**Business Law**

**Chapter 4 - The Law of Torts**

I. The Laws of Tort are based on the Rights of the People

A. Rights we have because we are members of society.

 1. Right to be free from bodily harm.

 2. Right to enjoy a good reputation.

 3. Right to conduct business without unwarranted

interference.

 4. Right to have one’s property free from damage or

trespass.

5. Rights that arise because of special circumstances.

(i.e. You have the right to expect competent care

from health care providers).

 B. Our *Duty* is to avoid violating the Rights of Others.

 C. Crime

 1. Def. - A wrongful act against the public at large.

 2. Criminal prosecutions are brought by the state to

punish wrongdoers and protect the public.

 D. Tort - Not a crime, one person's interference with

another's rights, either through intent, negligence, or strict

liability.

 1. tortfeasor - A person who commits a tort.

 2. tort lawsuits - Are brought against tortfeasors by the

injured person's to recover money as compensation

for the loss of injury suffered.

 3. Remember, a *tort* *is not a crime*, but in some

situations the wrongful act can be *both* a tort and a

crime.

 4. Example 1, pg. 50

II. Intentional Tort

Def. - A wrong that occurs when a person *knows* and *desires*

the consequences of his/her act (unintentional tort - determination of mind is lacking).

 A. Assault & Battery (may be committed together or

separately).

 1. Assault

 a. Threatening to strike or harm with a physical

movement, resulting in fear.

b. i.e. "I'm going to cut you to ribbons"

 c. Assault tort is different from assault crime.

 1) In the tort of assault the victim must know

that the tortfeasor has tried to harm him/her

(otherwise - *no fright no harm*).

 2) In criminal law - an assault is an attempted

battery and it is not necessary for the intended victim to be aware of the attempt (can be carried out against an unconscious victim and be considered a crime but not a tort).

 2. Battery

 a. Unlawful, unprivileged touching of someone.

 b. The touching does not have to be harmful, it

can be unwanted touch even if the wrongdoer is

to help or to harm.

 B. Trespass

1. Def. - A wrongful injury or interference with the

"property" of another person.

 2. Property - Everything you can own (cars, CD's,

land, plants, etc.).

 3. Example 2, pg. 52

 4. Airspace - Belongs to the owner of property as high

as they can effectively use it.

 C. Nuisance

 1. Def. - Anything that interferes with the enjoyment of

life or property.

 2. Examples: loud noises at night, noxious odors

 3. Public Nuisance - Affects a large group of people.

 4. Private Nuisance - Affects one person only.

 D. False Imprisonment (False Arrest)

 1. Def. - Unlawful restraint of a person, whether in

prison or otherwise.

 2. Popular in detaining shoplifters (reasonable).

 E. Defamation

 1. Def. - The wrongful act of injuring another person's

reputation while making false statements.

 2. Divided into 2 categories (libel/slander)

 3. Libel (letter) - False statement in written or printed

 form that injures that person's reputation or reflects

negatively on that person's character.

 4. Slander (spoken) - Similar to libel, except that the

 false statement is made orally to a third party.

 5. Cannot be sued if the statement is made without

spite or ill will.

 6. "Privileged Speech" protects the open debate of

legislature or judicial matters.

 7. Persons in the public limelight must prove *actual*

*malice* to have grounds for a lawsuit (actual

malice - The statement was made with the

knowledge that it was false or reckless disregard

for if it is true or false.)

 8. Fairness Doctrine - Whenever someone's honesty,

character, or integrity has been attacked on the air,

that person has the right to a defense using free air

time within one week of the attack.

 F. Invasion of Privacy

 1. Def. - Interference with a person's right to be left

alone.

1. In NY this right was established by creating a statute

but in Calif. it was established by amending the

Constitution.

 3. The Federal Privacy Act of 1974 - provides

safeguards for individuals against the invasion of

privacy by agencies of the federal government.

 4. Businesses holding "Confidential" papers **must**

keep them confidential, or they may find themselves

in a lawsuit for invasion of privacy.

 5. Using someone's photograph without permission

for advertising, etc. is also an invasion of privacy.

