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Chapter 5 Notes

**What is Cybertorts**

* Litigation that come from computer related injuries such as email, social media, and other.
* Can come from a social media post like Twitter, Facebook, and other web pages.
* Defamatory statements made online can seldom be expunged.

**Effect of Section 230 if CDA**

* Protects service provider from charges if third party is accused of defamation, etc.
* Material constituting ongoing torts are no required to be removed by service provider.
* To be eligible for protection, website must show:

1. It’s an interactive service provider or user of such
2. Cause of action defendant is publisher or speaker
3. Information is issue is provided by third party information content provider.

**Distributor Liability**

* Primary publishers- newspapers or book publishers
* Secondary Publishers or distributors- bookstores, libraries or newsstands.
* In a defamatory work, primary publishers would have same liability standards as the author.
* Distributors would not be liable as they are only the carier of the work and are not actually publishing the work.

**Cybertorts against a person**

* Tort Of Outrage- Conduct must be so outrageous in character and extreme in degree as to go beyond the standard of decency.
* Trespass to Virtual Chattels- Property tort by intentionally dispossessing another of a chattel and using a chattel in the possessing of another.
* Conversion- wrongful exercise of dominion over personal property.

**Spam Emails**

* In CompuServ v. Cyberpromotions, CompuServ claimed that Cyberpromotions used CompuServe’s computer system to spam people. Drained processing speed and disk space.
* The court found falsification of point of origin from Cyberpromotions to be a misuse of network.

**Intel v. Hamadi**

* Hamadi created and anti-Intel website and sent messages to Intel employees.
* California Supreme Court held that Hamadi did not trespass Intel’s email system.
* Intel sent Hamadi a letter demanding that he stop sending emails to current employees.
* Intel sought injunction based on trespass of chattels and tort actions of nuisance.
* California Supreme Court claimed rejected trespass of chattels as there was no apparent damage.
* Hamadi’s communication was compared to displeasing letters and would cause no damage.

Ana Andrade Juarez Page 2

**Spyware as trespass to chattels**

* Court refused to dismiss computer-tampering claim and that Direct Revenue breached duty not to harm Sotelo’s computers under consumer fraud act. (Sotelo v. DirectRevenue)

**Conversion in cyberspace**

* Cyberconversion- wrongful exercise of dominion over personal property.
* Is committed by: 1) intentionally dispossessing another of a chattel, 2) intentionally destroying or altering a chattel in the actor’s possession, 3) using a chattel in the actor’s possession without authority, 4) receiving a chattel pursuant to sale, lease, pledge, gift or other transaction, 5) disposing of a chattel by a sale, lease, pledge, gift , or other transaction, 6) misdelivering a chattel, or 7) refusing to surrender a chattel on demand.
* In domain names, domain names become tangible and therefore qualify to be chattel

**Internet related business torts in cyberspace**

* Restatement of Unfair Competition: appropriation of another company’s intangible assets is considered unfair competition.
* “hot news” misappropriation tort: factors are 1) plaintiff gathers information at cost, 2) information is time-sensitive, 3) defendant’s use of the information constitutes free riding on plaintiff’s efforts, 4) defendant is in direct competition with a product or service offered by plaintiff, and 5)ability of other parties to free-ride on the efforts of the plaintiff or others would so reduce the incentive to producer the product or service that its existence would be threatened.
* Tortious interference with contractual relations claim elements: 1)an advantageous 2)business relationship 3)under which plaintiff has legal rights, plus 4) is intentional and 5) unjustified
* Cyberfraud- knowingly falsely representing and an intent to deceive or induce reliance resulting in damages.
* Trade libel- making a statement that disparages the quality of the product. Statement was taken as fact, not opinion. Statement was false. Statement was made with malice. Statement resulted in monetary loss.