Table of Contents

CHAPTER 1. TORT LAW AND LITIGATION IN GENERAL

§ 1:1 Introduction and scope of this treatise
§ 1:2 Definition of a tort "claim"
§ 1:3 The Georgia Code's important role in Georgia tort law
§ 1:4 Sources of statutory claims and statutory or common law duties
§ 1:5 Purposes of tort law
§ 1:6 Choice of law and conflict of laws
§ 1:7 Application and effect of federal law
§ 1:8 Preemption of local law by state law
§ 1:9 Overview of the 2005 tort reform act
§ 1:10 Overview of the 2025 tort reform act
§ 1:11 Ethical issues in tort litigation; relationship to standard of care in legal malpractice claims
§ 1:12 Professionalism in tort litigation

CHAPTER 2. ORDINARY NEGLIGENCE CAUSING PHYSICAL HARM

§ 2:1 Ordinary negligence in general
§ 2:2 The general rule: no duty to act
§ 2:3 Duty of care—Can arise from statute, contract, or common law
§ 2:4 —Arising from engaging in an affirmative act
§ 2:5 —From a voluntary undertaking
§ 2:6 —From a gratuitous promise
§ 2:7 —To prevent a third person from causing physical harm due to special relationship or control over the third person
§ 2:8 —Parents to control adult child
§ 2:9 —Arising from supplying a chattel with reason to know its foreseeable use will cause physical harm
§ 2:10 —Negligent misrepresentation causing physical harm
§ 2:11 —Common carriers to passengers and innkeepers to guests
§ 2:12 —Arising from contract
§ 2:13 — —Third party beneficiaries
§ 2:14 —Owners or occupiers of land
§ 2:15 Breach of duty
§ 2:16 —Failure to exercise ordinary diligence or care

§ 2:17 —Persons with diminished capacity, impaired persons, or children
§ 2:18 —Extraordinary diligence or slight negligence
§ 2:19 —Gross negligence or slight diligence
§ 2:20 —Willful and wanton misconduct
§ 2:21 —The business judgment rule
§ 2:22 —*Res ipsa loquitur*
§ 2:23 —Negligence *per se*
§ 2:24 —Voluntary undertakings under Restatement § 324A
§ 2:25 Causation—Elements
§ 2:26 —Cause-in-fact
§ 2:27 —General principles of proximate cause
§ 2:28 —Proximate cause—Intervening proximate cause
§ 2:29 — —Concurrent proximate cause
§ 2:30 — —Third party criminal activity
§ 2:31 Damages—Generally negligence requires injury to plaintiff's person or damage to plaintiff's property
§ 2:32 —Exceptions to impact rule
§ 2:33 —Economic loss rule
§ 2:34 — —Exceptions
§ 2:35 —Limitations on recovery of medical expenses for claims arising on or after April 21, 2025
§ 2:36 Additional negligence-based claims

CHAPTER 3. PRODUCTS LIABILITY AND RELATED DOCTRINES

§ 3:1 Introduction and scope
§ 3:2 Manufacturer liability for harm to natural persons caused by new, defective personal property
§ 3:3 Did the defendant manufacture and sell new personal property to the ultimate consumer?
§ 3:4 Breach of duty—Existence of a "defect"
§ 3:5 —Design defect
§ 3:6 —Manufacturing defect
§ 3:7 —Duty to warn based on information known to the manufacturer at the time of sale or based on later-acquired information
§ 3:8 Breach of warranty
§ 3:9 —Express warranty
§ 3:10 —Implied warranty
§ 3:11 Causation requires cause-in-fact and proximate cause
§ 3:12 Statutes of limitations and repose
§ 3:13 Other defenses and limitations on defenses
§ 3:14 Limited liability of sellers for physical harm or

property damage caused by products manufactured by others
§ 3:15 Liability of sellers of unwholesome food or provisions
§ 3:16 Liability of sellers of adulterated drugs or liquor
§ 3:17 Liability of manufacturers or distributors of certain drugs
§ 3:18 Liability of sellers under the Drug Dealer Liability Act
§ 3:19 Liability of distributors of blood and human body parts

