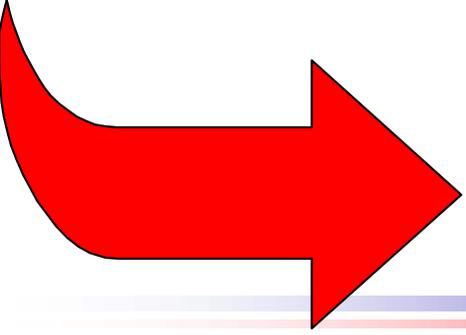


# INTENTIONAL TORTS AND TORTS BASED ON NEGLIGENCE

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## Chapter 7



# **The Role of Tort Law**

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- **Definition**
  - **Means “wrong” in French**
  - **Civil wrong, other than a breach of contract, for which the law provides a remedy**
  - **Breach of a duty owed to another that causes harm**
- **Compensation for injuries wrongfully inflicted by the defendant on the plaintiff**
- **Civil, not criminal law**
- **Law is determined in each state--rules vary**
- **However, the basic principles are similar among all states**
- **Remedies should place injured party in the position he/she would have been in prior to the tort**
- **Fear of tort action deters injurious behavior by others**
- **Punitive damages punish malicious behavior**

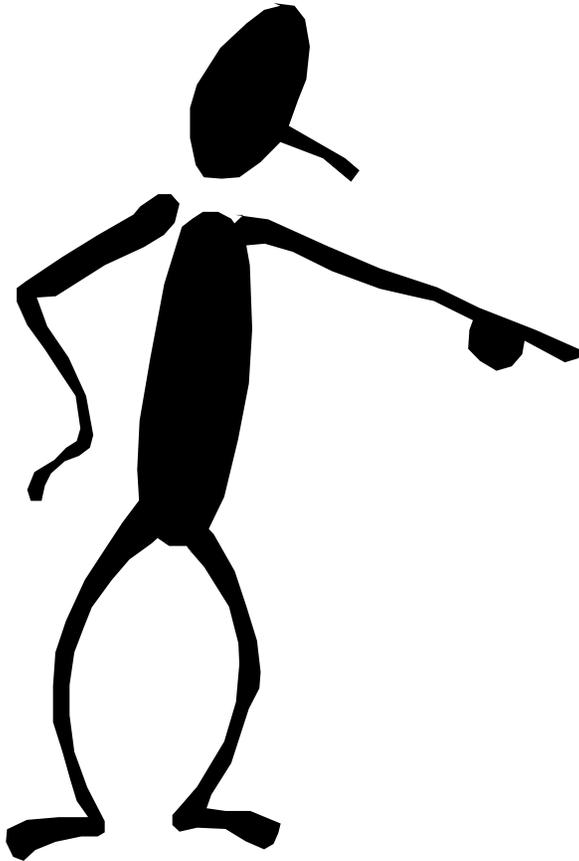
# Business and Torts

- **Lawsuits involving businesses often have large awards, i.e. Pennzoil-Texaco case: Jury awarded \$10.5 billion to the plaintiff**
- **Plaintiffs think of businesses as “deep pockets”**
- **Business is liable under agency law if a tort results in an activity “within the scope of the worker’s employment”**
- **Types**
  - **Intentional**
  - **Negligence (Unintentional)**
  - **Strict Liability (Without fault)**



# INTENTIONAL TORTS

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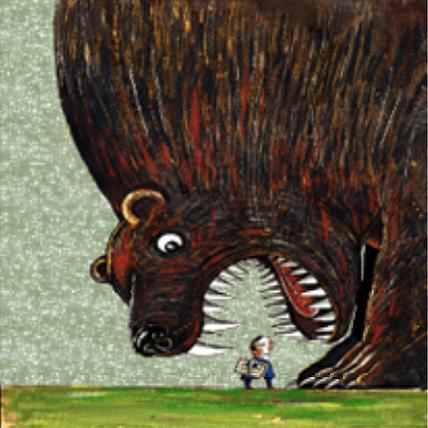


