INTENTIONAL TORTS AND TORTS BASED ON NEGLIGENCE

Chapter 7
The Role of Tort Law

- 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., the 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

- **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

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
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*. 

\[\text{Diagram of a person in a suit with a red tie.}\]
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 fiance; 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

- Intentional torts;
- Negligence;
- Strict Liability.
End of Chapter 7
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
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** 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