



Identifying FTCA Claims: Summary of Selected State Torts¹
Last Updated: August 2025

Table of Contents

ARIZONA TORTS 4

 Aiding and Abetting Tortious Conduct..... 4

 Assault..... 4

 Battery..... 5

 Breach of Fiduciary Duty..... 5

 Conversion 5

 False Arrest/Imprisonment..... 5

 Intentional Infliction of Emotional Distress (“IIED”) 6

 Intentional Interference with Custodial Relations 6

 Loss of Consortium..... 6

 Malicious Prosecution..... 6

 Medical Battery..... 7

 Medical Malpractice 7

 Negligence 7

 Negligent Supervision/Hiring..... 8

 Negligent Infliction of Emotional Distress (“NIED”) 8

 Premises Liability 8

 Wrongful Death 9

CALIFORNIA TORTS..... 9

 Abduction of a Child..... 9

 Abuse of Process..... 9

 Aiding and Abetting Tortious Conduct..... 9

 Assault..... 10

¹ The purpose of this document is to share information that may be helpful when initiating a new Federal Tort Claims Act (“FTCA”) matter for a client who is a noncitizen and who is considering filing an administrative claim or lawsuit against the United States government for financial compensation. The intended audience is legal practitioners, and this advisal should not be used as a substitute for legal advice by a lawyer familiar with a client’s case. Readers are cautioned to check for new legal developments.

Battery.....	10
Breach of Fiduciary Duty.....	10
Conversion	10
False Arrest/Imprisonment.....	11
Gross Negligence	11
Intentional Infliction of Emotional Distress (“IIED”)	11
Loss of Consortium.....	12
Malicious Prosecution.....	12
Medical Malpractice	12
Negligence	13
Negligent Hiring/Supervision/Training	13
Negligent Infliction of Emotional Distress (“NIED”)	13
Premises Liability	13
Wrongful Death	14
<i>FLORIDA TORTS</i>	<i>14</i>
Abuse of Process.....	14
Assault.....	14
Battery.....	14
Breach of Fiduciary Duty.....	15
Conversion	15
False Imprisonment/Arrest.....	15
Fraud	16
Gross Negligence	16
Intentional Infliction of Emotional Distress (“IIED”)	16
Intentional Interference with Custodial Parent-Child Relationship.....	17
Invasion of Privacy: Intrusion.....	17
Loss of Consortium.....	17
Malicious Prosecution.....	18
Medical Malpractice	18
Negligence	19
Negligent Infliction of Emotional Distress (“NIED”)	19
Negligent Hiring/Training/Supervision/Retention.....	19
Premises Liability	20

Trespass.....	20
Wrongful Birth.....	20
Wrongful Death	21
<i>NEW MEXICO TORTS</i>	<i>21</i>
Assault.....	21
Battery.....	22
Conversion	22
False Imprisonment.....	22
Fraud	22
Injury to Pregnant Woman.....	23
Intentional Infliction of Emotional Distress (“IIED”)	23
Invasion of Privacy	23
Loss of Consortium.....	24
Malicious Abuse of Process (“MAP”).....	24
Medical Malpractice	24
Negligence	25
Negligence in Hiring or Retention.....	25
Negligent Infliction of Emotional Distress (“NIED”)	25
Premises Liability	26
<i>TEXAS TORTS</i>	<i>26</i>
Abuse of Process.....	26
Assault (& Battery).....	26
Breach of Fiduciary Duty.....	27
Child Abduction.....	27
Conversion	27
Conversion of Money	28
False Imprisonment.....	28
Fraud	28
Interference with Possessory Interest in Child.....	28
Intentional Infliction of Emotional Distress (“IIED”)	28
Invasion of Privacy: Intrusion on Seclusion	29
Loss of Consortium.....	29
Malicious Prosecution.....	30

Medical Malpractice	30
Medical Negligence	30
Negligence	30
Negligent Hiring/Supervision	31
Negligent Undertaking.....	31
Premises Liability	31
Wrongful Death	32

ARIZONA TORTS

Abuse of Process

Description: In Arizona, “one who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it was not designed, is subject to liability to the other for harm caused by the abuse of process.” *Donahue v. Arpaio*, 869 F. Supp. 2d 1020, 1060 (D. Ariz. 2012) (quoting *Nienstedt v. Wetzel*, 651 P.2d 876, 881 (Ariz. Ct. App. 1982)). A plaintiff must prove “(1) a willful act in the use of judicial process; (2) for an ulterior purpose not proper in the regular conduct of the proceedings.” *Id.* (quoting *Crackel v. Allstate Ins. Co.*, 92 P.3d 882, 887 (Ariz. Ct. App. 2004)). “Process” includes “the entire range of procedures incident to litigation.” *Id.* (quoting *Crackel*, 92 P.3d at 888).

Additional Reference: Sarah E. Selzer & Peter R. Wand, Arizona Common Law Causes of Action § 1.1 (State Bar of Ariz. 2011) (available on Lexis Nexis).

Aiding and Abetting Tortious Conduct

Description: Aiding and abetting tortious conduct claims require establishing: (1) the primary tortfeasor must commit a tort that causes injury to the plaintiff; (2) the defendant must know that the primary tortfeasor’s conduct constitutes a breach of duty; and (3) the defendant must substantially assist or encourage the primary tortfeasor in the achievement of the breach. *See Wells Fargo Bank v. Ariz. Laborers, Teamsters, and Cement Masons Loc. No. 395 Pension Tr. Fund*, 201 Ariz. 474, 483 (2002). The party charged with the tort must have knowledge of the primary violation, and knowledge may be inferred from the circumstances. *Id.* Aiding and abetting liability is therefore based on proof of scienter. *Id.*

Assault

Description: A plaintiff must prove “that the defendant acted with intent to cause another harmful or offensive contact or apprehension thereof, and the other person apprehend[ed] imminent contact.” *A.G. v. Paradise Valley Unified Sch. Dist. No. 69*, 815 F.3d 1195, 1209 (9th Cir. 2016) (quoting *Garcia v. United States*, 826 F.2d 806, 809 n.9 (9th Cir. 1987)). Battery and assault “are the same except that assault does not require the offensive touching or contact.” *Id.* at 1209–10 (citing *Garcia*, 826 F.2d at 809 n.9).

Battery

Description: A plaintiff “must allege the defendant intentionally engaged ‘in an act that results in harmful or offensive contact with the person of another.’” *A.G. v. Paradise Valley Unified Sch. Dist. No. 69*, 815 F.3d 1195, 1209 (9th Cir. 2016) (quoting *Duncan v. Scottsdale Med. Imaging, Ltd.*, 70 P.3d 435, 438 (Ariz. 2003)).

Additional Reference: Sarah E. Selzer & Peter R. Wand, Arizona Common Law Causes of Action § 1.4 (State Bar of Ariz. 2011) (available on Lexis Nexis).

Breach of Fiduciary Duty

Description: Under Arizona law, the elements of a breach of fiduciary duty claim are “the existence of a duty owed, a breach of that duty, and damages causally related to such breach.” *Surowiec v. Cap. Title Agency, Inc.*, 790 F. Supp. 2d 997, 1004 (D. Ariz. 2011).

Conversion

Description: A plaintiff must show “an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.” *Focal Point, Inc. v. U-Haul Co. of Ariz.*, 746 P.2d 488, 489 (Ariz. Ct. App. 1986) (quoting Restatement (Second) of Torts § 222(A)(1)); *see also In re Ratliff*, 490 F. App’x 896, 898 (9th Cir. 2012) (applying *Focal Point* standard). “An action for conversion ordinarily lies only for personal property that is tangible, or to intangible property that is merged in, or identified with, some document.” *Miller v. Hehlen*, 104 P.3d 193, 203 (Ariz. Ct. App. 2005) (citations and internal quotation marks omitted). “To maintain such an action, the plaintiff must have the right to immediate possession of the property at the time of the conversion.” *Koss Corp. v. Am. Exp. Co.*, 309 P.3d 898, 914 (Ariz.Ct.App.2013) (citation omitted).

Additional Reference: Neil C. Alden et al., Arizona Tort Law Handbook § 6 (State Bar of Ariz., Steven Plitt and Steven J. Gross eds. 2012 and 2015 supplement) (available on Lexis Nexis).

False Arrest/Imprisonment

Description: “Under Arizona law, the intentional torts of false arrest and false imprisonment differ only in terminology and are defined as the detention of a person without his consent and without lawful authority.” *Spears v. Ariz. Bd. of Regents*, 372 F. Supp. 3d 893, 922 (D. Ariz. 2019) (citation and internal quotation marks omitted). “The essential element necessary to constitute either false arrest or false imprisonment is unlawful detention.” *A.G. v. Paradise Valley Unified Sch. Dist. No. 69*, 815 F.3d 1195, 1210 (9th Cir. 2016) (quoting *Slade v. City of Phoenix*, 541 P.2d 550, 552 (Ariz. 1975)). “A detention which occurs pursuant to legal authority . . . is not an unlawful detention.” *Slade*, 541 P.2d at 552 (citation omitted). A plaintiff must show that: “(1) the defendant acted with intent to confine another person within boundaries fixed by the defendant; (2) the defendant’s act resulted in such confinement, either directly or indirectly; and (3) the other person was conscious of the confinement or was harmed by it.” *Hart v. Seven Resorts Inc.*, 947 P.2d 846, 855 (Ariz. Ct. App. 1997) (citations omitted).

Additional Reference: Sarah E. Selzer & Peter R. Wand, Arizona Common Law Causes of Action § 6.1 (State Bar of Ariz. 2011) (available on Lexis Nexis).

Intentional Infliction of Emotional Distress (“IIED”)

Description: IIED requires proof of three elements: “(1) extreme and outrageous conduct by the defendant; (2) intent to cause emotional distress or reckless disregard of the near certainty that such distress will result from the defendant’s conduct; and (3) severe emotional distress on the plaintiff’s part that occurs as a result.” *A.G. v. Paradise Valley Unified Sch. Dist. No. 69*, 815 F.3d 1195, 1208 (9th Cir. 2016) (citing *Citizen Publ’g Co. v. Miller*, 115 P.3d 107, 110 (Ariz. 2005)). To satisfy the “extreme and outrageous” element, a defendant’s conduct must be “so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and be regarded as atrocious and utterly intolerable in a civilized community.” *Id.* (quoting *Mintz v. Bell Atl. Sys. Leasing Int’l, Inc.*, 905 P.2d 559, 563 (Ariz. Ct. App. 1995)).

Additional Reference: Sarah E. Selzer & Peter R. Wand, Arizona Common Law Causes of Action § 9.2 (State Bar of Ariz. 2011) (available on Lexis Nexis).

Family Separation FTCA Caselaw: *A.P.F. v. United States*, 492 F. Supp. 3d 989 (D. Ariz. 2020) (concluding plaintiffs’ IIED claim was cognizable under Arizona law).

Intentional Interference with Custodial Relations

Description: The Restatement (Second) of Torts § 700 provides that “[o]ne who, with knowledge that the parent does not consent, abducts or otherwise compels or induces a minor child to leave a parent legally entitled to its custody or not to return to a parent after it has been left him, is subject to liability to the parent.” While the tort of custodial interference has not been formally recognized in Arizona, several courts have noted that Arizona generally follows the Second Restatement and have evaluated custodial interference claims on the merits. *See, e.g., Rodriguez v. City of Phoenix*, 300 F. App’x. 514, 516–17 (9th Cir. 2008); *Ybarra-Johnson v. Arizona*, No. CV-14-00171-PHX-GMS, 2014 WL 5843358, at *5–6 (D. Ariz. Nov. 12, 2014).

Loss of Consortium

Description: “[L]oss of consortium is a derivative claim” and therefore a plaintiff must prove all elements of a separate underlying tort before she can claim loss of consortium. *Lackey v. Disney Vacation Dev., Inc.*, 101 F. Supp. 3d 849, 853 (D. Ariz. 2015) (quoting *Barnes v. Outlaw*, 964 P.2d 484, 487 (Ariz. 1998)). This claim seeks to compensate an individual for loss of any of the elements of consortium, “includ[ing] love, affection, protection, support, services, companionship, care, society, and in the marital relationship, sexual relations.” *Barnes v. Outlaw*, 964 P.2d at 487 (citation omitted). A plaintiff must provide “some basis to infer that affection or companionship was actually lost.” *Id.* (citation omitted).

