

In order to establish negligence, there are four elements that should be present ...

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Business Commerce Law

Distinguish between libel, slander, defamation, trade slander, and deceit, indicating in what situations each would apply and the significance of the distinction.

Libel, slander, defamation, trade slander and deceit are legal terms that are often interchanged by lay persons. While these words may seem related and almost similar, there are several ways in which they are different. Here is a discussion of what these different terms mean and situations to illustrate their meaning:

Defamation is a broad term used to refer to any published statement that is a false accusation and is detrimental to a particular person's reputation. The plaintiff or the recipient of the false statement must see the statement as false and derogatory. Even innuendos or implied statements with a double meaning that is false and derogatory to the plaintiff can be considered as defamation. Another requirement for defamation to be established is the presence of a third party like a published written form of newspapers or ear witnesses to a defamation incident.

The tort of defamation falls into two distinct classifications namely: libel or slander. The main difference between these two defamation types is the method of delivery of the defamation statement. Libel is often called the written form of defamation and slander. Most newspapers that are sued for falsely written articles therefore commit libel and not slander. On the other hand, hearing another person giving derogatory verbal assaults to a person is charged with slander and not libel.

Trade slander on the other hand is a special subtype of slander which

involves the wrongful attacks on the reputation of a business or establishment. It is oftentimes referred to as its other name which is product defamation.

Deceit on the other hand is the intentional act of misleading another person which finally results to damage. In order to establish the commitment of deceit, it is not even necessary that the deceitful or fraudulent statements are incorrect. It only entails that the person giving the statement believes it to be false.

Imprisonment can take the form of confinement, arrest, or submission to authority. Explain the differences and determine what is necessary to sue for false imprisonment.

Imprisonment is a controversial act because it impinges on the basic human right for freedom. An imprisonment act can take on many forms such as confinement, arrest or false arrest and submission to authority.

Confinement is the act of forcing another person to a space and binding him for a certain period of time, creating limits to their normal movement and freedom. Examples are placing someone inside a locked room enough basis that could be supported by a country's current laws and acts. In false arrests, an act of intentionally placing someone on restraint, against his will or without his permission, is involved. In addition, anyone performing an arrest should have the necessary authority and permits to be able to lawfully execute such task. Submission to authority is also another act of being restrained under the belief that they are submitting to a person of authority. Any act that limits an individual's freedom of movement but is not done through legal means is enough to present as evidence to charge the

accusers and basically everyone involved in the plot for false imprisonment. Distinguish between assault and battery. Discuss the right of self-defense with regards to assault and battery. Discuss how doctors avoid liability when they operate on or otherwise treat patients.

Assault and battery are often the most reported cases related to physical and intentional harm. Assault and battery both involve some sort of physical or psychological attacks directed towards a person or a group of people. Assault refers to the creation of threat against another person and their safety. The act must only be a threat and no physical contact or harm must be done yet. This can include verbally telling a person that they will hit them or throwing arms up in a threat to punch or slap another person. On the other hand, battery takes place if a physical contact or harm was already done such as telling a person that they will hit them and striking a punch on their face afterwards. The presence or absence of injury is not a requirement for charging assault or battery on another. They only need to prove that a threat or physical contact was established with or without actual harm as the end result.

When faced with an assault or battery, the victims can respond with the necessary force to be able to defend themselves against any aggressor. Acts of violence committed when faced with an episode of assault and battery are protected by an individual's right to self-defense. The court will consider whether the response accompanied with force or violence is within reasonable grounds.

Doctors are able to avoid liability from assault and battery in their profession by seeking a signed consent form. Through this form, the patient gives their

permission to submit to a certain medical procedure or treatment.

Furthermore, this consent must be a product of an informed decision and the patient should have received the proper discussion of the risks and benefits of the procedure. They must also be of legal age and have a sound mind and body to make a decision for the authorities to validate and acknowledge the presence of such form. If these conditions are fulfilled, the doctor is protected from getting sued as long as he or she is performing within the limits of what the consent has allowed.

