**LAW OF TORT**

1. **Introduction**

Tort is an act which causes harm to a determinate person, whether intentionally or not, not being a breach of a duty arising out of a personal relation or contract and which is either contrary to law or an omission of a specific legal duty or a violation of an absolute right. A tort is simply a civil wrong. Torts are wrongdoings that are done by one party against another. As a result of the wrongdoing, the injured person may take civil action against the other party. To simplify this, let's say while walking down the aisle of a grocery store, you slip on a banana that had fallen from a shelf. You become the plaintiff, or injured party, and the grocery store is considered the tortfeasor or defendant, the negligent party.

Simply said, you would probably take civil action against the grocery store to recoup compensation for pain, suffering, medical bills and expenses incurred as a result of the fall.

**2.0 Types of Torts**

1. Intentional Torts
2. Trespass
3. Defamation
4. Negligence
5. Nuisance

**2.1 Intentional Torts**

An intentional tort is an act that is intentionally committed against another person with the aim of causing harm. There are several intentional torts that fall into this category, like assault, battery, conversion, fraud, false imprisonment, trespassing and invasion of privacy. Not every injury-producing action is cause for an intentional tort lawsuit. The court will look at the conduct of the defendant to determine whether the actions were, in fact, intentional or just mere willful and wanton behavior not specifically meant to cause fear or injury, but is considered reckless.

Betty Geeslin, a personal representative of Bill Geeslin in Bill Geeslin v. Kobe Bryant, is one of those cases. Back in November of 2005, Geeslin and a friend attended a Lakers/Grizzlies game. The fans held courtside seats for the event. At some point during the game, famous basketball player Bryant ran to retrieve an out-of-bounds ball. As he reached for the ball, he lost his footing and fell atop Geeslin, leaving him with injury to his chest and lungs. After several days, Geeslin, now home, began experiencing uncomfortable pain in his chest severe enough to visit an emergency room. Once examined, it was diagnosed that he suffered a bruising and a crushed lung. He was prescribed several pain medications and a breathing machine and sent home.

After a few weeks of home treatment, Geeslin decided to sue Bryant for assault, battery and infliction of emotional distress. Geeslin claimed that when Kobe attempted to remove himself from Geeslin's chest, he used extreme force to push away, causing injury. Geeslin also claimed that he could no longer sleep at night, suffered anxiety and felt embarrassed by the incident in general.

When the court analyzed the case, it felt that the elements for tortious behavior were not present. Specifically, Geeslin assumed the risk of injury by choosing courtside seats. Bryant in no way intended to cause injury to Geeslin at the time of the initial fall or as he attempted to return to the court, and a reasonable person would not conclude that the incident was so seriously traumatic that Geeslin suffered emotional distress to the degree he claimed. In a motion for defendant's summary judgment, the court ruled in favor of Bryant.

On a side note, Geeslin died prior to final judgment and a personal representative maintained the claim against Bryant until time of final judgment. However, Bryant settled with the estate out of court for the sum of $75,000 to put a rest to any further appeals or complaints against him. Our next torts deal with actions that cause injury that do not have intentional characteristics.

**2.2 Trespass**

**2.2.1 Trespass on Persons**

Any direct interference with the person of another is actionable in the absence of any lawful justification. Trespass on a person includes:

1. **Assault;** An assault is conduct or threat to do violence to another in circumstances giving rise to apprehension that the plaintiff is in real danger. But not every threat amounts to assault. There must be in all cases be the means of carrying out the threat into effect
2. **Battery;** Battery is the actual unwarrantable striking of another person or mere touching in a rude manner, pouring water on or spitting in another’s face. It is immaterial whether the force is applied directly or indirectly to the person
3. **False Imprisonment;** Every confinement of a person is an, imprisonment whether it is in a common prison or in a private house or in the stocks or even by forcibly detaining one in the public streets. But to constitute false imprisonment there must be a total restraint of the liberty of a person without lawful excuse.

