property or the property of others. The use of deadly force to protect property is never reasonable or legal.

State something like the following if there is a suspected theft of goods or services:
Under the SHOPKEEPER’S PRIVILEGE a defendant may use reasonable force to detain a plaintiff for a reasonable period of time to investigate a reasonable suspicion that the plaintiff has stolen goods or services from the defendant.

State something like the following if there was a tortious injury to the defendant:

To protect litigation rights defendants may use reasonable force to as necessary to detain plaintiffs for a reasonable period of time to investigate events that have caused them damages.

Here…because…Therefore...

17. SELF-DEFENSE?

Under tort law a person who is NOT AN AGGRESSOR may act reasonably if NECESSARY to protect their own safety. Modernly the person can “hold her ground” and has no duty to retreat in most jurisdictions. Aggressors are people who have unreasonably created or increased dangers to others.

Here…because…Therefore...

18. DEFENSE of INFANCY, INSANITY or INCOMPETENCE?

INFANCY, INSANITY and INCOMPETENCE are not defenses for intentional torts.

[Watch for intentional torts by children or insane people! It is a criminal defense but not a tort defense because tort law is to compensate plaintiffs, not punish defendants.]

29. RESPONDEAT SUPERIOR ?

Under the doctrine of RESPONDEAT SUPERIOR an employer, master or principal is vicariously liable for all torts committed by an employee, servant or agent, respectively, if the tort is committed within the scope of the employment or agency relationship. Respondeat superior does not apply to independent contractors.

Here…because…Therefore.

[This is the same for both intentional torts and negligence]

30. VICARIOUS LIABILITY for JOINT ENTERPRISE ?

Under tort law each member of a JOINT ENTERPRISE is vicariously liable for all torts committed by other members within the scope of the enterprise relationship. A joint enterprise is one in which two or more parties agree to work together for mutual benefit and each shares equal rights of control over the objects and activities that cause the plaintiff injury.

Here…because…Therefore.
31. **LIABILITY for acts of INDEPENDENT CONTRACTOR?**

Under tort law defendant who hires an INDEPENDENT CONTRACTOR to perform duties that are not “non-delegable” by law is **NOT vicariously liable** for torts committed by the contractor and can only be **directly liable because of negligent selection or negligent entrustment** of the contractor by the defendant. An independent contractor is a person selected to provide labor services without close and regular supervision.

Here...because...Therefore.

**[This is the same for both intentional torts and negligence. Pay attention to the sort of responsibilities that are non-delegable.]**

32. **The ACTUAL CAUSE or a SUBSTANTIAL FACTOR causing injury?**

Under tort law the defendant is the **ACTUAL CAUSE** of injury if the plaintiff would not have been injured **BUT FOR** the acts of the defendant.

If two or more defendants acted negligently, the plaintiff would not have been injured if neither had acted, and the plaintiff cannot reasonably prove she would not have been injured but for the acts of each alone, then each defendant is a **SUBSTANTIAL FACTOR** causing injury. **Important!**

Here the defendant was the ACTUAL cause of injury (or else a SUBSTANTIAL FACTOR) because ...but for...

**[This is the same for both intentional torts and negligence]**

33. **PROXIMATE CAUSE?**

Under tort law **PROXIMATE CAUSE** means that the injury suffered by the plaintiff was so **DIRECT, NATURAL and FORESEEABLE**, so close in time and place, resulting from a **CHAIN OF CAUSATION** begun by the defendant’s acts, **unbroken by UNFORESEEABLE INTERVENING EVENTS** that the law will impose liability for the result. **Important!**

Generally if two or more events are actual causes of the plaintiff’s injury, the last event will be an **UNFORESEEABLE INTERVENING EVENT** cutting off the liability of all defendants who acted earlier. However, it is a matter of settled law that **negligent acts by others are FORESEEABLE** so they can never be intervening events. **Acts of nature** [e.g. tornados] and **criminal or intentionally tortious acts by third parties** [e.g. thefts, batteries] are presumed to be **UNFORESEEABLE** and will
terminate defendants’ liability unless extrinsic evidence shows defendants were aware the subsequent events were likely to occur. Important!

Here there was (no) PROXIMATE CAUSATION because...

