

Law of tort in business research paper

[Business](#), [Company](#)



Law of Torts in Business

Introduction

In the laws of a country, the law of tort is concerned with how someone treats their neighbour. A person should not injure a person neither should he trespass into a neighbour's property. Such acts are considered to be criminal in nature and the individual will be liable in a court of law. The law of torts covers a range of actions such as negligence, intentional injury and defamation that ruins an individual's reputation. The law of torts is best illustrated by the case of Donogue vs. Stevenson. The plaintiff was with a friend in a cafeteria taking ginger beer. When she took her drink she discovered that the beer contained a dead snail's decomposed remains. She took the manufacturers of the beer to court by filing a complaint. In that particular case, the Judge highlighted several statements on the definition of a neighbour that are highly regarded in the law of torts.

In assessing the extent of the manufacturer's liability and negligence the judge said that the biblical command to love one's neighbour also applied in the law of the land. Someone was expected not to injure their neighbour. An individual was to refrain from acts or the omission of an act that would at the end of the day injure his or her neighbour. The judge went further to explain the definition of a neighbour. He stated that someone's neighbour was a person who was directly affected by his or her action or the omission of the action necessitating that one thinks about the consequence and impact of his or her behaviour on the neighbour's welfare. In the law

of tort, there are a number of things that are being protected by the law. The law protects the reputation of an individual, his property and economic interests. Looking at the issue of negligence, it is not about being careless in conduct. The Lord Wright explained that in determining whether a defendant was liable for negligence, the court would look at three critical areas. The defendant should have had a duty towards the plaintiff which he was in breach of. The plaintiff must also show damages suffered to the court. This means the person must have suffered close damage due to an individual's breach of duty.

Economic Torts

There is a relationship between law of torts and business law. In the drafting of contracts certain parties have an obligation to the people they have entered into a contract with. In economic torts there are several areas that are covered such as fraud, restraint in business, conspiracy and interference in business activities. In economic torts, the law places liability on persons or institutions that cause pure economic loss to another party through the interference of business or economic relationships. It also covers the areas of labor law, anti-trust and competition law. It also covers intellectual property and unfair competition practices (Carty, 2001).

There are two cases that show the application of tort law in the area of competition and labor law. In the case of *Mogul Vs Steamship Co Ltd*, the plaintiff's took the defendants to court claiming that they had been driven from the Chinese tea market by the defendants. The defendants had held a shipping conference where the price of tea was set at a low price.

The court however found the cartel to be in order and not in any way illegal. They saw that it was simply an issue of competition between traders. There was also the case *Taff Vale Railway v Amalgamated Society of Railway Service Servants*.

The House of Lords actually found that the unions were liable to the company for causing the strikers to go on strike. The company was not able to achieve its financial or business objectives. However, the court action led to the formation of the trade disputes act 1906 and the British labor party.

Interference in Business Relationships

In the area of interference which is also known as the intentional interference with contractual relations, two areas are considered. There can be interference in two ways, either in the person's contractual relationships, whether they cover business or not or contractual relationships covering business alone (Varadarajan, 2001). There are several examples of cases where the law of economic torts in the area of interference was applied. In the case of *Garret vs. Taylor*, the defendant interfered with the plaintiff's ability to trade. He drove customers away from the plaintiff's quarry by telling them he will be violent against them. The customers got scared and desisted from buying from the plaintiff. The defendant was found liable by the court of law.

In another case of *Tarleton vs McGawley*, there were two native ships at the coast of Africa. Since the defendant did not want the African natives to trade with the rival ships, he shot in the air from his ship. The rival ship could not continue trading as the natives fled away from the area. There was a lot of

business lost and the court of law found the defendant liable. This was despite the claims by the defendant that he had been given exclusive rights to trade with the natives by the local ruler.

There is also the *Keeble vs. Hickeringill*. The defendant chased ducks away from the plaintiff's pond. The main purpose of the pond was to capture the ducks. Similarly to the other cases, the defendant had succeeded in limiting the business of the plaintiff. He had chased the birds away by shooting in the air, scaring the birds away. The court found the defendant liable as he restricted the man's trade or livelihood. It was said that the defendant should have tried to attract ducks to his pond as competition instead of what he had done.

Civil Conspiracy

There is also the area of conspiracy in economic tort law. This is where there is an agreement or collusion between two or more parties to deceive a third party (Mitchell, 2008). It also occurs where the two parties desire to deprive the third party of his legal rights.

In the law of tort, it should be established that there is some form of conspiracy between certain parties. It may be that the conspirators achieved an illegal objective through legal means or vice versa. An individual can take the matter to court even though he has not suffered a crime but has suffered some damages.

In tort law, the elements that must be in the case are the same as for criminal law. There must be an agreement between certain parties to break

the law. The conspirators must go beyond the intention and one or all must have taken an action towards the illegal plan. In the tort of conspiracy, the plaintiff should be aware of the circumstances and the conspiratorial agreement that was made.

