

Table of Contents

CHAPTER 1. INTRODUCTION

- § 1:1 Introduction—What is tort law?
- § 1:2 Evolution of American tort law
- § 1:3 Foundations of Virginia tort law
- § 1:4 Procedural steps in initiating and defending a Virginia tort action
- § 1:5 —State tort actions
- § 1:6 — —The pleadings
- § 1:7 — —Discovery
- § 1:8 — —Pre-trial challenges
- § 1:9 — —Trial
- § 1:10 — —Appeals
- § 1:11 —Federal tort actions
- § 1:12 Tort law practice and contemporary concerns
- § 1:13 The restatements of the law of torts: A brief overview

CHAPTER 2. INTENTIONAL TORTS

I. GENERALLY

- § 2:1 Introduction
- § 2:2 The intent or “substantial certainty” requirement
- § 2:3 The doctrine of transferred intent
- § 2:4 The mistake doctrine
- § 2:5 Infancy
- § 2:6 Insanity

II. TYPES OF INTENTIONAL TORTS

- § 2:7 The definition of battery
- § 2:8 The distinction between tort law assault and battery
- § 2:9 Battery in general
- § 2:10 Assault
- § 2:11 False imprisonment and false arrest
- § 2:12 Malicious prosecution
- § 2:13 Abuse of Process
- § 2:14 Trespass to chattel and conversion
- § 2:15 Trespass to land
- § 2:16 Intentional infliction of emotional distress
- § 2:17 Statutory Torts of Racial Harassment and Stalking

III. DEFENSES TO INTENTIONAL TORTS

- § 2:18 Express and implied consent

- § 2:19 Self-defense
- § 2:20 Defense of others
- § 2:21 Defense and recovery of property
- § 2:22 Public and private necessity—Generally
- § 2:23 Public necessity
- § 2:24 Private necessity
- § 2:25 Legal process
- § 2:26 Discipline
- § 2:27 Justification
- § 2:28 Ecclesiastical dispute defense available to clergy
- § 2:29 Sovereign immunity and government agents

CHAPTER 3. NEGLIGENCE IN GENERAL

- § 3:1 Introduction
- § 3:2 Duty and breach of duty—Generally
- § 3:3 —The objective reasonable person standard of care
- § 3:4 —The standard of care for minors
- § 3:5 —The standard of care for physically disabled persons
- § 3:6 —Mentally disabled persons
- § 3:7 —The reasonable professional standard of care
- § 3:8 —Sudden emergency doctrine
- § 3:9 —Unavoidable accidents
- § 3:10 —Duty to act—Special relationships
- § 3:11 Breach of fiduciary duty
- § 3:12 Duty and breach of duty—Negligent hiring, retention, supervision and entrustment
- § 3:13 —Negligent infliction of emotional distress
- § 3:14 —Unborn children
- § 3:15 —Degrees of negligence
- § 3:16 —Statutory violations and negligence per se
- § 3:17 Legal causation—Introduction
- § 3:18 Causation in fact—“But for” causation
- § 3:19 —Concurrent causation—The substantial factor rule
- § 3:20 —Shifting the burden of proof in unique cause-in-fact cases—Generally
- § 3:21 — —*Summers v. Tice*: the alternative liability theory
- § 3:22 — —Market share and enterprise liability theories
- § 3:23 Proximate causation—Introduction
- § 3:24 —Foreseeability of the plaintiff and rescuers—The foreseeable plaintiff
- § 3:25 — —The foreseeable rescuer
- § 3:26 —Foreseeability of harm in a direct causal chain of events
- § 3:27 —Foreseeable and unforeseeable intervening causes—Generally