[This is the same for both intentional torts and negligence]

34. DAMAGES for TORTS?

Every defendant that commits any tort is liable for all actual damages actually and proximately caused. Damages consist of SPECIAL DAMAGES, compensation for monetary losses, and GENERAL DAMAGES, compensation for pain, suffering, anxiety, emotional distress, inconvenience, etc. Defendants who commit intentional torts, including gross negligence (deliberate breach of duty) and recklessness (deliberate creation of unreasonable risks) may also be liable for PUNITIVE DAMAGES if the Court finds they acted with FRAUD, OPPRESSION or MALICE, an evil or wrongful intent to cause harm. Defendants who commit accidentally negligent torts are not liable for punitive damages. Tort plaintiffs have a right to “waive the tort” and demand RESTITUTION instead of compensation for damages.

35. EGG SHELL PLAINTIFF?

Under the EGG-SHELL PLAINTIFF concept, defendants are liable for all damages they actually cause plaintiffs, even if the plaintiffs, through no fault of their own, have pre-existing conditions that make them especially vulnerable to injury. The doctrine of the law is that “defendants must take plaintiffs as they find them.”

Here...because...Therefore...

39. PRODUCTS LIABILITY?

Under tort law anyone who RELEASES an UNREASONABLY DANGEROUS product into the STREAM OF COMMERCE is liable for PERSONAL INJURY or PROPERTY DAMAGE CAUSED. A product is UNREASONABLY DANGEROUS if the dangers it poses outweigh its utility given the commercial practicality for making it safer, without destroying its utility.

Liability may be established based on any of four theories: 1) BREACH OF EXPRESS WARRANTY, 2) BREACH OF IMPLIED WARRANTY, 3) NEGLIGENCE or 4) STRICT LIABILITY IN TORT.

Under a BREACH OF EXPRESS WARRANTY theory the plaintiff must show the defendant sold goods with express representations (express warranty) which made them unreasonably dangerous, and that it was the actual and proximate cause of injury to the plaintiff.

Further, under a BREACH OF IMPLIED WARRANTY theory the plaintiff must show the defendant sold goods by representing they were safe for ordinary use or knowing the buyer’s specific intended use (implied warranty), the goods were unreasonably
dangerous for that use, and that it was the actual and proximate cause of injury to the plaintiff.

Under a NEGLIGENCE theory the defendant has a duty not to place unreasonably dangerous goods into the stream of commerce. The plaintiff must be a foreseeable plaintiff proximately caused injury by the negligent acts of the defendant.

And, under a STRICT LIABILITY theory the plaintiff must show the seller was a COMMERCIAL SUPPLIER, the product was unreasonably dangerous at the time it left the defendant's control, and the defendant is only liable for non-economic damages.

Here… because… Therefore …

40. DEFAMATION?

Under tort law DEFAMATION is a FALSE statement of material fact PUBLISHED to others about the plaintiff CAUSING DAMAGE to REPUTATION. Defamation may be SLANDER, an oral statement, or LIBEL, a written statement. Important!

But many false statements are PRIVILEGED where the defendant speaks to defend a private interest, group interest or the public interest and does so without malice and in a reasonable manner calculated to defend that interest without unnecessarily harming the plaintiff.

Injury to reputation will be presumed where there is LIBEL or SLANDER PER SE. SLANDER PER SE is found where the false statement alleges CRIMINAL behavior, LOATHSOME disease, UNCHASTE behavior or improper BUSINESS practices. [CLUB] Important!

Under NEW YORK TIMES and its progeny, a PUBLIC FIGURE PLAINTIFF must prove ACTUAL MALICE, that the false statement was made with knowledge or reckless disregard of its falseness, in order to recover in a defamation action. A PUBLIC FIGURE is a person who has acted to put themselves in the public spotlight. Further, where a matter of PUBLIC CONCERN is at issue, or where the plaintiff seeks punitive damages, the plaintiff must at least prove NEGLIGENCE. Important!

Here the statement was FALSE because … The defendant would dispute this because …

And the statement was NOT PRIVILEGED because (either no valid interest being protected, statement no made reasonably, or malicious intent)... Further, the statement was PUBLISHED because... Also the statement was ABOUT the plaintiff because … And the statement at issue was DAMAGING to reputation because...

