

# Chapter 7

Tort Law / Workers Compensation and Environmental Law

# Case File / Intentional Torts(140-146)

- Read the Case File on page 140
  - Who do you think is responsible for Greenly's Injury? Why do you think they are responsible?
  - Based on your reading what is the most logical claim for Greenly?
- What is a tort? How does a tort generally differ from other forms of civil cases?
  - What types of injuries are covered by tort law?
  - What is the difference between a punitive damage payment and other tort based payments?
- What happens when a tort claim is based on intentional action? Is the tort invalid due to the fact that intentional torts are usually crimes? Explain?
- Using Application 7.1 Explain the difference between assault and Battery?
- Using Application 7.2 identify the actions that caused the false arrest and imprisonment? Why doesn't shopkeeper's privilege apply in this situation?
- In application 7.3 and 7.4 the idea of burden of proof in torts is identified. Explain the burden of proof for defamation cases. What must occur for a person to be found liable for defamation?
  - Given these decisions is it difficult to claim a tort for defamation? Why or why not? Is this good or bad in your opinion? Explain.
- Vocabulary

# Torts

- Torts – wrongdoings that are not related to contracts for which someone else other is liable for some sort of injury
  - The Injury can be physical, emotional, and reputational
  - Bob Runs a Red light and hits Jen, Jen is injured in the accident and must pay for medical expenses etc.
    - Bob becomes the tortfeasor (wrongdoer) and is accused of wrongdoing by Jen
  - Imagine that Bob is actually texting on his cell phone while drunk and the same accident occurs
    - Jen may have a claim for punitive damages (punish the wrongdoer for the action)
  - Three types of Torts
    - Intentional ; negligence ; strict liability
- Cause of action (actionable) – the right to file a tort ; but not the right to win

# Intentional and Personal Torts

- Intentional Tort – Party committing the wrongdoing intends to commit the wrongdoing knowing it will cause injury
  - Assault / Battery / false imprisonment / defamation / invasion of privacy / intentional infliction of emotional distress / misrepresentation / trespassing / conversion (like stealing)
  - Most intentional torts are also crimes!
- Personal Torts
  - Assault and Battery
    - Assault – intentional act that causes fear or apprehension of some immediate harmful or offensive contact
      - Pointing a gun at someone is assault
    - Battery – The actual act of intentionally harming by touching another.
      - Actually shooting someone is battery
  - False imprisonment / false arrest
    - False Imprisonment – the violation of a person’s personal liberties by confinement or restraint by someone with no legal reason to do so
    - False Arrest – if the imprisonment is made by someone claiming authority to make a lawful arrest
      - Police and Citizen’s Arrest
        - Not held to absolute certainty – Police must have probable cause or a warrant but a conviction is not required
        - Citizen’s arrest based on state laws (reasonable cause to believe someone is doing something wrong) – you’re better off calling the police.

# Defamation

- Defamation
  - The publication of a factual statement that is untrue and injurious to a person's reputation broken down into two categories:
    - Libel – Written Defamation
      - Does not require proof of actual monetary damages to the injured party
    - Slander – Spoken Defamation
      - Slander per se – a statement that on its face is defamatory – does not require proof of damages.
        - The mayor was spending time with Jen, a well known prostitute
      - If the statement is not Slanderous on its face the plaintiff must prove actual monetary damages before the slander is actionable.
        - The mayor was spending time with Jen
      - Defamation only exists if the statement is untrue and the statement is one of fact rather than opinion and must be a believable fact. – Satire is not defamation if it is obvious that the statements are satirical
- Defamation in the Media
  - First Amendment – Freedom of the Press
    - News media is not liable for defamation to public figures unless the statements were made with a disregard of the truth or malice
      - Tabloids – They don't have any facts and therefore can write whatever they want about public figures (actors / politicians etc.)
      - The injured party has burden of proof in news media public figure defamation cases.

# Intentional Infliction of Emotional Distress and Abuse of Process and Civil Rights

- Intentional Infliction of Emotional Distress – Intentional infliction of mental suffering
  - Tough to prove to courts due to ability to make false claims
    - Requires outrageous conduct that is intentional and reckless
    - Harassment in the workplace
    - Failure to pay by insurance companies or creating unnecessarily difficult claims processes
    - Crevel collection tactics (threats / intimidation)
    - Extreme bullying
- Malicious Prosecution and Abuse of Process
  - Misusing the Judicial system – filing false criminal or civil charges
    - Outcome of the Criminal case must be favorable to the defendant and the defendant must prove malicious intent by the tortfeasor
- Civil Rights
  - Lawsuits against police for excessive force
  - Job Discrimination / Harassment

# Intentional Torts Business / Property and Fraud (146-149)

- What is the difference between disparagement and forms of personal torts such as libel and slander?
  - Does disparagement require proof of property and monetary losses?
- What is breach of contract? How is breach of contract different from normal businesses competition?
  - In a breach of contract tort who is responsible for committing the tort? Explain a scenario. Who is not responsible for the tort? Is the irresponsible party responsible in any other manner?
    - Utilize Application 7.5 to assist in your understanding.
  - Does a contract always need to exist for a business tort to exist? Explain
- Discuss the difference between Trespass and Conversion in Property Torts – give an example of each to explain the difference.
- What is intellectual property? How has the internet created a bigger issue with intellectual property and infringement on intellectual property?
- Vocabulary
- Copy the table in figure 7-1 on page 148 into your notes.

