MICHIGAN PERSONAL INJURY AND ACCIDENT SURVIVAL GUIDE

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USING THIS GUIDE

This is meant to serve as an informative guide to anyone being sued or considering filing a lawsuit based on an incident involving a personal injury or other accident. This guide will introduce you to basic legal concepts that are relevant to such cases as well as helpful tips for anyone finding themselves on either side of such an event. This guide will also discuss certain specific types of injuries and accidents in some detail.

TABLE OF CONTENTS

CHAPTER 1: BASIC CONCEPTS

Cases and lawsuits involving personal injuries and accidents are typically referred to as “torts” by lawyers and courts. This is a distinct body of law that has its own unique terms and concepts that are important to know.

Can you only be sued for injuries/damage caused on purpose?

No, you can also sue someone for damage or injuries caused unintentionally. While some causes of action, like “assault” and “battery” are intentional, others can be the result of “negligence” or “recklessness”. The person being sued just needs to have met certain requirements such as mental state.

What does “negligence” mean?

Negligence can best be understood as carelessness that results in a harm for which someone can be sued. More specifically, it means careless behavior that does not comply with the standard of care expected of a reasonable person. Negligence will be discussed in greater detail in the dedicated negligence chapter of this guide.

Can children be sued for the personal injuries they cause?

Yes Depending on the circumstances. A Michigan court will not allow a lawsuit against a child younger than seven. In any case you are likely going to be suing the parents rather than the child themselves for their

malicious or negligent behavior. Furthermore, the courts do not impose the same standard of care on a minor as they would an adult. That will also be discussed in more detail in the negligence chapter of this guide.

CHAPTER 2: INTENTIONAL INJURIES

When can someone be liable for intentionally inflicting injuries on another person?

In order to be liable for intentionally inflicted injuries, three requirements must be met. First, the act itself must have been a voluntary movement (no reflexive actions). Second, that person must have had the proper intent or mental state. Typically, intentional injury cases require that the defendant either intended to cause the harm or was almost certain that injury would result from their actions. The third requirement is that the act of the defendant must be the primary cause of the injury being sued for. Even there were other causes involved, as long as the actions of the defendant where the most important contribution, they can be held liable for the injuries inflicted.

What if someone intended to injure one person, but ended up injuring a different person, could the third person sue for intentional injury?

Michigan (like most states), observes the doctrine of transferred intent. That means that when the defendant has the right mental state for an intentional tort, but causes an injury to someone other than their intended target, they can still be held liable as if they had injured their intended target.

What is assault?

Assault is any act which would cause a reasonable person to believe that you are about to cause harm or other offensive contact with their person. Exaggerated fears or the belief that harm might come in the far future is not enough. It must be imminent and it must be reasonable.

Mean words alone are not assault. However, a conditional threat, like "your wallet or your life" might count as assault. It does not matter if the defendant is not actually capable of carrying out the threat, as long as the victim reasonably believes he is capable. The defendant must have intended to put the victim in "apprehension" of harm in order to be liable for assault.

What is battery?

Battery is an intentional act which creates harmful or offensive contact with another person. "Harmful" means anything which causes pain, injury or disfigurement. However, "offensive" could be as tame as spitting someone and it would still qualify as battery. Just as long as a reasonable person would consider it offensive.

What is trespass?

A nonconsensual physical invasion of the plaintiff's land or the interference with their personal property. The defendant must be aware that they are trespassing. If both of these things are proven, then the plaintiff can sue for any damages that result from the trespass.

Can you trespass without physically entering onto the land?

Yes, you can. The "invasion" involved in trespass can also take the form of flooding or out of control fires. If the entity invading the land is non-physical, such as loud noises or concussive explosions, then it is typically treated as a nuisance rather than a trespass.

Does trespass only apply to ground level/surface land?

No, trespass can also include invasions from underground (tunneling) or above the land as well.

Can you accidentally trespass on land?

Yes, you can. Knowledge that you are trespassing is not a requirement to be sued for trespass. The only requirement is that you voluntarily and intentionally entered the land in question, even if you didn't know.

Can you be sued for trespass even if you don't cause any actual damage?

Yes. Unlike negligence lawsuits, damages for intentional injuries are assumed if the act in question is proven. The absence of any actual damage will minimize whatever you are ultimately required to pay, but you will still be liable for trespass.

What is false imprisonment?

False imprisonment occurs whenever someone is intentionally confined to a bounded area against their will. This restraint can come from physical barriers, or from the captor holding the captives loved ones or property hostage. It can also result from direct or indirect threats of violence. An indirect threat must be reasonably construed as a threat.

Can you be falsely imprisoned by the police?

Yes, but the rules are rather complicated. An invalid use of legal authority is only false imprisonment if the there was no warrant and the arrest was unlawful. A warrantless arrest is not unlawful if it was a privileged arrest.

What kinds of arrests are privileged?

The following types of warrantless arrests are privileged:

- An arrest by a police officer who reasonably believes that a felony has been committed by the person being arrested. A private citizen is not privileged to make such an arrest unless that person actually did commit a felony.
- Both police and private citizens may arrest without a warrant if a misdemeanor that "breaches the peace" happens right in front of them. Michigan also allow this for police officers if they reasonably believes that a serious misdemeanor has been committed, even if it didn't happen in their presence.
- If there is reasonable belief that a felony or breach of the peace is still ongoing, then both police and private citizens may arrest that person without a warrant.
- Shopkeepers are privileged to arrest if they reasonably believe that someone is shoplifting and conduct the arrest in a reasonable manner for a reasonable length of detention.

Can you sue someone for emotional injuries?

Yes, you can. Michigan allows lawsuits for intentional infliction of emotional harm. However, in order to succeed, the emotional distress must be severe and must have been caused by "extreme or outrageous" conduct. Outrageous conduct is defined as behavior which violates all reasonable standards of decency. Less offensive behavior might also qualify if it is done repeatedly or done against children or other vulnerable individuals.

Despite using the word "intentional", the injury does not always have to be intentionally inflicted. The lawsuit can also succeed if the defendant recklessly disregarded the effect of their conduct on the plaintiff.

Just proving outrageous conduct is not enough. Emotional injuries are the only form of intentional injury where the plaintiff must prove actual damages. While most states have moved away from requiring actual physical symptoms from the emotional distress, some form of damage is required. That being said, the more

outrageous the conduct, the less proof of damage will be necessary.

Can you sue someone for stealing from you or breaking your property?

Yes, you can. There are actually two different types of lawsuits you can pursue against someone for taking your personal property or damaging it. Which one you would use depends on how much damage was actually done to your property. If the damage is relatively minor, then you would sue for “trespass to chattels”. If the damage is bad enough that you lose the property and are suing to get it replaced, then you would sue for “conversion of chattels”.

It should be noted that a mistaken belief of ownership is not a defense to a claim of trespass or conversion of chattels.

CHAPTER 3: DEFENSES TO INTENTIONAL INJURY LAWSUITS

What if the injured person consented to the act which injured them?

So long as it was obtained voluntarily (no threats or fraud), then consent is a defense for most intentional injury lawsuits. The defense is only valid if you stay within the bounds of that consent. Most states do not allow consent to criminal acts. Consent can also take the form of "implied consent", where a reasonable person would believe they have consent based on social custom or common practice between the two individuals. Consent is also implied if you are acting to save someone's life.

What if I injured the other person in self-defense, or to defend someone else?

If done properly, the defense of self and others is a defense to what would otherwise be lawsuit worthy injuries. Self-defense is not a valid justification if you were the first aggressor (i.e. you started it). Defense of others is justified if the person being protected would have been justified in exercising self-defense on their own behalf.

Unless the assailant is using deadly force, your act of defense must also be non-lethal. However, the right of lethal self-defense is tied into Michigan's Stand your ground law. That means that your claim must be able to

stand up in a criminal homicide trial in order to succeed in a civil lawsuit. In order to comply with the Michigan SYG law, the following requirements must be met:

- The defendant exercising self-defense must not have been engaged in a crime
- The defendant must have been in a location where they were legally allowed to be
- The defendant reasonably believed that their use of force was necessary to prevent imminent death, bodily harm, or sexual assault.

If these requirements are not met, then you have a duty to retreat if you are reasonably able to do so. If not, then you are permitted to use lethal force.

What if the other person wasn't actually attacking me, I just mistakenly thought that they were?

In that scenario, your act of "self-defense" or "defense of another" is still valid as long as you reasonably believed that the person you injured actually was attacking someone.

Can I also justify injuring someone to protect my property?

Yes, if you do it properly. You may use a reasonable amount of force to prevent someone from causing damage (or trespassing) on your property. However, you are required to give a verbal warning to cease and desist unless it would be pointless or dangerous to do so. Furthermore, once the damage has already been inflicted, you cannot attack the intruder/vandal after the fact. If the intruder has stolen personal property, then the trespass is still ongoing while you are in hot pursuit, and you will have a defense in court for all properly conducted uses of force.

You may not use force if the so called "trespasser" has a "legal privilege" to be on your land. Legal privileges include:

- Necessity: entry onto the property is reasonably necessary to avoid damage or injury resulting from a natural or artificial source. The injury/damage being avoided must be greater than the harm that will be caused by trespassing on another's land. Necessity can either be public (for the benefit of the public) or private (for the benefit of a small number of people). If the necessity is private, then the intruder must pay for any damage caused (although they will be otherwise protected from other liability).
- Recapture of Chattels (personal property): If someone else's personal property accidentally or wrongfully ends up on your property, they are legally allowed to go onto your property to retrieve it (like the baseball in Sandlot). However, the owner of the "chattel" must give notice to the property owner and make a request for the return of the item(s) in question. If the landowner refuses to return it, then you may enter. If the landowner did not wrongfully place the item(s) on their land, then the one entering to retrieve the item(s) is liable for any damage caused to the land. If it is your fault that the item(s) are on the other person's land, then you have no privilege to enter and must resort to legal

process to get your property back.

