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A tort is a civil wrong.

Torts are divided into two big classes: intentional and negligent. (Also note "strict liability")

Most - but not all - intentional torts involve behavior that is also a crime.

The same action may be both a crime and a tort. (Remember the rule: "either, neither, or both.")

Each intentional tort has different essential elements (just like a crime does).

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Exercise: Write it Down!

How many intentional torts can you think of? (If you don't know the legal terms, just describe the behavior or list the equivalent crime, if there is one.)

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Exercise: Write it Down!

Assault	Defamation (Libel & Slander)
Battery	Criminal Conversation
False Imprisonment	Alienation of Affection
Conversion	Abuse of Process
Trespass to Real Property	Malicious Prosecution
Trespass to Personal Property (aka Trespass to Chattel)	Wrongful Discharge
Fraud	Destruction of property
Unfair or deceptive trade practices	Intentional Infliction of Emotional Distress

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Let's Zoom In on Two

CONVERSION

The assumption and exercise of the right of ownership over plaintiff's property by the defendant without the plaintiff's permission to the exclusion of the plaintiff's own rightful ownership interest.

UNFAIR OR DECEPTIVE TRADE PRACTICES

A practice is unfair when it offends established public policy as well as when the practice is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers." *Marshall v. Miller*, 302 N.C. 539, 548, 276 S.E.2d 397, 403 (1981). Also, "[a] party is guilty of an unfair act or practice when it engages in conduct [that] amounts to an inequitable assertion of its power or position."



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Right to Repo, Gone Wrong

Eley v. Mid/East Acceptance,
171 N.C. App. 368 (2005).
(Hertford Co.)

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For your consideration . . .

DONA READS THE FACTS . . .

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Plaintiff's evidence tended to show the following. Plaintiff was the owner of a 1995 Ford F150 pick-up truck that she had purchased through a loan from defendant, using the truck as collateral. In the summer of 2002, plaintiff missed two consecutive payments on the loan, and defendant made repossession arrangements with Carolina Repossessions. At approximately 4:00 a.m. on 29 July 2002, employees of Carolina Repossessions, Roger Pinkham and his brother, arrived at plaintiff's residence and began to hitch plaintiff's pick-up truck to their tow truck. Plaintiff heard them and went outside to investigate. When she requested to see the paperwork related to the repossession, one of the men briefly showed it to her. Plaintiff explained to Pinkham that she was not contesting the repossession of the truck, but that she was concerned about the 130 watermelons in the truck bed. She had purchased and loaded them into the truck on the previous day and had planned to drive them to Maryland for re-sale. In addition to the watermelons, the truck also contained some other personal items belonging to plaintiff, including a coat, an ice chest, and some children's toys. Plaintiff asked Pinkham if she could unload her melons and other personal property before he towed the truck. Pinkham refused, telling her he was in a hurry because he had to get to his regular job. Pinkham also refused to allow plaintiff to deliver the truck herself later that morning after she had had time to unload the melons. Plaintiff called defendant's office at about 8:00 a.m. the same morning and spoke to defendant's employee, Joyce White. When plaintiff asked White if she could retrieve her watermelons out of the repossessed truck, White replied, "What truck?" Fearing that the melons would quickly spoil in the summer heat, plaintiff, on the same day, filed a complaint alleging conversion in the Herford County Small Claims Court. Defendant's evidence tended to show that on Wednesday, 31 July 2002, two days after the repossession, one of defendant's employees called plaintiff and asked her to bring her truck key to defendant's office, but plaintiff refused. White testified that it was not defendant's practice to allow public access to the lot where repossessed items were kept; rather, defendant usually sent an employee to the lot to gather up personal property left in repossessed vehicles and bring it to defendant's office for the owners to collect. White noted that plaintiff's load of watermelons created an unusual situation, and defendant had asked plaintiff to furnish her truck keys so that defendant could drive the truck to its office and allow plaintiff to unload it there. Defendant then mailed plaintiff a letter, stating, "The watermelons are rotting and the smell is polluting the storage lot. If something is not done with them by 12:00 p.m., Friday, August 2, 2002, we will have to hire someone to dispose of them for us and the fee will be charged to your account." Although the post office attempted to deliver this letter to plaintiff, she never received it, and it was later returned to defendant's office. On Thursday, 1 August 2002, the day after defendant mailed the letter, defendant called plaintiff again and asked her to come retrieve her watermelons from the repossessed truck because they were spoiling and creating a mess. Plaintiff informed defendant that since the melons were rotten, she no longer wanted them.

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Small group assignments

Assume that plaintiff sues both Carolina Repossessions & Mid-East for both torts.

