Learning Objectives

1. Discuss the basis for intentional and negligent tort liability.
2. List and explain the generally recognized business torts.
3. Explain what business crimes are.
4. Describe what computer crimes are and the three types that affect business.

PREVIEW CASE

At a supermarket, a police officer observed Victor Balboni remove two cartons of cigarettes from their rack and place them in an opened bag in his shopping cart. Balboni then put more cartons of cigarettes in the opened bag. The officer walked down the aisle to Balboni’s shopping cart and looked into the bag. He saw several cartons of cigarettes in it. The officer arrested Balboni since state law specified that concealing merchandise with the intention of depriving the merchant of its use without payment constituted shoplifting. Balboni was searched and found to have no money. Is he guilty of shoplifting? Do you think he intended to pay for the cigarettes?

How do businesses relate to society and to other businesses? Can the activity of a business unfairly damage another business or even violate a criminal law? With some variations from state to state, courts have found some activities by businesses and some activities against businesses actionable.

Torts

Chapter 1 defined a tort as a private wrong or injury. The law permits people to sue for injuries caused by the intentional or negligent acts of others. The person who causes the injury is called a tortfeasor.
INTENTIONAL TORTS

To recover for an intentional tort, the injured person must show three things:

1. An act by the defendant,
2. An intention to cause the consequences of the act, and
3. Causation—the injury was caused by the defendant's act or something set in motion by the act.

Intentional torts include such actions as assault, battery, trespass, and false imprisonment. Although a business could be involved in these torts, parties involved in these types of cases come from every sector of the community.

NEGLIGENCE TORTS

To recover for a tort based on negligence, the injured party must show:

1. A duty of the tortfeasor,
2. Breach of that duty,
3. The breach was the actual and proximate cause of the injury, and
4. Injury or damage.

A person may recover in tort for negligence whenever these four elements occur. Courts frequently hear such cases involving automobile accidents, medical malpractice, injuries from products, and injuries resulting from the condition of a landowner's property.

BUSINESS TORTS

The type of tort caused by a business or involving a business is a business tort. Businesses become involved in a tort action in several common ways.

Product Liability. Manufacturers of products incur potential liability in tort for injuries caused by the products. A person injured through the use or condition of a product could sue on the basis of the manufacturer's negligence in the preparation or manufacture of the article. The plaintiff must go (figuratively) into the defendant's plant or factory, learn how the article was made, and prove negligence. Unless the plaintiff can show negligence in the design of the manufacturer's product or the general method of manufacture, it is unlikely the plaintiff will be able to prove negligence.
Whenever a manufacturer, as a reasonable person, should foresee that a particular class of persons would be injured by the product, the manufacturer is liable to an injured member of that class without regard to whether such member purchased from the manufacturer or from anyone else.

The difficulty of proving negligence has helped lead the courts to expand a doctrine called **strict tort liability**. This doctrine makes a manufacturer liable without proof of negligence. It applies to anyone injured because of a defect in the manufacture of a product when such defect makes the use of the product dangerous to the user or persons in the vicinity of the product. The person injured or killed must be a user or person in the vicinity.

**Business Activity.** Several other business activities have been widely recognized as tortious. They are intentional torts and may be based on state law, federal law, or the common law. While some variation exists among the states, an injured party may recover damages on the basis of conduct that causes two general types of harm:

1. Interference with a contract or economic advantage
2. Confusion about a product

**Interference with a Contract or Economic Advantage**

Although contracts are not discussed until Chapter 5, the tort of interference with a contract or economic advantage basically occurs when a business relationship has been formed and in some way a third party causes one party to break up that business relationship. If injured, the other party to the business relationship may have a cause of action against the party causing the breakup. This tort could also be the result of unjustified interference with a person’s reasonable expectation of future economic advantage.

Traditionally, proof of this tort only required a showing that the defendant knowingly interfered with a business relationship. However, more and more states require that the intentional interference be improper. Improper interference can occur because of an improper motive, an improper means, or by acting other than in the legitimate exercise of the defendant’s own rights. A defendant who protects its economic or safety interests or asserts an honest claim is not acting improperly.

