

Torts and Cyber-Torts

Tort: Definition

- Civil wrong
 - other than breach of contract
 - usually involving injury
 - to person or property

Torts: Types

- Unintentional or negligent
- Intentional
 - some are also crimes
- Strict Liability
 - e.g., Workman's Compensation

Intentional Torts

- Assault
 - Intentional, unexcused act creating fear or apprehension of being harmed
- Battery
 - Intentional, unexcused, harmful or offensive contact
- False Imprisonment
 - Intentional confinement of another person or restraint of another person's activities without justification
- Infliction of Emotional Distress
 - Intentional act that amounts to extreme and outrageous conduct resulting in severe emotional distress

Intentional Torts: Defenses

- Consent
- Self Defense
 - reasonable
- Defense or Assistance of Others
- Defense of property
 - reasonable
- Necessity
 - for public good

Defamation: Definition

- Anything Published or Publicly Spoken that Injures another's character, reputation or good name
 - Libel (written)
 - Slander (oral)
 - Publication
 - Speaker must have communicated the statement to other persons

Defamation Per Se

- Four Types of False Utterances recognized by Common Law as Defamation Per Se
 - That another has a loathsome communicable disease
 - That another has committed improprieties while engaging in a professions or trade
 - That another has committed or has been imprisoned for committing a serious crime
 - That an unmarried woman is unchaste

Defamation: Defenses

- Truth
 - Absolute Defense
- Privilege
 - Absolute
 - Legislators, attorneys in trial, etc.
 - Qualified Privilege
- Absence of Malice
 - Defamatory statements about public figures are privileged unless made with actual malice
 - either knowledge of falsity or reckless disregard for the truth

Invasion of Privacy

- Four Kinds
 - Appropriation
 - Use of someone's name, likeness, etc. for commercial purposes
 - Intrusion into an individual's affairs in which he has a reasonable expectation of privacy
 - Publication of information that puts someone in a false light
 - Public disclosure of private facts that an ordinary person would find objectionable

Fraud: Definition

- Intentional Deceit, usually for Personal Gain
 - Misstatement or Omission of Material Fact
 - mere puffery, opinion, not included
 - made Knowingly or with Reckless Disregard for Truth
 - with the Intention of Deceiving by Inducing Reliance
 - on which a Reasonable Person Would Rely
 - and Did Rely to His Detriment

Wrongful Interference

- Interference with Contract
 - Valid contract exists, third party knows of contract, and intentionally causes one party to breach
- Interference with Business Relationship
 - No contract exists, but third party knows individuals about to enter into relationship, intentionally interferes with one's attempts to establish the relationship
- Defense of third party to either
 - his actions were privileged or justified

Trespass to Land

- Entry onto, above, or below, surface of land without Owner's Consent is an Illegal Act
 - Owner must prove trespasser ignored signs or request to leave
- Attractive Nuisance
 - Landowner may be liable to injuries to Children for swimming pool, abandoned building, etc.
- Defense to Trespass
 - Necessity
 - License

Trespass to Personal Property and Conversion

- Trespass to Personal property
 - Taking another's personal property without consent in such a way as to interfere with his right to exclusive possession
 - Focus is injury to owner's enjoyment, not injury to property
- Conversion
 - Taking, using, selling, or retaining possession of personal property that belongs to another without authorization
 - Owner has superior right
 - May be excused by Necessity

Disparagement of Property

- Disparagement of Quality
 - Publication of false information about the quality of another's product or service
 - trade libel or slander of quality
- Disparagement of Title
 - Publication that denies or cast doubt on another's ownership of property, causing financial loss to him

Unintentional or Negligent Torts

- Definition of Negligence
- Breach of Duty of Care
- Injury and Damages
- Causation
- Defenses to Negligence

Negligence: Definition

- Conduct which
- falls below the standard
- established by law
- for the protection of others
- against unreasonable risk of harm

Breach of Duty to Act

- Reasonable Person Standard
 - Expected of a reasonable person in similar circumstances
 - given age, physical (but not mental) condition, superior skill or knowledge, emergency
 - May be set by statute
- Duty to Act
 - special relationship
 - negligently exposed person to potential harm

Negligence and Professionals

- Duties of Landowners
 - Expected to exercise reasonable duty of due care to protect from harm those coming on property
 - even trespassers
- Retailers and other firms
 - must exercise care toward business invitees
- Duties of Professionals
 - Failure to Perform to the Standard of the Profession can result in malpractice charges

Injury and Damages

- Only injuries to legally protected interests
- Compensatory Damages
 - Designed to reimburse
- Punitive Damages
 - Designed to punish

Causation

- Causation in Fact: conduct is actual cause
 - “But for” Test typical
- Proximate Cause
 - Substantial Factor Test, connection strong enough to impose liability
 - Limitations on Proximate Cause
 - Injuries must have been “Reasonably Foreseeable”
 - Superseding Cause

Res Ipsa Loquiter

- “The thing speaks for itself.”
- May infer both negligence and causation from certain events
 - ordinarily does not occur without negligence
 - other causes ruled out
 - negligence within scope of defendant’s duty
 - Shifts burden of proof to defendant

Negligence: Defenses

- Contributory Negligence
- Comparative Negligence
- Assumption of Risk

Contributory Negligence

- Act or omission by plaintiff
 - negligent
 - contributes to his injury
- Complete defense

Comparative Negligence

- Fault/recovery assigned to parties based on percentage of negligence
- Replaced contributory negligence in most states

Assumption of Risk

- Plaintiff understood risk and voluntarily placed self in it

Negligence Per Se

- Act or omission in violation of a statutory duty or obligation
 - violation of criminal statute that causes harm to another
- Plaintiff must prove that
 - statute or ordinance sets out standard of conduct in situation
 - plaintiff is in the class of persons protected by statute
 - statute or ordinance was intended to prevent type of injury the plaintiff suffered

Special Negligence Rules

- Danger Invites Rescue
 - When attempting to help others, any injury caused will be attributed to original wrongdoer
- Good Samaritan Rule
 - Prevents those who are aided by persons from suing them
- Dram Shop Liability
 - A business or individual serving drinks to someone after he arrives intoxicated or becomes intoxicated is liable for injuries that intoxicated person causes

Cyber-Torts

- Online Defamation
 - Online message attacking another person or entity in defamatory terms
 - Communications Decency Act of 1996 absolves Internet service providers from liability
 - Internet affords a high degree of anonymity to person posting message
- Spam
 - Bulk, unsolicited e-mail usually advisement
 - some states regulate