# Fraud and Defenses to Intentional Torts

- Fraud
  - Misrepresentation with the intention to deceive where the misrepresentation is justifiably relied upon and causes damages.
    - Misrepresentation must be presented as a matter of fact not opinion and suggests the disregard of others opinions.
      - Opinions can be fraud if represented as opinion by an expert
    - Must be knowingly false and made with the intent to deceive
    - Must be reasonably relied on by the victim and have no way of knowing the statement is false
    - Victim must prove financial loss
    - Negligence is not Fraud (it is a different type of tort)
- Defenses to Intentional Torts
  - Consent – If a victim consents to an action the action can not be a tort (medical treatments without consent become battery) children can not give consent
  - Privilege – the person committing the action has the right to commit such action by position of authority and status
    - Parent disciplines a child physically is not a tort
    - Doctor can render treatment in an emergency without consent
    - Self Defense – must be reasonable based on the threat
  - Immunity – Often, but not always, governments are immune from tort liability based on statutory law



# Intentional Torts Summary

Personal Torts	Business Torts	Property Torts
Assault	Disparagement	Trespass
Battery	Inducing Breach of Contract	Conversion
False Arrest	Interference with Prospective Economic Advantage	Intellectual Property Infringement
Defamation		Fraud
Invasion of Privacy		
Intentional Infliction of Emotional Distress		
Malicious Prosecution / Abuse of Process		
Civil Rights Violations		

# Negligence (149-154) Do not Read Case Files

- What is Negligence? Is Carelessness the same thing as Negligence? Why or why not?
  - What conditions must exist for a negligence tort to exist?
- Explain Application 7.6 Why does a negligence tort not exist? What of the outlined conditions do not exist in this situation?
- Are all automobile accidents negligence torts? Explain? What Duty of Due Care?
- Is Duty of Due Care different depending on the individual and the situation? How is Duty of Due care determined for the average citizen and for a professional different?
  - What is “res ipsa loquior” (rayz IP-sah loh-QUIT-her)?
  - How is res ipsa loquior different from negligence per se?
- What is Actual Cause
  - Explain the ‘but for’ test and difficulties in the application of this test. Is actual cause always clear?
  - When is the substantial factor test used? Explain
- Fill in the blank “If there is no injury there is \_\_\_\_\_”
- Vocabulary

# Negligence

- Negligence – Failure to act as a reasonably prudent person would act under the same or similar circumstances
  - Negligence can be a tort if it results in damages if the following elements prove to be true
    - The tortfeasor was under a duty to use due care
    - The tortfeasor breached that duty of due care
    - The tortfeasor's act with the actual cause of was the actual or proximate cause of injuries or damages
    - Damages were incurred
- Duty of Due Care
  - The duty to act in a responsible manner and not injure those around us
    - If you are in an auto accident and someone is injured you are required to call for help no matter what the circumstance of the accident.
    - If you see someone injured you are under no obligation to stop and help unless a special circumstance or relationship exists
      - A police officer on duty who does not stop to help breaches duty of due care the average citizen does not.
  - Professional Conduct is measured by the accepted practice of a professional when determining negligence (medical malpractice)
  - Res ipsa loquitur (rayz IP-sah loh-Q-ter) – negligence is obvious from the event
    - Doctor amputates the wrong foot / a police officer shoots an unarmed elderly woman because he was twirling his gun like a Cowboy.
  - Negligence per se – negligence is inferred due to violation of a statute (running a red light and causing injury)

# Actual v Proximate Cause

- Actual Cause
  - The negligent act was the actual cause of the injury
    - You run a red light and hit a pedestrian breaking his or her leg –
- Proximate Cause
  - Establishes liability for foreseeable consequences – How far does liability extend?
    - You start a fire in your apartment because you left the stove on. You burn down not only your apartment but twenty surrounding units. Are you responsible for the twenty surrounding units?
    - John is driving negligently his car and texting, he looks up and swerves to avoid hitting another car, in swerving he crashes into a traffic signal post, the post falls on tree which a branch breaks off of, hitting a pedestrian causing injury (probably not proximate cause because the injury was unforeseeable or came about in a highly extraordinary manner)

