

Business Law

Text & Exercises *6th Ed.*

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Chapter 5: Torts and Cyber Torts

Learning Outcomes

- LO1** • State the purpose of tort law.
- LO2** • Explain how torts and crimes differ.
- LO3** • Identify intentional torts against persons and property.

Learning Outcomes

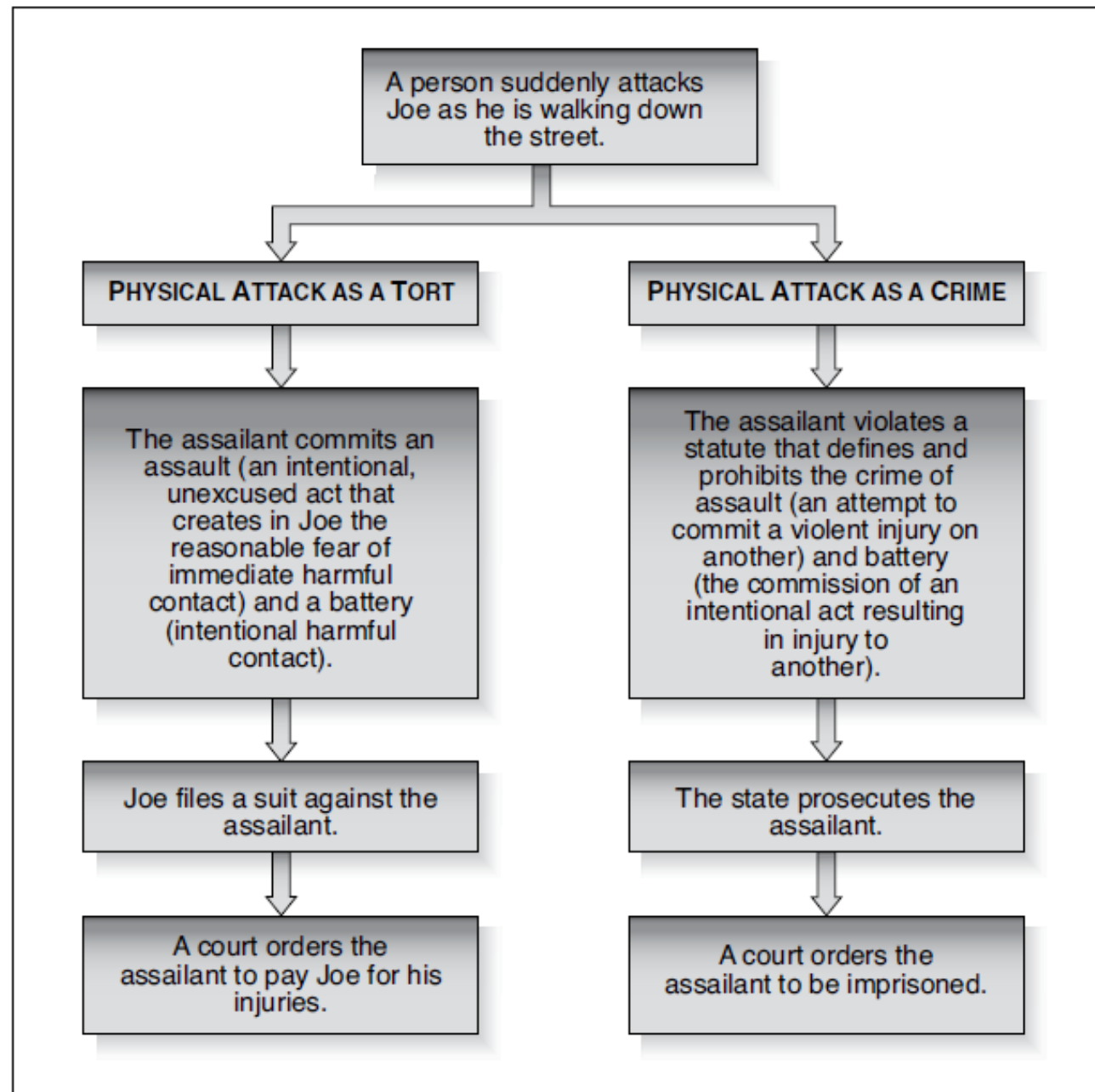
- LO4** • Name the four elements of negligence.
- LO5** • Define strict liability, and list circumstances in which it will be applied.

- **A tort is a private, civil legal action to obtain monetary damages from a legal injury a person or property.**
- **Business torts wrongfully interfere with another's business rights.**
- **An increasingly relevant area is now cyber torts.**

The Basis of Tort Law

- **A single act can have both criminal and civil consequences.**
- **Torts are ‘civil’ injuries for which the law provides damages to compensate the injured private party.**
- **Criminal charges, on the other hand, are injuries to an entire community. In a criminal case, the state prosecutes the alleged wrong-doer.**

Tort Lawsuit and Criminal Prosecution for the Same Act



Tort Reform

- **Critics of tort law claim too many unfounded suits, which drives up insurance costs and clogs up courts.**
- **States have passed laws to: limit amount of damages, limit contingency fees, and requiring losing party to pay attorney fees.**
- **Class Action Fairness Act of 2005.**

Intentional Torts

- Intentional tort requires **INTENT**.
- Tortfeasor (who commits the tort) must intend the act (which means the tortfeasor intended the act, OR knew with substantial certainty the consequences of his act would interfered with the legal interests of another).

Assault and Battery

- **Assault:** the reasonable apprehension or fear of immediate contact.
- **Battery:** completion (contact) of the assault.
 - No motive is necessary, and plaintiff can be compensated for emotional harm.
- **Defenses:** consent, self-defense and others, defense of property.