What are the necessary elements that must be present for a person to be classified as a trespasser? Consider the context of a homeowner with unruly guests or a business with unruly patrons. Apply the Trespass to Property Act in your answer.

Trespassing is an unlawful entry to a land or property without the permission of its owner. Even if the trespasser does not know that he is encroaching on a private property, the simple act of getting caught uninvited to a place owned by a private owner can already constitute trespassing. To prove an act of trespassing, it is not a requirement that the trespasser commits a wrongful act while inside the property. The simple act of intruding into another person's space, house or property is already trespassing. If the person obtains injury such as getting bitten by a dog inside the said property, the trespasser cannot hold the owner responsible for such harm. There are also forms of trespassing that does not entail one's personal entering on another's property. Indirect trespassing happens when a person throws anything into another's private property. If the owner suffers harm from such items thrown, the trespasser could be sued. There are also acts of

trespassing that involve permanently intruding into another property. An example could be a neighbor inadvertently building a fence or other physical structure extending into a lot that is no longer their property.

If the property in question is a business establishment or any property wherein the presence of the public is expected and welcome, establishing trespassing can be a little bit trickier. A good example of this would be a mall or a restaurant which more often than not is a private property that welcomes the public during its open hours. If visitors or patrons of the place become unruly, they are often requested to leave the premises. However, if these same people refuse to leave and cause more public scandal, then they can already be charged with trespassing and the owner has the legal right to use force to take them out of the business premises.

Explain, with reference to decided cases, what a person must do to establish negligence. Expand on the tests which may be applied and discuss what remedies and defenses are available. How does negligence relate to professional liability?

Negligence is a tort that is used to describe a careless action which intentionally or non-intentionally caused harm. This can be done by doing something that you should not have done or failure to do something that you should have done, the end result is harm or damage to a person and or its properties.

Duty - This refers to the existence of duty or responsibility to care or perform to a certain standard. Establishment of duty on the part of the other party means that he has an obligation to the plaintiff. In order to test for

negligence, the court makes use of a foreseeable plaintiff test. When it is clear that a certain conduct or action would cause harm and it is reasonable foreseeable then the person has the duty to be careful with the execution of that act. The said test was used in the Donoghue vs. Stevenson case.

Breach of duty - After a responsibility of duty has been established, the breach of duty requirement will follow. The defendant, in most cases, has usually performed a breach of duty that directly or indirectly caused the negative consequences to the plaintiff. The reasonable person test is used to test if a breach of duty was present. This test was used in trying the Maccabe vs. Westloak case.

Causation or proximate cause - The resulting harm or injury must be traced to a negligent conduct of the defendant. In order to establish this, the "but for" test is used. This test establishes that the harm will not happen but for the negligent conduct of the defendant. Proximity of the cause and the negative effect must also be established through a "remoteness" test. If the cause is too remote to cause the harm, then the defendant may not be held liable for the consequences.

Damage or injury - In order for negligence to be established, the damage or harm must be proven as the end result. This damage should be a direct result of the breach in duty or standard of care.

A defendant may raise the defense by proving that the plaintiff himself has voluntarily assumed the risks involved with the act. The defendant can also bring up the fact that the plaintiff was also contributory negligent in his actions, thus contributing to the negative end result.

List and explain the elements that are required for an agreement to be a

contract. In your answer, consider void and voidable contracts, formal and parol contracts, unenforceable and illegal contracts, implied terms, unilateral contracts, gratuitous promise, seals, offer, acceptance, and consideration.

A valid contract must be able to achieve or fulfill the following conditions:

Consensus - For any contract to take place there should be a consensus or agreement between the parties involved in the transaction. An offer and a consequent acceptance of an offer are usually needed for a consensus to be established.

Capacity - Capacity refers to the legal capability to enter a contract. This refers to the legal, psychological and physical requirements that should be met in order to declare one fully capable of signing an agreement. Examples of persons who do not meet the requirement for capacity are intoxicated patients and infants.

