

Torts Law

Contents

Assignment 2	3
Assignment 3	3
Answer to Question No. 4 at Page 175	3
Assignment 4	4
Answer to Problem 1 at Page 174.....	4
Answer to Problem 2 at Page 174.....	4
Answer to Problem 4 at Page 174.....	5
Assignment 5	5
Assignment 6	5
Answer to Question No. 1 at Page 218	5
Answer to Question No. 3 at Page 218	6
Assignment 7	7
Answer to Problem 2 at page 217	7
Answer to Problem 3 at page 217	7
Answer to Problem 5 at page 217	8
Assignment 8	8
Assignment 9	9
Answer to Question 1 at Page 254	9
Answer to Question 1 at Page 292	9
Assignment 10	10
Answer to Problem 2 at Page 253	10
Answer to Problem 6 at Page 253	10
Answer to Problem 1 at Page 291	11
Answer to Problem 3 at Page 291	11
References.....	12

Assignment 2

Issues

Whether the Burlington Insurance Co. has a duty to defend Crazy Horse in the suit filed against it by Mr. Martinez?

Relevant Legal Principles

The courts interpret the terms of an insurance policy on the basis of the meaning a layman would attach to the said terms. Accordingly, an insurer is under the duty to defend the insured if the claim falls within the ambit of the policy cover. But if the claim does not fall within the ambit of the coverage, the duty to defend does not arise. A duty to defend arises only in case, the insurer is aware of the facts at the commencement of the third party lawsuit. The ambit of the duty to defend is much broader as compared to the duty to indemnify. The fact that the insurer does not have a duty to defend corresponds to the fact that the insurer is not bound to indemnify the claimant.

Application

In the instant case, the insurance company had excluded its liability to defend the insured if it faces a lawsuit as a consequence of battery and assault. The main claim of Mr. Martinez was the harm caused to him because of the assault and battery inflicted to him by the Crazy Horse employees. As a result, Burlington is not bound to defend and indemnify Mr. Martinez.

Conclusion

From the above discussion, it may be stated that Burlington is not bound to defend the suit on behalf of Crazy Horse or indemnify Mr. Martinez (Buckley, 1993).

Assignment 3

Answer to Question No. 4 at Page 175

An assault may be defined to be the attempt to cause harm to another person, and it includes threats as well as behavior that is threatening. Assault is an attempt to harm another person by using force or violence. Assault is also defined to be an intended battery. On the other hand, a battery may be defined to be the harmful or intentional touching of the body of another person, sans the consent of such person (Dobbs, 1985).

Similarities

The similarities between the two are as follows;

Both assault and battery relate to the causing of harm to another person.

Both of these are intentional torts, as in both the cases; the act is intentional.

The differences between the two are as follows;

The assault has the effect of causing in the mind of the victim the fear of impending harm, even though harm is not caused. Whereas, a battery is the causing of harm to another person without the consent of such person(Williams, 2009).

The purpose of assault is to threaten the other person, and that behind the battery is to cause harm to the other person.

An assault may not involve physical contact with the victim but in case of battery physical contact is necessary (Fogg, 2009).

Requirement of intention

In case of assault, it is important to show that the person causing the assault intended the action that results in the assault. To constitute an offence of battery, the intention is not a necessary factor. Only offensive contact is required to constitute a battery, even though the person is not harmed or injured.

Assignment 4

Answer to Problem 1 at Page 174

This is not a case of intentional tort. The harm caused to Alicia by Marie was not intentional. The action of Marie was not initiated with the knowledge that it would harm Alicia. Thus, this is not an intentional tort.

Answer to Problem 2 at Page 174

This is also not a case of intentional tort. The action of the store manager would not fall under either assault or battery. It would also not amount to false imprisonment. A shopkeeper has the privilege to keep in custody a suspected store lifter for a reasonable amount of time, as long as the said shopkeeper has reasonable belief that the person concerned has committed an

offence or has attempted to commit an offence. But the period of such detention must be reasonable. In the given case, Malcolm did not detain Paris for a long time. Her detention was for a reasonable amount of time. Moreover, her detention falls within the privilege of the shopkeeper to detain a suspected store lifter.

Answer to Problem 4 at Page 174

This is a clear case of intentional tort of sexual harassment. The tort of sexual harassment includes, physical or verbal conduct that is of a sexual nature and such conduct unreasonably interferes with the work of the victim, adversely affect the employment of the victim. In this case, Gina Lee intentionally discussed her sexual life with Brad. The act of brushing against Brad's crotch with her hips is also reason enough to constitute the offence of sexual harassment (G., 1942).