Additional Reference: Neil C. Alden et al., Arizona Tort Law Handbook § 21.6.2.1 (State Bar of Ariz., Steven Plitt and Steven J. Gross eds. 2012 and 2015 supplement) (available on Lexis Nexis).

Family Separation FTCA Caselaw: *A.P.F. v. United States*, 492 F. Supp. 3d 989 (D. Ariz. 2020) (concluding plaintiffs’ loss of consortium claim was cognizable under Arizona law).

Malicious Prosecution

Description: To establish malicious prosecution under Arizona law, the plaintiff must “prove damage by a criminal prosecution, which terminated in his favor, with defendant as prosecutor or complaining witness acting without probable cause and with malice.” *Bearup v. Bearup*, 596 P.2d

35, 36 (Ariz. Ct. App. 1979). “[T]he existence of probable cause is a complete defense to [a] claim[] of . . . malicious prosecution.” *Hockett v. City of Tucson*, 678 P.2d 502, 505 (Ariz. Ct. App. 1983).

Medical Battery

Description: “[A] health care provider commits a common law battery on a patient if a medical procedure is performed without the patient’s consent.” *Duncan v. Scottsdale Med. Imaging*, 70 P.3d 435, 438 (Ariz. 2003) (citing *Hales v. Pittman*, 576 P.2d 493, 498 (Ariz. 1978)); *see also Rubino v. De Fretias*, 638 F. Supp. 182, 185 (D. Ariz. 1986) (distinguishing medical malpractice from medical battery claims). Lack of consent exists when a doctor fails to operate within the limits of the patient’s consent. *See Duncan*, 70 P.3d at 439. A plaintiff need not show physical damage. *See Rubino*, 638 F. Supp. at 185 (citation omitted).

Additional Reference: Neil C. Alden et al., *Arizona Tort Law Handbook* § 2.7 (State Bar of Ariz., Steven Plitt and Steven J. Gross eds. 2012 and 2015 supplement) (available on Lexis Nexis).

Medical Malpractice

Sources of Law: Ariz. Rev. Stat. Ann. §§ 12-561 to -573 (West 2020).

Description: Medical malpractice claims are governed by statute. In order “to prove an injury resulted from the failure of a health care provider to follow the accepted standard of care, a plaintiff must demonstrate both: ‘1. The health care provider failed to exercise the degree of care, skill and learning expected of a reasonable, prudent health care provider in the profession of class to which he belongs within the state acting in the same or similar circumstances, [and that] 2. Such failure was a proximate cause of the injury.’” *Madrigal v. Mendoza*, 639 F. Supp. 2d 1026, 1032 (D. Ariz. 2009) (quoting Ariz. Rev. Stat. § 12-563). “Unless malpractice is grossly apparent, the standard of care must be established by expert medical testimony.” *Rasor v. Northwest Hosp., LLC*, 403 P.3d 572, 575 (Ariz. 2017) (citations omitted); *see also Trujillo v. United States*, 786 F. App’x 124, 126 (9th Cir. 2019) (applying *Rasor* expert testimony requirement).

Negligence

Description: To establish a claim for negligence, “a plaintiff must prove four elements: (1) a duty requiring the defendant to conform to a certain standard of care; (2) a breach by the defendant of that standard; (3) a causal connection between the defendant’s conduct and the resulting injury; and (4) actual damages.” *Stein v. Ryan*, 662 F.3d 1114, 1117 (9th Cir. 2011) (quoting *Gipson v. Kasey*, 150 P.3d 228, 230 (Ariz. 2007)).

Additional Reference: Sarah E. Selzer & Peter R. Wand, *Arizona Common Law Causes of Action* § 14.1 (State Bar of Ariz. 2011) (available on Lexis Nexis).

Family Separation FTCA Caselaw: *J.P. v. United States*, 679 F. Supp. 3d 911 (D. Ariz. 2023) (concluding plaintiffs stated a negligence claim and denying motion to dismiss); *A.P.F. v. United States*, 492 F. Supp. 3d 989 (D. Ariz. 2020) (same); *B.A.D.J. v. United States*, No. 21-00215, 2022 WL 11631016 (D. Ariz. Sept. 30, 2022) (dismissing negligence claim for failure to state a claim).

Negligent Supervision/Hiring

Description: Arizona law imposes liability on a private person for “negligent operation, maintenance, control, supervision, directing, and training.” *Charley v. United States*, 437 F. Supp. 3d 745, 750 (D. Ariz. 2020) (citations omitted) (finding that, under the FTCA, this private-person standard applies regardless of separate corporate liability standards under state law). “Arizona follows the Restatement (Second) of Agency § 213 for negligent hiring, supervision, and training claims . . . which provides that ‘[a] person conducting an activity through servants or other agents is subject to liability for harm resulting from his conduct if he is negligent’ in giving improper instruction, in the employment of improper persons, or in the supervision of the activity.” *Id.* (citing Restatement (Second) of Agency § 213; *Kassman v. Busfield Enterprises, Inc.*, 639 P.2d 353, 356 (Ariz. Ct. App. 1981)).

Additional Reference: Sarah E. Selzer & Peter R. Wand, Arizona Common Law Causes of Action § 14.2 (State Bar of Ariz. 2011) (available on Lexis Nexis).

Negligent Infliction of Emotional Distress (“NIED”)

Description: An NIED claim “requires that the plaintiff witness an injury to a closely related person, suffer mental anguish that manifests itself as a physical injury, and be within the zone of danger so as to be subject to an unreasonable risk of bodily harm created by the defendant.” *Stearney v. United States*, 392 F. Supp. 3d 1037, 1058 (D. Ariz. 2019) (quoting *Guerra v. State*, 348 P.3d 423, 426 (Ariz. 2015)).

Additional Reference: Sarah E. Selzer & Peter R. Wand, Arizona Common Law Causes of Action § 14.3 (State Bar of Ariz. 2011) (available on Lexis Nexis).

Premises Liability

Description: Premises liability applies a negligence standard to cases that involve injuries related to a condition that exists on the defendant’s premises. As such, the four elements are the same as for negligence: duty, breach, causation, and damages. Case law establishes the applicable duty of care. “[A] possessor of land is under an affirmative duty to use reasonable care to make the premises safe for use by invitees.” *Lackey v. Disney Vacation Dev., Inc.*, 101 F. Supp. 3d 849, 853–54 (D. Ariz. 2015) (quoting *McMurtry v. Weatherford Hotel, Inc.*, 293 P.3d 520, 528 (Ariz. Ct. App. 2013)). “The standard of reasonable care generally includes an obligation to discover and correct or warn of unreasonably dangerous conditions that the possessor of the premises should reasonably foresee might endanger an invitee.” *McMurtry*, 293 P.3d at 528–29 (citing *Markowitz v. Ariz. Parks Bd.*, 706 P.2d 364, 367 (Ariz. 1985); Rev. Ariz. Jury Instructions (Civil) 4th, Premises Liability 1, Notice of Unreasonably Dangerous Condition, 98 (2005)). “To establish a proprietor’s liability for injuries arising from a dangerous condition of the premises, an invitee must prove either that the dangerous condition was caused or permitted to develop by persons for whom the proprietor was responsible or that the proprietor had actual or constructive knowledge of its existence.” *McDonald v. Smitty’s Super Valu, Inc.*, 757 P.2d 120, 122 (Ariz. Ct. App. 1988)).

Additional Reference: Neil C. Alden et al., Arizona Tort Law Handbook § 22.1 (State Bar of Ariz., Steven Plitt and Steven J. Gross eds. 2012 and 2015 supplement) (available on Lexis Nexis).

Wrongful Death

Description: A “wrongful death action is a statutory negligence claim requiring a showing that the death was caused by the alleged tortfeasor’s breach of a reasonable standard of care.” *Stearney v. United States*, 392 F. Supp. 3d 1037, 1046 (D. Ariz. 2019) (citing Ariz. Rev. Stat. §§ 12-611, -612). *See also Manion v. Ameri-Can Freight Sys. Inc.*, 391 F. Supp. 3d 888, 891–94 (D. Ariz. 2019) (discussing Arizona wrongful death and survival claims).

Additional Reference: Neil C. Alden et al., *Arizona Tort Law Handbook* § 29.1 (State Bar of Ariz., Steven Plitt and Steven J. Gross eds. 2012 and 2015 supplement) (available on Lexis Nexis).

CALIFORNIA TORTS

Abduction of a Child

Description: Section 49 of the California Civil Code states: “The rights of personal relations forbid: (a) The abduction or enticement of a child from a parent, or from a guardian entitled to its custody[.]” “It has long been established that the unlawful taking or withholding of a minor child from the custody of the parent or guardian entitled to such custody constitutes an actionable tort.” *Surina v. Lucey*, 168 Cal.App.3d 539, 542 (Ct. App. 1985); *see also Rosefield v. Rosefield*, 221 Cal.App.2d 431 (Ct. App. 1963).

Abuse of Process

Description: A plaintiff must show a “misuse of a *judicial* process.” *Estate of Tucker ex rel. Tucker v. Interscope Records, Inc.*, 515 F.3d 1019, 1037 (9th Cir. 2008) (emphasis in original) (quoting *Stolz v. Wong Commc’ns Ltd. P’ship*, 31 Cal. Rptr. 229, 236 (Ct. App. 1994)). Abuse of process requires “that the defendant (1) contemplated an ulterior motive in using the process, and (2) committed a willful act in the use of the process not proper in the regular conduct of the proceedings.” *Johnson v. Lucent Techs. Inc.*, 653 F.3d 1000, 1011 (9th Cir. 2011) (quoting *Booker v. Rountree*, 66 Cal. Rptr. 3d 733, 736 (Ct. App. 2007)).

Additional Reference: Judicial Council of California Civil Instructions 1520 (2020) (available at <https://www.courts.ca.gov/partners/317.htm>).

Aiding and Abetting Tortious Conduct

Description: Under California law, “[l]iability may . . . be imposed on one who aids and abets the commission of an intentional tort if the person (a) knows the other’s conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act or (b) gives substantial assistance to the other in accomplishing a tortious result and the person’s own conduct, separately considered, constitutes a breach of duty to the third person.” *See Fiol v. Doellstedt*, 50 Cal.App.4th 1318, 1325–26 (1996).

Additional Reference: Judicial Council of California Civil Instructions 3610 (2020) (available at <https://www.courts.ca.gov/partners/317.htm>).

Assault

Description: To prove assault, a plaintiff must show the “(1) defendant acted with intent to cause harmful or offensive contact, or threatened to touch plaintiff in a harmful or offensive manner; (2) plaintiff reasonably believed she was about to be touched in a harmful or offensive manner or it reasonably appeared to plaintiff that defendant was about to carry out the threat; (3) plaintiff did not consent to defendant’s conduct; (4) plaintiff was harmed; and (5) defendant’s conduct was a substantial factor in causing plaintiff’s harm.” *So v. Shin*, 151 Cal. Rptr. 257, 269 (Ct. App. 2013), *as modified on denial of reh’g* (Jan. 28, 2013); *see also Robles v. City of Berkeley*, 820 F. App’x 529, 533 n.3 (9th Cir. 2020) (applying *So* assault standard).

Additional Reference: Judicial Council of California Civil Instructions 1301 (2020) (available at <https://www.courts.ca.gov/partners/317.htm>).

Battery

Description: Battery is essentially the completion of an assault. The elements for battery are “(1) defendant touched plaintiff, or caused plaintiff to be touched, with the intent to harm or offend plaintiff; (2) plaintiff did not consent to the touching; (3) plaintiff was harmed or offended by defendant’s conduct; and (4) a reasonable person in plaintiff’s position would have been offended by the touching.” *So v. Shin*, 151 Cal. Rptr. 257, 269 (Ct. App. 2013), *as modified on denial of reh’g* (Jan. 28, 2013); *see also Robles v. City of Berkeley*, 820 F. App’x 529, 532–33 (9th Cir. 2020) (applying *So* battery standard).

Additional Reference: Judicial Council of California Civil Instructions 1300 (2020) (available at <https://www.courts.ca.gov/partners/317.htm>).

Breach of Fiduciary Duty

Description: The elements of breach of fiduciary duty are: (1) the existence of the fiduciary relationship, (2) breach, and (3) damage. *Oasis W. Realty, LLC v. Goldman*, 51 Cal.4th 811, 820 (2011).

Additional Reference: Judicial Council of California Civil Instructions 4100 (2020) (available at <https://www.courts.ca.gov/partners/317.htm>).