III. Negligence

Def. - An accidental or unintentional tort.

The failure to exercise the degree of care that a reasonable person would have exercised in the same circumstances.

 A. 4 Elements of Negligence (*all* must be proven)

 1. **Duty of Care**

 a. Duty not to violate the rights of others.

 2. **Breach of Duty**

 a. Breach of Duty is committed by not exercising

the degree of care that a reasonable person would

exercise in that same situation.

 b. "Reasonable Person" can not be called an

average person, normal person, etc. it must

be very objective (objective test).

 3. **Proximate Cause**

 a. Def. - Something that produces a result and

without which the result would not have

occurred.

 b. *Foreseeability test* is to be done, "Was the

injury to the plaintiff foreseeable at the time

the defendant engaged in the unreasonable

conduct?"

 4. **Actual Harm**

 a. There must be proof of the harm suffered.

 b. Did the plaintiff suffer *physical injuries,*

 *property* *damage, or financial loss?*

 *B. Defenses* to Negligence

 1. To defend yourself in a negligence lawsuit one of the

following 4 elements must be *eliminated*.

 a. They can argue that they owed no duty to the

plaintiff. **Duty of Care**

 b. That their conduct conformed to the reasonable

person standard. **Breach of Duty**

 c. That their conduct was not the proximate cause

of the plaintiff's injuries. **Proximate Cause**

 d. That the plaintiff suffered no injuries. **Actual**

**Harm**

 2. Other Defenses

 a. Contributory Negligence

 1) Def. - Negligence on the part of the plaintiff

that assisted in causing his/her injuries.

 2) Any degree of negligence on the part of the

plaintiff causes the them to lose the suit,

therefore many states no longer follow this

doctrine.

 b. Comparative Negligence

 1) The negligence of each party is compared.

 2) The amount of the plaintiff's recovery is reduced

by the % of his/her negligence.

3) Most states follow the "50 % Rule"

 - The plaintiff is allowed to recover part of the

award as long as his or her negligence was **not**

greater than the defendants, if it exceeds 50% he/she recovers nothing.

 4) Example 7, pg. 57

 c. Assumption of Risk

 1) Defendant must be able to show that the plaintiff

knew the risk involved and still took the chance

of being injured.

 2) i.e. "Individuals at a baseball game trying to

catch balls."

IV. The Doctrine of Strict Liability

 A. Certain activities are so dangerous that the law will not

apply the Principles of Negligence (unintentional tort) nor

the Rules of Intentional Torts.

 1. The risk is of such a nature that no amount of care

will eliminate that risk.

 a. using explosives

 b. keeping wild animals

 B. Also Popular in Product Liability Cases

 1. People being injured by defects in products they

bought in the market place.

 2. This manufacturer is liable regarding of fault if

the product defect caused the injury.

 3. Doesn't apply if the seller of the product doesn't

 usually engage in the sale of such items.

V. Survival & Wrongful Death Statutes

 A. Survival Statutes - allow a lawsuit to be brought even if

the plaintiff and defendant are deceased (unlike English

Common Law).

 1. True no matter what the cause of death.

 2. Common if the tort involves the damage of personal

or real property and the right to bring suit for

personal injuries.

 3. All survival suits are brought or defended by the

lawful representative of the estate of the deceased.

 B. Wrongful Death Statutes

 1. Preserve the right of the third parties affected by the

death of a person to bring a lawsuit.

 2. Preserves the right to bring a lawsuit only if the death

is caused by the negligence or the intentional conduct

of the defendant.

 3. Usually limited to family members who have lost the

support of the deceased (husbands, wives, children,

and parents).

VI. Remedies for Torts

 A. When the wrongdoer commits a tort, the victim can

usually be compensated by receiving monetary damages.

 B. In some cases money will not repay the injured party for

damages.

 1. Injunction - A court order issued by a judge ordering

a person to do or not to do something.

 2. Remedy of injunction is only available in special

circumstances where money damages will not

adequately re-pay the injured party.

1. If you violate the order of the judge you are guilty of contempt of court and fined and sent to jail.