In a free market economy, competitors inevitably injure one another. Courts do not hold such injury tortious, even when intentional, if the action was taken to advance a person’s economic interest and results from the competitive economic system.
However, if a person unjustifiably interferes with another’s business relationship or reasonable expectation of future economic advantage, there is a tort. Interference with leasing opportunities, the opportunity of buying and selling goods or services, and interference with the hiring of employees are examples of the types of interference that can be actionable.

**CONFUSION ABOUT A PRODUCT**

A person may commit a tort by intentionally causing confusion about another’s product. This could be done by making false statements about another’s product or by representing goods or services as being the goods or services of someone else.

**Injurious Falsehood.** When a person makes false statements of fact that degrade the quality of another’s goods or services, the tort of injurious falsehood occurs. The false statement must be made to a third person. This is called communication. The hearer must understand the statement to refer to the plaintiff’s goods or services and to degrade their quality. The injured party must also show the statement was a substantial element in causing damage. In some states the plaintiff must identify specific customers lost as a result of the statement.


**Outcome:** The court found that reading the caption in conjunction with the text, a reasonable reader could conclude that Atlas marketed an isometric exercise program, isometric exercises are dangerous, and therefore, Atlas’ exercise program was dangerous. Time-Life falsely described the Atlas system as isometric, so Atlas stated a claim for injurious falsehood.

Finally, the statement must have been made maliciously. Malice can always be shown by proving that the statement was made as a result of ill will, spite, or hostility with the intention of causing harm to the plaintiff. In some jurisdictions, the plaintiff need only show that the false statement was made knowing it was false or with reckless disregard as to the truth or falsity of it.
Confusion of Source. The tort that occurs when a person attempts to represent goods or services as being the goods or services of someone else is confusion of source. The law assumes customers would be confused as to the source of the goods or services. Actual confusion need not be shown. This tort occurs from trade mark or trade name infringement or unfair competition.

Trademarks. Federal law defines a trademark as a word, name, symbol, device, or any combination adopted and used by a person to identify and distinguish goods, including a unique product, from another's goods and to indicate the source of the goods. A trademark indicates that goods carrying that mark all come from one source. A trademark or trade name gives the owner the exclusive right to use a word or device to distinguish a product or a service (see Illustration 3-1 for a sample trademark violation letter form).

Not all words or symbols qualify for protection as trademarks. Only those marks used by a business in a way that identifies its goods or services and differentiates them from others are entitled to protection. The mark normally must be inherently distinctive, which means the mark is unique, arbitrary, and nondescriptive.

A mark that is not so distinctive may be a trademark if it has acquired a secondary meaning. A secondary meaning is a special or trade meaning developed by usage that distinguishes the goods or services in such a way as to warrant trademark protection. A generic term can be protected if it has acquired a secondary meaning. If the right to trademark protection is based on the doctrine of secondary meaning, the geographical area of protection will be limited to the area in which the mark has such a secondary meaning.

Marks that are fanciful, arbitrary, or subtly suggest something about the product can be protected. Protected marks include words such as Ivory for soap, the letters S and ECI, abbreviations and nicknames such as Coke, made-up words such as Exxon and Rolex, and the shapes of packages and products. Generic terms such as superglue and soft soap cannot be trademarks.

A trademark may be registered or unregistered. A trademark registered under the federal trademark law provides the holder with all the rights and remedies of that law. The holder of an unregistered trademark also has some rights under the federal law and rights provided by the common law. Many states also have trademark laws; however, they vary greatly. In some states the holder of a mark may not get greater protection by registering than the common law affords an unregistered mark.

Trademark or trade name infringement is the unauthorized use or confusingly similar imitation of another person’s mark or name. If the imitation is likely to cause confusion or mistake or deceive people, courts will halt use of the imitation. Courts examine a number of factors when deciding whether a likelihood of confusion between two marks exists. Although the various courts do not always use the same factors, those factors most commonly considered include:

1. The similarity of the two marks
2. The similarity of the products represented by the marks
3. The similarity of marketing and customers
4. The similarity and amount of advertising used
5. The area of overlapping use
6. The intent of the parties in adopting the marks
7. The strength of the marks
8. Actual confusion by the public
November 1, 2000

To Whom It May Concern:

I am the owner of rights to the mark which is described in the enclosed materials ("mark"). The mark has been registered with the U.S. Patent and Trademark Office, and United States Registration No. ____________________ has been issued for the mark. A copy of the registration certificate is enclosed for your information.