- Privilege of arrest: A police officer or a private citizen may enter another person's property without a warrant in order to arrest someone on that property. The officer cans still be sued for any misconduct on the property or against the person being arrested. If a citizen makes a felony arrest, then they can be held liable if the arrested person did not actually commit a felony.

Of these privileges to enter land, each of them is also a defense against a personal injury lawsuit.

Can a teacher or parent be sued for disciplining a child?

So long as reasonable force was used, then disciplining a child is a defense to uses of force or injuries that might otherwise result in civil liability.

CHAPTER 4: DEFAMATION

What is defamation?

Defamation is the use of certain written (libel) or spoken (slander) language that damages a person's reputation. In order to qualify as defamation the following requirements must be met:

- The language must be "defamatory". "Defamatory" means that the language in question tends to negatively affect one's reputation. Expressing an opinion is not defamation unless it is based on specific fact. Mere name-calling is not defamation. You cannot sue for the defamation of a dead person, only the living. You may need to present evidence of indirect defamation if the damaging nature of the words is not obvious on their face.
- The speech or writing must be about or concern the plaintiff. If it is not an obvious reference to the plaintiff, some additional evidence may be required to establish the indirect link. The listener must be able to understand the communication. The speaker/writer must have intended for that person to receive it or negligent about the risk that a third party would receive the damaging communication.
- Publication: The speaker (defendant) must have transmitted the defamatory language to at least one third party who is not the plaintiff. Language is only damaging to reputation when someone else hears it.
- Damage to plaintiff's reputation: The defamation must have caused actual reputational harm to the

plaintiff's reputation.

- Fault (negligence): The speaker must have demonstrated an unreasonable carelessness regarding the truth or falseness of their statements. Most other states only impose this requirement for matters of public concern

However, if the alleged defamation is discussing a topic of public concern (especially those about public figures), then the statement must be false in order for a defamation lawsuit to succeed.

If the target is a public figure than the requirements are more strict. This stricter requirement standard is known as "actual malice". Under the actual malice standard, the speaker must have known that their language was defamatory or shown reckless disregard for whether their words were true or false.

Proving actual malice will also enable you to receive more than mere monetary damages (including for emotional harm) in defamation lawsuits involving either public or nonpublic figures.

Do I need to show actual monetary damages for defamation?

You must show actual damages for all libel claims and most slander claims. The only forms of slander where you do not have to prove damages (damages are presumed) is in cases involving claims of the plaintiffs lack of chastity or allegations that the plaintiff committed a crime.

You can only be awarded punitive damages in a libel claim if the plaintiff gives the defendant a chance to retract their libelous statement before filing the lawsuit.

Can a whole group be defamed? Can the whole group sue the defamer?

That depends on the statement and the group in question. If the group is small and the statement refers to the entire group, then any member of that group can bring a lawsuit. If the group is large then the statement is considered to not specifically refer to any one member of the group and may not be used as the basis of a defamation lawsuit. If the group is small, but the statement does not refer to the whole group, plaintiffs can still recover if a reasonable person would interpret the statement to be referring to the plaintiff.

Can a news/media outlet be sued for defamation for publishing/circulating someone else's defamatory statement?

Primary publishers such as TV stations and newspapers are liable to the same extent as the original speaker. Anyone who repeats the defamation is also liable even if they cite the original source or disavow the statement.

Secondary publishers (paper distributors or those playing tapes of news broadcasts) are only liable if they should have known that the content was defamatory. Internet service providers are not considered publishers of any content hosted on their services.

What are the defenses to a defamation claim?

Here are some defenses to a claim of defamation:

- Consent: Consent to the statement is a complete defense. Once such consent is given, you may not sue for defamation for any statement that follows (and is within the scope of that consent) until such time as the consent is revoked. The rules governing consent to defamation are the same as those governing consent to intentional injuries (see the relevant chapter for more details).
- Truth: Truth is also an absolute defense to defamation. A demonstrably true statement can never be defamatory.
- Absolute privilege: certain privileged communications can never be used as the basis of defamation claims. Examples include judicial proceedings, statements by legislators, compelled communications by/with executive officials, and communication between spouses.
- Qualified privilege (can be lost if abused): examples include: statements that are of interest to the publisher, statements that are of interest to the listener, statements defending reputation/property/actions, statements of interest to both publisher and recipient. This privilege can be lost under the following circumstances
    - The statement falls outside of the scope of the privilege
    - The speaker acted with actual malice

The Defendant is has the burden to prove that the privilege applies to their statement.

CHAPTER 5: INVASION OF PRIVACY

What is invasion of privacy?

Invasion of the right of privacy actually refers of four different distinct acts with similar requirements. Whichever of the four you use the requirements will be as follow

- Invasive act
- Defendant's conduct caused the invasion
- Proof of mental anguish or emotional distress

The four distinct forms of invasion of privacy are:

- Appropriation of the plaintiff's name or picture: Plaintiff must show the unauthorized use of either their name or picture by the defendant for commercial gain. Commercial gain must be more than just selling for a profit. The picture/name must have been used to promote a product or service.
- Intrusion into plaintiff's seclusion or affairs: Intruding into private matters in a way that a reasonable person would find highly offensive. This does not include taking pictures of someone in public.
- Publishing facts which place the plaintiff in a false light: Attributing to the plaintiff views or actions he has not said or taken. The "false light" must be highly offensive to a reasonable person, and the

statement(s) must be published. The plaintiff must also prove that the defendant acted with actual malice.

- Public disclosure of private facts: The information must be private and it must be a kind of disclosure that a reasonable person would find highly offensive. This can result in liability even if the statement is true (truth is not a defense).

The right of privacy protected by this cause of action is strictly individual. It does not extend to the privacy of your family, does not follow you into the grave, and may not be given to another person. Corporations do not have a right of privacy.

Can I sue someone for installing cameras or other surveillance equipment on my property without my consent?

Yes, you can. Michigan law provides a cause of action for precisely this situation. This form of lawsuit applies to any device that records images, takes photos, or eavesdrops. It only applies to devices installed in private places (where there is an expectation of privacy) without the homeowner's consent.

CHAPTER 6: MISREPRESENTATION (FRAUD)

What is misrepresentation? Is it Fraud?

There are actually two types of misrepresentation. One of them, intentional misrepresentation, could accurately be described as fraud. The other is negligent misrepresentation. The elements of intentional misrepresentation are as follows:

- Misrepresentation of a material fact. “Material” basically means important or essential.
- Scienter: A legal term of art that basically means that the defendant knew or believed that their statement was baseless or false.
- Intent: The defendant intended to convince the plaintiff to act in a certain way based on a reliance on their false or baseless statement.
- Causation: the plaintiff actually relied on the statement and acted accordingly.
- The reliance was justifiable.
- Plaintiff suffered actual monetary damages.

There is no general duty to disclose material information, so the failure to do so is not automatically misrepresentation. The only situations where there is such a duty are:

- When the defendant is in a fiduciary relationship with the plaintiff
- When the transaction is the sale of real property, the defendant knows that the plaintiff lacks crucial information and could not reasonably discover it for themselves
- When the defendant has said something which deceives the plaintiff.

The defendant is also liable to foreseeable third parties who rely on the misrepresentation. Misrepresentation can only be based on an assertion of fact, not an opinion, unless the defendant has superior knowledge on the subject being spoken about.

What is negligent misrepresentation?

The elements of negligent misrepresentation are:

- Any misrepresentation by defendant in a professional or business context
- Breach of any duty toward the plaintiff
- The breach and misrepresentation caused the reliance and damages
- The reliance on the misrepresentation was justifiable
- There were damages

This form of misrepresentation typically occurs in a commercial setting. Liability will attach if the plaintiff's reliance was foreseeable. There is no third party liability for negligent misrepresentation.

CHAPTER 7: LAWSUITS ARISING FROM CRIMES

Can you sue someone for committing a crime against you?

Yes, you can. Just like any other intentional injury, the victim of a crime can sue the criminal for the property damage and injury they suffered as a result of that crime. You can file such a lawsuit even before the criminal's trial begins. Even if they have already been convicted, you are still allowed to sue for damages.

If I am being charged with a crime, how can I avoid also getting sued?

That depends, if you plan on fighting the conviction and aiming for a not guilty verdict, then there's really nothing you can do about a lawsuit except being prepared to fight it in court the same way you fought your criminal conviction. If you think you might accept a plea bargain, then you actually have another option. If you plead no contest to the charges, you will suffer whatever penalty results from that, but the no contest plea will protect you from any subsequent lawsuits.

Can I sue a police officer or someone else for wrongfully arresting, charging, or suing me?

You might be able to depending on the circumstances. A lawsuit for wrongful initiation of legal proceedings can take one of two forms, malicious prosecution (criminal) and abuse of process. The requirements for a malicious prosecution lawsuit are:

- The initiation of criminal proceedings against the plaintiff
- The case was resolved in the plaintiff's favor
- There was a total absence of probable cause for the entire criminal case
- The person who arrested the plaintiff or file charges against them had a purpose other than bringing the plaintiff to justice or did not even believe that the plaintiff was guilty
- The defendant's action caused damage.

