

Week 02: Crimes and Torts

Overview

Task: Read the Chapter.

Purpose: To understand important concepts in business law and prepare yourself for this week's assignments.

Vocabulary

- **Prosecute:** To officially accuse someone of a crime and bring them to court
- **Liability:** Legal responsibility for something, especially for harm or damages.
- **Contractual:** Related to or involving a contract, which is a legal agreement between parties.
- **Deceit:** The act of misleading or lying to someone.
- **Foreseeable:** Something that can be predicted or expected to happen.
- **Misrepresentation:** Providing false or misleading information that affects someone's decisions.
- **Malpractice:** When a professional, like a doctor or lawyer, fails to do their job correctly, causing harm to their client.

What is Criminal Law?

At their worst, business owners' actions may be so unethical and wrong that the government will respond by criminalizing their activities. Examples of these crimes include fraud, embezzlement, Ponzi schemes, tax evasion, bribery, and insider trading. The government brings criminal charges against someone that has violated relevant criminal statutes (laws). This process is also known as prosecution and a criminal trial may follow. The purpose of the trial is to determine whether the person charged is guilty of the crime. Consequences for someone convicted of a crime may include paying fines, incarceration (jail time), or probation.

Crimes are usually defined in the country's criminal code. In the United States, crimes are listed in both the state criminal code (by way of reference, you can view the [Idaho criminal code](#)) and the federal criminal code. Take some time to review the relevant criminal code that governs you and your business.

Criminal Action and Intent

You may have heard that ignorance of the law is no excuse, yet there are too many criminal laws in the United States and around the world for us to know them all.

A crime, therefore, consists of both the criminal act and the criminal intent, known as mens rea. Someone may have a strong desire to steal money, but if that person does not follow through with the theft, he or she cannot be charged with a crime. Although the individual has a guilty mind (intent), the law does not prosecute those who do not actually commit the criminal act.

Likewise, someone may commit the criminal act but lack the criminal intent. A person that is forced to commit a crime at gunpoint is not guilty of the crime. The United States does not criminally charge those who were forced to commit crimes they did not want to commit. A similar situation would be those that commit crimes by mistake or other reasons out of their control.

Classification of Crimes

Crimes are classified according to the seriousness of the offense. Treason is a major crime defined by the US Constitution as follows, "Treason against the United States shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort."

A felony is a serious crime against society, such as murder, arson, larceny, bribery, and embezzlement. It may be punished by execution, by a prison sentence of more than a year, or by a fine.

A misdemeanor is a less serious crime and is usually punished by a fine and/or imprisonment for no more than a year. Examples include traffic tickets, thefts of small amounts of money, or other relatively minor infractions.

Many countries no longer make the distinction between felonies and misdemeanors. They may simply classify criminal acts by serious or minor offenses.

Crimes in the Business World

Corporate Criminal Liability

Today, businesses are usually liable for the crimes committed by their agents and employees so long as the crime was committed during the course and scope of employment. In order for the business to be liable, a supervisor within the business must have had knowledge of or authorized the act, or the business must have been able to prevent the act. Businesses can be criminally liable for failing to perform specific duties required by law. This includes, but is not limited to, duties required by securities or environmental law.

A corporation can't be imprisoned, but it can be fined or denied certain privileges, such as permission to operate as a business. And while a business can't be imprisoned, the employees and agents of the business, of course, can be imprisoned for their own wrongful actions.

White Collar Crime

White-collar crime generally refers to non-violent crimes committed by or against businesses. By way of example, robbing a bank is not a white-collar crime, but a bank teller (or bank employee) secretly stealing the bank's money would be considered a white-collar crime. Many of the crimes discussed in this chapter are white-collar crimes.

RICO

The Racketeer Influenced and Corrupt Organizations Act (RICO) is one of the most successful laws used to combat white-collar crimes in the United States. RICO prohibits an organization's employees from engaging in crimes involving extortion or coercion. Examples include securities fraud, bribery, embezzlement, and wire or mail fraud.