I have just learned of your use of this mark, which is described in the enclosed materials. Specifically, your use of the mark is ____________________________________.

Your continued use is likely to cause confusion.

From the information that I have received regarding your use, my use of this mark has priority over yours based upon my earlier and continuous use, as well as the above federal registration. Therefore, your use is a violation of my rights.

I am demanding that you immediately stop using the mark described in the enclosed materials or any other name or mark confusingly similar. If you promptly contact me and provide written assurance that you have taken steps to discontinue such use, I will not pursue this matter further and will not assert any claim against you for money damages. You must provide me with an acceptable response before __________________ in order to avoid possible legal action against you.

Please contact me if you have any questions or need additional information.

Sincerely,

[Signature]
However, the imitation of another’s trademark is not always done to cause confusion and does not always lead to infringement. Where the imitation is for the purpose of jest or commentary, the parody is successful only when there is no confusion and therefore no infringement.

When infringement is a tort, rather than a crime, the holder of the trademark or name has the duty of bringing any legal action to stop the alleged infringement and recover damages.

Trademarks identify and distinguish tangible goods; service marks identify and distinguish services. However, the same legal principles govern trademark infringement and service mark infringement.

The owner of a trademark is protected from unauthorized use of the trademark even when confusion might not result. **Trademark or trade name dilution** is “the lessening of the capacity of a famous mark to identify and distinguish goods or services.” This could be done either by what is called blurring or by tarnishing a trademark. Blurring means to diminish the selling power of a trademark by unauthorized use on noncompeting products. A blurring use would occur if someone produced McDonald’s light bulbs or Chrysler tires, for example. Tarnishing a trademark occurs when the mark is used in a disparaging manner or on low-quality goods. The owner of a trademark or name may get an injunction against anyone’s commercial use of the trademark or name.

**Unfair Competition.** **Unfair competition** exists when the total impression a product gives to the consumer results in confusion as to the origin of the product. The
impression of a product includes its packaging, size, color, shape, design, wording, any decorative indicia, and name. When unfair competition is claimed, the total physical image conveyed by the product and its name are considered together.

**Facts:** Intermatic Incorporated was the exclusive owner of the famous trade name *intermatic*. Dennis Toeppen operated an Internet service provider business. He registered 240 Internet domain names including *intermatic.com* without permission from anyone who had previously used the names registered. He hoped to sell companies the right to use domain names he had registered. At a Web page at intermatic.com he used a map of Champaign-Urbana, Illinois. When Intermatic could not register *intermatic.com* as its domain name, it asked Toeppen to give up the domain name. He refused, so Intermatic sued him for trade name dilution.

**Outcome:** The court held that Toeppen’s registration lessened the ability of Intermatic to identify its goods on the Internet since it could not use its own name as its domain name. The Trademark Dilution Act protected Intermatic from having its federally registered trade name used as a domain name by Toeppen.

**Crimes**

The news media report on crimes every day so everyone hears about murders, robberies, assaults, and break-ins. Some of these crimes involve businesses or businesspeople.

**BUSINESS CRIMES**

Certain criminal offenses, such as arson, forgery, fraudulent conveyances, shoplifting, and embezzlement, closely relate to business activities. **Business crimes** are crimes committed against a business or in which the perpetrator uses a business to commit the crime.

**Types of Business Crimes**

The types of crimes committed by and against businesses appear to be limited only by the ingenuity of the human mind. Many include stealing or theft from the business. In this age of computers, wire transfers, and organized crime, the range of crime has been growing. Today, crimes affecting business include:

1. **Theft**
2. **RICO cases**
3. **Computer crimes**

**Theft.** **Theft** is the crime of stealing. It involves taking or appropriating another’s property without the owner’s consent and with the intention of depriving the owner of it. This definition includes taking and depriving another of property even when the thief initially obtains the property lawfully.

