Chapter 6

Intentional Torts

See Separate Lecture Outline System

INTRODUCTION

Your students may enjoy reading this, and the next, chapter—they should see a relationship between society’s interest in compensating injured parties and its interest in taking steps against those who cause the injuries. It may be helpful in analyzing a given situation to note in which circumstances one interest is dominant and those in which they are equal.

This chapter provides an overview of the law of intentional torts, including those classified as business torts and cyber torts. Part of doing business is the risk of being involved in a lawsuit. An ever-increasing business operating cost is the premium to obtain liability insurance to pay an adverse judgment in a suit. Many of these suits involve torts.

ADDITIONAL RESOURCES—

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AUDIO & VIDEO SUPPLEMENTS ★☆★

The following audio and video supplements relate to topics discussed in this chapter—

PowerPoint Slides

To highlight some of this chapter’s key points, you might use the Lecture Review PowerPoint slides compiled for Chapter 6.
Court TV

The video Truth or Lies: Local News on Trial (Turner v. Dolcefino & KRTK) provides additional background on defamation. Texas state Representative Turner was the first African-American candidate in a Houston mayoral race. A week before the election, KRTK-TV alleged Turner's involvement in a multi-million dollar insurance fraud scheme. Turner lost the election and filed a libel suit.

Other Videos

After a discussion of the tort of wrongful interference, you may want your students to see the video Moot Court—The Texaco/Pennzoil Case. You might consider showing this video either with or without a discussion of this case in the classroom. The video may help your students relate, on a more personal level, to the issue involved in this case; additionally, it would probably be interesting for them to see other law students (at Stanford University) tackling the challenges involved in reconstructing portions of the trial court's proceedings.

CHAPTER OUTLINE

I. The Basis of Tort Law

Tort law compensates those who suffer a loss or injury due to another's wrongful act.

A. THE PURPOSE OF TORT LAW

The purpose of tort law is to provide an injured party with a remedy for the violation of legally recognized and protected interests (personal safety, freedom of movement, property, and some intangibles, including privacy and reputation).

B. DAMAGES AVAILABLE IN TORT ACTIONS

1. Compensatory Damages

Special damages cover quantifiable losses, such as medical expenses, lost wages and benefits, the loss of irreplaceable items, and the costs of repairing or replacing damaged property. General damages are for non-monetary harm, such as pain and suffering, loss of companionship, loss of consortium, disfigurement, loss of reputation, and loss or impairment of mental or physical capacity.

2. Punitive Damages

These punish a wrongdoer and deter others from similar wrongdoing, and are awarded only when conduct was particularly egregious or reprehensible. Punitive damages are subject to the limits of the due process clause of the U.S. Constitution.

ANSWER TO CRITICAL ANALYSIS QUESTION IN THE FEATURE—CONTEMPORARY LEGAL DEBATES

Large damages awards in tort litigation have to be paid by someone. If the defendant is insured, then insurance companies foot the bill. Ultimately, though, high insurance rates are passed on to consumers of goods and services in the United States. Consequently, tort reform that reduces the size and number of damages awards ultimately will mean lower costs of goods and services to consumers. The downside of these lower costs, though, might be higher risks of medical malpractice and dangerous products. Do you believe that this trade-off is real? Why or why not? Insurance often covers damages awards in the United States,
and the premiums can be adjusted to reflect increased amounts of awards. But insurance premiums can also go up simply to increase the profits of the insurance companies. Such increases may also be passed on to consumers. If damages awards have been curtailed, businesses and consumers would thus be paying higher prices without a trade off. If insurance premiums were lowered to reflect lower damages awards—this seems unlikely, at least in the long run—it is not likely that a business would be willing to take higher risks with dangerous products. The business's reputation could suffer, and its profits could as easily disappear as if they were paid to insurance companies as premiums. If tort liability is a businessperson's primary concern, then locations in which damages awards are fewer in number and lower in amount might be appropriate places in which to choose to do business.

ENHANCING YOUR LECTURE—

TORT DAMAGES IN OTHER NATIONS

In contrast to U.S. courts, courts in Europe generally limit damages to compensatory damages; punitive damages are virtually unheard of in European countries. Even when plaintiffs do win compensatory damages, they generally receive much less than would be awarded in a similar case brought in the United States. In part, this is because citizens of European countries usually receive government-provided health care and relatively generous social security benefits. Another reason, though is that European courts tend to view the duty of care and the concept of risk differently than U.S. courts do. In the United States, if a swimmer falls off a high diving board and is injured, a court may decide that the pool owner should be held liable, given that such a fall is a foreseeable risk. If punitive damages are awarded, they could total millions of dollars. In a similar situation in Europe, a court might hold that the plaintiff, not the pool owner, was responsible for the injury.

Tort laws in other nations also differ in the way damages are calculated. For example, under Swiss law and Turkish law, a court is permitted to reduce the amount of damages if an award of full damages would cause undue hardship for the party who was found negligent. In the United States, in contrast, the courts normally do not take a party's economic circumstances into consideration.

FOR CRITICAL ANALYSIS

What impact might the typically greater damages awards in the United States have on a businessperson's decision about whether to keep the firm's operations in the United States or move them to another country? Does the potential cost of paying damages encourage large corporations to outsource jobs to other nations? Why or why not?

II. Intentional Torts against Persons

An intentional tort requires intent. Intent means that the actor intended the consequences of his or her act or knew with substantial certainty that certain consequences would result from the act. The law generally assumes that one intends the normal consequences of his or her actions. Thus a push is an intentional tort because the object of the push can ordinarily be expected to go flying.

A. Assault and Battery

1. Assault

An intentional, unexcused act that creates in another person a reasonable apprehension or fear of immediate harmful or offensive contact is an assault. If the contact is such that a reasonable person would want to avoid it and there is a reasonable basis for believing the contact is coming, the plaintiff suffers apprehension whether or not he or she is afraid. The
interest protected is freedom from having to expect harmful or offensive contact. The completion of the act that caused the apprehension, if it results in harm, is a battery.

2. **Battery**
   A battery is an unexcused, harmful, or offensive physical contact intentionally performed. The interest protected is the right to personal security and safety. The contact can be to any part of the body or anything attached to it. The contact can be made by some force that the defendant sets in motion.

3. **Compensation**
   Proof of motive in not necessary. Damages from a battery can be for emotional harm or loss of reputation as well as for physical harm.

