

# Cybertorts, strict liability, products liability, consumer protection

[Law](#)



## TORTS Cyber Torts, Strict Liability, Products Liability, Consumer Protection

Introduction The business world is governed largely by 2 types of law, contract law and tort law. Contract law pertains to the specific terms and conditions involved in the supply of a particular product or service. On the other hand, tort law governs all business practices (Cornell 2011) It is based on unwritten common law, although it can be reinforced by statutes passed by the legislature. Aside from these statutes, court decisions are based on precedent, that is, previous cases involving similar facts. Torts are wrongs committed against individuals and groups and can be intentional or unintentional. Intentional torts are wrongs done deliberately and therefore criminal and dealt with by criminal law and are uninsurable. On the other hand, unintentional torts are those committed inadvertently often due to negligence or carelessness and are therefore usually insurable. Examples of torts are cyber, strict liability, and product liability, for which consumer protection is required. Cyber Torts Cyber Torts are simply wrongs committed over the internet which cause some kind of harm to the internet user. (Talbot 2010) Examples include identity theft, illegal piracy of electronic property, arranging meetings for criminal transactions, false impersonation to obtain information and sending out vast amounts of e-mails containing harmful data or spam. As it is often difficult to determine who is responsible protective software is being developed. The most common cyber tort is identity theft followed by home shopping catalog sales. Other examples are trespass to chattels, conversion, cyber stalking/harassment and defamation. An example of the latter is a case where a female teenager befriended a male counterpart on My Space who made nasty comments about her resulting in

her suicide. In defamation the negative comments must be false as truth is an absolute defense. They must involve the unprivileged publication of a statement to third parties (internet users) by at least the negligent acts of the publisher and cause perceivable damage to a perspective plaintiff. They are considered especially dangerous because of the global reach of the internet and the potential for source anonymity. Conversion is the unlawful application of the personal goods of another by the taker or a third party other than the owner and/or destroying or altering its' nature. The required elements for a lawsuit are ownership or right of possession by the plaintiff, the defendants' conversion by a wrongful act and causing harm to the plaintiff. Similarly, trespass to chattels requires meddling with a chattel in possession of another resulting in a) dispossession of the chattel, b) deprivation of the use of the chattel, c) impairment of the condition of the chattel and d) harm to the legal possessor of the chattel. Strict Liability Strict liability differs from ordinary liability in that a plaintiff does not have to prove the defendants' negligence caused them harm, only that they sustained damage or injury resulting from an appropriate use of the defendants' product or service.(Cornell 2011) For example, an employer may be held liable for the torts of an employee, unless the employer can demonstrate that the employee performed contrary to the employers' instructions. In a products liability case where strict liability has been imposed by legislation because the product is inherently dangerous, purchasers of the product and injured others only have to prove the item was defective, that the defect caused the injury and the defect rendered the product inherently dangerous, even if the defendant exercised utmost care and was not negligent. The only

defenses in such cases would be if the defendant could prove the plaintiff misused and/or tampered with the product causing it to become dangerous. In cases of harm caused by animals, strict liability is not usually imposed on owners unless by legislation or it can be shown the owner knew of the animals' propensity to cause harm or it is considered a wild animal or did not take appropriate steps to restrain them. Another situation that could attract liability is the operation of an explosives factory in an urban area. Products Liability Products liability law is derived mainly from tort law although it can be codified by statute. (Cornell 2011) For example, regardless of any warranties supplied by the manufacturer products must be reasonably fit for the purpose intended and free from defects which could cause harm to the consumer and others. Assuming defects are caused by unintentional torts, they are generally insurable. Strict liability is usually applicable because it is often difficult for a consumer to determine whether the cause of the loss is a design, manufacturing or marketing defect, that is failure provide the consumer with accurate and complete instructions. Therefore all parties involved in the manufacture and sale of the product are jointly and severally responsible for damage and injury caused although insurance companies under a liability policy are required to pay only for resulting damage and injuries, not replacing the defective product itself. While strict liability may apply, there are defenses available. For example, if it can be shown that the consumer caused the damage themselves by dropping,, abusing or otherwise misusing the product, all defendants could escape liability, If a retailer can show that the product was received and sold in a sealed container they avoid liability. Generally, if any party can show that it would

have been impossible for them to have contributed to the loss in any way, they can escape liability but the onus is on them to prove that. Consumer Protection The US Federal Trade Commission publishes various articles to educate the public on how to avoid scams or rip offs in different types of purchases and how to optimally exercise their rights.(Federal Trade Com. 2009)Various jurisdictions have government consumer protection departments and organizations such as the Better Business Bureau and trade associations for the product involved can investigate on behalf of the consumer and assist in resolving legitimate complaints without litigation.

Conclusion Aside from contractual obligations, tort law imposes requirements on the design, manufacturer and distributor of products. It is up to consumers to educate themselves on their rights if they feel they have been victims of tort infractions and to seek appropriate assistance when necessary. References 1) Talbot, Jonathon Tyler” Cyber Crimes” Penn State April 19, 2010 retrieved from <https://webspaces.psu.edu> (1ST432\_SP10\_TEAM4\_CyberCrimesand Torts. 2) “ Products Liability Law” Legal Information Institute Cornell University Law School Aug. 19. 2011 retrieved from <http://www.law.cornell.edu>. 3) “ Strict Liability” Legal Information Institute Cornell University Law School Aug. 19. 2011 et al. 4) “ Tort Law an Overview” Legal Information Institute Cornell University Law School Aug. 19, 2011 et al. 5) “ Protecting America’s Consumers Federal Trade Commission Feb. 18, 2009” retrieved from [www.ftc.gov/bcp/consumers.htm](http://www.ftc.gov/bcp/consumers.htm).