Assignment 5

Topic: Lawsuit against the manufacturer of Energy Drink

Date of News: 23rd July 2015

Source of the News: The internet

Summary of the News: Rockstar Beverage Corporation has recently been involved in a lawsuit because one of the consumers alleged to have suffered a heart attack after consuming four drinks within eight hours. Initially the plaintiff only suffered short breath and restlessness, but then he was informed that he had suffered a heart attack. It is the allegation of the plaintiff that though the company markets the drink to be safe, it has a high content of caffeine that risks the health of the consumers. The risk associated with the consumption of high amount of caffeine is not warned by the manufacturers.

Relevance to the Content of this Course: This news seems relevant to the content of this course because it deals with the issue of personal injury (Turner, 2015).

Assignment 6

Answer to Question No. 1 at Page 218

Fraud is a kind of typical intentional tort. Fraud is the legal term used for the conduct of intentionally lying to another person. The plaintiffs have to show that the defendant was aware of the fact that the statement made by him/ her is false and yet he/ she makes such a

statement. The purpose of such false representation is to make the other person suffer loss as a consequence of relying on such representation.

Misrepresentation is one of the bases for bringing an action under the law of torts. A misrepresentation may lead to civil liability in the case, it results in the pecuniary loss. Misrepresentation may be defined to be a manifestation or assertion by words of mouth or conduct. Such assertion or manifestation is not backed by facts. To make a misrepresentation actionable, the other person must have acted in reliance of such statement. It is not mandatory for the plaintiff to show that the person making the statement did so intentionally. The person would be held liable irrespective of malafide intention (Glannon, 2010).

The similarities between the two may be stated as follows;

In case of both misrepresentation and fraud, the making of a false statement is not essential. When a person fails to make a statement that he is obligated to make, it may result in fraud and misrepresentation.

Answer to Question No. 3 at Page 218

Invasion of Privacy

When a person has a reasonable expectation of being left alone and there happens to be an intrusion of such expectation it results in an invasion of privacy. The four main types of invasion of privacy under the law of torts are as follows;

Intrusion of an individual's solitude or private affairs

If a person intrudes into the private affairs or solace of another person, whether physically or in any other way, the intrusion would be held actionable, if such action seems to be highly offensive to a person of reasonable prudence.

Appropriation of the name or likeness of the plaintiff concerned

If one person uses the name or likeness of another person without the consent of the concerned person, then the consequence would be the tort of this nature (Insurance. Accident

Policy. Intentional Injury, 1915). The principle underlying this rule is that the name of a person is his/ her personal property.

Disclosing publicly facts that are private to the plaintiff

In case, a person discloses the private information publicly then a legal action may be brought against such person. However, such disclosure should be labeled as offensive as per the standard of a person of reasonable prudence.

Putting the plaintiff under false light in the eyes of the public

A claim for false light is somewhat similar to a claim for defamation. This right enables an individual to bring an action against the other individual.

Assignment 7

Answer to Problem 2 at page 217

In the given problem, the tort of misrepresentation is applicable. There are three varieties of the tort of misrepresentation. These include, innocent misrepresentation occurs when a false statement is made without the knowledge of it being false, negligent misrepresentation occurs when the person making the false statement is expected to know better, and fraudulent misrepresentation occurs when a person knowingly makes a false statement in order to mislead the person concerned. In this case, Mike has made a false statement to Samuel without having proper knowledge. In the given situation, he is expected to know better about the paints. Thus, this is a case of negligent misrepresentation.

Answer to Problem 3 at page 217

In the given factual framework, the intentional tort of infliction of emotional distress is applicable. If a person caused another to suffer emotional distress, trauma or shock, then the victim has a right to bring an action against the other for infliction of emotional distress. In society individuals owe a duty of not inflicting emotional distress to other individuals. The term emotional distress includes any sort of mental anguish suffered by the victim as a consequence of the conduct of the tortfeasor. In the given case, Alex suffered emotional distress as a result of the malicious conduct of Maria. He even lost the opportunity to apply for the scholarship because of the conduct of Maria. In this case Maria is guilty of inflicting emotional distress to Alex.

Answer to Problem 5 at page 217

If the private affairs of an individual are disclosed by publicly by another in such a manner which is considered to be highly intrusive by a person of reasonable prudence then the said conduct would be deemed to be intrusion of privacy. There exist four varieties of intrusion of privacy. The fact that the statement is true cannot be a defense in an action for intrusion of privacy. In the given case we are concerned only about public disclosure of private facts. In this case, Gazette Herald has intruded the privacy of the participants of the alcoholics and plastic surgeons meeting by publishing about their personal affairs in the newspaper (Toxic-Shock Syndrome—United States, 1997).

