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Law of tort assignment

Question

The Importance of passing off as a form of economic tort.

Passing off is a type of economic tort which can be defined in various ways.

According to the legal dictionary passing off can be defined as making of false representation likely to induce a person to believe that the goods or services are those of another.

In tort passing off can be seen as a wrong, a common law tort which protects the goodwill of a trader from misrepresentation. Misleading the public into believing falsely, that the brand being projected was the same as a well known brand.

The elements of passing off are Reputation misrepresentation and damage to goodwill.

Economic tort according to Wikipedia can be defined as torts that provide the common law rules on liability which arise out of business transactions such as interference with economic or business relationships and are likely to involve pure economic loss.

Passing off simply takes place when someone or business passes off another person’s goods or services as if they are their own, by misrepresentation, the law of passing off is governed by the civil law, and usually takes place into the business world where a misrepresentation is made by one party which damages the goodwill of another individual, sometimes causing financial or reputational damage.

Passing off is important in 21st century because its purpose as an economic tort is to ensure and guarantee that people’s business notoriety is not misused. Passing off ensures against infringement, since generosity is an advantage in business, a financial resource is secured.

The fundamental point of passing off in economic tort is to keep up the reasonable challenge in the market and to anticipate any harm to the selflessness and kindness of a business because of distortion of enrolled products and enterprises and harms emerging out.

Common law rights protects businesses from, passing off, by others, in relation to their slogans, names, packaging and other advertising elements where the company will have grown or increased some form of goodwill.

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* **The elements of passing off**

No specific legislation governs the civil wrong of passing off. The law has been developed by the courts through case law. As the law currently stands, there are three essential elements that must be satisfied to prove passing off. The person or business making the claim (the claimant) must show:

They possess a reputation or goodwill in their goods, name, mark, or other identifying feature that associates the public with those particular goods, and distinguishes them from others;

There must be misrepresentation by the other party which has led others to believe the goods are actually those of the claimant. Confusion will not be sufficient to prove misrepresentation, and;

This misrepresentation has caused damage to the claimant’s reputation or goodwill.

There is no definitive legal definition for these three elements. In practice, the most difficult element to prove is that of showing there is goodwill in a product or service – i.e. a feature, name, or similar that attracts the consumer to a particular brand. This is what enables consumers to distinguish between the different brands on the market. The problem is, it is a very subjective test as the goodwill associated with a particular company may have very different effects on different members of the general public.

* **Remedies of passing off**

In successful passing off claims, the following remedies are available:

* Damages or an account of the defendant’s profits;
* An order for the delivery up or the destruction of the infringing articles or products;
* An injunction to prevent further actions that amount to passing off;
* Interim injunction if you need to act quickly;
* An enquiry to establish loss.
* **Defences of passing off**

The following are available as a defence to a passing off claim:

* The claimant’s mark, slogan, etc. is not distinctive;
* The mark, slogan, etc. has become generic;
* The defendant may be innocently using his or her own name;

The claimant has given consent.

In conclusion passing off is important in 21st century economic tort, because there are lots of crimes happening now, both off and on the internet, and the common law rights protects people, business owners from suffering from huge economic loss.