- **Intent**
  - Person knew what he/she was doing
  - Intent to do the act which *reasonably* would result in harm to the plaintiff
  - Knew /should have known the possible consequences of an action
  - Willful misconduct

# Intentional Torts Against Persons



- **Assault**
- **Battery**
- **False Imprisonment**
- **Infliction of Emotional Distress**
- **Invasion of Privacy**
- **Defamation**



# ASSAULT



- Placing plaintiff in fear of immediate bodily injury
- Fear: if a reasonable person under the same or similar circumstances would have apprehension of bodily harm or offensive contact
- Threats? Usually an assault
- Pointing a gun? Yes
- Point a gun while other person sleeps? No assault
- Letter threats? No assault (“immediate” requirement not met)
- Phone threats? Maybe. How close is the caller? On a cell phone outside the door or window?



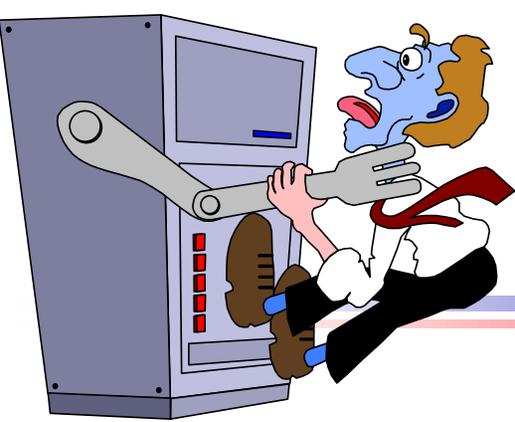
# BATTERY

- Unlawful “touching”
- Intentional physical contact without consent
- Use of fist, hand, or kicking
- Use of weapons, i.e. guns or stick
- Unwanted kiss? Has been held in some states to constitute battery



- Assault & Battery may or may not be linked together in a lawsuit
- Defenses
  - Consent
  - Privilege
  - Self defense
  - Defense of others/Defense of property
- See *Nelson v. Carroll*





# False Imprisonment (False Arrest)

- Intentional holding or detaining
- Freedom to come and go is restrained
- Restraint
  - May be physical
  - May be mental (i.e. through verbal threats)
- Lawsuits often arise from detention of suspected shoplifters
- Defense by businesses regarding detention of shoplifters
  - Restraint was in a reasonable manner
  - Restraint was in a reasonable time
  - Basis for the detention was valid
- See *Caldwell v. K-Mart Corp.*

# Infliction of Emotional Distress

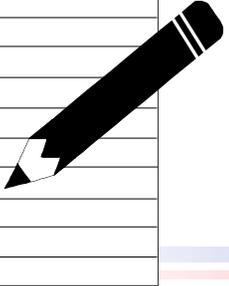
- Intentional conduct
- So outrageous, it creates severe mental or emotional distress
- Petty insults, annoying behavior, bad language?  
**Usually not actionable; we must have “tough skin”**
- Accompanying physical injury usually not required
- Bill collectors or landlords who badger, are profane, and threaten lay the background for a lawsuit
- **See *White v. Monsanto Co.***





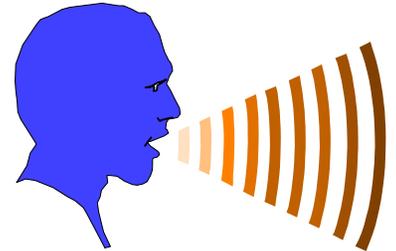
# Invasion of Privacy

- Infringement on a person's right of solitude & freedom from unwarranted public exposure
- Use of a person's name or picture without permission
- Intrusion on solitude (i.e. wiretap)
- Placing a person in false light (publishing a false story)
- Public exposure of private facts (debts, drug use)
- Defenses
  - Right of privacy waived by public figures, politicians, entertainers, sports personalities, etc.
  - Information about an individual taken from public files or records
- *See Peoples Bank & Trust Company of Mountain Home v. Globe International, Inc.*

