

Topic 9: Tort Law

Overview

- *Introductory Video:*
-

QUESTIONS & ANSWERS

1. What is a Tort?

A tort, in the legal context, means a “wrong”. More specifically, a tort is a civil wrong, as apposed to a breach of contract or other civil action.

- *Resource Document:* <http://thebusinessprofessor.com/torts-defined/>

2. What types of torts exist?

There are three broad categories of torts, as follows:

- *Intentional Torts* - Intentional torts, as the name implies, are characterized by the mental intent of the tortfeasor. Basically, the tortfeasor undertakes an activity with either the desire to bring about certain results or the knowledge that a result is “substantially certain”. When that intended action results in an identifiable harm or loss, the harmful action is an intentional tort.
- *Negligence* - Negligence is conduct by an individual that drops below a reasonable standard of care and causes harm to another person. Succinctly, an individual has a duty to act reasonably when interacting with others. When that individual fails to act reasonably and thereby causes harm to others, that individual is negligent.
- *Strict Liability* - Strict liability makes an individual liable for activity that causes harm to another without regard for her intent or the standard of care she showed in carrying out that activity. That is, simply undertaking the activity is sufficient to make the actor liable. The injured party is not required to demonstrate the actor’s intent or the level of care they exercised in undertaking the activity.

- *Discussion:*
- *Practice Question:*
- *Resource Document:* <http://thebusinessprofessor.com/intentional-torts/>

INTENTIONAL TORTS

There are many intentional torts. Some of the more common statutory and common law intentional torts are discussed below.

3. What is Assault and Battery?

Two commonly recognized intentional torts are known as assault and batter.

- *Assault* - is the act of acting to place another person in immediate apprehension of a harmful or offensive physical contact. There are several elements to this tort. First, the individual must intentionally act; the action cannot be unconscious or inadvertent. Second, the individual witnessing the act must sense immediate contact. Apprehension is more than fear. While the individual may also be scared, the core element is that they are aware of a touching that is likely to ensue. This is judged by a reasonable person standard. Would a reasonable person believe that physical contact is imminent and is that contact offensive or harmful?
- *Battery* - A battery is an illegal touching of another. A battery often accompanies an assault. The touching is done without justification and without the consent of the person touched.

- **Discussion:**
- **Practice Question:**
- **Resource Document:** <http://thebusinessprofessor.com/assault-and-battery/>

4. What is the Intentional Infliction of Mental Distress?

The intentional infliction of mental distress upon another is a form of battery to the emotions. Like a battery, it is caused by intentional conduct that carries a strong probability of causing mental distress to the person at whom it is directed. Generally, the conduct must be very extreme or outrageous in nature to constitute intentional infliction. For example, intentionally exposing a person to extreme ridicule in front of a large crowd may constitute such a tort. To recover for this tort, the defendant must demonstrate that the intentional conduct actually caused mental distress that manifest itself physically.

- **Discussion:** What type of conduct would you consider sufficiently extreme or outrageous to qualify as a battery on the emotions? Do you agree with the requirement that mental distress must also manifest itself through physical symptoms?
- **Practice Question:**
- **Resource Document:** <http://thebusinessprofessor.com/intentional-infliction-of-emotional-distress/>

5. What is the Invasion of Privacy?

Invasion of privacy comprises three principle types of invasion of personal interest:

- *Use of Name or Likeness* - Individuals have a property interest in their name and physical image. As such, appropriating the plaintiff's name or likeness for business use violates her property rights. For example, using a person's image in an advertisement without their consent violates their personal rights. Before using anyone's picture or name, a business must obtain a proper release from that person to avoid possible liability.

- **Discussion:**
- **Practice Question:**

- **Invade Physical Solitude** - Individuals have an expectation of privacy in their home and other personal spaces. Interrupting a plaintiff's privacy in such places is an invasion on the individual's physical solitude. For example, entering a person's home, spying through windows, illegal wiretapping, persistent unwanted telephoning all may constitute an invasion of privacy.

- **Discussion:**
- **Practice Question:**

- **Disclosure of Private Information** - Disclosure of highly-objectionable, private information about someone is an invasion of that person's privacy. In some cases, the information must be obtained without the person's consent. For example, disclosure of someone's private medical information could constitute an invasion of privacy. The tort generally requires that the private information be disclosed to the public at large. *Note:* The 1st Amendment protects the news media when they publish information about public officials and other public figures.

