Intentional Torts

Overview

Definition

Private wrong

Plaintiffs

Individuals

Class action

Defendants

11th Amendment immunity

Protects government

Gov't will waive immunity for certain situations

Compare to

Public wrongs

Criminal law

Civil infractions

Boundary: civil v. criminal

Criminal = recklessness

Civil = negligence

Battery

Required elements (to prove)

Intentional

(physical) Contact

With person

Of another

Offensive

To reasonable person

(Element is a legal term)

Assault

Required elements (to prove)

Intentionally

Put another

In reasonable

Fear

Of imminent

Battery

False Imprisonment

Required elements (to prove)

Intentionally

Restraining

Another

Against will

No reasonable

Escape

Trespass to Chattels

Required elements (to prove)

Intentional

Interference with

Rightful

Ownership, or

Control

Of personal property (generally refers to moveable property)

Of another

Interference with business relationship

Required elements (to prove)

Mental state

Intentional

Negligent

Business relationship

Existing

Reasonable expectation of future

Interference

Variable

Damages

Defamation (liable (written) and slander (spoken))

Elements to prove

Falsity

Mental state

Intentional

Negligent 

To prove (continued)

Publication

To third parties

Who understand

As fact

Not as opinion

Measurable damages

Public figure exception

Public interest exception

Actual malice

Unintentional tort

Negligence

Common law

Reasonably prudent person

Per se

Violation of statute

Statute has to have been designed to prevent the harm that occurred

Elements (all must be proved)

Duty (reasonably prudent person)

General

Specific

Breach

Causation

Cause in fact

"But for" test (only one cause)

"Substantial factor" test (for 2 or more)

Proximate cause

Policy (the line between liability and no liability)

Foreseeability (whether the breach of duty was reasonably foreseeable) (acts of terrorism are considered absolutely unforeseeable)

Intervening causes

Damages

Variable

Proof of damages

Res ipsa loquitur

"the things speaks for itself"

Elements

Instrumentality (physical object)

Nexus (connection between actual object and resulting harm)

No other explanation

Strict Liability

Products liability

Chain of production

Designer

Manufacturer

Wholesaler

Retailer

Ultrahazardous activity

Type of activity

Allocation of fault

Defenses (affirmative)

Consent

Explicit

Implicit

Capacity

Waiver

Defense of self (must be proportional to perceived harm, for self and others)

Defense of others

Necessity

Assumption of risk(aware of risks, but make the choice to participate anyway)

Contributory negligence

Comparative negligence (allocates fault)

Agency

Absence of

"Beyond scope of employment"

E.g., acting outside employer's instructions