TABLE OF CONTENTS

§ 3:28	— — Intervening negligent acts
§ 3:29	— — Intervening intentional or criminal acts
§ 3:30	— — Intervening acts of God or natural events
§ 3:31	— The extent of harm
§ 3:32	Actual and proximate causation—Functions of the court and jury
§ 3:33	Damages—Introduction
§ 3:34	— Compensatory damages
§ 3:35	— Punitive damages
§ 3:36	— Collateral source rule
§ 3:37	— Plaintiff's duty to mitigate damages
§ 3:38	— Liability insurance issues
§ 3:39	Proof of negligence—Introduction
§ 3:40	— Direct evidence
§ 3:41	— Circumstantial evidence
§ 3:42	— Res ipsa loquitur
§ 3:43	— Habit, custom, and practice
§ 3:44	— Witness and expert witness testimony
§ 3:45	Defenses to negligence—Introduction
§ 3:46	— Contributory negligence—Generally
§ 3:47	— Contributory negligence in Virginia
§ 3:48	— Contributory negligence—When contributory negligence will not apply
§ 3:49	— Comparative negligence—Generally
§ 3:50	— — In Virginia
§ 3:51	— Assumption of risk—Introduction
§ 3:52	— — Express assumption of risk—Pre-injury release forms
§ 3:53	— — Implied assumption of risk
§ 3:54	— Statutes of limitation and repose
§ 3:55	— Immunities—Generally
§ 3:56	— — Charitable immunity
§ 3:57	— — Intrafamily tort immunity—Interspousal tort immunity and liability
§ 3:58	— — — Parent and child tort immunity
§ 3:59	— — Governmental (or sovereign) immunity—Generally
§ 3:60	— — — Liability under the Federal Tort Claims Act
§ 3:61	— — — Liability under the Virginia Tort Claims Act
§ 3:62	— — Immunity and liability of Virginia counties and cities
§ 3:63	— — Statutory waiver of liability of localities and school boards for acts of bus drivers resulting in accident
§ 3:64	— — Statutory immunity for private individuals

- § 3:65 —Illegality
- § 3:66 Vicarious liability and imputed negligence—
Introduction
- § 3:67 —Scope of employment issues
- § 3:68 —Independent contractors
- § 3:69 —Apparent authority
- § 3:70 —Other bases for vicarious liability
- § 3:71 —Imputed contributory negligence

CHAPTER 4. MOTOR VEHICLE ACCIDENTS

- § 4:1 Introduction
- § 4:2 Duty of care—Generally
- § 4:3 —Owed by motorist
- § 4:4 —Degree of standard of care
- § 4:5 —Reasonable person standard
- § 4:6 —Intoxicated drivers
- § 4:7 —Mentally and physically impaired drivers
- § 4:8 —Owed by common carrier
- § 4:9 —Owed by owner
- § 4:10 —Pedestrians
- § 4:11 Breach of care—Generally
- § 4:12 —Res ipsa loquitur
- § 4:13 —Negligence per se
- § 4:14 Causation—Cause in fact, “but for”
- § 4:15 —Proximate cause
- § 4:16 —Intervening and superseding causes
- § 4:17 —Concurrent cause
- § 4:18 Damages—Generally
- § 4:19 —Punitive damages
- § 4:20 —Guest statute
- § 4:21 Defenses—Generally
- § 4:22 —Contributory negligence
- § 4:23 —Failure to wear a seatbelt
- § 4:24 —Assumption of the risk
- § 4:25 —Last clear chance
- § 4:26 —Unavoidable accident and sudden emergency
- § 4:27 —Intra-family immunity
- § 4:28 —Statute of limitations
- § 4:29 Vicarious liability
- § 4:30 Liability—Imputed to owner
- § 4:31 —Family purpose doctrine
- § 4:32 —Owner consent
- § 4:33 —Negligent entrustment

TABLE OF CONTENTS

- § 4:34 —Guest passengers
- § 4:35 Automobile insurance—General overview
- § 4:36 —Uninsured/Underinsured motorist
- § 4:37 —Medical payment coverage

CHAPTER 5. MEDICAL MALPRACTICE

- § 5:1 Introduction
- § 5:2 The Medical Malpractice Act
- § 5:3 Standard of care
- § 5:4 Informed consent
- § 5:5 Types of causes of action—Infinite variety exists
- § 5:6 —Fetus injuries
- § 5:7 —Malpractice claims related to birth
- § 5:8 Types of causes of action—Technical battery
- § 5:9 Types of causes of action—Wrongful death
- § 5:10 Causation
- § 5:11 Damages—Under the Medical Malpractice Act
- § 5:12 —Contributory negligence
- § 5:13 Expert testimony
- § 5:14 Medical malpractice review panel
- § 5:15 Immunity—Sovereign immunity
- § 5:16 —Charitable immunity
- § 5:17 Statute of limitations

CHAPTER 6. PROFESSIONAL MALPRACTICE

- § 6:1 Professional malpractice in general
- § 6:2 Legal malpractice actions
- § 6:3 Vicarious liability issues

CHAPTER 7. PREMISES LIABILITY ACTIONS

- § 7:1 Introduction
- § 7:2 Trespassers—Adult trespassers
- § 7:3 —Trespassing children
- § 7:4 Licensees—In general
- § 7:5 —Duty of landowners under Virginia’s “recreational use” statute
- § 7:6 Invitees—In general
- § 7:7 —Slip-and-fall cases
- § 7:8 —Lessor and lessee issues
- § 7:9 —Public employees—Generally
- § 7:10 — —Firefighters, police officers, and emergency medical personnel

