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Torts Midterm Review

8/20/2020

**Choice of Law:**

**Lex loci delicti-** principle of applying law where injury occurred.

-ignores interest if parties and litigation.

**Lexi fori**- where lawsuit is filed determines the governing law.

**Most significant relationship rule**- apply law of state where injury occurred *unless* another state has a more significant relationship with the parties, then that state law governs.

Ex: *Hataway v. McKinley*- UTK dive student dies in AK while on school trip with UTK instructor. Court ruled TN had a more significant relationship to the parties (both were TN residents and relationship centered around UTK). Lex loci delicti was outdated and better approach was most significant relationship approach.

**Statute of repose (sor)**- top cap, hard line, no extensions granted. Starts with defendant’s act (not at time of harm or plaintiff’s discovery).

Ex: Product sor is 10 years, suit must be brought within 10 years when product was sold by defendant.

-tolled by fraudulent concealment.

**Trigger dates**

-architects, builders, engineers, sor is date of improvement completion.

-healthcare, sor date is last treatment date.

**Tolling**

-stall time limit to file claim.

-tolled if plaintiff is a minor, mentally incompetent, or in prison.

-sor NOT tolled for medical malpractice b/c of mental incompetency (sol is tolled).

**Statute of Limitations (sol)**

-period of time in which plaintiff must file claim.

Slander- 6 months (from when words are spoken.)

\*Property damage- 3 years (real or personal property) \*discovery rule applies

Libel (written slander)- 1 year

False Imprisonment- 1 year

Malicious Prosecution- 1 year

Accountant/Lawyer malpractice- 1 year

\*Personal injury- 1 year \*discovery rule applies

Product liability- 1 year

Sor- 10 years (sor supersedes the discovery rule)

\*Medical malpractice- 1 year \*discovery rule applies

Sor- 3 years

Exceptions to sor medical malpractice: (1) fraudulent concealment, and (2) foreign object.

Therapist- 2 years

Sor- 3 years

Wrongful death- 1 year

**Personal injury sor**

-6 years from date of injury

-1 year of expiration of anticipated life of the product (*Spence*)

-10 years from product purchase

Ex: *Spence v. Miles Laboratories*- man allegedly contracted AIDS from contaminated product. Claim was barred for sor. Product expiration date was 6/5/1987. Man had one year from 6/5/1987 to file claim. Case dismissed because he did not file within the sor.

Ex: *Stanbury v. Bacardi-* woman gives consent for surgery on left foot. Wakes up to 2 bandaged feet, doctor operated on both feet. Continues to see doctor for 5 more months and doctor performs another surgery. She argues the continuing medical treatment doctrine should toll the sol for medical malpractice. Court ruled continuing medical treatment doctrine was overruled by discovery rule…she should have know about the injury when she saw both feet bandaged, not just one. Lawsuit was deemed time barred.

Ex: *Shadrick v. Coker-* man sees a tv program 3 years after back operation that discussed issues and complications of screws. From program, he first learned the screws were experimental and had not been approved by the FDA, screws had been found to cause problems in patients. Court ruled discovery ruled applied, doctor did not provide informed consent about screws and concealed risks associated screws.

**Continuing medical treatment doctrine**

-continuing treatments/acts/relationship.

-clock doesn’t start until relationship terminates.

-plaintiff would reasonably expect a fix or repair while still working together with doctor.

**Objective test**- what would a reasonable person in plaintiff’s position have discovered.

**Accrual date**- plaintiff’s claim is barred if outside sol even if they were not aware of harm.

-modern day statutes postpone accrual date until plaintiff discovers or should have discovered relevant facts.

**Discovery Rule**- statute of limitations does not start until:

(1) all elements of tort are present.

(2) Plaintiff discovers or when a reasonable person should discover harm.

(3) Plaintiff is injured AND defendant had a role/connection to injury.

**2 distinct injuries**- discovery of one does not start the statute of the other injury.

\*Knowledge of injury alone is not enough:

-plaintiff must believe injury was caused by defendant.

-must know of defendant’s identity.

**Minors:**

-Statute of limitations starts on 18th birthday.

-Statute of repose is not tolled.