Mail and Wire Fraud

Created using the US Constitutional Commerce Clause, this federal law prohibits the use of mail or interstate electronic communications (wires) for the purpose of furthering a "scheme or artifice to defraud." This is a very broad federal law that makes it easy for US federal agencies (usually the FBI) to investigate abuses. The law also bans attempts to defraud, so the federal prosecutor doesn't even need to show that the scheme worked or that anyone actually lost money.

Securities Fraud

Securities fraud occurs when a person or company provides false information to potential investors to influence their decisions to buy or sell securities, such as stocks. An example of securities fraud, Enron committed securities fraud and its accounting firm, Arthur Anderson, attempted to conceal compromising documents by shredding them once the fraud was discovered.

A Ponzi scheme is a type of securities fraud in which large amounts of money are promised to investors. However, rather than paying investors using proceeds or gains from the investment, money from new investors is used to pay off investors that started earlier. These schemes almost always fall apart when they can't get enough new investors to pay off the older accounts. Bernie Madoff, former chairman of NASDAQ and owner of a large investment firm, was prosecuted for his role in running one of the largest Ponzi schemes of all time. If interested, you can find more information [here](#).

Larceny

Larceny is a broad term that includes most forms of theft. This includes robbery, which is defined as the taking of property of another person against that person's will and under the threat of bodily harm. It also includes burglary, which is the illegal entering of another person's home or place of business for the purpose of committing a crime.

Embezzlement is another form of larceny that involves the wrongful taking of money or other property that has been entrusted to a person as part of his or her job. Some jobs such as accountants, lawyers, or bank employees, have more opportunities to embezzle money, as opposed to university professors that don't really come in contact with money or other property.

Extortion

Extortion involves taking or demanding money or other property from someone by using force, threats of force, or economic harm. The difference between extortion and bribery is that in bribery, both parties are voluntary participants. With extortion, one party is unwilling.

False Pretenses

The crime of false pretenses describes a broad category of crimes that involve obtaining ownership of another's property by making untrue representations of fact with intent to defraud. For example, a person who makes false statements to a bank to get a loan could be prosecuted under the crime of false pretenses.

Forgery

Forgery involves wrongfully making or altering the writings of another with the intent to defraud. It includes making a false document or altering an existing one. Documents commonly subject to forgery are checks, deeds, and contracts.

What is Tort Law?

Tort law is the law that governs injury and harm to others and is a term widely used in common law countries. Civil law countries call it the law of delict. For simplicity, we will use tort law throughout this text.

Businesses frequently deal with torts, whether it is with their own conduct toward clients or other businesses, or problems with its products. Business people must be aware of how their own conduct, or the conduct of their employees, can create tort liability.

Business torts are primarily concerned with economic harm, whether it results from a customer slipping and falling in your store (potentially resulting in medical costs), defamation that results in monetary loss or environmental disasters.

You will notice that many torts are also crimes. These dual offenses (torts and crimes) can be prosecuted criminally by the government, but the individual injured can also bring a civil lawsuit relying on tort law for redress. The criminal suit will seek to redress the harms to society while the tort action exists to make the injured party whole.

There are three different kinds of torts: intentional torts, negligent torts, and strict liability. In this class, we'll focus on the first two. As the name implies, intentional torts involve wrongful acts that were, well, intentional. Negligence, on the other hand, involves wrongful acts that were careless. Unlike criminal law, negligence torts do not require mens rea to be proven.

Intentional Torts

Intentional torts closely resemble crimes discussed earlier.

Assault and Battery

Both criminal and tort law attempt to protect society from physical harm. Assault consists of the following:

1. The threat of immediate harmful or offensive contact.
2. Any act that would arouse reasonable apprehension of imminent harmful or offensive contact.

Thus, if you have finally had enough of the local vendor's high prices, you may decide to take a swing at him (but you probably should work on your anger management instead). If you take a swing but don't make contact with the vendor, you have committed assault.