Prosecutors may not be sued for malicious prosecution. In Michigan "favorable resolution" of the case does not include: Settlements/compromises, other acts which bring an end to the criminal case, or some other act by the accused that prevents litigation.

The elements of abuse of process are:

- The wrongful use of legal process for an ulterior motive
- An act or threat directed at the plaintiff designed to accomplish the ulterior motive.

CHAPTER 8: NEGLIGENCE

Negligence is the most common legal standard for determining liability for personal injuries. In short, it is defined as a specific form of careless behavior that causes injury to another person.

What is the specific standard for negligence?

In order to win a negligence lawsuit, the plaintiff must prove each of the following:

- That the defendant had a "duty of care" towards the plaintiff during the incident. That duty of care obligates the defendant to behave as a reasonable person under similar circumstances would act (or some other applicable standard).
- That the defendant breached that duty of care
- That the breach of duty caused the alleged harm to the plaintiff
- That the plaintiff suffered actual harm or injury.

How do you determine when someone has a duty of care towards another?

A defendant owes a duty of care to all foreseeable plaintiffs. In other words you owe a duty of care to anyone that you would reasonably perceive to be at risk as a result of your actions.

What are some examples of people with a duty of care?

He are some examples of situations where someone owes or is owed a duty of care:

- If you cause an accident where rescuers are involved, then your duty of care extends to those rescuers (i.e. they are foreseeable plaintiffs). This also includes situations where you yourself are in need of rescue. Firefighters and police officers are generally barred from filing a lawsuit against a rescue under the "firefighters rule".
- If a particular economic transaction was intended or foreseen to benefit a third party (such as a will or a trust), then that third party is owed a duty of care by the participants in that transaction.

Duty of care typically exists where there is a special relationship (such as parent and child). It also exists between business owners and their patrons/customers. It also exists, to varying degrees, between property owners and guests on their property.

In certain circumstances you can owe a duty of care to someone you rescue, especially if you were the one to put them in danger in the first place.

How does the court define "reasonable person"?

The "reasonable person" is a fictional person whose behavior is measured against the behavior of a defendant in a lawsuit. The reasonable person does not have a race, an age, a gender, or any mental handicaps. These factors are not considered at all when determining the reasonableness of a person's actions. However, it will take into account physical disabilities such as blindness or paralysis.

Children are subjected to a slightly modified standard of reasonable care that takes into account age and relative life experience. The exception to this is when the child engages in an adult activity, in which case the same standard as adults applies.

Is "the reasonable person" the only standard used to determine the duty of care?

No, it is not. In addition to the lenient standard we use for children, we also expect individuals with superior or exceptional knowledge and experience to exercise that advantage and thus they are held to a higher standard. Examples of this include:

- Certain professionals: An occupation with certain skills, such as doctors, would be held to a higher standard in situations involving medical care. This heightened duty comes with an obligation for doctors to disclose the risks of any treatment and to obtain a patient's informed consent.
- Common carriers and innkeepers: entities who provide a very public service to a large number of people have a very high standard of care towards their guests. They are liable for even slight negligence.
- Bailment situations: A bailment relationship occurs when you entrust your personal property to the temporary possession of another person. An example of this would be leaving your car at an auto

repair shop. The auto repair shop becomes the "bailee" while the owner is the "bailor". The standard of care expected of a bailee depends on the nature of the bailment. There are generally three kinds of bailment relationships.

  - Bailments that are for the sole benefit of the bailee, such as letting someone borrow something from you. This imposes a very high standard of care.
  - Bailments for the sole benefit of the bailor (like free valet services) impose a rather small duty of care where the bailee is only liable for gross negligence.
  - Bailments for mutual benefit (standard auto repair shop) impose a standard duty of care (reasonable person).

- Public safety laws: If there is a law in place designed to protect members of the public from certain dangers (such as traffic laws), then everyone in that jurisdiction owes a duty of care to everyone that the particular law was meant to protect.
- Home owners and their guests: When you have someone on your property, that typically creates a duty of care. What that duty consists of varies greatly depending on the circumstance. The law regarding liability for guests is actually quite complex. As such it has its own dedicated chapter in this guide.
- Attorneys: The standard of care for attorneys is their adherence to the standards of professional conduct.

How does the court determine that a duty of care has been breached?

Usually this question is left to the judge or jury's discretion. They will have to decide if the defendant acted as prudently as a reasonable person under the same circumstances would have. There are some common examples and principals that these decision makers will use determine if breach has occurred.

- Custom: If there are certain customs in society or a particular industry, than a court might consider that any actions complying with that custom do not breach the standard of care. However, a judge or jury can still decide that the custom is unreasonable and negligent.
- Violation of a public safety statute: We all owe a duty of care in the context of public safety laws. If there is a public safety law (like a traffic law), then all people driving cars owe a duty of care to anyone that law is meant to protect. A violation of such a law that results in injury is a pretty clear cut "breach" of the duty to care. This principle is known among lawyers as "negligence per se".
- Res Ipsa Loquitur: This is a legal term of art used to describe situations where it is difficult to determine precisely what negligent action or person may have caused the accident. The factors used to prove a breach of duty in such a situation are:
  - An accident of the sort that doesn't usually happen unless someone has been negligent.
  - If there was any negligence, it was likely on the part of the defendant. This is usually shown by the fact that whatever object or element that caused the injury was in the exclusive possession or control of the defendant.

Making a case for Res Ipsa Loquitur does not guarantee that the judge or jury will find the defendant to be liable. It only means that the plaintiff has satisfied their burden of proving a duty of care and a plausible breach of that duty.

Do you ever have a duty to take action? Or is it just a duty to avoid negligent behavior?

Usually, there is no affirmative duty to act. However, there are some exceptions. You have a duty to take action in the following scenarios:

- Once you start giving aid to someone, you are required to follow through and do so with reasonable care. The Michigan Good Samaritan law create an exception to this rule for doctors and nurses. Under that law, medical practitioners are immune from liability for negligence if they had a good faith belief that there was a life threatening emergency. This immunity is revoked if the practitioner was grossly negligent, which is medical malpractice.
- If you were the one to put the plaintiff in peril, you have the duty to help them.
- If there is a special relationship (parent-child, innkeeper-guest, etc.) then the duty of reasonable care may require them to aid the other person.
- If have the ability and authority to control the actions of a third party, you may be obligated to prevent that third party from injuring another person.
- Merchants generally have no duty to protect their customers from the crimes of third-parties. They are only required to take steps to expedite the involvement of police. However, if there is continuous criminal activity at the business which creates a nuisance, then the property owner is liable for any criminal attacks on their customers.
- If a mental health professional overhears a patient threaten violence against someone, and appears willing and able to make good on that threat, then they must either warn the police (and the person being threatened), or hospitalize the patient making the threat.

How do you show that the defendant "caused" the injury?

In order to be liable for an injury or damage, the defendant must be both the "actual" and "proximate" cause. "Actual" cause refers to the literal physical cause of the event. However, even if the defendant is the actual cause it might not be the proximate cause (a cause that is not actual can never be proximate). "Proximate" in this context just means that something is the legal cause of the event.

There are a number of ways to show that someone or something is the actual cause of an accident or injury. One method of doing so is known as the "But for" test. This is where the plaintiff argues that "but for" the negligent actions of the defendant, the plaintiff would not have been injured. Even if there are multiple causes of the injury, the plaintiff might be able to argue that the defendant was a "substantial factor", in which case they will still be considered the actual cause.

Showing that the defendant is the proximate cause of the injury usually means showing that the injury was a

foreseeable risk or consequence of the defendant's action. Even if the injury was directly caused by the defendant's negligence, if the injury was unforeseeable in those circumstances, then the defendant will not be liable. For example, if someone hits your car, and detonates the explosive device in your trunk, they would not be liable for the damage caused the explosion.

What if a totally random thing, person, or event suddenly entered the picture and actually caused the injury?

The technical term for this sort of situation is an intervening force. These forces can be either foreseeable or unforeseeable, as can the results of their intervention. Whichever category they qualify as determines what their ultimate effect will be in the law suit. If the ultimate effect of the intervening force was unforeseeable (even if the force itself was foreseeable), then the defendant will not be liable. If the force itself was unforeseeable (you drive recklessly and end up toppling a tree instead of hitting another car), but the result itself was a foreseeable consequence of your negligence (the other car is totaled by the tree rather than your car), then the defendant is still liable. It goes without saying that foreseeable results of unforeseeable intervening forces do not remove save the defendant from liability (your bad driving forces the plaintiff to swerve and hit another driver's car).

What if the plaintiff had a prior injury that the accident made worse? What if they were really fragile to begin with?

Even if the plaintiff was abnormally prone to injury, you are still liable for the full extent of the damage you cause to them. You take the plaintiff as you find them. This is also known as "the eggshell skull rule".

How is damage determined in negligence cases?

The damage awarded in a negligence lawsuit depends on several factors. There are also multiple types of damages awarded. The complete list of factors and types of damage are as follows:

- Personal injury: all foreseeable direct damage resulting from an injury. This typically includes medical expenses and lost wages. It can also involve nonfinancial damages such as "pain and suffering".
- Property damage: The reasonable cost of repairing or replacing damaged or destroyed property. When replacing destroyed property, the damage awarded will be the fair market value of the property at the time it was destroyed.
- Punitive damages: Damages meant to punish rather than compensate the plaintiff. These are typically not awarded in negligence cases. However, an exception might be made if the defendant caused the injury intentionally or if they were particularly malicious. Michigan only allows punitive damages where there is emotional harm.
- Interest on damages: will never be awarded. The court will only impose the upfront value of the damages.

