

False imprisonment  
and merchant  
protection statutes  
law essay



**ASSIGN  
BUSTER**

Although the area of business law with which I am most familiar and have the most knowledge is contract law, secured transactions and bankruptcy, my first jury trial was a case involving a “ slip and fall” at the old Rickshaw Hotel which was located across from the former Garden State Race Track on Route 70 in Cherry Hill, New Jersey [This really dates me because the Rickshaw Hotel is now a car dealership and the Racetrack is a shopping center]. In a law firm, the newest associate is usually given the “ garbage” cases, ones which were not likely to succeed and with which a partner did not want to be associated.

This case was brought into our office shortly before trial, because an attorney who was licensed only in Pennsylvania thought he could have settled it before trial. However, there was one piece of testimony from a deposition that led the defense to believe the case had no merit. That statement was in answer to a question to the injured woman, “ When and where did you learn of the tear in the carpet at the hotel?” She answered, “ In my attorney’s office when he told me there was a tear in the carpet.”

I started the trial by telling the jury in the opening statement, “ That the defense would very shortly tell you, members of the jury, that ‘ This case is a fraud and that the reason they know it is a fake, is because of the deposition testimony.’ I said, “ Just the opposite is the case. This is a very truthful woman. She answered the question correctly, because that is exactly what happened. She did learn of the tear from her former attorney. If she had not been walking down a poorly lit hallway, if she could have seen the torn carpet, surely she would not have caught her foot in the tear, she did not see the tear as she fell and hit her head against the wooden chair rail on the

<https://assignbuster.com/false-imprisonment-and-merchant-protection-statutes-law-essay/>

wall, she did not see it as she lay unconsciously on the floor and she never saw it as she was carried on a stretcher out of the building.” The case settled before I called my first witness.

Every negligence case centers on what would “ the ordinary reasonable person” find to be the case.

## **Week Two OBJECTIVES**

**Upon completion of this workshop, students are expected to competently:**

Describe the concept of ethical leadership.

Understand the key concepts of ethics in the context of a business environment.

Comprehend the concepts of Duty of Care, Negligence and Liability.

## **Intentional torts against persons and against property**

### **Assault and battery**

Assault is the threat of immediate harm or offensive contact or any action that arouses reasonable apprehension of imminent harm. Actual physical contact is unnecessary.

Battery is the unauthorized and harmful or offensive physical contact with another person. Direct physical contact is unnecessary.

### **False imprisonment and merchant protection statutes**

False imprisonment is intentional confinement or restraint of another person without authority or justification and without that person’s consent.

<https://assignbuster.com/false-imprisonment-and-merchant-protection-statutes-law-essay/>

Merchant protection statutes allow merchants to stop, detain, and investigate suspected shoplifters without being held liable for false imprisonment if (1) there are reasonable grounds for suspicion, (2) suspects are detained for only a reasonable time, and (3) investigations are conducted in a reasonable manner.

## **Defamation of character and invasion of privacy**

If a person makes a false statement about another person, that is defamation of character. In court, a plaintiff must prove that the defendant make an untrue statement of fact about the plaintiff and that the statement was intentionally or accidentally published to a third party. Public figures cannot recover for defamation unless they can prove that the defendant acted with “ actual malice.”

Every person has a right to live his or her life without being subjected to unwarranted and undesired publicity. Violation of this right is the tort of invasion of the right to privacy.

## **Intentional torts against property**

Interference with an owner’s right to exclusive possession of land constitutes the tort of trespass to land.

Trespass to personal property occurs whenever one person injures another person’s personal property.

Conversion of personal property occurs when someone who originally is given possession of personal property fails to return it.

## **Negligence**

### **Elements of Negligence**

Elements of negligence include:

That the defendant owed a duty of care to the plaintiff

A duty of care is the obligation we all owe to each other not to cause unreasonable harm or risk of harm. Courts decide whether a duty of care is owed in specific cases by applying a reasonable person standard (how would an objective, careful, and conscientious person have acted in the same circumstances) or a reasonable professional standard (where the defendant has a particular expertise or competence).