Therefore, the plaintiff would be able to establish a prima facie case of defamation.
[Now go through the CASE LAW AFFIRMATIVE DEFENSES as part of the defamation analysis. ]

HOWEVER, the defendant would argue that the plaintiff is a PUBLIC FIGURE because…Therefore, the plaintiff would have to show ACTUAL MALICE because …

FURTHER, the defendant would argue that the subject was a PUBLIC MATTER because … Therefore, the plaintiff would have to prove NEGLIGENCE because …

Therefore…

41. FALSE LIGHT?

Under tort law FALSE LIGHT is the tort of publishing a false portrayal of a person in a manner that would cause them embarrassment or inconvenience.

Here…because. Therefore...

42. MISAPPROPRIATION of likeness?

Under tort law MISAPPROPRIATION is the tort of unauthorized use of the likeness of another person for personal gain in a manner that implies endorsement of a product or cause.

Here…because…Therefore...

43. INTRUSION into the plaintiff’s solitude?

Under tort law INTRUSION is the tort of unreasonable intrusion into the peace and solitude of another person.

Here…because. Therefore...

44. PUBLIC DISCLOSURE OF PRIVATE FACTS?

Under tort law PUBLIC DISCLOSURE is the tort of unreasonably disclosing private facts that a reasonable person would find embarrassing. Here…because…

HOWEVER, the defendant would DEFEND on the ground the facts revealed were PUBLIC FACTS. [This is the main issue in these cases].

45. PRIVATE NUISANCE?

Under tort law PRIVATE NUISANCE is an unreasonable interference with a person’s use and enjoyment of their own land. In the MAJORITY view COMING TO THE NUISANCE is a consideration for the court and NOT A COMPLETE BAR to bringing a nuisance action.
Here B’s use of her OWN LAND was INTERFERED WITH by A because…, and the interference was UNREASONABLE because…Therefore, …

46. PUBLIC NUISANCE?

Under tort law PUBLIC NUISANCE is an unreasonable interference with a person’s use and enjoyment of public resources. To have standing the plaintiff must show particular injury, greater than that suffered by the general public. Here…because.. Therefore, …

HOWEVER, the defendant would DEFEND on the ground that the plaintiff has suffered no greater injury than the general public. [This is the main defense issue in these cases]

47. MALICIOUS PROSECUTION?

Under tort law a person is liable for MALICIOUS PROSECUTION if they have instituted or continued a criminal prosecution of another person out of malice and the action was terminated based on its merits because there was no probable cause.

Here there was no probable cause because… Therefore…

48. ABUSE OF PROCESS?

Under tort law a person is liable for ABUSE OF PROCESS if they have brought a civil or criminal action against another person without a legitimate basis out of malice or for an improper purpose.

Here the defendant acted out of malice because… Therefore, …

49. ILLEGAL INTERFERENCE? [Paraphrase as necessary]

Under tort law a person is liable for unreasonably and illegally interfering with another person’s known or apparent business relationships.

Here the defendant’s acts caused unreasonable interference because… Therefore,…

50. DECEIT (or FRAUD or MISREPRESENTATION)?

Under tort law a person is liable for making 1) a FALSE STATEMENT OF MATERIAL FACT 2) KNOWING it was false 3) with INTENT TO DECEIVE, 4) that was REASONABLY RELIED upon by the plaintiff, 5) CAUSING the plaintiff INJURY.

Here there was FALSE STATEMENT of MATERIAL FACT because… And the statement was made by the defendant with KNOWLEDGE it was false
because…Further the defendant had an INTENT TO DECEIVE because… Also the plaintiff REASONABLY RELIED because… And the plaintiff was INJURED because…

Therefore, …

51. NONDISCLOSURE (CONCEALMENT)?

Under tort law a prima facie case of NONDISCLOSURE (or CONCEALMENT) requires showing 1) a DUTY to disclose material facts, 2) BREACH of that duty, 3) REASONABLE RELIANCE by the plaintiff on facts as they appeared to be, and 4) INJURY CAUSED by the nondisclosure.

Here the defendant had a DUTY to disclose because…And the defendant BREACHED that duty because they did not disclose…Further, this was a MATERIAL FACT because…And the plaintiff REASONABLY RELIED on appearances because…This nondisclosure INJURED the plaintiff because…

Therefore, …

52. TORT RESTITUTION?

Under tort law plaintiffs may “waive the tort” and instead of seeking an award of damages based on their own injury, they may seek RESTITUTION, an award of damages based on the amount the defendant has wrongfully benefited to PREVENT UNJUST ENRICHMENT.

