##### Definitions

##### Tort: a civil wrong, other than a breach of contract, for which the law provides a remedy

**Intent:** desire or knowledge to a substantial certainty that the act will result in the invasion of a protected interest

**Negligence:** not doing what a RPP, would do or doing something an RPP would not. – *Blyth v. Birmingham Waterworks Co*

RPP: someone with ordinary abilities and intelligence

Duty: Standard of Care

##### Fault-based theory: causation was first test; intent is current test

##### Goals of tort law: Provide peaceful means for adjusting rights of parties; Deter wrongful conduct; Encourage socially responsible behavior; Restore injured parties to original condition by compensation; vindicate individual rights of redress

**3 Burdens of proof:** Pleading, articulate case to court; production, evidence to prove; persuasion, preponderance of evidence

Intentional Torts, Burden: preponderance of evidence; Damages: Compensatory (special & general), Nominal, Punitive

**Elements of an Intentional Tort**

**Intent**

Mistake does not mitigate liability

Transferred Intent to F, A, TL, B, TCh

**Voluntary Action** – voluntary muscular movement

**Causation of Injury**

**Invasion of a Protected Interest (IPI)**

**False Imprisonment:** Unlawful Restraint/confinement, actual restraint not needed (state), contemporaneously aware of FI, OR injury

**Assault:** apprehension of harmful OR offensive contact

**Trespass to Land:** Invasion of the exclusive possession of land, no damages needed, airspace

**Battery**:intentional infliction of harmful OR offensive bodily contact, directly or indirectly(Fisher v. Carousel Motor)

**IIED:** intentionally OR recklessly causes, by outrageous conduct, severe emotional distress

**Proximities:** physical, relational, and temporal

**Trespass to Chattels:** interference with another’s chattel that causes damage or deprivation

Harmless intermeddling is NOT trespass

**Conversion:** exercise of dominion over another’s chattel where payment for the chattel would be proper damage.

##### Intentional Tort Defenses – Privileges (circumstances)

##### Consent – limited (*Mohr v. Williams*), Fraud (*De May v. Roberts*)

##### Express– no consent if mistake or misrepresentation

**Implied-in-fact** (inferred from P’s conduct or custom)

##### *O’Brien v. Cunard S.S. Co* or *Hackbart v. Cincinnati Bengals*

##### Consent, Implied-in-law or custom

##### P absent or unable to consent

Risk of Serious bodily harm if treatment is delayed

No reason to believe P would withhold consent

Reasonable person in P’s situation would consent

Self-defense: D reasonably believed P was about to inflict immediate harm & force was reasonably necessary to prevent harm

Can stand ground/use deadly force any place right to be

Cannot be retaliation; **force reasonable compared to threat**

Cannot provoke the attack; words alone not enough

**Defense of Others** (comparative force still required)

Majority: permitted if person protected is privileged to self-defend

Minority: permitted if reasonable to believe that person protected is privileged to self-defend

Minority allows reasonable mistake in order to defend

Defense of Property: Cannot use deadly force to protect property (OK in TX); No traps (*Katko v. Briney)*

Recovery of Chattels

Actual Dispossession, Fresh Pursuit, Must demand return, Must use Reasonable force

‘**Shop-Keepers Privilege’:** may detain suspected thief

Reasonable belief, within boundaries, demand return, proportionate action

**Necessity**

Public: protects D against punitive and compensatory damages (*Succo v. Geary*)

Can destroy property when action is in good faith and necessary to avert dangerous public disaster

Public official need only perceive imminent threat

Private: protects D against punitive damages only

reasonable mistake preserves privilege

**Authority of Law**

**Arrest by officer:**

Officer may arrest w/out warrant to prevent a felony or if peace is breached in his presence

Officer may arrest if he has reasonable grounds for thinking the person committed a felony

**Arrest by citizen** (use this when person intervenes in fight)

Citizen may arrest if felony, and reasonable grounds to believe person committed the felony

Discipline – Parent / teacher / military leader

**Justification** - catch-all for when another privilege won’t work

##### Negligence Torts, Burden: preponderance of evidence; Damages: compensatory (special & general)

**Elements of Negligence Tort**

**Duty to use reasonable care:** Matter of law, judge decides

Cardozo: owed foreseeable Ps & people in zone of danger

Andrews: owed to anyone injured as proximate result of D’s act

**Breach of the duty**

**Causation**

**Actual Loss or Damage**

Nominal / punitive damages NOT available for negligent torts

**Determining Duty / Standard of Care:** what would RPP do?

**Normal Adults**

Reasonable “custom and usage” = evidence of duty

D held to knowledge reasonable person would have had

**Children and Disabled Adults**

**Children** held to age, intelligence, maturity-matched standard unless engaged in inherently dangerous (“adult”) activity