Consideration - This requirement for a contract refers to the price or monetary terms that each party is willing to pay in order to complete the agreement.

Intention - For a contract to be valid, both parties must be aware or have an intention to implement the legally enforceable consequences or obligations that are central to the agreement.

Legality - The contract and all other matters pertaining to an agreement must be legal and within the public policy of a place. A contract cannot be done or honored if the other elements are illegal.

Void and voidable contracts- Void contracts are null and are not legally binding to its parties. Contracts are considered void if one or more of the

elements for a valid contract is not present. Voidable contracts on the other hand are those contracts wherein one of the parties involved has the legal capacity to end the contract.

Unenforceable and illegal contracts – An unenforceable contract has the requirements or elements to make a contract valid but neither one of the parties can sue the other to perform the terms stated in the said contract. A good example for an unenforceable contract would be an unsigned agreement. Illegal contracts are those that involve unlawful acts such as drug trafficking. These contracts are void and are not honored by the court.

Implied contracts – These are agreements that exist and are based solely on the conduct of the parties involved. Without a formal written contract, the implied agreements and benefits from such an arrangement are often unclear.

Unilateral contracts – These are often called one sided contracts because only one party gives a promise and only the other party is asked to perform what was stated in the said contract. However, the said party is not obligated or legally bound to perform what was asked of him in the contract. These contracts are accepted or concluded by performing the requested action in the offer.

Gratuitous promise – The gratuitous contract or promise is a one sided agreement wherein only one of the parties involved can reap the benefits from the deal. The courts do not enforce gratuitous promises because they are one sided and do not usually involve the asking of consent from the other party.

Seal – A seal in a contract is any mark or impression affixed to a contract or

any document. This is done by the parties who are being bound by the said contract or agreement. Seals are in place in order to qualify such contracts as formal ones.

Offer - An offer is a clear and unambiguous communication of the terms that the parties require from the agreement. The offer must state all the needed terms and conditions that the other party may need to decide if they will accept the contract or not.

Acceptance - An acceptance is the act that makes a contract valid, effective and legally binding. In acceptance, the intention to commit to the terms in the offer is made official.

Consideration - A consideration is anything that has an objective value and is used as the price that parties are willing to commit to in order to fulfill a contract. These considerations are not only limited to monetary matters but can also extend to other forms of payments such as a service or any tangible object.

Explain the circumstances in which a minor, mental incompetent or drunk person may escape liability for a contract and the circumstances in which they or their guardian may be bound or become bound by the contract.

Minors - Minors or those people under legal age for consent and contracts can escape the contractual obligations because they are not in the right capacity to enter into such conditions. However, the adults with whom they entered a contract with are bound by the terms stated in the contract because they are already of legal age and sound mind when they entered such arrangements.

Mentally incompetent - Insane individuals or those who have mental

incapacity are also protected by the law from possible liabilities from a contract. Just like minors, mentally incompetent individuals do not have the psychological capacity to properly understand what is needed of them in the arrangement or contract. In order to get the lawful protection from contractual obligations, a proof of incompetence must be established. In addition, the other party that formed the contract must also be aware of the condition of the mentally incompetent individual.

Drunk - People who fulfill the mental capacity and legal age to be bound by contracts could also be free from the consequences and legal obligations if they are drunk or intoxicated during the time that they entered into a contract. They will not be held liable if they can prove that they were severely intoxicated to the point that they do not know what they are doing when they signed the contract. In addition, the other party must also be aware of their condition when they let the drunk or intoxicated party to continue with the contract signing.

Discuss in detail the requirement of writing, including reference to decided cases, statutes, and the common law.

Contracts should be made official through writing in order to be enforceable: Contract types that need to be written down in a formal contract include the following:

Land deals - Land contracts require a written agreement in order to be enforceable. It is one of the most common dealings. Land is a property that is highly priced and valuable. Hence, an agreement in written form is necessary.