4. **Defenses to Assault and Battery**
   The defenses discussed in the text are
   - **Consent**: When a person consents to the act that harms him or her, there is no liability for the damage done. This defense is good only as long as the defendant remains within the boundaries of the consent given.
   - **Self-defense**: An individual who is defending his or her life or physical well-being may use self-defense—that is, whatever force is reasonably necessary to prevent harmful contact. This defense extends to real danger and apparent danger, but force cannot be used once the danger has passed (and revenge is always prohibited).
   - **Defense of Others**: An individual can act in a reasonable manner to defend others who are in danger.
   - **Defense of Property**: Individuals may use reasonable force to defend property, but not force that is likely to cause death or great bodily injury.

B. **FALSE IMPRISONMENT**
   False imprisonment is the intentional confinement or restraint of another person without justification. The interest protected is the freedom to move without restraint. Confinement can be by physical barriers, physical restraint, or threats of physical force. Moral pressure or threats of future consequences are not sufficient. Businesspersons are often confronted with suits for false imprisonment after attempting to confine suspected shoplifters. Most states allow a merchant’s security personnel to detain a suspected shoplifter if there is reasonable cause for suspicion and the confinement is reasonable.

C. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
   Infliction of emotional distress is an intentional act that amounts to extreme and outrageous conduct resulting in severe emotional distress to another. The focus in an emotional distress suit is usually on the nature of the act—a single indignity or annoyance may not be enough, but repeated annoyances, coupled with threats, may be. In a business context, for example, the repeated use of extreme methods to collect a delinquent account may be actionable. A few states require that distress be evidenced by some physical illness.

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**ADDITIONAL BACKGROUND—**

**Infliction of Emotional Distress**

*Imagine that Dave invites Beth to a swimming party. At the party, Dave gives Beth a suit that Dave knows will dissolve in water. When Beth goes swimming, the suit dissolves, leaving Beth naked in the presence of the other guests. Beth suffers extreme embarrassment, shame, and humiliation. Is Dave liable for intentional infliction of emotional distress?* Under the circumstances, Dave is liable for Beth’s emotional distress. Liability can be found where
the conduct has been so outrageous in character, and so extreme in degree, as to go beyond what has been described as “all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”

Suppose that while arguing over the telephone with Michelle, an airline reservations operator, about a full refund for a cancellation, Phil calls her a liar and says that he would punch her in the mouth if he were there. Michelle suffers emotional distress over Phil’s statements, cannot sleep, and becomes ill. Is Phil liable for intentional infliction of emotional distress? Phil’s statements may be insulting, but they are not so outrageous or extreme as to result in liability. The Restatement (Second) of Torts, Section 46, Comment d, states, “[L]iability clearly does not extend to mere insults, indignities, ... or other trivialities. ... [People] must necessarily be expected and required to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind. ... [S]ome safety valve must be left through which irascible tempers may blow off relatively harmless steam.”

Even when conduct is extreme and outrageous, as of the early 1990s, at least five states and the District of Columbia required a physical injury or impact to recover for the negligent infliction of emotional distress. At least seventeen other states required that the plaintiff either be in the zone of danger or exhibit objective physical manifestations of the emotional injury. An exception existed, however, in at least eighteen states to the physical impact/zone of danger requirements to cover situations when a bystander suffered emotional injuries as a result of witnessing harm to immediate family members. In Dillon v. Legg, 44 P.2d 9123 (Cal. 1968), the court set forth factors to consider in determining whether emotional injury to a bystander is foreseeable: (1) whether the plaintiff was located near the scene of the accident; (2) whether the shock resulted from a direct emotional impact upon the plaintiff from the sensory and contemporaneous observance of the accident; and (3) whether the plaintiff and the victim were closely related.

D. DEFAMATION
Wrongfully hurting another's reputation by making a false statement of fact is defamation. Doing so orally is slander; doing it in writing or in a form of communication that has the potentially harmful qualities characteristic of writing (pictures, signs, statues, and films) is libel.

1. The Publication Requirement
Defamation requires that the publication of the statement (that is, that it be communicated to someone other than the defamed party).

2. Damages for Libel
To recover for libel, a plaintiff does not need to prove actual harm. “General damages,” which are designed to compensate for nongeneric harms, are presumed.

ENHANCING YOUR LECTURE—

IS ONLINE DEFAMATION SLANDER OR LIBEL?

The distinction between slander and libel is important because, as noted elsewhere, a plaintiff must prove “special damages” to establish the defendant’s liability for slander. How does this letter of tort law apply to online defamatory statements? This novel question came before a California appellate court in 2003. At stake was an award of $775,000 in damages, which a trial jury had awarded to Varian Medical Systems, Inc., the plaintiff in the case. The jury awarded the damages after deciding that the false and derogatory statements about the company made by two former employees on various Internet bulletin boards constituted defamation. The defendants appealed,
claiming that even if they had defamed Varian, their statements constituted was slander, not libel. Thus, Varian could not be awarded damages because it had not proved “special damages”—a requirement in a case alleging slander.

The appellate court disagreed. The court held that the messages on the bulletin boards were “writings.” In the court’s eyes, “the only difference between the publications defendants made in this case and traditionally libelous publications is defendants’ choice to disseminate the writings electronically.”

THE BOTTOM LINE

One of the defendants’ arguments in this case was that statements posted on Internet bulletin boards are “typically freewheeling and irreverent” and that no reasonable person would regard such statements as true. The appellate court made it clear, however, that defamatory statements, even if made online, are not exempt from “established legal and social norms” or “the civilizing influence of the law.”


3. Damages for Slander
Because slanderous statements have a temporary quality, special damages must be proved. Proof of injury—an actual economic loss—is required. The exceptions are
- A statement that another has a loathsome disease (including sexually transmitted diseases and mental illness).
- A statement that another has committed improprieties while engaging in a profession or trade.
- A statement that another has committed or has been imprisoned for a serious crime.
- A statement that an unmarried woman is unchaste.

4. Defenses to Defamation
These include the truth. Other defenses are
- A privilege (for example, statements made by judges during a trial), which may be qualified, or conditional.
- The lack of actual malice (knowledge of falsity or reckless disregard for the truth), as to statements made about in the press about public figures.