Standard for **physically** **disabled** person is “reasonable person with the disability”, but standard for **mentally disabled** people is the same as for normal people

**Policy**: potential Ps can recognize / protect themselves against physically handicapped individuals, but can’t necessarily recognize a mental handicap. This makes the caretakers of the mentally ill be more cautious

**Professionals**

Standard of care is raised for experts/professionals to perform to the minimum abilities for one in good standing under the circumstances.

P needs **expert** **testimony** and affirmative evidence to establish duty of care unless obvious to a lay jury

**Locality rule**: professional held to standards in same/similar community; Some courts reject, recognize national standard

**Emergency situations** may change duty depending on what reasonable person would do in the emergency situation

Common carriers have increased duty of care

**Medical professionals** **must disclose information** to patients that a reasonable patient would want to know

Minority rule: physicians must disclose everything that this particular patient would want to know

Physicians do not need to disclose information:

The patient does or ought to know

That would be detrimental to the patient

In emergency situations

Conflicts of interest affecting medical judgment

No duty to protect against unforeseeable circumstances, but must take reasonable precautions against foreseeable risks

? of fact - P must prove D’s actions probably caused damages

? of foreseeability - P must prove D’s action likely caused damages

Duty that imposes extreme financial burden = unreasonable

**Hand Formula:** Duty exists when probability of injury times magnitude of injury is more than burden to prevent injury (P\*L>B 🡪 duty)

**Restatements §285 –** Standard of Conduct may be

(A) Established by legislative enactment or administrative regulation which provides a standard of care, and states deviation creates a cause of action

**(B)** Adopted by court from **criminal statute** (negligence per se)

Injury occurs of type the statute sought to prevent

To person protected by statute

**Satisfies Duty & Breach**

**Application options:**

Creates negligence per se (**majority** view)

Establishes a rebuttable presumption of negligence

Mere evidence only – still must show breach

Courts won’t import criminal standard if unreasonable

(C) Established by judicial decision (common law) Judge decides as a matter of law - Pokora v Wabash Ry. Co.

(D) RPP – giving facts to jury and letting them decide

##### Breach of the duty of care

##### Direct Evidence: witness, videotape, etc.

##### Constructive – should have been aware

##### Circumstantial evidence: everything else

**Res Ipsa Loquitor**: “the thing speaks for itself”

Thing causing injury was under D’s control

Event causing injury would not have occurred but for D’s negligence in ordinary course of events

Neither P nor third party contributed to the injury

Uses preponderance of evidence (<50%)

**Majority**: permissible **inference of negligence**

minority: **rebuttable presumption** of negligence that requires jury to find for P if D does not rebut evidence

minority: Creates **negligence per se** and shifts burden of proof to D to prove by preponderance that he did not cause injury

Example: *Ybarra v. Spangard* – medical personnel, shoulder pain

**Causation**

**Causation in Fact**

“**Sine Qua Non/ But For**” test: D’s action is cause in fact of P’s injury if, but for D’s action, P would not have been injured

Must be causal connection; co-existence is not sufficient

**Exception**: D’s activity increases chances that P will be harmed, D is liable

**Substantial factor test**: To be liable, each tortfeasor’s activity must substantially contribute to P’s injury

**Concurrent Causes**

Where multiple negligent acts combine to cause injury, all are actual causes and are jointly and severally liable

**Independent tortfeasors**: some courts shift burden to Ds to disprove that their negligence didn’t cause P’s injuries

**Market Share Liability**: if specific manufacturer (like DES) can’t be identified, some courts allow P to recover from all manufacturers according to their market share

Problem - blameless corporations may be liable because they cannot prove themselves not guilty

“**Enterprise Liability”:** industry’s practices create a risk of harm to P, all manufacturers are liable because the industry, by lobbying / creating stds, controls the risk

**Proof of causation in fact**

P has burden & must prove D probably caused the injury

D introduce evidence that other causes possibly caused injury

Can be multiple causes

**Proximate/Legal cause**: policy decision as to who should bear loss for unexpected injuries or for expected injuries caused in unexpected ways; Conduct is legal cause if harm was foreseeable result of conduct & harm was not brought about by extraordinary/unforeseeable sequence of events