Intentional Torts Against Persons

- **False Imprisonment.**
 - Confinement or restraint of another person's activities without justification.
 - Merchants can detain a suspected shoplifter as long as there is probable cause.

Defamation

- **Defamation:** publication of a false statement (oral or written) that injures a person's good reputation.
 - Libel: damages are presumed as a matter of law. Plaintiff need not prove she was actually injured. Reason: libel is “permanent” and continues to harm after statement made.
 - Slander : plaintiff must prove special damages (statement actually caused monetary loss). Reason: slander is temporary.

Defamation

- **Slander *per se* (no proof of damages is required):**
 - Loathsome communicable disease.
 - Professional impropriety.
 - Imprisonment for a serious crime.
 - Unmarried woman is unchaste.
- **Publication Requirement:** third party must hear or see statement. An individual who re-publishes the statement may be liable.

Defamation

- **Defenses Against Defamation.**
 - Truth is normally an absolute defense.
 - Statement was Privileged:
 - Absolute: judicial and legislative proceedings.
 - Qualified: good faith, limited.
 - Public Figures: plaintiff must show statement made with “actual malice.”

Invasion of the Right to Privacy

- **Person has the right to solitude. Breach of that duty is a tort.**
- **Intrusion into private affairs or seclusion.**
- **False Light.**
- **Public disclosure of private facts.**

Fraudulent Misrepresentation

- **Fraudulent (Intentional) Misrepresentation.**
 - Intentional deception of another that causes belief in a condition that is different from the condition that already exists.
 - Knowing misrepresentation of fact.
 - Intent to induce innocent party to rely.
 - Justifiable reliance by innocent party.
 - Causation and Damages.
 - Contrast: “puffery” or statements of opinion.

Abusive or Frivolous Litigation

- **Plaintiff files suit based on malice or without a legitimate legal reason and loses the suit, he can be sued for malicious prosecution, recover costs of suit and, in some states, lost profits.**
- **Abuse of process: does not require proof of malice or prior litigation.**

Wrongful Interference

- **Wrongful Interference with Contracts.**
 - Valid, enforceable contract exists between two parties.
 - Third party knows about contract.
 - Third party intentionally causes either party to breach the original contract.

Wrongful Interference

- **Wrongful Interference with Business Relationship.**
 - Distinguish competition vs. predatory behavior. Predatory behavior is unlawfully driving competitors out of market.
 - To prevail, Plaintiff must show Defendant targeted only Plaintiff's customers and product.
- **Defenses to Wrongful Interference:**
Interference was justified or permissible (*bona fide* competitive behavior).

Intentional Torts Against Property

- **Trespass to Land.**
 - Occurs when a person, without permission, enters onto (above or below) some one else's land; or remains on the land or permits anything to remain on the land.
 - Actual damages or harm to the property is not required to prove trespass.

Intentional Torts Against Property

- **Trespass to Personal Property.**
 - Wrongfully taking or harm or interference with exclusive right of use of personal property (chattel) of another.
- **Conversion.**
 - Wrongfully taking or retaining possession of chattel and placing in service of another.
 - Good intentions are not a defense. Usually occurs with trespass to personal property.

Disparagement of Property

- Occurs when economically injurious falsehoods are made about another's property or product.
- **Slander of Quality** (Trade Libel): false statement about another's product that caused a third party to refrain from dealing with plaintiff, causing financial loss.
- **Slander of Title**: false statement about legal ownership of another's product resulting in financial loss.

Unintentional Torts (Negligence)

- **Negligence** occurs when plaintiff is legally injured due to defendant's failure to live up to a reasonable standard of care causing foreseeable risk of injury.
- **Analysis:**
 - Did defendant owe plaintiff a legal duty of care?
 - Did defendant breach that duty?
 - Did plaintiff suffer a legal injury?
 - Did defendant's breach of duty cause plaintiff's injury?

Negligence: Duty of Care and Breach

- **Duty is based on reasonable person standard.**
 - How would a reasonable person have acted under the circumstances?
 - Duty to Warn Business Invitees of risks, and keep common areas safe. *Exception: Obvious risks.*
 - Duty of Professionals to clients (attorneys, CPA's, doctors).

Negligence: Injury Requirement and Damages

- **Plaintiff must suffer a *legally* recognizable injury.**
 - Plaintiff must show she suffered loss or harm to legally protected interest.
 - Not all injuries can be compensated.
 - Compensatory damages are norm. Punitive damages are generally awarded only in intentional torts.

Negligence: Causation

- **To hold defendant liable, plaintiff must the tortious act was both the actual and proximate cause of the injury.**
 - Causation in Fact: “but for” defendant’s act, injury would not have occurred.
 - Proximate Cause: defendant’s act created a **foreseeable** risk of injury to plaintiff (sufficient strong connection).

Defenses to Negligence

- **Assumption of the Risk.**
 - Not applied in emergency situations.
- **Superseding Cause.**
 - Event must be unforeseeable.
- **Contributory Negligence** (few jurisdictions).
- **Comparative Negligence** (more common).
 - As long as Plaintiff is less than 50% at fault he can recover a pro-rata share of the verdict.

Strict Liability

- **Does not require fault, intent or breach of duty.**
- **Usually involves ‘abnormally dangerous’ activities and risk cannot be prevented.**
- **Product Liability—manufacturers and sellers of harmful or defective products.**

- **Identifying the Author of Online Defamation.**
 - Threshold barrier to suing an internet service provide (ISP). Suits are now brought by “John Does” until discovery is completed.
- **Liability of ISPs.**
 - Communications Decency Act provides broad protection for ISPs, but there are limits to immunity.