CHAPTER 4. STRICT LIABILITY AND RELATED DOCTRINES

§ 4:1 In general
§ 4:2 Injuries or damage caused by explosives or blasting
§ 4:3 Heightened liability for personal injuries caused by wild animals
§ 4:4 Greater liability for injuries caused by vicious or dangerous animals other than domesticated livestock
§ 4:5 Damages caused by roaming livestock
§ 4:6 Innkeeper liability for injury to guests or guests' property
§ 4:7 Carrier liability for injury to their customers or customers' property
§ 4:8 Statutory strict liability

CHAPTER 5. PREMISES LIABILITY AND RELATED DOCTRINES

§ 5:1 Introduction
§ 5:2 Duty arises from "ownership," "possession," or "occupation" of "premises" or "approaches"
§ 5:3 Duty of out-of-possession landlords
§ 5:4 Determining the standard of care requires determining the "relationship" between owner/occupier and plaintiff at time of injury or the plaintiff's "status"
§ 5:5 Duty of care to invitees—Generally
§ 5:6 —Prong one—Defect, condition, or hazard, but not active negligence
§ 5:7 — —Defendant's actual or constructive knowledge of defect or condition and failure to correct or warn
§ 5:8 —Prong two—Actual and constructive knowledge of the plaintiff
§ 5:9 — —The superior knowledge rule
§ 5:10 Liability to invitees—Causation
§ 5:11 —Injury and the impact rule
§ 5:12 Standard of care owed to licensees

§ 5:13 Standard of care owed to trespassers—Generally
§ 5:14 —Attractive nuisances
§ 5:15 Standard of care owed to volunteers
§ 5:16 Standard of care owed to emergency personnel, social guests, and minors
§ 5:17 Standard of care owed to invitees on recreational property
§ 5:18 Premises liability of employers to employees
§ 5:19 Liability of premises owners for harm to or caused by independent contractors
§ 5:20 Liability of premises owners for injuries caused by third party criminal conduct—Claims arising before April 21, 2025
§ 5:21 —Claims arising on or after April 21, 2025
§ 5:22 Defenses to premises liability
§ 5:23 Qualified immunity for damage caused by prescribed burns

CHAPTER 6. WRONGFUL DEATH AND RELATED CLAIMS

§ 6:1 A plaintiff's tort claims do not abate on the plaintiff's death
§ 6:2 The requirement of proof of all elements of a claim and that defendant caused the plaintiff's "death"
§ 6:3 Survival claims distinguished from wrongful death claims
§ 6:4 Wrongful death claims—Background
§ 6:5 —Exclusion as plaintiffs of those who commit intentional homicide
§ 6:6 —Who may bring wrongful death claim
§ 6:7 —Measure of damages
§ 6:8 —Limitations on damages for healthcare expenses
§ 6:9 Participation in recoveries for wrongful death
§ 6:10 The estate's claims
§ 6:11 Defenses to wrongful death and related claims

CHAPTER 7. INTENTIONAL TORTS REQUIRING BODILY INJURY OR MENTAL DISTRESS

§ 7:1 Background
§ 7:2 Requirement of intent; impact rule
§ 7:3 Battery
§ 7:4 Assault
§ 7:5 Intentional infliction of emotional distress

§ 7:6 Sexual harassment

CHAPTER 8. INJURY TO A FAMILY MEMBER OR TO A FAMILY RELATIONSHIP

§ 8:1 Injuries to a minor
§ 8:2 Parents' claim against a person who furnishes alcohol to their minor child
§ 8:3 Harm to plaintiff's marital relationship