Here…because…Therefore…

Note: The above issue statements provide virtually every important issue, definition, rule and term that you will ever see on a Torts examination in law school or on a Bar Exam, other than issues dealing strictly with NEGLIGENCE actions. If you know the above issues and responses you have everything you really need.
### Ch. 3: Spotting Tort Law Issues

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26. Detainment of customer in store: Shopkeeper's Privilege - reasonable?
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30. Forced or protective act: Necessity? Self defense? Defense of others?
31. Act taken without intention of harm: Mistake of fact? Reasonable mistake?

SOME ISSUE SPOTTING EXAMPLES:

**Example 1:** "Al went to the edge of town where there was a deserted rock quarry 100 feet deep. He liked to shoot his gun there because it was so safe. Unknown to him Bob the wino had fallen into the quarry in a drunken stupor. Bob knew he was in danger, but he went to sleep in an abandoned car at the bottom anyway. Al intentionally shot at a beer bottle, and the bullet hit the bottle just as he intended. Then the bullet went into the quarry like he intended and there it hit Bob in the leg. What actions can Bob bring against Al, and what are Al's defenses?"

**Issues:**

1) BATTERY because the question says "intentionally shot" and "he intended". Even though Al did not intend to hit Bob, the grader "intends" for you to discuss intent. So do it.

2) NEGLIGENCE. Did Al have a duty to Bob? Yes. Did he breach the duty by not being careful? Probably not. Was Al the "proximate cause" of Bob's injury or was Bob's falling in the quarry an intervening cause?

3) CONTRIBUTORY NEGLIGENCE. Clearly Bob helped cause of his injury.

4) COMPARATIVE NEGLIGENCE -- same thing.

5) ASSUMPTION OF THE RISK -- Bob "knew he was in danger."
Ch. 4: Tort Rules and Definitions

1. **ABUSE OF PROCESS (TORTS):** Abuse of process is the tort of bringing or continuing a civil or criminal action against the plaintiff without legitimate basis out of malice or for an improper purpose. (see MALICIOUS PROSECUTION.)

2. **ACTUAL MALICE (TORTS):** For DEFAMATION a false statement is made with actual malice if it is made with knowledge the statement is false or with reckless disregard for whether it is false or not. (see RECKLESS, DEFAMATION.)

3. **APPROPRIATION OF LIKENESS (TORTS):** Appropriation of likeness is the tort of unauthorized use of the name or likeness of a person in a manner that implies endorsement of a product or support of a cause. It does not include the publication of names and photographs in news articles and matters of legitimate public interest. Damages are often awarded in RESTITUTION measured by the profit to the defendant. (see INVASION OF PRIVACY.)

4. **ASSAULT (TORTS):** Assault is the tort of intentionally acting to cause the plaintiff reasonable apprehension of a battery. The plaintiff must be apprehensive.

5. **BATTERY (TORTS):** The tort of intentionally acting to cause a harmful or offensive touching of the plaintiff or his person.

6. **BREACH OF EXPRESS WARRANTY (TORTS):** Breach of express warranty is a products liability theory claiming 1) a defendant released goods into the stream of commerce 2) falsely stating the goods were suitable for a specific use and 3) the recipient of the goods reasonably relied on the statements, 4) the goods were unreasonably dangerous for the stated purpose, and it 5) caused injury to the plaintiff. The defendant is liable for all injury, property damage and other harm that is actually caused, subject to general considerations of foreseeability and proximate causation.

7. **BREACH OF IMPLIED WARRANTY (TORTS):** Breach of implied warranty is a products liability theory claiming 1) a defendant released goods into the stream of commerce 2) falsely implying the goods were suitable for 3) ordinary use or 4) the buyer's known intended use, 5) that the recipient of the goods reasonably relied on the defendant's expertise and behavior, 6) the goods were unreasonably dangerous for ordinary use or the recipient's known intended use, and it 7) caused injury to the plaintiff.

8. **COMING TO THE NUISANCE (TORTS):** "Coming to the nuisance" is a defense argument in a nuisance action that the plaintiff's act of physically moving to a location where a condition existed created the nuisance complained of. Considered a complete bar in a MINORITY view but only considered a factor in determining damages in the MAJORITY AND CALIFORNIA view. (see PRIVATE NUISANCE.)