# Common Types of Negligence Torts

- Automobile Accidents
  - Negligence in Operation or Maintenance
- Liability of Landowners (Premises Liability) – Duty of Care based on person injured – *Most people have insurance for this or its in homeowners insurance*
  - You're walking to class and you trip and fall on a cracked sidewalk in falling you sustain a concussion and a broken arm – the school is liable – Invitee (business purpose)
  - A guest in your home is electrocuted when using a faulty light switch – you are liable – licensee (Guest)
  - A criminal breaks into your house to steal your TV he slips and falls in the process – you are most likely not liable (depending on state laws if categories exist) - trespasser (unwelcome)
    - Some states see all people on property as equal and hold landowner responsible regardless of class.
  - **Attractive Nuisance Doctrine** – Landowner has a duty to protect children from hazards likely to attract unwelcome trespassing children
    - Tree Houses / Trampolines / Horses (NJ) / Piles of Leaves/ Swimming Pools etc.
- Professional Negligence (Malpractice)
- Defective Products – Product Liability
- Emotional Distress – often only possible along side physical injury
- Loss of consortium – Injuring your Spouse through Negligence

# Negligence Cases / Defenses (152-156)

- Read the Cases on page 152 and 156 answer all case analysis questions for both cases
- Read the section on Defenses of Negligence on page 155 to 156
- Vocabulary

# Defense of Negligence

- Despite negligence claims, mitigating factors and exceptions to negligence torts exist and can be utilized to defend against negligence torts
- **Contributory Negligence**
  - The plaintiff is at part responsible for the negligent action and injury and therefore the defendant is not liable in any manner
    - Countered by **last clear chance** – the plaintiff may be contributorily negligent but the defendant had the last chance to avoid the accident
- **Comparative Negligence**
  - Some states do not utilize contributory negligence and rather assign fault and damages based on proportion of contributory negligence
    - Plaintiff 10% at fault Defendant 90% at fault – Damages at 90% of original claimed damages
    - Sometimes limited if plaintiff is 50% or greater at fault no damages are awarded
- **Assumption of Risk** – You know that you are going to be in a situation where you can get hurt - often accompanied by release forms but do not have to be.
- **Immunity** – Governments are often not liable based on statutory law.
  - DMV is not liable for not revoking a license of a negligent driver

# Strict Liability and Damages (157-161)

- What is the difference between Strict Liability and other forms of Torts such as Negligence and Intentional torts?
  - Give an realistic example of a strict liability scenario
- Strict Liability is often seen with “Dangerous Animals”
  - Can a person be held liable for their dog biting another person even if the dog has shown no history of violence towards people? Explain?
  - What happens if you decide to keep a black bear in your back yard as a pet. Are you liable If the bear attacks someone?
- What is an abnormally dangerous activity? How does liability apply in this situation? When can strict liability become negligence given the example in the text?
- Can a retailer like Walmart be responsible for defective products they sell by a different manufacturer? Explain?
  - Under what circumstances does defective product liability exist?  
Under what circumstances does it not exist?
- What is the most common defense to strict liability?
- Vocabulary



# Damages for Strict Liability

- Damages are often Compensatory Damages – Compensates the party for the loss sustained
  - Special Damages – Financial Expenses resulting from the injury (medical expenses and lost earnings)
  - General Damages – no absolute or quantifiable value (pain and suffering / loss of a limb / permanent disfigurement)
    - Limited
  - Punitive Damages – Punishment for Wrongdoing – Seen mostly in intentional and negligence torts (gross negligence)
    - Excessive Punitive damages violates the 14<sup>th</sup> amendment and Due process clause
    - NJ Law caps punitive damages in injury cases at five times the amount of compensatory damages or \$350,000, whichever is greater
- Side Note One bite Rule in NJ – You are strictly liable for your dog biting another person in NJ regardless of the animals past behavior.

# Case Analysis(159-162)

- Read Burnett v National Enquirer, Inc. on page 159 – 161  
Answer all Case Analysis Questions
- Read Application 7.7 on page 162
  - Consider the cases listed and the situations they discuss. Given the cases here is the punitive damage rule a good rule? Why or why not? Explain your position and create an argument in a short paragraph or two?

# Liability for Torts of Another / Workers

## Compensation and Environmental Law (162-164)

- Discuss a situation in which the tortfeasor is not the only person or entity responsible for the tort?
  - What is “respondeat (respon diat) superior” and “vicarious liability”
  - Can respondeat superior be avoided when an employer utilizes a contractor instead of a standard employee? What doctrine controls this? What is the standard test that defines whether or not this doctrine applies?
- If you are injured while working for an employer does tort law apply? Why or why not?
  - Does this cover all workplace injuries or only certain ones?
    - If a customer in a supermarket commits battery on a cashier explain where torts apply and do not apply?
      - How are damages recovered by the cashier for medical bills? Can damages be recovered in any other way?
      - Can damages be recovered from both the employer and the tortfeasor? Explain
    - What government organization governs workplace safety?
- What government organization governs business’s impact on the environment?

# Application and Analysis Questions

- Answer all application and Analysis Questions on page 166-167

# Assignments and Projects

- Complete Assignments and Projects Question 1 and 3 Figure 7-4 is on page 168