ADDITIONAL BACKGROUND—
Thoughtless Comments and Slander

McClune v. Neitzel, 235 Neb. 754, 457 N.W.2d 803 (1990), provides an example of how thoughtless comments can become slander. Robert McCune was a single, 27-year-old man, who grew up in Springfield, Nebraska (population: 800). He worked in neighboring Gretna with his brother, selling lawn sprinkler systems and managing the installation crews. McCune’s mother, Betty Holz, was a home health aide. One of Holz’s coworkers was Patricia Dieleman. Lois Keyes was one of Dieleman’s patients. On July 8, Keyes’ daughter told Keyes and Rose Neitzel that a friend of McCune’s was dying of AIDS. That evening, as Dieleman was tending to Keyes, Keyes told Dieleman that she did not want Holz to care for her. When Dieleman asked why, Neitzel responded, “Didn’t you know her son, Bobbie, has AIDS?” McCune did not have AIDS. Dieleman reported Neitzel’s remarks to a friend of hers and to Holz. Neitzel spoke of the conversation with Keyes’ seven daughters, her own husband, her sister, her brother, and her four sons. When McCune learned of Neitzel’s statement, he began to avoid Springfield, where he had previously visited his mother and friends at least twice a week. He avoided some family gatherings. A Springfield resident confronted him regarding AIDS. His work
E. INVASION OF PRIVACY

Four different acts qualify as tortious invasions of privacy. These are:

- Using a person’s name or picture or other likeness for commercial purposes without permission.
- Intruding into an individual’s affairs or seclusion (invading someone’s home, illegally searching someone’s belongings, eavesdropping by wiretap, unauthorized scanning of a bank account, compulsory blood testing, window peeping).
- Publishing information that places a person in a false light.
- Publicly disclosing private facts about an individual that an ordinary person would find objectionable.

CASE SYNOPSIS—

Case 6.1: Anderson v. Mergenhagen

After Dick and Karyn Anderson’s marriage collapsed and they divorced, Karyn’s new boy friend Paul Mergenhagen began following Dick’s new wife Maureen. On more than a dozen occasions Paul took photos of, and made obscene gestures to, Maureen as she was driving in her car or walking with her children. Frightened, disturbed, distracted, nervous, upset, shaken, and scared, Maureen called the police several times. Paul admitted that he followed Maureen at least four times and took more than thirty photos of her car. Maureen filed a suit in a Georgia state court against Paul, alleging, among other things, invasion of privacy. The court issued a summary judgment in Paul’s favor. Maureen appealed.

A state intermediate appellate court reversed and remanded. “[S]urveillance of an individual on public thoroughfares, where such surveillance aims to frighten or torment a person, is an unreasonable intrusion upon a person’s privacy. ... [R]epeatedly following a woman, who was pregnant for part of that time and was frequently alone or with her small children, photographing her at least 40 times, repeatedly causing her to become frightened and upset, to flee to her home, and to call the police seeking help, creates a jury question as to whether the defendant’s actions ... intruded upon her privacy.”

Notes and Questions

Under a Georgia state statute [Official Code of Georgia Section16-5-90(a)(1)]

A person commits the offense of stalking when he or she follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person. ... For the purpose of this article, the term “place or places” shall include any public or private property occupied by the victim other than the residence of the defendant. For the purposes of this article, the term “harassing and
intimidating" means a knowing and willful course of conduct directed at a specific person which causes emotional distress by placing such person in reasonable fear for such person's safety or the safety of a member of his or her immediate family, by establishing a pattern of harassing and intimidating behavior, and which serves no legitimate purpose. This Code section shall not be construed to require that an overt threat of death or bodily injury has been made.

Maureen alleged in part that Paul's conduct constituted stalking. Paul admitted to certain acts that might qualify but denied that he had the requisite intent. The court ordered this issue to go to trial. *Could Paul be liable if there is no finding of intent?* No. The statute requires "knowing and willful" conduct. This conduct must be "directed at a specific person which causes emotional distress by placing such person in reasonable fear for such person's safety or the safety of a member of his or her immediate family, by establishing a pattern of harassing and intimidating behavior, and which serves no legitimate purpose."

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**ANSWER TO “WHAT IF THE FACTS WERE DIFFERENT?” IN CASE 6.1**

*Suppose that Dick and Karyn had two children and Dick had been awarded custody of them. If Paul had been watching Maureen to determine her fitness to care for the children, would the result in this case have been different? Explain.* There would likely be no privacy violation by a parent's watching, or even eavesdropping and spying, on the other parent's spouse to determine that individual's fitness for custody of the parents' children. The same factors would determine the case, however: whether the surveillance was "conducted in a vicious or malicious manner not reasonably limited and designated to obtain information needed for the defense of a lawsuit or deliberately calculated to frighten or torment the plaintiff."

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**ANSWER TO “THE LEGAL ENVIRONMENT DIMENSION” QUESTION IN CASE 6.1**

*To succeed on a claim of intrusion into an individual’s affairs or seclusion, should a plaintiff have to prove a physical intrusion? Why or why not?* The court pointed out that under Georgia law “to state a claim under the ‘unreasonable intrusion’ tort, the plaintiff must allege a physical intrusion.” Invading someone’s home or searching their personal belongings, for example, would qualify. The court explained further, however, that “this ‘physical’ requirement can be met by showing that the defendant conducted surveillance on the plaintiff or otherwise monitored her activities.” In other words, any physical element does need not to be “analogous to a trespass”—“prying and intrusions into private concerns” is enough. It might be argued that a physical invasion should be required because in contemporary urban society most of us are under surveillance most of the time, through security cameras or other devices. This could be countered by arguing that an intense, focused surveillance, as the plaintiff alleged in this case, can be sufficiently offensive without a physical invasion.

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F. **APPROPRIATION**

The use of one person's name or likeness by another, without permission and for the benefit of the user, is appropriation (known in many states as the right of publicity). This is not limited to the appropriation of name or likeness. An individual's right to privacy includes the right to the exclusive use of his or her identity and the financial interest in its commercial exploitation.
G. **FRAUDULENT MISREPRESENTATION**
To constitute fraudulent misrepresentation, a statement of fact must be involved; reliance on an opinion is not justified unless the person making the statement has superior knowledge of the subject matter, and *puffery*, or seller's talk, ("This is the best product!") is too subjective. The elements are
- Misrepresentation of facts or conditions with knowledge that they are false or with reckless disregard for the truth.
- Intent to induce another to rely on the misrepresentation.
- Justifiable reliance by the deceived party.
- Damages.
- A causal connection between the misrepresentation and the injury suffered.