*Hagerty* dripolene cancer case- Man had symptoms from exposure from working with carcinogenic dripolene. He couldn’t wait to see if cancer appeared or not because of sol. Court ruled he could sue for current injuries and emotional harm based on *fear of future* cancer. If cancer occurred later, he could bring separate suit.

8/27/2020

**Damages**

-damages are awarded objectively.

Theory of damages:

(1) to reasonable compensate the injured party, and

(2) to punish/deter the tortfeasor

**3 kinds of damages: compensatory, punitive, and injunctive relief**

**Compensatory**

-purpose is to make plaintiff whole.

-financial damages designed to be financially equivalent to harm and restore plaintiff to position they were in before harm. 2 types:

(1) Special/economic award

-readily quantifiable, can be calculated with reasonable certainty, ex: produce bill or receipt.

-ex: reimburse for lost wages, medical expenses, loss profits (can be for past and future)

(2) General/non-economic award

-opposite of special/economic.

-not readily quantifiable, some states have placed caps on general damages.

-in TN, cap is $750,000…. $1 million cap if plaintiff suffered catastrophic injuries.

-cap is NOT applied if defendant did it on purpose or if they are convicted of felony for tortious act.

-Ex: physical pain and suffering (past & future), mental anguish and emotional distress, loss of enjoyment of life, disfigurement, shortened life expectancy, permanent impairment or disability.

**Loss of Consortium**

-value of tangible services provided by family members in home plus intangible benefits they receive from one another.

-loss of affection, love, sex, support, advice

-in TN, spouse only. *Personal injury* allows only for spouse to recover for loss of consortium.

(wrongful death action can be awarded to child for parent’s death but personal injury.)

**Survival Statutes**

-focus on victim.

-preserve victim’s cause of action…allows deceased’s cause of action to continue after death.

-common law used to be if they died, their action died with them. Family could not continue action after death.

-currently same recovery available should victim have lived/survived.

-recovery is available regardless of the cause of death or whether death was instantaneous.

-time window for claim is time of injury to time of death.

-death terminates future accrual. Damages are limited to only those damages the person could have claimed at the time of death.

-TN is a survival state and it permits family members to recover for wrongful death. Child can recover loss of consortium in *wrongful death* of parent. (not personal injury- that is spouse only for loss of consortium in TN).

**Damages allowed (varies by state/statute)**

-conscious pain and suffering from injury, conscious pain and suffering of imminent apprehension of death before physical impact.

-medical expenses resulting from injury, loss of enjoyment of life, any earnings between injury and death, funeral expenses.

\*-not recoverable: libel, slander, malicious prosecution

**Pecuniary loss**- economic loss, financial consequences of untimely death (loss of income, services, funeral, medical expenses, future support)

-compensate injured party for economic losses resulting from death.

**Hedonic damages**- value of satisfaction that people get by just being alive.

-ex: walking through the park on a sunny day, watching your kids grow up.

-in TN, not recoverable because of difficulty to measure value.

**Wrongful Death**

-focus on family members.

**-**spouse and child able to recover for loss of consortium in wrongful death.

-parent can recover for child’s wrongful death. \*Parent cannot recover for sorrow and anguish they endure when losing a child.

**Compensatory Property Damage**

-objective is to restore.

(1) destruction or dispossession of property (market value of item/property)

(2) deprivation of use- value of the use such as rental value.

(3) physical harm

a) repairable-measure of damages, lesser of the 2….repair or decrease in market value.

b) not repairable- decrease in market value.

**Punitive Damages for Property Damage**

-objective is to punish and deter, “punch to defendant’s financial nose”.

-damages to jury must include discussion between compensatory and punitive.

-conduct required for punitive:

1) intentional wrongdoing

2) fraud

3) recklessness

4) maliciousness

-cannot be awarded for just negligent conduct, action must go beyond negligence of the 4 actions above, plaintiff has to prove 1 of 4 by clear and convincing evidence.

-standard of proof: clear and convincing evidence, higher standard required for punitive damages. (normal tort standard is preponderance of the evidence…more likely to be true than not.)