- Attorneys' fees: Almost never awarded in American civil courts.
- Duty to mitigate: All plaintiffs are obligated to take reasonable steps to mitigate the damage. Failure to mitigate will likely cause a reduction in the damages awarded by the court.
- Collateral source rule: Even if a plaintiff receives benefits for the injury from somewhere else, the damages will not be reduced.

Can you be sued for negligently causing emotional damage?

The answer to this question is rather uncertain. In other jurisdictions, the courts recognize the cause of action for negligent infliction of emotional harm. However, the Michigan Supreme Court has not yet officially recognized such a cause of action. There are several cases by the appeals court that have recognized it.

In the event that the Supreme Court actually does recognize it, it is important to know how other states approach the issue. The only situations where emotional harm creates liability is where the plaintiff's distress is caused by a near miss, where they nearly died or where nearly injured. The plaintiff must have been in the "zone of danger" where them getting killed or injured was a reasonable possibility. The other requirement is that the plaintiff must show physical symptoms of their distress.

There is an exception to the "zone of danger" rule. A plaintiff who was not at risk of death or injury can still sue for emotional distress if the victim who actually got hurt was closely related to the plaintiff and if the plaintiff personally witnessed the accident.

CHAPTER 9: INJURIES ON PRIVATE PROPERTY

The rules for liability for injuries to people on your private property are rather complex. It depends on a number of factors such as the reasons for their presence on your land and whether or not they had permission to be there.

What are the factors for determining the duty of care in these situations?

Michigan law will look to factors such as the status of the entrant on the land, their permission to be there, whether the owner had knowledge of the entrant, whether the conditions on the land are natural or artificial, how dangerous those conditions are, and whether or not the entrants are children. A relatively complete breakdown of these categories is as follows

- Undiscovered trespasser: Homeowners owe no duty whatsoever to undiscovered trespassers.
- Discovered or anticipated trespassers: Property owner must post warnings about concealed and highly dangerous hazards or take steps to make them safe.
- Children: Michigan follows the “attractive nuisance doctrine”. This doctrine applies if there is a known and dangerous hazard which tends to attract children to its vicinity (such as a trampoline or a swimming pool). The hazard in question must be dangerous because of a child’s inability to appreciate the risks. In such cases, if the cost of addressing the hazard do not outweigh that risk, then the property owner must either post warnings or make the hazard safe.

- Licensee: Someone who enters the property for their own benefit. This also includes social guests. If there is a concealed and dangerous natural or artificial hazard, the property owner must either post warnings or make the hazard safe. If private land is held open to the public (like a church or museum), then its guests are licensees, not invitees.
- Invitees: Guests who are invited onto land, usually to conduct business. The property owner must make reasonable inspections of the property to discover concealed and dangerous hazards. If discovered, they must post warnings or make the hazard safe. Property owners don't owe any duty to take action against open and obvious hazards unless the hazard is unreasonably dangerous (a wet floor in front of the only exit of the building).
- Users of recreational land: Trespassers and invitees who use such land for its intended purpose (hunting, fishing, etc.) may not sue the property owner unless the owner was grossly negligent or maliciously failed to address against a dangerous hazard.
- Privileged entrants (firefighters rule): Firefighters and police officers may not sue a property owner for hazards that injure them during the course of their duties. The only exceptions are as follows:
    - Property owner caused the injury intentionally, willfully, or was grossly negligent
    - The injury was caused by negligent conduct that happened after the firefighter or police officer arrived on the scene.

CHAPTER 10: DEFENSES TO NEGLIGENCE LAWSUITS

This chapter is meant to assist anyone who is a defendant in a negligence lawsuit. It contains the descriptions and limitations of the common defenses to a negligence lawsuit.

What if the plaintiff was reckless or negligent? Am I still liable for their injuries or damaged property?

Michigan follows a variation of the "comparative negligence doctrine". What that means is that if the plaintiff was more than fifty-percent at fault for the accident/injury, then they cannot be awarded noneconomic damages. If the plaintiff was under the influence of alcohol, then they cannot receive any damages whatsoever. Furthermore, even if they are less than fifty percent at fault, then they can only recover whatever portion of the damages (up to 100%) is the fault of the defendant. You can derive the amount of the damages by multiplying the total damages by the percentage represented by that party's relative liability.

What if the plaintiff wasn't necessarily negligent or reckless? What if they did something that carries an inherent risk, or were otherwise aware of the dangers and did it anyway?

The situation described by this question is known as "assumption of risk. If the plaintiff knew of the risks and then proceeded to voluntarily face those risks, then they may not recover from and injury or damages that result from those risks. The court will presume that a plaintiff has assumed a risk if the average reasonable person would be aware that the risk existed. A plaintiff does not "assume" a risk if he had no choice or

alternative other than facing that risk. Likewise, “assumption of risk” does not apply in cases involving fraud or emergencies. The “assumption of risk” defense is not available to common carriers and public utilities. Furthermore, anyone protected by a public safety statute may not be denied damages due to assumption of risk (you cannot consent to a dangerous activity that is illegal).

Explicit consent in writing is a textbook example of assumption of risk. However, Michigan courts do not allow parents to legally sign away their child’s right to file a lawsuit.

CHAPTER 11: MEDICAL MALPRACTICE

While medical malpractice lawsuits are technically negligence lawsuits, they are typically viewed as a distinct area of law and therefore merit their own chapter.

What is the standard used to decide liability in medical malpractice cases?

Like most negligence cases involving educated and trained professionals, a medical practitioner is held to the standard of reasonable care expected of medical professionals. Specialists are held to a standard where they are compared to other practitioners of the same specialty.

It is not medical malpractice simply because a patient dies under the practitioner's care. In Michigan a plaintiff cannot sue for their loved one's "loss of opportunity to survive" unless that person's odds of survival in the absence of the doctor's negligence is greater than fifty percent.

Is it medical malpractice if the doctor abandons their patient?

Yes, if the doctor did so in a way that deprives the patient of reasonable time to find a replacement. Any harm caused by the delay in finding a replacement is medical malpractice liability.

How are damages determined in medical malpractice cases?

There is no cap on economic damages in medical malpractice lawsuits. Any medical costs and lost wages can be awarded as damages.

That being said, there is a cap on non-economic damages. The cap is normally set at $280,000 (adjusted for inflation). This cap is raised to $500,000 under the following circumstances:

- The patient suffered loss or permanent disability of one or more limbs
- Injuries to the patient's brain or spinal cord
- Patient has been rendered infertile
- The plaintiff's mental faculties have been so compromised, that they have lost the ability to care for themselves.

CHAPTER 12: STRICT LIABILITY

Strict liability refers to cases where there is liability even if the defendant is not negligent or otherwise at fault. In such cases the defendant is automatically liable if certain conditions are met and if there are any damages whatsoever. The common requirements for all strict liability cases are:

- The type of activity must be one where the law imposes an absolute duty to make that activity safe. These activities are considered abnormally dangerous.
- The dangerous aspect of that activity must be the actual and proximate cause of the plaintiff's injuries
- The Plaintiff suffered actual damage to their body or property

When is an activity abnormally dangerous?

Two things are required for an activity to be abnormally dangerous. This first is that there must be a foreseeable risk of serious harm that cannot be mitigated by mere reasonable care. Second, the activity must not be common in the community.

What other activities carry strict liability?

The only other example of this is keeping animals. Wild animals are automatically strict liability. Domestic animals are not subject to strict liability in Michigan unless the defendant is the keeper of the animal, the

defendant knew about the animal's dangerous tendency, and the dangerous tendency causes harm. The only exceptions are dogs which are covered by the dog bite statute and are discussed in a later chapter.

What are some defenses to a strict liability case?

The only two valid defenses are comparative negligence and assumption of risk.

CHAPTER 13: PRODUCTS LIABILITY

Products liability is the liability held by manufacturers and distributors or products for injuries caused by defects. Products liability has five variants, some of which are identical to other forms of personal injury liability. These variants are: intent based, negligence, strict liability, implied warranties, and representation theories.

What are the basic requirements for all variants of products liability cases?

No matter what variant of products liability claim you use you must show a defect and that the defect existed when the product left the defendant's control.

What types of defects are there?

The types of defects involved in products liability cases are as follows:

- Manufacturing defect: The plaintiff must show that the product does not perform as safely as an ordinary consumer would reasonably expect. Defendants are expected to anticipate reasonable misuse. This also applies to food products.
- Design defects: The product could have been designed in a way that was safer without seriously compromising its functionality or making it significantly raising its price (also known as the feasible alternative approach).

- Inadequate warnings: The same as design defect. Also, this cannot result in liability if any of the following is true:
    - The danger was obvious
    - The product is only available to "sophisticated users"
    - The defendant could not have known about the defect when it left their control.
- Government safety standards: Any product fails to meet comply with government safety regulations is automatically defective. However, mere compliance does not guarantee that the product is not defective. If a drug is approved by the EPA, then it is presumed (irrebuttably) to be safe unless the manufacturer withheld information from the FDA.

A manufacturer or distributor is not liable for scientifically unknowable risks or unavoidably unsafe products (such as knives or guns).

What is intent based products liability?