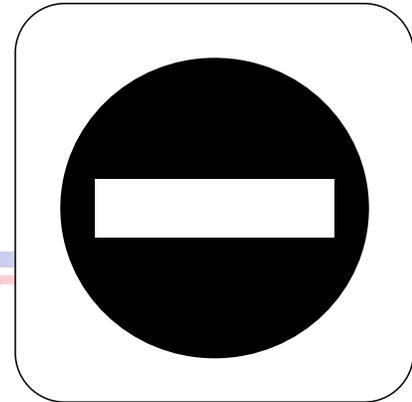


# Defamation (Libel/Slander)

- **Definition:** An intentional false communication that injures a person's reputation or good name
- **Elements of the Tort:**
  - False or defamatory statement
  - Published or communicated to a third person
  - Causing harm or injury to the plaintiff
- **Defamation *per se*:** Presumption of harm
  - No proof of harm/injury is necessary
  - Examples: person has committed a crime; has a sexually communicable disease; carries out business activities improperly, etc.
- **Case regarding Workplace Defamation:**
  - *Frank B. Hall & Co. v. Buck*



# Defenses to Defamation



- **Truth is a complete defense in some states**
- **Absolute privilege is an immunity**
  - Legislators in committee sessions
  - Participants in judicial proceedings
- **Conditional privilege eliminates liability if the false statement was published in good faith**
  - If there is no malice (unlike the *Buck* case)
  - In order to protect a person's legitimate interests
- **Constitutional privilege**
  - Members of the press may publish "opinion" about public officials, figures, or those of public interest if there is *no actual malice* ("absence of malice")
  - See "Libel in Foreign Courts" (US communications companies sued in UK which does not grant news media extensive privileges traditional in U.S.)



# Cyberlaw: *Tort Liability for Internet Servers*

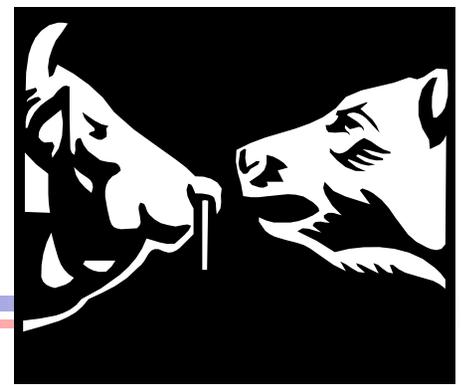
- **Q:** If Internet users are involved in illegal activities, are the Internet servers liable?
- **A:** Generally no, as long as they were not aware of it or had no reason to be aware of it
- **In *Zeran v. America Online*:** AOL not liable in tort for defamatory message that AOL user sent. Sender is liable.
- **In *Maraboi-FL v. Natl. Assn. of Fire Equipment Distributors*:** Held that server could be liable if aware of copyright infringement. Trial court will determine the issue as to liability.



# Intentional Torts Against Property

- **Trespass to Land:** Unauthorized intrusion that interferes with another's peaceful enjoyment of their property
- **Private Nuisance:** interference with use & enjoyment of land
  - Destruction of crops, causing health risks from pollution, throwing objects on the land, using the neighboring house for drug deals
  - *See Pendoley v. Ferreira and "Expensive Boom Box"*
- **Public Nuisance:** Interference with a right held in common by general public
  - Illegal gambling, bad odors, obstruction of a highway
- **Trespass to Personal Property:** Interference with the right of an owner to the exclusive use and enjoyment of property
- **Conversion:** Unlawful control of another's personal property
- **Misappropriation:** Invasion of property rights such as trademarks or trade secrets