Conversion

Description: “Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff’s ownership or right to possession of the property; (2) the defendant’s conversion by a wrongful act or disposition of property rights; and (3) damages.” *Lee v. Hanley*, 354 P.3d 334, 344 (Cal. 2015) (citations and internal quotations marks omitted); *see also ESG Capital Partners, LP v. Stratos*, 828 F.3d 1023, 1038 (9th Cir. 2016) (applying *Lee* conversion standard). “Property is a broad concept that includes every intangible benefit and prerogative susceptible of possession or disposition.” *Kremen v. Cohen*, 337 F.3d 1024, 1030 (9th Cir. 2003) (internal quotation marks omitted). Legal title or absolute ownership of the property are not required; the plaintiff “need only allege it is entitled to immediate possession at the time of conversion.” *Plummer v. Day/Eisenberg, LLP*, 108 Cal. Rptr. 3d 455, 461 (Ct. App. 2010) (citations and internal quotations marks omitted).

Additional Reference: Judicial Council of California Civil Instructions 2100 (2020) (available at <https://www.courts.ca.gov/partners/317.htm>).

False Arrest/Imprisonment

Description: “The tort of false imprisonment and false arrest are considered one in the same, because ‘false arrest is but one way of committing a false imprisonment.’” *Martin v. Cty. of San Diego*, 650 F. Supp. 2d 1094, 1105 (S.D. Cal. 2009) (quoting *Collins v. City & Cty. of San Francisco*, 123 Cal. Rptr. 525, 526 (Ct. App. 1975)). False imprisonment requires “(1) the nonconsensual, intentional confinement of a person, (2) without lawful privilege, and (3) for an appreciable period of time, however brief.” *Young v. Cty. of Los Angeles*, 655 F.3d 1156, 1169 (9th Cir. 2011) (quoting *Easton v. Sutter Coast Hosp.*, 95 Cal. Rptr. 2d 316, 323 (Ct. App. 2000)). “Restraint may be effectuated by means of physical force, threat of force or of arrest, confinement by physical barriers, or by means of any other form of unreasonable duress.” *Scofield v. Critical Air Med., Inc.*, 45 Cal. App. 4th 990, 1001 (Ct. App. 1996) (citations omitted). “A person who sets in motion a false arrest/imprisonment can be held liable for the tort even if he does not directly participate in the actionable conduct.” *Martin*, 650 F. Supp. 2d at 1106.

Additional References: Judicial Council of California Civil Instructions 1400–09 (2020) (available at <https://www.courts.ca.gov/partners/317.htm>).

Gross Negligence

Description: There is no distinct cause of action for gross negligence; thus, a plaintiff must raise this when she pleads a negligence. *See Eriksson v. Nunnink*, 120 Cal. Rptr. 3d 90, 115 n.18 (Ct. App. 2011). While ordinary negligence “consists of a failure to exercise the degree of care in a given situation that a reasonable person under similar circumstances would employ to protect others from harm,” gross negligence requires either “‘a want of even scant care’ or ‘an extreme departure from the ordinary standard of conduct.’” *City of Santa Barbara v. Super. Ct. (Janeway)*, 161 P.3d 1095, 1099 (Cal. 2007) (quoting *Eastburn v. Reg’l Fire Protection Auth.*, 80 P.3d 656, 662 (Cal. 2003)); *Mayall on Behalf of H.C. v. USA Water Polo, Inc.*, 909 F.3d 1055, 1068 (9th Cir. 2018) (quoting *Janeway*).

Additional Reference: Judicial Council of California Civil Instructions 425 (2020) (available at <https://www.courts.ca.gov/partners/317.htm>).

Intentional Infliction of Emotional Distress (“IIED”)

Description: A plaintiff must allege “(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff’s suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant’s outrageous conduct.” *Corales v. Bennett*, 567 F.3d 554, 571 (9th Cir. 2009) (quoting *Tekle v. United States*, 511 F.3d 839, 855 (9th Cir. 2007)). Extreme and outrageous conduct is understood as “conduct exceeding all bounds usually tolerated by a decent society, of a nature which is especially calculated to cause, and does cause, mental distress.” *Knight v. Wells Fargo Bank NA*, 459 F. Supp. 3d 1288, 1293 (N.D. Cal. 2019) (quoting *Cole v. Fair Oaks Fire Prot. Dist.*, 729 P.2d 743, 746 n.7 (Cal. 1987)). Notably, in the immigration context, a defendant’s threat of deportation can support a plaintiff’s IIED claim. *See Plascencia v. United States*, Case No. EDCV 17-cv-02515 JBG, 2018 WL 6133713, at *10–11 (C.D. Cal. May 25, 2018); *Mendia v. Garcia*, 165 F. Supp. 3d 861, 879 (N.D. Cal. 2016).

Additional References: Judicial Council of California Civil Instructions 1600, 1602 (“outrageous conduct”), 1603 (“reckless disregard”); 1604 (“severe emotional distress”) (2020) (available at <https://www.courts.ca.gov/partners/317.htm>).

Loss of Consortium

Description: A loss of consortium claim is an independent tort that is triggered by a separate actionable tortious injury to only a plaintiff’s spouse or registered domestic partner. *See Leonard v. John Crane, Inc.*, 142 Cal. Rptr. 700, 703–06, 710 (Cal. Ct. App. 2012) (citations omitted); *Ferry v. De Longhi America Inc.*, 276 F. Supp. 3d 940, 947–51 (N.D. Cal. 2017) (discussing limitation to spouse or domestic partners). “Consortium” includes subjective elements such as “love, companionship, affection, society, sexual relations, solace,” etc. *Rodriguez v. Bethlehem Steel Corp.*, 525 P.2d 669, 684 (Cal. 1974) (citation and internal quotation marks omitted).

Additional Reference: Judicial Council of California Civil Instructions 3920 (2020) (available at <https://www.courts.ca.gov/partners/317.htm>).

Malicious Prosecution

Description: “Under California law, a malicious prosecution claim is disfavored and requires proof that the underlying litigation: (1) was commenced by or at the direction of the defendant and was pursued to a legal termination in his, plaintiff’s, favor; (2) was brought without probable cause; and (3) was initiated with malice. In addition, the plaintiff must demonstrate resulting damage by way of attorneys’ fees incurred in defense, mental distress, and/or injury to reputation or social standing.” *Est. of Tucker ex rel. Tucker v. Interscope Recs., Inc.*, 515 F.3d 1019, 1030 (9th Cir. 2008) (internal citations and quotation marks omitted).

Additional Reference: Judicial Council of California Civil Instructions 1500 (2020) (available at <https://www.courts.ca.gov/partners/317.htm>).

Medical Malpractice

Sources of Law: Cal. Civ. Proc. Code § 340.5 (West 2020) (definition of “professional negligence”); Cal. Civ. Code §§ 3333.1–.2 (West 2020) (same)

Description: To prevail on a claim of medical malpractice, the plaintiff must establish: “(1) a duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise, (2) a breach of the duty, (3) a proximate causal connection between the negligent conduct and the injury, and (4) resulting loss or damage.” *Allphin v. Peter K. Fitness, LLC*, 78 F. Supp. 3d 987, 992 (N.D. Cal. 2015) (citing *Chakalis v. Elevator Sols., Inc.*, 141 Cal. Rptr. 3d 362, 372 (Ct. App. 2012)). To establish breach of duty in a medical malpractice case, a plaintiff “must show that the physician’s performance fell below the ‘care ordinarily possessed and exercised by members of the medical profession under similar circumstances.’” *Id.* (quoting *Avivi v. Centro Medico Urgente Med. Cntr.*, 71 Cal. Rptr. 3d 707, 712 (Ct. App. 2008)).

Additional References: Judicial Council of California Civil Instructions 500 (general directions), 501 (health care professionals), 502 (medical specialists), 504 (nurses), 514 (duty of hospital) (2020) (available at <https://www.courts.ca.gov/partners/317.htm>).

Negligence

Description: “A plaintiff . . . must demonstrate ‘a legal duty to use due care, a breach of such legal duty, and [that] the breach [is] the proximate or legal cause of the resulting injury.’” *Kesner v. Superior Court*, 384 P.3d 283, 290 (Cal. 2016) (quoting *Beacon Residential Cmty. Ass’n v. Skidmore, Owings & Merrill, LLP*, 327 P.3d 850, 854 (Cal. 2014)).

Additional Reference: Judicial Council of California Civil Instructions 400 (2020) (available at <https://www.courts.ca.gov/partners/317.htm>).

Negligent Hiring/Supervision/Training

Description: “[A]n employer can be liable to a third person for negligently hiring, supervising, or retaining an unfit employee. . . . Liability is based upon the facts that the employer knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materializes.” *Alexander v. Cmty. Hosp. of Long Beach*, 259 Cal. Rptr. 3d 340, 365 (Ct. App. 2020) (quoting *Doe v. Cap. Cities*, 50 Cal. App. 4th 1038, 1054 (1996)). The plaintiff must show that a person in a supervisory position over the actor had prior knowledge of the actor’s propensity to do the bad act. *See id.*

Additional Reference: Judicial Council of California Civil Instructions 426 (2020) (available at <https://www.courts.ca.gov/partners/317.htm>).

Negligent Infliction of Emotional Distress (“NIED”)

Description: To prove NIED, plaintiffs must demonstrate: “(1) Defendant has a duty of care to Plaintiffs; (2) Defendant breached that duty; (3) Defendant’s breach of the duty of care threatened physical injury to the Plaintiffs, unless Defendant’s negligence was of a highly unusual type or Plaintiffs’ serious emotional distress was a predictable result of the breach; (4) Plaintiffs suffered serious emotional distress; (5) Defendant’s conduct was a substantial factor in causing Plaintiffs’ serious emotional distress; and (6) Plaintiffs suffered damages.” *Galvan v. Walt Disney Parks & Resorts, U.S., Inc.*, 425 F. Supp. 3d 1234, 1245 (C.D. Cal. 2019) (citing *Wong v. Tai Jing*, 117 Cal. Rptr. 3d 747, 767–688 (Ct. App. 2010)).

Additional Reference: Judicial Council of California Civil Instructions 1620 (2020) (available at <https://www.courts.ca.gov/partners/317.htm>).

Premises Liability

Source of Law: Cal. Civ. Code § 1714(a) (West 2020) (duty to exercise due care).

Description: A plaintiff must show “that the defendant owned or controlled the property, that the defendant was negligent in the use or maintenance of the property, that the plaintiff was harmed, and that the defendant’s negligence was a substantial factor in causing the harm.” *Carter v. Nat’l R.R. Passenger Corp.*, 63 F. Supp. 3d 1118, 1144 (N.D. Cal. 2014). “The owner of premises is under a duty to exercise ordinary care in the management of such premises in order to avoid exposing persons to an unreasonable risk of harm.” *Brooks v. Eugene Burger Mgmt. Corp.*, 215 Cal. App. 3d 1611, 1619 (Ct. App. 1989).

Additional Reference: Judicial Council of California Civil Instructions 1000 (2020) (available at <https://www.courts.ca.gov/partners/317.htm>).

Wrongful Death

Description: To state a claim for wrongful death, a plaintiff must plead (1) the tort (negligence or other wrongful act), (2) the resulting death, and (3) the damages, consisting of the pecuniary loss suffered by the heirs. *Lattimore v. Dickey*, 239 Cal. App. 4th 959, 968 (2015).

Additional Reference: Judicial Council of California Civil Instructions 3921–22 (2020) (available at <https://www.courts.ca.gov/partners/317.htm>).

FLORIDA TORTS

Abuse of Process

Description: For a cause of action, a defendant must use the “criminal or civil legal process against another” for an “*immediate purpose* other than that for which it was designed.” *Bothmann v. Harrington*, 458 So. 2d 1163, 1169 (Fla. Dist. Ct. App. 1984). The plaintiff must show “1) an illegal, improper, or perverted use of process by the defendant; 2) an ulterior motive or purpose in exercising the illegal, improper, or perverted process; and 3) damages to the plaintiff as a result.” *Antoine v. State Farm Mut. Auto. Ins. Co.*, 662 F. Supp. 2d 1318, 1324 (M.D. Fla. 2009) (citing *Hardick v. Homol*, 795 So. 2d 1107, 1111 n. 2 (Fla. Dist. Ct. App. 2001)). No abuse of process occurs “when the process is used to accomplish the result for which it was created, *regardless of an incidental or concurrent motive of spite or ulterior purpose.*” *S & I Invs. v. Payless Flea Mkt., Inc.*, 36 So. 3d 909, 917 (Fla. Dist. Ct. App. 2010) (quoting *Bothmann*, 458 So. 2d at 1169 (emphasis added)).