Some states use different terms to identify the various possible types of theft. As it relates to business, types of theft include such crimes as shoplifting, embezzlement,
and larceny. The elements of each of these offenses differ somewhat from state to state, but the crimes generally consist of the following:

1 **Shoplifting**: Taking possession of goods in a store with the intent to use as the taker’s own without paying the purchase price. In some states, merely concealing unpurchased goods while in a store constitutes shoplifting. The intent required for shoplifting is the intent to use the property as the taker’s. This crime must be committed in a store by taking store merchandise, so it is always a business crime.

2 **Embezzlement**: Fraudulent conversion of another’s property by someone in lawful possession of the property. Embezzlement requires the intent to defraud the owner of the property. Conversion here means that the defendant handles the property inconsistently with the arrangement by which he or she has possession of it. Since many businesses rely on employees to receive payments and make disbursements, embezzlement is often a crime against a business.

3 **Larceny**: Taking and carrying away the property of another without the consent of the person in possession and with the intention of depriving the possessor of the property. The intent to deprive the person in possession of the property must exist at the time the property is taken. For larceny to exist, the taker need not take the

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**PREVIEW CASE REVISITED**

**Facts**: At a supermarket, a police officer observed Victor Balboni remove two cartons of cigarettes from their rack and place them in an opened bag in his shopping cart. Balboni then put more cartons of cigarettes in the opened bag. The officer walked down the aisle to Balboni’s shopping cart and looked into the bag. He saw several cartons of cigarettes in it. The officer arrested Balboni since state law specified that concealing merchandise with the intention of depriving the merchant of its use without payment constituted shoplifting. Balboni was searched and found to have no money.

**Outcome**: The court held that he was guilty of shoplifting because he concealed the cartons and had no money to pay for them.

**Facts**: Gailon A. Joy owned Credit Management Services Corp. (CMS), a debt-collection agency. When CMS made a collection, it would deposit the money in a bank in Barre. CMS also had its own separate account. However, CMS began transferring funds from the Barre account to its own account to cover its expenses. CMS received a collection for Stacey Fuel and Lumber Co., but never even told Stacey the money had been collected. A year later, CMS filed for bankruptcy. The state charged Joy with the crime of embezzling the collection made for Stacey. Joy claimed he intended to repay the money.

**Outcome**: The court upheld Joy’s conviction, saying an intent to repay was irrelevant.

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property from the owner—merely from the person in possession of it. Larceny can relate to business whenever someone takes any business property, whether inventory, tools, or even office supplies.

**Facts:** Stephen Murray made false entries in his corporate employer’s books and forged 180 of his employer’s checks, making them payable to himself. The amounts of the checks ranged from $2,000 to $60,000, and over five years Murray stole more than $4,000,000.

**Outcome:** The court found him guilty of 180 larcenies because he had taken his employer’s property 180 times without consent and with the intention of depriving the employer of the money.

**RICO Cases.** The Racketeer Influenced and Corrupt Organizations Act, called RICO for short, is a federal law designed to prevent the infiltration of legitimate businesses by organized crime. It prohibits investing income from racketeering to obtain a business, using racketeering to obtain a business (through conspiracy, extortion, and so on), using a business to conduct racketeering, and conspiring to do any of these. The conspirators do not have to do the acts themselves. If they direct the action, they are responsible. The law includes stiff criminal penalties for violation.

However, RICO includes civil sanctions as well as criminal ones. As a result it has been used by one business against another in cases not involving organized crime. The injured party brings the action under RICO based on the perpetration of criminal activity and requests damages. In criminal cases a government brings the action. To find a business violation of RICO, a plaintiff must show all of the following:

1. **Conduct**
2. Of an enterprise (at least two people)
3. Through a pattern (at least two acts within 10 years)
4. Of racketeering activity

Racketeering activity means activity labeled criminal under state or federal laws. Examples of such activity include murder, kidnapping, arson, robbery, bribery, extortion, distribution of illegal narcotics, prostitution, and white-collar crime such as mail fraud, money laundering, and securities fraud. The defendant does not have to have been convicted; it is enough just to have engaged in activity for which a conviction could be obtained. This makes it easier to win a civil RICO case than a criminal case.

