Unit 5 – Torts

I. Definition

A tort is a private or personal wrong that has been imposed upon one person by another as a result of an invasion of a legal right or a breach of a legal duty and for which a court will grant monetary damages. A tort does not include the breach of a contractual duty. The wrong can be intentional, unintentional, or, in some cases, without any fault at all by the “wrongdoer.”

II. Intentional Torts

An intentional tort is a voluntary act where the wrongdoer intended to bring about a specific consequence or where he knows, or should know, that the consequences will occur. When the court finds that a tort was committed intentionally, it will grant not only monetary damages to make right the injury suffered by the plaintiff but may also award punitive (exemplary) damages (compensation in excess of actual damages) to the plaintiff in order to punish the wrongdoer. Some examples of intentional torts are trespass (wrongful interference with the person, property, or rights of another), battery (unwanted touching of another), false imprisonment (illegal confinement), intentional infliction of emotional distress (acts or words intended to shock), defamation (libel or slander) and invasion of privacy (placing a person in a false light, using a person’s name, or publicizing a private life). Some torts are also crimes, and the wrongdoer will be subject to criminal prosecution, which is not for the purpose of compensating the injured party, but rather for punishing the wrongdoer. A tort would be a crime if the wrong was such unacceptable conduct that it interfered with the interest of the public (not just the interest of a private party).

III. Negligence

The tort of negligence is based on four elements: (1) the defendant owed a duty of reasonable care to the plaintiff; (2) the defendant breached this duty by failing to do what a reasonable and careful person would do under similar circumstances; (3) the breach of duty was the proximate cause of plaintiff’s injury (proximate cause is that which directly caused the specific injury and without which the injury would not have happened); and (4) there was damage to the person or the property of the plaintiff.

Negligence can be defined as a failure to do something that a reasonable person would do under similar circumstances. It can also be the doing of some act that a reasonable person would not have done under the same circumstances. This law is based on society’s expectation that everyone will exercise due care in his conduct toward others if it can be foreseen that the conduct might result in an injury. Negligence results from carelessness, thoughtlessness, or inadvertence, rather than from willfulness.

If a plaintiff can prove the four necessary elements to establish a claim of negligence, under common law, the defendant may be able to offer a defense that will
prevent a recovery of damages by the plaintiff. One such defense is called “contributory
negligence.” Society also expects a person to exercise due care for the safety of his own
self or property. Therefore, if a plaintiff is negligent in caring for himself in preventing
the injury, then he cannot recover any damages from the defendant even though the
defendant was also negligent. A second defense to negligence under the common law is
called “assumption of the risk.” This can be raised when the plaintiff voluntarily assumes
a known risk. Instead of a “reasonable person” standard, the judge or jury considers the
specific facts and circumstances before denying a recovery of damages to the plaintiff. A
modification of the contributory negligence defense is called the doctrine of “last clear
chance.” If the defendant had the last chance to avoid the injury but failed to do so, then
the contributory negligence of the plaintiff will not prevent the plaintiff’s recovery for
damages. This result happens because the plaintiff’s negligence was not the proximate
cause of the injury (a necessary element for this tort).

Because of the harshness of a complete bar to recovery by the plaintiff under the
defense of contributory negligence, many states now have statutes that allow some
recovery under the theory of comparative negligence (or comparative fault). The judge
or jury compares the negligence of the plaintiff with that of the defendant and divides the
damage award between the two parties proportionately.

As in most civil actions, the plaintiff must prove by a preponderance of the
evidence that all four elements are present for a negligence claim. This is called the
“burden of proof.” A preponderance of the evidence means that the jury believes that it
is more probable than not that the evidence is true. One way to establish this burden of
proof is the use of circumstantial evidence to prove the defendant’s negligence when
there is no actual proof available. This theory is called res ipsa loquitur (“the thing
speaks for itself”). In order to use this method of proof, the plaintiff must show that: (1)
the injury would not ordinarily occur without negligence by someone, (2) the defendant
had complete control over the thing that caused the injury and is the only one that knows
the facts as they happened, and (3) the plaintiff was not at fault in any way. Under this
rule, the court presumes the defendant’s negligence and the burden of proof is shifted to
the defendant to show otherwise.

