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Session Two (9/5) Torts

Assignment: Chapter 3 and Questions 1, 3, and 4

1. Describe the objectives of tort law.
2. *preservation of peace* between individuals by providing a substitute for retaliation
3. *culpability* (to find fault for wrongdoing)
4. *deterrence* (to discourage the wrongdoer [tortfeasor] from committing future wrongful acts, as well as, deter others from committing wrongdoing)
5. *compensation* (to indemnify the injured party to a lawsuit)
6. Describe the elements of a negligence that the plaintiff must establish in a negligence suit.

* Duty to care: obligation to conform to a recognized standard of care
* Breach of duty: deviation from the recognized standard of care or failure to adhere to an obligation (a physician fails to respond to his or her on-call duties)
* Injury: actual damages must be established or if there are no injuries, monetary damages cannot be awarded the plaintiff(s)
* Causation: departure from the standard of care must be the cause of the plaintiff’s injury or the injury must be foreseeable

1. Describe the importance of causation in establishing liability in a negligence suit.

* The element of causation requires that there be a reasonable, close, and causal connection or relationship between the defendant’s negligent conduct and the resulting damages. Proximate cause is a term that refers to the relationship between a breach of duty and the resulting injury. The breach of duty must be the proximate/direct cause of the patient’s injuries. If an injury would have occurred regardless of a defendant’s negligent act, liability cannot be assigned to the defendant.

Assignment: Chapter 4 and Questions 1 and 2

1. Describe the various categories of intentional torts.

Describe the difference between assault and battery.

* Assault: Deliberate threat, coupled with apparent ability to do physical harm to another. Actual contact is not necessary. (ex. invading one’s personal space and threatening to punch them)
* Battery: Intentional touching of another’s person in a socially impermissible manner without person’s consent. (ex. failure to obtain consent prior to surgery)

What is defamation of character? What two forms can it take?

The offense of injuring a person’s character, fame, or reputation by false and malicious statements

* Slander: Oral form of defamation
* Libel: Written form of defamation

Under what circumstances can a patient be held in a hospital against his or her will?

* Physically violent persons
  + Permissible for reasons justifiable under the law
* Contagious diseases
* Intoxicated persons
* Restraints

What is fraud? What three elements must be present to establish fraud?

A willful and intentional misrepresentation that could cause harm or loss to a person or property.

1. An untrue statement known to be untrue by the party making it and made with the intent to deceive
2. Justifiable reliance by the victim on the truth of the statement
3. Damages as a result of that reliance

Describe how a patient’s privacy can be invaded.

Patients privacy can be invaded if employee/patient confidentiality is breach or if they receive unwarranted publicity and exposure to public view by having private affairs made public against one’s will.

What is the infliction of mental distress? Give an example.

The intentional or reckless infliction of mental distress is characterized by conduct that is so outrageous that it goes beyond the bounds tolerated by a decent society. (ex. telling someone that they have a terminal illness and months later saying that the diagnosis was a mistake)

2. What are the legal theories an injured party can pursue when filing a lawsuit against a seller, manufacturer, or supplier of goods?

* Negligence (ex. selling equipment with a known hazardous design, failure to warn)
  + Duty: Product manufactured by the defendant
  + Breach: Product defective when it left the manufacturer
  + Injury: Plaintiff(s) injured by the product
  + Causation: Product proximate cause of injury
* Breach of warranty
  + Express warranty: Includes specific promises or affirmations made by seller to buyer
    - For example: Drug manufacturer represents its product to be free from addiction and it is not.
  + Implied warranty: One that exists by operation of the law as a matter of “public policy” for protection of the public
    - E.g., Consumers have the right to assume that food is not contaminated
* Strict Liability
  + Liability without fault
  + Elements required to establish strict liability
    - Product manufactured by defendant
    - Product defective at time it left manufacturer
    - Plaintiff injured by product
    - Defective product proximate cause of injuries

Session Three (9/12) Tort Reform and Professional Liability Insurance

Assignment: Chapter 5 and Questions 1, 2, and 3

1. Describe various tort reform programs designed to lower the cost of malpractice insurance. Should there be limits placed on malpractice awards? Support your opinion.

* *Mediation* is the process wherein a third party attempts to bring about a settlement between parties. *Arbitration* is a process wherein parties agree to submit their differences to the judgement of an impartial mediation panel for resolution in lieu of trial.
* *Structured awards* are those placed in a trust set up to provide compensation over a plaintiff’s lifetime.
* *Pretrial screening panels* are used to encourage out-of-court settlements. The panels give an opinion on provider liability and, in some cases, damages.
* The *collateral source rule* is a common law practice that prohibits a court or jury, when setting an award, from taking into account that part of the plaintiff’s damages that would be covered by other sources of payment.
* A *contingency fee* is payment for an attorney’s services predicated on the favorable outcome of a case. Many believe that a limitation on such fees would limit the windfall profits of attorneys, thus reducing the economic drain on the healthcare system.
* Some healthcare providers have filer *countersuits* after being named in what they believe to be frivolous claims. The threat of such suits, however, has not proven to be helpful in reducing the number of malpractice claims.
* The concept of *joint and several liability* holds that a person who caused an injury concurrently with another person can be held equally liable for the full judgement awarded by a court. Some states require that each defendant in a multidefendant action should be limited to payment for the percentage of fault ascribed to him or her.
* Some states are attempting to limit the rising costs of malpractice awards by settling *malpractice caps.*
* Proponents of *no-fault approach* to reducing the costs associated with exorbitant malpractice awards cite as its advantages swifter and less expensive resolution of claims and more equitable compensation for patients.
* *Statutes of limitations* specify the timeframe within which a lawsuit must be commenced.
* Reducing the risks of malpractice can be accomplished by implementation of best practices, risk management, *performance improvement activities,* and peer review.

I don’t believe there should be limitations on malpractice awards because not all cases are the same or cause the same amount of damages. Justice would not be served in many cases if there were a law saying that you can only receive “X” amount of money. It would not be fair to the person filing the suit and it would be no incentive for professionals to avoid malpractice.

2. Discuss what a structured award is and how it might reduce the costs associated with large-sum malpractice awards.

Structure awards are set up for the periodic payment of judgements rather than paying the injured party a lump-sum payment. Structured awards require a smaller cash outlay by the defendant or the defendant’s insurance company, thereby holding down costs of malpractice insurance and the ultimate cost of medical care to the consumer.

3. Discuss which of the schemes for tort reform discussed previously you consider most helpful in addressing the malpractice insurance crisis.

I consider structured awards most helpful because of what I stated in the last answer.

Assignment: Chapter 21 and Questions 1 and 4

1. What is the purpose of an insurance policy?

Insurance is a contract that creates legal obligations on the part of both the insured and the insurer. It is a contract in which the insurer agrees to assume certain risks of the insured for consideration or payment of a premium.

4. What are the primary categories of a risk?

* Property loss or damage: the possibility that an insured’s property may be damaged or destroyed by fire, flood, tornado, hurricane, or other catastrophe.
* Personal injury: the possibility that the insured may be injured in an accident or may become ill; the possibility of death is a personal risk covered in the typical life insurance plan.
* Legal liability risk: the possibility that the insured may become legally liable to pay money damages to another and includes accident and professional liability insurance. The insured is protected from the risk of liability imposed by lawsuits or claims that come within the coverage of the insurance policy.