**Arbitrary line drawing**

May be unfair, but creates useable rule for future litigation

Ex: cutting off liability at second generation in DES cases

**Direct causation**

D liable for direct effects of actions (no intervening causes); same as cause in fact

Insufficient rule because there is no definition of “direct”

**Foreseeability of causation (MAJORITY RULE)**

Would RPP foresee risk (Wagon Mound 2)

Class of persons injured must be foreseeable (Palsgraf)

**Majority** (Cardozo): duty is owed to foreseeable Ps and people in zone of danger – cuts off liability at DUTY

Minority (Andrews): D owes duty to the world at large to refrain from acts that unreasonably threaten harm – allows liability for any foreseeable injury, even if remote

**Balancing test for proximate cause**: was there a natural and continuous sequence between cause and effect; was cause a substantial factor of effect; was there a direct connection; was cause likely to produce result; could result be foreseen?

Type of injury must be foreseeable (followed by majority)

Extent of injury needn’t be foreseeable for personal injury

**Eggshell skull rule**: D must take the P as found

No such rule for property damage – court may / may not cut off liability

**No liability for remote dangers**

**Intervening Force**: something that comes into existence prior to the tortious act, liability is retained (unless superseding cause)

**Superseding Cause**: intervening force that is unforeseeable; removes liability

**Rescue Doctrine**: danger invites rescue. D liable if:

D negligent to person rescued

RPP would conclude peril or appearance of peril is imminent

Rescuer acted with reasonable care in effecting the rescue

**Alcohol Cases**: Host may be liable for injury caused by social guest’s drunk driving (if RPP wouldn’t have served alcohol, the host is liable)

**Damages: (**Nominal **(vindicate),** Compensatory **(make whole) [**Special **(easily quantified) and** General **(pain and suffering)],** Punitive **(to punish; intentional; reckless/willful)**

Hard/Special - Lost earning capacity / in present dollars (adjust for time & inflation) / Medical bills / Services must be necessary due to injury / Charge for services must be reasonable / Can recover for past and future medical bills

Soft/General - Pain / Anguish / No evidence needed (can be assumed) / Impairment / Quality of life / Disfigurement

**Judicial Control** – additur; remittitur

##### Apportionment of damages

##### P can only collect for damages proximately caused by D, cannot collect for apportionable subsequent aggravation

##### Comparative responsibility: portion of P’s fault vs. portion of D’s fault

##### Proportionate responsibility: how fault is distributed among Ds

**Collateral source rule** – D liable for total amount of injures, even if P has already been compensated by collateral source (insurance, donation, etc.)

**Duty to mitigate**

**Wrongful Death & Survival**

**Wrongful death** – survivor’s claim for losses they personally sustain due to loss of decedent

Beneficiaries limited to legal heirs of decedent

Can recover loss of support; funeral expenses

Every state has enacted wrongful death statute

**Survival** – damages decedent would have been entitled to had they lived; recovery goes to estate

Previously, tort action died w/decedent; now survives death

Can recover loss of earnings, medical expenses, loss of property that occurred as result of injuries suffered, lost chance, premature death

Uses comparative negligence

##### Joint and Several Liability – 2+ fail duty to P, indivisible harm, both responsible for full amount

##### Comparative Responsibility (similar to comparative negligence)

2+ fail duty to P

Fact-finder may decide portion of injury caused by each D

**J&S** better for P each D will be liable for entire amount

##### Satisfaction & Release – D pays full obligation to P

P is only permitted 1 satisfaction of judgment, but release operates as covenant not to sue, & P cannot recover for proportion of judgment attributable to released party’s acts

P reserves right to sue other joint tortfeasors

Mary Carter agreements (void in Texas) - D will promise to pay P low amount of money & will help P sue other Ds

**Contribution and Indemnity –** no contribution for intentional torts

**Contribution**: D held liable for his acts as well as acts of others; D can force reimbursement from other tortfeasors (cost sharing)

**Indemnity**: when one is held responsible for damages because of a relation to the actual wrongdoer (ex: employer/employee)

**Vicarious Liability**

**Respondeat Superior – look to person higher up**

Employer is held responsible for employee’s negligence if employee is working w/in job duties (furthers employers business purposes)

**Going and coming rule** – commute is not part of employment

**Slight deviation rule** – no liability if actions are so startling/unusual that it is unfair to include it as risk of employer’s enterprise

**Independent contractors** don’t fall in this category

**Joint Enterprise** (4 requirements)

Agreement among members (express or implied)