This form of liability occurs when the defect is the result of an intentional act knew that the defect was nearly certain to occur as a result of their actions. Any injured plaintiff may sue and is also eligible to receive punitive damages. The only defenses a manufacturer can make in such a case are those available for intentional injuries (see relevant chapter).

What is negligence based products liability?

It's the same standard as negligence but based on products liability. The plaintiff must show duty, breach, actual and proximate cause, and damages. The duty of care is owed to all foreseeable plaintiffs. Users, consumers, and bystanders of the product are all foreseeable plaintiffs. Res Ipsa Loquitur applies in products liability cases. A wholesaler or retailer can usually satisfy their standard of care with cursory inspections. The same defenses as standard negligence cases apply. If injuries or property damage occur, then disclaimers are irrelevant.

What is strict liability products liability?

Under this theory, a plaintiff does not have to show any particular carelessness. The only things that need to be proven are a defect and damages. This form of products liability applies to commercial suppliers. The defect must make the product more dangerous than any reasonable consumer would expect. Retailers will be liable under this theory even if they had no opportunity to inspect the product.

Comparative negligence and assumption of risk are defenses to strict products liability. Disclaimers are irrelevant if there are injuries or property damage. The manufacturer/commercial supplier also has a complete defense if any of following factors are present:

- The injury was caused by an alteration of the product that was not reasonably foreseeable
- The product was misused in an unforeseeable way

- The purchaser was aware that the product was unreasonably dangerous but voluntarily exposed themselves to the risk of harm
- Inherently unsafe objects (like knives) that cannot reasonably be made safe.

Michigan imposes a cap on non-economic damages for strict Products liability. Such damages are capped at $280,000 unless the product causes death or the permanent loss of a vital bodily function, In which case the cap is lifted to $500,000. The cap is also lifted if the defendant committed gross negligence or willfully disregarded a substantial risk that the defective product would cause that type of injury.

A seller is not liable under strict liability unless the seller failed to exercise reasonable care or breached any express warranties.

What are the implied warranties?

The two warranties that are implied in the sale of any good that can be the subject of a products liability suit are known as the warranty of merchantability and the warranty of fitness for a particular purpose.

- Warranty of merchantability: the goods are of average quality and are fit for the purposes that particular product is typically used for. Only merchants who deal in that kind of good can be held liable.
- Warranty of fitness for a particular purpose: When the seller knows or ought to know the specific purpose the goods are required for and the byer is relying on the expertise of the seller when selecting the goods.

Family and household members of the purchaser can also sue for this kind of products liability. Assumption of risk is a defense to this kind of products liability claim. Disclaimers are only effective against claims of economic losses.

What are the representation theories of products liability?

This form of products liability comes into play when the seller or manufacturer make affirmative claims about the product. The two forms of this are express warranty and misrepresentation:

Express warranty: Any claim or promise about the product that creates the basis of the bargain in which the product is sold. The basic requirements are the same as implied warranty except when it comes to disclaimers. The disclaimer must be consistent with the warranty in order to be effective.

Misrepresentation of fact: A seller will be liable for misrepresentations of fact when the statement was a material fact about quality/use, and misrepresentation is intended to induce reliance by the buyer in the transaction. The reliance must be justified.

CHAPTER 14: NUISANCE

What is nuisance?

Nuisance is not actually a separate type of lawsuit. Instead it is a types of damage. It comes in two forms: private and public.

- Private nuisance: a substantial and unreasonable interference with the use or enjoyment of someone's private property.
    - Substantial interference: offensive, annoying, and inconvenient to the average member of the community. The hypersensitivity of the plaintiff does not make interference substantial.
    - Unreasonable interference: Required for nuisance based on intent or negligence. It balances the severity of the plaintiff's injury with the usefulness of the product that is considered to be the interference.
- Public nuisance: Interferes with the health, property rights, or safety of the community. A private party must have suffered unique harm in order to sue.

What are the remedies for nuisance?

The remedies for nuisance are as follows:

- Damages
- Injunctive relief: a legal order to not act in a certain way. Used if standard remedies are unavailable or inadequate. Benefits will be weighed against the hardships it would impose.
- Self-help: In private nuisance cases this is only available after notice to defendant for refusal to act. Only a public authority or a private party suffering from the unique damages

What defenses are available for nuisance?

The comprehensive list gives all the types of defenses.

- Legislative authority: Not an absolute defense. Examples of this include zoning laws which permit certain activities.
- The conduct of others
- Contributory negligence: Only a defense if the plaintiff uses a negligence theory.
- Coming to the nuisance: May occur where the plaintiff knowingly bought land where nuisance existed. Under Michigan's Right to farm law, farms do not become nuisances when the land use of the area changes.

CHAPTER 15: WRONGFUL DEATH

What is a wrongful death lawsuit?

It allows a deceased person's next of kin to sue for damages that person suffered prior to their death as well as the damage (usually emotional) suffered by the surviving relatives of the deceased.

CHAPTER 16: THIRD-PARTY LIABILITY

This occurs whenever someone is sued because of the actions of a third party. This is also referred to as "vicarious liability".

Can I, an employer, be sued for the actions of my employee?

Yes, assuming the plaintiff makes a case under the doctrine of "respondeat superior". In short you are liable for any damages caused by your employees while they are in the "scope of their employment".

When is the employee within the scope of their employment?

An employee is within the scope of their employment if they are on their employer's premises. They are also within the scope when they are offsite while performing certain tasks or commuting to and from work. Minor deviations (frolic) from employer business is also within the scope of employment, even if it is for the employees own interest. However, if the deviation is significant enough in terms of time or distance (a detour) then it is no longer within the scope of employment.

Intentional infliction of injuries are automatically outside the scope of employment except under the following circumstances:

- Use of force is authorized by the business (i.e. bouncers or security)

- The industry generates friction and tension (such as debt collectors)
- The use of force was intended to further the business of the employer (removing violent customers from the premises).

Employers can also be liable for negligently hiring or supervising their employees.

What about independent contractors?

You are generally not liable for the actions of your independent contractors. There are, however, two exceptions:

- The independent contractor is contracted to engage in inherently dangerous activities. This only applies to third-parties, not to employees of the independent contractor.
- Based on public policy, the duty cannot be delegated (like the duty of care associated with some construction sites).

You may be liable for your negligence in hiring independent contractors.

Are members of partnerships liable for each other's actions?

No, a joint partner is only liable for their own conduct.

What if I allowed someone else to use my car?

Under the "family car doctrine" the owner is liable for any misconduct by immediate family members using the car with the explicit or implied permission of that owner.

Under the law of "permissive use", you can also be liable for the conduct of non-relatives who use your car with your consent.

You can also be negligent for "negligently entrusting" your vehicle to someone. This typically occurs when the owner was in the car at the time and could have taken steps to prevent or mitigate the poor conduct of the driver.

CHAPTER 17: TORT IMMUNITY

Can I sue or be sued by my own family?

Absolutely. There are no limitations on lawsuits between family members. Except that children cannot sue their parents of reasonable exercises of parental authority.

Can I sue the federal government?

Yes, depending on the circumstances. It still maintains immunity against intentional injuries, defamation, and misrepresentation.

Can I sue the state government?

The state of Michigan still retains broad immunities for its exercises of state power. There are however, a few noteworthy exceptions:

- Highway safety: agencies responsible for particular stretches of road have a duty to keep highways reasonably safe. This does not include failure to remove naturally accumulating snow and hail. The statute of limitations for such a lawsuit is 120 days,
- Negligent operation of government owned vehicles
- The duty to repair public buildings.

CHAPTER 18: AUTO ACCIDENTS

Auto accidents are some of the most common and costly accidents that people experience. Not only will you have to pay for the damages and injuries you sustain, but you may also end up losing the use of your car for a certain period of time. This can cause great inconvenience and can even impact your ability to make a living. Therefore it is important that , when the accident was the fault of another person, that you make sure that the appropriate party is paying you an appropriate reward for the damage you or your vehicle have sustained.

How is liability for automobile accidents determined in Michigan?

Automobile accidents in Michigan are governed by the Michigan No-fault insurance statute. This law creates a rather specific and detailed regime of rules and standards. The statute sets out rules about how severe the injury must be in order to sue, and how much and what kind of damages can be awarded. The statute also requires that anyone who files a lawsuit for automobile injuries must have had car insurance at the time of the incident. No matter how severe the injuries, or how reckless or negligent the other driver was, an uninsured person may not file an automobile lawsuit.

The purpose of this requirement is to have car insurance providers cover at least part of the costs and damages of a car accident. The only time you're are allowed to sue the driver who caused the accident is if you suffer an injury that causes a "serious impairment". "Serious impairment" is defined as an obvious impairment of a serious bodily function which hinders the victim's ability to lead a normal life.

However there are three exceptions to this requirement. Closed head injuries, serious disfigurement, or other permanent scarring, then the court must still allow your law suit to go through. Under Michigan No-fault law, you can only sue for pain and suffering, the cost to replace your vehicle, and excess damages. Also, if your injury causes lost wages for more than three years. Than you can sue for the entirety of any wages lost after the third year. The No-fault statute will reimburse you for up to 85 percent of lost wages for the first three years. "Excess damages" include both the lost wages after the third year, as well as any (pre-third year) as well as the portion of the 85 percent of your wage losses that exceeds the statutory limit. The statutory limit is currently $5700. In other words, if 85% of your total wage losses is greater than $5700, than the portion of that sum which exceeds $5700 is excess damages. All excess damages are paid for by the insurance company of the driver at fault. All other available damages (pain and suffering, and vehicle replacement) can be taken from either the driver at fault or their insurance company. A lawsuit against another driver for injuries arising out of a car accident is often referred to as a "third-party auto negligence lawsuit".

