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The law of tort

How the law of tort affects you and your business

Tort law, like contract law, is a civil area of law. This area of law is extremely important to you and your business. It is quite possible to make yourself and/or your business liable to be sued in tort for negligent acts done by you or done at your instigation by your business.

Some of the many areas based on tort law which you have to be especially aware of when running your own business are:

- Making sure that you do not allow any defective products to be sold to your consumers;
- Ensuring that employees are kept safe and supplied with the correct protective equipment;
- Making sure that any plant and equipment used by employees is safe and correctly maintained;
- Making sure that any references you supply to an employee are correct and factual (employees are beginning to look a bit of a nightmare);
- Making sure that any business premises, and private property you may have are kept in a safe condition for anyone coming into them (including trespassers!);
- Making sure that, if you are in the business of supplying advice to clients, that this advice had not been issued carelessly.

Of course, this list is not exhaustive but at least it'll give you an idea of the wide range of business activities where the law of tort comes in. Luckily for you as a business law student, not all these torts will be covered intensively on your course. In the main, what you will have to look at closely on an undergraduate business law course is, the background to tort, that is, the general principles of tort, the tort of negligence, negligent advice and occupier's liability. So, that's what we'll do.

The basic principles

As is the case with contract law, torts are civil wrongs. For our purposes, we can say that a tort is any civil offence which is not covered by contract law. I'm aware that sounds like a cop out but it really isn't. So, a tort is a civil wrong that has been normally performed by one person against another person. It doesn't amount to a criminal offence against the other person. It involves a breach of a duty which you owe to another person or some unlawful intrusion of the rights of another person. Tort cover a vast area of law. Just to give you an idea of how far reaching tort is, it covers amongst other things:

- **Trespass:** See example below.
- **Negligence:** This where someone owes a duty of care to other people, are careless as to their actions and cause damage to others which is directly due to their careless actions. An obvious example here is that a driver of a vehicle has a duty of care not to injure other road users. If a driver is careless when driving a vehicle and causes damage to other road users, then he is likely to be sued by anyone damaged by his actions.
- **Occupier's liability:** A duty to protect the safety that an occupier of 'premises' has to visitors to their premises. This duty of care to others, which all occupiers have, operates in your own home or any offices, shops or buildings that might be used by your business including outbuildings and any land occupied by you or your business.
- **Nuisance:** There are two types of these – private and public nuisance. An example of private nuisance might be you playing the Rolling Stones at full volume every night for eight hours at a time, disturbing the old lady who lives in the flat above you. This is a tort. A public nuisance is where you disturb a great many people all in one go. An example might be where you hire a sound stage on Wimbledon Common and turn up all 40 of your amplifiers to distortion level and the noise you make can be heard in Belgium. This is a tort and a criminal offence. Particularly criminal if you are playing anything by Barry Manilow.
- **Defamation:** Saying/writing/publishing some untrue information which is intended to injure the reputation of this person.

Luckily for us, in business law, we only have to look closely at three torts. Namely: negligence (this has two aspects – *negligent acts* causing physical harm and *negligent statements* causing financial loss to others) and *occupier's liability*. We do come across the idea of tort again, in passing, in employment

law with something called *vicarious liability*. But for now, as an explanation of what a tort is, we'll have a quick look at trespass to land. This should give you an idea of what the law of tort is all about.

Trespass to land – a quick example

Trespass is probably the oldest and most wide ranging of torts. As such it provides a good background to the torts we do have to cover. Trespass to land is based on a person intruding onto the property rights of another person. Trespass actually covers *interference*, not only to land, but also interference physically to another person (bodily interference) and interference with another person's property.

The tort of trespass to land is particularly easy to understand and the concept will be familiar to all of us. For example, let's suggest that someone starts to walk across your garden every day because it's a quick way to get to the local shops. We'll assume that although they keep walking across your lawn, they don't cause any real damage apart from squishing a few leaves of grass. So, no real harm done? Well not really. But do you really want to have some unknown person walking over your garden every day? I suspect you wouldn't, as neither would I.

In this tort of trespass to land, someone is trying, in a sense, to take over the rights which you personally have over your own property. These are often called your 'proprietary rights'. After all, you own your own garden and if you haven't given any other person the right to walk all over your lawn then they have no right to do so.

This is the basis of all torts – someone has invaded your personal rights in some way and you don't like it! The behaviour explained above is not in itself a criminal offence, however annoying it might be when you look out of your window. But, if whoever it is that walks over your lawn went further and started kicking your garden shed as they went by, then this would almost certainly become a criminal offence (probably criminal damage). Torts can often overlap with criminal law and in certain instances can result in both civil actions and criminal actions being taken simultaneously. As we don't need to study criminal law in a business law course, we'll exclusively restrict ourselves to the civil side of things.

So, if trespass isn't a criminal offence then it must be (and is) a civil offence. Just as with contract law, as it's a private offence, it's up to you to take your own legal action (to sue) to put this situation right, Annoying I know, but unless this trespasser starts pinching your petunias, there is not much more