- **Discussion:**
- **Practice Question:**

- **Resource Video:** <http://thebusinessprofessor.com/invasion-of-privacy/>

6. What is False Imprisonment?

False imprisonment is the wrongful detention of a person without that person's consent. The detention does not have to involve actual physical force. It can involve a threat of physical force or other harm. The key aspect is that the detained individual must reasonably believe that he or she cannot leave the detention without unjust repercussions. Generally, this situation arises when detaining a suspected shoplifter. If the individual is not actually a shoplifter, then the detention is wrongful and can constitute false imprisonment.

- **Discussion:** What type of action do you believe would reasonably make a person believe that they are detained without the ability to leave?
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/false-imprisonment/>

7. What is Malicious Prosecution?

Malicious Prosecution is wrongfully subjecting someone to the prosecutorial process. This tort often arises from causing someone to be arrested criminally through false swearing or pretenses. That is, you cause a person to be arrested simply to harass that person.

- **Discussion:** How would you propose balancing the objective of protecting the wrongfully accused against dissuading someone from pressing charges against someone who committed a crime against them?
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/malicious-prosecution/>

8. What is Trespass?

The tort of trespass is similar to the crime of trespass. It involves entering into someone else's land without consent or remaining there after being asked to leave. The difference between the civil action and the criminal charge is that a tort requires the existence of damages to be actionable. In addition to personally entering someone's land, trespass can occur by projecting something (such as pollution) onto another's land without consent.

- **Discussion:**
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/trespass/>

9. What is Conversion?

Conversion is the wrongful exercise of dominion (power) and control over the personal (non-land) resources of someone else. Conversion is the civil action for taking another person's property without their consent. It involves depriving the owner of their lawful right to exclude others from their resources. The deprivation may be temporary or permanent, but it must constitute a serious invasion of the owner's legal right. For example, stealing something from an employer is conversion – as is purchasing something that has been stolen. Further, failing to return something at a designated time, delivering something to the wrong party, and destruction or alteration of someone else's property also constitutes conversion.

- **Discussion:**
- **Practice Question:**
- **Resource Document:** <http://thebusinessprofessor.com/conversion/>

10. What is Defamation?

Defamation is the publication of an untrue statement about another that subjects that individual's character or reputation to contempt and ridicule. "Publication" simply means that the untruthful statement

was told or made known to at least one other person. Individual and businesses can sue for defamation. In business, false accusations of dishonesty or inability to pay debts frequently lead to defamation suits. Approximately 1/3 of all defamation claims are brought by employee against present and former employers.

Types of Defamation

There are three general types of defamation:

- *Slander* - Slander is spoken or oral defamation.
 - *Libel* - Libel is written defamation or defamation over the television or radio.
 - *Disparagement* - Disparagement is defamation of another person's trade or business prowess, product, or service.
- **Practice Question:**
 - **Resource Document:** <http://thebusinessprofessor.com/defamation/>

Defenses to Defamation

There are several recognized defenses to a defamation claim. First, a statement made was true (truth is an absolute defense). The statement arose from a privileged communication. For example, a statement made by legislators, judges, attorney, and those involved in lawsuits are privileged in most circumstances.

- **Discussion:**
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/defenses-to-defamation-actions/>

1st Amendment Considerations

Special rules apply to defamation and the news media. The media is not liable for the defamatory untruths they print about public official and public figures unless plaintiff's can prove the untruths were published with "malice" (evil intent that is the deliberate intent to injure) or with "reckless disregard for the truth."

- **Discussion:**
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/defamation-and-1st-amendment-considerations/>

11. What is Fraud?

Fraud is the intentional misrepresentation of a material fact that is justifiably relied upon by someone to

his or her injury. The lie inducing the other party's misunderstanding must regard a material fact about the prospective transaction. Fraud often involves the intentional misrepresentation of property or financial status. For example, lying about assets or liabilities in order to get credit or a loan is fraud. Fraud can also be a failure to disclose a material fact that harms another. This can be the case when a legal duty to disclose the material fact exists.

- **Discussion:**
- **Practice Question:**
- **Resource Document:** <http://thebusinessprofessor.com/fraud/>

12. What is Intentional Interference with with Contractual Relations?

This is a tort based in common law rather than statute. This tort occurs when a non-party to the contract knowingly induces a party to the contract to fail to honor or breach that agreement. This situation often arises when one company raids another for employees. The raiding company knowingly induces employees to breach their employment contract with their current employer.