**Facts:** Sedima and Imrex Company, Inc. formed a joint venture to sell electronic components. Once the buyer ordered parts, Imrex was to procure them and ship them to Europe. Sedima and Imrex were to split the net proceeds. Orders were filled, but Sedima believed that Imrex was inflating expense bills and therefore cheating Sedima out of some of the proceeds.

**Outcome:** Sedima filed suit asserting claims under RICO.

**Outcome:** The trial court held that RICO did not apply because Imrex had not been convicted on criminal charges for a racketeering injury. The appellate court said only criminal activity, not a conviction, need be shown.
Civil suits under RICO have been very popular because of the liberal damages available. Rather than allowing merely compensatory damages, RICO provides recovery of three times the damages suffered. It also allows the recovery of attorneys’ fees, which can be a substantial sum.

In addition to the federal RICO, many states have passed so-called Baby RICO laws. Similar to the federal law, these laws apply to activities in intrastate commerce. The federal law has jurisdiction over interstate commerce.

**Computer Crimes.** Computer crimes are crimes committed with the aid of a computer or because computers are involved. Under this definition, computers can be involved in crimes in various ways:

1. They can be the objects of the crimes—such as when a computer is stolen or damaged.
2. They can be the method of committing a crime—such as when a computer is used to take money from an account.
3. They can represent where the crime is committed—such as when copyrights are infringed on the Internet.

As more and more businesses rely on computers, as computer systems have become more interconnected, and as more businesses and private individuals use the Internet and the information on the Internet, more opportunities exist for criminal behavior. Frequently computer offenses can be successfully prosecuted by using existing criminal laws prohibiting theft, mail fraud, wire fraud, and the transportation of stolen property.

**Facts:** McGraw operated a computer for the Indianapolis Department of Planning and Zoning. He used the city's computer for his private business of selling a dietary product. City employees did not have authorization to use the computer for private business. McGraw put his customer lists, inventory control, and other business records on the computer. After being fired, he asked another employee to get him a printout of his business records and then erase them. The other employee reported this and McGraw was charged under a traditional theft law with theft of computer services.

**Outcome:** The court said that computer time was services, which are a valuable asset. Therefore it was property and within the definition of property subject to theft.

Some courts have refused to apply traditional criminal laws to computer offenses. Both the federal government and the states have responded to the need for laws that clearly apply to computer crimes by enacting specific computer crime legislation.

One federal law is called the Computer Fraud and Abuse Act. This act makes it an offense to, without authorization, access a computer or exceed authorized access of a computer used by or for the U.S. government or a financial institution and to (1) fraudulently obtain anything of value; (2) intentionally and without authorization obtain or destroy information; (3) affect the use of the computer; or (4) cause damage. It is also an offense to (1) deal in computer passwords and thereby affect interstate commerce; (2) knowingly access a computer, obtain national defense information and disclose, attempt to disclose, or retain it; and (3) transmit a threat to damage a U.S. government or financial institution computer in order to extort money from anyone. The punishment is a fine and/or up to 10 years imprisonment for the first offense and up to 20 years imprisonment for the second offense.
The federal government has also enacted a law called the *Electronic Communications Privacy Act*. This law prohibits the interception of computer communications, such as e-mail, or obtaining and divulging without permission data stored electronically.

The laws enacted by the states vary considerably. However, they generally prohibit alteration of a computer program or intentional, unauthorized access to a computer regardless of the reason for the access and the disclosure of any information gained by such access.

Criminal activity relating to computers can be classified as three types: trespass, fraud, and criminal copyright infringement.

**Trespass.** As applied to business crime, *computer trespass* means unauthorized use of or access to a computer. A trespass can range from being harmless to being a threat to national security. Such activities as merely using a computer to play games or prepare personal documents constitute computer trespass. More serious trespasses include learning trade secrets, customer lists, and classified defense information. Computer trespass has been the focus of state computer crime laws.

A computer trespass may be committed in a number of ways, depending on who gains unauthorized access and the use made of the computer. The access might be by:

1. An employee not authorized to use a computer in the business
2. An employee authorized to use a computer who uses it for nonbusiness purposes
3. An unauthorized outsider who gains access to the business’s computer system—called a **hacker**

Since all computer trespass involves the use of computer time without permission, all trespass technically can be classified as theft of computer time. However, computer trespass causes even more serious problems. It ties up computers and prevents employees from doing their jobs and may reveal trade secrets, customers’ personal financial records, or confidential medical information. Because computers house so much information, it is helpful that the computer crime laws of the majority of jurisdictions protect the confidentiality of all information stored in computers.