- § 7:11 —Acts of third persons or animals
- § 7:12 Duty owed to those outside the premises
- § 7:13 Causation and damages
- § 7:14 Abolition of status-based categories for premises liability actions

CHAPTER 8. NUISANCE

I. INTRODUCTION

- § 8:1 Background and history
- § 8:2 Distinguishing nuisance from trespass to land
- § 8:3 Preemption

II. PRIVATE NUISANCE

- § 8:4 Definition and general application
- § 8:5 Substantial and unreasonable interference required
- § 8:6 Factors considered in determining whether an activity is a nuisance
- § 8:7 Remedies

III. PUBLIC NUISANCE

- § 8:8 Definition and general application
- § 8:9 Remedies

CHAPTER 9. TORTIOUS INTERFERENCE

- § 9:1 Introduction
- § 9:2 Tortious interference with parental rights
- § 9:3 Tortious interference with contract
- § 9:4 Tortious interference with business relations
- § 9:5 Damages
- § 9:6 Defenses
- § 9:7 The Business Conspiracy Act
- § 9:8 Trade secrets

CHAPTER 10. FRAUD AND MISREPRESENTATION

I. INTRODUCTION

- § 10:1 Overview of tortious misrepresentation and fraud

II. FRAUDULENT MISREPRESENTATION

- § 10:2 General principles

TABLE OF CONTENTS

- § 10:3 Proving the necessary elements of fraud
- § 10:4 Remedies for fraudulent misrepresentation

III. CONSTRUCTIVE FRAUD

- § 10:5 General principles
- § 10:6 Remedies for constructive fraud

IV. FRAUD BY NONCONCEALMENT

- § 10:7 General principles

CHAPTER 11. EMOTIONAL DISTRESS

- § 11:1 Historical background
- § 11:2 Intentional infliction of emotional distress
- § 11:3 —Third-party recovery
- § 11:4 Negligent infliction of emotional distress
- § 11:5 —Examples of sufficient physical injury
- § 11:6 —Exceptions to physical injury requirement
- § 11:7 —Third-party recovery

CHAPTER 12. DEFAMATION

- § 12:1 Definitions and overview
- § 12:2 Parties to a defamation action
- § 12:3 Elements of defamation—Publication
- § 12:4 —False and defamatory statement
- § 12:5 —Intent
- § 12:6 Slander of title
- § 12:7 Virginia statutory action for insulting words
- § 12:8 Damages
- § 12:9 Justification and mitigation of damages
- § 12:10 Defenses—Truth
- § 12:11 —Privileged communications—Generally
- § 12:12 — —Absolute privilege
- § 12:13 — —Qualified privilege
- § 12:14 Immunity under Virginia’s Anti-SLAPP Law

CHAPTER 13. INVASION OF THE RIGHT TO PRIVACY

- § 13:1 Introduction
- § 13:2 Unauthorized use of a name or picture of any person
- § 13:3 The Virginia “Peeping and Spying” statute
- § 13:4 The Virginia stalking statute
- § 13:5 The Virginia computer invasion of privacy statute

- § 13:6 The Virginia Government Data Collection and
Dissemination Practices Act
- § 13:7 The Virginia Freedom of Information Act

CHAPTER 14. STRICT LIABILITY ACTIONS BASED UPON ABNORMALLY DANGEROUS ANIMALS AND ACTIVITIES

- § 14:1 Introduction
- § 14:2 Strict liability for animals—Trespassing animals
- § 14:3 —Abnormally dangerous domestic animals
- § 14:4 —Wild animals
- § 14:5 Strict liability for abnormally dangerous activities—
Generally
- § 14:6 —Abnormally dangerous activities on land: *Rylands*
v. Fletcher
- § 14:7 —Strict liability for explosives and high energy
activities
- § 14:8 —For poisons and other toxic materials
- § 14:9 Causation requirements for strict liability actions
- § 14:10 Defenses to strict liability actions

CHAPTER 15. PRODUCTS LIABILITY

- § 15:1 Introduction
- § 15:2 Causes of action—Generally
- § 15:3 —Negligence—Generally
- § 15:4 — —Negligent design
- § 15:5 — —Negligent manufacture
- § 15:6 — —Negligent failure to warn
- § 15:7 —Breach of warranty—Generally
- § 15:8 — —Express warranty
- § 15:9 — —Breach of implied warranty—Generally
- § 15:10 — — —Implied warranty of merchantability
- § 15:11 — — —Implied warranty of fitness for a particular
purpose
- § 15:12 —Strict liability
- § 15:13 —Breach of statutory duties
- § 15:14 —Fraud
- § 15:15 Causation—Generally
- § 15:16 —Proximate cause
- § 15:17 —Intervening and superseding cause
- § 15:18 Defenses—Statute of limitations
- § 15:19 —Product Misuse
- § 15:20 —Product Alteration
- § 15:21 —Contributory negligence