Assignment 8

Topic: Whether the Scottsdale Insurance Company, which is the insurer of Hunt Cub, under a policy of general insurance, is liable to cover the actions of Johnson, a member of the club for his action of unintentionally shooting Denny Ray marks.

Case Name/ Parties: Danny Ray Marks, Jr. and Timothy B. Johnson v. Scottsdale Insurance Company

My comments on the decision of the court: The appeal court decided in favor of Scottsdale Insurance Company. The court applied ordinary meaning in order to interpret the intention of the parties from the terms of the policy. The terms of the policy as per appeal court are clear in this case. The insurance company would insure the members only with respect to the activities performed by the member or the club on behalf of the club. In this case, Johnson's action of hunting is not an activity performed on behalf of the club. Thus, the insurance company would not bear liability for Johnson's action in the suit filed by Mark (Smith, 1992).

My decision, in case, I was the Judge: If I was the Judge in this case, my decision would have been the same as that of the judge in this case because the terms of the policy have clearly stated the purpose for which the insurance cover would be applicable and the conduct of Johnson was not covered by such policy (Anon, 2015).

Assignment 9

Answer to Question 1 at Page 254

Intentional torts which cause injury to property rights are those actions of tortfeasor's which interfere with the property owner's exclusive right to use his property without being interfered in any manner (Sinel, 2013). The following are included under this category;

Trespass to land

Toxic torts

Trespass to chattel

Slander of title

Conversion

Defamation by computer

Commercial Disparagement (Shapo, 1990)

The distinctions between intentional tort to person and property are as follows;

Primarily, the intentional tort to person inures or causes harm to the person of the victim whereas intentional tort to property causes harm to the property of the victim. But this is the general rule, many-a-times in cases of intentional tort to property harm is caused to the person of the victim along with property. For instance, in case of toxic tort, the escape of harmful gas etc from the premises of the tortfeasor may cause harm to the health as well as the property of the victim via the medium of property (Jain, 2006).

Answer to Question 1 at Page 292

When a person is accused of committing an intentional tort, the legal defense which would protect him for incurring liability for the harm caused to the person or property of the victim are commonly known as defenses. The principle underlying this rule is that some intentional torts are justified in law.

When an action for committing intentional tort is brought against a person, the defendant has the right to bring to the notice of the court such facts which would have the effect of excuse

his liability for causing harm to the plaintiff. Various defenses are available which the defendant may take recourse to. The courts then determine whether the privilege excuses the liability of the defendant. In case, the court is satisfied that the defendant has successfully established the existence of privilege, it would be deemed that the person concerned has not committed any tortious act (Jasper, 2000).

Privilege to commit the act is one of the situations under which defense may be raised. This defense may be taken for any sort of personal injury claim. This is the right of a person to engage in such a conduct which the majority of the individuals in the society do not have the right to engage in (Okrent and Buckley, 2010).

Assignment 10

Answer to Problem 2 at Page 253

This is a clear case of commercial disparagement. Commercial disparagement occurs when a person publicly makes untrue statements about the business, or goods or services of another person (Keeton and Prosser, 1984). The elements which constitute the tort of commercial disparagement includes the following;

Making of false statement about the goods or business of another person

The purpose behind making such statement is to disrepute the business of the other person (Okrent, 2015)

Communication to the public

In the instant case all of these ingredients are satisfied and hence we may say that Ben is guilty of the tort of commercial disparagement to the goods and services of the Chinese Restaurant, Tao.

Answer to Problem 6 at Page 253

This is a case of defamation by computer. Computer databases have the potential to store various types of information about individuals. This tort results when inaccurate information about a person concerned is disseminated via the medium of computer. The elements of this tort include the following;

Untrue information about the credit rating of a person

Entering of such inaccurate data into the computer database

Communication of such inaccurate information to the public

Such inaccurate data has the effect of injuring the ability of the person concerned to acquire credit (Miller, n.d.).

All these elements have been satisfied in the instant case. Thus, the accountant of the dentist is liable for the tort of defamation by computer to Ryan.

Answer to Problem 1 at Page 291

In this case Kim is guilty of the intentional tort of causing damage to property belonging to another person. The defense available to Kim in this case is that of privilege. This defense protects a person from incurring liability for a tortious action if that person can show that the act committed was intended to accomplish a social goal. In this case, the action of Kim was intended to protect the pedestrians and thus he is immune from the liability of causing harm to the vehicles (Morissette, 2009).

Answer to Problem 3 at Page 291

In the suit brought by husband of the lady who was being tortured, Leroy can take the defense of person. He employed force in order to protect the person lady from the man. He was not aware that he was her husband.

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