

# THE LAW OF TORTS

## Unit 2

**IF YOU WERE THE VICTIM, HOW WOULD YOU WANT THAT PERSON TO BE PUNISHED IF ANY FORM OF JAIL OR PRISON WAS NOT AN OPTION.**

Someone broke into your car and took your cell phone, your new jacket, and your backpack (with whatever might have been in there).

Someone stole your identity, opened a credit card and bought a bunch of stuff under your name. Now you're broke and your credit rating sucks, and debt collectors are calling your house.

# THE RIGHTS OF THE PEOPLE

- be free from bodily harm
- enjoy a good reputation
- conduct business without interference
- have one's property free from damage or trespass

**TORT** – one person's interference with another's rights through

- Intent
- Negligence
- Strict Liability

**Tortfeasor** – a person who commits a tort

# INTENTIONAL TORTS (1)

NICE FAT CD

# INTENTIONAL TORTS (2)

## ● Nuisance--

interferes with the  
enjoyment of life or  
property

➤ Loud noises, odors

# INTENTIONAL TORTS (3)

## ● **Invasion of Privacy** – allows people to be left alone

- > Cannot use someone's photo without their permission
- > Medical/financial records must be kept private
- > Federal Privacy Act of 1974 – protects people from the federal govt.

# INTENTIONAL TORTS (4)

- **Conversion** –  
unauthorized taking  
or borrowing of  
personal property of  
another for the use  
of the taker



# INTENTIONAL TORTS (5)

● **Emotional Distress** –  
intentionally or recklessly  
causing emotional or  
mental suffering to others

# INTENTIONAL TORTS (6)

- **False Imprisonment** – Unlawful restraint of a person whether in prison or otherwise
- **Assault & Battery** -- threat of force & unlawful touching

# INTENTIONAL TORTS (7)

● **Trespass** – injury to or interference with another's property

- Personal property
- Real property

# INTENTIONAL TORTS (8)

- **Contract Interference** – intentionally causing one person not to enter or to break a contract with another.

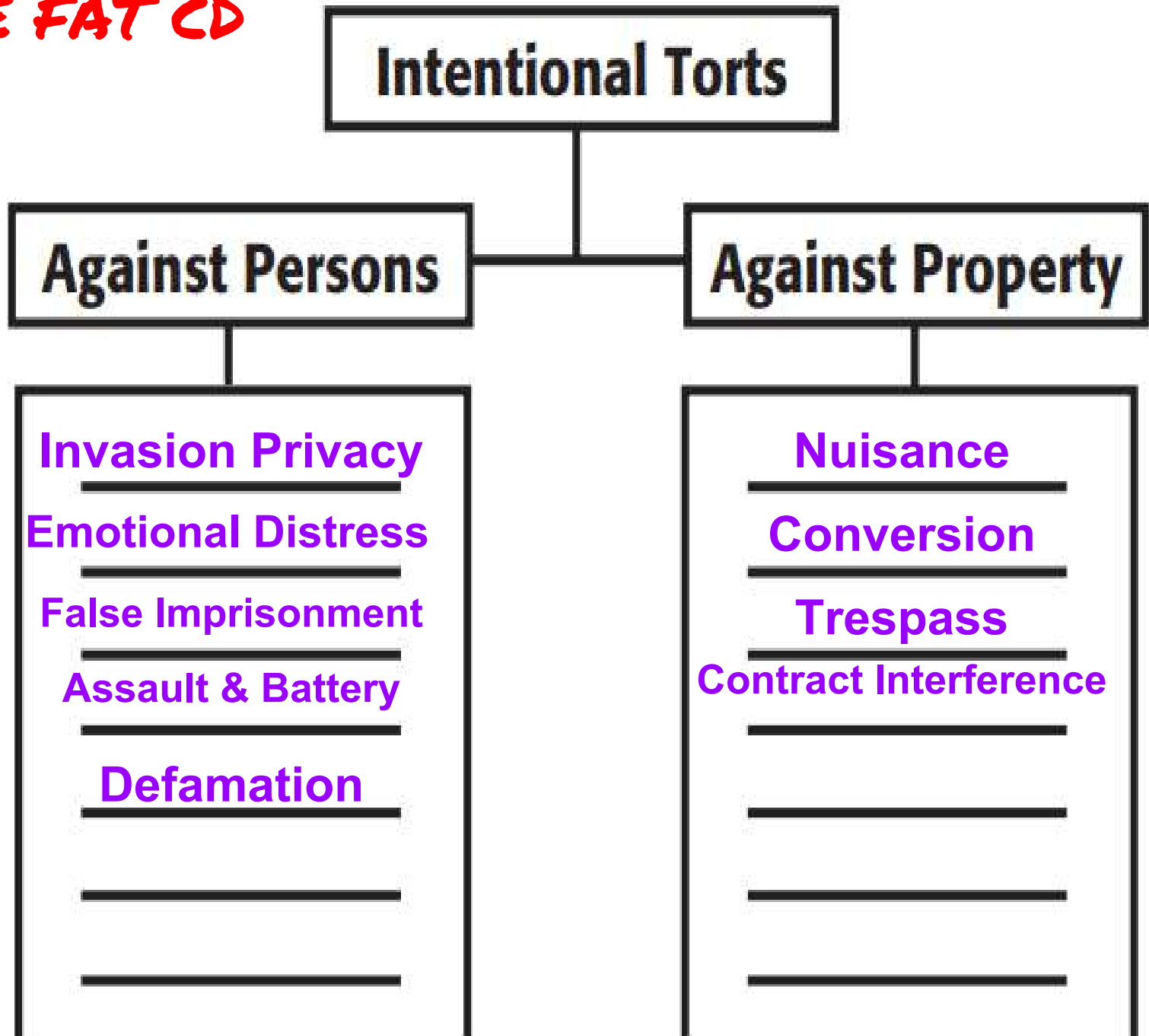
# INTENTIONAL TORTS (9)