Guarantees and indemnities - British Columbia's law and equity act also

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states that matters regarding guarantees and other indemnities must be properly carried out through writing.

Some contract types that are not to be performed within a year from agreement - There are some agreements wherein the terms of contract will not be feasible to be done within a year of signing. Hence, a written agreement must be in place in order for the terms to be enforceable after this period of time.

Sales of goods exceeding a specified minimum - The Sale of Goods Act in Canada require the sale and purchase of goods above a specified minimum to be documented through writing.

Discuss the concept of "intention to be bound", in the nature of commercial and non-commercial contracts, having regard to the necessity of writing, how the courts view agreements, and the tests used to determine intention. The presence of intention to be bound is needed for a contract to be valid. Without a commitment from the parties that they will be legally bound by the terms and conditions stated in the contract, and then the contract could be considered void from the very beginning. The intention to create a contract means that both parties agree that legal consequences will follow from the said agreement. Hence, it is important to have all the necessary terms and conditions including the intention to be written clearly and unambiguously. In order for the courts to determine intention, they usually look into the reasonable expectations of the promise and consider these using objective tests to determine intention.

The case of Campbell and Gibson is a good example to illustrate a contract and the relationships and consequences involved when a contract is

breached. The first consideration to look into would be the validity of the contract between Campbell and Gibson on Monday night. All the legal considerations to qualify as a valid contract were present in the terms of their contract agreement.

Even if Gibson bid to make the offer lower than the original table price of \$25, 000, Campbell accepted the counteroffer. Thus, an agreement has been reached after they bargained and arrived at a certain price. After the price negotiations, they agreed to make a written agreement to hold the offer open until Friday. Campbell's act of canceling the agreement and offering the same table to another customer was a breach of their written contract. Campbell may have tried to inform Gibson of the changes but the letter of revocation cannot be considered valid until the recipient has received it. Gibson's letter of acceptance which was sent Monday evening is a controversial point and the court would decide which of the two letters would be honored because it crossed in transit during the mail.

When a fire destroyed the desk in question, Campbell will be charged for a breach in contract and failure to deliver the promised deliverables. On the other hand, Gibson could also be sued because he failed to deliver the deliverables he sold to the Canadian museum of civilization. Both parties can actually be sued by different entities.

This second case is an example of a situation of tort of negligence. In order for negligence to be established, the four elements (duty, breach of duty, proximate cause, damage or injury) must be present and proven.

Francis, the adult in this scenario has a duty to care for his underage son Evan. It was his duty to ensure that Evan drives safely or should not drive in

the first place because he is not yet legally permitted to do so. Hence, Francis has fulfilled tort of duty and breach of duty.

During the hospitalization of George, the two doctors would also be considered for negligence in this scenario. Dr. Foote's improper and incomplete assessment has led to a wrong diagnosis for George. This resulted in the infection and further harm that occurred afterwards. Hence, George is in the right position to sue Doctor Foote in this case.

On the other hand, Dr. Cutter, the surgeon who inadvertently cut the wrong foot and then intentionally cut the other one is also equally negligent. Both doctors are medical professionals that have to perform based on a standardized level of care and they have just failed to do so. Their negligent actions, even if non-intentional have resulted in harm for the plaintiff.

The misunderstanding that occurred between Holt and MacPherson was evident when they argued on the condition of the books that were traded. MacPherson was not aware that Holt was referring to the other copy of the book and Holt did not know that the book in question has two copies. This created the confusion that should not have happened if they had a formally written contract in place. The contract should have stated clearly the conditions of the book lending process and that the parties involved should reach a consensus about the transaction.

One of the elements in creating a valid contract (offer and acceptance) was not present in the scenario. Hence, the contract will be considered void or null. However, the court could resolve this by considering the conduct of the two parties because they both assumed that they were under a legally bounded transaction. A solution could be an order for Holt to return the

original book to MacPherson and for Holt to return the money he collected from the void transaction.

Works Cited

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