

Chapter 6

Torts

A Tort is

A violation of a duty imposed by civil law.

3 types of torts:

- Intentional
- Negligence
- Strict liability

Intentional Torts

An intentional tort occurs when the harm that resulted from the breach of a duty imposed under civil law was caused by a deliberate action (intent to commit the act).

Note: the harm need not be intended, just the act that caused the harm need be intended.

Defamation

false statements that harm someone's reputation

- Written defamation = libel.
- Oral defamation = slander.

Defamation Has 4 Elements

- A defamatory statement of fact (i.e., stated as though it is a fact)
- That is false
- And is communicated
- Causing injury (e.g. lower reputation, embarrassment, and/or humiliation.)

Yeagle v. Collegiate Times

You Be The Judge

Defamation & Public Personalities

Public Personalities (official or figure)

- Must prove 4 elements and also actual malice by defendant
- Actual malice means defendant knew the statement was false or acted with reckless disregard of the truth.

Defamation & Privilege

Privilege

- Absolute: courtroom
- & legislative hearings

- Qualified: when 2 people
- have legitimate need
- to exchange info; good faith required

False Imprisonment

- The intentional restraint of another person without reasonable cause & without consent
 - Shoplifting: generally a store may detain a customer or worker for alleged shoplifting provided there is a reasonable basis for the suspicion and the detention is done reasonably

Intentional Infliction of Emotional Distress

Two elements:

- Extreme and outrageous conduct
- that causes serious emotional harm

Other Intentional Torts

- Battery:
 - (1) intentional
 - (2) touching of another person
 - (3) in a way that is unwanted or offensive
 - (4) without consent
- Assault:
 - (1) intentional
 - (2) act
 - (3) that causes plaintiff to reasonably fear an imminent battery
- Fraud: injuring another person
by deliberate deception

Compensatory Damages

The amount of money that will restore him to the position he was in before the defendant's conduct caused an injury.

The single recovery principle requires a court to settle the matter once and for all, by awarding a lump sum for past and future expenses.

George Grubbs Enterprises v. Bien

Lost earning capacity (past and future)	\$147,560
Physical symptoms and discomfort (past and future)	\$100,000
Emotional injury and mental anguish (past and future)	\$301,980
Other	\$24,275
<i>Total Compensatory Damages</i>	<i>\$573,815</i>
Punitive Damages (reversed)	\$5,000,000

Punitive Damages

Purpose is to punish the defendant for conduct that is extreme and outrageous

Awarded in relatively few cases, usually only in intentional torts

Punitive Damages “guideposts”

- The reprehensibility of the defendant’s conduct
- The ratio between the harm suffered and the award (generally should not exceed 9 times compensatory, but no set ratio)
- The difference between the punitive award and any civil penalties used in similar cases
- Defendant’s wealth can’t be excuse for unreasonably high award

Williams v. Philip Morris Inc.

- Summary of facts
- Jury awarded punitive damages of \$79.5 million

Privacy and Publicity

- Intrusion (on solitude or seclusion)
- Commercial Exploitation

Negligence

5 Elements

- Duty of due care
- Breach
- Factual cause
- Foreseeable harm
- Injury

Hernandez v. Arizona Board of Regents

Summary of facts

What's the issue?

How did the lower courts rule?

How did the state supreme Court rule and why?

Breach of duty

Failing to behave the way a reasonable person would under similar circumstances.

Reasonable “person” means someone of the defendant’s occupation or position

Negligence Per Se

- When a legislature sets a minimum standard of care (in a statute)
- for a particular activity
- in order to protect a certain group of people
- and a violation of the statute injures a member of that group
- the defendant has committed negligence per se.

Negligence Per Se ... is....

much easier to prove than ordinary negligence because the plaintiff does not need to prove:

- duty
- breach of duty nor
- foreseeability

Factual Cause

THE “BUT FOR” TEST

Foreseeability

The *type of harm* must have been reasonably foreseeable.

Superseding cause, when circumstances are highly unusual, extraordinary, or bizarre, might mean harm not foreseeable.

Res Ipsa Loquitor

“The thing speaks for itself”

- The defendant had exclusive control of the thing that caused the harm.
- The harm would not normally have occurred in the absence of negligence.
- The plaintiff had no role in causing his or her own injury.

Contributory and Comparative Negligence

When Plaintiff is partly responsible for her injury

Contributory negligence (only a few states). If Plaintiff is even *slightly* negligent herself, no recovery against Defendant.

Comparative negligence. Plaintiff may recover even if she is partially negligent.

Contributory and Comparative Negligence Example

Medical bills	\$70,000
Pain and suffering	\$200,000
Lost wages	\$22,000
Automobile damage	\$8,000
Total	\$300,000

Defense of Assumption of the Risk

Potential defense:

A person who voluntarily enters a situation that has an obvious danger cannot complain if he is injured.

Strict Liability

Higher burden placed on certain dangerous activities.

- Ultrahazardous activities
- Defective products