H. **ABUSIVE OR FRIVOLOUS LITIGATION**
Persons have a right not to be sued in the absence of a legally just and proper reason. Torts related to abusive litigation include malicious prosecution (suing out of malice without probable cause) and abuse of process (using a legal process in an improper manner or to accomplish a purpose for which it was not designed). The latter does not require proof of malice or a loss in a prior legal proceeding.

III. **Business Torts**
Business torts involving wrongful interference are generally divided into two categories: wrongful interference with a contractual relationship and wrongful interference with a business relationship.

A. **WRONGFUL INTERFERENCE WITH A CONTRACTUAL RELATIONSHIP**
Any lawful contract can be the basis for this action. The plaintiff must prove that the defendant actually induced the breach of a contractual relationship, however, not merely that the defendant reaped the benefits of a broken contract. The elements are
- A valid, enforceable contract between two parties.
- A third party's knowledge of the contract.
- The third party's intentionally causing either of the two parties to break the contract.

B. **WRONGFUL INTERFERENCE WITH A BUSINESS RELATIONSHIP**
Individuals may not interfere unreasonably with another's business to gain a share of the market. The distinction between competition and predatory behavior often depends on whether a business is attempting to attract customers in general or to solicit only those customers who have already shown an interest in the product or service of a competitor.

C. **DEFENSES TO WRONGFUL INTERFERENCE**
There is no liability if the interference was permissible. Bona fide competitive behavior is a privileged interference even if it results in the breaking of a contract. The public policy that favors free competition in advertising outweighs the instability that competitive activity might cause in contractual relations.

IV. **Intentional Torts against Property**
A wrong against property is a wrong against the individual who has legally recognized rights with regard to the property. The law categorizes property as *real property* (land and things permanently attached thereto) and *personal property* (things that are movable).

A. **TRESPASS TO LAND**
Trespass to land occurs when a person, without permission, enters onto another's land, or causes anything or anyone to enter onto the land, or remains on the land, or permits anything to remain on it. Harm to the land is not required.
1. **Trespass Criteria, Rights, and Duties**
   Trespassers include guests who are asked to leave. A trespasser is liable for property damage. A trespasser assumes the risks of the premises (unless the owner laid a trap to injure a trespasser or had a duty to warn of dangers on the property). A trespasser can be removed by reasonable force.

2. **Defenses against Trespass to Land**
   A complete defense to a charge of trespass exists if the trespass is warranted, as when one enters to help another in danger. Another defense is that the so-called owner did not have rights to the property.

**B. TRESPASS TO PERSONAL PROPERTY**

When an individual unlawfully harms another's personal property or otherwise interferes with the owner's right to exclusive possession and enjoyment, trespass to personal property occurs. The tort may entail acts of damage, dispossession, or both. A complete defense exists if the trespass was warranted.

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**CASE SYNOPSIS—**

**Case 6.2: Register.com, Inc. v. Verio, Inc.**

Register.com, Inc., is a registrar for the Internet Corporation for Assigned Names and Numbers (ICANN). Verio, Inc., sells Web site design and other services. Verio devised a bot to query Register’s WHOIS data (information, including e-mail addresses, about its registered clients). A party who is given this data must agree not to spam the identified parties. Verio ignored the restriction, and refused to stop. Register filed a suit in a federal district court against Verio, alleging trespass to personal property. The court ordered Verio to stop accessing Register’s computers by bot. Verio appealed.

The U.S. Court of Appeals for the Second Circuit affirmed. Verio's use of bots “consumed a significant portion of the capacity of Register's computer systems. *** [I]f Verio were permitted to continue to access Register's computers through such robots, it was highly probable that other Internet service providers would devise similar programs to access Register's data, and that the system would be overtaxed and would crash.” Register's request to Verio to stop “sufficiently advised Verio that its use of robots was not authorized and, according to Register’s contentions, would cause harm to Register's systems.”

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**Notes and Questions**

Traditionally, the courts have drawn a distinction between interference by dispossession, which does not require a showing of actual damages, and interference by unauthorized use or meddling, which requires a showing of actual damages. **Which of these types of interference occurred in this case?** In this case, the lower court concluded that "evidence of mere possessory interference is sufficient to demonstrate the quantum of harm necessary to establish a claim for trespass to [personal property]."

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**ANSWERS TO QUESTIONS AT THE END OF CASE 6.2**

1. **Why should the use of a robot, or “bot,” to initiate “multiple automated successive queries” have a different legal effect than typing and submitting queries manually?** As the dissent in this case pointed out, “Verio’s unauthorized use of its software robot poses risks to the
integrity of Register.com’s systems due to potential congestion and overload problems. Register.com has demonstrated to the district court that these risks are real and potentially disruptive of its operations, and that, absent injunctive relief, there is a strong probability that various entities not party to the litigation would engage in similar trespassory activity.”

2. **Are there any circumstances under which the use of a bot to initiate “multiple successive queries” could be justified against claims of trespass to personal property?** If it could be shown that a trespass to personal property was warranted, the use of a bot could be defended against assertions of trespass. For example, if a party paid for access to a Web site, and was denied that access, the use of a bot to bypass the block would at least be arguable.

C. **CONVERSION**

When a person wrongfully possesses or uses the personal property of another as if the property belonged to them, conversion occurs. Conversion is a trespass to personal property more serious in terms of duration and use. Unlawfully taking property is trespass; unlawfully retaining it is conversion. Believing one is entitled to the property is not a defense. Thus, someone who buys stolen goods is guilty of conversion even if he or she did not know the goods were stolen.

D. **DISPARAGEMENT OF PROPERTY**

Disparagement of property occurs when economically injurious falsehoods are made about another's product or property.

1. **Slander of Quality**

Publication of false information about another’s product, alleging it is not what its seller claims, is slander of quality. Actual damages must be proved to have proximately resulted from the slander. Improper publication may be both slander of quality and defamation. False or misleading statements about a competitor’s products are also actionable.

2. **Slander of Title**

When a publication denies or casts doubt on another’s legal ownership of property and results in financial loss to the owner, slander of title may exist. This is usually done knowingly.

V. **Cyber Torts**

Cyber torts are torts committed in cyberspace. The issues generally are who should be liable and how to prove, for example, that a defamatory remark was “published.”

A. **DEFAMATION ONLINE**

Under the Communications Decency Act (CDA) of 1996, Internet service providers (ISPs) are not liable for the defamatory remarks of those who use their services. Liability still rests with the party who made the remark, however. The text discusses the problem of identifying anonymous posters.