Common purpose

Community of monetary interest

Equal right to voice/control of partnership

**Both ways test** – if master vicariously liable to 3rd party due to agent’s negligence, he is barred from recovery b/c his agent’s negligence is imputed to him (also applies to joint enterprise)

##### Special Duty of Care Situations

##### Failure to Act

D owes no duty to go to aid of stranger in emergency OR help 3rd party in general

**EXCEPTION**: when D assumes duty to act; D has special relationship w/P (employer, host, carrier, jailor, teacher, invitee); D controls **instrumentality** causing injury to P

duty depends on public policy (and relationship btwn D/P)

Prevent harm to children; Doctors must prevent harm to people they have reason to believe will be harmed by their patients

##### Negligent Infliction of Emotional Distress

Old rule: no recovery without physical injury

Modern rule: where a definite & physical injury is produced as result of ED proximately caused by D’s negligence, P may recover for physical consequences even if no physical impact at time of mental shock

##### Unborn Children

Cannot recover for wrongful death of fetus b/c not legally alive

Parent’s claim: wrongful birth: can recover for extraordinary medical expenses (ex: negligent abortion; failed sterilization)

Child’s claim: wrongful life: can recover medical expenses in minority (ex: I never should have lived)

##### LAND - Owners and occupiers

Policy: person occupying land controls risk of injury on the land and In a position to know of dangers

Land conditions/ Duty to people **not on property**

**Natural:** conditions not created by owner; no duty except to prevent creating unreasonable risk of harm

**Artificial**: conditions created by landowner; no duty except to inspect and maintain structures and to protect users of adjacent public ways from harm

**Active Operations**: activities engaged in on one’s land that could foreseeably harm another; duty to avoid unreasonable risk of harm

LAND - On the premises

**Trespassers** (on land without permission)

Old rule: no duty to trespassers

**Modern rule**:

Undiscovered – duty for no willful/wanton injury

Discovered (duty to warn of known & hidden dangers or reasonable care)

Frequent trespass to limited area (duty to use reasonable care)

A tolerated intruder (akin to licensee - reasonable care)

trespasser is not tolerated merely because D didn’t prevent the trespass, based on assumption that a tolerated intruder = licensee

**attractive nuisance** – when landowner set before young children a temptation that he has reason to believe will lead them into danger, he must use ordinary care to protect them from harm (artificial nuisance)

**Licensees** (on land with permission – Social Guests / Emerg Svcs)

Duty to warn licensees of known artificial dangerous conditions

**Invitees** (on land to further owner’s purposes – Business Guests / Gen Public);Owner has duty to inspect for hidden dangers

Reasonable care duty to keep property safe

Some courts reject categories, use reasonable under circumstances

**Value** of life and limb does not depend on classification of inv / lic

**Firefighter’s rule** – emergency worker is a licensee

**Lessor and Lessee -** Lessor generally doesn’t owe lessee (or guests) any duty because lessee controls property; 6 exceptions to this rule:

Dangerous conditions RPP known to lessor, unknown to lessee

Conditions dangerous to those outside the premises

Premises leased for admission of the public

Parts of land in lessor’s control, lessee entitled to use

Where lessor contracts to repair

Negligence by lessor in making repairs

Affirmative Defenses

##### Contributory negligence (common law) – no longer used

##### If P at all negligent 🡪 total bar to recovery

##### Last clear chance: if P was negligent, but D had last clear chance to avoid the injury, P can recover

##### Comparative negligence – Ps damages reduced in proportion to % negligence attributed to P

**Pure**: P can recover % portion of the injuries caused by D

**Modified**:

50% cap: P can recover if he was 50% or less responsible (P’s negligence doesn’t exceed D’s)

49% cap: P can recover if he was 49% or less responsible (P’s negligence is less than D’s)

##### Assumption of Risk (common law)

Complete bar to recovery (partial bar in strict liability)

Types: subjective standard; NOT what P should have known

**Express**: usually in writing

Exculpatory clauses = void if contrary to public policy

**Implied**

Implied assumption when: 1) P knows of risk 2) appreciates level of risk & 3)voluntarily encounters risk

If actions are subjectively unreasonable then it acts as contributory negligence

Implied assumption of risk abolished in some states and treated as comparative negligence

##### Fellow servant (common law)

##### Employer not liable to employee for injuries caused by coworker

##### Statutes of Limitation

##### Old rule: clock runs from date on injury

##### New rule: clock starts when injury is or should be discovered

Protects against fraudulent concealment

##### Statute of Repose: absolute bar on suit even if fraudulently concealed

Runs from date of injury; Usually 10 years

##### Immunity – bars recovery based on D’s status, position or relationship to P, but doesn’t deny wrong has been committed

