Chapter 6
Torts

What is a Tort?

✓ A tort is a violation of a duty imposed by the civil law.
✓ A crime is a violation of a duty imposed by the criminal law.
✓ A breach of contract is a violation of a duty you have imposed upon yourself.

Common Torts

✓ Defamation = Libel and Slander
✓ Negligence
✓ False imprisonment
✓ Battery, Assault, Fraud
✓ Interference with a contract
✓ Commercial exploitation of another’s identity or likeness
Which Tort?

- If a newspaper columnist falsely accuses someone (in their daily newspaper column) of being a cocaine addict, what tort has the newspaper columnist committed?
- If a surgeon performs a surgery while drunk, and injures the patient in the process, what tort has the surgeon committed?

Which Tort?

- If a con artist tricks money out of you with a phony offer to sell you a car, what tort has the con artist committed?

Intentional Torts

- Defamation
- False imprisonment
- Intentional infliction of emotional distress
- Battery, Assault, Fraud
- Tortious interference with a contract
- Intrusion
- Commercial exploitation
Two Types of Defamation
Libel: Written or broadcast defamation.
Slander: Oral defamation that is not broadcast.

Defamation Has 4 Elements
✓ A defamatory statement
✓ that is false
✓ and communicated
✓ causing injury (e.g. lower reputation, embarrassment, and/or humiliation) – (slander only)

Mashburn v. Collin (1977)
✓ The trial court granted a motion for summary judgment for the defendants.
✓ The appeals court reversed and remanded.
✓ The case then went to the Louisiana Supreme Court, who reversed the appeals court’s decision and reinstated the trial court’s grant of summary judgment.
Yeagle v. Collegiate Times: You Be the Judge

Director of Butt-Licking

Public Officials and Figures

✓ Since the 1964 case of New York Times v. Sullivan, public officials have had to prove a 5th element to win a defamation lawsuit: Actual Malice.
✓ Actual malice means the speaker either “had knowledge of the statement’s falsity or acted with reckless disregard for its truth or falsity.”

Reckless Disregard for the Truth

Is present when the defendant either:
✓ Entertained serious doubts about the statement’s truth, but made or published the statement anyway, or
✓ Consciously rejected overwhelming evidence of falsity, relying instead on much less significant evidence of the statement’s truth.
Public Official, Public Figure, or Neither?

- President Obama
- Katy Perry
- Mr. Lilly
- Hillary Clinton
- President Bill Clinton
- Kim Dotcom

Zeran v. America Online

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Privileged Communications

- Where do speakers enjoy absolute privilege against defamation lawsuits?
- When do speakers enjoy a qualified privilege?
- What are the two conditions or limitations on this qualified privilege?
Qualified Privilege

**Conditions/Limitations:**
1. Acts in good faith
2. Talks only to someone who ought to know

What happens if a speaker fails to conform to these conditions?

Qualified Privilege Example

Jerry believes his co-worker, Ben, is using illegal drugs. Since both he and Ben are nurses, Jerry is concerned Ben’s drug usage could result in injury to a patient. He tells his supervisor, Cyndi, that he has seen Ben pop a pill at least three times, and that he suspects these are illegal drugs because Ben seemed embarrassed the one time he noticed Jerry saw him pop the pill. Cyndi talks with Jerry about the alleged drug usage and Ben produces a bottle of prescription medicine he is required to take once a day for high blood pressure. Cyndi shows Jerry one of Ben’s pills and Jerry says yes that looks like the kind I saw him take. I’m satisfied. Thanks for looking into it. When Ben learns it was Jerry who reported him, Ben files a defamation lawsuit against Jerry, arguing that Jerry’s accusations have harmed his reputation. Will Ben win his lawsuit?

False Imprisonment

- The intentional confinement of another person for an appreciable period of time without his consent.
  - Need not involve locks or ropes; a supervisor’s order is enough.
  - Merchants have a conditional privilege to stop suspected shoplifters.
False Imprisonment: Kanner v. First National Bank of South Miami

- Florida Court of Appeals (1974)
- If telling a bank teller that she cannot leave until her cash drawer balance is verified serves no useful purpose, then a jury could find that it constitutes false imprisonment.
- Final outcome unknown. (Case remanded to the trial court for further proceedings).

A Store’s Conditional Privilege to Detain

Generally, a store may detain a customer or worker for alleged shoplifting provided:
1. There is a reasonable basis for the suspicion, and
2. The detention is done reasonably.

