

Chapter 2
Torts and Intellectual Property
*= more than 1 question on exam

- Three Major Torts
 - **Intentional Torts**: when the defendant intends to commit a particular wrongful act
 - **Negligence**: carelessness. Means failure to exercise care to avoid an unreasonable risk of harm to others, and, as a result, causing injury
 - **Strict Liability**: under some circumstances, a person engaging in a particular activity will be liable for any injuries caused by that activity, whether or not that person is at fault
- Defamation
 - Elements (essential) of defamation claim: **All of these things must be present for a defamation case**
 - A representation as a statement of fact– not just an opinion
 - Even if someone starts off by saying “In my opinion..” still an assertion of a fact so considered a fact
 - About the plaintiff (only the subject of the representation can sue)
 - Falsity
 - Must be a false statement
 - No defamation claim on a false statement
 - Communication to a third party called “publication”
 - At least one other person involved
 - Not privileged
 - Defamation is called *slander* if it's spoken and *libel* if it's written
 - Plaintiff doesn't have to be in the room for a defamation case
- Defamation Privileges*
 - A defendant will not be liable for defamation if the communication is privileged
 - **Privileges**:
 - **Absolute Privilege**: means that the communication will always be privileged no matter what
 - Ex. Husband and wife, judicial and similar proceedings (anything you say while being a witness), communications between spouses
 - **Conditional (qualified) Privilege**: means that the communication will be privileged unless the defendant knows it to be false or makes the statement with reckless disregard of truth or falsity
 - Ex. To protect legitimate business interests
 - Have the privilege unless you abuse it
- Types of Invasion of Privacy:*
 - Intentional tort

- o **Varieties:**
 - Intrusion on person solitude or seclusion
 - Publicizing private facts
 - Putting someone in false light
 - Commercial use of a person's name or likeness
- Intentional Infliction of Emotional Distress*
 - o **Elements:**
 - Intentional conduct by the defendant that is outrageous, extreme, beyond the bounds of decency
 - Severe emotional distress suffered by the plaintiff
- Trespass vs. Nuisance*
 - o **Trespass** to land requires a physical intrusion
 - o **Nuisance** is substantial and unreasonable interference with someone's use and enjoyment of property, without a physical intrusion
- **Conversion:**
 - o Taking personal property and converting it to your own use/possession
 - o Includes: stealing, giving it away, selling the item, or destroying it
 - o Only applies to personal property
 - o Very similar to stealing
- Fraud and Misrepresentation
 - o **Essential elements of an action in common law fraud:**
 - False representation was made as a statement of fact
 - It was untrue and known to be untrue by party making it
 - It was made to induce the other party to act upon it
 - The other party did so act upon that false representation to his injury
 - o Evidence needs to be beyond a reasonable doubt (more than 50%)
 - Clear and convincing
 - Preponderance of evidence
- Intentional Business Torts
 - o **Disparagement:** when you say something defamatory against a company or a product rather than against an individual
 - May be harder to win disparagement cases bc courts may require more proof of malice and damages
 - o Tortious (Wrongful) Interference with Contract Rights or Business Expectancies
 - If all elements are met, a person can be civilly liable for interfering with someone else's contracts, business relationships, or business expectancies. **Elements:**
 - Existence of a contractual or other business relationship
 - Defendant's knowledge of the relationship
 - Defendant's intent to interfere with the relationship
 - Interference that is in fact tortious

- Actual loss suffered by the plaintiff as a result of the interference
- o Unfair Competition
 - Must be truthful in advertising, not misleading
 - Describes a range of torts where a person is improperly injuring another person's business
 - Ex. Two companies have similar names even if the similarity isn't close enough to be a trademark infringement, if under the circumstances the similarity appears to be a deliberate attempt by one of the companies to confuse customers
- o The Lanham Act of 1946 and Protected "Marks"
 - A mark distinctively identifies something
 - **Trademarks**: for products (ex. Big Mac)
 - **Service Marks**: for services (ex. American Idol)
 - Protected marks may be anything distinctively identifying the source of the product or service: words, phrases, pictures, package design, colors, slogans
 - **Dilution**: where a company uses a word, phrase, etc. to identify a new product or service, and it's similar to a registered trademark/service mark
 - May not be literal violation of trademark law bc new mark isn't being used on a competing product to confuse customers, or bc the new mark isn't exactly the same as the old one
- o Misappropriation of Trade Secrets*
 - In order for there to be liability, the trade secrets would have to have been acquired by or through someone with a confidential relationship with the plaintiff (such as employee), or acquired improperly (such as by bribery or spying)
 - Can't be held liable if steps to keep it a secret weren't taken
 - Steps: limit which employees know, having employees sign non-disclosure statements, etc.
 - Way secrets were found out may be illegal
 - Espionage, wrong doing, etc.
- o The Connecticut Unfair Trade Practices Act (CUTPA)
 - Conn. Gen. Stat. §42 -110b(a) states: "No person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Thousands of court decisions have added, in effect, "and we mean it"
 - Attacks unfair trade practices in several ways:
 - Authorizes the state govt. to conduct its own investigation of alleged unfair trade practices
 - Authorizes punitive damages to winning plaintiffs
 - There's an expedited procedure for certifying class actions when a CUTPA violation is alleged