# *Pendoley v. Ferreira,*

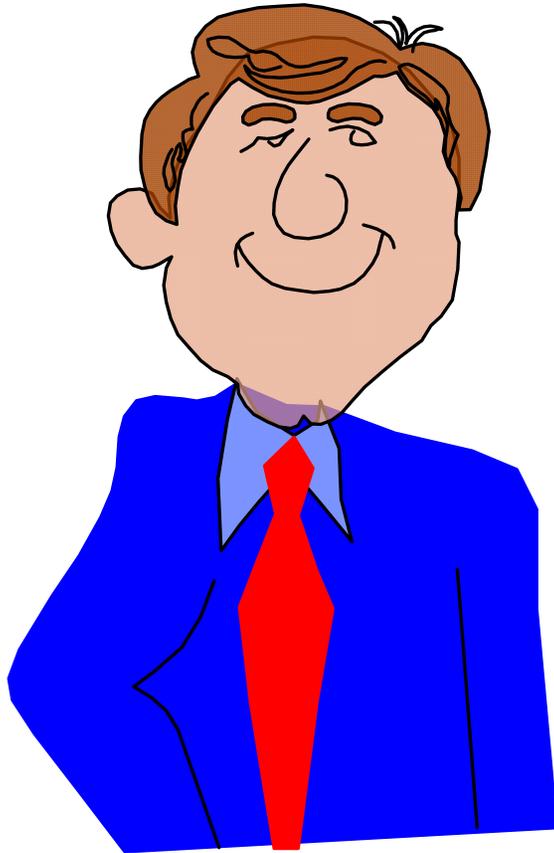


- **Ferreiras started pig farming in 1949; by 1960 there were 850 pigs, 225 piglets & 10 employees**
- **30 new homes were built in the area between 1949 and 1960**
- **Pendoley & others sue Ferreira for nuisance from smell; ask for an injunction to force closing of pig farm**
- **Trial court : \$300 to each homeowner and injunction to prevent stench**
- **Ferreira appeals**
- **Held: Offensive operation must be terminated entirely within a reasonable time.**
- **Damages alone cannot compensate for “nauseating piggery odors”**
- **There is “unreasonable interference with the proper enjoyment” of the landowners’ residences**
- **Ferreira given a reasonable opportunity to move with complete injunction at a future date**

# TORTS BASED ON NEGLIGENCE

- **Duty (Owed to the plaintiff)**
- **Breach of duty of care**
  - Unintentional careless conduct that creates an unreasonable risk of harm to others
  - Breach through an act or omission
- **Causation (causal connection to the injury)**
- **Injury/Damages**
  - There can be a negligence action even if there was no intent to do harm
  - **See “*Tort Liability in France*” (French Civil Code specifically defines elements of negligence)**

# Negligence: Duty of Care and the Reasonable Person Standard



- The standard is how persons in the relative community ought to behave
- One must be reasonable at all times, under all circumstances
- “What a reasonable person would do in same or similar circumstances”
- Applies to professions-- Reasonable CPA, MD, attorney, etc.
- See *Bethlehem Steel v. Ernst & Whinney*

# Negligence Per Se

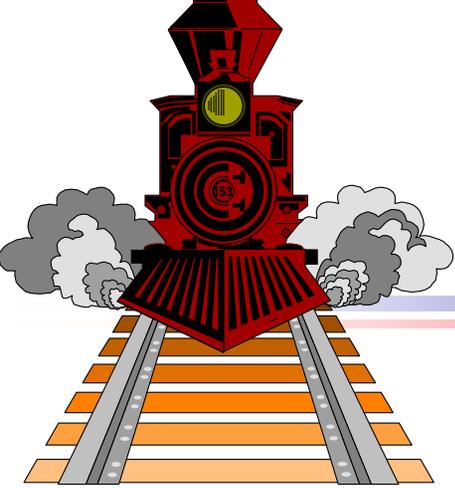
- Violation of statute is negligence.
  - Statute needs to protect that class of people
  - Some states, it proves negligence.
  - Some states, only evidence of negligence.
    - We will use, it proves negligence.
- Jury still must decide if this negligence caused the injury.
- Examples:
  - Selling alcohol to minors, causing crash.
  - Leaving keys in car, causing crash.