● **Defamation** – injuring another's reputation by make false statements

- > **Slander** – false statement made orally
  - Must be communicated to a third party
- > **Libel** – written, radio, TV, video, movies, signs



**NICE FAT CD**



● Jake decided to play a practical joke on Jessica. As Jessica prepared to sit down, Jake pulled the chair out from under her. Jessica fell to the hardwood floor and fractured her hip. Jake says he committed neither assault or battery. Is Jake correct on either account? Why or Why not.

**Jake did not commit assault,  
but he did commit battery**

- A photographer took a photo of Maria without permission while Maria was sunbathing by the pool in her own backyard. Maria later discovered that the photo had been used in an advertisement for sunscreen. What tort, if any has been committed?

**Invasion of Privacy**



● Steve asked to borrow Alexis Ipod to go to the gym. He enjoyed it so much he decided to keep it. Steve has refused to return the Ipod he borrowed. What tort if any has been committed?

Conversion

- An elderly woman was beaten and robbed by an unknown person. Emily told several people that Max Maxwell was guilty of the crime. This was a false statement. Has Emily committed a tort for which Max can recover damages?

Slander

Can you be sued if  
you hurt someone  
by accident?

# NEGLIGENCE

## ACCIDENTAL TORT



Take it  
reasonably!

# 4 ELEMENTS OF NEGLIGENCE<sup>(1)</sup>

- ① Defendant owed plaintiff a duty of care
- ② Breach of Duty
- ③ Proximate Cause
- ④ Actual harm

