

UNIVERSITY OF ILLINOIS
AT URBANA-CHAMPAIGN

Engineering Law

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Class 8



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Announcements

- Review Quiz 2
 - Verify Grades on Compass
- Reminder - Exam #2 – November 1st



Summary - 1

- Statute of Frauds - If a contract is a “big deal” then it must be in writing to be enforced
- A contract will not be enforced by the courts if it violates public policy
- Performance of a contract is based on an objective reasonableness standard
 - Performance may be excused under certain circumstances
 - Performance may also be modified by the parties or by a court



Summary - 2

- Remedies for breach of contract
 - Damages
 - Compensatory
 - Special
 - Punitive
 - Liquidated
 - Injunction
 - Specific Performance
- Both parties have a duty to mitigate damages



Summary - 3

- Courts can enforce remedies in many fashions:
 - Writ of execution - seize and sell
 - Garnishment - get from 3rd party
 - Attachment/Lien - can't sell without paying
 - Contempt of Court – jail them



Summary - 4

- When a person assumes ownership of goods, they “take title”
 - Typically person with title to goods bears loss
 - Buyer – delay taking title
 - Seller – transfer title ASAP
- Warranties
 - Implied
 - Express
 - Extended



Summary - 5

- Implied Warranty
 - Title
 - Merchantability
 - Fitness for Particular Purpose
- Express Warranties
 - “I really mean it – this is a dealbreaker”
 - Often coupled with liquidated damages



Summary - 6

- Extended Warranty
 - Not required, but frequently used as an inducement to purchase goods
 - Becomes binding on seller at purchase
- Disclaimer
 - Most warranties can be disclaimed by agreement
 - “As is” – disclaims most warranties



On To Torts!

- New section – Torts!
 - Torts are wrongs – breach of a duty that society says that you owe to another
 - Civil lawsuit rather than criminal prosecution
 - By living in society, you must abide by a certain standard of care in your actions
 - Kind of like a societal contract you didn't know you were bound by!
- Intentional Torts
- Negligent Torts



Intentional Torts - 1

- Torts vs. Crimes - Historically
 - Crimes were offenses against the state
 - Best interest of society
 - Don't necessarily care about the individual victim
 - On the other hand, Torts were designed to compensate the victim for the bad acts of another
 - Today, often have both the criminal trial for the crime and a civil trial for a tort related to the crime
- Example – OJ was found not guilty of the crime of murder, but found liable for the tort of wrongful death



Intentional Torts - 2

- Torts vs. Crimes
 - Tort and related crime may have different elements and different standards of proof
 - Tort = civil = preponderance of the evidence
 - More likely than not = 50%+
 - Criminal = beyond a reasonable doubt = 90%-ish?
 - Damages/Remedies are a lot more flexible with torts – but are often limited with crimes
 - Example – OJ is liable for \$30M for the tort of wrongful death, but would not have been liable for such a sum based on a criminal conviction for murder



Intentional Torts - 3

- Liability arises from an intentional act by a tortfeasor – one who commits the tort
- Damages –
 - Compensatory – medical, pain and suffering
 - Punitive – punish the tortfeasor for bad acts
 - Damages can range from symbolic (\$1) to extremely high values for tortfeasors the jury wants to punish
 - Judges can throw out unreasonable verdicts, but rarely do
 - But! Damages may be dischargeable in bankruptcy or non-collectable due to homestead, pension, or trust



Assault and Battery

- Assault – immediate apprehension of offensive contact
- Battery – unwanted touching
- Can you have a battery without assault?
 - Doctor operating on unconscious patient beyond permission
 - Adding offensive substance to food that is then eaten



Intent

- What if you threw a rock to scare someone (you meant to miss), but ended up hitting them?
 - Still liable for tort of battery (plus assault if they saw it coming)
 - Just need intention to do act that results in contact for the tort of battery, although intention to inflict an injury may be required for crime
- What if you hit the wrong person with a rock?
 - Still liable for tort of battery (plus assault if they saw it coming)
- Bottom Line: Your intent typically does not matter – if it happens, you are typically liable



Imprisonment and Distress

- False Imprisonment
 - Restraint of a person in a bounded area without justification or consent
 - Any bounded area – including car, room, etc.
 - No time limitation – still a tort if very short, but damages may be minimal
- Intentional Infliction of Emotional Distress
 - Severe emotional distress - need big symptoms
 - Extreme and outrageous behavior
 - Often abused and viewed skeptically by courts
 - Ex – Neighbor impersonates teen boy on Facebook to mess with teen girl, tells girl to kill herself - she does



Variations

- Intentional torts are creations of the common law, but have been codified in most states
- Assault, Battery, False Imprisonment, and IIED are the classic intentional torts, but the state can codify other actions as torts
 - Including OJ’s “wrongful death”
 - Torts and names vary from state-to-state
 - Intentional torts are typically uninsurable
 - Negligence is typically insurable
 - Run over someone on purpose? Car insurance won’t pay. Accident? OK.
 -  If you are not sure if something is a tort in your state, consult a lawyer

Negligence

- Negligence
 - Conduct that is culpable because it falls short of what a reasonable person would do to protect others from foreseeable risks of harm
 - Underlying principle is still reasonableness
- Factors for negligence:
 - A Duty of Care
 - Breach of the Duty
 - Proximate Cause
 - Damages
- Typically tried to jury – wide variance in verdicts



