

Exam 3 for Legal Environmental of Business

Tort: the word tort means “wrong”, legally; a tort is a civil wrong other than a breach of contract.

1. Intentional tort: do on purpose, based on will
2. Negligent tort:

Intentional tort is not covered by insurance

1. **Assault:** causing a apprehension of an injury
2. **Battery:** intentional contact with another without their consent
3. **Conversion:** is the wrongful exercise of dominion (power) and control over the personal (non-land) resources that belong to another.
4. **Malicious prosecution:**
 - a. Instituting proceeding with malice
 - b. Absence of probably cause
 - c. Termination of the criminal proceeding
5. **Defamation:** injury a person’s character or reputation by 1st statements
It must be communicated through a third party
6. **Trespass:** an authorized entry of land to another
7. **Intentional interference with contractual relationship**
Probably the most common example of this tort involves one company raiding another for employee. If employees are under contract to an employer for a period of time, another employer cannot induce them to break their contracts.

New York Times VS Sullivan

Case Summary: http://www.law.cornell.edu/supct/html/historics/USSC_CR_0376_0254_ZS.html

Holding: the media is not liable for defamatory untruth they print about public figures and fewer plaintiffs can prove the untruth for published with reckless disregard for the truth.

8.Fraud

FIVE elements you need to win a fraud case, ALL OF THEM!

1. False representation of a major material fact
2. Knowingly made
3. Intend to deceive
4. Justifiable reliance
5. Damage

Negligent tort: failure to use such care as a reasonably careful person would use under similar circumstance

Elements to win a negligent case:

A. Duty

Good Samaritan statute: you are not liable to rescue someone if you are negligent

TWO exception of Good Samaritan stature:

- a. If compensation is expected
- b. If there is willful misconduct

Court Case

Pasgraf VS Long Island Railroad (1928)

Case summary: <http://www.lawnix.com/cases/palsgraf-long-island-railroad.html>

Holding: there is no duty owed to a unforeseeable plaintiff

B. Breach the duty off somebody

C. Proximate cause: needs a rational relationship

Definition: must be reasonable connection between the negligent of defendant and the damages suffered by the plaintiff.

D. Damages: use damages as a result

Duty owed to people who come on the property

1. **Trespass:** one comes on to the property without permission
Generally there's no duty to keep the property safe for a trespass.
Exception: a. attractive nuisance doctrine: swimming pool
b. A willful injury
2. **Licensee:** one who goes on the property with the owner consent.
You need to know the damager/need to write a danger note/ warn note
3. **Invitee:** one come on under property under business situation

Possible methods to defend negligence:

1. **Contributory negligence** defense absolutely barred the plaintiff from recovery if the plaintiff's own fault contributed to the injury "in any degree, however slight."
2. **Comparative responsibility:** The trend today however, in the great majority of states is to offset the harsh rule of contributory negligence with the doctrine comparative responsibility.

Steps:

- a. The jury assign a percentage of total fault to the plaintiff
- b. The plaintiff will recover his negligence was not greater than the defendant's negligence.
- c. Plaintiff's award is diminished by the amount proportional to the percentage of his negligence.

3. Assumption of the risk

Remedy: the legal procedure to the enforce a right

Types of remedy:

- a. Damages
- b. Injunction: a court order requiring a person to do or referring doing a particular thing

Two kinds of injunction:

- a. Restraining order: keep you from doing something mental abuse, divorce case
- b. Mandatory injunction: specific performance to make you do something

Equity will not be relieved if there is adequate remedy at law

Law court → damages

Equity court → injunction

Real estate: you can get injunction

Damage

1. Compensatory damages: damages for the actual laws suffer

Eg:

- a. Medical bills
- b. Loss of wages
- c. Pain& suffering

Mitigation: the non-breaching party under a duty to mitigate their damages

2. Nominal: a token awarded to a legal establishment that a legal right has been valid even though there's no economic harm has been done
3. Liquidated damage: amount which a party to the contract agreement must be paid in the event of breach.

Liquidated damage must be a reasonable amount

4. Punitive: damages awarded to the plaintiff to punish the defendant for his willful& malicious act.

Normally for intentional tort

In Ohio, the winner is not entitled to recover for paying the attorney fee

Exception:

- a. In conjunction with intentional tort
- b. If the contract provides for attorney fee
- c. If allowed by specific statute
- d. Frivolous lawsuit

Criminal Law: all crimes are defined by statute (legislature makes the statute)

What is the legislature?

- a. Federal criminal statute: congress
- b. State criminal statute: state legislature (Ohio → Columbus)