- **Discussion:**
- **Practice Question:**
- **Resource Document:** <http://thebusinessprofessor.com/intentional-interference-contractual-relations/>

NEGLIGENCE TORTS

13. What is negligence?

Negligence is unreasonable behavior that causes injury to another person or business.

Elements of Negligence

Five elements make up a claim for negligence:

- existence of a duty of care owed by the defendant to the plaintiff;
- unreasonable behavior by the defendant that breaches the duty;
- causation in fact;
- proximate causation; and
- an actual injury.

- **Discussion:**
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/negligence-actions/>

14. What is a legal duty?

The first element of a negligence tort is establishing the nature of the duty owed. A duty generally arises pursuant one's conduct or activity. For example, an individual who decides to drive an automobile owes a duty of care to other motorists and pedestrians. A duty may also arise pursuant to a special relationship between individuals, such as parent-child, doctor-patient, attorney-client, etc. Once the nature of the duty is determined, the individual owing the duty must use reasonable care and skill around others to avoid injuring them.

- **Discussion:**
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/duty-of-care-negligence/>

15. What is “Unreasonable Behavior” constituting a Breach of Duty?

Negligence entails unreasonable behavior that breaches the duty of care that the defendant owes to the Plaintiff. Whether conduct is unreasonable is a mixed question of law and fact. In determining whether conduct is unreasonable, a court will consider “the likelihood that the defendant’s conduct will injure others, taken with the seriousness of the injury if it happens, and balanced against the interest which he must sacrifice to avoid the risk.”

Inaction as Unreasonable Behavior

In some situations, inaction may be unreasonable behavior. For example, when a special relationship exists or one individual causes the risk of harm to the other person. For example, a mother has a duty to protect her child from dangerous situations. Further, someone who pushes a non-swimmer into deep water has a duty to act reasonably in preventing that person from drowning.

Willful and Wanton Behavior

Willful and wanton behavior demonstrates a complete disregard for the potentially harmful consequences of the conduct. Though it does not show intent, it shows an extreme lack of due care. Such conduct will frequently fall below the standard of care owed to other individuals and constitute negligence. In some jurisdictions this is known as “aggravated negligence”. The law frequently allows a plaintiff to recover punitive damages as well as actual damages in such situations.

- **Discussion:**
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/breach-of-duty-of-care/>

16. What is Causation in Fact?

In a negligence action, the defendant’s conduct must have caused the injury to the plaintiff. Causation in fact presents the question, “but for” the act of the defendant, would the injury have occurred? This is the

broadest aspect of causation, as any number of causes together could have contributed to the injury. The jury must determine whether the defendant's conduct is a substantial, material factor in bringing about an injury. If there are multiple defendants, each individual defendant can be held jointly and severally liable for the collective actions of the group.

- **Discussion:**
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/cause-in-fact-element-of-tort-liability/>

17. What is Proximate Causation?

Proximate causation requires that the harm suffered by the defendant be reasonably foreseeable as a result of the plaintiff's conduct. For the type of injury to be foreseeable, the plaintiff must be one whom the defendant could reasonably expect to be injured by a negligence act. Further, the injury must be caused directly by the defendant's negligence. The relationship between the defendant's actions and the harm caused cannot be too far removed or tenuous. Again, this determination is left for the jury to decide.

- **Discussion:**
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/causation/>

18. What are the Defenses to Negligence?

Jurisdictions commonly recognize three principle defenses to negligence actions.

- **Contributory Negligence** - This doctrine bars a plaintiff's recover in a negligence action if the plaintiff's own fault contributed to the injury "in any degree, however slight." Contributory negligence is only applied in a few jurisdictions and in limited circumstances.
- **Comparative Negligence** - Comparative negligence compares the degree of fault assessable against the defendant and that assessable against the plaintiff. In a pure comparative negligence jurisdiction, the plaintiff can only recover the percentage of damages not attributable to her own fault. For example, if the plaintiff is 90% negligent for her loss of \$100k, she can only recover \$10K from the defendant. In a modified comparative negligence state, the plaintiff cannot recover if her negligence is greater than (or "as great as" in some jurisdictions) the negligence of the defendant. In a case involving one plaintiff and one defendant, the plaintiff may only recover if her negligence is less than 50% compared with that of the defendant. Further, the plaintiff's recover is reduced by her percentage of negligence, just as in a pure comparative negligence jurisdiction. The jury is left to assess the percentage of negligence between the parties.
- **Assumption of the Risk** - Assumption of the Risk arises when the plaintiff knowingly and willfully undertakes an activity made dangerous by the negligence of another. That is, the plaintiff understands the risk associated with the activity and does it anyway. The assumption of risk must be voluntary and the injured person must really understand the risk. In some situations, the parties can contractually acknowledge certain risks in a given activity. This may have the effect of

assuming the risk of any harm suffered as a result of those risks.