**Bifurcated procedure**: trial split into 2 parts.

1st part- jury decides compensatory damages and evidence of punitive only.

2nd part- jury decides punitive award amount. Defendant’s financial worth is admissible evidence.

-Constitutional limitations: due process precludes excessive awards for punitive.

**Injunctive Relief**

-court order to stop or start doing something.

Ex: nuisance cases

**Miscellaneous damage rules**

-single action requirement: all of plaintiff’s damages (past, present and future) have to be determined at once, can only sue once.

**Duty to mitigate damages**

-legal obligation of plaintiff to keep damages to a minimum.

-cannot let injury fester to increase damages to recover. (if you break your arm, you have a duty to seek medical attention.)

Jury sets the amount of damage award. Judge and appeals court can change amount.

**-increase award: additur**

**-decrease award: remittitur**

**Collateral Source rule**

-payment of damages paid from third party of defendant other than defendant or defendant’s insurance does not reduce the recoverable amount the plaintiff can get.

**“American Rule”**

-common law general rule that winning party may not be awarded attorney fees from loser.

-attorney’s fees are not recoverable by plaintiff’s damages.

-each side pays own attorney’s fees.

**In TN: Loser Pays Law**

-loser pays up to $10,000 in attorney’s fees if case is dismissed for no claim.

-purpose to deflect frivolous suits.

**Attorney’s fees**

-allows for 1/3 to ½ of recovery for attorney’s fees for plaintiff’s lawyer.

-provides an incentive to take solid cases.

-in TN: limits what lawyers can charge, 1/3 of award for medical malpractice. TN Statute cap is 1/3.

-does not depend on trial or litigation outcome.

*Hodges v. Toof*- 1992, Man spitefully fired by employer for serving jury duty. Trial court awarded compensatory ($200,000) and punitive damages ($375,000), court of appeals vacated decision according to TCA 22-4-103 stating he could only recover for lost wages. TN Supreme Court said statute did not bar claim for compensatory, affirmed compensatory award, remanded to jury to determine punitive based on clear and convincing evidence…if satisfied, they could fix the amount for punitive.

*Goff v. Elmo Greer*- 2009, contractor used part of Goff’s land for project. Contractor breached contract by burying tires, not cleaning up trash/materials, spilled oil, caused blasting damage to home and vehicles. Contractor lied about behavior and did not own up to what could have been no one else’s mistake. Trial court awarded $1 million in punitive damages. SC ruled evidence presented supported punitive damages but said $1 million award was excessive and contractor’s due process rights were violated.

-9 factors court found relevant:

1) the defendant’s financial affairs, condition, and net worth.

2) nature of wrongdoing.

3) defendant’s awareness of harm being caused and motivation in causing harm.

4) duration of misconduct and whether they attempted to conceal conduct.

5) expenses plaintiff had to fix the loss/repair.

6) whether defendant profited from activity, and if so, whether punitive award should be in excess to deter future behavior.

7) whether defendant has previous punitive damages against him based on same wrongful action.

8) once conduct came know to defendant, did they attempt to correct or make amends.

9) any other circumstances shown by the evidence to help determine the proper punitive award.

*Jordan v. Baptist Three Rivers*- 1999, Daughter filed claim against doctor and hospital for malpractice that resulted in her mother’s death. Sought damages for loss of consortium and hedonic damages. SC ruled loss of consortium is permissible in wrongful death suits. Age of child does not matter. In this case, the child was an adult. Recoverable because of survival statute and pecuniary value of mother’s life. TN does not allow for hedonic recovery.

*Still v. Baptist Hospital*- 1988, Mother left with permanent physical and mental disabilities after birthing complications allegedly resulting from negligence of doctor and hospital staff. Grandmother sues for granddaughter’s behalf for loss of consortium because her mother will never be able to provide or take care of her. Sought $100,000. SC ruled this was for legislature to decide. Court ruled children have no cause of action for loss of parental consortium in a personal injury case.

-key: this is personal injury case not wrongful death. Loss of consortium of child in personal injury does not apply (only applies to spouses in TN.)

-court asked what is mother’s love worth? The child will be rich, but are they better off? Is that justice?