**2.2.2 Trespass On Land**

Trespass on land is unjustifiable interference with the possession or an unjustified entry on the land of another independent of any intention to trespass .In order to constitute trespass both force nor unlawful intention nor actual damage is necessary and it may be committed:

1. By entering land of another
2. By throwing some objects on the land
3. By remaining there on after right of entry has ceased
4. By using the right of entry for purposes other than for which it was allowed
5. By doing an act affecting the conclusive right of plaintiffs possession

**2.2.3 Trespass On Goods**

An action for trespass to goods lies where there is wrongful interference with another person’s goods which are in his possession

**2.2.4** **Elements Of Trespass On Goods**

The plaintiff must establish:

1. That at the time of trespass he had the possession of the goods either actual or constructive
2. That his possession had been wrongfully interfered with or disturbed.

**3.0 Defamation**

Defamation is the publication of a false statement, without justification, which tends to lower the plaintiff’s reputation in the estimation of right- thinking members of society or to injure him in his office, trade or profession.

**3.1 Elements of Defamation**

1. **The defendant must have made a false statement.** This is important because no action is may be maintained by the plaintiff on the basis of a true statement.
2. **The statement must be defamatory.** A defamatory statement is one which has a tendency to injure the reputation of the person to which it refers.
3. **The defamatory statement must refer to the plaintiff.** The plaintiff must prove that the statement complained of refers to him.
4. **The defamatory statement must be published.** A cause of action accrues to the plaintiff only upon publication of the defamatory statement.

**3.2 Types of Defamation**

**3.2.1 Slander.**

The statement is made in spoken words or in some other transient form. Slander is actionable only upon proof of damage. In exceptional circumstances a slanderous statement is actionable without the need of proving damage. These are:

1. Where the statement imputes a criminal offence punished by imprisonment.
2. Where the statement imputes a contagious disease on the plaintiff.
3. Where the statement imputes unchastity on a woman
4. Where the statement imputes incompetence on the plaintiff in his trade, occupation or profession.

**3.2.2 Libel**.

The defamatory statement is made in some permanent form such as writing, printing, and pictures.

**3.3 Defamation of a group**

Where defamation statement is made of a large group of persons, it is not actionable.

**3.4 Repetition**

Every repetition of defamatory matter constitutes a fresh cause of action and anyone who repeats it may be sued.

**3.5 Defamation of Deceased Persons**

It is not a tort to defame a deceased person .But the person defaming may be criminally prosecuted if the imputation would have injured the reputation of that person if living and is intended to be hurtful to the feelings of deceased’s family.

**3.6 Defamation by Innuendo**

In some cases, the words used may not be clearly defamatory but they could have a defamatory meaning in the light of specific facts known by some persons.

**4.0 Negligence**

Negligence is the omission to do something which a reasonable man guided upon those regulations which ordinarily regulate the conduct of human affairs would do or do something which a reasonable and prudent man would not have done.

**4.1 Elements of Negligence**

The tort of negligence consists of three elements which a plaintiff must prove in any action based on negligence.

1. Legal duty of care.
2. Breach of duty.
3. Loss or damage.

**4.1.1 Legal Duty of Care**

The plaintiff must prove that the defendant owed him a duty of care in the circumstances. The circumstance must have been such that the defendant knew or ought to have known that acting negligently would injure the plaintiff.

**4.1.1.1 Standard of Care**

The standard of care expected of the defendant is that of a reasonable man of reasonable prudence. This is a person who has the minimum information and knowledge necessary to act reasonably in any situation

**4.1.2 Breach of Duty**

The plaintiff must prove that the defendant acted negligently thereby breaching his legal duty of care. The plaintiff must prove specific acts or omissions the part of the defendant. The plaintiff must adduce evidence to prove his case. However in certain circumstances negligence is proved without evidence. These cases are referred to as Res ipsa loquitor which literally means “it speaks for itself”. This is a rule of evidence by which the plaintiff is deemed to have established negligence on the part of the defendant without adducing any evidence

**Conditions that must be met before the rule of Res Ipsa Loquitur**

1. There must be reasonable evidence of negligence on the part of the defendant.
2. That the operation is under the control of the defendant, when the accident took place.
3. Such a thing does not ordinarily occur when proper care is taken

**Effects of Res Ipsa Loquitur**

1. It provides prima facie evidence on the part of the defendant
2. It shifts the burden of proof from the plaintiff to the defendant and if the defendant’s explanation is credible the plaintiff loses the case

**Loss or Damage**

The plaintiff must prove that as a result of the defendant’s breach of duty he suffered loss or damage. The plaintiff’s loss must be traceable to the defendant’s breach of legal duty, failing which the plaintiff’s damage is deemed to be remote and therefore irrevocable.

