



JOHNS HOPKINS

WHITING SCHOOL
of ENGINEERING

Cyber Operations, Risk, and Compliance

The Myriad World of Torts (Non-Criminal Personal Injuries) and the Civil Litigation Process

Tort Law Introduced

- When people think of accidents, worker's compensation, medical malpractice, defamation, slip & falls, automobile collisions and the like, they are referring to **the law of torts**, non-criminal personal injury. By practice area, its among the largest single fields of attorney employment...or so it would seem through their advertising!
- Tort law addresses both money compensation ("damages" and penalties) and non-monetary relief (e.g. restraining orders) for injured parties. As a rule, the loss of liberty is not among the remedies.
- Tort laws are **State based** jurisprudence; thus many areas of the law may vary by jurisdiction. The Fed tort laws employ state law.

Tort Law Introduced (continued)

- Among the factors which can vary by state are; a) statutes of limitations, b) appropriate tribunal, c) scope of compensatory and punitive or exemplary damages, d) limitations on the use of paid expert witnesses, e) appellate avenues and f) compulsory or voluntary mediation and arbitration. (Google “tort reform”!)
- Plaintiffs’ counsel are often employed on a contingency fee basis (that is, no legal fees are paid if there is no recovery, with fees paid as a percentage of any settlement or trial). Defense counsel are usually paid by the hour or case, as is customary for hiring attorneys.
- The contingency fee is unique to the USA and is very controversial; is it the “poor person’s key to the courthouse” or an incentive for abuse?

Negligence Introduced

The largest branch of tort law deals with negligence, defined as a **departure from a standard of care** (which is not excused somehow).



- A major underlying theory of negligence is foreseeability...if there is a legal duty to someone and the potential for injury to that person is “reasonably foreseeable”, liability may apply.



- Note: this does NOT suggest absolute liability to claimants, except in ultra hazardous situations in which injury is equated to liability.



- Another major underlying theme is that of Reasonableness, or what the “reasonably prudent person” would do under the specific circumstances to avert injury.

Negligence (continued)

- “Reasonableness” is a subjective, flexible standard; it does not impute automatic liability. The cases suggest a “duty of ordinary care”, neither the highest nor the most superficial level of conduct. Hence, defendants may win with a poor outcome or bad result explained, none the less, by the conduct as “reasonable” under the facts.
- Expert testimony is usually essential to establish breaches of the standard of care in complex cases. (Note the four elements of a prima facie case, including proximate cause, also involving experts.)
- Despite media hype, the standard of care is by and large defined by YOU, that is, **practicing professionals in the field and their organizations**. The legal profession and courts depend on them.

Other Important Torts

So-called “**Intentional Torts**” are varied and interesting. They include defamation (libel and slander), invasion of privacy, mental anguish (mental outrage), false imprisonment and assault & battery.



- Defamation is a major concern for one’s reputation personally and professionally...(The Immortal Bard....He who steals my purse steal’s trash...).Slander (verbal defamation) or libel (written) require a non-privileged communication to a third party which is false.



- Truth is an absolute defense to defamation charges (vs. invasion of privacy claims which are exactly opposite). As a rule, economic injury is required for the Plaintiff, unless the offending language is “per se actionable” (e.g. Art Reynolds is a menace to the legal profession).



The business community and most of the Republican Party are convinced that our economy and society are being ruined by a horde of frivolous lawsuits fueling outrageously generous jury awards.

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Civil Litigation Introduced

- It is strongly suggested that you obtain any business law reference which reviews this topic. The Rules of Evidence and of Procedure are in themselves somewhat complex.
- A lawsuit is commenced when a plaintiff properly serves the **proper party** (defendant) in the **proper court** (forum) within the **proper time** limits (statutes of limitation); that is “sewer service” or service on the wrong defendant can void a claim, as can filing too late in a court without jurisdiction (e.g. all landlord-tenant actions in Maryland, no matter the amount involved, must at first be filed in District Court, the courts usually handling misdemeanors.)
- Attorneys must be permitted to practice before the court they file as counsel; not admitted to practice? Find a local attorney.

