

HSCC 330

Legal and Legislative Aspects of Health Care

Tort Law Part 2

Objectives

- Upon completion of this section, the student should be able to:
 - identify intentional torts
 - describe products liability
 - identify defenses for products liability
 - identify the most frequent types of malpractice claims

Intentional Torts

- Assault and Battery
- False Imprisonment
- Abandonment
- Defamation of Character
- Fraud
- Invasion of Privacy
- Intentional Infliction of Mental Distress

Assault & Battery

■ Assault

- An intentional threat to do injury to the person of another that the person being threatened believes could be carried out
- Unconsented threat

■ Battery

- The unlawful touching of the person of another by another without the consent of the person being touched
- Unconsented touching

False Imprisonment

- The unlawful restraint of an individual's personal liberty
- The unlawful restraining or confining of an individual

Abandonment

- This is ending patient care without assuring that care is continued at the same or higher level.
- Break in the continuity of care

Defamation of Character

- Communicating false information about someone, knowing the information to be false or with reckless disregard

Slander

- False oral statement, made in the presence of a third person, that injures the character or reputation of another

Libel

- A method of defamation expressed by print, writing, pictures, or signs
- Any publication that is injurious to the reputation of another

Defenses to a Defamation Action

- Truth
- Privilege
 - Absolute
 - Qualified

Fraud

- The willful and intentional misrepresentation that could cause harm or loss to a person or property

Invasion of Privacy

- A wrong that invades the right of a person to personal privacy

Intentional Infliction of Mental Distress

- The intentional or reckless infliction of mental distress
 - grief
 - public humiliation
 - despair
 - shame
 - wounded pride

Res Ipsa Loquitor

- “The thing speaks for itself”
- Doctrine of Common Knowledge
- Three conditions to prove

Products Liability

- Liability of a manufacturer, seller, or supplier to a buyer or other third party for injuries sustained because of a defect in a product

Products Liability

- Negligence Per Se
- Breach of Warranty
 - Express
 - Implied
- Strict Liability

Negligence Per Se

- Requires the plaintiff to establish duty, breach, injury, and causation

Breach of Warranty

- Warranty
- Expressed Warranty
 - written or verbal
- Implied Warranty

Express Warranty

- Any description of the goods creates an express warranty that the goods shall conform to the warranty

Implied Warranty

- A promise that something which is sold shall be functional and fit for the purpose that the seller requires

Strict Liability

- A concept applied by the courts where a seller is liable for any and all defective or hazardous products which unduly threaten a consumer's personal safety

Products Liability Defenses

- Contributory Negligence
- Assumption of Risk
- Intervening Cause
- Disclaimers

Contributory Negligence

- Any lack of ordinary care on the part of the person injured, that, combined with the negligent act of another, caused the injury and without which the injury would not have occurred

Assumption of Risk

- Voluntary exposure to risk

Intervening Cause

- An act of an independent agency which destroys causal connection between the negligent act of the defendant and the wrongful injury

Disclaimers

- Manufacturer's inserts and warnings

In conclusion . . .
