

5.5: Concluding Thoughts

Tort law significantly impacts businesses, regardless of industry. Businesses must not engage in activities with the intention to harm employees, customers, and the public. They also must act reasonably to avoid injuries caused by their negligence. Similarly, manufacturers can be strictly liable for design defects, manufacturing defects, and failure to warn consumers. Because many businesses are seen to have “deep pockets,” they are often targeted by plaintiffs when injured by their products and services.

Intentional torts occur when the tortfeasor intends the consequences of his or her act or knew with substantial certainty what the consequences would be. Businesses are affected by intentional torts and need to be careful not to commit them against their employees, customers, and members of the public. It is useful to categorize intentional torts based on the types of rights being protected, such as preventing injuries to persons, property or privacy.

Negligence imposes a duty on all persons to act reasonably and to exercise due care in dealing and interacting with others. Negligence has five elements. First, the plaintiff must demonstrate the defendant owed the plaintiff a duty of care. Second, there must be a breach of that duty. A breach occurs when the defendant fails to act like a reasonable person. The plaintiff must also demonstrate that the defendant caused the plaintiff’s injuries. Both causation-in-fact and proximate causation must be proven. Finally, the plaintiff must demonstrate legally recognizable injuries, which include past, present, and future economic, medical, and pain and suffering damages. Defendants can raise several affirmative defenses to negligence, including assumption of risk and comparative negligence.

In areas where strict liability applies, the defendant is liable no matter how carefully it tried to prevent harm. Carrying out ultrahazardous activities results in strict liability for defendants. Another area where strict liability applies is in the serving of alcohol to minors or visibly intoxicated persons. A large area of strict liability applies to the manufacture, distribution, and sale of unreasonably dangerous products. Products can be unreasonably dangerous because of a production defect, design defect, or both. A product’s warnings and documentation are a part of a product’s design, and therefore inadequate warnings can be a basis for strict product liability. Assumption of risk, product misuse, and commonly known dangers are all defenses to strict product liability.

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