CHAPTER 9. CLAIMS FOR HARM CAUSED BY UNLAWFUL DETENTION OR ABUSE OF CRIMINAL OR CIVIL PROCEEDINGS

§ 9:1 Distinctions between false imprisonment, malicious arrest, malicious prosecution, and liability for procurement
§ 9:2 False imprisonment
§ 9:3 Procuring false imprisonment
§ 9:4 Malicious or false arrest and malicious prosecution
§ 9:5 Abusive civil litigation
§ 9:6 Wrongful injunction as a form of abusive litigation
§ 9:7 Spoliation of evidence: sanction, not a tort claim

CHAPTER 10. INJURY TO REPUTATION OR PRIVACY: DEFAMATION, INVASION OF PRIVACY, AND RELATED CLAIMS

§ 10:1 Introduction
§ 10:2 Defamation—First Amendment concerns: necessity to prove malice or mere negligence
§ 10:3 —Fault of malice or negligence
§ 10:4 —Publication of defamatory statement about plaintiff to a third party
§ 10:5 —Truth and opinions
§ 10:6 —*Per se* vs. *per quod*
§ 10:7 —*Per se*
§ 10:8 —*Per quod*
§ 10:9 —Absolute and qualified privileges
§ 10:10 —Justification, limitations, the Anti-SLAPP Statute, and other defenses
§ 10:11 —Media defendants
§ 10:12 —Liability of others in addition to an actual publisher
§ 10:13 —Damages, punitive damages, and injunctive relief
§ 10:14 Violation of liberty interest of government employee

§ 10:15 Invasion of privacy—Four distinct claims
§ 10:16 —Damages and remedies
§ 10:17 —Defenses
§ 10:18 Statutory protections for privacy
§ 10:19 Disparaging goods, services, or business of another

CHAPTER 11. HARM TO ECONOMIC INTERESTS; FRAUD; MISREPRESENTATION; INTERFERENCE; FIDUCIARY DUTY

§ 11:1 Fraud—Generally
§ 11:2 —Material representation of present fact
§ 11:3 —Omission of material fact
§ 11:4 —Knowledge of falsity or reckless disregard for truth
§ 11:5 —Justified and actual reliance
§ 11:6 —By surprise
§ 11:7 —Economic damages required for actual fraud
§ 11:8 Fraudulent inducement to enter a contract
§ 11:9 Fraudulent transfer of property
§ 11:10 Fair Business Practices Act
§ 11:11 Negligent misrepresentation that causes pecuniary loss
§ 11:12 Tortious interference with contracts or business relations
§ 11:13 Interference with existing or prospective business relations
§ 11:14 Tortious interference with burial rights
§ 11:15 Misappropriation of trade secrets or ideas
§ 11:16 Wrongful discharge or termination
§ 11:17 Breach of fiduciary duty or confidential relationship
§ 11:18 Wrongful dishonor
§ 11:19 Tortious termination of utility service
§ 11:20 Negligent disclosure of personally identifiable information: identity theft

CHAPTER 12. PROFESSIONAL MALPRACTICE

§ 12:1 Introduction
§ 12:2 Professional malpractice—When expert affidavit is required for filing
§ 12:3 —Expert competency; additional requirements in medical malpractice cases
§ 12:4 —Expert affidavits required to be filed with the complaint in certain state court cases

§ 12:5 Medical malpractice—Generally
§ 12:6 —Duty
§ 12:7 —Breach
§ 12:8 — —Emergency medical care
§ 12:9 — —Georgia COVID-19 Pandemic Business Safety Act
§ 12:10 —Cause-in-fact and proximate cause
§ 12:11 —Damages
§ 12:12 —Liability of hospitals, clinics, and related entities
§ 12:13 —Defenses and related issues
§ 12:14 Legal malpractice—Generally
§ 12:15 —Duty
§ 12:16 —Breach
§ 12:17 —Cause-in-fact and proximate cause
§ 12:18 —Damages
§ 12:19 —Liability for acts of nonlawyer personnel
§ 12:20 —Defenses

