

5.2: Intentional Torts

In an intentional tort, the tortfeasor intends the consequences of his or her act, or knew with substantial certainty that certain consequences would result. This intent can be transferred. For example, if someone swings a baseball bat at someone else but the person ducks and the bat hits a third person, the person hit is the victim of a tort even if the person swinging the bat had no intention of hitting the person actually injured.

It is useful to think of torts based on the type of rights being protected.

Theory of Liability	Description
Interference with Personal Freedom	
Assault	Causing the apprehension or fear of immediate harmful or offensive contact
Battery	Application of force that results in harmful or offensive contact with a person's body
False Imprisonment	Intentional confinement or restraint of a person's movements without justification or consent
Intentional Infliction of Emotional Distress	Intentionally or recklessly causing another person severe emotional distress through extreme or outrageous acts
Interference with Property Rights	
Trespass to Land	Unauthorized entry onto land that is visibly enclosed & owned by another
Trespass to Personal Property	Taking or harming another's personal property without permission
Conversion	Wrongful possession or disposition of property as if it were one's own with the intent to do so permanently
Nuisance	Condition or situation that interferes with the use or enjoyment of property
Interference with Economic Relations	
Disparagement	False & injurious statement that discredits or detracts from the reputation of another's property, product or business
Interference with Contractual Relations	Intentional inducement of a party to break an existing contract
Interference with Prospective Advantage	Intentional interference with a potential business relationship
Misappropriation	Using another's property dishonestly for one's own use
Wrongful Communications	
Defamation	Harming the reputation of another by making a false statement
Slander	Spoken defamation
Libel	Written defamation
Invasion of Privacy	Violating someone's right to be left alone or to restrict public access to confidential information through: <ul style="list-style-type: none">• appropriating the person's name or likeness;• invasion of physical solitude;• publicly disclosing private facts; or• false light

Interference with Personal Freedom

Assault is the threat of force on another that causes that person to have a reasonable apprehension or fear of immediate harmful or offensive contact. Actual fear or physical injuries are not required for assault. It is also not necessary for the tortfeasor to intend to cause apprehension or fear. If someone points a realistic-looking toy pistol at a stranger and says “give me all your money” as a joke, it is still assault if a reasonable person would have had apprehension or fear in that situation. The intentional element of assault exists here, because the tortfeasor intended to point the realistic-looking toy at the stranger.

Battery is the application of force to another that results in harmful or offensive conduct. It includes any non-consensual touching, even if physical injuries are not present. In battery, the contact or touching does not have to be to the person. Grabbing someone’s clothing or possessions they are holding is battery. Notice that assault and battery are not always present together. Assault can occur without physically touching the victim. Similarly, a surgeon who performs unwanted surgery or inappropriately touches a patient who is sedated has committed battery but not assault because the patient did not feel fear or apprehension.

When someone is sued for assault or battery, several defenses are available. The first is consent. Boxers have consented to being battered when competing. Self-defense and defense of others also may be available defenses, as long as the self-defense is proportionate to the initial force.

False imprisonment occurs when someone intentionally confines or restrains another person’s movement or activities without justification. The protected interest is the right to travel and move freely without impediment. This tort requires actual and present confinement. False imprisonment is challenging for retailers and other businesses that interact regularly with the public, such as hotels and restaurants. The **shopkeeper’s privilege** allows businesses to detain suspected thieves until law enforcement arrives. The detention must be reasonable, however. Store employees must not use excessive force in detaining the suspect, and the justification, manner, and time of the detention must be reasonable.

Intentional infliction of emotional distress occurs when a tortfeasor intentionally or recklessly causes another person severe emotional distress through extreme and outrageous acts. A plaintiff has to prove the defendant’s actions would be outrageous to a reasonable member of the community. The standard is objective. It is not enough for the plaintiff to believe the defendant acted outrageously.

Although the standard for outrageous conduct is objective, the measurement is made against the particular sensitivities of the plaintiff. Exploiting a known sensitivity in a child, the elderly, or pregnant women can constitute intentional infliction of emotional distress. Businesses must be careful when handling sensitive employment situations to avoid potential liability. This is especially true when firing or laying off employees. Such actions must be taken with care and civility. Similarly, bill collectors and foreclosure agencies must be careful not to harass, intimidate, or threaten people.

Interference with Property Rights

Intentional torts can also be committed against property. **Trespass to land** occurs when someone enters onto, above, or below the surface of land that is visibly enclosed without the owner’s permission. The trespass can be momentary or fleeting. Soot, smoke, noise, odor, or even a flying arrow or bullet can all become the basis for trespass. These can also be the basis for nuisance claims. **Nuisance** is a condition or situation that interferes with the use or enjoyment of property. Nuisance claims can be public (applying to community areas such as parks or the environment) or private (applying to privately owned property such as houses).