Groups 1 & 3: Discuss liability of each defendant for conversion. What information, if any, is missing? If you're not absolutely certain of your decision, identify specifically the "soft spots" – what's concerning you or making you unsure? Remember that you should separately analyze (1) whether this evidence makes out a prima facie case, and (2) whether the facts raise a potential defense.

Groups 2 & 4: Same assignment, but for UTP.

Group 5: Focus on the evidence in this case. Which parts of the testimony are relevant – and particularly significant? Which parts are irrelevant? Is there evidence that might be "more prejudicial than probative" the judge should look out for?

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Unfair or deceptive practice

A practice is unfair when it offends established public policy as well as when the practice is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers." *Marshall v. Miller*, 302 N.C. 539, 548, 276 S.E.2d 337, 403 (1981). Also, " [a] party is guilty of an unfair act or practice when it engages in conduct [that] amounts to an inequitable assertion of its power or position."

The trial court found and evidence supports that (1) two men appeared at the female plaintiff's house at 4:05 a.m. with a tow truck and hauled away her truck without giving plaintiff a reasonable time to unload her 130 watermelons; (2) following the repossession, when plaintiff contacted defendant to inquire as to the location of her truck so she could retrieve her watermelons, defendant denied knowledge of the truck; (3) defendant was unresponsive to plaintiff's inquiries about her watermelons; (4) defendant only offered to give plaintiff access to the truck—by requesting her truck key—after the watermelons were already rotting and of no value; and (5) defendant has never compensated, nor offered to compensate, plaintiff for the converted property. These unchallenged findings of fact, taken together, are such as "a reasonable mind might accept as adequate" to support the finding that the defendant deprived plaintiff of her property by means of inequitably asserting its relative position of power.

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Who were the actors?

MID/EAST ACCEPTANCE CORPORATION
OF NC, INC.

CAROLINA REPOSSESSIONS


Employees: Joyce White, maybe others

Employees: Roger Pinkham & his brother

Who drove the repo truck?

Who said "What truck?"

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Traditional negligence analysis

- Did defendant have a duty of reasonable care to the plaintiff?
- Did defendant breach that duty (i.e., was defendant negligent)?
- Was defendant's negligence the proximate cause of injury to plaintiff or plaintiff's property?
- What damages did plaintiff suffer?

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Test for negligence


What would a reasonably prudent person, acting with due care and diligence, do under the same circumstances?

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Substitutes for negligence requirement:

Negligence Per Se

Violation of safety statute



Strict Liability

Any person or other legal entity shall be entitled to recover actual damages suffered in an amount not to exceed a total of two thousand dollars (\$2,000) from the parent or parents of any minor who shall maliciously or willfully injure such person or destroy the real or personal property of such person.

N.C. Gen. Stat. Ann. § 1-538.1

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Most common defense

Contributory negligence

Π is 1% / Δ is 99%

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Collateral Source Rule

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Davis v. Hulsing
Enterprises, LLC



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Negligence *per se*/Violation of safety statute

GS 18B-305(a): Sale to Intoxicated Person.--It shall be unlawful for a permittee or his employee or for an ABC store employee to knowingly sell or give alcoholic beverages to any person who is intoxicated.

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MOTOR VEHICLE LIENS

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In a nutshell

Who? Person or business who tows, stores, or repairs motor vehicle in ordinary course of business, OR public parking facilities, OR landowner with abandoned MV for 30+days.

What? Right to sell vehicle to obtain reimbursement for reasonable charges of repair, service, towing, or storage.

How? Usually by notifying DMV. When judicial approval is required, often a special proceeding. But sometimes law requires small claims hearing.

Issues before the magistrate: (1) Is there a lien? (2) What are the reasonable charges for services rendered (including reasonable storage charges)?

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Note special procedural rules!

Amount in controversy = amount of lien (~~not~~ FMV of vehicle)

Action must be brought in county where claim arose (i.e., place of repair, storage, etc.)

Service by publication is allowed if plaintiff, using "due diligence," is unable to locate defendant

Your judgment authorizes sale; it does not award money.

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This is a POSSESSORY lien.

It arises when plaintiff takes possession and ends when plaintiff surrenders vehicle or defendant pays all amount owed.

Basic lawsuit: Business files CVM-203/COMPLAINT TO ENFORCE POSSESSORY LIEN ON MOTOR VEHICLE / Judgment entered on CVM-402.

Twist: Owner steals his own car: Business files CVM-903/Complaint to Recover Motor Vehicle Held for Lien and to Determine Amount of Lien/Judgment CVM-905

Twist: Owner initiates challenge to lien: Owner files CVM-900/Complaint to Recover Motor Vehicle Held for Lien and to Determine Amount of Lien/Judgment CVM-905

PLUS Forms CVM-901M (Order for release of motor vehicle held for lien), and CVM-904M (Bond to keep possession of motor vehicle taken from lienor).

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