CHAPTER 13. HARM TO, OR INTERFERENCE WITH RIGHTS IN, PERSONAL PROPERTY

§ 13:1 Background and the meaning of "personal property"
§ 13:2 Trespass to personal property
§ 13:3 Theft of personal property, conversion, and trover
§ 13:4 Bailments
§ 13:5 —Rights and duties of bailor
§ 13:6 —Rights and duties of bailee
§ 13:7 —Liability to third parties
§ 13:8 Wrongful repossession
§ 13:9 Computer theft, misuse, and data torts

CHAPTER 14. HARM TO, OR INTERFERENCE WITH RIGHTS IN, REAL PROPERTY

§ 14:1 Historical background
§ 14:2 Trespass to real property
§ 14:3 Nuisance—Definitions; public compared to private
§ 14:4 —Elements of private nuisance claim
§ 14:5 —Distinguished from similar claims
§ 14:6 —Enjoining nuisances or anticipatory nuisances
§ 14:7 —Transfer of real property and liability for existing or continuing nuisances
§ 14:8 —Acquisition by prescription; bar of statute of limitations

§ 14:9 State governmental liability for trespass or nuisance
§ 14:10 Defamation of title or slander of title
§ 14:11 Wrongful foreclosure and wrongful attempted foreclosure

CHAPTER 15. VICARIOUS LIABILITY AND RELATED CLAIMS AND DOCTRINES

§ 15:1 Introduction
§ 15:2 Vicarious liability distinguished from liability for negligent hiring, retention, or supervision and negligent entrustment
§ 15:3 Principal-agent relationship in general
§ 15:4 Agency distinguished from other legal relationships
§ 15:5 Vicarious liability in the principal-agent context
§ 15:6 Vicarious liability arising from shared control of an agent
§ 15:7 No vicarious liability on a "special master" for harm caused by a "borrowed servant"
§ 15:8 No vicarious liability for harm caused by an "independent contractor"
§ 15:9 Exceptions: principal liability for torts of independent contractor
§ 15:10 No vicarious liability for harm caused by a fellow employee
§ 15:11 Negligence claims against a principal for harm caused by negligent hiring, retention, or supervision of its agent
§ 15:12 Negligence claims for permitting another to use a dangerous instrumentality
§ 15:13 Negligence claims for permitting an incompetent person to drive a vehicle or use another dangerous chattel: negligent entrustment
§ 15:14 Liability for civil conspiracy
§ 15:15 Liability for Georgia RICO conspiracy
§ 15:16 Liability for malicious procurement, including aiding and abetting breach of fiduciary duty
§ 15:17 Agent's liability to principal
§ 15:18 Liability of agent to third parties
§ 15:19 Agent's liability for torts of underservant
§ 15:20 Employer's liability to employee: workers' compensation as exclusive remedy; exceptions
§ 15:21 Liability of independent contractors
§ 15:22 Authority of agent; nondelegable duties
§ 15:23 Principal's ratification of agent's conduct
§ 15:24 Notice to agent as notice to principal

§ 15:25 Partnerships—Defined
§ 15:26 —Liability of partners to third parties
§ 15:27 —Liability of partners to other partners
§ 15:28 Joint ventures or joint enterprises
§ 15:29 Limited partnerships
§ 15:30 Limited liability partnerships
§ 15:31 Unincorporated associations
§ 15:32 Professional corporations
§ 15:33 Liability of corporate constituents, related corporations, and successor corporations for harm caused by the tort of a corporation
§ 15:34 Liability for pre-incorporation transactions
§ 15:35 Liability for providing alcoholic beverages to a tortfeasor; dram shop liability
§ 15:36 Liability of an owner of a vehicle for vehicular injuries
§ 15:37 Liability of a vehicle's passenger for damages caused by the driver: guest passengers
§ 15:38 Liability of a family member for torts of another family member
§ 15:39 Liability of a family member for torts of a family member—The family purpose doctrine