Battery is unauthorized and harmful or offensive physical contact with another person (or something closely associated with him or her) that causes some form of injury. Almost any intentional and unwanted contact constitutes battery. Even touching that is physically harmless would be a battery if it is unwanted. Of course, unintentional contact would not be considered battery because battery is an intentional tort, thus requiring that the defendant intended to perform the act that results in the battery.

Let's go back to our example of attempting to hit a vendor. However, in this scenario, you actually hit the person. Obviously, you have committed both assault and battery. But what if you meant to hit the vendor, but instead miss and hit another shopper passing by? In that case, you likely committed assault against the salesperson, and assault and battery against the fellow shopper you actually hit. You may claim that you did not intend to hit the other shopper, but under the doctrine of transferred intent, the law transfers your intent to hit one person to the actual victim.

There are a limited number of defenses to these intentional torts. Consent would be one of them. If you get in a boxing ring, you have consented to getting hit because it's the nature of the sport. Another defense is that of self-defense. You are permitted to respond to the force of another with comparable force to defend yourself. If someone takes a swing at you and you push him or her backwards, you are not liable for battery. However, if someone takes a swing at you and you respond by shooting the attacker, you may have difficulty arguing that your response was appropriate to the threat you faced.

Defamation

Defamation is the intentional publication (communication to a third party) of a false statement that harms the reputation or character of an individual, business, or product. Defamation consists of statements of fact, rather than statements of opinion. For the act to be defamatory, it must be shown that the statement was made so that others could hear or read it (Defamation does not have to be written). Thus, if a former employer writes a letter that wrongfully accuses you of terrible crimes, it is not defamatory unless it was sent to someone other than you.

The statement must reference a particular person, though the person need not be named. Saying that, "the new accounting professor is a crook," is sufficient to identify that person and therefore constitutes defamation. But saying, "all accountants are crooks," is not sufficient to constitute defamation because making such claims against all 1.3 million accountants in the United States is not specific enough for any one of them to claim damages.

A common defense to a charge of defamation is that the statement is true. If the statement is true, the statement doesn't injure the person's character; rather, that person has injured his or own character. Also, statements made during court proceedings are privileged and therefore cannot serve as the basis of a defamation claim.

From the definition above, you may think that you can avoid defamatory statements by couching all your statements as opinions. This is not always the case. For example, I could say, "Brother Walsh was a crooked accountant when he stole all that money from his clients...but that's just my opinion." This statement is still damaging, and given my position as a teacher and attorney, the statement carries extra weight, thus likely subjecting me to liability for defamation.

Also note that I do not have to intend to defame someone to be charged with defamation. I simply must have intended to say the defamatory statement.

Invasion of Privacy

This relatively new right protects our reasonable expectation of privacy. One of the earliest privacy rights involves the appropriation of name or likeness for commercial gain. Under this law, it is wrongful to use the name or image of another person for advertising purposes or for the purpose of trade (business) unless permission is given. Thus, a pet store cannot use

Samuel L. Jackson's picture to sell their puppies. However, a newspaper can use Mr. Jackson's image on the cover in order to discuss the latest entertainment news.

Public disclosure of private facts occurs when someone publishes an embarrassing fact about another that a reasonable person would find highly offensive. This is closely related to intrusion on an individual's seclusion, which occurs when someone invades a person's solitude, seclusion, or personal affairs when the person has the right to expect privacy.

As of 2024, most countries have at least some legislation protecting individual privacy.

Intentional Interference with Contractual Relations

To prevail on this claim, the plaintiff must show that the plaintiff had a contract with a third party, the defendant knew about the contract, the defendant improperly encouraged the third party to breach the contract, and there was an injury to the plaintiff.

Now, because most of us live in a capitalistic society, this tort does not stop businesses from offering a better deal to a party already in or looking for alternative business opportunities. However, if a business uses illegal means to cause another party to breach an existing contract with another business, this action may constitute the tort of intentional interference.