##### Interspousal

Common law: can’t sue spouse because wife is husband’s chattel, would undermine marital tranquility

Modern rule: interspousal immunity is dissolved

##### Parent-child – largely abolished or limited to negligence

##### Charitable

Common law: can’t sue a charity

Policy:

Donated funds shouldn’t be diverted from intended use

People who avail themselves of charitable services

Modern rule: no charitable immunity

Policy: charities are more like businesses today

##### Sovereign

Common law: government immune to tort suits

Modern rule: Federal Tort Claims Act

Government liable for negligence by employees & for intentional torts unless within discretionary act or strict liability tort (ex: no liability for active duty service)

Municipalities immune for governmental, but not **proprietary functions** (proprietary – could be done by private corp)

**Strict Liability:** abnormally dangerous activity OR animal to foreseeable Ps

**Animal** – consider what sort of animal and where the animal is

**Abnormally dangerous activity** – person who for his own purposes brings on his land and collect and keeps there anything likely to do mischief if it escapes must keep it as his own peril

**Factors to Consider:** (not about occasion, about activity)

**High degree of risk** of harm to person, land, chattels

Likelihood that resulting harm will be great

Inability to eliminate risk by exercise of due care

Extent to which activity is not a matter of common usage

Inappropriateness of location where activity is carried on

Extent to which value of activity to community outweighs risk

**Limitations to Strict Liability**

Abnormally sensitive character of P’s activity, not by type of risk inherent to activity

Liability can be reduced by P’s conduct when conduct is consistent with **assumption of risk** (but not simple cont. negl.)

Unforeseeable uses

Used Products – no liability to manufacturer (Peterson v. Lou . )

**Products Liability** manufacturer, seller, or distributor –one engaged in the business of selling or otherwise distributing products who sells or distributes a defective product is subject to liability for harm to persons or property caused by the defect (3rd)

**Manufacturing defect** – flaw not in general product line

The plaintiff must establish **4** essential elements to recover for defective manufacturing a strict liability claim (3rd). **First**, that the defendant was in the business of selling or distributing the product. **Second**, regardless of the exercise of due care the product was defective. **Third**, the product reached the ultimate consumer without substantial change in the condition it was in when sold. **Fourth**, that the defective condition in the product proximately caused injury to the plaintiff.

**Elements**: Defect, had control, no changes, Causation.

Food – foreign v natural; not what you would expect

3 ways to prove it was defective when it left manufacturer’s hands: 1) direct evidence (usually through expert testimony), 2) circumstantial evidence, and 3) eliminating other likely causes

intentional (breach of warranty), negligent, or strict liability

**Defective Design:** entire product line (Intentional or Negligent)

**Duty** to prevent harm from unreasonably dangerous products, **Breach** by negligently choosing a design that fails when foreseeable risk could have been reduced/avoided by adoption of a reasonable alternative design

**Consumer Expectations Test:** when product is unreasonably dangerous & beyond that which would be contemplated by ordinary consumer (considering common knowledge);

**Risk/Utility Test:** when product ordinarily works fine, but presents some undue risks in other situations, **balance:**

Consider factors at time product was manufactured (3rd)

1. Usefulness/desirability of product
2. Safety aspects of product
3. **\*Availability of feasible substitute/alternative product**
4. Ability to make safer w/out diminishing utility
5. User’s ability to avoid injury when using product
6. User’s anticipated awareness of product dangers
7. Feasibility of spreading cost of additional safety to insurance

Jurisdictions use either or both tests

**Inadequate Warning:** applies when foreseeable risks could have been reduced/avoided by reasonable instructions/warnings – negligence or intentional – not strict liability

Learned intermediary

Open and Obvious

Hypersensitivity/Allergy

**Post-Sale Duty to Warn:** factors to consider w/ this doctrine:

Obviousness of risk, no duty to warn for open/obvious danger

Burden on manufacture to locate those at risk (duty to place warnings on product and not just in instruction manual)

Likelihood of harm, seriousness of harm

**Express Warranty** – probably strict (contract claim)

D made statement about product which is not true

The statement formed part of the basis of the bargain

Ps were part of class to whom statement was addressed

This would include remote buyers, users, or even passerby if the statement was addressed to the public at large