Is it possible to get any damages from a lawsuit that are not "excess damages"?

Yes, Michigan also allows something called a "mini tort" lawsuit. If the damage to your vehicle is not covered by your car insurance, then you can sue for up to $500 of that damage. However, if you were more than Fifty percent at fault for the accident, then you may not file such a lawsuit. Mini-tort lawsuits are not available for motorcycle accidents.

What can I do to help prove that my injuries cause me a "severe impairment"?

The very first thing you should do is see a doctor immediately. This is not only important for your own health, but it is a valuable first step in your case. The documents that are arise from this meeting with a physician will provide the basis for a claim that your injuries are a severe impairment. When this appointment occurs, it is important that you tell your doctor that you are worried that you were injured in a car accident. Getting this done quickly is important because any delay in seeking a medical evaluation or treatment might be used as evidence that your injuries/impairment are not as severe as you are claiming.

Another step you should take making sure you obtain and save any documents relating to any personal injury claims you made with your insurance company in the wake of the accident. The absence of such documentation as well as a failure to seek replacement services are also methods by which the defendant can undermine your claims of severe impairment. Therefore is essential that you make these claims, seek theses services, and keep the documents for them on hand.

Follow any advice given to you by your doctor regarding your injury. If your doctor tells you not to do something, do not do it. If that something is a common life activity, then this is textbook evidence of a severe impairment. That being said, explicit doctor's orders are not necessary. If you personally believe that you cannot perform certain tasks, and actively refrain from doing them, than that can also be evidence if it is persuasive enough.

It should be noted that you injuries do not have to be long-lasting in order to be a severe impairment. What really counts is the extent your basic life activities are hindered, not the duration of that hindrance. Do not

allow the other driver or their insurer to rob you of damages by hiding behind your relatively short lived injuries.

If there were any witnesses to the accident, make sure you get their contact information and give it to your attorney.

What can I do to make sure my car is repaired quickly following the accident?

Your best bet is to make sure that your car insurance includes collision coverage. That way, you are not dependent on the other driver's insurance company in order to get your car repaired. With collision coverage, your own insurance will cover it, and your insurance company may or may not try to get the other insurance company to reimburse them.

What else should I look out for in my car insurance policy?

Make absolutely sure that your policy does not have a "step down clause". A step down clause is a deceptive little clause that limits what your insurer needs to pay it if the accident involves one of your own family members. In other words, a complete stranger would be treated less harshly than your own flesh and blood.

When is a car a "total loss"?

In Michigan a car is a total loss when the damage is 75 percent or greater. At that point the insurance company must declare it totaled and apply for salvage title. You will not need or be able to get it repaired.

Should I cooperate with the insurance adjuster from the other driver's insurance company?

No, you should not. You are not required to and anything you say is more likely to hurt than help. They were hired by people who do not want the other driver to be at fault, do not help them accomplish that.

Is there anything else I should do to ensure the success of my claim/lawsuit?

It is highly recommended that your refrain from posting about the accident or the aftermath on social media until after your case is concluded. A picture of you smiling and seemingly healthy can serve as evidence to undermine your claims about the severity of your injuries.

Is there a statute of limitations on a car accident lawsuit?

Yes, the lawsuit must be filed within three years.

CHAPTER 19: MOTORCYCLE ACCIDENTS

While less common than auto accidents, it is still important to be aware of certain important details when you are involved with a motorcycle accident. This is especially important given the key differences between motorcycle and automobile accidents.

How do motorcycle accidents differ from car accidents?

Well, for one thing, motorcycle accidents are not usually covered by most of the provisions of the Michigan No-Fault statute. This is because motorcycles are not technically considered “motor vehicles” under that law. As a result, the owner/operator of the motorcycle is not required to have insurance in order to sue for damages resulting from an accident. However, there are also situations where a motorcycle owner/operator cannot receive No-Fault insurance benefits.

If a motorcycle and a car get in an accident, and the motorcycle is at fault, then the driver of the car can sue for damages and the injury thresholds of the no-fault statute do not apply. As a result, the owner/operator of the motorcycle would face for steeper liability than a car driver in the same circumstances would face.

What if the one operating the motorcycle was not the title owner?

In that case, either the operator or the title owner could be sued for damages if the motorcycle driver was the one at fault.

What if the driver of the car was at fault, can the motorcycle driver sue for damages? Can they still receive no-fault insurance benefits?

Yes, but only if the other vehicle was a car or a truck. Furthermore the motorcyclist must have the proper motorcycle liability insurance required by the Michigan No-Fault statute. If these (and a few other) requirements are met, then the motorcyclist is eligible for No-Fault personal injury benefits and can sue for the same damages as an automobile operator would under the same circumstances (i.e. excess damages and wage losses beyond the first three years). The personal injury benefits will cover the first three years of lost wages as well as some of the other expenses associated with the accident that cannot be recovered as damages in a lawsuit.

The other requirement is that the car involved in the collision with the motorcycle must not have been parked. Uninsured motorcycles and collisions with parked cars are not covered. Furthermore, a pedestrian struck by a motorcyclist is not eligible for no-fault benefits.

What kind of insurance is a motorcyclist legally required to have?

A motorcyclist only needs to carry basic liability coverage that covers third-party liability suits. Additional insurance such as personal injury protection and uninsured/under-insured motorist coverage is also helpful in case you get hit by a motorist who does not have car insurance.

However, if the motorcyclist is at least 21 years old, and wishes to drive without a helmet (inadvisable), then they must carry at least $20,000 in medical benefits coverage. Also, the absence of a helmet will most likely reduce the amount you could receive in damages from a lawsuit. After all, not wearing a helmet is choice you make which contributes to any injuries you sustain.

Which insurance company will have to pay for the no-fault benefits in an accident involving a motorcycle?

The priority for accident liability is as follows:

- First priority: insurer of the car/truck
- Second: insurer of the driver of the car or truck
- Third: automobile insurer of the motorcyclist (so long as the motorcyclist owns an insured automobile)
- Fourth: insurer of the motorcycle owner if the motorcyclist is not the owner
- Fifth: the Michigan Assigned Claims Plan administered by the MAIPF (Michigan Automobile Insurance Placement Facility).

Regardless of who ends up paying in the beginning, they can usually sue someone further up the priority ladder on their own.

Is there a statute of limitations for motorcycle accidents?

Yes, three years, the same as it is for cars and trucks.

CHAPTER 20: BOAT ACCIDENTS

Dozens of people are injured in boating accidents every year. These accidents cost hundreds of thousands of dollars and can even be fatal to those involved. IF you or your loved ones are planning to visit the beach, ride in a boat, or have already experienced a boating accident; then it is highly advisable that you read this chapter.

How is liability determined for a boating accident?

Boating accidents, like many other types of injuries, is determined by a negligence standard. Negligence is covered in more detail in an earlier chapter, but here is the gist of it. A person can be held liable for injuries resulting from a boating accident if they failed to act as a reasonable operator of a water craft, and this lack of caution was a primary cause of the injuries that occurred.

How can I prove that the boat operator did not exercise a reasonable standard of care?

There are a number of factors that can be used to show the negligence of a boat operator. These factors include:

- The speed at which the boat was travel. Excessive speed in proximity to swimmers and other boats is textbook negligence.
- Whether or not the boat operator was drunk or otherwise intoxicated at the time of the accident

- If the boat operator was behaving in a dangerous or reckless manner (for example: playing chicken)
- If the boat operator broke any laws. Breaking laws meant to prevent injury is a great way to prove negligence.
- If the watercraft was improperly lit at the time of the accident.
- If the boat was not seaworthy
- If the boat did not have enough lifejackets or other floatation devices.

This list can also serve as a helpful reference for defendants seeking to show that they behaved in a reasonable manner. It is also helpful to anyone thinking about operating a boat in a body of water. The items on that list are some pretty good safety practices for anyone who enjoys a day of fun on the water.

Other than the owner/operator, who else might be liable for a boating related injury?

In some cases, boating injuries can be the result of a mistake or negligence in the manufacture of the boat. In which case, the victims of the injury can file a products liability case against the maker of the boat.

CHAPTER 21: DOG BITES

While they have more than earned the distinction of being called man's best friend", dogs are still animals capable of doing harm to humans. A poorly trained or contained dog presents an elevated risk of injury to its owners and other people. This chapter is intended to help the victims of dog bite injuries, dog owners facing lawsuit, and responsible pet owners seeking to avoid future liability.

What are some basic facts about dog bites?

4.5 million people are bitten by dogs in the United States every year. According to the CDC, there are roughly 800,000 dog bites every year that require medical attention (1 in every five dog bites). 334,000 of those end up being so severe that the victim must be hospitalized. To put that perspective, there are 2400 dog bite injuries every day. To break it down even further, one person is injured by a dog every 36 seconds. As many as twelve people die each year as a result of dog bite injuries.

How is liability determined in dog bite cases?

Dog bites in Michigan are governed by the Michigan dig bite statute. Furthermore, Michigan uses a strict liability standard when determining dog bite liability. Strict liability means that the dog's owner can be liable even if they were not aware of any tendency towards aggression or other warning that a bite was imminent. If your dog bites someone, you can be liable even if that dog has never bitten anyone before. All other dog related injuries are based on a negligence standard (discussed in detail in an earlier chapter).