A common situation involving this claim includes businesses luring employees away from a competitor. Of course, businesses can recruit employees that are already working for a competitor, but to constitute the tort of intentional interference, the business must take improper or illegal methods in the recruitment. This could involve fraud or deceit, unethical conduct, illegal statements, or any actions that fall far outside the typical business competition.

Fraudulent Misrepresentation

This tort occurs when a party uses intentional deceit to facilitate personal or business gain. To win, a party must show all of the following:

1. A party knowingly, or with reckless disregard for the truth, misrepresented material facts and conditions.
2. The party intended that the other parties would rely on the misrepresentation.
3. The injured party reasonably relied on the misrepresentations.
4. The injured party suffered damages because it relied on the misrepresentations.
5. A direct correlation exists between the injury and the reliance on the misrepresentations.

Negligence

Many harms are not intentionally caused. Therefore, the law recognizes that some should receive recompense for injury resulting from the careless acts of others. This is where the law of negligence will assist injured parties. The tort of negligence has four elements:

1. That the defendant had a duty of care.
2. The defendant breached that duty of care.
3. Connection between the breach of the duty and the injury.
4. And actual damages or loss.

Duty of Care

We should begin our study of negligence with an understanding of the general duty of care. The plaintiff must first show that the defendant owes a duty to the plaintiff. In some cases, the law makes clear that certain parties have duties to others (for example, parents have a duty to keep their children safe). But in most cases, the courts will use the reasonable person standard to determine what duty the defendant has toward the plaintiff. The reasonable person standard is a legal measurement of the way members of society expect others to act in a given situation. The judge or jury will determine how the defendant should have acted in a specific situation and find the defendant liable if he or she fell below that standard of care.

Courts generally hold that businesses have a duty of care to warn customers against risks that they may encounter on the business premises. Some risks, however, are obvious, so the business is not required to warn of these risks. For example, a business need not warn customers about the risk of electric shock if they stick a fork in an outlet. However, other risks like wet floors are not easily seen. Thus, the business must warn its customers, usually in the form of a yellow wet floor sign. Why? Because a reasonable person working in the store would know that it is important to warn customers of these risks.

Professionals have more training than ordinary people. Therefore, when professionals are serving in their professional capacity, courts will hold them to a higher standard than the reasonable person standard discussed above. Therefore a doctor cannot defend against medical malpractice by saying that a reasonable ordinary person may have left the sponge in the plaintiff's chest cavity. Rather, we hold that doctor to a higher standard. We hold that doctor to the standard of the average reasonable doctor. Using that higher standard, the doctor would be found liable for negligence for leaving medical instruments in the body of a surgery patient. These are considered malpractice cases, typically involving doctors, attorneys, or accountants.

Breach

Turning our attention to the second element of negligence, we must determine whether or not a breach of the duty has occurred. For example, a driver on the road has a duty to obey traffic signals. If the driver ignores a red light and causes a car crash, the driver has breached the duty of safe driving.

Causation

Causation is the third element of a negligence claim. It has two elements. It requires both actual cause as well as proximate cause. Actual cause means that the defendant's breach directly resulted in the plaintiff's injury. Ask yourself whether the injury would have occurred without the defendant's actions. If it would have, there is no actual causation. Proximate cause is also required. Proximate cause requires the plaintiff and the plaintiff's damages to have been foreseeable at the time of the accident or breach. Thus, if the defendant could not reasonably foresee the damages that the plaintiff suffered as a result of the breach, the plaintiff will not win the negligence lawsuit.

Damages

Damages are the final requirement. The plaintiff must have been injured as a result of the defendant's actions. Remember that the purpose of tort law is to compensate plaintiffs that were injured. If the driver in the example above runs the red light, but no one is injured or even driving through the intersection, there are no tort damages because no one was injured (though that person could still receive a traffic ticket for breaking the law).

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