Civil Litigation Continued

- Once a defendant is served, the defendant may respond, and bring in other defendants as joint parties. A defendant's failure to respond may lead to entry of a **default judgment** in favor of the plaintiff.
- Either party, importantly, may seek to dispose of the lawsuit via filing **motions to dismiss and/or for summary judgment**. These motions claim that there is nothing for a jury to consider, as a matter of law. (E.g. the statute of limitations has run and is a bar to suit.)
- The major element of most complex lawsuits is the discovery phase, mainly **interrogatories**(questionnaires), **depositions** (oral examinations under oath), and **document production requests**.

The Deposition



- Depositions are costly and can be time consuming. Since the witness (deponent) is testifying, often on camera, under oath, any statements given can be used at trial as evidence, especially to impeach (contradict) varying story lines or comments.



- If you are to be deposed, you must be **adequately prepared by an attorney you trust**. Insurers and employers often furnish counsel to witnesses; a “gut check” must be made as to your confidence in them. The fiduciary duty of any lawyer should be to you! Don’t “wing it”.



- Prior to being deposed, a complete document/case review is needed. The deposition itself can be amiable or stressful, depending on the examiner’s style; the deponent should be advised and protected by the attorney although broad lines of questioning are permitted in discovery.

Some Points on the Trial Stage

Court

Most cases are settled out of court; having said that, there has been a major expansion of self-help “small claims” type courts with limited jurisdiction.

Proof

In court, the Plaintiff has the burden of proving all the elements of the case by a “preponderance of the evidence” (“50% + 1”).

Location

Every state and most counties have their own unique *modus operandi* (rules of procedure); these are important as are the unique personalities of the judges.

Note: Please remember the “Reynolds Rule of Suing”...it rarely makes sense to pursue a poor person. An asset check can quickly reveal if someone is “judgment proof.”

(Reynolds, 2022)

The Judiciary- an Overview

- Federal judges at all levels (except for Magistrates) are appointed for life; thus, as they rarely are impeached or retire en masse, each judge is considered a “potentate” in their own court.
- White House changes can make a major difference in the composition of the judiciary. Bi-partisan selection is becoming less common in the wake of hyper partisanship. All judges are appointed by the President with Senate confirmation. SCOTUS nominations are highly visible proceedings!
- State and local level judges can be elected, appointed or selected in hybrid fashion; most voters have no idea who judicial candidates are. Party labels can be meaningless. Politically active lawyers often dominate both the selection process and judiciary. Contested elections are now not uncommon. Note titles of courts and jurisdiction vary widely.

Verdicts, Judgements, and Appeals

- Most cases are settled but when a verdict is rendered, either by a jury or by the judge (“the bench trial”), it can be set aside (vacated), reduced or appealed at multiple levels. In addition, damages awards can be significantly reduced by statute or in post-verdict motions.
- Final (vs. interim or interlocutory) judgments result in the potential for “attaching” (seizing) the defendant’s assets. State law allows minimal assets to be excluded from collection. Judgments can last for decades and are a blight on someone’s creditworthiness.
- Every state allows at least one appeal as a matter of right to an intermediate appellate court. These tribunal names vary enormously.



Appeals (continued)

- The senior court of each state (Court of Appeal, Supreme Court) like SCOTUS, has discretion to accept or decline cases for review. “Get a Cert”. Statistically, the judgments of jury trials are rarely overturned, and the judgments of intermediate appellate courts are usually upheld.
- At the federal level, the result is more profound. SCOTUS accepts a fraction of cases appealed to it, thus affirming the judgments of the various Circuit Courts. The result can be different interpretations of law on similar fact patterns or disputes, vs. a uniform interpretation applicable in all states. SCOTUS is the “supreme law of the land”...if it makes its intentions and holdings known!

Final Thoughts

- Litigation is risky and usually expensive; its always best to settle disputes out of court.
- Threatening litigation is an empty gesture without the means to follow through. Ensure your resources (money, witnesses, evidence) are adequate to the task.
- While the UK employs specialized trial counsel (barristers), and any American lawyer in theory can represent you in court, its best to engage counsel very familiar with the rules of evidence and procedure in the particular court or jurisdiction (Forum) the case is pending in. Better yet, hire a lawyer on good terms with the judge!



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