TABLE OF CONTENTS

§ 15:22	—Assumption of the risk
§ 15:23	—Open and obvious danger
§ 15:24	—Knowledgeable user
§ 15:25	—Learned intermediary rule
§ 15:26	—Lack of notice
§ 15:27	—Disclaimers of liability and limitations on damages
§ 15:28	—Manufacture pursuant to plans and specifications
§ 15:29	—Government contractor defense
§ 15:30	—Federal preemption of state law claims
§ 15:31	Parties
§ 15:32	Evidence—Industry customs and standards
§ 15:33	—State of the art
§ 15:34	—Statutes and regulations
§ 15:35	—Res ipsa loquitur
§ 15:36	—Subsequent repair or modification
§ 15:37	—Other accidents
§ 15:38	—Recalls
§ 15:39	—Tests and accident reconstruction
§ 15:40	Expert testimony—Generally
§ 15:41	—State court
§ 15:42	—Federal court
§ 15:43	Damages—Personal injury
§ 15:44	—Property damage
§ 15:45	—Economic loss
§ 15:46	—Punitive damages

CHAPTER 16. MULTIPLE TORTFEASORS

§ 16:1	Introduction
§ 16:2	Joint tortfeasors—Apportionment
§ 16:3	—Joint and several liability
§ 16:4	—Vicarious liability
§ 16:5	—Settlement by one tortfeasor
§ 16:6	Contribution—Generally
§ 16:7	—Effect of settlement by one tortfeasor
§ 16:8	Indemnity—Express Contractual
§ 16:9	Entitled Indemnity—Common law
§ 16:10	Indemnity—Implied contractual
§ 16:11	—Implied—Vicarious liability
§ 16:12	—Equitable—Active v. passive tortfeasors
§ 16:13	Practice and procedure for asserting contribution and indemnity claims
§ 16:14	Statute of limitations
§ 16:15	Indemnity, contribution, and settlement under the <i>Restatement Third of Torts: Apportionment of Liability</i>

CHAPTER 17. WRONGFUL DEATH ACTIONS

- § 17:1 Introduction
- § 17:2 The Virginia Wrongful Death Act
- § 17:3 Alternate state wrongful death legislation—Virginia survival statutes
 - § 17:4 —The Virginia Workers’ Compensation Act
 - § 17:5 —The Virginia Railroad Employers’ Liability Act
 - § 17:6 —Liability for death or injury to a motor vehicle guest
- § 17:7 Related federal legislation—Introduction
 - § 17:8 —The Federal Tort Claims Act
 - § 17:9 —The Federal Employers’ Liability Act
 - § 17:10 —Federal and state maritime tort claims acts—Generally
 - § 17:11 — —The Jones Act
 - § 17:12 — —The Federal Death on the High Seas Act
 - § 17:13 — —The Longshore and Harbor Workers’ Compensation Act
 - § 17:14 — —Wrongful death actions and *Moragne v. States Marine Lines*
 - § 17:15 —The Federal Civil Rights Act
 - § 17:16 —The Federal Employees’ Compensation Act
 - § 17:17 —The Federal Social Security Act
- § 17:18 Conduct creating a wrongful death cause of action—Wrongful acts generally
 - § 17:19 —Intentional torts and gross negligence
 - § 17:20 —Negligence
 - § 17:21 —The problem of proximate cause
 - § 17:22 —Strict liability actions
 - § 17:23 —Breach of contract and breach of warranty actions
 - § 17:24 —Maritime wrongful death actions
 - § 17:25 —Death of a viable unborn child and “wrongful birth” actions
 - § 17:26 —Effect of suicide
 - § 17:27 —Physical condition of the deceased prior to, or subsequent to, injury
- § 17:28 Parties to a wrongful death action—Decedent’s personal administrator—Rights and duties of decedent’s administrator
 - § 17:29 — —Foreign administrators
 - § 17:30 —Beneficiaries—Generally
 - § 17:31 — —Surviving spouse
 - § 17:32 — —Surviving children of a deceased parent
 - § 17:33 — —Persons dependent on the decedent

