

TORTS

(Breach of Contract も忘れない!!)

I. Intentional Torts: ①Battery, ②Assault, ③False Imprisonment, ④Intentional Infliction of Emotional Distress, ⑤Nuisance (public, private), ⑥Trespass to Land / Chattels/Conversion, ⑦Malicious Prosecution, ⑧Abuse of Process.

⑨Fraud, ⑩Inducing a Breach of Contract, ⑪Misrepresentation, ⑫Wrongful death acts

⇒**Defense:** ①Consent, ②Defense(self-defense, defense of others), ③Necessity(public, private)

II. *Defamation ⇒**Defense:** ①Consent, ②Truth, ③Privilege (absolute, qualified)

***Invasion of privacy** ⇒**Defense:** ①Consent, ②Privilege (absolute, qualified)

III. Negligence: Duty of Care, Breach, Causation, Damages

⇒**Defense:** ①Contributory (Comparative) negligence, ②Assumption of the risk, ③Minor, ④Incompetent

IV. Strict Liability: ①Product Liability, ②Ultra-hazardous Activity

⇒**Defense:** ①Assumption of risk, ②Lack of Causation, ③<注>Contributory Negligence は×

INTENTIONAL TORT TO PERSON

1) **Battery:** 暴行

(a) Need a harmful or offense contact

(b) With the P's person (and Intent)

To establish a prima facie case for battery, plaintiff must prove: 1) ..., 2) ..., and 3) Here, ...

2) **Assault:** 脅迫

(a) D put P in apprehension to

(b) Immediate battery

3) **False Imprisonment:** 不法監禁

(a) D must commit an act of restraint

(b) There must be confinement in the bounded area

Defense: (1) Privilege of Arrest: only if the misdemeanor was a breach of the peace and was committed in the presence of the arresting party. (2) Shopkeeper's Privilege: A shopkeeper has a privilege to detain a suspect if she has a reasonable **belief** that a theft was committed and the detention is conducted in a reasonable **manner** and for a reasonable period of **time**.

4) **Intentional Infliction of Emotional Distress:** 精神的苦痛の故意による賦課 (★常に、最後に付け足す!!)

(a) Outrageous conduct

(b) Severe emotional distress suffered by the P (and Intent)

*Intent = Reckless as the effect of D's conduct will satisfy the intent requirement.

*Outrageous conduct = conduct that exceeds all bounds of decency tolerated in a civilized society.

5) NUISANCE

***Private Nuisance** = **Substantial, unreasonable interference** with the P's use or enjoyment of **land**.

***Public nuisance** = Unreasonably interferes with the health, safety or property rights of the community.

6) Trespass to land: 不動産への不法侵入

(a) Physical invasion

(b) Land (and Intent)

Trespass to chattels AND conversion: 動産への不法侵害および横領

i) Moderate or modest interference → **trespass to chattels**.

ii) Extensive, significant, great interference or harm → **conversion**.

7) Malicious Prosecution [*相手方 Client に対する主張と、Attorney に対する主張で、別々に検討する。]

(a) Institution of criminal proceedings against P

* **Most jurisdictions have extended the malicious prosecution action to encompass.**

(b) Termination favorable to P

(c) Absence of probable cause for prosecution [*特に、この要件は当て嵌めが異なる!!]

(d) Improper purpose of D

(e) Damages

8) Abuse of Process

(a) Wrongful use of the process for an ulterior motive

(b) Threat against P to accomplish ulterior motive

9) Fraud

a) affirmative misrepresentation

b) Scienter (intent) = On purpose (knowing it to be false) or reckless

c) Intent to induce reliance

d) Justifiable reliance by P on the statement:

e) actual pecuniary damages.

10) Inducing a Breach of Contract:

i) There must be valid contract between P and 3rd party and must NOT be terminable at will.

ii) D must have knowledge of that contract.

iii) Persuasion by D designed to convince 3rd party to breach or abandon the contract.

iv) Subsequent breach of the contract by the 3rd party.

11) **Misrepresentation** : Liability for misrepresentation arises when a representation by the seller about a product induces reliance by the buyer.

12) **Wrongful death acts**: which permit a surviving spouse or next of kin to recover for the death of a spouse or kin for loss of support and loss of consortium (loss of service, loss of society/companionship, loss of sex).

DEFENSES (affirmative defenses):

1) Consent:

Legal Capacity – Only a person with **legal capacity to consent** can give a valid consent.

2) **PROTECTIVE PRIVILEGES: Self-defense, defense of others, and defense of property**

i) **Proper Timing**: The threat that the D is responding to a threat that must be **imminent**, or **in progress** of commission.

ii) **Reasonable belief** – D has a **reasonable belief** that threat is genuine.

iii) **Proportionality of Degree of Force**:

3) **Necessity** (trespass to land, trespass to chattel, conversion only)

a) **Public necessity**

(1) D invades someone else's property in an **emergency** situation

(2) to protect the **community as a whole or significant group** of people.

b) **Private necessity**:

(1) D invades someone else's property in an **emergency** situation

(2) to protect an **interest of his own** (your own safety, health, or property). =D is acting selfishly.

HARM TO DIGNITARY INTEREST

A) DEFAMATION

1. Defamatory statement by D that specifically identifies P
2. The statement can be either oral or written (publication)
3. Damages **to the reputation of the plaintiff** ("slander per se" = business, profession, crime of moral)

Affirmative Defenses to Common Law Defamation:

- a) Consent:
- b) Truth
- c) Privileges:

Absolute privilege: <Communication between spouses>, <government affairs>,

<Judicial Proceeding> All statements made by counsel in judicial proceedings are absolutely privileged.