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**CASE SYNOPSIS—**

**Case 6.3: Fair Housing Council of San Fernando Valley v. Roommate.com, LLC**

Roommate.com, LLC, operates an online roommate matching Web site and e-mail newsletter. Users disclose information about themselves and their roommate preferences based on age, gender, and other characteristics, and on whether children will live in the household. The Fair Housing Councils of San Fernando Valley and San Diego, California, filed a suit in a federal district court...
against Roommate, claiming that a violation of the Fair Housing Act (FHA). The court held that the Communications Decency Act (CDA) barred this claim and dismissed it. The Councils appealed.

The U.S. Court of Appeals for the Ninth Circuit concluded that the CDA does not immunize Roommate for all of the content on its Web site and in its e-mail newsletters. “The immunity applies to a defendant who is the ‘provider ... of an interactive computer service’ and is being sued ‘as the publisher or speaker of any information provided by’ someone else. ... Roommate is immune so long as it merely publishes information provided by its members. However, Roommate is not immune for publishing materials as to which it is an ‘information content provider.’” The appellate court reversed the lower court’s summary judgment, and remanded the case for “a determination of whether [Roommate’s] non-immune publication and distribution of information violates the FHA.”

Notes and Questions

Members of Roommate’s service can add “Additional Comments” to their Web-generated profiles through an open-ended essay prompt. Does the CDA exempt Roommate from liability for publishing the content its members provide in the “Additional Comments” portion of their profiles? The court concluded that “Roommate’s involvement is insufficient to make it a content provider of these comments. Roommate’s open-ended question suggests no particular information that is to be provided by members; Roommate certainly does not prompt, encourage or solicit any of the inflammatory information provided by some of its members. Nor does Roommate use the information in the ‘Additional Comments’ section to limit or channel access to listings. Roommate is therefore not responsible, in whole or in part, for the creation or development of its users’ answers to the open-ended ‘Additional Comments’ form, and is immune from liability for publishing these responses.”

ANSWER TO “THE ETHICAL DIMENSION” QUESTION IN CASE 6.3

Do Internet service providers (ISPs) have an ethical duty to advise their users if of the information that the users provide for distribution through the ISPs might violate the law? Explain. Yes, because such advice could remind users of the limits on information that may be distributed online, just as posted speed limits remind motorists of how fast they can safely and legally drive. No, because this might have a “chilling” effect on the user’s speech—that is, on the information that the users would otherwise provide. Also, it could be considered to constitute the unauthorized practice of law.

ANSWER TO “THE E-COMMERCE DIMENSION” QUESTION IN CASE 6.3

Should the courts continue to regard the CDA’s grant of immunity to ISPs as “quite robust”? Why or why not? One of Congress’s goals in enacting the CDA was to encourage “the unfettered and unregulated development of free speech on the Internet.” So long as this goal is considered important, the CDA’s grant of immunity to Internet service providers should arguably be considered “robust.” If this speech is perceived as fairly well developed, or to have become the online equivalent of a shout of “Fire!” in a crowded theater, however, it might be argued that the immunity has served its purpose and could be restrained.

B. SPAM

Spam is junk e-mail. The First Amendment limits what the government can do to restrict it, but sending it may constitute trespass to personal property. The Controlling the Assault of Non-
Solicited Pornography and Marketing (CAN-SPAM) Act preempts state anti-spam statutes, except for those that prohibit deceptive e-mailing practices, to permit the use of unsolicited commercial e-mail but prohibit certain spamming activities (details are listed in the text).

ENHANCING YOUR LECTURE—

CROSS-BORDER SPAM

Spam is a serious problem in the United States, but enforcing antispam laws has been complicated by the fact that many spammers are located outside U.S. borders. After the CAN SPAM Act of 2003 prohibited false and deceptive e-mails originating in the United States, spamming from other nations increased, and the wrongdoers generally were able to escape detection and legal sanctions.

Before 2006, the Federal Trade Commission (FTC) lacked the authority to investigate cross-border spamming activities and to communicate with foreign nations concerning spam and other deceptive practices conducted via the Internet. In December 2006, however, Congress passed the U.S. Safe Web Act of 2006 (also known as the Undertaking Spam, Spyware, and Fraud Enforcement with Enforcers Beyond Borders Act of 2006), which increased the FTC’s ability to combat spam on a global level.

The act allows the FTC to cooperate and share information with foreign agencies in investigating and prosecuting those involved in Internet fraud and deception, including spamming, spyware, and various Internet scams. Although the FTC and foreign agencies can provide investigative assistance to one another, the act exempts foreign agencies from U.S. public disclosure laws. In other words, the activities undertaken by the foreign agency (even if requested by the FTC) will be kept secret.

FOR CRITICAL ANALYSIS

A provision in the U.S. Safe Web Act provides Internet service providers (ISPs) with a “safe harbor” (immunity from liability) for supplying information to the FTC concerning possible unfair or deceptive conduct in foreign jurisdictions. Is this provision fair? Why or why not?


TEACHING SUGGESTIONS

1. To illustrate any tort, set out the elements and provide a hypothetical in which one of the elements is missing. This helps students to identify and distinguish the elements in fact situations. Possible hypotheticals include: Driving in a car, at a blind spot in the road, Walter honks his horn three times. Two blocks away, an elderly woman believes the horn is an air raid siren and suffers a heart attack. Walter honked his horn, and the honking caused the woman’s death, but Walter is not liable because there is no duty not to honk your horn.

2. Tort law involves civil liability. This chapter provides an opportunity to emphasize the distinction between civil and criminal liability by providing examples of acts that constitute a tort and a crime, a tort and no crime, a crime and no tort, and no tort and no crime. For instance:
a. Believing he is entitled to Paula’s typewriter, Ralph takes it. Ralph has committed a tort (conversion) but no crime (because he lacked criminal intent).

b. A mugger, gun drawn, sneaks up behind Steve on the street. A police officer seizes the mugger before Steve realizes what is happening. The mugger has committed a crime (attempted robbery) but no tort (Steve suffered no injury).

c. Tina is dying. Victor refuses to donate blood to save him. Tina has committed no tort and no crime.

Cyberlaw Link

Ask students to consider the parameters of tort law in cyberspace. What is its potential and what are its limits? How might the tort of misappropriation be applied in cases of misconduct online? What are some of the tort causes of action that might apply to defective or misleading electronic transfers of information?