Additional Reference: 41A Fla. Juris. 2d *Process* § 6 (2025) (available on Westlaw).

Assault

Description: The elements of assault are “(1) an intentional, unlawful threat, (2) an apparent ability to carry out the threat, and (3) creation of a well-founded fear that violence is imminent.” *Cannon v. Thomas ex rel. Jewett*, 133 So. 3d 634, 639 (Fla. Dist. Ct. App. 2014) (quoting *H.W. v. State*, 70 So. 3d 143, 145 (Fla. Dist. Ct. App. 2012)). Intent is legally implied “[w]here a reasonable man would believe that a particular result was [s]ubstantially certain to follow” but not where the defendant just has “knowledge and appreciation of a [r]isk, short of substantial certainty.” *Spivey v. Battaglia*, 258 So. 2d 815, 817 (Fla. 1972).

Additional Reference: 3A Fla. Juris. 2d *Assault and Battery-Civil Aspects* § 1–8 (2025) (available on Westlaw).

Battery

Description: The elements of battery are 1) the alleged tortfeasor “acts intending to cause a harmful or offensive contact with the person of the other” and 2) “an offensive contact with the person of the other directly or indirectly results.” *City of Miami v. Sanders*, 672 So. 2d 46, 47 (Fla. Dist. Ct. App. 1996) (citing Restatement (Second) of Torts § 18). Intention to do mere offense is sufficient to establish intent for battery. *See Myers v. Cent. Fla. Invs.*, 592 F. 3d 1201, 1220 (11th Cir. 2010) (citing *Paul v. Holbrook*, 696 So. 2d 1311, 1312 (Fla. Dist. Ct. App. 1997)).

Additionally, under Florida law, police officers, as well as their public employers, may be held liable for battery if the officers use excessive force while effectuating an arrest. *See Perez v. Sch. Bd. of Miami-Dade Cnty., Fla.*, 917 F. Supp. 2d 1261, 1268 (S.D. Fla. 2013) (citing *Hennagan v. Dep't of Highway Safety & Motor Vehicles*, 467 So. 2d 748, 750 (Fla. Dist. Ct. App. 1985))

Additional Reference: 3A Fla. Juris. 2d *Assault and Battery-Civil Aspects* § 1–6 (2025) (available on Westlaw).

Breach of Fiduciary Duty

Description: “The elements of a breach of fiduciary duty claim are: (1) the existence of a fiduciary duty; (2) the breach of that duty; and (3) damage proximately caused by that breach.” *Border Collie Rescue, Inc. v. Ryan*, 418 F.Supp.2d 1330, 1342 (M.D.Fla.2006) (citing *Gracey v. Eaker*, 837 So. 2d 348, 353 (Fla. 2002)).

Conversion

Description: Conversion is “an unauthorized act which deprives another of his [personal] property, permanently or for an indefinite time.” *Furmanite Am., Inc. v. T.D. Williamson, Inc.*, 506 F. Supp. 2d 1134, 1143 (M.D. Fla. 2007) (citing *Senfeld v. Bank of Nova Scotia Tr. Co. (Cayman) Ltd.*, 450 So. 2d 1157, 1160–61 (Fla. Dist. Ct. App. 1984)). A plaintiff must prove “(1) an act of dominion wrongfully asserted; (2) over another’s property; and (3) inconsistent with his ownership therein.” *In re Bentley*, 600 B.R. 115, 118 (Bankr. M.D. Fla. 2018) (citing *TracFone Wireless, Inc. v. Hernandez*, 196 F. Supp. 3d 1289, 1299 (S.D. Fla. 2016)). Absolute ownership is not required as “interference with legal rights incident to ownership, such as the right to possession” in this manner constitutes conversion. *See United Am. Bank of Cent. Fla., Inc. v. Seligman*, 599 So. 2d 1014, 1017 (Fla. Dist. Ct. App. 1992). “‘Law enforcement officers may be liable for conversion’ for the seizure or retention of personal property.” *Case v. Eslinger*, 555 F. 3d 1317, 1331 (11th Cir. 2009) (quoting *E.J. Strickland Constr., Inc. v. Dep’t of Agric. & Consumer Servs. of Fla.*, 515 So. 2d 1331, 1335 (Fla. Dist. Ct. App. 1987)).

Additional Reference: 12 Fla. Juris. 2d *Conversion and Replevin* § 1, 13 (2025) (available on Westlaw).

False Imprisonment/Arrest

Description: False imprisonment is “the unlawful restraint of a person against his will, the gist of which action is the unlawful detention of the plaintiff and deprivation of his liberty.” *Harder v. Edwards*, 174 So. 3d 524, 530 (Fla. Dist. Ct. App. 2015) (quoting *Johnson v. Weiner*, 155 Fla. 169, 19 So. 2d 699, 700 (1944)). To bring a cause of action, the plaintiff must establish the following elements: “1) the unlawful detention and deprivation of liberty of a person 2) against that person’s will 3) without legal authority or ‘color of authority’ and 4) which is unreasonable and unwarranted under the circumstances.” *Id.* (quoting *Montejo v. Martin Mem’l Med. Ctr., Inc.*, 935 So. 2d 1266, 1268 (Fla. Dist. Ct. App. 2006)). Courts generally treat false arrest as the same cause of action as false imprisonment, but it has sometimes been treated differently, such as when a plaintiff is lawfully arrested but unlawfully imprisoned. *See Kubisiak v. Gualtieri*, 723 F. Supp. 3d 1154, 1172 (M.D. Fla. 2024) (citing *Smart v. City of Miami*, 107 F. Supp. 3d 1271, 1280 (S.D. Fla. 2015)).

Additional Reference: 24A Fla. Juris. *False Imprisonment* § 1 (2025) (available on Westlaw).

Fraud

Description: Fraud is defined as “(1) a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment; and (2) a misrepresentation made recklessly without belief in its truth to induce another person to act.” *Kish v. A.W. Chesterton Co.*, 930 So. 2d 704, 707 (Fla. Dist. Ct. App. 2006) (quoting *Nehme v. Smithkline Beecham Clinical Labs., Inc.*, 863 So. 2d 201, 205 (Fla. 2003)). “The essential elements of fraud are: (a) a false representation of fact, known by the party making it to be false at the time it was made; (b) that the representation was made for the purpose of inducing another to act in reliance on it; (c) actual reliance on the representation; and (d) resulting damage to the plaintiff.” *Essex Ins. Co. v. Universal Ent. & Skating Ctr., Inc.*, 665 So. 2d 360, 362 (Fla. Dist. Ct. App. 1995) (citing cases). A demonstration of bad faith is necessary to bring an action for fraud. *Parker v. State of Fla. Bd. of Regents ex rel. Fla. State Univ.*, 724 So. 2d 163, 169 (Fla. Dist. Ct. App. 1998).

Additionally, in Florida, aiding and abetting a fraud may be a valid cause of action. For an aiding and abetting claim, the plaintiff must establish “(1) the existence of an underlying fraud; (2) that the defendant had knowledge of the fraud; and (3) that the defendant provided substantial assistance to advance the commission of the fraud.” *Sun Life Assurance Co. of Can. v. Imperial Premium Fin., LLC*, 904 F. 3d 1197, 1214 (11th Cir. 2018) (quoting *Chang v. JPMorgan Chase Bank, N.A.*, 845 F. 3d 1087, 1097–98 (11th Cir. 2017)).

Additional Reference: 27 Fla. Juris. *Fraud and Deceit* § 1–48 (2025) (available on Westlaw).

Gross Negligence

Description: Gross negligence is defined as “an act or omission that a reasonable, prudent person would know is likely to result in injury to another.” *Eller v. Shova*, 630 So. 2d 537, 541 n.3 (Fla. 1993) (citing *Glaab v. Caudill*, 236 So. 2d 180, 183 (Fla. Dist. Ct. App. 1970)). To establish gross negligence, a plaintiff must show 1) “circumstances constituting an imminent or clear and present danger amounting to a more than normal or usual peril;” 2) “knowledge or awareness of the imminent danger on the part of [the tortfeasor];” and 3) “an act or omission [on part of the tortfeasor] that evinces a conscious disregard of the consequences.” *Ramsey v. Dewitt Excavating, Inc.*, 248 So. 3d 1270, 1273 (Fla. Dist. Ct. App. 2018) (citing *Vallejos v. Lan Cargo S.A.*, 116 So. 3d 545, 552 (Fla. Dist. Ct. App. 2013)). Gross negligence is distinguished from wanton negligence, as the former applies where the tortfeasor exercises slight care while the latter exercises *no* care. See *Farrell v. Fisher*, 578 So. 2d 407, 409 (Fla. Dist. Ct. App. 1991).

Additional Reference: 38 Fla. Juris. 2d *Negligence* § 4 (2025) (available on Westlaw).

Intentional Infliction of Emotional Distress (“IIED”)

Other names: In Florida, IIED is sometimes referred to as “outrage” or “outrageous conduct causing severe emotional distress.” 21 Fla. Prac., *Elements of an Action* § 1305:1 (2024-2025 ed.).

Description: To raise an IIED claim, a plaintiff must prove: “1) the defendant acted recklessly or intentionally; 2) the defendant’s conduct was extreme and outrageous; 3) the defendant’s conduct caused the plaintiff’s emotional distress; and 4) plaintiff’s emotional distress was severe.” *Johnson v. Thigpen*, 788 So. 2d 410, 412 (Fla. Dist. Ct. App. 2001) (citing *Urquiola v. Linen Supermarket, Inc.*, No. 94-14-CIV-ORL-19, 1995 WL 266582, at *4 (M.D. Fla. Mar. 23, 1995)). Florida’s standard for “outrageous conduct” is “particularly high” as the conduct must be “so outrageous in

character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Patterson v. Downtown Med. & Diagnostic Ctr., Inc.*, 866 F. Supp. 1379, 1383 (M.D. Fla. 1994) (quoting *Metro. Life Ins. Co. v. McCarson*, 467 So. 2d 277, 278–79 (Fla. 1985)); see also *Gomez v. United States*, No. 13-cv-21126-KMM, 2013 WL 11322607, at *5 (S.D. Fla. Dec. 3, 2013) (finding ICE officer’s remarking to a minor he “was going to be raped by black men in jail” was insufficient to be “outrageous”). A defendant’s awareness that the plaintiff is “peculiarly susceptible to emotional distress, by reason of some physical or mental condition or peculiarity” may make conduct “outrageous.” *Liberty Mut. Ins. Co. v. Steadman*, 968 So. 2d 592, 595 (Fla. Dist. Ct. App. 2007) (citing Restatement (Second) of Torts, § 46 cmt. f.). Notably, Florida’s “impact rule,” which requires a physical injury or impact for recovery, does not apply to IIED. See *Clemente v. Horne*, 707 So. 2d 865, 866 (Fla. Dist. Ct. App. 1998).

Additional Reference: 17 Fla. Juris. *Damages* § 94 (2025) (available on Westlaw).

Intentional Interference with Custodial Parent-Child Relationship

Description: To claim intentional interference with a custodial parent-child relationship, the elements “include that the plaintiff had superior custody rights to the child and that the defendant intentionally interfered with those rights.” *Stone v. Wall*, 734 So. 2d 1038, 1042 (Fla. 1999) (citing Restatement (Second) of Torts, § 700 cmt. c.)). “In Florida, the cause of action [of intentional interference with custodial parent-child relationship] is only applied to cases in which a child is physically taken from his custodial parent.” *Woodburn v. State of Fla. Dep’t of Child. & Fam. Servs.*, 854 F. Supp. 2d 1184, 1217 (S.D. Fla. 2011) (citing *Stone*, 734 So. 3d at 1045).

Additional Reference: 25 Fla. Juris. 2d *Family Law* § 100 (2025) (available on Westlaw).