Trespass can be innocent or willful. An innocent trespass occurs when someone enters another’s property by mistake or when they believe they have permission but do not. Willful trespass occurs when someone intentionally enters another’s property knowing they do not have permission to be there.

There are times when trespass is justified. Someone may have a license to trespass, such as a meter reader or utility repair technician. There may also be times when it may be necessary to trespass—for example, to rescue someone during an emergency.

Some states do not require the land to be visibly enclosed to be protected from trespass. Therefore, residential homes in urban and suburban areas do not always need a fence around the property to be protected from trespass.

Trespass to personal property is the unlawful taking or harming of another’s personal property without the owner’s permission. The tort of **conversion** is the wrongful possession or disposition of property as if it were one’s own with the intent to do so

permanently. It is the civil equivalent to the crime of theft. An employer who refuses to pay an employee for work commits conversion. Similarly, conversion occurs when a business returns personal property to the wrong customer.

Interference with Economic Relations

Torts can also take place against goods or products instead of people. **Disparagement** is a false and injurious statement that discredits or detracts from the reputation of another's property, product, or business. To recover, the injured party must prove that the statement caused a third party to take some action resulting in economic loss to the plaintiff. In other words, the victim of the statement must prove that it lost customers or goodwill as a result of the false statement made about its business or products. These types of false statements are considered unfair competition and, therefore, are unlawful.

Similarly, unfair competition can also be in the form of interfering with a competitor's contracts. **Tortious interference with contractual relations** prohibits the intentional interference with an existing valid and enforceable contract by intentionally inducing one of the parties to break the contract, causing damage to the relationship between the contracting parties. This occurs when a business tries to break up a competitor's contract with vendors, suppliers, or customers in an effort to harm them.

There are four elements to prove intentional interference with contractual relations:

1. A contract exists between the plaintiff and a third party;
2. Defendant knew of the contract;
3. Defendant improperly induced the third party to breach the contract or made performance of the contract impossible; and
4. Plaintiff was injured.

Similarly, **tortious interference with prospective advantage** is an intentional, damaging intrusion on another's potential business relationship, such as the opportunity to obtain customers or employment. Fair competition does not give rise to this tort. However, if a business engages in fraud, intimidation, or threats to drive away potential customers from its competitors, then it is liable. Tortious interference with prospective advantage applies to conduct before a contract exists.

Misappropriation occurs when a person or business uses someone else's property dishonestly for one's own use. Misappropriation is a very broad tort because it covers any likeness or identifying characteristic, as well as property such as patents, copyrights, and trademarks. It also applies to a business's name and goodwill.

Wrongful Communications

Another intentional tort is **defamation**, which is the act of harming the reputation of another by making a false statement to a third party. Spoken defamation is considered **slander**, while written defamation is **libel**. To be liable for defamation, the words must be made to a third party, which may include emails, text messages, and social media. The First Amendment provides strong protection for news organizations, and courts have held that public figures must show actual malice before they can win a defamation lawsuit. This means celebrities and famous individuals must prove the media knew that it was publishing false information, or that it published the information with reckless disregard for the truth. Truth is a complete defense to defamation.

The **invasion of the right of privacy** is essentially the violation of a person's right to be left alone and to restrict public access to personal information, such as tax returns and medical records. There are four forms of this tort:

Form of Invasion of Privacy	Description
1. Appropriating a person's name or likeness	Using someone's name, photograph, or other identifying characteristic for commercial purposes without permission
2. Invasion of physical solitude	Window peeping, eavesdropping, using drones to video private areas, going through garage to find confidential information, etc.
3. Public disclosure of private facts	Disclosure of a private citizen's finances, medical conditions, or personal relationships through a public medium such as social media
4. False light	Using publicity to place a person in false light in the public eye, such as objectionable hobbies or attributing beliefs and opinions to the person that he or she does not hold

Fraud is the intentional misstatement of a material fact that is relied upon by a third party to the detriment of the targeted party. It requires the tortfeasor to misrepresent facts (not opinions) with knowledge that they are false or with reckless disregard for the truth. An “innocent” misrepresentation is not enough—the defendant must know he or she is lying. Fraud can arise in any number of business situations, such as lying on a résumé to gain employment, lying on a credit application to obtain credit, or in product marketing. Here, there is a fine line between **puffery**, or seller’s talk, and an actual lie. If an advertisement claims that a particular car gets a certain gas mileage or meets emissions standards, then fraud occurs if those statements are untrue. Conversely, an advertisement that promises “unparalleled luxury” is only puffery since it is opinion.

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