The Michigan dog bite statute also lays out some exceptions to the strict liability standard. In order to sue for a dog bite injury, the following conditions must be met:

- The defendant actually owned the dog that made the bite
- The bite was the direct cause of the injury
- The victim of the bite must not have provoked the dog, otherwise the owner is not liable.
- The victim was either in a public place, or a private place where they were legally allowed to be (basically a castle doctrine/stand your ground standard for dog bites).

In other words, reckless provokers and trespassers may not sue for dog bite injuries arising from their actions.

"Trespassing" specifically means that the person lacked the legal authorization to be at that location. Keep in mind that such authorization can exist even if you did not have the property owner's permission to be there. Police officers, fire fighters, owners of personal property or livestock, there are numerous examples of situations where someone can be present on another's property without trespassing. This makes it rather crucial for the bite victim to have a lawyer to help discover useful facts like this.

Provocation can include unintentional acts (such as accidentally stepping on the dog's tail). However, hitting the dog in response to the dog attacking another person or animal is not provocation because the dog was already aggressive.

What is "common law", and when would I use it?

If, for whatever reason, you do not qualify under the dog bite statute, you may still bring a law suit for a dog bite or other injury caused by a dog. "Common law" simply means judge made law. It refers to the rules and standards that Michigan civil courts have developed to deal with certain types of cases. The various standards that might be applied in a dog-related injury are discussed individually below.

Common law strict liability:

The State of Michigan will also allow a lawsuit to follow a "common law strict liability" standard. One key difference between this and the Michigan dog bite statute is that fault will not be assumed. The plaintiff must prove that the dog's owner knew or should have known that their dog was "abnormally dangerous". If the dog was not abnormally dangerous, or if the defendant had no reason to know of such danger, then the plaintiff must rely on a statutory strict liability or a common law negligence standard.

Common law strict liability claims do not allow the defense of "provocation". It does, however, permit the defense of trespass by the bite victim. A dog bite plaintiff must have been somewhere they were legally allowed to be.

How does the court determine whether or not the dog is "abnormally dangerous"?

In Michigan law, this is an incredibly complex and ambiguous question. There is no set standard for

determining when a dog is abnormally dangerous. The only thing that can be said with any certainty is that mere growling or other natural canine behaviors are not enough. That being said, a pattern of excessively aggressive behavior might be enough, especially if the dog in question has a history of severely injuring or killing humans and animals.

Common law Negligence:

It is important to keep in mind that the strict liability is not the only source of liability for dog bites, or any other dog related injury. The strict liability standard only represents the heightened seriousness that the law shows towards such injuries, therefore it is still possible to be found liable for negligence relating to a dog bite or other dog related injury.

A negligence standard, also known as "common law negligence", is more favorable to a dog owner being sued for an injury caused by their dog. To meet such a standard, the plaintiff has to show that the owner failed to exercise a reasonable standard of care in terms or preventing their dog from hurting someone. In such a situation, an injured plaintiff might have to prove in court that the dog owner was aware that their dog was aggressive, dangerous, and prone to causing injury.

Negligence can also be found if the owner violated a public safety law involving dogs. A good example of this is a leash law, if you allow your dog to wander around without a leash in an area where leashes are legally required, then any injury your dog causes is likely to be found to be a result of your negligence. This is known as "common law negligence per se". The very fact that you violated a law related to public safety that is meant to protect the public from dog related injuries will be used to prove that you owed a duty to members of the public and that you "breached" that duty by breaking the law.

Another consequence of applying a negligence standard is that it might weaken or even eliminate the defenses that a dog owner might have under the Michigan strict liability dog bit statute. While the trespassing victim defense remains intact, evidence of provocation is no longer a defense. In order to use your victim's provocative behavior, you (or your attorney) will have to take added steps to apply those facts to legal standards that apply to all negligence lawsuits. Typically, the victim's provocation of the dog would be considered "assumption of risk" or "comparative negligence". The gist behind these defenses is that the carelessness or foolishness of the victim makes them partially or even entirely at fault for their injuries. The result of such a finding may end up being reduced damages for the victim rather than completely shielding the dog owner from liability.

If the injury is not bite related (i.e. a jumping dog knocks someone over), then the lawsuit will always follow a common law negligence standard.

How is the amount of damages determined in a dog bite case?

The level of liability that will be imposed for dog bites or other injuries depends on how the injuries are defined or categorized under Michigan law. Is the lawsuit being brought under the Michigan dog bite statute? Or some other category of liability? Does that category recognize any defenses? Does that category take the

victim's relative fault into account? Was there any fault on the part of the plaintiff whatsoever? If so, what portion of the damage is the fault of the defendant dog owner? Once the portion of fault is determined, we must then determine how much damage was actually inflicted. Regardless of which form the lawsuit takes, damages stemming from dog bites or dog related injuries consist of any and all of the following:

- Any and all medical expenses arising from the injury
- Any lost wages resulting from missed work (from injury induced disability as well as doctor's appointments)
- Pain and suffering resulting from the injuries
- Compensation for permanent scarring that resulted from the injuries.

Damages arising from dog bites and other injuries are typically payed for by the defendant dog owner's homeowners insurance. This is typically done before a lawsuit is even filed, which usually puts the insurer on the hook for the entirety of the bill, regardless of relative fault of the victim. Insurance will be discussed in more detail in a later chapter. The important thing to understand is that the plaintiff and the insurer will negotiate and eventually settle on an amount of damages.

However, if the defendant owner is uninsured, then the case will have to be settled in court. At which point relative fault and total damages will be decided based on the outcome of certain discovery procedures (discussed in a later chapter).

What is the procedure for dog bite/injury cases?

A dog bite/injury lawsuit will follow some of the same steps and procedures that are used in other personal injury lawsuits. It will start with a complaint filed by the injured victim and their attorney. The complaint will list the basis for the defendant dog owner's fault/liability as well as the injuries that form the basis of the lawsuit. The defendant will then be given the opportunity to respond with an answer in which they may deny or admit to any of the facts alleged in the complaint. However, any fact admitted to in the answer is automatically conceded at trial.

Following the exchange of complaint and answer, the case will enter discovery. At this stage, both parties will utilize certain evidence gathering tools in order to develop proof of their side of the story at trial. Both parties will use a combination of interrogatories (mandatory written inquiries) as well as depositions (questioning done under oath) to gather evidence which includes, but is not limited to, any of the following:

- Descriptions of and health information regarding the dog
- The dog's history of aggression or lack thereof
- Prior complaints by other people or from animal control
- Certain restraint measures such as muzzling that may have been used on the dog
- Any attack or guard training that the dog underwent

- Any warning signs used on the property
- Identifying an veterinarian or other expert who would general knowledge about dogs or specific information about that particular dog
- The dog owner's insurance coverage
- Statements from first hand witnesses
- Any other evidence relied upon in the complaint

Depending on what is produced in discovery as well as the actions of both parties, the case might end in a settlement or be decided at trial by a judge or a jury.

What is the statute of limitations for dog bite cases?

The statute of limitations for dog bite cases is three years from the moment of the injury.

What should I do if I have suffered a dog bite?

The very first thing you should do is seek medical attention. Not only can dog bites cause severe injury, but dog saliva makes bite wounds prone to infection. Also, it would be wise for you or your doctor to take pictures of the bite wound. This is essential because you must prove that an injury occurred in order to sue for a dog bite. At some point it would also be advisable to contact animal control or the local police and file a report. Even if you do not succeed in your lawsuit, an official report might lead to further legal consequences for a reckless dog owner.

What can I do to reduce the risk of my dog biting someone?

- Properly train and socialize your dogs: Aggression and biting are not common behaviors in domestic dogs. A dog that is accustomed to being around people and other animals is usually calm and docile in their presence. It is vitally important that you acclimate young puppies to various situations and stimuli in order to prevent them from becoming anxious and possibly aggressive if confronted by them later in life.
- Properly exercise your dog: Aggression is often a consequence of a dog with excessive energy and no healthy outlet. A dog in an excited, high-energy state is more likely to exhibit aggressive behaviors. Thus, in order to minimize this risk and to promote your dog's health, it is important to give your dog regular opportunities to engage in physical activity.
- Avoid aggressive activities like tug-of-war: these games tend to nurture an aggressive response in dogs. Long walks, and fetch tend to be healthier recreational activities in dogs.
- Keep your pet on a leash when out in public: It is important to be able to control your dog at all times. Even if a dog does have a random or natural aggressive response, the presence of a leash can often prevent any injury. If you are unable to control your dog despite having them on a leash, then it is very important that you pursue additional obedience training.

- Do not chain your dog in your yard: chained dogs are nearly three times more likely to exhibit aggressive behaviors than dogs that are merely contained by physical barriers or an invisible fence.
- Make sure that any physical or other restraints or barriers (fences, gates, tethers, invisible fences, etc.) are beyond your dog's ability to escape. Physical barriers should be too high for the dog to jump over. IF your dog is prone to digging, then layer the bottom of the barrier with a material that the dog cannot dig through. Barriers and tethers should be made of materials that the dog cannot chew through. Control and containment are important factors in preventing dog bites and dog related injuries, especially if the dog is prone to aggression.
- Spay or neuter your dogs: This is just a good practice in general. Shelters are already beyond capacity from too many unwanted dogs. An unplanned litter is both expensive and exhausting to handle. As an added bonus, the procedure tends to make dogs (especially males) more docile.
- Take your pet to the vet regularly and get vaccinated: Sickness and injury are also common causes of uncharacteristic aggressive behavior. This is especially true of the rabies virus. In addition to being universally fatal once symptoms manifest, one of the symptoms of rabies is extreme aggression. The fact that the virus is transmittable to humans makes vaccination even more important.