Intentional Infliction of Emotional Distress

Elements:
1. The conduct must be extreme and outrageous, and
2. The emotional harm that results must be serious.
Intentional Infliction of Emotional Distress:  
**Ford Motor Credit Company v. Sheehan**

- Florida Court of Appeals (1979)
- (Falsely) telling someone’s mother that both of her grandchildren were in critical condition in a hospital in order to repossess her son’s car qualifies as intentional infliction of emotional distress.
- $4,000 compensatory plus $11,000 punitive damages awarded.

Intentional Infliction of Emotional Distress:  
**Midas Muffler Shop v. Ellison**

- Arizona Court of Appeals (1982)
- Six highly critical phone calls within a three month period falsely accusing someone of failing to pay their bills, only one of which was after 9PM, does not qualify as intentional infliction of emotional distress.
- Not extreme or outrageous enough

*Jane Doe and Nancy Roe v. Lynn Mills*
Battery Has 4 Elements
1. The intentional and
2. Harmful or offensive
3. Touching of another
4. Without his consent.

Assault Has 3 Elements
1. The intentional
2. attempt or offer to cause a harmful or offensive contact with another person
3. that causes a reasonable apprehension of imminent battery to form in the other person’s mind.

Compensatory Damages
Money intended to restore a plaintiff to the position he was in before the injury.

Jury’s job is to decide how much money would it take for the plaintiff to be indifferent between…
George Grubbs Enterprises v. Bien: Compensatory Damages

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<th>Damage Category</th>
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<tr>
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<td>Past emotional injury and mental anguish</td>
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<td>$10,000.00</td>
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<tr>
<td>Future loss of society and reduced ability to socially interact with family, former fiancé, and friends, and hearing people</td>
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<td>TOTAL</td>
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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.

Punitive Damages

✓ Are not common
✓ Sole purpose is to *punish and deter* the behavior of the defendant
✓ Further compensation of the plaintiff *occurs* but is *not any part of the purpose* of punitive damages. It is an accidental side-effect.
How Common are Punitive Damages?

Of every 100 tort cases filed… 100
90% are settled before trial -90
Leaving only 10 that might get punitive damages 10
Plaintiff wins about half of those -5
Leaving only 5 that might get punitive damages 5
Punitive damages awarded in ~6% of cases that reach a jury verdict x.06
…this many win punitive damages 0.3

How Much Punitive Damages to Award

✓ The U.S. Supreme Court has stated that “a trial court generally should not permit a punitive (damages) award more than nine times higher than the compensatory damages.”
✓ The median ratio is 0.62-to-1
✓ The mean ratio is 2.90-to-1

Williams v. Philip Morris Incorporated

✓ Jury awarded $821,485 in compensatory damages, plus $79.5 million in punitive damages!
✓ This is a ratio of 97-to-1!
✓ The U.S. Supreme Court vacated the punitive award and remanded the case.
✓ The Oregon Court of Appeals reinstated the $79.5 million punitive damages!
Intrusion (on Solitude or Seclusion)

- Used to sue “peeping Toms” and overeager journalists and photographers.
- Any intrusion on privacy that a reasonable person would find offensive.

Commercial Exploitation

Carlos Agriculture Inc. had a two-year contract to supply vegetables to S&S Groceries. Acme Inc., a competitor of Carlos Agriculture, wanted S&S’s business. Although aware of Carlos Agriculture’s contract with S&S, Acme offered S&S prices so low that S&S decided to breach its contract with Carlos Agriculture and entered a new contract to buy its vegetables from Acme instead. What tort (if any) may Carlos Agriculture sue Acme for?
Tortious Interference with A Contract

Four elements:
1. There was a contract between plaintiff and a third party.
2. The defendant knew of the contract.
3. The defendant improperly induced the third party to breach the contract or made performance of the contract impossible, and
4. There was injury to the plaintiff.

Texaco v. Pennzoil
✓ Texas Court of Appeals (1987)
✓ One of the largest tort awards in U.S. history: $7.53 compensatory plus $3 billion punitive damages!
✓ A very close call, but the appeals court deferred to the jury on all points.

Texaco v. Pennzoil Take-Aways
✓ There’s this thing called tortious interference with a contract.
✓ It has four required elements. You might want to memorize them.
✓ Trust your instincts as a business person more than your own lawyers
✓ The law isn’t always fair to business people. It’s harsh, and a bit unpredictable.
Negligence Law
“When someone is injured, how far (and to whom) should liability extend?”
- Beatty and Samuelson, p. 144

Negligence’s 5 Elements
1. Duty of Due Care
2. Breach of That Duty
3. Factual Cause of Harm
4. Foreseeable Type of Harm
5. Injury

Negligence’s Five Elements:
1. Duty of Due Care
   “Did the defendant have a duty of due care to this plaintiff?”
   ✓ The test is generally “foreseeability.”
   ✓ If the defendant could have foreseen injury to the plaintiff as a very possible result of her actions, then she had a duty to him.
Negligence’s Five Elements:
2. Breach of Duty
“Did the defendant behave in the way a reasonable person (with similar training) would have under similar circumstances?”
✓ If not, then the defendant has breached his duty.
✓ A reasonable doctor always checks current medications before prescribing additional ones.