**5.0 Nuisance**

It unlawful interference with a person use or enjoyment of land or of some right over or in connection with it.

**5.1 Types of Nuisance**

* **Public nuisance;** it is an act which interferes with the enjoyment of a right which all members of a community are entitled to such as the right of fresh air ,travel on the highways. It does not create a civil action for any person unless he proves a particular injury to himself beyond that which is suffered by the rest of the public. Public nuisance is a crime actionable at the suit of the attorney general on behalf of the public at large.
* **Private nuisance;** it is the one’s own land in such a reasonable manner as to cause interference with another person’s use and enjoyment of his own land. The common forms of nuisance are noise, smoke, gases, heat etc.

**6.0 How Types of Tort Affect Business**

The area of tort law covers a wide range of misconduct including personal injuries, negligence and malpractice. Business is a crucial part of life, there should be some kind of law, rules and regulations for it to function in a discipline manner. Business torts usually involve an intentional and improper interference with the business interests of another.

This involves injury to another’s business interests. These can include losses that may occur in the future rather than losses that were experienced in the past .Because of this aspect; many business tort claims involve a complex determination of the plaintiff’s future or projected losses.

Tort law seeks to provide reimbursement to members of society who suffer losses because of the unreasonable ‘conduct of others. A business may be found negligent for a number of reasons, all of which involve breaching duties that the business has towards others. These duties are known as duties care or duties of trust.

* A small retail business has a duty of care for small delivery personal, customers and inspectors who enter its place of its business. If any one of these people trips over misplaced merchandise within the store, it may be cause for a negligence law suit. This lawsuit may ruin or erode the face of the business give the business bad or negative press and it would ruin the business financially and in terms of customer base. Therefore negligence as a type of tort can affect the business.
* Duties for businesses change based on who works for the company and there special skills or level of expertise. For example a car repair shop that employs trained and licensed automotive technicians has a higher duty of care to its clients than an unskilled defendant, this means that an auto repair business may be held liable for a car crush that a customer causes after picking up a car that still had mechanical problems if a reasonable mechanic would have deemed the vehicle unsafe to drive, even if a reasonable person without automotive training would have deemed the vehicle safe. Courts can award monetary damages in negligence cases to help plaintiffs recover from harm, they may also award punitive damages which punishes defendants for negligence actions, hence this would affect the business or enterprise in that it would have to chunk out a sum of money to compensate the said plaintiff and pay for the costs of the suit that the court deemed fit, so it would the business financially.
* The tort of passing off could affect an established business, the making of false representation to the public, or to third persons, likely to induce them to believe that the goods or services of another are of the plaintiff. This may be for instance by counterfeiting or imitating the plaintiffs trademarks or trade name his wrappers, labels or containers, his vehicles the badges or uniforms of his employs or the appearance of his place of business. In an action for passing the appellant would that the respondent intentionally mislead consumers into believing its services originated with the appellant and that the appellant thereby suffered damage. This was established in the case study,***{[[1]](#footnote-1)Mattel USA V. 3894207 Canada INC.}*** in addition this would affect the business in the following ways, it would lose its customers, the court may grant an injunction to stop the services of that particular business and they would suffer financially, would be estopped or it would be mandatory for the business to be shut down.
* Defamation as a tort would make the business have a bad reputation and affect it in a manner that it would lose its customers or they would have lesser faith after the defamatory action, the public would have doubts with the commodities of services the business offers and therefore the business would eventually suffer financially and economically.

