



# CLASS 14

**TORTS AND PERSONAL INJURY**

# MISREPRESENTATION (FRAUD)

## 1) **Material misrepresentation**

- Must be a factor in the transaction
- Distinguish “mere puffing”

## 2) **Defendant had knowledge of its falsity (“scienter”)**

## 3) **It was intended to induce reliance**

- If the defendant thinks that it won’t have an impact on the transaction, there is no fraud

## 4) **It did induce justifiable reliance**

- The plaintiff must have actually believed the statement and must have used it in the decision-making process
- The reliance must be reasonable

## 5) **Economic damages**

- Something must go wrong with the goods or transaction that is related to the false statement

# INJURIOUS FALSEHOOD

- Same basic idea as defamation, but applies to a business context.
- Elements are same as other types of defamation:
  - 1) False statement
  - 2) Disparaged plaintiff's property or business interests
  - 3) The statement caused plaintiff to suffer harm
  - 4) Economic damages

# INJURIOUS FALSEHOOD (CONT.)

- 2 types:
- **Slander of Title**
  - Defendant claims that the plaintiff lacks title of the property in which he is dealing
  - (e.g., “He doesn’t own that property he’s trying to sell or lease out.”)
- **Trade Libel**
  - Defendant makes false statements as to the quality of plaintiff’s goods so that customers will be discouraged from buying them
  - (e.g., “Don’t buy from her, she rips customers off.”)

# INTERFERENCE WITH BUSINESS RELATIONS - INTERFERENCE WITH CONTRACT

- Elements:
  - 1) **Existence of a valid contractual relationship**
  - 2) Defendant **knows** of that relationship
  - 3) **Intentional interference** with the contract
  - 4) That **leads to breach or termination** of the contract
  - 5) **Damages** (economic)
    - i.e., the plaintiff must show that the breach harmed him or her financially

# MALICIOUS PROSECUTION

- Elements:

- 1) **Institution of a criminal proceedings**

- This can be done by complaining to the police or the DA. Of course, only a DA can actually file a criminal charge and prosecute someone

- 2) **Termination in plaintiff's favor on the merits**, not because of a technicality like a search and seizure problem

- 3) **No probable cause to believe plaintiff did commit the crime**

- It can't be reasonable for the defendant to have actually thought that plaintiff committed the crime. If he did reasonably think plaintiff was guilty, it is not a tort, no matter his evil intentions

- 4) **Improper purpose in bringing the charge**

- 5) **Damages**

- **Judges and prosecutors are immune from this tort**

# MALICIOUS PROSECUTION (CONT.)

- Abuse of Process
  - Same as malicious prosecution, but in a non-criminal charge context
  - Example: suing someone just to harass him or her



# QUIZ TIME