Negligence’s Five Elements:
3. Factual Cause
“Would the injury have not occurred but for the defendant’s breach?”
✓ If so, then the defendant’s breach is said to have been a factual cause of the plaintiff’s injury.

Negligence’s Five Elements:
4. Foreseeable Type of Harm
“Was the type of harm experienced by the plaintiff as a direct result of defendant’s breach reasonably foreseeable?”
✓ If so, then the defendant’s breach is said to have been a proximate cause of plaintiff’s injury.
✓ If not, then there is no liability.
Negligence’s Five Elements:
4. Foreseeable Type of Harm

Negligence Per Se
✓ When a legislature sets a minimum standard of care 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.

Dram Shop Laws
✓ Generally make liquor stores, bars, and restaurants liable for any injuries that arise from serving alcohol to intoxicated persons or minors who subsequently cause death or injury to third-parties.
Hernandez v. Arizona Board of Regents
Arizona Supreme Court (1994)
✓ A fraternity served alcohol to minors at an opening week party.
✓ Rayner got drunk there; and later, seriously injured Hernandez, who sued Rayner, the frat, and the school.
✓ Trial court granted summary judgment for the defendants, and the appeals court affirmed.
✓ But the State Supreme Court reversed and remanded.

It's been a crime in Arizona to furnish alcohol to minors since 1887.
This is a classic negligence per se case.
It's true that this will be the first time Arizona has said that a social host will be liable for injuries if they serve alcohol to a minor, but times have changed.

Wiener v. Southcoast Childcare Centers, Inc.
✓ An illustration of the limits of a landowner's liability to protect visitors from the criminal acts of others.
✓ According to one neighbor, a mail truck had crashed through the fence before.
Wiener v. Southcoast Childcare Centers, Inc.

- Trial court granted summary judgment for defendants.
- Appellate court reversed.
- California Supreme Court reversed again, reinstating summary judgment for defendants.

Negligent Hiring: Gaines v. Monsanto

- Missouri Court of Appeals (1983)
- Trial court granted summary judgment for defendants.
- Missouri Court of Appeals reversed and remanded.
- Ultimate outcome unknown.

Res Ipsa Loquitur

- 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.
Negligence’s Five Elements:

5. Injury

✓ The plaintiff must persuade the court that he has suffered a harm that is genuine, not speculative.

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

Assumption of the Risk

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

✓ Trespassing in a construction zone.
✓ Union Pacific Railway v. Cappier
✓ Baseball and hockey games
Strict Liability

“If you engaged in a proscribed activity and it was the factual cause of another’s injury, you are liable for her injuries.”

✓ Defective products
✓ Ultrahazardous activity

Kyle was driving on a freeway and he passed under an overhead roadway that was being repaired by LSO Construction. As Kyle emerged from under the overpass, a steel truss dropped from the roadway above, smashing into Kyle’s car and injuring Kyle. LSO was working alone on the overhead roadway and had exclusive control over the steel trusses being installed. Kyle sued LSO for negligence. What type of lawsuit should Kyle file and what should he argue?

Higgins and some friends went to a night baseball game at Comiskey Park in Chicago. Near the end of the game, Higgins went to the men’s room. On his way back to his seat, he walked down a corridor that ran past a concession stand. As he passed the stand, the door to the front of the stand (a 4’ by 6’ sheet of plywood attached to the ceiling with hinges and held in the open position with a hook-and-eyelet, also affixed to the ceiling) fell from its open position and struck him on the head, causing permanent head and neck injuries. None of the eyewitnesses to the incident saw anyone touch either the door or the hook securing it, or do anything that might have caused the door to fall. There was however testimony that, just before the door fell, the crowd in the stadium was screaming and stamping, and that one “could feel the place tremble.” What tort should Higgins sue for and what should he argue?
Todd was an overzealous vacuum cleaner salesman. One day Todd went to the home of Mabel Jones, an elderly widow. Mabel told Todd that she was not interested. In response, Todd threatened to hit Mabel, pushed her aside, and entered her home. Todd then forced Mabel to sit down on her couch and would not let her leave while he gave his sales pitch again. What torts did Todd commit in this case?