# ELEMENTS OF NEGLIGENCE<sub>(4)</sub>

## ⦿ Proximate Cause

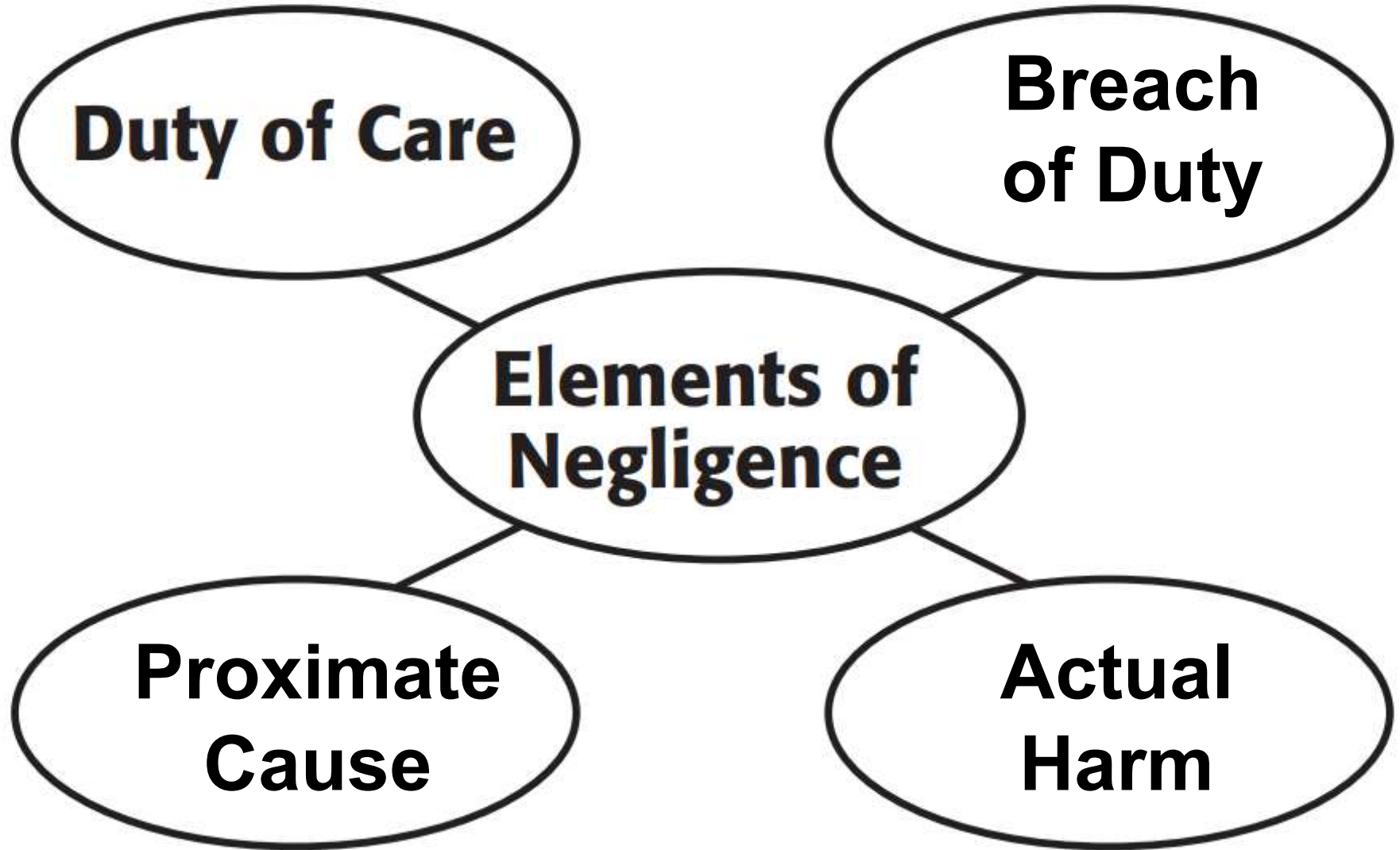
- Something that produces a result

- ⦿ Could the result (injury) have been foreseeable based on the defendant's actions?

# ELEMENTS OF NEGLIGENCE<sup>(5)</sup>

## ● Actual harm

- > Physical injuries
- > Property damage
- > Financial loss





# DEFENSES TO NEGLIGENCE <sup>(1)</sup>

Eliminate one of the four elements or prove:

- Contributory Negligence
- Comparative Negligence
- Assumption of Risk

# DEFENSES TO NEGLIGENCE (2)

## ● Contributory Negligence

- > Plaintiff's actions contributed to the injuries
- > Not used often because it's unfair to plaintiffs who were only slightly negligent

# DEFENSES TO NEGLIGENCE <sup>(3)</sup>

## ● Comparative Negligence

- > Compares the negligence of the plaintiff and the defendant
- > If the plaintiff is more than 50% at fault, they will receive no award
- > Used most often today

# DEFENSES TO NEGLIGENCE (4)

## ● Assumption of Risk

- > The plaintiff knew the risks involved and accepted the risks
  - Skydiving, deep sea diving

Who is liable if you  
are injured by a  
faulty product?

# STRICT LIABILITY

- **When an activity is so dangerous, the party involved is held “strictly liable.”**
  - > Keeping wild animals
  - > Using explosives
  - > Storing and transporting highly flammable liquids in densely populated areas
- **Manufacturers of products are also held to strict liability.**
  - > Defective strollers
  - > Tainted food

● Phil keeps a poisonous snake in his locker. He was very careful to keep it locked up so that it would not harm anyone. One day, while Phil was in class, two students got the snake out of the locker and let it loose in the girls gym. Stephanie got bitten. Is Phil legally responsible for injuries? Explain

**Yes, the doctrine of strict liability**

If the injured party in  
a lawsuit dies, what  
happens to the  
lawsuit?



# SURVIVAL AND WRONGFUL DEATH STATUTES

- Allows a lawsuit to be brought even though the rightful plaintiff and defendant are deceased.
- The lawful representative of the estate of the deceased handles the suit
- **Wrongful death** – bring a suit if negligence or intentional tort caused the death
- Only brought by spouses, children or parents

# REMEDIES FOR TORTS

- Money Damages
- Injunctions – a court order issued by a judge ordering a person to do or not to do something

As a joke, Annette removes the bullets from her father's revolver takes the gun outside, and points it at the head of her neighbor, Mrs. Joiner, who is just leaving her house. Mrs. Joiner, who unknown to Annette suffers from serious heart disease has a stroke and dies instantly.

What tort has been committed?

**Assault**

Kathleen, 17, is in a record store. As she passes a rack of CDs, she quickly slips one under her jacket. Thinking that no one has noticed she turns to leave the store. The store manager, however was watching her on closed-circuit TV. As soon as she passes the cash register, he stops her, before she leaves the store. The manager calls the police and keeps Kathleen in his office until they come.

