

Chapter 9-Torts in the Business Environment

Assault—any word or action intended to make another person fearful of immediate physical harm; a reasonably believable threat.

Battery—an unexcused and harmful or offensive physical contact intentionally performed. For example, Ivan threatens Jean with a gun, then shoots her. The pointing of the gun at Jean is an assault; the firing of the gun (if the bullet hits Jean) is a battery.

Defenses to Assault and Battery

1—consent—when a person consents to the act that damages him or her, there is generally no liability

2—self-defense—a person who is defending his or her life or physical well-being can claim self-defense

3—defense of others—an individual can act in a reasonable manner to protect others who are in real or apparent danger

4—defense of property—reasonable force may be used in attempting to remove intruders from one's home, although deadly force normally cannot be used just to protect property

False Imprisonment

Business persons are often confronted with suits for false imprisonment after they have attempted to confine a suspected shoplifter or other suspect for questioning or interviewed a suspect or witness. Under the privilege to detain granted to merchants in some states, a merchant can use the defense of probable cause to justify delaying a suspected shoplifter. The detention must be conducted in a reasonable manner and for only a reasonable length of time.

**Intentional infliction of emotional distress—
an intentional act that amounts to extreme
and outrageous conduct resulting in severe
emotional distress to another.**

Defamation

Four types of false utterances that are torts per se:

1—a statement that another has a loathsome disease

2—a statement that another has committed improprieties while engaging in a profession or trade

3—a statement that another has committed or has been imprisoned for a serious crime

4—a statement that an unmarried woman is unchaste

Publication—means that the defamatory statements are communicated to persons other than the defamed party.

Privileged communications are of two types: absolute and qualified. Absolute privilege is available only in judicial proceedings and certain legislative proceedings. In other situations, a person will not be liable because of a qualified privilege. For example, statements made in recommendation letters or in written evaluations of employees are qualifiedly privileged.

To be made with actual malice, a statement must be made with either knowledge of its falsity or a reckless disregard of the truth. Public figures have a greater burden of proof in defamation cases than do private individuals.

Invasion of Privacy

Four acts qualify as an invasion of privacy;

1—the use of a person’s name, picture, or other likeness for commercial purposes without permission

2—intrusion in a person’s affairs or seclusion in an area in which the person has a reasonable expectation of privacy

3—publication of information that places a person in a false light

4—public disclosure of private facts about a person that an ordinary person would find objectionable

Fraud

Fraud includes several elements:

1—misrepresentation of facts or conditions with knowledge that they are false or with reckless disregard for the truth

2—intent to induce another to rely on the misrepresentation

3—justifiable reliance by the deceived party

4—damages suffered as a result of reliance

5—causal connection between the misrepresentation and the injury suffered

Trespass to Land—occurs whenever a person, without permission or legal authorization, enters onto, above, or below the surface of land that is owned by another; causes anything to enter onto land; remains on the land; or permits anything to remain on it.

Attractive nuisance doctrine—children do not assume the risks of the premises if they are attracted to the premises by some object, such as an unfenced swimming pool.

Trespass to personal property—the unlawful taking or harming of another’s personal property; interference with another’s right to the exclusive possession of his or her personal property.

Conversion—the wrongful taking, using or retaining possession of personal property that belongs to another.

Negligence

1—Did the defendant owe a duty of care to the plaintiff?

2—Did the defendant breach that duty?

3—Did the plaintiff suffer a legally recognizable injury as a result of the defendant's breach of the duty of care?

4—Did the defendant's breach cause the injury?

Duty of care—the duty of all persons, as established by tort law, to exercise a reasonable amount of care in their dealings with others.

Causation

The court must address two questions:

1—Is there causation in fact? This can usually be determined by use of the “but for” test

2—Was the act the proximate cause of the injury? Proximate cause, or legal cause, exists when the connection between an act and an injury is strong enough to justify imposing liability.

Since the famous *Palsgraf* case, courts have used foreseeability as the test for proximate cause.

Defenses to Negligence

Assumption of risk—a plaintiff who voluntarily enters into a risky situation, knowing the risk involved, will not be allowed to recover. The requirements of this defense are knowledge of the risk and voluntary assumption of the risk.

Contributory negligence—in a few states, recovery for injury resulting from negligence is prevented if the plaintiff was also negligent. Under this doctrine, no matter how insignificant the plaintiff's negligence is relative to the defendant's negligence, the plaintiff is precluded from any recovery.

Comparative negligence—a theory in tort law under which the liability for injuries resulting from negligent acts is shared by all persons who were negligent on the basis of each person's proportionate negligence.

Strict liability—liability regardless of fault. In tort law, strict liability may be imposed on defendants in cases involving abnormally dangerous activities, dangerous animals, or defective products.