Invasion of Privacy: Intrusion

Description: “Florida recognizes three categories of privacy torts: ‘(1) appropriation—the unauthorized use of a person’s name or likeness to obtain some benefit; (2) intrusion—physically or electronically intruding into one’s private quarters; [and] (3) public disclosure of private facts—the dissemination of truthful private information which a reasonable person would find objectionable’” *Oppenheim v. I.C. Sys., Inc.*, 695 F. Supp. 2d 1303, 1308 (M.D. Fla. 2010), *aff’d*, 627 F. 3d 833 (11th Cir. 2010) (quoting *Allstate Ins. Co. v. Ginsberg*, 863 So. 2d 156, 162 (Fla. 2003)). Intrusion can occur “upon plaintiff’s physical solitude or seclusion, as by invading plaintiff’s home or other quarters or an illegal search of his shopping bag in store.” *Vernon v. Med. Mgmt. Assocs. of Margate, Inc.*, 912 F. Supp. 1549, 1561 (S.D. Fla. 1996) (quoting *Guin v. City of Riviera Beach*, 388 So. 2d 604, 606 (Fla. Dist. Ct. App. 1980)). For a cause of action, the intrusion must be “highly offensive to a reasonable person.” *Oppenheim*, 695 F. Supp. 2d at 1309. (citing *Stoddard v. Wohlfahrt*, 573 So. 2d 1060, 1062–63 (Fla. Dist. Ct. App. 2010)).

Additional Reference: 19A Fla. Juris. 2d *Defamation and Privacy* § 220 (2025) (available on Westlaw).

Loss of Consortium

Description: “[L]oss of consortium is a separate cause of action belonging to the spouse of [an] injured married partner, and though derivative in the sense of being occasioned by injury to the spouse, it is a direct injury to the spouse who has lost the consortium.” *Orange Cnty. v. Piper*, 523

So. 2d 196, 198 (Fla. Dist. Ct. App. 1988) (citing cases). Consortium refers to “[t]he companionship and fellowship” of a spouse and “the right of each to the company, cooperation and aid of the other in every conjugal relation. Consortium . . . consists, also, of that affection, solace, comfort, companionship, conjugal life, fellowship, society and assistance so necessary to a successful marriage.” *Castro v. Linfante*, 307 So. 3d 110, 112 (Fla. Dist. Ct. App. 2020) (quoting *Gates v. Foley*, 247 So. 2d 40, 43 (Fla. 1971)).

Additional Reference: 25A Fla. Juris. 2d *Family Law* § 526 (2025) (available on Westlaw).

Malicious Prosecution

Description: “The elements of malicious prosecution are (1) an original judicial proceeding against the present plaintiff was commenced or continued; (2) the present defendant was the legal cause of the original proceeding; (3) the termination of the original proceeding constituted a bona fide termination of that proceeding in favor of the present plaintiff; (4) there was an absence of probable cause for the original proceeding; (5) there was malice on the part of the present defendant; and (6) the plaintiff suffered damages as a result of the original proceeding.” *CCP Harbour Island, LLC v. Manor at Harbour Island, LLC*, 373 So. 3d 18, 31 (Fla. Dist. Ct. App. 2023) (citing *MacAlister v. Bevis Constr., Inc.*, 164 So. 3d 773, 776–77 (Fla. Dist. Ct. App. 2015)). “Because there can be no claim for malicious prosecution without a showing of malice, and because Fla. Stat. § 768.28(9)(a) bar[s] []claims against the entity or officials acting in their official capacities for conduct committed with malice, Florida law is also clear that there can be no claim for malicious prosecution against state agencies or subdivisions.” *C.P. by & through Perez v. Collier Cnty.*, 145 F. Supp. 3d 1085, 1094 (M.D. Fla. 2015) (citing cases); *but see Douglas v. United States*, 796 F. Supp. 2d 1354, 1367 (M.D. Fla. 2011) (granting summary judgment for a malicious prosecution claim against ICE where the agency initiated deportation proceedings against plaintiff without investigating his derivate citizenship claim). Malicious prosecution differs from “abuse of process” in that malicious prosecution “is concerned with maliciously causing process to issue, while [abuse of process] is concerned with the improper use of process after it has been issued. *McMurray v. U-Haul Co.*, 425 So. 2d 1208, 1209 (Fla. Dist. Ct. App. 1983).

Additional Reference: 24A Fla. Juris. 2d *False Imprisonment* § 21, 24 (2025) (available on Westlaw).

Medical Malpractice

Source of Law: Fla Stat. § 766.101–318.

Description: Medical malpractice claims are governed by statute. The elements of a medical malpractice action are: 1) a duty by the physician, 2) a breach of that duty, and 3) causation. *See Saunders v. Dickens*, 151 So. 3d 434, 441 (Fla. 2014). The first element of duty requires a physician to act within the standard of care, which is “a level of care, skill, and treatment that, in consideration of all surrounding circumstances, is recognized as acceptable and appropriate by similar and reasonably prudent health care providers” *Id.* (citing Fla. Stat. § 766.102). Florida courts use a “more likely than not” standard of causation. *Henson v. United States*, 508 F. Supp. 2d 1103, 1114 (N.D. Fla. 2007) (citing *Gooding v. Univ. Hosp. Bldg., Inc.*, 445 So. 2d 1015, 1018 (Fla. 1984)).

Additional Reference: 36 Fla. Juris. 2d *Medical Malpractice* (2025) (available on Westlaw).

Negligence

Description: For a negligence claim, the plaintiff must show: (1) “[a] duty, or obligation, recognized by the law, requiring the defendant to conform to a certain standard of conduct, for the protection of others against unreasonable risks;” (2) “[a] failure on the defendant’s part to conform to the standard required: a breach of the duty;” (3) “[a] reasonably close causal connection between the conduct and the resulting injury...commonly known as legal cause, or proximate cause, and which includes the notion of cause in fact;” and (4) “[a]ctual loss or damage.” *Hodges v. United States*, 78 F. 4th 1365, 1375 (11th Cir. 2023) (citing *Clay Elec. Coop., Inc. v. Johnson*, 873 So. 2d 1182, 1185 (Fla. 2003)). Negligence includes both negligent acts and failures to act. *See Ankers v. Dist. Sch. Bd. of Pasco Cnty.*, 406 So. 2d 72, 73 (Fla. Dist. Ct. App. 1981) (citing *Padgett v. Sch. Bd. of Escambia Cnty.*, 395 So. 2d 584, 585–86 (Fla. Dist. Ct. App. 1981)).

Additional Reference: 38 Fla. Juris. 2d *Negligence* § 1–2 (2025) (available on Westlaw); 3 Fla. Pleadings & Prac. Forms § 30:1–12 (2025) (available on Westlaw).

Negligent Infliction of Emotional Distress (“NIED”)

Description: The elements of NIED are: “(1) the plaintiff must suffer a physical injury; (2) the plaintiff’s physical injury must be caused by the psychological trauma; (3) the plaintiff must be involved in some way in the event causing the negligent injury to another; and (4) the plaintiff must have a close personal relationship to the directly injured person.” *Corbin v. Prummell*, 655 F. Supp. 3d 1143, 1166–67 (M.D. Fla. 2023) (citing *Zell v. Meek*, 665 So. 2d 1048, 1054 (Fla. 1995)). To recover damages for emotional distress, the plaintiff must show that the emotional distress stems from physical injuries sustained on impact. *Id.* (citing *Elliot v. Elliot*, 58 So. 3d 878, 880 (Fla. Dist. Ct. App. 2011)). In general, Florida’s “impact rule” provides “no recovery for mental or emotional pain and suffering unconnected with physical injury” in actions for simple negligence. *Thomas v. Hosp. Bd. of Dirs. of Lee Cnty.*, 41 So. 3d 246, 253 (Fla. Dist. Ct. App. 2010) (citing *Rowell v. Holt*, 850 So. 2d 474, 477–78 (Fla. 2003)).

Additional Reference: 17 Fla. Juris. 2d *Damages* § 97–98 (2025) (available on Westlaw).

Negligent Hiring/Training/Supervision/Retention

Description: For negligent hiring claims, a plaintiff must prove “(1) that an employee or independent contractor . . . was incompetent or unfit to perform the work provided; (2) that [d]efendant knew [or] reasonably should have known of the particular incompetence or unfitness; and (3) that the competence or unfitness proximately caused the injuries.” *Dudley v. NCL (Bahamas) Ltd.*, 688 F. Supp. 3d 1194, 1205 (S.D. Fla. 2023) (quoting *Kennedy v. Carnival Corp.*, 385 F. Supp. 3d 1302, 1334 (S.D. Fla. 2019)). Negligent supervision or retention “occurs when, during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicated his unfitness, and the employer fails to take further action such as investigating, discharge, or reassignment.” *Garcia v. Duffy*, 492 So. 2d 435, 438–39 (Fla. Dist. Ct. App. 1986). For negligent hiring, “an employer is liable in tort for reasonably foreseeable damages resulting from the negligent training of its employees and agents,” such as for negligent implementation of training programs and policies. *See Watts v. City of Hollywood, Fla.*, 146 F. Supp. 3d 1254, 1269 (S.D. Fla. 2015) (quoting *Lewis v. City of St. Petersburg*, 260 F. 3d 1260, 1265 (11th Cir. 2001)).

Additional Reference: 2A Fla. Juris. 2d *Agency and Employment* § 301–307 (2025) (available on Westlaw).

Premises Liability

Description: “The crux of the cause of action for premises liability is not legal title or ownership, but the failure of a person who is in actual possession and control . . . to use due care to warn or to exclude, licensees and invitees from areas known to the possessor to be dangerous because of operations or activities or conditions.” *Haynes v. Lloyd*, 533 So. 2d 944, 946 (Fla. Dist. Ct. App. 1988). While possessors of property are not obligated to “know of all existing dangerous conditions on the property” at all times, a plaintiff can assert a premises liability action where “the defendant possessor had actual knowledge of the dangerous condition before it caused the injury in question” or “constructive knowledge . . . of the dangerous operation, activity, or condition on the premises” *Id.*

Of note regarding wild animals, “the law does not require the owner or possessor of land to anticipate the presence of or guard an invitee against harm from animals *Ferae naturae* unless such owner or possessor has reduced the animals to possession, harbors such animals, or has introduced onto his premises wild animals not indigenous to the locality.” *Wamser v. City of St. Petersburg*, 339 So. 2d 244, 246 (Fla. Dist. Ct. App. 1976) (emphasis added); *Simmons v. Fla. Dep’t of Corr.*, No. 5:14-cv-438-0C-39PRL, 2015 WL 3454274, at *6 (M.D. Fla. May 29, 2015) (finding an inmate could assert a cause of action for premises liability against Florida Department of Corrections due to presence of disease-carrying ticks in prison).

Additional Reference: 41 Fla. Juris. 2d *Premises Liability* § 94–100 (2025) (available on Westlaw).

Trespass

Description: “Trespass may be generally said to be the injury to or use of the property of another by one who has no authority or right whatever to do so.” *Halifax Drainage Dist. of Volusia Cnty. v. Gleaton*, 188 So. 374, 379 (Fla. 1939) (quoting *Stephenson v. Nat’l Bank of Winter Haven*, 109 So. 424, 425 (Fla. 1926)). “To obtain a recovery for a trespass to real property...the aggrieved party must have had an ownership or possessory interest in the property at the time of the trespass.” *Winselmann v. Reynolds*, 690 So. 2d 1325, 1327 (Fla. Dist. Ct. App. 1997) (citing cases).

In Florida, courts have recognized that “[w]hen the lawful performance of [an officer’s] duty requires that an officer enter upon private property to make a general inquiry, such an entry is justifiable,” preventing trespass claims. *State v. Garcia*, 374 So. 2d 601, 603 (Fla. Dist. Ct. App. 1979). In the medical practice context, a physician may commit trespass to the person where they perform surgery without express or implied consent. See *Gouveia v. Phillips*, 823 So. 2d 215, 223 (Fla. Dist. Ct. App. 2002). “Trespass to the person is an intentional act which is unlawful, while malpractice arises on account of negligence.” *Chambers v. Nottebaum*, 96 So. 2d 716, 717 (Fla. Dist. Ct. App. 1957).

Additional Reference: 55 Fla. Juris. 2d *Trespass* § 1–4 (2025) (available on Westlaw).

