

TORTS OUTLINE

1. INTENTIONAL TORTS

a. 3 General Rules

- i. The *extreme sensitivity* of a victim is ignored in deciding the elements of a claim – we assume the P is a normal plaintiff
- ii. NO *incapacity* defenses (Mentally ill, intoxicated, minor, disabled)
- iii. All intentional torts require *intent*.

b. Prima Facie Case

- i. Act by defendant – The act requires a *Volitional Movement* by the defendant.
- ii. Intent – The intent may be either:
 1. *Specific* – *desires* to produce the specific legally forbidden consequences
 2. *General* – knows with *substantial certainty* that these consequences will result
 3. *Transferred Intent* – If you intend any forbidden consequence, intent will be transferred to the injured victim. (Try to punch one person and hit another)
 - a. Only applies to assault, battery, false imprisonment, trespass to land and to chattel.
- iii. Causation
 1. The result must be *legally caused* by the defendants act or something set in motion by him. Causation is satisfied if defendants conduct was a *substantial factor* in bringing about the injury. (Injury DOES NOT need to be foreseeable)

c. Intentional Torts to the PERSON

i. BATTERY

1. Harmful or offensive contact
 - a. Offensive – Reasonable person standard – Not permitted by an reasonable person (Sexual contact, spitting, tapping on shoulder for the time)
 - b. Contact is NOT offensive if the plaintiff *consented* to it.
 - c. There is *implied consent* for ordinary contacts of everyday life.
 - d. Direct or Indirect – Can strike plaintiff (direct) or set a trap for the defendant to fall into later (indirect) (i.e. Does not have to be instantaneous – poisoning.)
2. With the plaintiffs person

- a. Anything plaintiff is holding, touching or connected to. (Cane, horse, plate, bag)

3. **Intent / Causation**

ii. **ASSAULT**

1. An act by the defendant creating a **reasonable apprehension** in the plaintiff
 - a. Apprehension is defined as *knowledge* and should not be confused with fear or intimidation (e.g. a weakling can cause apprehension in a bully)
 - b. *Apparent ability* – If the plaintiff ***reasonably believes*** that defendant has the apparent ability to commit the battery it is sufficient. (unloaded gun)
2. Of **immediate harmful or offensive contact** to plaintiff's person (battery)
 - a. *Words alone lack immediacy* – For the defendant to be liable the words must be coupled with ***physical conduct***.
 - b. *Words can negate a reasonable apprehension / immediacy* – i.e. the defendant shakes her fist and says “I will get you tonight at 5 pm” OR the defendant shakes her fist and says “If you weren't my BF I would hit you”
 - c. Remember the requirement of ***immediacy***.
3. **Intent / Causation**

iii. **FALSE IMPRISONMENT**

1. An **act or omission** on the part of defendant that **confines or restrains** the plaintiff
 - a. *Sufficient acts of confinement or restraint*
 - i. Physical ***barriers***
 - ii. Physical ***force / Threats*** of force
 1. Not merely *moral pressure* or *future threats*
 2. If D leaves door open and says if you leave this room I will kill your child. (good, if blow up Jupiter not good)
 - iii. ***Failure to release*** (omission) – Pre-existing duty of D to help P move about (i.e. Ex: Disabled person left on plane by aircrew)
 - iv. Invalid use of ***legal authority*** (wrongful arrest)
 - b. It is irrelevant how ***short the period*** of confinement is.
 - c. Plaintiff MUST either be **aware of** the confinement or **harmed by it**
2. To a **bounded area**

- a. Freedom of movement must be limited in ***all directions*** – i.e. blocking path of travel in a single direction is not false imprisonment
- b. There must be NO ***reasonable*** means of escape ***known*** to the plaintiff.
 - i. Hidden, humiliating, dangerous, or disgusting means of escape are NOT ***reasonable***.

3. **Intent / Causation**

- a. Shopkeepers Privilege – To detain, shopkeeper must have reasonable grounds, investigation, force and time. (G.I.F.T.)

iv. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)**

1. **Extreme and outrageous conduct**

- a. Definition – *Conduct that exceeds all bounds of decency tolerated in a civilized society.* i.e. NOT mere isolated insults. (Objective Standard)
 - i. It is ***continuous*** or ***repetitive*** in nature (i.e. phone call everyday at the same time threatening you to pay your bills)
 - ii. ***Fragile plaintiff*** – i.e. children, elderly, known pregnant women, supersensitive adults (phobia) and the sensitivity is known by D.
 - iii. ***Common carriers*** and ***innkeepers*** may be liable for even mere isolated “gross insults”
- b. Examples: false reports of death or false reports of HIV after intercourse
- c. **Intent or Recklessness** – Recklessness satisfies this cause of action
 - i. Must intend the conduct or commit a reckless act – Merely not doing something will not raise to IIED. i.e. failing to wash the sheets

2. **Causation** – Conduct must cause severe emotional distress.