That the defendant breached this duty of care

A breach of the duty of care is the failure to exercise care.

That the plaintiff suffered injury

The plaintiff must suffer personal injury or damage to his or her property to recover monetary damages for the defendant's negligence.

That the defendant's act caused the plaintiff's injury

A person who commits a negligent act is not liable unless his or her act was the cause of the plaintiff's injuries.

Causation in fact or actual cause-a person who commits a negligent act is not liable unless causation in fact can be proven.

Proximate or legal cause-the law establishes a point along a chain of events caused by a negligent party after which that party is no longer legally responsible for the consequences of his or her actions.

### **Intentional and negligent infliction of emotional distress**

Intentional infliction of emotional distress or the tort of outrage occurs when a person's extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another person. Some jurisdictions have extended this doctrine to include negligent infliction of emotional distress where the defendant's negligence causes emotional distress. The most common example is bystanders who witness the death or injury of a loved one caused by another's negligent conduct.

### **Special negligence doctrines**

Negligence per se is a tort where the violation of a statute or ordinance constitutes the breach of the duty of care. An example would include a statute that establishes a duty for homeowners to fix their sidewalks.

Res ipsa loquitur can occur when the defendant was in exclusive control of the situation and the plaintiff would not have suffered injury but for someone's negligence. A good example is a surgical instrument left in a patient's body.

Dram shop acts make taverns and bartenders liable for injuries caused to or by patrons who are served too much alcohol.

Similarly, some states make social hosts liable for injuries caused by guests who become intoxicated at a social function.

Many state guest statutes provide that if a driver voluntarily and without compensation gives a ride to another person, the driver is not liable to the passenger for injuries caused by the driver's ordinary negligence.

Good Samaritan laws relieve medical professionals from liability for ordinary negligence when they stop and render aid to victims in emergency situations.

Under the "fireman's rule," a fireman who is injured while putting out a fire may not sue the party whose negligence caused the fire.

The "danger invites rescue" doctrine provides that a rescuer who is injured while going to someone's rescue can sue the person who caused the dangerous situation.

Common carriers are held to a higher standard than most other businesses; they have a duty of utmost care, rather than a duty of ordinary care, to their passengers and patrons.

Landowners owe a duty of ordinary care to invitees and licensees, but generally do not owe a duty of ordinary care to a trespasser.

## **Defenses to tort liability**

Superseding or intervening event-a defendant is not liable for injuries caused by a superseding or intervening event for which he or she is not responsible.

Assumption of the risk-a defendant can use this defense against a plaintiff who knowingly and voluntarily entered into or participated in a risky activity, for example car racing, that resulted in injury.

Contributory negligence-this doctrine states that a plaintiff who is partially at fault for his or her own injury cannot recover against the negligent defendant. Many states have rejected this doctrine and replaced it with the doctrine of comparative negligence.

Comparative negligence-the comparative negligence doctrine apportions damages according to fault.

## **Fraud**

Fraud or intentional misrepresentation or deceit occurs when a wrongdoer deceives another out of money, property, or something of value. The elements of fraud are:

The wrongdoer made a false representation of material fact.

The wrongdoer had knowledge that the representation was false and intended to deceive the innocent party (scienter).

The innocent party justifiably relied on the misrepresentation.

The innocent party was injured.