Where it is an issue of a company's liability, the employee or the agent must have taken part in the conspiracy. The situation becomes more complicated where the company conspired with another company or other natural persons. In the case of *Lloyd v Grace, Smith & Co* . (1912). It was held that the principle would have a case to answer where the agent commits a fraud. However the agent must have been acting within actual or apparent authority. At the same time in the case of *In re Hampshire Land Company* (1896) it was held that in the event where the agent's conduct caused losses to the principle, the principle would not be held liable. In the case of *Belmont Finance Corporation v Williams Furniture Ltd* (1979), Belmont sued the defendants, a majority who were the company's senior directors, for conspiring to have the company buy the shares of another company that had been grossly overvalued.

However, the judge did not accept the plaintiff case as he deemed the Belmont Company to be part of the conspiracy. The case was appealed and the defense lawyer said several statements in favor of the company's innocence in the matter. He pleaded that the company should not be deemed to have possession of the director's plans. The company had suffered as the directors had plundered it of a substantial amount of its assets. The company was therefore a victim and should not be considered as

an accomplice in the conspiracy. The directors should be fully be liable in the court of law and pay damages to the company for the losses it has suffered. The lawyer defended the company well and showed the court the innocence of the company.

The court of appeal accepted the argument and the principle was deemed to be a victim and not a conspirator even though the directors had made very important board meetings where they had appended the seal to the company's critical documents.

Fraud

There is also the economic tort in fraud. In the area of criminal fraud, fraud can be defined as the intentional and deliberate choice by an individual to deceive in order to get some personal gain. Fraud may also be committed in order to damage an individual. Fraud is a criminal act. It is also a violation of civil law. The common objective of fraudsters is to get money or valuables however fraud has also been committed in certain cases where an individual desires prestige and status in the society. It is different from a hoax where an individual deceives others but the individual has no intention to gain financially or to damage or injure a person.

There are about nine aspects in the area of fraud that are considered in criminal law.

The court considers the representation of the fraud, its materiality and the extent of the deceit. The plaintiff must be aware of the deception. Other aspects that are considered is the plaintiff's right to rely on the defendant's

information and the action of the plaintiff's reliance on the information. Does the plaintiff suffer any damages? Could the plaintiff have been ignorant of the deception and the defendant's awareness that the plaintiff would rely on the information.

The plaintiff is expected to prove each of the nine elements, clearly and convincingly to the court of law in order for him or her to have a claim of fraud. The damages that will be given to the plaintiff will be the difference between the actual value of the property and what the Defendants had presented the value to be.

The plaintiff may be awarded some special damages where the court of law is shown other specific damages suffered as a result of the fraud.

Restraint in Trade

In the area of restraint of trade, an individual should not be restrained from conducting business unless the restriction comes from the law of the land. No other form of restriction should influence his ability to trade. Anything else that restricts his ability to trade may be considered or deemed criminal nature. The Lord Smith noted that in a given country, it was the privilege or right of the trader to carry out business according to his discretion and choice. It is only the law that should restrict his trade, since the law should be obeyed and upheld at all times. Where an individual enters into certain contracts that restrict him from trading, then the contracts are deemed to be illegal agreements. Unless it is shown that the contracts are in the best interests of both parties and the community at large. These tort laws are

usually applied in two areas. This is in the area of employee employment contracts and competition in the market place.

There are other laws that cover the area of competition so the tort law in the area is rarely used. A restraint of trade is a clause in a business contract that restrains another party's business activities. In the case of *Nordenfelt v Maxim, Nordenfelt Guns and Ammunition CO.* (1894) a Swedish arms inventor had sold his gun business to an American businessman. Furthermore he had agreed to a clause in the business contract that specified he would not sell any ammunition at all so as not to be a source of competition to the American trader. The House of Lords agreed that the restraint in trade clause where the Swedish man would not make ammunition or guns anywhere in the world for the next 25 years was reasonable. However, the provision in the contract that the Swedish man would not be a competitor against the American in any way was found to be unreasonable by the house of the Lords.

Secondly, for the restraint for trade clause to be enforceable in a court of law, both parties should provide valuable consideration in the business contract. In the *Dryer's Case* which occurred in 1414, Mr. John dyer had agreed not to carry out any business in the same location as the plaintiff for a period of six months. However, the plaintiff had not given any valuable consideration in return. When the plaintiff took the defendant to court, it was rejected and the court said that the plaintiff should in fact go to prison and pay a fine to the king. The plaintiff had not bothered to attend the court proceedings.

Conclusion

The law of tort in business expects an individual to treat the other party in honesty and integrity and not take advantage of any business situation. A party is not to affect the business activities of other parties.

References:

Carty. H.(2001). An analysis of the Economic Torts. UK: Oxford University Press.

Mitchell, G. (2008) Conspiracy: a wide ranging tort. New law Journal, 7281, 773-774.

Varadarajan, D. (2001) Tortious Interference and the Law of Contract: The Case for

Specific Performance Revisited. The Yale Law Journal, 111: 735-760.