One of the most highly publicized methods of trespass involves damaging computer record systems by using rogue programs. A **rogue program** is a set of software instructions that produces abnormal or unexpected behavior in a computer. Various kinds of rogue programs have such colorful names as viruses, bacteria, worms, Trojan horses, and time bombs. They may cause computer users difficulty, inhibit normal use, or impose injury. The programs can be introduced to a computer by being
attached to a useful program or even e-mail and spread to other computers through modems, discs, or network connections. Once introduced, a rogue program can alter the operations of a program, destroy data or screen displays, create false information, display a message, or even damage the computer.

**Facts:** Robert Morris, a graduate student at Cornell University, had authorization to use computers at Cornell. He wanted to demonstrate that security measures on computer networks were inadequate. Morris released a worm into the Internet from a computer at MIT. The worm was supposed to take up little computer time and be difficult to detect. The worm duplicated and infected computers much faster than Morris expected. An estimated 6,200 computers at universities, military sites, and medical research facilities all over the country crashed or would not work.

**Outcome:** The court found Morris guilty of violation of the Computer Fraud and Abuse Act.

Rogue programs may not show up for some time, so they can spread without alerting operators to their presence and damage all files in a computer system. One large computer software company inadvertently sent out copies of a software program containing a virus. The product had been accidentally infected after being loaded onto a computer that had received the virus from another program. In this case the virus merely caused a message to flash on computer users’ screens. However, the software company had the expense of recalling thousands of copies of its software program.

**Fraud.** As applied to computer crime, fraud encompasses larceny and embezzlement. It includes causing bank deposits to be credited to just one individual’s account. Such an action might be prosecuted under traditional crime statutes or new computer crime statutes.

**Facts:** Jones and an accomplice altered accounts payable documents fed into a computer. As a result, the computer issued checks to Jones totaling $130,000. They originated in Canada, and Jones cashed them in Maryland. Charged under a statute that made it a crime to transport securities known to be stolen, converted, or taken by fraud in interstate or foreign commerce, Jones argued the securities were forgeries and as such the statute did not apply to them.

**Outcome:** The court said the checks were genuine but contained a false statement as to the true creditor. Jones was found guilty.

The use of the Internet has made it possible for a wide variety of frauds to be perpetrated on unsuspecting businesses and individuals. Sometimes the Internet provides an easy and inexpensive way to advertise a scam since so many people “surf the Web.” A fraud can be easily advertised on the Internet, such as the one in which a 15-year-old advertised computer parts for sale. Customers were required to pay cash upon delivery or by a check on which payment could not be stopped. The box supposedly containing the computer parts would be empty and the perpetrator had the customers’ money.

Other Internet fraud has included a long-distance telephone company employee selling more than 50,000 calling card numbers. The employee was convicted and sent
to prison. The Federal Trade Commission stopped an illegal pyramid arrangement after it scammed participants of $6 million.

Computer criminals frequently target businesses, particularly large banks. Citibank recently lost $10 million, but recovered all but $400,000 when some Russians broke into its computer system and engaged in fraudulent transactions. Businesses frequently suffer losses quietly in preference to advertising to customers, stockholders, and clients that they are vulnerable to hackers, so it is impossible to accurately measure the dollar amount of loss to business from computer fraud.

**Criminal Copyright Infringement.** In addition to civil copyright infringement, there exists the crime of criminal copyright infringement. In order to establish the criminal offense, the prosecutor needs to prove that (1) there has been copyright infringement, (2) the infringement was willful, and (3) the infringement was done for business advantage or financial gain.

As anyone who has used the Internet knows, it is relatively easy to copy material found on the “Net.” The most serious problems for business occur when software is copied. Software that is copied illegally is called **pirated software.** Pirating software is a worldwide industry because the Internet links people all over the world. Software is sometimes copied without the owner’s knowledge and stored in someone else’s computer located anywhere else in the world. Within a relatively short time people all over the world can make numerous illegal copies. If the owner of the computer used for storage finds out, the pirated software can be removed from the computer, but the copying has already taken place. Hundreds or thousands of copies of the pirated software could have already been made.