## **Terms**

assault-(1) The threat of immediate harm or offensive contact or (2) any action that arouses reasonable apprehension of imminent harm. Actual physical contact is not necessary.



assumption of the risk-A defense in which the defendant must prove that (1) the plaintiff knew and appreciated the risk and (2) the plaintiff voluntarily assumed the risk.

battery-Unauthorized and harmful or offensive physical contact with another person. Direct physical contact is not necessary.

causation in fact or actual cause-The actual cause of negligence. A person who commits a negligent act is not liable unless causation in fact can be proven.

causation-A person who commits a negligent act is not liable unless his or her act was the cause of the plaintiff's injuries. The two types of causation that must be proven are (1) causation in fact (actual cause) and (2) proximate cause (legal cause).

comparative negligence-A doctrine that applies to strict liability actions that says a plaintiff who is contributorily negligent for his injuries is responsible for a proportional share of the damages.

contributory negligence-A doctrine that says a plaintiff who is partially at fault for his own injury cannot recover against the negligent defendant.

conversion of personal property-A tort that deprives a true owner of the use and enjoyment of his or her personal property by taking over such property and exercising ownership rights over it.

covenant of good faith and fair dealing-Under this implied covenant, the parties to a contract not only are held to the express terms of the contract

but also are required to act in “ good faith” and deal fairly in all respects in obtaining the objective of the contract.

“ danger invites rescue” doctrine-Docctrine that provides that a rescuer who is injured while going to someone’s rescue can sue the person who caused the dangerous situation.

defamation of character-False statement(s) made by one person about another. In court, the plaintiff must prove that (1) the defendant made an untrue statement of fact about the plaintiff and (2) the statement was intentionally or accidentally published to a third party.

Dram Shop Act-Statute that makes taverns and bartenders liable for injuries caused to or by patrons who are served too much alcohol.

duty not to willfully or wantonly injure-The duty an owner owes a trespasser to prevent intentional injury or harm to the trespasser when the trespasser is on his or her premises.

duty of ordinary care-Collecting banks are required to exercise ordinary care in presenting and sending checks for collection.

duty of utmost care-A duty of care that goes beyond ordinary care that says common carriers and innkeepers have a responsibility to provide security to their passengers or guests.

false imprisonment-The intentional confinement or restraint of another person without authority or justification and without that person’s consent.

Good Samaritan law-Statute that relieves medical professionals from liability for ordinary negligence when they stop and render aid to victims in emergency situations.

guest statute-Statute that provides that if a driver of a vehicle voluntarily and without compensation gives a ride to another person, the driver is not liable to the passenger for injuries caused by the driver's ordinary negligence.

injury-The plaintiff must suffer personal injury or damage to his or her property in order to recover monetary damages for the defendant's negligence.

intentional infliction of emotional distress-A tort that says a person whose extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another person is liable for that emotional distress. Also known as the tort of outrage.

intentional interference with contractual relations-A tort that arises when a third party induces a contracting party to breach the contract with another party.

intentional misrepresentation-(1) Tort that occurs when a wrongdoer deceives another person out of money, property, or something else of value. Also known as fraud or deceit; (2) when a seller or lessor fraudulently misrepresents the quality of a product and a buyer is injured thereby.

intentional tort-Occurs when a person has intentionally committed a wrong against (1) another person or his or her character, or (2) another person's property.

invasion of the right to privacy-A tort that constitutes the violation of a person's right to live his or her life without being subjected to unwarranted and undesired publicity.

libel-A false statement that appears in a letter, newspaper, magazine, book, photograph, movie, video, etc.

negligence per se-Tort where the violation of a statute or ordinance constitutes the breach of the duty of care.

negligence-A tort related to defective products where the defendant has breached a duty of due care and caused harm to the plaintiff.

negligent infliction of emotional distress-A tort that permits a person to recover for emotional distress caused by the defendant's negligent conduct.

palming off-Unfair competition that occurs when a company tries to pass one of its products as that of a rival.

professional malpractice-The liability of a professional who breaches his duty of ordinary care.

proximate cause or legal cause-A point along a chain of events caused by a negligent party after which this party is no longer legally responsible for the consequences of his or her actions.

punitive damages-Damages that are awarded to punish the defendant, to deter the defendant from similar conduct in the future, and to set an example for others.

res ipsa loquitur-Tort where the presumption of negligence arises because (1) the defendant was in exclusive control of the situation and (2) the plaintiff would not have suffered injury but for someone's negligence. The burden switches to the defendant(s) to prove they were not negligent.