Wrongful Birth

Description: Wrongful birth is a specific medical malpractice claim “in which parents give birth to an impaired or deformed child and allege that negligent treatment or advice deprived them of

the opportunity or knowledge to avoid conception or to terminate the pregnancy.” *Kush v. Lloyd*, 616 So. 2d 415, 417 n.2 (Fla. 1992) (citing *Black’s Law Dictionary* 1612 (6th ed. 1990)). Florida “extend[s] the tort of wrongful birth to encompass all extraordinary expenses caused by the impairing condition for the duration of the child’s life expectancy.” *Id.* at 424. Plaintiffs can recover for emotional distress on wrongful birth claims as Florida’s “impact rule,” which requires physical injury or impact to recover damages related to emotional distress, does not apply in this context. *See Clements v. Attenti U.S., Inc.*, 735 F. App’x 661, 663 n.3 (11th Cir. 2018) (citing *R.J. v. Humana of Fla., Inc.*, 652 So. 2d 360, 363 (Fla. 1995)). On a related note, there is no cause of action for stillborn fetuses under Florida’s Wrongful Death Act, but parents can recover damages where a negligent act of another caused the stillbirth without the “impact rule” applying. *See Tanner v. Hartog*, 696 So. 2d 705, 707–08 (Fla. 1997).

Additional Reference: 17 Fla. Juris. 2d *Damages* § 96 (2025) (available on Westlaw).

Wrongful Death

Source of Law: Fla. Stat. § 768.16–26.

Description: Wrongful death claims are governed by statute. A plaintiff may maintain an action for a death “caused by the wrongful act, negligence, default, or breach of contract or warranty of any person” where “the event would have entitled the person injured to maintain an action and recover damages if death had not ensued.” Fla. Stat. § 768.19 (emphasis added). The elements for the wrongful death’s underlying basis, such as negligence, medical malpractice, or an intentional tort must be proven. *See, e.g., Tieder v. Little*, 502 So. 2d 923, 927 (Fla. Dist. Ct. App. 1987) (establishing wrongful death claim by showing elements of negligence). Florida uses a “more likely than not” standard to establish that the defendant’s conduct caused the wrongful death. *See Lopez v. Fla. Power & Light Co.*, 501 So. 2d 1339, 1342 (Fla. Dist. Ct. App. 1987) (quoting *Gooding v. Univ. Hosp. Bldg., Inc.*, 445 So. 2d 1015, 1018 (Fla. 1984))

Additional reference: 6 Fla. Prac. *Personal Injury and Wrongful Death Actions* § 17:1–5 (2025) (available on Westlaw).

NEW MEXICO TORTS

Assault

Description: “Assault is defined as either of the following: ‘A. an attempt to commit a battery upon the person of another; B. any unlawful act, threat or menacing conduct which causes another person to reasonably believe that he is in danger of receiving an immediate battery; or C. the use of insulting language toward another impugning his honor, delicacy or reputation.’” N.M. Stat. Ann. § 30–3–1 (2025); *State v. Maes*, 100 N.M. 78, 81, 665 P.2d 1169 (N.M. Ct. App. 1983), *abrogated on other grounds as recognized by State v. Zavala*, 2019 WL 13156151, at *2 (N.M. Ct. App. 2019). “Aggravated assault consists of either of the following: ‘A. unlawfully assaulting or striking at another with a deadly weapon; B. committing assault by threatening or menacing another while wearing a mask, hood, robe or other covering upon the face, head or body, or while disguised in any manner, so as to conceal identity; or C. willfully and intentionally assaulting another with intent to commit any felony.’” N.M. Stat. Ann. § 30–3–2 (2025); *Maes*, 100 N.M. at 81. “Assault with intent to commit a felony consists of any person assaulting another with intent

to kill or commit any murder, mayhem, criminal sexual penetration in the first, second or third degree, robbery or burglary.” N.M. Stat. Ann. § 30–3–3.

Secondary Source: UJI 13–1624 NMRA (2025) (defining assault and battery) (available on Westlaw).

Battery

Description: To find a defendant guilty of battery, a court must prove beyond a reasonable doubt that the “defendant intentionally touched or applied force” to the victim and that the “defendant acted in a rude, insolent or angry manner.” *State of N.M. v. Rael*, 2025 WL 2051767, at *9 (N.M. Ct. App. 2025); *see also* N.M. Stat. Ann. § 30–3–4.

Secondary Source: UJI 13–1624 NMRA (2025) (defining assault and battery) (available on Westlaw).

Conversion

Description: “Conversion is defined as the unlawful exercise of dominion and control over personal property belonging to another in exclusion or defiance of the owner’s rights, or acts constituting an unauthorized and injurious use of another’s property, or a wrongful detention after demand has been made.” *Nosker v. Trinity Land Co.*, 107 N.M. 333, 337–38, 757 P.2d 803, 807–08 (Ct. App. 1988) (citing *Bowman v. Butler*, 98 N.M. 357, 648 P.2d 815 (Ct. App. 1982), and *Taylor v. McBee*, 78 N.M. 503, 433 P.2d 88 (N.M. Ct. App. 1967)). “The elements of the tort of conversion and refusal are: (1) that the plaintiff had the right of possession of personal property; (2) that the plaintiff demanded that the defendant return the property to plaintiff; and (3) that the defendant refused to return the property to plaintiff.” *Nosker*, 107 N.M. at 338.

False Imprisonment

Source of Law: N.M. Stat. Ann. § 30–4–3.

Description: The elements of false imprisonment include: (1) the restraint or confinement of the victim against their will; and (2) the knowledge on the part of the defendant that they did not have the authority to restrain or confine the victim. *State v. Delgado*, 2025 WL 1652072, at *2 (N.M. Ct. App. 2025). In addition, “the restraint [involved] need only be present for a brief time.” *State v. Muise*, 103 N.M. 382, 388, 707 P.2d 1192 (N.M. Ct. App. 1985). “The crime of [false imprisonment] is complete when the defendant, with the requisite intent, restrains the victim, even though the restraint continues through the commission of a separate crime.” *State v. Dominguez*, 327 P.3d 1092, 1097 (N.M. Ct. App. 2014) (recognizing this principle in relation to the offense of kidnapping). The element of restraint is determined by “the point at which the physical association between the defendant and the victim [is] no longer voluntary.” *State v. Jacobs*, 129 N.M. 448, 10 P.3d 127 (2000), *overruled on other grounds by State v. Martinez*, 478 P.3d 880 (N.M. 2020).

Fraud

Source of Law: N.M. Stat. Ann. § 30–16–6. *But see* S.B. 359, 57th Leg., 1st Sess. (N.M. 2025) (proposing amendments to § 30–16–6).

Description: “The elements of fraud include (1) a misrepresentation of fact, (2) either knowledge of the falsity of the representation or recklessness on the part of the party making the misrepresentation, (3) the intent to deceive and to induce reliance on the misrepresentation, and (4) detrimental reliance on the misrepresentation.” *Williams v. Stewart*, 137 N.M. 420, 429 (N.M. Ct. App. 2005).

Secondary Source: UJI 13–1633 NMRA (2025) (defining fraud) (available on Westlaw).

Injury to Pregnant Woman

Source of Law: N.M. Stat. Ann. § 30–3–7 (West 2025).

Description: The tort of “injury to pregnant woman consists of a person other than the woman injuring a pregnant woman in the commission of a felony causing her to suffer a miscarriage or stillbirth as a result of that injury.” *State v. Santillanes*, 130 N.M. 464, 474–75, 27 P.3d 456, 466–67 (2001) (citation omitted).

Intentional Infliction of Emotional Distress (“IIED”)

Description: The elements of intentional infliction of emotional distress (IIED) are: “(1) the conduct in question was extreme and outrageous; (2) the conduct of the defendant was intentional or in reckless disregard of the plaintiff; (3) the plaintiff’s mental distress was extreme and severe; and (4) there is a causal connection between the defendant’s conduct and the claimant’s mental distress.” *Trujillo v. N. Rio Arriba Elec. Coop., Inc.*, 131 N.M. 607, 616, 41 P.3d 333 (2001) (quoting *Hakkila v. Hakkila*, 112 N.M. 172, 182, 812 P.2d 1320, 1330 (N.M. Ct. App. 1991)). Extreme and outrageous conduct is that which is “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Stieber v. J. Pub. Co.*, 120 N.M. 270, 274, 901 P.2d 201, 205 (N.M. Ct. App. 1995) (quoting Restatement (Second) of Torts § 46, cmt. d (1965)).

Secondary Source: UJI 13–1628 NMRA (2025) (defining IIED) (available on Westlaw).

Family Separation FTCA Caselaw: *C.D.A. v. United States*, No. 21-469, 2023 WL 2666064 (E.D. Pa. Mar. 28, 2023) (concluding plaintiffs stated an IIED claim under New Mexico law and denying motion to dismiss).

Invasion of Privacy

Description: The tort of invasion of privacy is categorized into four groups: “false light invasion of privacy,” “intrusion,” “publication of private facts,” and “the right of publicity or appropriation.” *Moore v. Sun Pub. Corp.*, 118 N.M. 375, 383, 881 P.2d 735, 743 (N.M. Ct. App. 1994). “False light,” which is closely related to defamation, “is the placing of another in a false light in the public eye.” *Id.* (citation omitted). “Intrusion,” which is similar to trespass, “involves an invasion of the plaintiff’s private space or solitude,” such as eavesdropping or spying. *Id.* (citation omitted). The elements of publication of private facts are the disclosure itself, “which would be objectionable to a reasonable person, and a lack of legitimate public interest in the information.” *Fernandez-Wells v. Beauvais*, 127 N.M. 487, 489, 983 P.2d 1006, 1008 (N.M. Ct. App. 1999). Finally, the right of publicity or appropriation “consists of the exploitation of the plaintiff’s name or likeness, usually for commercial gain,” such as for advertising. *Moore*, 118 N.M. at 383.

Secondary Source: UJI 13–1626 NMRA (2025) (defining invasion of privacy) (available on Westlaw).

Loss of Consortium

Description: “Loss of consortium is simply the emotional distress suffered by one spouse who loses the normal company of his or her mate when the mate is physically injured due to the tortious conduct of another.” *Romero v. Byers*, 117 N.M. 422, 425, 872 P.2d 840, 843 (1994). “Recovery for loss of consortium may extend to” non-spousal relationships, including “sibling relationships” so long as the parties establish a “sufficiently close relationship” so as to prove “mutual dependence.” *Wachocki v. Bernalillo Cnty. Sheriff’s Dep’t*, 150 N.M. 650, 265 P.3d 701, 703 (2011); *see Lozoya v. Sanchez*, 133 N.M. 579, 66 P.3d 948 (2003) (holding that a claim for loss of consortium may apply to unmarried cohabitants if familial closeness between them is established), *abrogated on other grounds by Heath v. La Mariana Apartments*, 143 N.M. 657, 180 P.3d 664 (2008); *see also Fernandez v. Walgreen Hastings Co.*, 126 N.M. 263, 968 P.2d 774 (1998) (holding that a grandmother may recover under a theory of loss of consortium due to the death of her minor grandchild of whom she was the caretaker).

Secondary Source: UJI-Civ app. 1, NMRA (2025) (providing a sample loss of consortium instruction) (available on Westlaw).

Family Separation FTCA Caselaw: *C.D.A. v. United States*, No. 21-469, 2023 WL 2666064 (E.D. Pa. Mar. 28, 2023) (dismissing loss of consortium claim for failure to state a claim).

Malicious Abuse of Process (“MAP”)

Description: New Mexico combined the torts of abuse of process and malicious prosecution in *Devaney v. Thriftway Marketing Corp.*, 124 N.M. 512, 514, 953 P.2d 277 (1997), *abrogated on other grounds by Fleetwood Retail Corp. of N.M. v. LeDoux*, 142 N.M. 150, 164 P.3d 31 (2007). The elements of MAP are “(1) the use of process in a judicial proceeding that would be improper in the regular prosecution or defense of a claim or charge; (2) a primary motive in the use of process to accomplish an illegitimate end; and (3) damages.” *Durham v. Guest*, 145 N.M. 694, 701, 204 P.3d 19 (2009) (overruling *DeVaney* “with respect to its holding that all malicious abuse of process claims require the defendant to have initiated a judicial proceeding against the plaintiff”).

Secondary Source: UJI 13–1636 NMRA (2025) (defining MAP) (available on Westlaw).

Family Separation FTCA Caselaw: *C.D.A. v. United States*, No. 21-469, 2023 WL 2666064 (E.D. Pa. Mar. 28, 2023) (concluding plaintiffs stated an abuse of process claim under New Mexico law and denying motion to dismiss).