Qualified privilege: >>> 3 requirements

- (1) D is speaking in **socially useful context**;
- (2) Alleged defamatory part must be relevant to that **context**; and
- (3) D speaks with **good faith belief in accuracy** of what he is saying;

2) Constitutional Defamation (1st Amendment Defamation)

If the topic of the alleged defamation relates to something that is of **public concern**,

2 Additional Elements (in addition to 3 elements of C/L defamation):

- i) **Falsity: P must show** that the statement is **false**.
(1) This reverses the burden of proof from that of C/L rule of defamation.
- ii) **D's Fault** = If P is **public figure** or **public official** → **D's malice** (knowledge, reckless)
If it is public matter but P is a **private figure** → **D's negligent**

B) INVASION OF RIGHT TO PRIVACY

1) Appropriation (News worthiness exception)

D uses (1) **P's name or picture**

(2) for D's **commercial purpose** (News worthiness exception)

(3) **without P's permission**.

- 2) **Intrusion** = **Invasion of P's seclusion** in the way that would be **objectionable to an average person**
- 3) **False light** = **Widespread dissemination** of a **major misrepresentation** about the **P** that would be objectionable to average person.
- 4) **Disclosure**: (News worthiness exception)
 - i) **Widespread dissemination**
 - ii) of **confidential information** about P
 - iii) that would be **objectionable to the average person**.

Affirmative Defenses to Invasion of Privacy

- b) **Consent**
- c) **Absolute/qualified privileges**: ONLY for false lies and disclosure.

NEGLIGENCE

(1) **Duty** : Negligence is the breach of a duty of due care which the actual and proximate cause of plaintiff's injuries. Under the Cardozo view, a duty is owed to persons in the foreseeable zone of danger.

(2) **Standard of Care** : The defendant's conduct will be measured against the reasonable, ordinary, prudent person under the same or similar situation. **<Owners and/or Occupiers of Land>**

(3) **Breach** : **<Attractive Nuisance>** (i) dangerous condition, (ii) D knew that children frequent the area, (iii) the condition is likely to cause injury because of the child's inability to appreciate the risk, (iv) the expense of remedying the situation is slight compared to the magnitude of the risk

(4) **Causation** : (i) cause-in-fact, (ii) proximate cause : not liable if unforeseeable for the intervening cause

(5) **Damages** :

(6) **Defense** : (i) contributory/comparative negligence , (ii) Assumption of the Risk, (iii) Mitigation

Negligent Infliction of Emotional Distress:

(i) D's negligence; (ii) "zone of physical danger"; (iii) subsequent **physical manifestation** due to distress.

"Informed Consent": A doctor has a duty to disclose to the patient the risks of the proposed treatment.

- <Exception>
- (i) **Commonly known risks;**
 - (i) The patient **declines** to hear the information;
 - (iii) The patient is **incompetent**; or
 - (iv) Doctor concludes that the disclosure would be **harmful** to the patient.

STRICT LIABILITY

ULTRAHAZARDOUS ACTIVITIES : An activity may be characterized as abnormally dangerous if it involves a substantial risk of serious harm to persons or property no matter how much care is exercised.

- i) Activity that imposes **risk of severe harm**.
- ii) Activity that cannot be made safe (**cannot be reasonably safe**).
- iii) Activity that is **uncommon in the community**.

PRODUCTS LIABILITY: <注>必ず、negligence 及び Implied/Express warranty も検討する。危険なら、ultrahazardous activities

- a. The D was a **merchant** (Service provider - NG) / (Commercial lessor - OK)
- b. The product has to be **defective** (Design defect – safer, cost effective, practical)
- c. **The defect must have existed when the product left D's hand** (ordinary chain of distribution - presumption)
- d. The P must be a foreseeable user of the product making a **foreseeable use** (actual & proximate cause)
- e. Damages (+Causation)

Implied Warranty: There is an implied warranty that goods are merchantable and are generally fit for the particular purposes for which such goods are used.

Express Warranty: An express warranty arises where a seller or supplier makes any affirmation of fact or promise to the buyer relating to the goods that becomes part of the "basis of the bargain."

VICARIOUS LIABILITY: <注>必ず、employer 固有の negligence も検討する。

1) General: Note: always ask if you can get direct liability before you consider vicarious liability

2) Relationships

a) **Employer-Employee Relationship (Respondent Superior):** → This rule applies to **partnership and joint venture as well**.

- i) General rule: **Employer is generally liable** for torts of the employee, if the employee was acting **within the scope of the employment**.
- ii) **2 typical cases: NOT w/in the scope of the employment.**
 - (1) Frolic or Detour:
 - (2) **Intentional tort** of the employee:
 - (a) General rule: **Outside the scope** of employment, thus, employer has no vicarious liability.
 - (b) Exceptions:
 - (i) If physical force is **authorized** in the employment, or is a part of job. Misuse of the force is within the scope of employment
 - (ii) If job is one which **generates friction**.
 - (iii) If servant is furthering business of master. **Intentional tort that directly serves employer's interest.**

b) **Hiring party-Independent contractor:**

- i) General rule: **Hiring party is not liable**.
- ii) Exceptions:
 - (1) Engaged in **inherently dangerous activity**.
 - (2) The principal has the duty that is **nondelegable on public policy grounds**. Ex. **Land occupier's duty of care** to keep her land safe for business invitees.

c) **Automobile Owner-Automobile Driver:**

d) **Parent-Children:**

- i) General rule: **Parent is NOT vicariously liable** for their children's tort (from the children's ordinary life activities).
- ii) Exception: Parent may be held liable for parent's own negligence in allowing a child to do something. (direct negligence first)