- a. 3rd Party Causation – 3rd party may recover when:
 - i. The elements of emotional distress (prima facie case), OR
 - ii. The defendant knew she was ***present*** when the injury occurred, AND the defendant knew that she is a close relative of the injured person.

3. **Severe emotional distress results** (NOT mild irritation, slightly annoyed)

- a. ***Actual damages***, not nominal damages, ARE required. (Ridicule, embarrassment in front of numerous people)
- b. Proof of ***physical injury*** is NOT required.

d. **Intentional Torts to PROPERTY**

i. **TRESPASS TO LAND**

1. **Physical Invasion** of the plaintiff's **Real Property**

- a. The invasion may be by a **person** or **object**. (i.e. walking/driving, etc. onto the property [not being pushed onto or enter by a startled horse] or throwing a baseball onto the property or watering another's land)
- b. If **intangible matter** (i.e. vibrations, odor, or light) sue in nuisance.
- c. **Real property** includes land, air above, and soil below to a useable / reasonable distance.
 - i. i.e. kid throwing a ball over your land and landing on the street

2. **Intent**

- a. Defendant need intend only to **enter** on that particular piece of land.
 - i. i.e. mistake is no defense
- b. **Non negligent entry** – (Accidental) – No liability – i.e. hitting a ball that deflects off a tree landing in another's land.
- c. If **negligence** or **recklessness**, no liability unless damages occur
- d. Trespass may occur by refusing to leave.

3. **Causation** – trespass MUST cause damages

- a. **Potential Plaintiffs** – Anyone in **actual or constructive** possession of the land may maintain this action. (Lessee's can bring an action)
- b. **Damages** – Nominal Damages will suffice

ii. **TRESPASS TO CHATTELS**

1. **Intentional Interference** with plaintiff's **right of possession**

- a. Two types of interference – The interference may either be intermeddling (i.e. damaging) or dispossession (i.e. stealing)

2. **Causation**

3. **Damages** – Actual damages to a **possessory right** are required. (damages are not necessary to chattel) – Will usually recover reasonable rental value or diminished value.

iii. **CONVERSION**

1. **Intentional Interference** with plaintiff's **right of possession**

- a. Only **tangible** personal property and **intangibles that have been reduced to physical form** (promissory note) are subject to conversion.

- b. *Potential Plaintiffs* – Anyone with an **immediate right** to possession.
 - 2. The interference is **so serious** that it warrants payment of the chattels **full value**.
 - a. *Matter of degree* – The longer the withholding period and the more extensive the use / destruction, the more likely it is to be a conversion. A less serious interference is trespass to chattels.
 - 3. **Causation**
 - a. *Subsequent purchasers* (even in good faith) are **liable for conversion**, but the plaintiff may only collect once.
 - 4. **Damages** – Plaintiff may recover **damages** (*fair market value at the time of conversion*) (forced sale of chattel) or **possession** (replevin)
 - 5. **Acts of Conversion**: wrongful acquisition (theft), wrongful transfer, wrongful detention, and substantially changing, severely damaging or misusing a chattel.
- e. **DEFENSES to Intentional Torts**
 - i. **CONSENT** – P's **consent** to D's **conduct** is a defense, BUT one **cannot** consent to a **criminal act**.
 - 1. **Express Consent** – **Exceptions**:
 - a. **Mistake** if defendant **knew** and **took advantage** of the mistake (STD)
 - b. Consent induced by **fraud** or **duress** is void
 - 2. **Implied Consent** – Apparent consent is that which what a reasonable person would (1) infer from the **usage/custom** or (2) infer from **plaintiffs conduct**.
 - a. *Infer from usage/custom* – i.e. inherent contacts in a contact sport (what normally happens in the game – Foul vs. punch in face), being touched by doctor in a physical exam, bumped on a public bus, walking up front walk
 - b. *Infer from plaintiffs conduct* – i.e. kiss at the end of a date.
 - i. Test – Must look at the **objective conduct** of the plaintiff, NOT the plaintiff's subjective interpretation. (D's reasonable interpretation of P's conduct)
 - 3. **Consent Implied by Law** – arises when action is needed to **save a person's life** or some other **important interest** in person or property.
 - a. i.e. if operating in stomach the Dr. can remove a cyst that he sees.
 - 4. **Capacity required** – Individuals without capacity are deemed **incapable of consent**. (i.e. incompetents, drunk persons, and young children) (children can consent to age appropriate activities)