Discussion Questions

1. Identify and define the torts that protect against the intentional interference with persons. 
   - **Assault.** An intentional, unexcused act that creates in another person a reasonable apprehension or fear of immediate harmful or offensive contact. 
   - **Battery.** An unexcused, harmful, or offensive physical contact intentionally performed. 
   - **False imprisonment.** The intentional confinement or restraint of another person without justification. 
   - **Infliction of emotional distress.** An intentional act that amounts to extreme and outrageous conduct resulting in severe emotional distress to another. 
   - **Defamation.** Wrongfully hurting another's reputation is defamation. (Doing so orally is slander; doing it in writing or in a form of communication that has the potentially harmful qualities characteristic of writing is libel.) 
   - **Invasion of privacy.** Using a person's name or picture or other likeness for commercial purposes without permission; intruding into an individual's affairs or seclusion; publishing information that places a person in a false light; publicly disclosing private facts about an individual that an ordinary person would find objectionable. 
   - **Misrepresentation (fraud).** Misstating facts or conditions with knowledge that they are false or with reckless disregard for the truth and an intent to deceive resulting in injury.

2. Identify and describe defenses to assault and battery. 
   - **Consent.** There is no liability for damage done by an act to which the injured person consented (as long as the act was within the boundaries of the consent). 
   - **Self-defense.** An individual defending his or her life or physical well-being can use whatever force is reasonably necessary to prevent harmful contact. “Whatever force is reasonably necessary” is whatever force the individual believes is about to be used against him or her. Force cannot be used once danger has passed and cannot be used in revenge. 
   - **Defense of others.** An individual can act to defend others who are in danger to the same extent that he or she can act in self-protection. 
   - **Defense of property.** To defend property, individuals can use reasonable force—which does not include force that is likely to cause death or great bodily injury.

3. What is the basis for the tort of defamation? The publication of a statement that holds an individual up to contempt, ridicule, or hatred. Publication means that the statements are made to or within the hearing of persons other than the defamed party (statements dictated to a secretary, for example). Republication is also defamatory—thus, a person who repeats defamatory statements is liable.

4. Discuss the category of business tort known as wrongful interference with a contractual relationship. The basic elements are: (1) an enforceable contract between two parties, (2) a third party's knowledge of the contract, and (3) the third party's inducing either of the two to break it (not merely reaping
the benefits of a broken contract). The third party must interfere for the purpose of advancing his or her economic interest.

5. **What are defenses to charges of wrongful interference with the business rights of others?** The interference was permissible. Bona fide competitive behavior is permitted even if it results in the breaking of a contract. Public policy favors free competition. Absent associated illegal activity, a businessperson will not incur liability for negotiating secretly behind a rival’s back, refusing to do business with a competitor, or refusing to deal with third parties until they stop doing business with a rival.

6. **What is appropriation?** The use of one person’s name or likeness by another, without permission and for the benefit of the user, is appropriation. An individual’s right to privacy includes the right to the exclusive use of his or her identity.

7. **Identify and define the torts that protect against the intentional interference with property.**
   - **Trespass to land.** When a person, without permission, enters onto another’s land, or causes anything or anyone to enter onto the land, or remains on the land, or permits anything to remain on it. (Harm to the land is not required.)
   - **Trespass to personal property.** When an individual unlawfully harms another’s personal property or otherwise interferes with the owner’s right to exclusive possession and enjoyment.
   - **Conversion.** When the owner or rightful possessor of personal property is deprived of its use (in other words, a trespass to personal property so serious that a converter can be forced to buy the property—unlawfully taking property is trespass; unlawfully retaining it is conversion).

8. **Why are Internet service providers (ISPs) exempt from liability, under some statutes, for the actions of their customers?** Sometimes it is viewed as unfair to impose liability on an ISP for the actions of its customers, who may number in the hundreds of thousands, or more. It also sometimes said that imposing such liability would inhibit the development of the Web and the Internet. An analogy might be the imposition of liability on a bookseller for the statements of every author in every book that the seller sold. To so restrict ISPs (or booksellers) would limit access to their products and services to very few customers.

**Activity and Research Assignments**

1. Have students bring to the class current news articles about events that involve or might ultimately involve tort suits. Ask them to identify the parties to the actions, the tort(s) involved, and their predictions as to the outcomes of the cases.

2. News reports of local, national, and international controversies involving the subjects considered in this chapter can often be found and may be used effectively in discussing this material. Events that are frequently widely publicized include competitors’ wrongfully attempting to obtain information and cases involving professional athletes. Have students keep an eye out for these and discuss them in class.

**Explanations of Selected Footnotes in the Text**

Footnote 5: The case of *New York Times v. Sullivan* grew out of an advertisement placed in the *New York Times* in 1960 to raise money for civil rights causes. Titled “Heed Their Rising Voices,” the ad stated that thousands of African-American students were engaging in nonviolent demonstrations in affirmation of their right to live in dignity. The ad claimed that the students’ efforts to uphold the guarantees of the Constitution and the Bill of Rights were being met by “an unprecedented wave of terror by those who would deny” those guarantees. The ad described a number of events by way of illustration, including the expulsion of students for demonstrating at the Alabama state capitol in Montgomery and the “truckloads of police armed with shotguns and tear gas [that] ringed the Alabama State College campus.” No specific public official was named. The ad asked for funds to support the student movement, the struggle for the right to vote,
and the legal defense of Martin Luther King, Jr., who had been indicted for perjury. The ad was signed with
the names of sixty-four well-known personalities in public affairs, religion, trade unions, and the arts. L. B.
Sullivan, commissioner of the Montgomery police department, claimed that he was implicitly the butt of al-
legedly libelous charges. In fact, the ad was full of mistakes unrelated to the alleged libel (for example, the
students had not been expelled for demonstrating at the capitol, but for demanding service at a lunch
counter in the Montgomery County courthouse). Citing the unrelated mistakes, Sullivan's former employer
testified that he would not reemploy Sullivan if he believed "the things that the paper said he did." Under
Alabama law, the statements were found libelous per se on the ground that they injured Sullivan in his repu-
tation, profession, trade, or business, and the jury awarded him $500,000. The Alabama Supreme Court
affirmed the decision. The Times appealed. The United States Supreme Court reversed. The Supreme
Court ruled that even applications of the law of libel must be made "against the background of a profound
national commitment to the principle that debate on public issues should be uninhibited, robust and wide
open." Only proof of "convincing clarity" that a false and defamatory statement concerning an identifiable
official was made with "actual malice" could constitutionally justify an award of damages for defamation of
official conduct. The court pointed out that erroneous statements are inevitable in free debate and must be
protected if freedom of expression is to have the "breathing space" that it needs to survive.