9. **CONCEALMENT (TORTS):** Concealment is the tort of 1) intentionally concealing facts with 2) an intent to deceive when there is 3) a pre-existing duty to reveal the facts, the 4) plaintiff reasonably relies on the facts as they appear and 5) is caused injury. The difference between CONCEALMENT and FRAUD is only that the latter requires an intentional misrepresentation while the former requires an intentional breach of the duty to disclose material facts. (see FRAUD as alternative theory.)

10. **CONSENT DEFENSE (TORTS):** Consent is a defense to most intentional torts if there is informed, voluntary consent by a person with legal capacity. Consent is not a valid defense to an act intended to cause serious bodily injury and often is not a defense to injury suffered from "mutual combat".

11. **CONVERSION (TORTS):** Conversion is the tort of substantial interference with personal property (chattel) causing deprivation of possession. The remedy and measure of damages for conversion is the forced sale of the chattel to the defendant.
12. CRIME PREVENTION DEFENSE (AUTHORITY OF LAW) (TORTS): Crime prevention (also called authority of law) is a tort defense that any person has a right to act reasonably, including to perform an arrest, to prevent a felony in their presence, and that police may arrest to prevent misdemeanors in their presence or based on reasonable suspicion of felonies. (Defense to intentional torts of battery and false imprisonment.)

13. DAMAGES (TORTS): It is often said that tort plaintiffs must prove damages, but that is not correct. Under tort law “damages” means a monetary award to a plaintiff that is measured by the injury suffered by the plaintiff. But a tort plaintiff may prove and claim RESTITUTION as an alternative to a proof of damages. Damages may be special (measured by out of pocket expenses) or general (to compensate for pain, suffering.) Damages may also be claimed for interference with possessory rights in the case of trespass to land and conversion. If a prima facie case is proven, damages are presumed for the torts of ASSAULT, BATTERY, CONVERSION, FALSE IMPRISONMENT, TRESPASS TO LAND and LIBEL PER SE. Damages must be proven with admissible evidence for the torts of INTENTIONAL INFRINGEMENT OF EMOTIONAL DISTRESS, TRESPASS TO CHATTELS, NEGLIGENCE, NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS, SLANDER, and LIBEL PER QUOD. (which see.) An award of PUNITIVE damages is intended to punish and deter further misconduct by the defendant is not strictly measured by the actual injury to the plaintiff. (See RESTITUTION)

14. DEFAMATION (TORTS): A defamation is an unprivileged, false statement of material fact about the plaintiff published to another person causing damage to her reputation. Statements made in a reasonable manner, without malice to defend a legitimate personal, group, or public interest are PRIVILEGED. An oral defamation is SLANDER and a written defamation is LIBEL. If the defamatory statement involves INNUENDO or interpretation (COLLOQUIUM) or knowledge of extrinsic facts (INDUCEMENT) it is defamation PER QUOD. If the false statement is clear on its face and about criminal acts, loathsome disease, unchaste behavior or business practices of the plaintiff it is defamation PER SE (CLUB). General damages can be awarded without proving special damages only in the case of a defamation per se. Under New York Times v. Sullivan a public figure plaintiff must prove the defendant acted with actual malice because they acted with knowledge or with reckless disregard of the falsity of their statements. Further, negligence or actual malice must be proven if the false statements concern a matter of legitimate public interest.
   - LIBEL is a DEFAMATION that is written or recorded in some manner giving the false statement permanence. It may be LIBEL PER SE or LIBEL PER QUOD.
   - SLANDER is a DEFAMATION that is oral or made in some manner that it is transitory and not permanent. It may be SLANDER PER SE or SLANDER PER QUOD.
   - ACTUAL MALICE means making a false statement with knowledge or RECKLESS DISREGARD for its falsity.
   - RECKLESS DISREGARD with respect to a claim of ACTUAL MALICE for defamation means the defendant deliberately made a defamatory statement of fact about the plaintiff without any factual basis, whatsoever, to believe it was true.

15. DEFENSE of OTHERS (TORTS): A person is privileged to act as reasonably necessary to protect the safety of others. Jurisdictions are split when a defendant mistakenly acts to protect an aggressor in a fight. Under the STEPS-INTO-THE-SHOES view the defendant steps into the shoes of the aggressor and is not privileged to act to defend the aggressor in a fracas. Under the REASONABLE APPEARANCES view the defendant is privileged to act based on reasonable appearances, even if he acts to protect the aggressor in a fracas mistakenly believing he is aiding the victim of aggression. (See AGGRESSOR.)