**Remedies: -** This is a legal means to recover a right or to prevent or obtain redress for a wrong.

There are two principals remedies available to the victim of tort are damages to compensate for the harm he has shuttered and where appropriately an injunction to prevent future harm.

**a) Trespass to land**

This is where the plantitis possession of land is wrongful interfered with

**Defenses in Trespass to land**

1. Prescription- When you can claim a legal right to same property (defendant claiming possession).
2. Act of necessity-trespass to protect harm to public e.g. entry to put out hire for public safety.
3. Statutory Authority- Where authority to entre land is conterred by law whether by statute or court order.
4. Entry by license- This is authorized or licenced entry and is not actionable e.g KPLC employees to read meter for bills.

**Remedies**

1. Damages (Monetary compensation).
2. Ejection I usually in a continuation trespass (eviction).
3. Action for recovery of land, where there has been wrongful dispossession.
4. Injunction to prevent a further or threatened trespass.
5. Distress damages pheasant this is detention of the defendant’s chattle or animal is the cause of trespass in question.

**b) Trespass to the person**

**Assault-** Mere threat

**Battery-** actual action causing harm

**False imprisonment**

**Assault-** is committed by a person when he threaten to use force against the other person and thus putting other person in fear of immediate danger e.g.

**Battery-** is actual application of force against a person by another without lawful justification. It must intentional and voluntary.

**False Imprisonment-** is where a person is deprived of his freedom without lawful justification.

**Defenses**

1. Parental Authority.
2. Judicial Authority.
3. General defenses like self defense.

**Remedies**

1. Damages monetary compensation.
2. Habeas corpus applies to false imprisonment. This is an order from high court directing that the detained person has brought to court.

**c) Trespass to Goods**

Trespass to Goods is the act of directly and interfering with goods in the possession of another without lawful justification.

Interference mat include;

1. Removing haking a way the goods from one place to another trespass.
2. Using the goods for yourself-Conversion.
3. Destring or damaging the goods trespass.
4. Sale of goods to a third party conversion.

**Main elements**

1. The act complained of must be direct.
2. It is possession rather ownership that determines the right to claim.
3. The attending act must be deliberate or intentional.

**Defenses**

1. Can plead statutory or judicial I can plead ownership rights remedies (conversation and dentine)
2. Recover of goods or their value.
3. Price of goods converted paid to you.

**d) Nuisance**

It’s committed whenever a person is wrongfully disturbed in the use of and enjoyment of his land.

**Defenses**

De mininus Non curat lex. This means the case is based on triviality. The harm is minimal reasonable person has cause to complain.

Damage suffered by nursance must be substantial

**General Defenses in tort.**

1. Volenti non fit injuria –Plaintitt voluntarity took up the risk.
2. Act of God.
3. Invevitable accident.
4. Necessity.
5. Self defense.
6. Mistake.
7. Statutory authority.
8. Exemption clauses/disclaimers.

**Volenti non fit injuria**-Itis the voluntary assumption of risk by a complainant. It is base on injury that no injury can be done to a willing person.

e.g plaintitts were the personal representative of a decreased who died when the bus was swept away in floods. The driver never wanted to cross the flooded bridge but the deceased and deceased knew the risk and assumed it.

**Inevitable accident-** (unavoidable accident)

This is an accident which cannot be prevented by the excerse of ordinary care or skill.

**Act of God.** (inevitable acci but caused by natural force) e.g. earthquakes, lightening.

**Necessity** (it is the last alternative) This when one is forced to interfere with another person’s right to prevent injury or harm to another.

**Self defense** every person has a right to defend himself, his property or members of his family against any unlawful harm. Exercise must be done in

* Force should be commensurate with the attack.
* The necessity to use such force must be established

**Mistake-** (Mistake is not a defense in tort)

It is viewed in exceptional case. E.g. wrong arrest where police in a case of mistaken identity arrest a wrong person.

**Expectation clauses disclaimer**- clauses by which a party denies or limits liability for certain actions.

1. [↑](#footnote-ref-1)