CHAPTER 4
Torts and Cyber Torts

Learning Objectives

• What is a tort?
• What is the purpose of tort law? What are the two basic categories of torts?
• What are the four elements of negligence?
• What is meant by strict liability?
• What is a cyber tort, and how are tort theories being applied in cyberspace?

Basis of Tort Law

• A tort is a civil, legal injury to a person or property caused by a breach of a legal duty.
• Plaintiff (the injured party) sues the Defendant (the Tortfeasor) for damages.
• Three Torts:
  – Intentional.
  – Unintentional (negligence-no fault).
  – Strict Liability (absolute liability).

Intentional Torts Against Persons

• Assault and Battery.
  – Assault: the reasonable apprehension or fear of immediate contact.
  – Battery: completion (contact) of the assault.
• 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.
• Infliction of Emotional Distress.
  – Extreme and outrageous conduct.
  – Some courts require physical symptoms.

Intentional Torts Against Persons

• Defamation.
  – Publication of a false statement (oral or written) that injures a person’s good reputation.
    • Publication: third party must hear or see statement
    • Statements made on the internet may be actionable.
    • An individual who re-publishes the statement will be liable.
  – Statement must hold someone up to contempt, ridicule or hatred in the community.
**Defamation (cont’d).**

- **Slander per se** (no proof of damages is required):
  - Loathsome communicable disease.
  - Professional impropriety.
  - Imprisonment for a serious crime.
  - Unmarried woman is unchaste.

**Defenses:**
- **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.
- Appropriation.
- False Light.
- Rights of Internet users?

**Misrepresentation (Fraud).**

- Intentionally deceive another to believe 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.

**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 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.
Intentional Torts Against Property

- Trespass to Land.
- Trespass to Personal Property.
- Conversion.
- Disparagement of Property.
  - Slander of Quality.
  - Slander of Title.

Negligence

- Negligence is an unintentional tort.
- Occurs when someone suffers injury because of the defendant's failure to comply with a legal duty.
- Defendant (tortfeasor) creates foreseeable risk of injury.

Negligence—Analysis

- Did the Defendant owe the Plaintiff a legal duty of care?
- Did the Defendant breach that duty?
- Did the Plaintiff suffer a legal injury?
- Did the Defendant's breach of duty cause the 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 of Landowners to business invitees and tenants to keep common areas safe.
  - Duty of Professionals to clients (attorneys, CPA's, doctors).

Negligence

- Injury Requirement and Damages
  - Plaintiff must suffer a legally recognizable injury.
  - Not all injuries can be compensated.
- Causation
  - Causation in Fact (“but for” test).
  - Proximate Cause (foreseeably strong connection).
  - Palsgraf (1928).

Negligence

- Defenses:
  - Assumption of the Risk.
  - Superceding Intervening Cause.
    - Event must be unforeseeable.
  - Contributory Negligence (few jurisdictions).
    - Plaintiff recovers nothing if he is at fault.
  - Comparative Negligence (more common).
    - As long as Plaintiff is less than 50% at fault he can recover a pro-rata share of the verdict.
Negligence

- Special Negligence Doctrines.
  - *Res Ipsa Loquitur.*
  - Negligence *Per Se.* Violation of law is a legal breach of duty. Plaintiff must show:
    - Defendant broke a law/statute.
    - Plaintiff is in a special class to be protected; and
    - Statute designed to prevent injury to Plaintiff.
  - “Danger Invites Rescue” doctrine.
  - Dram Shop Acts.

Strict Liability

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

Cyber Torts

- Can a person be liable for a tort committed in cyberspace?
- Should an Internet Service Provider (ISP) be liable for the actions of its subscriber?
- Who should be liable for “spam” and computer viruses that cause injury?