slander-Oral defamation of character.

social host liability-Rule that provides that social hosts are liable for injuries caused by guests who become intoxicated at a social function. States vary as to whether they have this rule in effect.

strict liability-Liability without fault.

superseding event-A defendant is not liable for injuries caused by a superseding or intervening event for which he or she is not responsible.

tort of misappropriation of the right to publicity-An attempt by another person to appropriate a living person's name or identity for commercial purposes.

tort-A wrong. There are three categories: (1) intentional torts, (2) unintentional torts (negligence), and (3) strict liability.

trespass to land-A tort that interferes with an owner's right to exclusive possession of land.

trespass to personal property-A tort that occurs whenever one person injures another person's personal property or interferes with that person's enjoyment of his or her personal property.

unfair competition-Competition that violates the law.

## **Internet Links**

Torts generally: [www.law.com](http://www.law.com)

American Bar Association Tort and Insurance Practice Section: [www.abanet.org/tips/home.html](http://www.abanet.org/tips/home.html)

Tort and Insurance Law Journal: [www.abanet.org/tips/journal/lawjournal.html](http://www.abanet.org/tips/journal/lawjournal.html)

## **Discussion Question Knight v. Jewett**

Facts: On January 25, 1987, the day of the 1987 Super Bowl football game, plaintiff Kendra Knight and defendant Michael Jewett, together with a number of other social acquaintances, attended a Super Bowl party at the home of a mutual friend. During half time of the Super Bowl, several guests decided to play an informal game of touch football on an adjoining dirt lot, using a "peewee" football. Each team had four or five players and included both women and men; plaintiff and defendant were on opposing teams. No rules were explicitly discussed before the game.

Five to ten minutes into the game, defendant ran into plaintiff during a play. According to plaintiff, at that point she told defendant "not to play so rough or I was going to have to stop playing." Her declaration stated that

<https://assignbuster.com/false-imprisonment-and-merchant-protection-statutes-law-essay/>

"[defendant] seemed to acknowledge my statement and left me with the impression that he would play less rough prospectively." In his deposition, defendant recalled that plaintiff had asked him to "be careful," but did not remember plaintiff saying she would stop playing.

On the very next play, plaintiff sustained the injuries that gave rise to the present lawsuit. As defendant recalled the incident, his team was on defense on that play, and he jumped up in an attempt to intercept a pass. He touched the ball but did not catch it, and in coming down collided with plaintiff, knocking her over. When he landed, he stepped backward onto plaintiff's right hand, injuring her hand and little finger.

Both plaintiff and Andrea Starr, another participant in the game who was on the same team as plaintiff, recalled the incident differently from defendant. According to their declarations, at the time plaintiff was injured, Starr had already caught the pass. Defendant was running toward Starr, when he ran into plaintiff from behind, knocked her down, and stepped on her hand. Starr also stated that, after knocking plaintiff down, defendant continued running until he tagged Starr, "which tag was hard enough to cause me to lose my balance, resulting in a twisting or spraining of my ankle."

The game ended with plaintiff's injury, and plaintiff sought treatment shortly thereafter. After three operations failed to restore the movement in her little finger or to relieve the ongoing pain of the injury, plaintiff's finger was amputated. Plaintiff then instituted the present proceeding, seeking damages from defendant on theories of negligence and assault and battery.

**Imagine that you are on the California Supreme Court and are faced with this case. Do you rule that the plaintiff is barred any recovery because California has followed the common law theory of “ assumption of risk?” Or do you rule that the plaintiff’s conduct was such that she does not come within the doctrine of assumption of risk? Or finally, do you rule that the assumption of risk defense should simply be discarded in modern tort practice and you rule that the assumption of risk is no longer a valid doctrine in California.**

(Please note, I am not asking you to research the actual case, but rather to use the text and your own experience to guide your opinion.)