

## CHAPTER 12: TORTS AND CYBER TORTS

### I. THE BASIS OF TORT LAW

Two notions serve as the basis for all torts → wrongs and compensation

#### A. The purpose of Tort Law

Provide remedies for the invasion of various protected interests → physical security, freedom of movement, protection of property or damage/destruction of property, personal privacy, reputation, family relations and dignity

#### B. Damages Available in Tort Action

##### 1. *Compensatory Damages*

- Reimburse plaintiff for actual losses
- Put plaintiff in same position as if damage would not have happened
- Special damages → compensate plaintiff for quantifiable monetary losses
- General damages → compensate individuals (not companies) for nonmonetary aspects such as pain and suffering, loss of reputation, loss of consortium etc.

##### 2. *Punitive Damage*

- Limited by right of due process → excessive punitive damage
- Punish wrongdoer and deter others from similar wrongdoing
- Available mainly in intentional tort actions or gross negligence (intentional failure to perform a manifest duty in reckless disregard of consequences)

#### C. Tort Reform

Excessive damages → causes frivolous lawsuits

Class Action Fairness Act → shifted jurisdiction over large interstate tort and product liability class-action lawsuits from state courts to federal courts → prevents forum shopping (looking for sympathetic state court)

### II. INTENTIONAL TORTS AGAINST PERSONS

Tortfeasor → the one committing the tort must intend to commit an act, the consequences of which interfere with the personal or business interests of another in an illegal way

- Evil motive is not required

#### A. Assault and Battery

Assault: intentional and unexcused threat of immediate harmful or offensive contact (includes words)

- Completion of the act if results in harm to the plaintiff is a battery → unexcused and harmful or offensive physical contact intentionally performed
- Whether contact is offensive is determined by reasonable person standard (how a reasonable person would have acted under same circumstances)

#### B. False Imprisonment

- Essential that person being restrained not agree to the restraint
- Any detention must be conducted in a reasonable matter and for a reasonable amount of time

#### C. Intentional Infliction of Emotional Distress

Amounts to extreme and outrageous conduct resulting in severe emotional distress to another. To be actionable (serving grounds for lawsuit) act must exceed bounds of decency accepted

- Limited by First Amendment

#### **D. Defamation**

Defamation of character → wrongfully hurting a person's good reputation by stating false statements of fact (not statement of opinion → protected under 1<sup>st</sup> Amendment)

- Libel: breach in writing
- Slander: oral breach

##### *1. The Publication Requirement*

- Publication → communicated to persons other than defamed party
- Overhearing, published on the Internet etc. are also publications

##### *2. Damages for Libel*

- General damages presumed as matter of law

##### *3. Damages for Slander*

- Plaintiff must prove special damages to establish liability; because of temporary quality
- Slander per se does not require proving special damages:
  - ✓ Statement that other party has a disease
  - ✓ Statement that another has committed improprieties in business
  - ✓ Statement of sexual misconduct

##### *4. Defenses to Defamation*

- Privileged speech → absolute (granted when judicial and gov't persons should be allowed to speak freely in matters of public interest); qualified (made in good faith and publication is limited to those who have a legitimate interest)
- Public figures → false defamatory statements about them will not constitute defamation unless statements are made with actual malice (knowledge of falsity or disregard of the truth)

#### **E. Invasion of Privacy**

Four acts qualify as invasion of privacy:

- Appropriation of identity
- Intrusion into an individual's affairs or seclusion → invading a home or searching through a computer
- False light → publication of information that places a person in a false light
- Public disclosure of private facts (not of public concern)

#### **F. Appropriation**

##### *1. Degree of Likeness*

- Required to impose liability for the tort of appropriation.
- True when plaintiff is claiming appropriation based on depiction on animated film

##### *2. Right of Publicity as Property Right*

- Allows public figures, celebrities etc. to sue anyone who uses their images for commercial benefits w/o their permission
- Cases involving right of publicity turn into whether the use was commercial or not

#### **G. Fraudulent Misrepresentation**

Intentional deceit for personal gain

- Fraud exists only when a person represents as a fact something he or she knows is untrue

#### **H. Abusive Frivolous Litigation**

Tort law recognizes that people have a right not to be sued without any legal just and proper reason

- Abuse of process
- Malicious prosecution → must prove malice

### **III. BUSINESS TORTS**

#### **A. Wrongful Interference with Contractual Relationship**

Three elements are necessary:

- Valid, enforceable contract exists
- Third party must know contract exists
- Third party must intentionally induce a party to the contract to breach the contract

#### **B. Wrongful Interference with Business Relationship**

Prohibited to unreasonably interfering with another's business in their attempts to gain market share.

- Predatory behavior → actions undertaken with the intention of unlawfully driving competitors out of the market
- Plaintiff must prove defendant caused economic harm

#### **C. Defenses to Wrongful Interference**

Interference was justifiable or permissible

- Bona fide competitive behavior is permissible even if it results in the breaking of a contract

### **IV. INTENTIONAL TORTS AGAINST PROPERTY**

#### **A. Trespass to Land**

Occurs any time a person without permission enters onto, above or below the surface of land owned by another; causes anything to enter onto the land; or remains on the land or permits anything to remain on it

##### *1. Trespass Criteria, Rights and Duties*

- Property owner, or leaser must establish person as trespasser
- Common law → trespasser is liable for damages caused to the property and cannot hold owner liable for injuries on the premises; abandoned in some courts under reasonable duty of care
- Attractive nuisance → held liable if for example a child gets injured in the pool

##### *2. Defenses Against Trespass to Land*

- Trespass is warranted or trespasser entered to assist someone in danger
- Trespasser can show there was a license to come into the land

#### **B. Trespass to Personal Property**

Trespass to chattels or trespass to personalty → whenever an individual wrongfully takes or harms the personal property of another or interferes with enjoyment of personal property