TABLE OF CONTENTS

§ 17:34	— —Parents, brothers, and sisters of the deceased
§ 17:35	— —Non-resident aliens
§ 17:36	— —Non-relatives and non-dependents
§ 17:37	—Defendants
§ 17:38	Defenses and other matters in bar—Introduction
§ 17:39	—Consent to a wrongful act
§ 17:40	—Self-defense
§ 17:41	—Defense of property and family
§ 17:42	—Contributory negligence of the deceased plaintiff
§ 17:43	—Contributory negligence of decedent's beneficiary
§ 17:44	—The sudden emergency doctrine
§ 17:45	—Comparative negligence
§ 17:46	—Assumption of risk
§ 17:47	—Governmental (or sovereign) immunity
§ 17:48	—Intrafamily tort immunity and liability
§ 17:49	—Good samaritan statutory immunity
§ 17:50	—Release, compromise, or settlement of the claim
§ 17:51	—Statute of limitations and repose
§ 17:52	—Defective pleadings or proof
§ 17:53	—Prior adjudication
§ 17:54	Damages—Generally
§ 17:55	—Compensatory damages
§ 17:56	—Punitive damages
§ 17:57	—Evidentiary matters related to damages
§ 17:58	—Other wrongful death damage references
§ 17:59	Choice of law issues

CHAPTER 18. WORKERS' COMPENSATION

§ 18:1	Introduction
§ 18:2	Scope of Worker's Compensation
§ 18:3	—Worker's compensation as exclusive remedy
§ 18:4	Actions against third parties/co-workers
§ 18:5	Determining applicability
§ 18:6	Employee v. borrowed servant and independent contractor
§ 18:7	Accidental injury arising out of and in the course of employment
§ 18:8	On the job injury, not during course of employment
§ 18:9	Frolic and detour
§ 18:10	Going to and coming from work
§ 18:11	—Dual purpose trip
§ 18:12	Benefits
§ 18:13	—Periodic benefits
§ 18:14	—Loss of earning capacity

- § 18:15 —Permanent partial impairment (for loss of, loss of use of, or disfigurement to the body)
- § 18:16 —Permanent total disability
- § 18:17 Practice and procedure under Virginia Worker's Compensation Act
- § 18:18 —Virginia Worker's Compensation Commission
- § 18:19 —Claims filing procedure
- § 18:20 —Statutes of Limitations
- § 18:21 —Burdens of proof
- § 18:22 —Discovery
- § 18:23 —Hearing processes
- § 18:24 —Appeal

CHAPTER 19. PLEADING AND PRACTICE FORMS

- § 19:1 Introduction

I. INTENTIONAL TORTS

- § 19:2 Sample pleadings for an assault and battery action
- § 19:3 Sexual battery pleading
- § 19:4 False imprisonment, defamation, and emotional distress—Retail store
- § 19:5 False arrest pleadings
- § 19:6 Intentional infliction of emotional distress complaint involving a minor plaintiff and a retail seller and repossession agent as defendants
- § 19:7 Trespass to land pleading—Requesting damages and an injunction
- § 19:8 Trespass to chattel or conversion—Wrongful taking

II. NEGLIGENCE ACTIONS

- § 19:9 Motor vehicle liability: general introduction and checklist
- § 19:10 Motor vehicle accident pleadings—Turn at intersection, failure to signal, speeding, and improper lookout
- § 19:11 Collision with commercial truck and minor on bicycle
- § 19:12 Sample wrongful death pleading—Involving a two-car collision
- § 19:13 Sample forms to qualify a decedent's administrator or administratrix in a Virginia wrongful death action
- § 19:14 Medical malpractice actions: general introduction and checklist
- § 19:15 Medical malpractice pleadings—General form

TABLE OF CONTENTS

- § 19:16 Wrongful death action against internist and radiologist for failure to detect cancer
- § 19:17 Professional malpractice: legal malpractice—General form
- § 19:18 Premises liability pleadings: general introduction
- § 19:19 Premises liability pleading—Slip and fall case in a grocery store
- § 19:20 —Complaint by prospective tenant against landlord for falling down an inadequately lighted stairway
- § 19:21 Nuisance—Complaint for equitable relief and compensatory damages for nuisance
- § 19:22 Complaint for the intentional interference with a business or contractual relationship
- § 19:23 Complaint for rescission of an agreement induced by fraud
- § 19:24 Mental distress complaint by homeowner against blasting operations
- § 19:25 Defamation: libel complaint against newspaper publisher
- § 19:26 Invasion of privacy complaint for the unauthorized use of plaintiff's name or picture
- § 19:27 Products liability actions: general introduction and checklist
- § 19:28 Complaint to recover damages for breach of implied warranties of merchantability and fitness of a defective product, and negligence
- § 19:29 Wrongful death pleadings based on a defective truck tire [federal diversity lawsuit]
- § 19:30 Workers' compensation forms

Table of Laws and Rules

Table of Cases

Index