# Res Ipsa Loquitur

- “the thing speaks for itself”.
- Applies to a situation;
  - that usually does not occur in the absence of negligence;
  - the defendant is in control of; and
  - the plaintiff is not negligent.
- Shifts burden of proof to defendant!
- Examples
  - Airplane crash.
  - Audi sudden acceleration case?
    - Not res ipsa. Audi not in control at time.

# Damages

- Defendant liable only for damages legally (proximately) caused by his tort action.
- This is not physical causation, but legal causation.
- Damages that:
  - Naturally flow from the action;
  - Foreseeable from the action.
- This limits the liability of the tortfeasor.



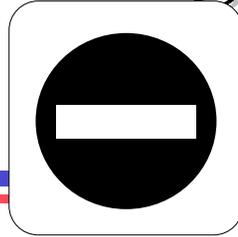
## *Palsgraf v. Long Island RR Co.* (1928 Landmark Case)

- Palsgraf waits on the platform for a train; another train begins to leave the station; man carrying a package runs to catch it; jumps on the train; looks like he might fall
- Guards try to help him as he teeters
- He drops the package which contains fireworks that explode
- Shock from the explosion causes scales located on the platform to fall, injuring Palsgraf who sues RR for negligence of its employees
- Jury finds for Palsgraf; appellate court affirms; RR appeals
- Issue: Is it foreseeable that the assistance by the guards would cause Palsgraf's injury through the falling scales?
- Held: No. Nothing in the situation would suggest such a result. Case reversed and dismissed.

# Proximate Cause Examples

- Lincoln dealer loose wheel case;
  - Person killed by gun suing gun mfg;
  - Dungeons and Dragons case;
  - Rap music cases;
  - Pornography and assault on women cases;
  - NAMBA killing of minor case.
- 
- Did the act cause the injury?

# Defenses To A Negligence Action



- **Assumption of Risk**

- The injured party knew or should have known of the risk and voluntarily assumed it
- Complete bar to the plaintiff's case

- **Contributory Negligence**

- Plaintiff's action contributed to the injuries
- Plaintiff's case is completely barred
- **Pretty much gone now.**

- **Comparative Negligence**

- Damages are reduced by the % of injuries caused by plaintiff's own negligence
- **Pure Comparative Negligence:** % set by the jury regarding the cause of the injuries
- **50% Rule:** If plaintiff is 50% or more at fault, case is completely barred
- See *Wassell v. Adams*

# *Wassell v. Adams*

## *COMPARATIVE Negligence.*

- Susan Wassell is visiting her fiancé north of Chicago
- At 1:00 AM, hears a knock on the door; didn't see anyone; thinks it is her fiancé; opens door anyway;
- Stranger is there; asks for a drink of water; she gets the water; he says the water isn't cold enough & also wants some money; man goes to the bathroom to get more water; she hides her purse; man emerges; she runs from the room; he drags her back to the room and rapes her; man is never caught
- She sues motel owners for failing to warn of high-crime area
- Jury assesses damages at \$850,000; but says Susan was 97% to blame for the occurrence
- Under comparative negligence, she is awarded \$25,500 in damages; she appeals. In some states she would have received nothing, since more than 50% her fault.
- **Held: Jury, not the appellate court, is the trier of fact and determines damages; judgment affirmed.**

# Other defense examples:

- Normally, comparative negligence looks at the cause of the accident. What about increasing the severity of injuries? Should the Jury consider:
  - Not wearing seat belt (required by law – neg. per se).
  - Not wearing motor cycle helmet (required – neg. per se).
  - Not wearing helmet (not required).

# Strict Liability In Tort

- Under negligence, the act is done in an unreasonable manner, so liable.
- Under S.L., the act is so inherently dangerous (ultra-hazardous), that even if no negligence, the actor is liable.
- Called “liability without fault”. Not true.
- Blasting, storage of explosive or gas, keeping wild animals as pets, now defective products.
- Only defense is assumption of risk; not comparative negligence.