9/3/2020

**Intentional Torts: Assault and Battery**

Intent- must be proved by plaintiff that defendant intended the tort.

-you cannot accidentally commit an intentional tort.

-definition: (1) defendant had a desire to do an act which forms basis of tort, or

(2) he had knowledge that consequences would result from conduct.

-definition provides 2 ways to prove intent.

- precise consequences do not have to be intended.

-negligence is different…defined as unreasonably risky conduct.

-reckless/wanton conduct….defined as reckless disregard for the safety of others, deliberate indifference (ex: drag racing)

**Motive**

-the reason defendant did what they did.

-motive is irrelevant to intent.

-the court doesn’t care why…they are concerned with definition of intent.

**Transferred Intent Doctrine**

- tortfeasor intended to commit tort against person and commits different tort, OR commits same tort against different person, OR different tort against a different person….tort follows original conduct.

-intent “follows the first, follows the bullet”.

-Defendant must have acted voluntarily…he was in control of himself. (not unconscious)

**Children/Mentally Ill**

- not immune to liability unless they cannot entertain intent (ex: babies and severe mentally ill).

-can be held liable if they are old enough to have awareness.

**Parental Liability**

- not liable just because of parent-child relationship.

-parents can be liable for negligently not supervising children (beyond carelessness).

-TN rule- can be held for up to $10,000 in personal property but must show:

1) harm was willfully/maliciously caused (beyond carelessness).

2) child is under 18 and lives at home

3) parent must have know or should have known of child’s tendency to commit acts.

4) parent must have had an opportunity to control child and negligently failed to do that.

-Absent negligence- parent is not liable, relationship is not enough to be held liable.

TN Exception- child has vandalized public property and been convicted on a prior occasion.

*Horton v. Reaves*- 1974, mother leaves 5-week old baby unattended in home for over 2 hours. 3 and 4 year olds of neighbor, who were unsupervised, dropped the baby when trying to pull her off the bed. The court ruled intent requires children to have awareness of natural consequences of acts. They have to be old enough to have awareness.

**Assault**

- often precedes battery.

- act that is intended to and does place plaintiff in *apprehension* of an immediate unconsented touching.

-no physical harm or actual touching is required.

-plaintiff has to be aware of imminent harmful contact to own person (not others or property).

-if plaintiff never anticipated assault, she might only have a battery claim in contact occurred.

Ex: A attempts to strike B from behind. B turns in time to avoid contact…since B anticipated unconsented contact, has an assault claim.

Ex: A attempts to strike B from behind, B does not see this and A misses, no contact…not assault because of no anticipation.

-words alone without action do not count as assault.

Plaintiff must prove:

1) intent

2) reasonable apprehension (in expectation of being on the receiving end of harmful contact.)

3) reasonable expectation (ordinary person would have been apprehensive of contact.)

4) apprehension must be imminent, right now.

5) threat of harmful or offensive contact (not words alone)

6) defendant shows actual ability or apparent ability to make good on threat.

-must prove all 6 by preponderance of evidence.

**Battery**

-intentional *infliction* of harmful or offensive contact.

-actual physical contact is required. Contact with person or anything attached to person counts (yanking mask off face).

-victim does not have to be aware of forthcoming contact.

-objective test, measured by reasonable person standard.

*Bouton v. Allstat-* 1986, a boy trick-or-treating is killed on Halloween by homeowner who answers the door. Homeowner claimed he was assaulted by the boy who was dressed up for Halloween with toy gun…feared imminent harm because of boy’s costume. Court ruled a reasonable person would expect to see scary costumes on Halloween (he was participating in handing out candy). Halloween modified the duty to not scare, the boy’s conduct was not offensive.

-unreasonable claim of imminent fear of harmful contact.

*Manning v. Grimsley*- 1981, pitcher threw ball into stands where heckling fans were seated. Pitcher claims his misthrew…but facts show he looked directly into crowd where they were seated, threw the ball striking Manning. Court ruled the jury could have reasonably inferred pitcher intended to throw at the hecklers based on the facts…it was not a “rouge throw” as claimed. He intended to throw the ball and caused harm, satisfying the battery claim.