16. DEFENSE of PROPERTY (TORTS): A person is privileged to act as reasonably necessary to protect his own property or the property of others. But deadly force can never be used to protect property because it is NOT reasonable. Defense of property is never a defense to murder, but a MISTAKE OF FACT may be a reasonable alternative. (see NECESSITY, MISTAKE OF FACT.)
17. DISCLOSURE OF PRIVATE FACTS: A person of recognized authority (schoolteacher, bus driver, airplane pilot, policeman, parent, etc.) is privileged to act reasonably to control others (Defense to intentional torts of battery and false imprisonment.)

18. FALSE IMPRISONMENT: False imprisonment is the tort of intentionally acting to cause the plaintiff to be confined to an enclosed area with no reasonably apparent means of reasonable escape. The plaintiff must be aware of the confinement.

19. FALSE LIGHT: False light is the tort publishing a false portrayal of the plaintiff causing inconvenience or embarrassment. Damages are generally measured by the injury to the plaintiff. The distinction between False Light and Defamation is that in the former case the false portrayal may not cause damage to reputation while in the later case false statements of fact cause injury to reputation and standing. (see INVASION OF PRIVACY.)

20. FRAUD: Fraud is the tort of 1) FALSELY STATING or MISREPRESENTING material facts with 2) an INTENT TO DECEIVE, causing 3) REASONABLE RELIANCE by the plaintiff 4) resulting in INJURY to the plaintiff. (Also called DECEIT; See CONCEALMENT as alternative theory.)

21. INFANCY, INSANITY AND INCOMPETENCE: There is NO DEFENSE of infancy, insanity or incompetence in TORT other than to claim lack of intent!

22. INTENTIONAL ACT: An intentional act is one done for the purpose of causing a result or with knowledge with reasonable certainty that the result will occur.

23. INTENTIONAL INFILITATION OF EMOTIONAL DISTRESS: Intentional Infliction of Emotional Distress is an intentional, outrageous act which causes the plaintiff severe emotional distress beyond mere embarrassment and humiliation. The plaintiff must prove emotional distress suffered actually was severe, and generally transferred intent will not apply. (See TRANSFERRED INTENT.)

24. INTERFERENCE: Interference is the tort of unreasonably interfering with the known business relationships of the plaintiff causing injury. This may be called interference with a "CONTRACT" where the defendant knows the plaintiff has an existing contract, or it may otherwise be called interference with "PROSPECTIVE ECONOMIC RELATIONSHIPS".

25. INVASION: Invasion is an action for INVASION OF PRIVACY caused by unreasonable intrusion into the peace and solitude of the plaintiff. Damages are measured by the injury to the plaintiff. (see INVASION OF PRIVACY.)

26. INVASION OF PRIVACY: Invasion of privacy is a general term for four specific causes of action: DISCLOSURE of private facts, INTRUSION into solitude, APPROPRIATION OF LIKENESS, and FALSE LIGHT (DIAL).

- DISCLOSURE OF PRIVATE FACTS is the unreasonable public disclosure of private facts, even though true, that a reasonable person would find embarrassing. Damages are measured by the injury to the plaintiff.

- INTRUSION is an unreasonable intrusion into the peace and solitude of the plaintiff. Damages are measured by the injury to the plaintiff.

- APPROPRIATION OF LIKENESS is the unauthorized use of the name or likeness of a person to make a profit, excepting the publication of names and photographs as news articles, information and matters of legitimate public interest. Damages are measured by the profit to the defendant.

- FALSE LIGHT is the publication to others of a false portrayal of the plaintiff in a manner causing public ridicule or embarrassment. Damages are measured by the injury to the plaintiff.

27. LIBEL: Libel is a written defamation or one recorded in some manner giving the false statement permanence. May be LIBEL PER SE or LIBEL PER QUOD. (see DEFAMATION.)
28. **MALICE (TORTS):** Malice in tort is the requisite mental state or wrongful intent required for a defendant to be liable for certain torts such as **DEFAMATION, ABUSE OF PROCESS** and **MALICIOUS PROSECUTION** (which see.)

29. **MALICIOUS PROSECUTION (TORTS):** Malicious prosecution is the tort of instituting and/or continuing a criminal prosecution of the plaintiff out of malice. The plaintiff must show the prosecution lacked probable cause and was terminated based on its merits. (see **ABUSE OF PROCESS**.)