- **Discussion:**
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/defenses-to-negligence/>

STRICT LIABILITY TORTS

19. What is Strict Liability?

Strict liability concerns an individual's legal responsibility for injury-causing behavior that is neither intentional nor negligent. Basically, an individual will be liable for any harm resulting to a third party from a course of conduct to which strict liability applies. For example, injuries caused while working with explosives is a strict liability tort in most states.

- **Discussion:**
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/strict-liability/>

20. What is strict products liability?

Strict products liability involves the commercial sale of defective products. In most states any retail, wholesale, or manufacturer who sells an unreasonably dangerous defective product that causes injury to a user of the product is strictly liable. This applies to commercial sellers, who normally sell products like the one causing injury, or who place them in the stream of commerce. Suppliers of defective parts and companies that assemble a defective product.

There are two kinds of defects:

- **Production Defects** - A production defect occurs when products are not manufactured to manufacturer's own standards. Consumers of the defective product are later injured as a result of this variation from the manufacturer's standards.
- **Design Defects** - A design defect occurs when a product is manufactured according to the manufacturer's standards, but is an unsafe design. Any time the product injures a user due to its unsafe design.

With production and design defects, any seller of the product (from manufacturer to retailer) may be liable for the defective product. Strict products liability is useful in protecting individual consumers who suffer personal injury or property damage, rather than protecting businesses.

- **Discussion:**
- **Practice Question:**

- **Resource Video:** <http://thebusinessprofessor.com/strict-product-liability/>

22. What Defenses exist to strict product liability actions?

Contributory and comparative negligence are not defenses to strict products liability actions. In most jurisdictions, however, assumption of the risk may constitute a defense. If a plaintiff knowingly undertakes a dangerous activity to which strict liability applies, then she may be barred from recover from the defendant. Individuals may contractually acknowledge their assumptions of any risks in a given activity. Misuse of a product is another defense common in product liability cases. Basically, this means that the plaintiff caused the injury by using the product in a manner that is not intended. For example, removing safety guards from equipment is a common misuse. It is important to note that, compliance with federal or state standards regarding the manufacture and design of a product is evidence that the product is not defective, but not a complete defense. Many states are beginning to adopt a reasonableness standard for design defects, failure to warn, and testing inadequacies. These standards replace the traditional strict liability standard.

- **Discussion:**
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/strict-products-liability/>

23. What other common Strict Liability Causes of Action exist?

Most states recognize similar types of conduct as subject to strict liability:

- *Ultrahazardous Activity* - Courts may impose strict liability in tort for types of activities they call ultrahazardous. This may include activities such as working with explosives, wild animals, or extreme sports.
- *Dram Shop Acts* - These laws make sellers of alcoholic beverages directly to customers on the seller's premises liable for harm caused as a result of becoming intoxicated.
- *Common Carriers* - Carriers of cargo on behalf of others may be strictly liable to the owner for any harm suffered by the cargo. Risk of loss, however, may be shifted back on the owner via contract.

- **Discussion:**
- **Practice Question:**
- **Resources Video:** <http://thebusinessprofessor.com/examples-of-strict-liability-actions/>

TORT DAMAGES

24. What are Compensatory Damages?

Tort plaintiffs may generally recover compensatory damages for injuries or losses suffered as a result of the tortious conduct. As the name implies, these damages are used to compensate the plaintiff for an injury suffered. The purpose is to make the plaintiff whole again. Calculation of damage awards are calculated by the jury, usually using life expectancy tables and present value discounts.

- *Discussion:*
- *Practice Question:*
- *Resources Video:* <http://thebusinessprofessor.com/compensatory-damages/>

25. What are Punitive Damages?

Punitive damages are used to punish defendants for committing intentional torts and for negligent behavior considered “gross” or “willful and wanton.” The key to the award of punitive damages is the defendant’s motive. Usually motive must be malicious, fraudulent, or evil. Punitive damages are also awarded for dangerously negligent conduct that shows a conscious disregard for the interests of others.

- *Discussion:*
- *Practice Question:*
- *Resources Video:* <http://thebusinessprofessor.com/tort-damages/>