**Implied Warranty of Merchantability/fitness particular purpose**

**Damages** - Negligence/strict liability – must be physical impact/injury; if only emotional, zone of danger applies to negligence and strict liability; property damage under all three; intangible economic harm (lost profits) – negligence if identifiable class, implied warranty if direct purchaser

**Nuisance**

**Private** (3 elements)

Substantial interference w/ P’s use and enjoyment of land

Negligent, intentional, or abnormally dangerous act

P must be entitled to use and enjoyment of land

Liability will depend on weighing extent of harm, burden to D to correct it, social value of land invaded, suitability of locality

Unintentional act = nuisance if factors above weigh in high

**Public**

Typically a government action, private person may bring public nuisance suit if they show nuisance is especially injurious and they suffer a harm different from harm to public generally

Private P needn’t have interest in land if above criteria met

**Defamation:** damage to reputation

Statements are presumed to be false; **truth = aff. defense**

Single people from **groups** and **deceased** can’t plead defamation

Unless group is small/ individual was singled out (mud will stick)

**Standard**: “right thinking people” **or** non-antisocial group

**Opinions = actionable**, if they imply existence of underlying facts

**Pleading Defamation** (if meaning clear on face, only plead 1st 2)

Must show defamatory **words**

**Publication**: must be heard/seen by 3rd party that can understand

**Inducement**: extrinsic facts which are reasonably understood to convey defamatory meaning

**Colloquium**: words were spoken of an concerning P

**Innuendo**: the meaning alleged to have been communicated

**Libel and Slander**

Special damages – financial interest harmed

**Libel** – written; more serious than slander

Damages presumed: don’t have to prove special damages

Broadcast treated as libel, whether script or not

**Slander** – spoken

Damages not presumed; P must prove special damages

**Slander per se**: damages like libel

Imputations of major crime

Loathsome disease

Business, trade profession, or office

Serious sexual misconduct

**Defamation Privileges/Immunities**

**Consent**

**Truth –** for media D & public concern may not apply

**Retraction**

**Absolute Defamation Privileges**

**Executive:** high ranking executive branch members enjoy absolute privilege, lower ranking members a qualified privilege

**Judicial:** judges, attorneys, parties, witnesses all have absolute privilege if statements are sufficiently “related to the case”

**Legislative:** anything said on the floor of the legislative body, in hearings, or by aides and witnesses to legislators is privileged

Mailings to constituents, campaign speeches not privileged

**Qualified Defamation Privileges** – can be revoked by malice/abuse

Justified if you are doing something that you believe to be in best interest of other individual

**Fair comment** – publisher allowed to offer criticism on matters of public concern including activities of public officials/figures

Qualified defamation privileges may be lost in the event of:

Excessive publication (too much info or to too many people)

Malice (relaying info to no one’s legit interest, knowingly false)

**New York Times Privilege** – protects media from liability for publishing false statements about public figures, as long as there is no **Actual Malice.**

**NY Times malice** – actual knowledge that statement is false OR w/reckless disregard of whether it is true/false

**NY Times** protects the media when it publishes matters of public interest or concern about a public figure or official as long as the publisher doesn’t act with actual malice (knowledge of falsity or a reckless disregard for the truth

**Public official** = someone who holds public office

**Public figure** = someone in the spotlight; limited and general

**Public official/figure & public issue** – NY Times malice applies

Limited– voluntary thrust required; if no thrust, treated private

General– no thrust required

**Public officlal/figure & private issue** – at least negligence

**Private person & public issue** – Negligence or Intentional, punitive damages only if Times malice

**Private person & private issue** – punitive even if no Times malice

To recover in defamation action against news media D over matters of public interest, the public figure P must prove **NY Times malice**

In defamation case with private figure P against news media D over matters of public interest, the state may choose any standard **other than strict liability**

**Private parties, private matters, common law applies**

**Privacy:** Intentional/negligent act by D which causes serious/unreasonable invasion of P’s privacy and damages.

**Four Types of Privacy Actions**

**Misappropriation of likeness/Name**

Must be used for D’s own purpose/benefit (commercial/otherwise)

Right to privacy (dignitary) - Extinguishes at Death

Right to publicity (monetary) - Remains for 50 years

**Right from intrusion** (into protected sphere of privacy);

Intent

Reasonable Expectation of Privacy

Absolute expectation of privacy not necessary

Highly offensive to RPP

**Public disclosure of private facts –** Not widely recognized

Publication w/intent

Private Facts

Offensiveness

Absence of a Legitimate Public Concern

**False light** (very close to defamation; not recognized in TX)

**Exception:** right to publish materials of public record