-actions of pitcher would lead a jury to see he intentionally threw the ball causing harmful contact.

*Brzoska v. Olson-* 1995, Dentist with HIV who stopped performing surgery once he became infected. Patient claimed battery with several others including fear of exposure, mental anguish, embarrassment, etc. Of 630 patients tested, none had contracted HIV. Medical board found cleanliness and precautionary methods to be above the standard. Court ruled patient experienced no actual injuries, just fear from exposure and future contraction. He did not prove a channel of transmission…proved no cuts, open wounds where disease could pass from dentist to patient. Conduct required is outrageous and dentist behaved professionally with precautions in place.

-fear of exposure/future contraction is not enough without proving an channel of transmission…there was no offensive contact.

9/10/2020

**Intentional Tort- Intentional Infliction of Emotional Distress**

**-key conduct is bad (negligent) v extreme and outrageous.**

-statute of limitations is 1 year.

-protects the interest of people’s “peace of mind”.

-TN recognizes this as a viable claim. Most states have adopted *Medlin*.

- new to legal scene compared to other intentional torts.

-courts were reluctant to recognize: (1) because mental injuries are difficult to measure when calculating damages, (2) No objectively observable injury (can’t see the mental injury, can’t see result of harm), (3) easy to fabricate, (4) concerned about potential flood of trivial cases, (5) absolute peace of mind is utter fiction and the law shouldn’t protect something that doesn’t exist.

-Jury decision for award would be speculative.

-Today most jurisdictions recognize as distinct tort claim (independent other tort claim.)

TN leading case, *Medlin-* bank kept poor records for house payments and started foreclosure proceedings. Bank found another past due payment and started foreclosure proceedings a second time. Medlin had to hire a lawyer twice, jump through all the hoops twice. She claims bank representatives were rude and mean, they also knew she had just lost her child….tortfeasor knows they are dealing with an egg shell plaintiff. She developed headaches and anxiety from experience (not connected to another injury). Sues for IIED…she had a right to peace of mind.

By extreme or outrageous conduct, defendant is liable for damages. Court ruled these facts were not “extreme” or “outrageous”. Bank was negligent but this is not enough to recover under IIED.

Rogers graveyard case- mother is upset about condition of child’s graveyard…unkempt, messy, disrespectful. Court ruled this was not extreme or outrageous behavior that would stun or cause someone to be utterly speechless.

**IIED Requirements:**

(1) Extreme and outrageous conduct, exceeds all bounds of decency. Just negligent conduct is not enough. (not for insults, petty annoyances, embarrassing someone.)

Johnson case- perfectly formed baby that died and is returned to mother in gallon jug of formaldehyde, shriveled and disfigured…example of **outrageous** conduct. She had to see a therapist, take medication, extreme depression, but physical consequences are not required but they help demonstrate the damage. Court ruled this was outrageous conduct required by IIED.

(2) Conduct is intentional or reckless (deliberate disregard of high probability that the conduct out cause severe emotional distress).

(3) Existence of severe emotional distress of plaintiff (more than hurt feelings or being embarrassed).

-Egg shell skull rule: defendant takes plaintiff where they are. But not liable when plaintiff’s emotional response exceeds what a reasonable person would have experienced.

-Exception is when plaintiff knows they are egg shell (hypersensitive, vulnerable, frail).

-Expert medical testimony or proof of emotional injury in not required in TN/majority of jurisdictions. (Extreme nature of conduct speaks for itself.)

**Third Person Claim**

Defendant misconduct directed at person A, but person B (third person) experiences emotional distress.

-Recovery depends on: If all 3 yes, then they have a claim.

(1) whether person B was actually present (Not finding out about it later.)

(2) did they actually see it

(3) are they related to victim *or* if not, did emotional distress result in emotional harm (has to manifest physically)

Ex: wife witnesses husband stabbed in back by tortfeasor. (She was present, saw it, and is related to victim).

**False Imprisonment**

-intentional and unlawful confinement, restraint, or detention that requires or compels plaintiff to go somewhere or stay against their will

(1) defendant’s conduct is intentional (transferred intent applies)

(2) unlawful restraint (if it’s legal, there is no false imprisonment)

(3) has to be confinement, restraint, or detention (key to false imprisonment in cases… *interference with personal freedom*).