Footnote 6: Vanna White, hostess of "Wheel of Fortune," markets her identity to advertisers. Without White's
permission, Samsung Electronics America, Inc., attempted to use White's identity. An ad for
Samsung videocassette recorders depicted a robot, dressed in an outfit resembling White's and posed next to
a game board that resembled the "Wheel of Fortune" set, in a stance for which White is famous. White sued
Samsung, alleging, among other things, that the company had appropriated her celebrity status. The court
granted Samsung's motion for summary judgment. White appealed. In White v. Samsung Electronics
America, Inc., the U.S. Court of Appeals for the Ninth Circuit held that it is not important how a celebrity's
identity is appropriated, and reversed and remanded the case. The means of appropriation are relevant only
to determine whether a defendant appropriated a plaintiff's identity. "If the celebrity's identity is commer-
cially exploited, there has been an invasion of his right whether or not his 'name or likeness' is used." The
tort of appropriation "has developed to protect the commercial interest of celebrities in their identities. The
theory *** is that a celebrity's identity can be valuable in the promotion of products, and the celebrity has
an interest that may be protected from the unauthorized commercial exploitation of that identity."

Circuit Judges Kozinski, O'Scannlain, and Kleinfeld dissented from the majority opinion. The follow-
ing is an excerpt from their dissent (as it appears on Westlaw).

Saddam Hussein wants to keep advertisers from using his picture in unflattering contexts. [FN1] Clint
Eastwood doesn't want tabloids to write about him. [FN2] Rudolph Valentino's heirs want to control his film biography. [FN3] The Girl Scouts don't want their image soiled by association with certain activities. [FN4] George Lucas wants to keep Strategic Defense Initiative fans from calling it "Star Wars." [FN5] Pepsico doesn't want singers to use the word "Pepsi" in their songs. [FN6] Guy Lombardo wants an exclusive property right to ads that show big bands playing on New Year's Eve. [FN7] Uri Geller thinks he should be paid for ads showing psychics bending metal through telekine-
sis. [FN8] Paul Prudhomme, that household name, thinks the same about ads featuring corpulent bearded chefs. [FN9] And scads of copyright holders see purple when their creations are made fun of. [FN10]

D20 (Iraqi diplomat objects on right of publicity grounds to ad containing Hussein's picture and
caption "History has shown what happens when one source controls all the information").


(Rudolph Valentino); see also Maheu v. CBS, Inc., 201 Cal.App.3d 662, 668, 247 Cal.Rptr. 304
Reflections (1988) (A humorous short story with a tragic ending. "She thought of the first day she had
CHAPTER 6: INTENTIONAL TORTS

met VR_SKY. How foolish she had been. How could she love a man who wouldn't even tell her all the letters in his name?


FN6. Pepsico Inc. claimed the lyrics and packaging of grunge rocker Tad Doyle’s “Jack Pepsi” song were “offensive to [it] and [...] likely to offend [its] customers,” in part because they “associate [Pepsico] and its Pepsi marks with intoxication and drunk driving.” Deborah Russell, Doyle Leaves Pepsi Thirsty for Compensation, Billboard, June 15, 1991, at 43. Conversely, the Hell’s Angels recently sued Marvel Comics to keep it from publishing a comic book called “Hell’s Angel,” starring a character of the same name. Marvel settled by paying $35,000 to charity and promising never to use the name “Hell’s Angel” again in connection with any of its publications. Marvel, Hell’s Angels Settle Trademark Suit, L.A. Daily J., Feb. 2, 1993, s II, at 1. Trademarks are often reflected in the mirror of our popular culture. See Truman Capote, Breakfast at Tiffany’s (1958); Kurt Vonnegut, Jr., Breakfast of Champions (1973); Tom Wolfe, The Electric Kool-Aid Acid Test (1968) (which, incidentally, includes a chapter on the Hell’s Angels); Larry Niven, Man of Steel, Woman of Kleenex, in All the Myriad Ways (1971); Looking for Mr. Goodbar (1977); The Coca-Cola Kid (1985) (using Coca-Cola as a metaphor for American commercialism); The Kentucky Fried Movie (1977); Harley Davidson and the Marlboro Man (1991); The Wonder Years (ABC 1988-present) (“Wonder Years” was a slogan of Wonder Bread); Tim Rice & Andrew Lloyd Webber, Joseph and the Amazing Technicolor Dream Coat (musical). Hear Janis Joplin, Mercedes Benz, on Pearl (CBS 1971); Paul Simon, Kodachrome, on There Goes Rhymin’ Simon (Warner 1973); Leonard Cohen, Chelsea Hotel, on The Best of Leonard Cohen (CBS 1975); Bruce Springsteen, Cadillac Ranch, on The River (CBS 1980); Prince, Little Red Corvette, on 1999 (Warner 1982); dada, Dizz Knee Land, on Puzzle (IRS 1992) (“I just robbed a grocery store--I’m going to Disneyland / I just flipped off President George--I’m going to Disneyland”); Monty Python, Spam, on The Final Rip Off (Virgin 1988); Roy Clark, Thank God and Greyhound [You’re Gone], on Roy Clark’s Greatest Hits Volume I (MCA 1979); Mel Tillis, Coca-Cola Cowboy, on The Very Best of (MCA 1981) (“You’re just a Coca-Cola cowboy / You’ve got an Eastwood smile and Robert Redford hair ...”). Dance to Talking Heads, Popular Favorites 1976-92: Sand in the Vaseline (Sire 1992); Talking Heads, Popsciple, on id. Admire Andy Warhol, Campbell’s Soup Can. Cf. REO Speedwagon, 38 Special, and Jello Biafra of the Dead Kennedys. The creators of some of these works might have gotten permission from the trademark owners, though it’s unlikely Kool-Aid relished being connected with LSD, Hershey with homicidal maniacs, Disney with armed robbers, or Coca-Cola with cultural imperialism. Certainly no free society can demand that artists get such permission.