IV. Strict Liability

As discussed above, there usually must be a finding of fault to establish an
intentional tort or negligence. An exception to this is the concept of “strict liability.”
Under this exception, a person who engages in an “ultrahazardous activity” or an
“abnormally dangerous activity” is liable for all injuries proximately caused by his
activity, even if he took the most care possible to prevent such injuries (no proximate
cause requirement). Therefore, this is liability without fault. An activity is considered to
be ultrahazardous or abnormally dangerous if it involves a high degree of serious harm,
the risk cannot be eliminated even with reasonable precautions, and the activity is
inappropriate to the place where it is conducted.
V. Insurance

In addition to reducing the risk of tort liability by exercising reasonable care in his activities, a person can also protect himself and his assets from the financial burdens of tort liability with insurance. A liability policy can cover a wide range of potential hazards. If a farmer gets a “comprehensive liability policy,” he will be covered for payments for personal and property injuries to third parties to whom the farmer is liable and also for medical payments to injured persons regardless of the farmer’s tort liability. Even though the comprehensive liability policy may cover an extensive array of injuries, it will not cover all circumstances. A general exception to coverage is for injuries that result from intentional torts or from crimes committed by the insured farmer. There are, however, exceptions; newspapers can obtain coverage for defamation claims. Also, the insurance company will only pay damages that are the legal obligation of the insured (e.g., one resulting from a court judgment) but will not pay those obligations that are only moral ones (one which the plaintiff wants to compensated for but is not a legal obligation of the defendant). An important aspect of insurance is the obligation of the insurance company to defend the insured. This aspect of most policies requires the insurance company to provide an attorney at no cost to the insured and pay other associated costs of litigation. This is an often overlooked reason for obtaining insurance coverage.

Insurance policies should be reviewed carefully before they are purchased to insure sufficient coverage for the farmer’s individual situation. After purchase, they should also be reviewed periodically to make sure that the amounts and types of coverage continue to be appropriate. Oral statements of an insurance agent do not generally bind the insurance company; the written policy controls.

VI. Liability in Pesticide Application

Injuries from pesticide sprays may result to persons or property outside of the targeted spray area. In these circumstances, the farmer who sprays, or hires someone else to spray for him, may be held liable for damages under several different theories. If spraying is considered an ultrahazardous activity, the sprayer (and/or the one who hires the sprayer) may be held strictly liable for resulting damages. (If the pesticide application is done by an independent contractor the landowner will generally have no liability unless a court finds that the spraying was an extraordinarily dangerous activity. If spraying is not considered inherently dangerous, the grounds for liability may be negligence. Alternatively, another grounds for liability could be trespass or nuisance. Additionally most states impose some form of regulatory liability.

VII. Duty to Protect Those Entering Agricultural Land

In order for a farmer to be held liable for an injury to another who is on his land, there must be some proof of negligence on the part of the farmer. The status of the injured person is a factor in defining the duty owed by the farmer to that person. There are three categories of persons entering agricultural (and other) land: trespasser, licensee, and invitee.
If the party coming onto the land is a trespasser (one who enters and remains without permission), the duty of reasonable care owed by the landowner is slight. However, the landowner may not maliciously injure a trespasser, he may not use more force than necessary to evict the trespasser from the premises after he has been asked to leave, and he may not use deadly force under any circumstances. A landowner must also allow the use of his land by one whose use is necessary to prevent bodily injury or death. Such a person is not a trespasser but may be required to pay for any actual damages to the property. A landowner who refuses one who needs to use the land out of necessity may be found both criminally and civilly liable.

There is a higher duty owed to a licensee (one who enters the land with permission for his own purpose or business rather than for the landowner’s or tenant’s benefit). An example of a licensee is a social guest. Here, the landowner has the additional duty to warn the licensee of dangerous conditions or dangerous animals on the premises. If the licensee is a hunter, the landowner may also have a duty to warn him of other hunters already on the property. In its 1998 decision in Nelson v. Freeland the N.C. Supreme Court eliminated the category of licensee and held that all licensees would be treated as invitees. It left the trespasser category unaltered.

The highest level of duty is owed to an invitee (one who is on the land with permission for the benefit of the landowner or tenant). Examples of invitees are a repairman or a hunter who shares his game with the landowner. In the case of an invitee, the landowner has the additional duty to make the premises safe or to warn of any conditions that cannot be made safe.

There is a special theory of liability in the case of young trespassers called the “attractive nuisance” rule. A landowner may be liable for injuries to children in cases where he would not be liable to adults under the same circumstances. This theory holds that children do not have the same experience or judgment as adults and that they may be strongly attracted to explore certain things, such as farm ponds, animals, or farm machinery. The only fault necessary to find the landowner liable is a failure to foresee, as a reasonably prudent person would, the likelihood that children would be attracted onto the premises.