-Plaintiff has to be aware of restraint when it occurs. Exception is when plaintiff is injured or knocked out.

-Length of the confinement is immaterial (no minimum), but must correlate to damage sought. The longer to confinement, the more the recovery is enhanced,

-has to be a specific area where plaintiff is prevent from leaving. (Not A walking up to B on sidewalk and refuses to step aside…not false imprisonment because B can just walk around).

-no *reasonable* means of escape known to plaintiff or means of escape is unsafe. No requirement they expose themselves to danger or harm to get out.

-if there is a safe was to exit, they need to do that.

**Ways to bring about confinement:**

(a) physical barrier (fence, hole in ground, walls, locked room)

(b) physical force (directed at plaintiff, plaintiff’s family, or property…steal laptop and threaten to smash it if you get up.)

(c) threat of force (has to be a credible threat of force, reasonable person to believe force would be used AND has to be of threat immediate harm.)

(d) moral pressure (pressure to do the right thing)

Ex: Newsom case- she was accused of shoplifting and questioned in room by security guard and manager for 2 hours. No yelling or threats…just if you leave were going to call the police. Outside of the door was locked, inside was not. She was afraid to walk out and chose not to. Did not tell her she could not leave. Court ruled she was not allowed to recover because moral pressure by itself is not enough.

**Shoplifting Detentions:**

-Business can hold person that has *probable cause* to believe that theft is being attempted or has occurred.

-restraint for reasonable amount of time and, if necessary, with reasonable force is acceptable

**Trespass to Land**

-intentional physical entry onto another’s property without their consent or legal privilege.

(a) intentional entrance (transferred intent is applicable too, voluntary act required.)

ex: A pushed B into C’s rose bushes crushing them. A is liable to C but B is not.

(b1) physical entry onto property or causing a physical thing to enter property.

(b2) remain on the land when you are asked to leave.

Ex: lease ends and tenant doesn’t vacate the property.

Ex: you throw a party and at 9pm you ask guests to leave and they don’t.

(c) failing to remove object from land that tortfeasor is under an obligation to remove.

Ex: tenant has legal obligation to remove furniture.

-If entry is not tangible (bad smell or noise), not a physical entry for trespass. It is considered under the nuisance doctrine.

-boundary for trespass- height and depth of what owner could use.

Exception is for aircraft- federal law reserves air space for travel in public domain.

**Trespass Damages**

-trespass is intentional.

-majority rule: the tort is complete without proof of harm to property. Intentional invasion of property completes the tort.

-traditional rule does not require harm to property.

-if no damage, what could a court award? Nominal damages? The law infers harm …the intentional invasion of plaintiff’s property.

-some courts require proof of damages to keep out trivial cases, *TN might be one…but no solid TN law* that requires proof…it depends.

**Trespass to Chattel**

-Intentional *interference* with the chattel personal property of another without their consent or legal privilege.

(a) intentional (even if heart is in the right place and wanted to do a good thing, motive is irrelevant.)

(b) interference with chattel:

(1) intermeddling- defendant directly or indirectly impaired chattels value/ability, OR

(2) dispossession- takes chattel away.

(c) Damage to chattel is required.

**Conversion**

-Intentional *exercise of dominion* or *control* over someone else’s chattel that seriously interferes with their use.

-wrongfully exerted dominion over someone else’s property.

-personal property only:

(a) wrongfully acquire the property.

(b) wrongful detention- keep the property longer than allowed.

(c) substantially alters, destroys, or damages the chattel.

\*requires substantial interference with owner’s right of control over chattel. (key difference between trespass and conversion).

Ex: Russell-Vaughn Ford case - car dealership keeps man’s key when he returns test drive car. (pretend to lose keys to keep people on the car lot longer). Court awarded punitive damages. Defendant argued they only converted the key…court stated the key controlled the car which in turn controlled the car….they converted the car. (because of the control of the key).

-if you control a main part/function of the chattel, it triggers conversion.

-more substantial interference is conversion.

-less substantial interference is trespass to chattel.