30. **NECESSITY DEFENSE (TORTS):** A person is privileged to act as reasonably necessary to protect people and property from harm. Protection of self is also called **SELF-DEFENSE,** protection of others is also called **DEFENSE OF OTHERS,** and protection of property is also called **DEFENSE OF PROPERTY.** If the act is to protect the safety of any person, it is a complete defense. If it is to protect the property of any person besides the defendant or the public welfare, it is a **PUBLIC NECESSITY** and a complete defense. If it is only to protect the property of the defendant it is a **PRIVATE NECESSITY** and the defendant remains liable for any damage actually caused.

31. **NUISANCE (TORTS):** A nuisance can be a **PUBLIC or PRIVATE NUISANCE.** A PUBLIC NUISANCE is causing an unreasonable interference with the plaintiff’s use of public resources (often land.) To bring an action the plaintiff must prove **STANDING** by showing they suffer a particular injury from the acts of the defendant that is different from or greater than the injury suffered by the general public. A PRIVATE NUISANCE is causing an unreasonable interference with the plaintiff’s use and enjoyment of her own land in a manner that does not constitute a **TRESPASS TO LAND** (which see.) Nuisance may involve smoke, fumes, odors, noise, light, obstruction or aircraft. In the MAJORITY AND CALIFORNIA view the plaintiffs COMING TO THE NUISANCE (which see) is NOT a complete bar to bringing a nuisance action. (see **TRESPASS TO LAND**.)

32. **PRIVATE NUISANCE (TORTS):** A private nuisance is an unreasonable interference with the plaintiff's use and enjoyment of her own land in a manner that does not constitute a **TRESPASS TO LAND** (which see.) Nuisance may involve smoke, fumes, odors, noise, light, obstruction or aircraft. In the MAJORITY view the plaintiffs COMING TO THE NUISANCE (which see) is NOT a complete bar to bringing a nuisance action. (see COMING TO THE NUISANCE, PUBLIC NUISANCE, TRESPASS TO LAND.)

33. **PRODUCTS LIABILITY (TORTS):** Every person who releases an unreasonably dangerous product into the stream of commerce may be liable for personal injury, property damage and other harm caused. Liability may be based on four theories: **BREACH OF EXPRESS WARRANTY, BREACH OF IMPLIED WARRANTY, NEGLIGENCE or STRICT LIABILITY IN TORT** (which see.)

34. **PROXIMATE CAUSE (TORTS):** Proximate (legal) cause means that a defendant’s act actually caused injury that was so direct and natural, close in time and place, by a chain of causation unbroken by UNFORESEEABLE INTERVENING EVENTS that the law will impose liability. But when independent acts by two or more people are all ACTUAL CAUSES of the injury, the last, unforeseeable, intentional act is generally held to be the only proximate (legal) cause of the result and proximate causation and tort liability for all prior acts is terminated. This is the same as for crimes, and it can cut off liability for both intentional torts and negligence. (see UNFORESEEABLE INTERVENING EVENTS.)

35. **PUBLIC DISCLOSURE OF PRIVATE FACTS (TORTS):** Public disclosure of private facts is the **INVASION OF PRIVACY** tort of unreasonably disclosing private facts about the plaintiff that a reasonable person would find embarrassing. Damages are usually measured by the injury to the plaintiff. (see **INVASION OF PRIVACY**.)

36. **PUBLIC FIGURE (TORTS):** Under *New York Times v. Sullivan* a public figure for purposes of a defamation action is a person who injects themselves into the public arena. Once a person becomes a public figure they probably remain a public figure until they fade from memory. (see DEFAMATION.)
37. **PUBLIC NUISANCE (TORTS):** A public nuisance is an unreasonable interference with the plaintiff's use of public resources. To bring an action plaintiffs must prove STANDING (which see) by showing they suffer a particular injury from the acts of the defendant that is different from or greater than the injury suffered by the general public. (see PRIVATE NUISANCE.)

38. **RECAPTURE OF CHATTELS DEFENSE (TORTS):** Property owners attempting to recover chattel while in fresh pursuit or seeking recovery of chattel lost through no fault of their own may enter land of others and use reasonable force to recover it. They must first request return of the property by the parties in possession if that is feasible. (Defense to trespass to land and battery.)

