

Chapter 12

I. Basis of Tort Law.

A. Torts: A tort is a civil wrong not arising from breach of contract. A breach of a legal duty that proximately causes harm or injury to another.

B. Types:

- 1.
- 2.
- 3.
- 4.

C. Damages:

1. Compensatory Damages: plaintiff awarded compensatory damages to compensate or reimburse the plaintiff for actual loss.
 - a) In order to put plaintiff in same position as if the tort hadn't occurred.
2. Punitive Damages: To punish the wrongdoer and deter others from similar wrongdoing.
 - a) Appropriate when the defendant's conduct was particularly egregious (reprehensible).

II. Intentional Tort Against Persons(Personal Torts) and Business Relationship

A. Intentional Torts.

1. Intent is required to do the act that results in the harm.
2. No evil or harmful motive is required.
3. Only need to intend the act that results in the harm; do not have to intend the harm itself
4. "Tortfeasor"= Person committing the tort.

B. Assault and Battery.

1. Assault- an intentional, unexpected act that creates in another person a reasonable apprehension or fear of immediate harmful or offensive contact.
2. Battery- an unexcused and harmful or offensive physical contact intentionally performed.
3. No malice necessary.
4. Defenses to Assault and Battery:
 - a) Consent.
 - b) Self-defense.
 - (1) Reasonable defense in both real and apparent danger.
 - (2) Force used must be reasonably necessary.
 - c) Defense of others.

C. False Imprisonment.

1. Barriers/restraints can be physical or oral threats of physical force.
2. Person being restrained must not agree to the restraint.
3. Shoplifters- come states statutorily give businesses defenses to allow them to detain shoplifters for a reasonable time and in a reasonable manner, if the business has probable cause to justify the delay.

D. Intentional Infliction of Emotional Distress.

1. Relatively new tort and difficult to prove.
 2. May have to show evidence of physical symptoms or illness or some emotional disturbance documented by medical or psychiatric evidence.
 3. Public Figures- ex. Hustler v. Jerry Falwell p. 285
- E. Defamation: Making false statements that harms another's good reputation (Must be a fact and not an opinion).
1. Types:
 - a) Libel- written
 - b) Slander-Oral
 2. Publication requirement: When someone hears false statements. Someone receiving this information that this information is not about.
 3. Damages for Defamation.
 - o What is the proof that we must show to win.
 - a) Slander: plaintiff must prove that he suffered special damages.
 - b) Exception: Defamation (Slander) Per Se (in and of themselves).
 - (1) Statement that person has loathsome, communicable disease.
 - (2) Statement that person has committed improper ties in their profession or trade.
 - (3) Statement that person has committed or been imprisoned for a serious crime.
 - (4) Statement that unmarried woman is unchaste (sleeps around).
 - c) Libel-proof of special damages is not necessary.
 4. Defenses:
 - a) Truth is an absolute defense.
 - b) Privileged Speech (allow permission to commit defamation).
 - (1) Absolute:
 - (a) Judicial proceedings
 - (b) Legislative proceedings
 - (2) Qualified(Conditional):
 - Specific se to facts, if you can prove them it proves defamation.
 - Example: tells your new employer that they think you were stealing from them.
 - (a) Made in good faith
 - (b) Made to those with legitimate interest in the communication.
 - c) Public figures.
 - (1) Public figure has higher burden in proving defamation.

(2) Must prove "actual malice."

(a) Know it's false or should have and say it anyway.

- Pg. 287 case in book

F. Invasion of the Right to Privacy (Intentional interference with a person's right to solitude).

1. Use of a person's name, picture, or other likeness for commercial purpose without permission. (See G. Appropriation, below.)
2. Intrusion on an individual's affairs or seclusion.
3. Publication of information that places a person in a false light (third and final proof).
4. Public disclosure of private facts about an individual that an ordinary citizen would find objectionable (true info).

G. Appropriation.

1. The use of one's person's name or likeness by another, without permission and for the benefit of the user.
2. Individual's right to privacy includes the rights to the exclusive use of his or her identity.
3. Right to Publicity as a Property Right (Dies with you, ex. Marilyn Monroe).

H. Fraudulent (deceit for personal gain) Misrepresentation (Fraud).

1. Elements:

- a) Misrepresentation of material facts or conditions with knowledge that they are false or with reckless disregard for the truth.
- b) Intent to induce another to rely on the misrepresentation.
- c) Justifiable reliance by the deceived party.
 - (1) Reasonable person would believe.
- d) Damages suffered as a result of the reliance.
- e) A causal connection between the misrepresentation and the injury.

2. More than mere "puffery" (seller's talk) - only involves subjective terms; opinions rather than facts.

3. Reliance on a statement of opinion may be fraud if the person making the statement has a superior knowledge of the subject matter.

- Texaco vs. Pennzoil (largest \$ in history)

Concept Summary 12.1, Intentional Torts against Persons

III. Business Torts