What are some common reasons that dogs bite?

Some of the reasons dogs might bite people are:

- They are protecting their home/territory
- They are hurt
- The feel trapped
- You scared them
- They became too excited
- They were not properly trained/socialized

Whether you are a dog owner trying to prevent dog bites or someone interested in canine safety, this list will help you mitigate the risks of a dog bite injury.

How can I identify an aggressive dog?

There are a few common body language indicators of a dog exhibiting aggression. These include, but are not limited to:

- Freezing in place and holding the body rigid
- Tucking the tail between the legs
- Standing with the head low and the front legs splayed.

- Raised fur on the back.
- Excessive licking of the lips
- Growling and snarling
- Curling lips to show teeth

If you witness any of these signs or otherwise suspect that a dog is taking an aggressive posture, then you should stand still with your hands at your sides and avoid moving closer to the dog. Avoid eye contact, as the dog will likely perceive that as a challenge and escalate their aggression. If the dog loses interest, back away from it slowly. If the dog actually attacks you, follow the advice in the following section.

What should I do if a dog attacks me?

If a dog does attack you, try giving it something other than you to bite on. If you have a purse or if you can manage to get your jacket off, use it as a substitute and try to back away from the dog. If the dog manages to get you to the ground, adopt a fetal position and remain as still as possible. Cover the back of your neck and ears with your arms and hands and do your best to avoid yelling or screaming. Ideally the dog will lose interest in attacking you and you will be able to find safety and an opportunity to take stock of the situation.

Are children at greater risk from dog bite injuries?

Over half of all dog bite victims are children, with over a quarter of all child dog bite injuries resulting in a visit to the emergency room. Dog bites frequently rank among the top ten causes of non-fatal injuries in children of all age groups.

The reason for this elevated risk, aside from a child's relative physical frailty, is the fact that their short stature means dog bites are frequently to the child's face and neck (rather than the arms, torso, or legs typical of dog attacks on adults). Children are also a greater risk because their relative youth and immaturity makes them more likely to engage in behaviors that irritate, harass, or cause pain to a dog and thus provoke a bite.

Never leave a child alone with a dog unsupervised, even if you trust that dog's demeanor.

These facts and figures should serve as a warning that dog bites are a serious hazard to both adults and children. All parents and dog owners should be aware of this risk and take the necessary precautions. The basic facts chapter will also equip you with all of the information you need to prevent and respond to dog bite injuries.

What are some common mistakes made by dog bite victims?

Here are some mistakes you should avoid unless you want to undermine a possible dog bite lawsuit or possibly even threaten your own health.

- Failing to see a doctor immediately: Not only can this worsen your injuries, but any delay in treatment for the injury can be used as evidence in court that the injury itself was not serious. It can also be used

to cast doubt that the injury was even caused by the dog bite. Likewise, documents from the doctor are powerful evidence for your case.

- Failing to report the dog bite to the police: This is similar to seeking medical attention in the sense that delays are evidence that can be used against you by the defendant dog owner. The police can also help you collect valuable evidence
- Failing to collect valuable evidence: Immediately after you are bitten, you need to make sure that you identify witnesses, photograph the scene/dog/bite wound, and take written statements (if possible). Anything you can get that can prove your version of events is important.
- Failing to accurately identify the breed of the biting dog. Not only is this an easy way for the defendant dog owner to undermine your story, it is also irresponsible and harmful to the community at large. Distorted dog bite statistics are often the basis of misguided laws, such as breed bans, which will be discussed in a later chapter. Furthermore, a successful dog bite case can often lead to irresponsible owners either losing their dogs, or being persuaded to take steps to control their animals.
- Speaking to the insurance adjuster: Do not speak to any insurance adjustor who works for the defendant's insurance company. This persons only job and goal is to help the insurance company avoid liability. They generally do this by trying to paint the situation as being the victims fault. If they succeed your entire lawsuit could fail and you could end up paying the medical bills entirely out of pocket.
- Failing to retain a lawyer: While dog bites may be relatively common occurrences, this does not always translate to winning in court. Dog bites, like other injuries, are dealt with using very specific and nuanced legal standards and procedures. If the defendant fog owner has the advantage in legal counsel, this can be a huge disadvantage to you. Remember, it is not always about what is actually true, but what you can prove in court.

When can a Michigan dog owner be charged with a crime as a result of a dog bite/injury?

There are really only three scenarios where a dog can put their owner at risk of criminal liability. One such scenario is if the breed of the dog violates a city or states breed ban/breed specific legislation (discussed in its own chapter in this guide). This can result in penalties even if the dog never attacked anyone.

The second such scenario is a "negligence per se" situation where the owner of an attacking dog violated a public safety law (such as a leash law) that was designed to prevent dog attacks. Not only would violating that statute strengthen the victim's lawsuit, but the lawbreaking owner will be subject to whatever criminal penalties are listed in the statute.

The third scenario where a dog attack can result in criminal charges against the owner is if the dog in question has been labeled abnormally dangerous. Michigan dangerous dog laws establish numerous requirements for the owners of dangerous dogs. These requirements are often conditions imposed in exchange for not having the dog euthanized. These conditions might include having to muzzle a dog or keeping it confined on your property. You may also be required to buy liability insurance or obtain a special license.

The degree of criminal liability a dog owner might be exposed to depends on the severity of the injuries as well as the severity of the breach of any requirements or conditions imposed by a dangerous dog law.

For example, if a dangerous dog escapes confinement and injures someone, then the owner is guilty of a misdemeanor. The same is true for injuries arising from the violation of any other dangerous dog requirement.

If the injuries are severe enough, the defendant owner might even be charged with a felony. If the dog attack results in the death of the victim, then the owner can be charged with involuntary manslaughter.

An owner who commands their dog to attack or otherwise uses the dog as a weapon can be charged with aggravated assault or even murder.

Can a dog be euthanized for biting/aggressive behavior? When will the government take dogs from irresponsible owners?

A single biting incident will not result in a dog being put down, nor does Michigan have a two bite rule. Instead, Michigan law requires that when a dog has caused serious injury or death to a person or pet (aside from the exempted scenarios) must be brought before a magistrate to determine whether or not it is a dangerous. If it is found to be dangerous, then the judge will order the animals destruction. They might also impose requirements pursuant to a dangerous dog statute.

As for removing dogs from their owner's custody, that requires a court order based on the owner's violation of a state or municipal law.

How does insurance effect dog bite cases and vice versa?

A major effect of homeowners insurance on dog bite cases is that it prevents the majority of incidents from ending in lawsuits. Most dog bite cases are settled out of court with the dog owner's insurance company.

The insurance company and the bite victim will often enter lengthy negotiations during which the victim and their attorney will share the evidence and documentation that would also be used at trial in order to establish the owner's fault, as well as the extent of the victim's injuries. This usually results in a settlement that is more beneficial to the victim than if they had to undergo an expensive trial.

The prevalence and expense of dog bite injuries also has an effect on insurance. Irresponsible dog owners may see their own personal premiums increase. However, such increases may also be experience by everyone who has homeowners or any liability insurance which covers dog bite cases. Some studies suggest that dog bites account for as much a one quarter of all homeowner's insurance claims. Thus, it is logical to conclude that if society took extra precautions to guard against dog aggression and dog bite incidents, it would result in substantial reductions in insurance premiums for everyone.

What are the advantages of hiring a lawyer for a dog bite case?

While dog bite cases might seem simple and straightforward on the surface, they are just as complex and

nuanced as any other legal action. The legal standards and procedures used by courts and lawyers in lawsuits are esoteric and can be difficult to manage for a layman without specialized legal training or experience. A lawyer is better equipped to fashion evidence into arguments tailored to the tests and standards employed by the court in dog injury cases. An attorney is often trained to speak and write persuasively. A good attorney is also a skilled detective who knows how to effectively and efficiently procure evidence that is both relevant and persuasive.

Even if the incident is likely to be settled out of court, having the services of an attorney who is skilled and knowledgeable regarding dog injury cases is likely to increase the total compensation you receive for your injuries.

CHAPTER 22: FIREWORKS ACCIDENTS

Michigan legalized consumer grade airborne fireworks in 2012. While this change in the law has brought joy to families in Michigan every Fourth of July, it has also led to many injuries (and even a few deaths).

How is liability for a fireworks injury determined?

Like most injuries and accidents, fireworks lawsuits are decided based on a negligence standard. Unlike dog bites however, there is no specific statute that deals with fireworks liability. There are only state and local ordinances dictating when you may set of fireworks.

A lawsuit for negligent fireworks use can take several forms. You can sue for damages based on personal injury or property destruction based on the negligence of the user or the faulty manufacture of the device. Cities and townships can also sued based on their negligence when they use fireworks for events.

Violating any ordinance that regulates firework use is a clear breach of duty of care that will weigh heavily against you in a negligence lawsuit. For more details about negligence, please consult the chapter in this guide discussing the topic.

How can I use fireworks more safely this Fourth of July?

Make sure to fire them off in an open area. Take care not to aim them at people or objects. Once the fuse is

lit, back away and wait. It is a good idea to keep a bucket of water handy whenever you use fireworks. Remember to stay safe and have a wonderful Fourth of July (or any other holiday for that matter.