# Issue: Are Greedy Consumers Causing the Punitive Damage ‘Crisis’?

- Industry groups are asking for statutory restrictions on punitive damage awards
- Actually businesses themselves are winning many of these high awards
- Federal tort limitation
  - Proposed Senate bill applied only to product liability cases. Passed.
  - So business vs. business cases still are OK.
- Consumer groups think this is unfair
- Some lawyers may argue that punitive damages play an important role by sending a strong message to companies who “don’t want to play by the rules.”



# Tort Liability

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- Intentional torts;
- Negligence;
- Strict Liability.

# End of Chapter 7

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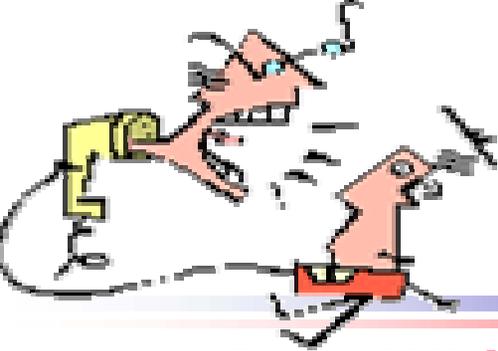
# *Nelson v. Carroll (1999)*

- **Carroll loaned Nelson \$8000; \$4200 had been repaid. Carroll sought out Nelson at a nightclub & demanded repayment.**
- **Nelson offered \$2300; Carroll (“a little tipsy”) pulled out a gun, hit Nelson on side of head and then shot him.**
- **Carroll is sentenced 7 years in prison for criminal assault.**
- **Nelson suffers from health problems; sues Carroll for battery. Carroll contends discharge of gun was accidental.**
- **Lower court holds for Carroll; Nelson appeals.**
- **ISSUE: Is the accidental firing of the gun a defense that will exonerate Carroll of liability?**
- **HELD: No. Battery was committed by hitting Nelson on the side of head and from an intent to cause harmful contact.**
- **This was not innocent conduct that accidentally resulted in harm. This is a volitional act to invade another’s well-being.**
- **Intent requirement is NOT a specific desire for certain result.**



## *Caldwell v. K-Mart Corp.*

- Store security watches Caldwell; accuses her in parking lot of having merchandise in her purse; Caldwell opens her purse; no merchandise is there; guard asks her to come back to the store; they walk around 15 minutes; guard says 6-7 times that he's seen her shoplift; another employee lets Caldwell go
- She is emotionally upset for several days; experiences discomfort going into stores; moves her residence
- She sues for false imprisonment; jury awards \$75,000 in damages + \$100,000 punitive damages; K-Mart appeals
- Initial stop in the parking lot was justified; walking Caldwell through the store with continued accusations was not
- Guard violated requirements under K-Mart's Loss Prevention Manual
- **Was the jury's finding re: damages reasonable?**
- **Held: Judgment affirmed. Large verdict was not motivated by "caprice, passion, prejudice or improper considerations."**



## *White v. Monsanto Co.*

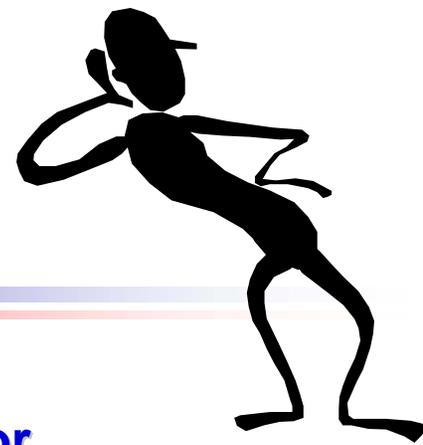
- **Irma White (church-going woman) works at Monsanto refinery; boss sees idle workers and has a one minute “profane tirade”**
- **Irma has chest pains, head pounding, difficulty breathing, clammy hands; sees a doctor who diagnoses a “panic attack”**
- **She sues; jury awards \$60,000 for emotional distress; Monsanto appeals**
- **Was there a basis for tort of emotional distress?**
- **HELD: Reversed. Although the tirade was “crude, rough, and uncalled for, it was not tortious”**
- **Not directed just at White**
- **No intention to inflict severe distress by the supervisor**



