



Civil Law



Intentional Torts, Negligence, &
Strict Liability
Chapters 19-21

Ch. 19: Intentional Torts

- Deliberate harm
- Contrary to the implication in the text, you don't need to prove intent *to recover damages*
 - You can still recover damages by proving negligence

Compensatory Damages

- Actual costs of the harm (compensation)
- Medical bills, repair/replacement bills
- Lost wages
- Future losses
- Pain & suffering
- All must be proven in court



Nominal Damages

- Token, symbolic awards
- Defendant is wrong, but little damage is proven
- Defendant is wrong, but the jury may feel the plaintiff doesn't have "clean hands" either

Punitive Damages

- Punishment for willful, malicious, or outrageous act
- Deterrent to others
- This is the award that can be huge
- Also that part of the award that is most likely to be reduced on appeal

Common Personal Torts mentioned in text

- Battery
- Assault
- Infliction of mental distress
- False Imprisonment



Defamation

False statement communicated to a 3rd party, causing harm

- Slander
 - Oral statements
- Libel
 - Written statements

Defamation, cont'd.

Defenses:

- The truth
- Entitled opinion

Defamation over the Web...?

Suing the media for defamation, need to prove malice

- Knew it was false; disregard for truth

Torts that harm property

- Law protects against unauthorized use of property
- Law protects against theft or damage to property

Types of Property

- Real
 - Land & items attached to it or fixed: houses, crops, etc.
- Personal
 - items that can be moved
- Intellectual
 - part of the creative mind: writings, music, ideas

Real Property Protections

One has the right to be free from unreasonable interferences with the use and enjoyment of one's property

- Trespass
- Nuisance (such as noise)

Real Property Obligations

- Real property owners must use reasonable care when others are on their property
 - Use reasonable care to make it safe; warn people of risks
- Ex. Cannot have unfenced or ungated “attractive nuisances” (pools, etc.)

Personal Property

- One can sue to recover personal property taken or damaged
- Get the property or value of it
- One can use reasonable force to protect property
- In CA, one can **NEVER** use deadly force simply to protect property
- Some states like **Texas** allow for the use of deadly force to protect property in particular circumstances

Intellectual Property

- Creation of one's mind, or intellect
- Inventions: one applies for a patent
- Creative expression (song, book): one applies for a copyright
- Infringement of patent or copyright = tort
- Limits to intellectual property rights: ex. building on others' work, fair use

Defenses to Intentional Torts

- Consent
 - Written, spoken, or assumed
- Privilege
 - Legal Authority
 - Self-defense
 - Defense of property (reasonable)

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You Be The Judge

Answer a-f

Ch. 20: Negligence

Elements & Defenses

Elements of Negligence

- **Each** of the following must be proven:
 - Duty—the defendant owed a duty of care to the plaintiff
 - Breach of Duty: the duty was violated
 - Causation: the defendant caused the harm
 - Damages: there were actual damages

Legal vs. Moral Duty

- Just as in criminal cases, one does not always have a *legal* duty of care toward another where a *moral* duty may exist
- Ex: the drowning person and the expert swimmer passing by in a boat

Reasonableness

- Generally, everybody has a duty toward everyone else—the duty to act reasonably
- Who is a reasonable person?
 - One of ordinary prudence or carefulness
 - Assumes that reasonable people do not break the law
 - Age appropriateness

Causation

- Cause in fact: without the wrongful act, the harm would not have occurred
- Act → causes harm
- Proximate cause:
 - Some close connection between the act and the harm caused
 - Deals with harms that are **reasonably predictable consequences** of the act itself
 - Ex. Car crash injures other driver, but also knocks down a utility pole causing a power outage that makes me late to work and I get fired; driver is NOT responsible for damages to me

Damages

- Attempt to restore the plaintiff to pre-injury condition (with \$)
- Most states require that actual damages need to be proven before punitive damages can be awarded

Defenses

- Contributory negligence
- Comparative negligence: pay only that percent for which you are liable
- Assumption of risk
 - Plaintiff voluntarily entered into danger
 - Waivers (page 260)

Strict Liability

Chapter 21

Strict Liability

- Differs from negligence and intentional wrongs
- Applies when a defendant is engaged in an activity that is so dangerous that there is risk of harm even if defendant uses utmost care.

Strict Liability

- No need to prove negligence or intent to recover damages
- No need to prove duty or breach (both are implied)
- These people face strict liability:
 - Owners of dangerous animals
 - People who engage in highly dangerous activities
 - Manufacturers & sellers of defective products

Strict Liability

- The Pope's pit bull
- Ultra-hazardous activities
 - Demolition work
 - Other examples...?
- Liability w/o fault

Strict products liability

- Designed for products that, because of design defect or manufacturing flaw, are unreasonably dangerous
- Autos, planes, etc.

Duty to warn

- If manufacturer has reason to know that
 - a product will cause harm in a foreseeable way
 - user is unlikely to see the danger

Defenses

- Assumption of risk
- Contributory negligence???

Evaluating hypothetical cases

- Is an ultra-hazardous activity being performed?
- Was damage incurred?
- Should the company be responsible for the injury? Was the harm foreseeable?

Fairness Issues

- Is it fair to require a company to pay even if precautions are taken?
- Is strict liability necessary to protect society?

Strict Liability

- Rob buys a video recorder. As he hooks it to his television, the wires short and he is severely burned.

Strict Liability

- Francesca buys a curling iron. While she is using it the iron becomes very hot, her hair catches fire, and she is burned.

Strict Liability

- Brett buys a football to play catch. As he catches the ball it explodes in his face.

Tort Reform

Chapter 22

Hypothetical

- William Smith stepped off a curb into the street where he was struck by a car driven by Mary Minow and seriously injured. One witness said that Minow was speeding and should have seen Smith and stopped. Another said Smith should have been more careful.

Smith v. Minow

- If Smith sues Minow for his medical bills, who pays the attorney fees?

In England

- In the UK, the loser pays all bills, including attorney's fees.
- UK sees it as unfair to win and have to pay fees
- Contingency fees (often 1/3) would drive up costs

In the US

- Each side pays his own attorney's fees
- English rule would discourage people from their right to go to court
- Small claims courts w/o attorneys can be used