Finding software pirates can be extremely difficult, if not impossible. They could have used fake identification and nicknames or used an anonymous remailer. An **anonymous remailer** is a device that permits a person who has access to a computer and an e-mail account to send messages and software to an e-mail address or a group without the recipient knowing the source of the communication. The person who wants to send an anonymous communication sends it to the anonymous remailer. The remailer removes the identity and address of the sender and then sends, or “remails,” the communication to the address indicated by the sender. The recipient receives the communication with the remailer’s address on it. Since some remailers keep a record showing the sender’s identity, some communications can be traced. However, if the sender uses a remailer who does not keep such a record or uses several anonymous remailers, the communication could be impossible to trace. As a result, computer copyright infringement is, in dollar terms, the most serious crime on the Internet. It has been estimated to cost copyright holders billions of dollars a year.

**Questions**

1. What three things must an injured person show to recover for an intentional tort?
2. Explain the benefit to plaintiffs of the doctrine of strict tort liability.
3. What is a trademark and what does it indicate?
4. Why is shoplifting always a business crime?
5. Is it a business crime to take pencils home from the office? Explain.
6. Must the defendant have been convicted of a crime in order for a plaintiff to win a civil RICO case? Explain.
7 Summarize the response of government to the threat of computer crime.
8 In terms of dollars lost, what is the most serious crime on the Internet? Why is it so big a problem?

Case Problems

When the concluding question in a case problem can be answered simply yes or no, state the legal principle or rule of law that supports your answer.

LO3 1 James Gagan and others invested in South Hesperia CATV which proposed to build and operate a cable television system. The construction was to be done by American Cablevision, Inc. (ACI), owned by Sharar, Trimble, and Gouyd. After several years, Hesperia was in financial shambles. The person running Hesperia asked Sharar for help. Sharar, Trimble, and Gouyd agreed they would sell Hesperia and keep the proceeds. They sold Hesperia and wrote the other investors offering to buy their investments in Hesperia. The three planned to use the proceeds of the sale of Hesperia, some of which was clearly the property of the other investors, for the buyout. A financial consultant and an attorney actually sent out the offers to buy and checks to the other investors. Gagan refused to sell his interest and sued the three under RICO. He alleged he lost $350,000 as a result of the misapplication of the sales proceeds. Had Sharar, Trimble, and Gouyd conspired to violate RICO in their sale of Hesperia and the diversion of the sale proceeds even though they had not directly made the offers or sent out the checks?

LO1,2 2 For 30 years, Draper Communications, Inc. operated a television station under the call letters WBOC-TV. It advertised by those call letters, spending $150,000 annually. A new station managed by Delaware Valley Broadcasters chose the call letters WBOT-TV. WBOC and WBOT had some overlapping service area. Draper sued to prevent Broadcasters from using the call letters WBOT-TV. A witness testified that the call letters were overwhelmingly similar phonetically. WBOC had an extremely strong mark. WBOT posed a significant competitive threat, and television viewers were not likely to exercise great care in choosing a station. Could Draper keep Broadcasters from using the call letters WBOT-TV?

LO3,4 3 Anaheim police detective Stockwell asked Diane Terry to help in a sting investigation of wrongful computer access. Terry worked for Trans Union, a credit reporting agency. She created a phony file in her company’s credit data bank using the name Diane T. Wolfe, but without supplying any data. She phoned National Credit Service, which advertised as a service to help people with bad credit. Lelas Gentry told her he could create a new credit file for her with false information. She and Stockwell met with Gentry, who gave Stockwell a full credit report on Diane T. Wolfe from Trans Union. Gentry did not have authorization for access to Trans Union’s files, and only Gentry, Stockwell, and Terry knew of the fictitious Diane T. Wolfe. Gentry was charged with gaining access to a computer system and obtaining services with fraudulent intent. Was he guilty?