CHAPTER 16. IMMUNITY FROM TORT CLAIMS

§ 16:1 Background and general considerations
§ 16:2 Infant immunity
§ 16:3 Interspousal limited immunity
§ 16:4 Limited intra-family and parental immunity
§ 16:5 Sovereign immunity and governmental employee official immunity against claims for damages
§ 16:6 Waiver of sovereign immunity against claims for damages caused by specific acts or conduct
§ 16:7 County sovereign immunity and qualified immunity of county employees against claims for damages
§ 16:8 Municipal immunity and employee qualified immunity against claims for damages
§ 16:9 Limited immunity in health care emergencies
§ 16:10 School district immunity and school district employee qualified immunity against claims for damages
§ 16:11 Waiver of sovereign immunity regarding claims for declaratory and injunctive relief
§ 16:12 Limited immunity for certain officers of nonprofits against liability
§ 16:13 Limited immunity of health care providers for possessing low-THC oil against claims for damages

§ 16:14 Limited immunity of broadcasters of Amber Alerts against claims for damages
§ 16:15 Immunity of firearms instructors against claims for damages
§ 16:16 Limited immunity of employers or property owners for transportation, use, or possession of firearms against claims for damages
§ 16:17 Immunity from crimes committed by persons under pre-trial release against claims for damages
§ 16:18 Limited immunity for boat liveries from certain tort liability
§ 16:19 Limited immunity for certain mental health care providers
§ 16:20 Other forms of codified, limited tort immunity

CHAPTER 17. DEFENSES TO INTENTIONAL TORTS

§ 17:1 Introduction
§ 17:2 Justification or authorization
§ 17:3 The right to repossess as a defense to conversion or trespass
§ 17:4 Consent and withdrawal of consent
§ 17:5 Lack of intent including by reason of insanity or incompetency

CHAPTER 18. DEFENSES AND DOCTRINES TO ELIMINATE, REDUCE, OR APPORTION DAMAGES

§ 18:1 Introduction
§ 18:2 Statutes of limitations
§ 18:3 —Identifying the applicable statute of limitations for each claim and determining when each claim "accrues"
§ 18:4 —Accrual, the discovery rule, continuing torts, and computation of time
§ 18:5 —Application to other pleadings; relation back of amendments
§ 18:6 —Tolling
§ 18:7 Ante litem notice for certain claims against governmental entities
§ 18:8 Statutes of repose
§ 18:9 Insufficient service of process
§ 18:10 —Diligence in perfecting service
§ 18:11 Assumption of risk

§ 18:12 —Elements
§ 18:13 —Applicability
§ 18:14 —Injuries from space flight participation
§ 18:15 Joint and several liability and apportionment of fault
§ 18:16 Contributory negligence and assumption of the risk distinguished from modified comparative fault
§ 18:17 Modified comparative fault
§ 18:18 Last clear chance
§ 18:19 Avoidance of consequences of defendant's negligence
§ 18:20 Sudden emergency
§ 18:21 Legal accident
§ 18:22 Act of God
§ 18:23 Contractual exculpatory provisions
§ 18:24 Exculpatory provisions in contracts—Lease provisions
§ 18:25 Settlement agreements
§ 18:26 Lack of standing due to invalid assignment of certain tort claims
§ 18:27 Judicial estoppel
§ 18:28 Indemnity—Definition and general concepts
§ 18:29 —Contracts indemnifying for one's own negligence
§ 18:30 Failure to mitigate damages
§ 18:31 Workers' compensation as exclusive remedy
§ 18:32 Qualified immunity for certain persons engaged in equine, livestock, or llama activities
§ 18:33 Death of the defendant

CHAPTER 19. REMEDIES

§ 19:1 Introduction
§ 19:2 General and special damages defined
§ 19:3 Awards of general damages for distress, discomfort, or pain and suffering and their review
§ 19:4 Awards of special damages and their review
§ 19:5 One satisfaction or recovery for each compensable harm
§ 19:6 Attorney's fees
§ 19:7 Unjust enrichment as a remedy, not a tort
§ 19:8 Injunctions

Table of Laws and Rules

Table of Cases

Index