Duty of Care - 1

- Liability should not be imposed unless injury was reasonably foreseeable
- Reasonable
 - What would a reasonable person do?
- Foreseeability
 - Would a reasonable person have foreseen it?
- Ex – A falls and is injured at B’s party
 - Opt 1 – Fell in pit - A asserts that B should have marked pit with “Danger” sign before having a party
 - Opt 2 – Slipped on grass - A asserts that B should have made sure his grass was not slippery so that A



would not fall

Duty of Care - 2

- Great variance in duty of care from state to state
 - and even from jury to jury
- “Duty creep” – All kids must now wear a helmet?
- No more “accidents?”
- “Someone has been hurt, they need money”
 - As a large company, you are an unsympathetic and easy target
 - Duty is not applied uniformly from person to person – some are more sympathetic (both Ps and Ds)
 - Ex – little old grandmother falls as opposed to man
 - Ex – Local store accused of negligence due to slip and fall vs. Walmart



Breach of Standard Of Care

- Breach of Standard Of Care
 - Once we determine what the standard of care should be, did the D abide by it?
- Proximate Cause
 - Did the failure to follow the standard of care cause the injury?
 - Was the injury foreseeable?
 - “But for” – the injury would not have occurred “but for” the action
 - Standards can vary



Proximate Cause

- Ex: A is working on a ceiling electrical box on a ladder and B is standing below holding the ladder. They previously turned off the power and left a sign. C doesn't care and turns on the power shocking A and causing him to fall on B, injuring him. Are C's actions the proximate cause of A's injury? B's injury?
- **Probably yes**
- When A is shocked and falls he knocks over a gas can, the gas ignites and the building catches on fire which causes the building to collapse destroying D's car. Is C the proximate cause of D's car destruction?
- **Probably not**
- But! Was there a duty to secure gasoline? Was there a duty to provide sprinklers? What if there were multiple failing parties?



Joint Liability

- If multiple parties have failed in their duty, then they may be held jointly liable
 - Court/Jury may apportion damages (70-30)
 - If no apportionment, then P can recover full amount from either
 - Compare with Comparative and Contributory Negligence later



Res Ipsa Loquitur

- “It speaks for itself”
 - “I don’t know exactly who did it, but somebody on your end screwed up.”
 - Ex - Goes in for surgery and a sponge is left in
 - Injury would not have occurred unless someone was negligent
 - D had control of instrument causing injury
 - P was not responsible for their own injury and there is no other reasonable explanation



Defenses To Negligence - 1

- Assumption of Risk
 - You knew the risks and decided to engage in the activity anyway
 - “Signing a waiver” - #1 Negligence Defense
 - But! Only the risks normally associated with the activity and with full disclosure
 - Only defense to negligence, not intentional torts
- Contributory Negligence
 - The P’s own negligence contributed to their injury (maybe only 1% of total negligence)
 - (Some states) No recovery – Ps must not act negligently in any way if they want money from the courts



- Alabama, DC, Maryland, North Carolina, Virginia

Defenses To Negligence – 2

- Comparative Negligence
 - (Most states) P's negligence may reduce D's liability, but D should still pay for their own negligence
 - Ex – \$100,000 in damages, D 70% liable, but P 30% liable = D pays \$70K to P
 - Can lead to abuses – P injures himself for \$1M in damages, but is 90% to blame. However, D still has to pay \$100K to P
 - Some states have special rules to address this
 - Illinois – No recovery if P is $\geq 51\%$ responsible



Property Torts

- We have previously discussed torts in terms of injury to person, but land and interests in property can also be harmed
 - Property torts are some of the most ancient torts and have varied greatly over time
 - Trespass to Land
 - Trespass to Chattels – personal property
 - Conversion



Trespass To Land

- Trespass to land
 - Land rights were incredibly important historically, just about everything was based on land
 - Land was your wealth, it was your source of food, it was your job, even the basis of your voting rights in some places – including some US states before 1850!
 - Can sue anyone who enters land without your permission (if they mess with your crops, your family could die)
 - Compensatory damages may be difficult to prove, but potential for punitives
 - “Land” includes anything attached to the land, like houses, buildings, trees, crops, etc.



Trespass to Chattel

- Any interference with the possession of your personal property
 - Any physical contact with the chattel
 - Any dispossession of the chattel (taking it, destroying it, or preventing your access)
 - Again, compensatory damages for contact may be hard to prove, but punitives may be available
 - Personal property is anything tangible not connected to land (not intellectual property, not real property)



Conversion

- Taking my land and making it a chattel (or vice versa) and depriving me of it
- Ex – You take my lumber and build a shed
 - Trespass to Land + Chattel -> Land = Conversion
- Ex – You cut down my trees and leave the lumber on my land
 - Trespass to Land + Land -> Chattel = Conversion
- Ex – You cut down my trees and haul away the lumber
 - Trespass to Land + Conversion + Trespass to Chattel



Replevin and Trover

- Replevin – give me back the stuff you took
- Trover – pay me for the stuff you took
- Ex – Hey! You went on my farm (trespass to land) took my axe (trespass to chattel) and cut down my tree! (conversion) You then took the wood! (trespass to chattel)
- Give me the wood back! (replevin) Sorry, I sold it.
- Then pay me for the wood! (trover)



Trespass To Electronic Chattels

- Successfully re-invented trespass to chattels for use against spammers
 - The spammer activity was a trespass against the computer network
 - Damages due to cost of electricity, bandwidth, and loss of customer satisfaction
- Screen-scraping e-bay data
- Usually must allege some sort of “damage”, but taking up space and using resources may qualify



- Questions?