What tort has been committed?

None

The defendant's dog known to have a propensity to bite, bit the plaintiff after the defendant's servant mischievously let the dog loose.

What tort has been committed?

**Strict Liability**

Baxter purchased an automobile from Ford that they claimed was equipped with a windshield that was shatterproof. Baxter was later injured when the windshield shattered.

What tort has been committed?

**Strict Liability**

Mary Murray sued Wal-Mart, claiming she was unreasonably detained by the store's employees who suspected her of shoplifting. The plaintiff claims profane and racially derogatory comments were directed to her by the manager in front of her daughter, grandchildren and general public. As a result of the humiliation, she acquired a nervous condition

What tort has been committed?

**Emotional Distress**

Seth and Ferman argue over who should have won a basketball game. Ferman insults Seth's favorite team, the Buckets. He calls its players lazy, worthless, and lucky. Seth is outraged. He has been a Bucket fan for years. Losing all control, Seth punches Ferman in the mouth. Ferman suffers two broken teeth, three chipped teeth, and a badly cut lip that requires 10 stitches. His dental bill totaled \$2,000 and he missed five days of work as a result of his injury. He also requires use of pain medication for a week and is extremely uncomfortable. Seth needs 4 stitches in his hand.

What tort has been committed?

# Assault & Battery



Wells left his golf club lying on the ground in the backyard. While playing in the yard, Well's son swung the club hitting and injuring Lubitz.

What tort has been committed?

None

Sandy, 17, throws a snowball at a friend on a crowded street corner. The snowball missed the friend but hits an elderly man who falls to the ground and is injured.

What tort has been committed?

**Battery**

# CYBERLAW

# The Electronic Communications Privacy Act (ECPA) – 1986

- Sets out provisions for: Access, use, disclosure, interception and privacy protections of electronic communication
- Prevents government entities from requiring disclosure of electronic communications from a provider without proper procedure

# Types of Transmission (1)

- LISTSERV – a means of allowing distribution of comments about particular subjects of interest to a group of people
- Chat Room – online forum enables individuals to communicate in real time

# Types of Communication (2)

- Personal Email – The ECPA makes it unlawful for someone other than the intended recipient to read or disclose the contents of a private email; this does not apply in work situations

# Exceptions

- If the sender is attempting to damage the system or harm another user
- If the sender or recipient consents to the inspection or disclosure; many ISP's (internet service provider )require this upon signing up
- If the email system is owned by an employer
- If the ISP is required in response to a court order
- If asked for under the USA Patriot Act

# Online Tracking & Monitoring

- Cookies – small text files that a server can store on the user's computer to track the user's web viewing habits
- Web Bugs – graphics on a Web page or in an email designed to monitor who is reading the page or message
  - > Many times they are invisible
  - > Placed by third-parties interested in collecting data



# Web Bugs (2)

## ● Information gained from a web bug:

- > The IP address of the computer that fetched the bug
- > The URL of the page that the web bug is located on
- > The time the Web bug was viewed
- > The type of browser that fetched the Web bug

# Workplace Monitoring

- Employers can use computer software that allows them to see what is on the screen or stored in the employee's computer terminal or hard disk
- Employers can monitor Internet usage including web-surfing and emails
- Keystroke monitoring – how many keystrokes per hour the employee is doing
- Employers can monitor idle time

# Law Enforcement Access

- Carnivore Program – Computer system that the FBI has installed onto ISP's servers, in order to read and analyze packets of data sent to or received by suspects in criminal investigation.

# Secure Transactions

- Encryption – process of converting readable data into unreadable characters to prevent unauthorized access.
- Online banking – use of the Internet to pay bills, transfer money and access banking and credit card accounts.

# SPAM & Spoofing

- SPAM – unsolicited and unwanted commercial emails
- Spoofing – the disguising of an email to make it appear as if were sent from a different address than it was.



# Internet Security

- Firewalls – a program or hardware device to secure the computer system from unauthorized access.
- Commercial Security Systems
  - > Password protection
  - > Biometrics (authenticate users by characteristics ex – face, voice, iris, retina, fingerprint)
  - > Cryptography – coding or scrambling data into different format

# BINGO

## VOCABULARY WORDS

Plaintiff	Assault	Actual Harm
Defendant	Slander	Money Damages
Intentional Tort	Proximate Cause	Trespass
Conversion	False Imprisonment	Tortfeasor
Libel	Accidental	Defamation
Comparative Negligence	Emotional Distress	Wrongful Death
Invasion of Privacy	Battery	Nuisance
Strict Liability	Assumption of Risk	Duty of Care
Injunction		