

Chapter 6 – Tort Law

Tort Law

- Designed to compensate those who have suffered a loss or injury due to another person's wrongful act
- Purpose of tort law is to provide remedies for the violation of various protected interests.

Compensatory Damages

- Compensate or reimburse the plaintiff for actual losses. Make the plaintiff whole as if tort had not occurred
- Special damages compensate the plaintiff for quantifiable monetary losses (medical expenses, benefits, lost wages, etc)
- General damages compensate individuals for nonmonetary aspects of harm suffered (physical and emotional pain, loss of reputation, etc.)

Punitive Damages

- Punish the wrongdoer and deter others from similar wrongdoing
- Appropriate only when defendant's conduct is reprehensible
- Gross negligence - an intentional failure to perform a manifest duty in reckless disregard of consequences
- Subject to limitations under the due process clause of the Constitution

Tort Reform

- Tort law encourage too many trivial and unfounded lawsuits which seek excessive awards and add unnecessary costs

Types of Reforms

- Limiting the amount of both punitive damages and general damages that can be awarded
- Capping the amount that attorneys can collect in contingency fees (based on percentage of damages award)
- Requiring the losing party to pay both the plaintiff and the defendant's expenses

Class Action Fairness Act (CAFA) of 2005

- Class action - lawsuit in which many plaintiffs bring the suit as a group
- Product liability - suits involve the manufacture, sale, and distribution of dangerous and defective goods
- Forum shopping - looking for a state court known to be sympathetic to their cause
- CAFA has turned jurisdiction for class action lawsuits over to the federal gov't and no longer the state courts

Classification of Torts

- Intentional torts result from the intentional violation of a person or property (fault + intent)
- Unintentional torts or negligence results from the breach of a duty to act reasonably (fault - intent)
- A popular defence in intentional torts is consent - when a person consents to the act that damages him, there is no liability

Intentional Torts Against Persons

- Tortfeasor - one committing the tort, must intend to commit the act regardless of intention to harm or damage a person or property
- Intent means that the tortfeasor knew w/ substantial certainty that specific consequences would result from the act
- Transferred intent - when defendant intends to harm one, but unintentionally harms a second person

Assault

- Any intentional and unexcused threat of immediate harmful or offensive contact

Battery

- If the act that created the apprehension is completed and results in harm to the plaintiff

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