

## Chapter 11–Torts in the Business Environment

Tort—a civil wrong not arising from a breach of contract. A breach of a legal duty that proximately causes harm or injury to another.

Two notions serve as the basis of all torts: wrongs and compensation. A tort action is a civil action in which one person brings a personal suit against another to obtain compensation or other relief for harm suffered.

### *Intentional Torts Against Persons*

In an intentional tort, the tortfeasor (one committing a tort) must intend to commit an act, the consequences of which interfere with the personal or business interests of another in a way not permitted by law. In tort law, intent means only that the actor intended the consequences of his or her act or knew with substantial certainty that certain consequences would result from the act. Thus, forcefully pushing another—even if done in jest and without any evil motive—is an intentional tort (if injury results), because the object of a strong push can ordinarily be expected to fall down or to be knocked backward.

#### Assault and Battery

##### Assault—

Apprehension is not the same as fear. If a contact is such that a reasonable person would want to avoid it, and if there is a reasonable basis for believing that the contact will occur, then the plaintiff suffers apprehension whether or not he or she is afraid.

The completion of the act that caused the apprehension, if it results in harm to the plaintiff, is a battery.

##### Battery—

Physical injury need not occur. The contact can involve any part of the body or anything attached to it—for example, a hat or other item of clothing, a purse, or a chair or an automobile in which one is sitting. Whether the contact is offensive or not is

determined by the reasonable person standard.

### Defenses to Assault and Battery

A number of defenses can be raised by a defendant:

#### False Imprisonment

False imprisonment—is defined as the intentional confinement or restraint of another person's activities without justification. The confinement can be accomplished through the use of physical barriers, physical restraint, or threats of physical force. Moral pressure or threats of future harm do not constitute false imprisonment.

#### Infliction of Emotional Distress

Intentional infliction of emotional distress—

## Defamation

Defamation of character involves wrongfully hurting a person's good reputation. The law has imposed a general duty on all persons to refrain from making false, defamatory statements about others. Breaching this duty orally involves the tort of slander; breaching it in writing involves the tort of libel. The tort of defamation also arises when a false statement is made about a person's product, business, or title to property.

The common law defines four types of false utterances that are considered torts per se (meaning no proof of injury or harm is required for these false utterances to be actionable):

The basis of the tort of defamation is the publication of a statement or statements that hold an individual up to contempt, ridicule, or hatred.

### Publication—

Note further that any individual who republishes or repeats defamatory statements is liable even if that person reveals the source of such statements.

### Defenses Against Defamation

Truth is normally an absolute defense against a defamation charge. Another defense that is sometimes raised is that the statements were privileged communications. Privileged communications are of two types:

False and defamatory statements that are made about public figures (those who exercise substantial governmental power and any persons in the public limelight) and that are published in the press are privileged if they are made without actual malice.

### Invasion of Privacy

A person has a right to solitude and freedom from prying public eyes. Four acts qualify as an invasion of privacy:

### Fraud (Deceit)

Fraudulent misrepresentation or fraud includes several elements:

For fraud to occur, more than mere puffery or seller's talk must be involved. Normally, the tort of fraud occurs only when there is reliance on a statement of fact. Sometimes reliance on a statement of opinion may involve the tort of fraud if the individual making the statement of opinion has a superior knowledge of the subject.

### *Intentional Torts against Property*

#### Trespass to Land–

Before a person can be a trespasser, the owner of real property must establish that person as a trespasser.

A trespasser generally cannot hold the owner liable for injuries sustained on the premises. This common law rule is being abandoned in many jurisdictions in favor of a "reasonable duty of care" rule that varies depending on the status of the parties.

#### Attractive nuisance doctrine–

#### Trespass to personal property–

#### Conversion–

If the initial taking of the property was unlawful, there is trespass; retention of that property is conversion. Good intentions are not a defense against conversion. Someone who buys stolen goods commits the tort of conversion even if he or she does not know that the goods were stolen.

### *Negligence*

The tort of negligence occurs when someone suffers injury because of another's failure to live up to a required duty of care. In torts involving negligence, the tortfeasor neither wishes to bring about the consequences of the act nor believes that they will occur. The actor's conduct merely creates a risk of such consequences.

In examining a question of negligence, one should ask four questions:

Duty of care—

Failure to live up to a standard of care may be an intentional act, a careless act, or an omission.

Tort law measures duty by the reasonable person standard. The courts ask how a reasonable person would have acted in the same circumstances. It is society's judgment of how a person should act.

Duty of Landowners

Landowners are expected to exercise reasonable care to protect from harm persons coming onto their property. Retailers and other firms that invite persons to come onto their premises are usually charged with a duty to exercise reasonable care to protect those persons, who are considered to be business invitees. The landowner also has a duty to discover and remove any hidden dangers that might injure a customer or other invitee. Some risks are so obvious that the business owner need not warn customers about them.

Injury Requirement and Damages

To recover damages, the plaintiff must have suffered some loss, harm, wrong, or invasion of a protected interest. Occasionally, damages awarded in tort suits include both compensatory damages (which are intended to reimburse a plaintiff for actual losses) and punitive damages (which are intended to punish the wrongdoer and deter others from similar wrongdoing).

### Causation

In deciding whether there is causation, the court must address two questions:

### Defenses to Negligence

The basic defenses to negligence are:

1. Assumption of risk–
2. Contributory negligence–
3. Comparative negligence–

## *Strict Liability*

### Strict Liability–

With regard to product liability, one who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer or to his property if the seller is engaged in the business of selling such a product and it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

The plaintiff must show that the product was so defective as to be unreasonably dangerous; that the product caused the plaintiff's injury.