

The Law of Torts

Business Law

Chapter 4

The Law of Torts

- The law of torts is the concept of rights.
- Under the law, people are entitled to certain rights simply because they are members of our society.

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- These rights include:
 1. the right to be free from bodily harm
 2. the right to enjoy a good reputation
 3. the right to conduct business without unwarranted interference
 4. the right to have one's property free from damage or trespass

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- All people have the duty to avoid violating those rights in any way
- All people have a duty to respect the rights given to others

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- Tort - one person's interference with another's rights, either through intent, negligence, or strict liability
- Difference between a crime and a tort
 - A crime is a wrong against the public at large
 - A tort is a wrong against an individual

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- Tortfeasor - a person who commits a tort
 - Lawsuits are brought against tortfeasors by the injured persons themselves to recover money as compensation for the loss or injury suffered.
- Criminal prosecution is brought by the state to punish wrongdoers and to protect the public
- A wrong can be both a tort and a crime

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- Intentional Tort - a wrong that occurs when a person knows and desires the consequences of his or her act.
- The most Common Intentional torts
- 1. Assault - when one person deliberately frightens another person into the reasonable belief that he or she is about to be injured
 - The assault occurs because the victim fears immediate bodily harm

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- Difference between the tort assault and the crime of assault
 - Tort - the victim must know that the tortfeasor has tried to harm him or her. Without that knowledge, the victim has not been frightened, and no harm has resulted.
 - Criminal law - an assault is an attempted battery. The victim may not be aware of the attempt. Criminal law is to protect the public and to punish wrongdoers not compensate victims. A criminal assault can be carried out against an unconscious victim.

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- 2. Battery - the unlawful, unprivileged touching of another person. The touching does not have to be harmful, simply unwanted.

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- 3. Trespass - a wrongful injury to or interference with the property of another
 - Property refers to everything a person can own - moveable and nonmovable (real property). Real Property - land, things built on the land, or located on the land. The tort of trespassing refers to real property.

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- 4. Nuisance - anything that interferes with the enjoyment of life or property
 - Ex.: loud noises at night, noxious odors, smoke or fumes coming from a nearby house
- Public Nuisance - one that affects a large group of people (all the people in the neighborhood)
- Private Nuisance - affects one person only

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- 5. Interference with contractual relations intentionally causing one person not to enter or to break a contract with another
- 6. Deceit - false statement or deceptive practice done with intent to injure another
- 7. Conversion - unauthorized taking or borrowing of personal property of another for the use of the taker

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- 8. False imprisonment (false arrest) – making an arrest without having probable cause or a warrant to arrest someone.
- Most states have laws that allow store managers and detectives to detain suspected shoplifters. They must have reasonable grounds to suspect that shoplifting incident has occurred and must detain the suspect in a “reasonable” manner and only for a “reasonable” length of time. Reasonable can be difficult to determine.

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- Defamation - wrongful act of injuring another's reputation by making false statements.

2 categories - libel and slander

- Libel - a false statement in written or printed form that injures another's reputation or reflects negatively on that person's character

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- Statements made by senators and representatives on the floor of congress and statements made in court of law are privileged. Privileged speech is protected against defamation lawsuit and is protected open debate of legislative and judicial matters.
- Persons who are in the public limelight (politicians, judges, entertainers, athletes) must prove more damage to their reputation than the average person. They also have to prove that the statements are false and made with actual malice.

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- Actual Malice - the statement was made either with the knowledge that it was false or with a reckless disregard for whether it was true or false.
- Slander - the same as libel except that the false statement is made orally to a third party.

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- 10. Invasion of privacy - interference with person's right to be left alone
- The Federal Privacy Act of 1974 - provides safeguards for individuals against the invasion of privacy by agencies of the federal government.
- Also invasion of privacy to use an individual's photograph, likeness, or name without permission for advertising, publicity, or publication purposes.

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- 11. Misuse of legal procedure - bringing of legal action with malice and without probable cause.
- 12. Infliction of emotional distress - intentionally or recklessly causing emotional or mental suffering to others.

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- Unintentional Tort - lacks the determination of mind.
- Negligence - the failure to exercise the degree of care that a reasonable person would have exercised in the same circumstance.

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- Elements of Negligence - ALL must be proved
- 1. The defendant owed the plaintiff a **Duty of Care**
 - Because each of us in this society has certain rights, the rest of us have the duty not to violate those rights.
- 2. **Breach of Duty** - the defendant failed to act as a reasonable person would have and therefore, did not use the degree of care required under the circumstances.

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- 3. The breach of duty by the defendant was the **proximate cause** of the injury to the plaintiff.
- Proximate Cause – something that produces a result, and without which, the result would not have occurred.
- 4. The plaintiff suffered some **actual harm** or injury. ex.: physical injuries, property damage or financial loss

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- Defenses to Negligence
 - Elimination of one of the four elements
- Contributory Negligence, Comparative Negligence, Assumption of Risk

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- Contributory Negligence - negligence on the part of the plaintiff that assisted in causing his or her injuries - no matter how slight the plaintiff's own negligence was
- Comparative Negligence - the negligence of each party is compared - the amount of the plaintiff's recovery is reduced by the percent of his or her negligence.
 - (plaintiff's negligence > 50%, recovers nothing)
- Assumption of Risk - If the defendant can show that the plaintiff knew of the risk involved and still took the chance of being injured.

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- Strict Liability - applies only to ultrahazardous activities (no amount of care will eliminate the risk)
 - Ex.: using explosives, keeping wild animals, and storing highly flammable liquids in densely populated areas.

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- Survival and Wrongful Death Statutes
- Survival statutes allow a lawsuit to be brought even if both the plaintiff and the defendant are deceased.
 - Suits are brought or defended by a representative of the estate.

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- Wrongful Death Statutes - preserves the rights of third parties affected by the death of a person to bring a lawsuit.
- Only if the death caused by the negligence or the intentional conduct of the defendant
 - Usually limited to: husband, wife, children or parents

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- Remedies for Torts
- In some cases money will not repay the injured party for the damage.
- Injunction - a court order issued by a judge ordering a person to do or not to do something.
 - Issued when money damages will not adequately repay the injured party.