## *Peoples Bank & Trust of Mountain Home v. Globe International*

- **95-year-old Nellie Mitchell runs a newsstand**
- **Globe's tabloid publishes her picture with headline "World's oldest newspaper carrier, 101 quits because she's pregnant!"**
- **Was in fact story of "paper gal" in Australia who allegedly became pregnant by millionaire on her paper route ("one thing kind of led to another")**
- **Globe thought Nellie was dead at time of the story**
- **Nellie almost suffers a stroke, was teased about being pregnant and attempted to buy up all of the papers**
- **Jury finds invasion of privacy; awards \$650,000 in damages + \$850,000 in punitive damages; Globe appeals**
- **Held: Globe loses. Nellie's experience likened to a person "who had been dragged slowly through a pile of untreated sewage"**

# *Frank B. Hall & Co. v. Buck*



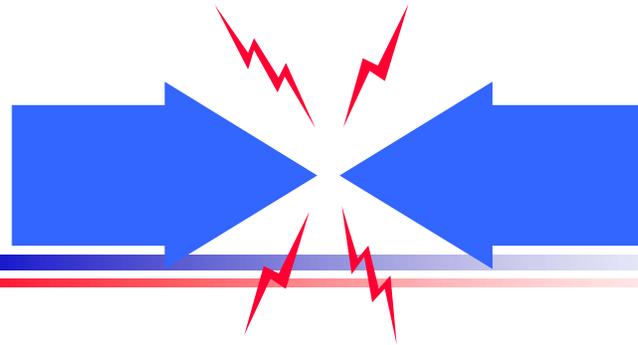
- Insurance agent, Buck, is fired by Eckert; no one will rehire him; he investigates through Barber (PI)
- Eckert tells PI that Buck was horrible, a “classical sociopath”, verbally abusive, had stolen files, “a zero”, “a Jekyll & Hyde person”, was “lacking . . . in scruples”
- Tells Burton (another agent) that Buck “didn’t reach production goals;” “would not be rehired”
- Buck sues Hall for defamation
- Jury awards \$605,000 in actual damages; \$1.3 million in punitive damages; Hall appeals
- **Q: Were statements to Burton sufficient to create defamation?**
- **A: Yes. (Note: Testimony of conversation with PI coupled with comments to Burton showed intent to violate Buck’s rights)**



## *Bethlehem Steel Corp. v. Ernst & Whinney*

- Ernst & Whitney, acctg. firm, prepares an audited financial report for Jackson Mfg. overstating its financial status
- Ernst knew Jackson needed the report for Bethlehem Steel to show Jackson's finances were strong (Bethlehem would then sell steel to Jackson on credit)
- Jackson goes into bankruptcy, owing Bethlehem money; Bethlehem sues Ernst; jury awards \$400,000
- Judge sets aside verdict; orders a new trial; Ct. of Appeals reverses; affirms trial court decision; everyone appeals
- **Held: Ct. of Appeals is affirmed; remand case for new trial**
- **Non-clients rely on accountant's information**
- **Accountants should not be liable if unaware of the use of the information they create or who will rely on it**
- **However, here false information supplied & losses incurred**

# Causation



- **Causation** between a party's act & another's injury
- **Cause in fact** shows the person's conduct is the actual cause of the event that created the injury (Some courts call this the "but for" test)
- **Proximate cause** indicates that the liability bears a reasonable relationship to the negligent conduct
- If consequences are **too remote**--no liability
- If there is an **intervening or superseding event**--no liability
- Chain of events created by a party's actions must be **foreseeable**
- Some states replace **proximate cause** with legal cause that creates a **substantial factor** in bringing about the injury