Copyright law specifically gives the world at large the right to make “fair use” parodies, parodies that don’t borrow too much of the original. When Mel Brooks, for instance, decided to parody Star Wars, he had two options: He could have stuck with his fair use rights under 17 U.S.C. s 107, or he could have gotten a license to make a derivative work under 17 U.S.C. s 106(b) from the holder of the Star Wars copyright. To be safe, he probably did the latter, but once he did, he was guaranteed a perfect right to make his movie. [FN25]


Parody, humor, irreverence are all vital components of the marketplace of ideas. The last thing we need, the last thing the First Amendment will tolerate, is a law that lets public figures keep people

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from mocking them, or from “evok[ing]” their images in the mind of the public. 971 F.2d at 1399. [FN29]

FN29. The majority’s failure to recognize a parody exception to the right of publicity would apply equally to parodies of politicians as of actresses. Consider the case of Wok Fast, a Los Angeles Chinese food delivery service, which put up a billboard with a picture of then-L.A. Police Chief Daryl Gates and the text “When you can’t leave the office. Or won’t.” (This was an allusion to Chief Gates’s refusal to retire despite pressure from Mayor Tom Bradley.) Gates forced the restaurant to take the billboard down by threatening a right of publicity lawsuit. Leslie Berger, He Did Leave the Office--And Now Sign Will Go, Too, L.A. Times, July 31, 1992, at B2. See also Samsung Has Seen the Future: Brace Yourself, Adweek, Oct. 3, 1988, at 26 (ER 72) (Samsung planned another ad that would show a dollar bill with Richard Nixon’s face on it and the caption ‘Dollar bill, 2025 A.D.,’ but Nixon refused permission to use his likeness); Madow supra note 19, at 142-46 (discussing other politically and culturally charged parodies).

Footnote 13: In ancient times, it was not the existence of a contract that was important but the relation recognized by law in which the parties stood and with which the third party interfered. In early Roman law, the head of a household could maintain an action against one who committed violence on household members, including slaves. By the 1200s, the common law had incorporated this idea with a twist—an action for damages could be sustained by any master for loss of the services of a servant through violence committed on the servant. After the Black Death, in 1349, because of the shortage of labor in England, a system of compulsory labor was introduced in an Ordinance of Labourers (later Statute of Labourers). A penalty was provided to keep laborers from running away, and a remedy was given to employers against anyone who received and retained the laborer in service. In 1853, Miss Johanna Wagner, an opera singer of some distinction, was under contract to sing exclusively in a certain theatre for Lumley. Gye, “knowing of the premises, and maliciously intending to injure” Lumley, “enticed and procured” Wagner to refuse to fulfill the contract. Lumley sued. Under the Statute of Labourers, an operatic artiste was not to be classed as a “servant,” but in Lumley v. Gye the court nonetheless held that the principle should extend to Wagner and that it was a tort to persuade her to break her contract. The court emphasized Gye’s “malice.” Originally, English law applied the tort to personal service contracts only, but eventually came to apply it to intentional interfer- ences with any type of contract. It was not until the twentieth century that most American jurisdictions recognized this tort as applicable to any contract, regardless of its character.

ANSWERS TO ESSAY QUESTIONS IN
STUDY GUIDE TO ACCOMPANY BUSINESS LAW, ELEVENTH EDITION
BY HOLLOWELL & MILLER

1. **What is a tort?**  A tort is a civil wrong (other than a breach of contract) for which a remedy is provided in the form of an action for damages.

2. **What is a cyber tort, and how are tort theories being applied in cyberspace?**  A cyber tort is a tort committed in cyberspace. The text states that determining what tort duties apply in cyberspace and the point at which one of those duties is breached is not an easy task for the courts. Generally, tort theories are being applied in cyberspace in traditional ways with some additional problems caused by the technology.

**REVIEWING—**

★★★

**INTENTIONAL TORTS**

★★★

Two sisters, Darla and Irene, are partners in an import business located in a small town in Rhode Island. Irene is married to a well-known real estate developer and is campaigning to be the
mayor of their town. Darla is in her mid-thirties and has never been married. Both sisters travel to other countries to purchase the goods they sell at their retail store. Irene buys Indonesian goods, and Darla buys goods from Africa. After a tsunami (tidal wave) destroys many of the cities in Indonesia to which Irene usually travels, she phones one of her contacts there and asks him to procure some items and ship them to her. He informs her that it will be impossible to buy these items now because the townspeople are being evacuated due to a water shortage. Irene is angry and tells the man that if he cannot purchase the goods, he should just take them without paying for them after the town has been evacuated. Darla overhears her sister’s instructions and is outraged. They have a falling-out, and Darla decides that she no longer wishes to be in business with her sister. Using the information presented in the chapter, answer the following questions.

1. **Suppose that Darla tells several of her friends about Irene instructing the man to take goods without paying for them from the people of Indonesia after the tsunami disaster. If Irene files a tort action against Darla alleging slander, will her suit be successful? Why or why not?**

   No, because what Darla said was true and therefore not defamatory. Darla told her friends about Irene’s instructions to a man over the phone. Because Irene did tell the man to take the goods without paying for them, she would not be successful in a suit against Darla.

2. **Now suppose that Irene wins the election and becomes the city’s mayor. Darla then writes a letter to the editor of the local newspaper disclosing Irene’s misconduct. If Irene accuses Darla of committing libel, what defenses could Darla assert?**

   Truth is normally an absolute defense to any claim of defamation or slander. Because Irene did tell the man to take the goods without paying for them, Darla’s letter exposing this fact is not malicious or defamatory. Furthermore, Irene’s winning the mayoral election has made her a public figure. Public figures have less protection against defamation. False and defamatory statements about them that are published in the press are not defamatory unless the statements are made with actual malice—that is, with either knowledge of falsity or a reckless disregard for the truth. Therefore, Darla’s statements, which are either true or believed by her to be true, were not made with actual malice.

3. **If Irene accepts goods shipped from Indonesia that were wrongfully obtained, has she committed an intentional tort against property? Explain.**

   Yes, because she has accepted wrongfully obtained goods, even though it may not be proved that she knew this in advance. Irene’s acceptance of the goods makes her liable for conversion. She is liable for this tort regardless of whether she played a role taking the goods. Additionally, her role in taking the goods may make her liable for a second tort, trespass to personal property, which occurred when the man took the goods without paying for them.

4. **Suppose now that Irene, who is angry with her sister for disclosing her business improprieties, writes a letter to the editor falsely accusing Darla of having sexual relations with her neighbor’s thirteen-year-old son. For what intentional tort or torts could Darla sue Irene in this situation?**

   Defamation per se and emotional distress. The strongest suit would be for defamation per se. Irene’s letter is defamation per se because the false information involves a claim that Darla committed a criminal act. There could also be a claim of emotional distress, since the outrage of being accused of this act could be found to exceed the bounds of decency.