LO1,2 4 Teilhaber Manufacturing Co. produced an industrial storage rack called the Cue-Rack. It competed with one sold by Unarco Materials Storage, Inc. Unarco conducted tests on a hybrid rack composed of uprights manufactured by Teilhaber for the Cue-Rack and beams manufactured by another company. Unarco distributed a report on these tests written by Unarco’s chief engineer. It stated that the tests were performed on a Cue-Rack “furnished by Teilhaber.” Teilhaber sued Unarco for product disparagement. Was the report false?
William Croft, an assistant professor at the University of Wisconsin–Madison, received a $130,000 grant from the Environmental Protection Agency to study cancer in cattle. He wanted to investigate the cancer-causing effects of asbestos. While he was working on the project, the town of Weston hired Croft to test the asbestos content of Weston’s water supply. Croft hired Laurel Johnson to test Weston water samples during the summer. Johnson received $2,000 from EPA funds for her work on the Weston project. Croft’s report to Weston included calculations prepared by Johnson. Croft was charged with larceny—misappropriating Johnson’s services, paid for by the government, for his own personal research project. Was he guilty?

Knaack Manufacturing Company registered the trademark WEATHER GUARD to identify toolboxes and other truck and van equipment (not car covers), which it sold through contractors and industrial supply houses. Rally Accessories, Inc. sold two car covers called SILVERGUARD and GOLDGUARD through mass retailers. It produced a car cover in a weather-resistant fabric and chose the name WeatherGUARD for it. Both Rally’s attorney and the U.S. trademark office advised that the name was registerable for car covers. There were 12 registrations and approved applications using “weather guard.” Knaack sued Rally for infringement and dilution of its mark. Knaack used its mark in red and Rally used its mark on a four-color box. None of Knaack’s distributors carried any Rally car covers and there was no evidence of confusion by customers. Since Knaack’s and Rally’s products differed in function, price, packaging, method of installation, and use, was Rally guilty of infringement or dilution?

Hawkeye Bank & Trust and affiliated banks agreed to refer bank customers to Financial Marketing Services, Inc. (FMS) for the purchase of life insurance. Hawkeye and FMS shared the commissions. Hawkeye employees and some independent agents licensed through FMS made the actual sales; however, all insurance business was FMS’s property. Because of concern about the confidentiality of bank customer information, Hawkeye decided to terminate its contract with FMS and sell insurance directly to its customers. The independent agents claimed Hawkeye terminating the contract with FMS constituted intentional interference with the agents’ contracts and prospective business relations. Was it?

Cardservice International, which provided credit and debit card processing, registered the trademark Cardservice International, with exclusive right to the word Cardservice. Without Cardservice’s permission, Webster McGee, who also provided credit and debit card services, registered cardservice.com as his domain name with the company that regulates the use of domain names on the Internet. At that Internet site, McGee advertised merchant card services. Cardservice demanded that McGee give up the domain name and he refused. Cardservice had to use the domain name cardsvc.com and sued for trademark infringement. McGee was liable if his use of the domain name cardservice.com was likely to cause confusion among consumers. Was it?

The TV program “60 Minutes” had a segment titled “Killer Wheels” about the use and safety of multipiece tire rims. It stated that people had been injured and killed when pieces of metal from such rims separated. Redco Corp., a manufacturer of multipiece tire rims, sued CBS for trade libel even though the program did not mention Redco. Redco admitted that some people had been killed in accidents involving multipiece rims, although no one had died in an accident involving its rims. Redco claimed that the rims would not explode if properly serviced. Did Redco state a claim for product disparagement?

As a contact representative in an IRS office, Richard Czubinski, for use in his official duties, had a password that allowed him to access information from IRS computers. He used the password with his office computer to get information about the tax returns of, among others: a prosecutor who had charged Czubinski’s father with a felony, a city
counselor who had defeated him in an election, and a woman he had dated. Czubinski did nothing more than observe the confidential information he had obtained. He was charged with violating the Computer Fraud and Abuse Act. To be guilty he must have exceeded authorized access of a federal computer and obtained something of value. Is he guilty?

### Internet Resources for Business Law

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<td>Copyright Office, Library of Congress</td>
<td>The Copyright Office provides publications and extensive information on copyright topics, including the basics of copyright law.</td>
<td><a href="http://lcweb.loc.gov/copyright/">http://lcweb.loc.gov/copyright/</a></td>
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