39. **RESTITUTION (TORTS):** Restitution is a remedy granted by a court (almost always a money judgment) to the plaintiff that is not measured by the injuries the plaintiff has suffered. Rather it is measured by the amount necessary to prevent UNJUST ENRICHMENT by the defendant, protect the PUBLIC INTEREST by PREVENTING REASONABLE EXPECTATIONS of the plaintiff or otherwise to RESTORE THE STATUS QUO.

40. **SELF-DEFENSE (TORTS):** A person who is not the aggressor in a fracas is privileged to act as reasonably necessary to protect his or her own safety. This is NOT a defense if the party was the aggressor unless they are no longer the aggressor because they attempted withdrawal from the fracas or the other party escalated the level of violence. (see AGGRESSOR, NECESSITY DEFENSE.)

41. **SLANDER (TORTS):** Slander is an oral defamation or one made in some manner that it is transitory and not permanent. May be SLANDER PER SE or SLANDER PER QUOD. (see DEFAMATION.)

42. **STANDING (TORTS):** Standing means that a plaintiff has a right to pursue a legal remedy because they have suffered actual damages.

43. **STRICT PRODUCT LIABILITY (TORTS):** Strict product liability is a products liability theory when 1) a commercial supplier of goods 2) releases unreasonably dangerous goods into the stream of commerce, resulting in 3) personal injury or property damage (not economic losses) to the plaintiff. The plaintiff can be any person who is injured as a result.

44. **TRANSFERRED INTENT (TORTS):** Every defendant that intentionally acts to cause any injury to anyone is liable for every injury to everyone injured, even if the tort plaintiff or injury caused is different from that intended. Transferred intent often is not applied to actions claiming IIED.

45. **TRESPASS TO LAND (TORTS):** Trespass to land is an intentional act to cause unauthorized entry onto the land of the plaintiff. Trespass may be by physical entry of the defendant herself, or by the defendant causing other people, objects or any particulate matter to enter onto, under or pass over the land of the plaintiff at low altitude. A continuing trespass occurs if the defendant leaves objects on the plaintiff's land. No damage to the land is necessary, but the defendant is liable for any damage caused. It is not a trespass to land for the defendant to cause smoke, fumes, odors, sounds, light, obstruction or objects at high altitude to pass over the land of the plaintiff, but such acts may constitute a PRIVATE NUISANCE (which see.)

46. **TRESPASS TO CHATTELS (TORTS):** A trespass to chattels is an intentional unauthorized interference with the chattel of another causing damage.

47. **UNFORESEEABLE INTERVENING EVENTS (TORTS):** If a subsequent act by a third party, or natural event (“act of God”) is also an actual cause of the injury suffered by a plaintiff or victim, if will generally be viewed as an “unforeseeable intervening event” that terminates proximate cause and ends the liability of defendants that acted earlier. But negligence by a third party is presumed to be foreseeable and will not terminate proximate causation or liability. Criminal acts and intentional torts by third parties are presumed to be unforeseeable and will terminate all liability of defendants that acted earlier UNLESS the defendant knew the subsequent
criminal act or intentional tort by the third party was likely to occur. (see PROXIMATE
CAUSE.)

48. **UNJUST ENRICHMENT (TORTS):** A Court may award a remedy in RESTITUTION (usually
a money judgment) to either prevent an unjust enrichment or protect the public interest by
preventing the frustration of reasonable commercial expectations rather than a remedy based on
damages. (see RESTITUTION).
ABC-FITT = The intentional torts.
  o Assault
  o Battery
  o Conversion
  o False imprisonment
  o Intentional infliction of emotional distress
  o Trespass to land
  o Trespass to chattels

DARN COPS = The intentional tort DEFENSES.
  o Discipline
  o Authority of law
  o Recapture
  o Necessity
  o Consent
  o Others (defense of)
  o Property (defense of)
  o Self (defense of)

SCRAP = When the defendant has an affirmative DUTY to act.
  o Statute requires
  o Contract promises
  o Relationship requires
  o Assumption of duty undertaken
  o Peril caused by defendant

CLUB = A slander is Slander Per Se when the statement alleges --
  o Crime
  o Loathsome disease
  o Unchaste behavior
  o Improper Business practices

DIAL = Invasion of Privacy consists of four torts –
  o Disclosure of private facts
  o Intrusion into privacy
  o Appropriation of likeness
  o false Light.