

Exam 3 Material

Tort: A civil wrong, other than breach of contract, for which the law provides a remedy in the form of a lawsuit for money damages.

- “tortus” means crooked; twisted
- sue for \$ damages & non-economic damages i.e. pain/suffering

A tort involves a direct interference with:

- a. person or
- b. property/ trespassing or
- c. intangible interests i.e. reputation, defamation

Tort Liability

1. **Intentional Tort**- purposely done
2. **Negligence**- your fault due to carelessness
3. **Strict Liability**- fault is irrelevant; involves ultra hazardous activities such as the use of explosives

1. INTENTIONAL TORTS

DAMAGES in intentional tort cases:

1. Actual-compensatory
2. Punitive-punishing/deterrence

A. Assault- intentional act of putting another person in apprehension

1. Actual, physical contact is not required
2. There must be present, apparent ability to carry out the “threat”

For example: pointing a gun at someone

The same act may be BOTH a TORT & a CRIME; separate trials- crime is prosecuted first then a civil trial.

B. Battery- intentional touching of another person without consent/justification

1. Consent
 - a. Expressed verbally by words
 - b. Implied by one's conduct
 - c. Informed Consent- “consent w/o knowledge is not consent at all”

Note: There is- assault without battery & battery without assault (getting hit from behind)

C. False Imprisonment- intentional confinement or restraint of a person w/o consent or justification; “restraint of liberty”

Common facie: false accusation of shoplifting- when security fails to follow the proper procedures when dealing with a shoplifter, then he/she has been falsely imprisoned

**EL Case: Teen sues over psychiatric imprisonment, claims she was wrongly imprisoned for 14 months, deprived of school, friends etc. During her 396 day stay they used drugs and shackles to subdue her.

Million \$ lawsuit.

D. Abuse of Process: groundless (w/o basis) institution of civil proceedings against a person; abusing the legal process

Frivolous Lawsuit: no seriousness with claim, should never have been brought to a courtroom

Spite Suit: court is used as malice to get back at someone. If you are a victim of this, then you can turn it around and sue that person.

E. Defamation: publication of false statements which holds a person up to hatred, contempt or ridicule; i.e. harms reputation (hatred, contempt, ridicule) (publication = involving at least 3 people) (A tells B something false about C)

"Truth is a defense to a lawsuit of defamation" (so it must actually be false!)

1. Slander: oral defamation
2. Libel: written defamation
3. Defamacast: publication has been broadcasted via TV, radio, etc (used by a few states only)
4. Defamation Per Se ("in & of itself") - if you engage in a false statement the harm to the persons reputation is automatic.
 - a. Accusation of a crime
 - b. Statement that degrades person in business/profession
 - c. Accusation of having a loathsome disease (STD)

Note: Law says this kind of false statement automatically harms the reputation & we don't have to bring in anyone to prove. "The law isn't an enemy of common sense"

5. Privilege: deals with issues of defamation in certain instances which involve a weighing process
 - a. Absolute: even if statement is false, speaker/writer is immune from liability
 - (1) Judicial proceedings, and/or
 - (2) Legislative proceedings

Note: If on the floor of one of these proceedings and you defame someone, he/she who's reputation was harmed can't sue you because in these scenarios we want people to speak openly w/o fear of retribution.

- b. Qualified: even if statement is false, speaker/writer is immune from liability if ALL 3 are met:
 - (1) statement made in good faith; honest approach
 - (2) statement made by person with legitimate interest
 - (3) statement made in reasonable manner (depends)

****Restaurant Case:**

During lunch rush hour, the systems were down and the cashier would put money she received aside to deal with later to save time and help current customers. The owner found this alarming and confronted her:

Owner: "You are not ringing up the cash in the register" → thus no record of customer purchases

Cashier: "Are you accusing me of stealing?" → gave opportunity for owner to say no &

disassociate himself, but he replies..

Owner: "Well, you're not ringing up the cash" → 'well' isn't a 'no', this is more of a shrug of the shoulders.

- 1.) False statement? Although he didn't accuse her, he did imply and the jury says: you don't have to actually say thief or steal if one can reasonably take it accusingly.
- 2.) Qualified? The accusation was made in good faith and as the owner he did have a legitimate interest. BUT the statement wasn't made in a reasonable manner because he humiliated her in front of other people (customers).

Owner lost the case and paid a large sum for defamation.

6. Suits by public officials/figures require a showing of malice- a reckless disregard for the truth or falseness of the statement.

-because these people are always in the limelight, they should have a tougher skin.

-National inquirer wins and loses cases all the time; for example- Carroll Burnett fought their accusation of being a drunk and won against them because 1. It was hear-say & 2. It couldn't be proven 3. Malicious intent

Vexatious Litigant- a person who in the immediately preceding 5-year period, has commenced, prosecuted, or maintained, pro-se (self representation), five or more civil actions in any court in this state, except an action governed by the Florida small claims rules, which actions have been finally and adversely determined against such person or entity

Remedies for Vexatious Litigant:

1. Security: (cash bond) - before you continue with trial you have to put up money.
 2. Filing Order: Judges permission is needed to file lawsuit
- If you file anyway (if judge doesn't give permission you could be found in contempt of court)

F. Intentional Infliction of Emotional Distress: harming of one's psyche

1. Outrageous Conduct(not tolerated in civilized society) &&&
2. Severe emotional distress (getting feelings hurt doesn't count, must be

severe)

**Both must be met to minimize the number of lawsuits brought to court. Keeps out the cry-babies who get their feelings hurt and helps those who need it.

Example Cases:

-Young man serving in Vietnam, went back to the states. He called friend's parents to inform them of their son's death. Parents spent 2 days freaking out, until the man calls back to say he's joking their son didn't die. He lost a very large settlement.

-A wife left her husband in a nursing home for the weekend. Monday she came to find knicks all over his face and the nursing staff claimed it was from trying to shave him. She didn't believe them and after investigation found out rats were biting him.

-All rape cases