Medical Malpractice

Description: “To prove medical malpractice, a plaintiff must show that (1) the defendant owed the plaintiff a duty recognized by law; (2) the defendant breached the duty by departing from the proper standard of medical practice recognized in the community; and (3) the acts or omissions complained of proximately caused the plaintiff’s injuries.” *Diaz v. Feil*, 118 N.M. 385, 388, 881 P.2d 745, 748 (N.M. Ct. App. 1994). In deciding whether a duty is owed, courts must identify “policy considerations and interests involved without regard to whether the injury sustained by

Plaintiff was foreseeable.” *Brown v. Kellogg*, 2015-NMCA-006, ¶ 7, 430 P.3d 1274, 1275 (N.M. Ct. App. 2014).

Negligence

Description: To recover on a negligence action, a plaintiff must establish: “(1) defendant’s duty to the plaintiff, (2) breach of that duty, typically based on a reasonable standard of care, (3) injury to the plaintiff, and (4) the breach of duty as cause of the injury.” *Zamora v. St. Vincent Hosp.*, 2014-NMSC-035, ¶ 22, 335 P.3d 1243, 1249 (N.M. 2014). “In New Mexico, negligence encompasses the concepts of foreseeability of harm to the person injured and of a duty of care toward that person.” *Ramirez v. Armstrong*, 100 N.M. 538, 541, 673 P.2d 822, 825 (1983), *overruled on other grounds by Folz v. State*, 110 N.M. 457, 460, 797 P.2d 246, 249 (1990). While negligence is a question of fact, the existence of a duty owed to the plaintiff by the defendant is a question of law. *Herrera v. Quality Pontiac*, 134 N.M. 43, 48 (2003).

Secondary Source: UJI 13–1601 NMRA (2025) (defining negligence) (available on Westlaw).

Family Separation FTCA Caselaw: *C.D.A. v. United States*, No. 21-469, 2023 WL 2666064 (E.D. Pa. Mar. 28, 2023) (dismissing negligence claim for failure to state a claim).

Negligence in Hiring or Retention

Description: “Negligence in hiring or retention is based on the employer’s negligent acts or omissions in hiring or retaining an employee when the employer knows or should know, through the exercise of reasonable care, that the employee is incompetent or unfit.” *Lessard v. Coronado Paint & Decorating Ctr., Inc.*, 142 N.M. 583, 593, 168 P.3d 155, 165 (2007). Under a theory of negligent hiring or retention, a plaintiff must provide “evidence that the employee was unfit, considering the nature of the employment and the risk he posed to those with whom he would foreseeably associate” *Valdez v. Warner*, 106 N.M. 305, 307, 742 P.2d 517, 519 (N.M. Ct. App. 1987) (citation omitted). “An employer may be held liable for negligent hiring or retention, even if the employer is not vicariously responsible for the employee’s negligent acts under a theory of respondeat superior.” *Lessard*, 142 N.M. at 593. In addition, “an employer can be held liable for negligent hiring or retention under the common law duty to ‘members of the public whom the employer might reasonably anticipate would be placed in a position of risk of injury as a result of the hiring.’” *Id.* at 594 (quoting *Spencer v. Health Force, Inc.*, 137 N.M. 64, 107 P.3d 504 (2005)).

Secondary Source: UJI 13–1647 NMRA (2025) (defining negligence in hiring or retention) (available on Westlaw).

Negligent Infliction of Emotional Distress (“NIED”)

Description: “NIED is an extremely narrow tort that compensates a bystander who has suffered severe emotional shock as a result of witnessing a sudden, traumatic event that causes serious injury or death to a family member.” *Baldonado v. El Paso Nat. Gas Co.*, 143 N.M. 297, 304–05, 176 P.3d 286 (N.M. Ct. App. 2006), *aff’d*, 143 N.M. 288, 176 P.3d 277 (2008). NIED is “a tort against the integrity of the family unit.” *Ramirez v. Armstrong*, 100 N.M. 538, 541, 673 P.2d 822 (S. Ct. 1983), *overruled on other grounds, Folz v. State*, 110 N.M. 457, 460, 797 P.2d 246 (1990). A defendant cannot be liable for the tort unless the witness-plaintiff has a close marital or family relationship with the victim. *Id.*

Family Separation FTCA Caselaw: *C.D.A. v. United States*, No. 21-469, 2023 WL 2666064 (E.D. Pa. Mar. 28, 2023) (dismissing NIED claim for failure to state a claim).

Premises Liability

Description: “An owner or occupier of property has a duty to maintain the property in a safe condition . . . to avoid creating or permitting an unsafe condition to exist on the premises” which are “not limited by the physical boundaries of the land.” *Monett v. Dona Ana Cnty. Sheriff’s Posse*, 114 N.M. 452, 458, 840 P.2d 599, 605 (1992). The owner or occupier of a parcel of property “owes a duty to safeguard each business visitor whom the occupier reasonably may foresee could be injured by a danger avoidable through reasonable precautions available to the occupier of the premises.” *Klopp v. Wackenhut Corp.*, 113 N.M. 153, 157, 824 P.2d 293, 297 (1992). The danger of a condition on the premises need not be obvious to trigger liability. *Chavez v. Convergys Corp.*, 2023-NMCA-067, ¶ 17, 535 P.3d 721, 726 (N.M. 2023).

TEXAS TORTS

Abuse of Process

Description: To prove abuse of process, the plaintiff must show: “(1) the defendant made an illegal, improper, or perverted use of [a criminal or civil legal] process, a use neither warranted nor authorized by the process; (2) the defendant had an ulterior motive or purpose in exercising such illegal, perverted, or improper use of the process; and (3) damage to the plaintiff as a result of such illegal act.” *Brown v. City of Houston*, 297 F. Supp. 3d 748, 760 (S.D. Tex. 2017) (quoting *Hunt v. Baldwin*, 68 S.W.3d 117, 129 (Tex. Ct. App. 2001)). “Process” includes “individual writs issued by the court during or after judicial proceedings” and, in the criminal context, “the entire range of procedures connected with judicial proceedings after the arrest warrant has been issued.” *Kjellvander v. Citicorp*, 156 F.R.D. 138, 142 (S.D. Tex. 1994) (citing *Snyder v. Bryne*, 770 S.W.2d 65, 69 (Tex. Ct. App. 1989)). “If wrongful intent or malice caused the process to be issued initially, the claim is instead one for malicious prosecution.” *Hunt*, 68 S.W.3d at 130 (citation omitted)

Additional Reference: O’Connor’s Texas Causes of Action ch. 2 (Thomson Reuters 2020) (available on Westlaw).

Family Separation FTCA Caselaw: *D.A. v. United States*, 663 F. Supp. 3d 715 (W.D. Tex. 2023) (concluding plaintiffs stated a plausible claim for abuse of process and denying motion to dismiss); *B.Y.C.C. v. United States*, No. 22-6586, 2023 WL 5237147 (D.N.J. Aug. 15, 2023) (same); *Leticia v. United States*, No. 22-7527, 2023 WL 7110953 (E.D.N.Y. Oct. 27, 2023) (same); *S.M.F. v. United States*, No. 22-01193, 2023 WL 6215319 (W.D. Wash. Sept. 25, 2023) (dismissing claim for abuse of process for failure to state a claim); *E.L.A. v. United States*, No. 20-1524, 2022 WL 2046135 (W.D. Wash. June 3, 2022) (same); *C.D.A. v. United States*, No. 21-469, 2023 WL 2666064 (E.D. Pa. Mar. 28, 2023) (same); *M.A.N.H. v. United States*, No. 23-00372, Dk. 51 (C.D. Cal. Sept. 22, 2023) (same).

Assault (& Battery)

Source of Law: Tex. Penal Code Ann. § 22.01(a) (West 2019).

Description: “[T]he definition of assault is the same under civil and criminal law and covers three types of contact: (1) bodily injury; (2) imminent bodily injury; or (3) intentional or knowing

physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive and provocative.” *Andrade v. Teichroeb*, 341 F. Supp. 3d 681, 687 (N.D. Tex. 2018) (quoting *LaBella v. Charlie Thomas, Inc.*, 942 S.W.2d 127, 138 (Tex. Ct. App. 1997)); accord Tex. Penal Code Ann. § 22.01(a) (West 2019).

Additional Reference: O’Connor’s Texas Causes of Action ch. 4 (Thomson Reuters 2020) (available on Westlaw).

Family Separation FTCA Caselaw: *B.Y.C.C. v. United States*, No. 22-6586, 2023 WL 5237147 (D.N.J. Aug. 15, 2023) (concluding plaintiffs sufficiently plead claim for assault and battery and denying motion to dismiss); *Leticia v. United States*, No. 22-7527, 2023 WL 7110953 (E.D.N.Y. Oct. 27, 2023) (same).

Breach of Fiduciary Duty

Description: “The elements of a breach-of-fiduciary-duty claim are (1) the existence of a fiduciary relationship between the plaintiff and defendant; (2) the defendant’s breach of the fiduciary duties arising from that relationship; and (3) injury to the plaintiff, or benefit to the defendant, resulting from that breach.” *Plotkin v. Joekel*, 304 S.W.3d 455, 479 (Tex. App. 2009).

Family Separation FTCA Caselaw: *B.Y.C.C. v. United States*, No. 22-6586, 2023 WL 5237147 (D.N.J. Aug. 15, 2023) (concluding plaintiffs sufficiently plead claim for breach of fiduciary duty and denying motion to dismiss).

Child Abduction

Description: A claim for child abduction requires a showing that someone “who, with knowledge that the parent does not consent, abducts or otherwise compels or induces a minor child to leave a parent legally entitled to its custody or not to return to the parent after it has been left him.” *Silcott v. Oglesby*, 721 S.W.2d 290, 292–93 (Tex. 1986).

Family Separation FTCA Caselaw: *B.Y.C.C. v. United States*, No. 22-6586, 2023 WL 5237147 (D.N.J. Aug. 15, 2023) (concluding plaintiffs sufficiently plead claim for child abduction and denying motion to dismiss); *S.M.F. v. United States*, No. 22-01193, 2023 WL 6215319 (W.D. Wash. Sept. 25, 2023) (same).

Conversion

Description: “Conversion is the wrongful exercise of dominion or control over the property of another in denial of, or inconsistent with, the other’s rights in the property.” *Domain Prot., LLC v. Sea Wasp, LLC*, 426 F. Supp. 3d 355, 388 (E.D. Tex. 2019) (quoting *Robinson v. Nat’l Autotech, Inc.*, 117 S.W.3d 37, 40 (Tex. Ct. App. 2003)). “To establish a claim for conversion, a plaintiff must prove that: (1) the plaintiff owned or had possession of the property or entitlement to possession; (2) the defendant unlawfully and without authorization assumed and exercised control over the property to the exclusion of, or inconsistent with, the plaintiff’s rights as an owner; (3) the plaintiff demanded return of the property; and (4) the defendant refused to return the property.” *Id.* (citing *Texas Integrated Conveyor Sys., Inc. v. Innovative Conveyor Concepts, Inc.*, 300 S.W.3d 348, 366–67 (Tex. Ct. App. 2009)). “The plaintiff must also establish that the defendant’s conversion was the proximate cause of the plaintiff’s injury.” *Id.* at 389 (citations omitted).

Additional Reference: O'Connor's Texas Causes of Action ch. 6 (Thomson Reuters 2020) (available on Westlaw).

Conversion of Money

Description: “Actions for conversion of money are available in Texas only where ‘money is (1) delivered for safekeeping; (2) intended to be kept segregated; (3) substantially in the form in which it is received or an intact fund; and (4) not the subject of a title claim by the keeper.’” *In re TXNB Internal Case*, 483 F.3d 292, 308 (5th Cir. 2007) (quoting *Edlund v. Bounds*, 842 S.Wd.2d 719, 727 (Tex. Ct. App. 1992)).

Additional Reference: O'Connor's Texas Causes of Action ch. 6, § 2 (Thomson Reuters 2020) (available on Westlaw)

False Imprisonment

Description: To prove false imprisonment, a plaintiff must show: “(1) willful detention, (2) without consent, and (3) without authority of law.” *Davila v. United States*, 713 F.3d 248, 262 (5th Cir. 2013) (quoting *Martinez v. English*, 267 S.W.3d 521, 529 (Tex. Ct. App. 2008)).

Additional Reference: O'Connor's Texas Causes of Action ch. 10 (Thomson Reuters 2020) (available on Westlaw).

Family Separation FTCA Caselaw: *Flores Benitez v. Miller*, 687 F. Supp. 3d 304 (D. Conn. 2023) (dismissing false imprisonment claim under Texas law for failure to state a claim).

Fraud

Description: The elements of common law fraud are: “(1) a material misrepresentation; (2) that was either known to be false when made or made without knowledge of its truth; (3) which was intended to induce reliance; (4) which was relied on; and (5) which caused injury.” *Vine v. PLS Fin. Servs., Inc.*, 331 F.R.D. 325, 339 (E.D. Tex. 2019), *aff'd*, 807 F. App'x 320 (5th Cir. 2020) (citing *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001)).

Additional Reference: O'Connor's Texas Causes of Action ch. 12 (Thomson Reuters 2020) (available on Westlaw).

Interference with Possessory Interest in Child

Description: “A person who takes or retains possession of a child or who conceals the whereabouts of a child in violation of a possessory right of another person may be liable for damages to that person.” Tex. Fam. Code § 42.002. A “possessory right” is defined as “a court-ordered right of possession of or access to a child, including conservatorship, custody, and visitation. *Id.* § 42.001(2). However, a person sued for damages for interference with a possessory interest in a child may recover attorney's fees and costs if the court or jury finds that the claim for damages is frivolous, unreasonable, or without foundation. *Id.* § 42.009.

Intentional Infliction of Emotional Distress (“IIED”)

Description: IIED is considered to be a “gap-filler tort, judicially created for the limited purpose of allowing recovery in those rare instances where a defendant intentionally inflicts severe

emotional distress in a manner so unusual that the victim has no other recognized theory of redress.” *Shemwell v. Cannon*, 352 F. Supp. 3d 690, 702 (N.D. Tex. 2019) (citing *Hoffmann-La Roche, Inc. v. Zeltwanger*, 144 S.W.3d 438, 447 (Tex. 2004)). IIED “has four elements: (1) the defendant acted intentionally or recklessly; (2) its conduct was extreme and outrageous; (3) its actions caused the plaintiff emotional distress; and (4) the emotional distress was severe.” *Hersh v. Tatum*, 526 S.W.3d 462, 468 (Tex. 2017) (citation omitted). The conduct must be “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Id.* (citation and internal quotation marks omitted). “Conduct that is merely rude or insensitive or that amounts to ‘mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities’ does not rise to the level of ‘extreme and outrageous conduct.’” *Grost v. United States*, 648 F. App’x 459, 461 (5th Cir. 2016) (quoting *GTE Sw., Inc. v. Bruce*, 998 S.W.2d 605, 612 (Tex. 1999)).

Additional Reference: O’Connor’s Texas Causes of Action ch. 14 (Thomson Reuters 2020) (available on Westlaw).

Family Separation FTCA Caselaw: *D.A. v. United States*, 663 F. Supp. 3d 715 (W.D. Tex. 2023) (concluding plaintiffs stated a plausible IIED claim and denying motion to dismiss); *B.Y.C.C. v. United States*, No. 22-6586, 2023 WL 5237147 (D.N.J. Aug. 15, 2023) (same); *Leticia v. United States*, No. 22-7527, 2023 WL 7110953 (E.D.N.Y. Oct. 27, 2023) (same); *C.D.A. v. United States*, No. 21-469, 2023 WL 2666064 (E.D. Pa. Mar. 28, 2023) (same); *C.M. v. United States*, 672 F. Supp. 3d 288 (W.D. Tex. 2023) (same); *M.A.N.H. v. United States*, No. 23-00372, Dk. 51 (C.D. Cal. Sept. 22, 2023) (same).

Invasion of Privacy: Intrusion on Seclusion

Description: “There are three distinct injuries under the tort of invasion of privacy: (1) intrusion on seclusion, (2) public disclosure of private facts, and (3) appropriation of name or likeness.” *Thomas v. State*, 294 F. Supp. 3d 576, 616 (N.D. Tex. 2018) (citation and internal quotation marks omitted). Intrusion on seclusion requires a plaintiff to show that “1) the defendant intentionally intruded on the plaintiff’s solitude, seclusion, or private affairs, and 2) the intrusion would be highly offensive to a reasonable person.” *Martin v. Guevara*, 464 F. App’x 407, 410 (5th Cir. 2012) (citing *Valenzuela v. Aquino*, 853 S.W.2d 512, 513 (Tex. 1993)).

Additional Reference: O’Connor’s Texas Causes of Action ch. 15 (Thomson Reuters 2020) (available on Westlaw).

Loss of Consortium

Description: Loss of consortium is an independent tort that is actionable only as a derivative claim to separate tortious conduct and arises only “when a spouse, parent, or child suffers actionable non-fatal physical injury” from the underlying tort. *Robinson v. Johnson*, 975 F. Supp. 950, 955 (S.D. Tex. 1996) (citing *Whittlesey v. Miller*, 572 S.W.2d 665, 667 (Tex. 1978)). The plaintiff may “recover for such nonpecuniary damages as loss of...love, protection, emotional support, services, companionship, care, and society.” *Id.* (quoting *Reagan v. Vaughn*, 804 S.W.2d 463, 467 (Tex. 1990)).

Family Separation FTCA Caselaw: *C.D.A. v. United States*, No. 21-469, 2023 WL 2666064 (E.D. Pa. Mar. 28, 2023) (dismissing loss of consortium claim for failure to state a claim).

Malicious Prosecution

Description: To establish a claim for malicious prosecution, a plaintiff must show: (1) the institution or continuation of civil proceedings against the plaintiff; (2) initiated by the defendant; (3) with malice in the commencement of the proceedings; (4) which proceedings lacked probable cause; (5) were terminated in the plaintiff's favor; and (6) resulted in special damages. *Tex. Beef Cattle Co. v. Green*, 921 S.W.2d 203, 207 (Tex. 1996).

Medical Malpractice

Sources of Law: Tex. Civ. Prac. & Rem. Code Ann. §§ 74.001–.507 (West 2019).

Description: The Texas Medical Liability Act (“TMLA”) establishes liability if: “(1) the defendant is a ‘physician’ or ‘health care provider,’ (2) the plaintiff’s cause of action is a ‘health care liability claim,’ (3) the defendant owed the plaintiff a duty of care; (4) the defendant breached its duty of care by failing to meet the required standard of care; and (5) the defendant’s breach proximately caused the plaintiff’s injury.” *Martinez v. Pfizer Inc.*, 388 F. Supp. 3d 748, 767 (W.D. Tex. 2019) (citing *Marks v. St. Luke’s Episcopal Hosp.*, 319 S.W.3d 658, 662 (Tex. 2010)). “There is a rebuttable presumption that a cause of action is a ‘health care liability claim’ if it is ‘based on facts implicating the defendant’s conduct during the course of a patient’s care, treatment, or confinement.’ *Id.* at 768 (citing *Loaisiga v. Cerda*, 379 S.W.3d 248, 256 (Tex. 2012)).

Medical Negligence

Description: To establish a claim for medical negligence, “a plaintiff is required to prove (1) a duty by the healthcare provider to act according to a certain standard, (2) a breach of the applicable standard of care, (3) an injury, and (4) a sufficient causal connection between the breach of care and the injury.” *Dunnick v. Marsillo*, 654 S.W.3d 224, 228 (Tex. App. 2022) (citation and internal quotation marks omitted).

Family Separation FTCA Caselaw: *D.A. v. United States*, 663 F. Supp. 3d 715 (W.D. Tex. 2023) (concluding plaintiffs failed to state a plausible claim for medical negligence and granting motion to dismiss).

Negligence

Description: To establish a claim of negligence, a plaintiff must prove: (1) a duty of care existed; (2) a breach of that duty; and (3) damages proximately caused by the breach. *See Western Inv., Inc. v. Urena*, 162 S.W.3d 547, 550 (Tex. 2005); *see also Davis v. United States*, 474 F. Supp. 2d 829, 833 (N.D. Tex. 2007) (applying *Western* standard).

Additional Reference: O’Connor’s Texas Causes of Action ch. 21-A (Thomson Reuters 2020) (available on Westlaw).

Family Separation FTCA Caselaw: *Flores Benitez v. Miller*, 687 F. Supp. 3d 304 (D. Conn. 2023) (denying motion to dismiss negligence claim); *C.M. v. United States*, 672 F. Supp. 3d 288 (W.D. Tex. 2023) (same); *B.Y.C.C. v. United States*, No. 22-6586, 2023 WL 5237147 (D.N.J. Aug. 15, 2023) (same); *Leticia v. United States*, No. 22-7527, 2023 WL 7110953 (E.D.N.Y. Oct. 27, 2023) (same); *M.A.N.H. v. United States*, No. 23-00372, Dk. 51 (C.D. Cal. Sept. 22, 2023) (same); *E.L.A. v. United States*, No. 20-1524, 2022 WL 2046135 (W.D. Wash. June 3, 2022) (granting motion to dismiss negligence claim for failure to state a claim); *C.D.A. v. United States*, No. 21-469, 2023 WL 2666064 (E.D. Pa. Mar. 28, 2023) (same).

Negligent Hiring/Supervision

Description: “An employer who negligently hires, retains, or supervises an incompetent or unfit individual may be directly liable to a third party whose injury was proximately caused by the employee’s negligent or intentional act.” *Doe v. Apostolic Assembly of Faith in Christ Jesus*, 452 F. Supp. 3d 503, 522 (W.D. Tex. 2020) (quoting *Wrenn v. G.A.T.X. Logistics, Inc.*, 73 S.W.3d 489, 495 (Tex. Ct. App. 2002)). “The cause of action is based on an employer’s direct negligence instead of the employer’s vicarious liability for the torts of its employees.” *Id.* (citing *Wrenn*, 73 S.W.3d at 496). “A claim of negligent hiring, supervision, or retention is not dependent upon a finding that the employee was acting in the course and scope of his employment when the tortious act occurred.” *Id.*

Additional Reference: O’Connor’s Texas Causes of Action ch. 21-D (Thomson Reuters 2020) (available on Westlaw).

Family Separation FTCA Caselaw: *B.Y.C.C. v. United States*, No. 22-6586, 2023 WL 5237147 (D.N.J. Aug. 15, 2023) (dismissing, in part, claim for negligent supervision for failure to state a claim).

Negligent Undertaking

Description: To establish a claim of negligent undertaking, a plaintiff must show that: (1) a defendant undertook to perform services that it should have known were necessary for the protection of the plaintiffs; (2) defendant failed to exercise reasonable care in performing those services; (3) plaintiff relied upon defendant’s performance; or (4) defendant’s performance increased plaintiff’s risk of harm. *Kristensen v. United States*, 372 F. Supp. 3d 461, 469 (W.D. Tex. 2019).

Family Separation FTCA Caselaw: *B.Y.C.C. v. United States*, No. 22-6586, 2023 WL 5237147 (D.N.J. Aug. 15, 2023) (concluding plaintiffs sufficiently plead claim for negligent undertaking and denying motion to dismiss).

Premises Liability

Description: Premises owners generally “have a duty to protect invitees from, or warn them of, conditions posing unreasonable risks of harm if the owners knew of the conditions or, in the exercise of reasonable care, should have known of them.” *Henkel v. Norman*, 441 S.W.3d 249, 251 (Tex. 2014) (citation omitted). “[A] landowner’s premises-liability duties, like its negligence duties, are limited to a duty to exercise ordinary, reasonable care.” *Austin v. Kroger Texas, L.P.*, 465 S.W.3d 193, 203 (Tex. 2015). A plaintiff must prove: “(1) the property owner had actual or constructive knowledge of the condition causing the injury; (2) the condition posed an unreasonable risk of harm; (3) the property owner failed to take reasonable care to reduce or eliminate the risk; and (4) the property owner’s failure to use reasonable care to reduce or eliminate the risk was the proximate cause of injuries to the invitee.” *Henkel*, 441 S.W.3d at 251–52 (citation omitted).

Additional References: O’Connor’s Texas Causes of Action chs. 23-B, 23-C (Thomson Reuters 2020) (available on Westlaw).

Wrongful Death

Description: Under Texas law, “[a] person is liable for damages arising from an injury that causes an individual’s death if the injury was caused by the person’s or his agent’s or servant’s wrongful act, neglect, carelessness, unskillfulness, or default.” Tex. Civ. Prac. & Rem. Code § 71.002(b). Thus, the elements of a wrongful death claim are (1) “wrongful or negligent conduct of the defendant” and (2) “proximate cause resulting in death.” *Schippers v. Mazak Props., Inc.*, 350 S.W.3d 294, 298 (Tex. App. 2011). A wrongful death claim “is for the exclusive benefit of the” decedent’s parents and children. *Id.* § 71.004(a).