

TORTS

INTENTIONAL TORTS

PRIMA FACIE CASE

• ACT

1. Voluntary
 - a. Non-accidental physical muscular movement
2. Failure to act when there is a legal duty

• INTENT

1. Deliberate and purposeful state of mind or knowledge with substantial certainty that consequences would result from act
 - a. Distinguished from Negligence, which requires a foreseeable risk which a reasonable person would avoid
 - b. Knowledge with substantial certainty requires knowledge of more than a possibility of the consequence resulting
2. Includes transferred intent
 - a. Example: Person A shoots a gun at Person B, intending to harm Person B, but the bullet hits Person C instead. Person A is liable to Person C for the intentional tort of battery
 - b. Alternative Example: With five rats (battery, assault, false imprisonment, trespass, wrong to abduct), if Person A intends to commit tort with respect to Person B, but commits a different tort with respect to Person B, Person A is liable for second tort even though intent was that required to commit first tort

• CAUSATION

1. Disconnected from negligence in that conscious mental act is specifically proven

• DAMAGES

1. Nominal available
2. Generally, greater liability imposed for acts intended to invade another's rights than for acts in disregard of consequences

TORTS TO PERSONS

• BATTERY

1. Unlawful or offensive contact judged by reasonable person standard
 - a. Physical invasion of victim's person or something so connected to victim's person that it is customarily regarded as part of person
2. No actual injury required
 - a. Taking indecent liberties without consent such as a slap on the buttocks
 - b. May be used as alternative pleading or actual harmless case
3. Damages
 - a. Victim entitled to mental damages and compensation for resulting mental disturbance
 - b. Physical damages can be avoided except where defendant has defense of mistake of fact

• ASSAULT

1. Reasonable apprehension of immediate harmful or offensive contact
 - a. Apparent ability to cause harm is sufficient
 - b. Mental invasion of victim's peace of mind
2. Requirement of direct act
 - a. Words coupled with conduct
3. No proof of harm required
4. Damages available are same as for Battery
 - **FALSE IMPRISONMENT**
 1. Act or omission of confinement to bounded area
 - a. Boundless area for apparent victim's will
 - b. Voluntary submission negates imprisonment
 2. Awareness of confinement or injury resulting from confinement
 - a. Not bounded if aware of reasonable means of escape
 3. Length of time period immaterial
 4. Damages
 - a. Damages

- a. Compensation for resulting losses, including physical and mental damages, special and consequential damages, and maybe punitive damages

• INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS

1. Act of extreme and outrageous conduct
 - a. Special duty of common carriers and innkeepers to patrons (including mental, emotional, psychological)
 - b. Known sensitivity (young children, pregnant women, superstitious adults, children)
 - c. May include willful, wanton or reckless behavior including deliberate disregard of a known high degree of risk
2. Actual damages required
 - a. Evidence of physical harm or serious outrage
3. **Proximate liability** only where defendant knows that plaintiff is prone

TORTS TO PROPERTY

• THREATS TO LAND

1. Physical Invasion

- a. Intrusion without authorization and without privilege under law
- b. Interference with possession of another's property
- c. Absence of fact as to ownership of property, no defense
- d. Distinct from private nuisance, which requires interference with use and enjoyment attributable under private nuisance
 - i. Example: Floodlight projecting onto neighboring property or smoke from hearthway carried by air onto neighboring property is not physical invasion attributable under trespass but would be interference with use and enjoyment attributable under private nuisance
 - ii. Example: Directing hose at neighboring property causing it to flood is physical invasion attributable to trespass

2. No proof of actual damage required
3. Liable for all consequences
4. Mistake of law is no defense

• THREATS TO CHATTEL

1. Act interferes with right of possession
2. Physical damage or deprivation of use for substantial period of time

• CONVERSION

1. Encroaching dominion or control usurping full value damages
2. Common Law - Defendant who found lost goods converted them to his/her own use rather than returning them
3. Mistake of law or fact is no defense
4. **Mistake of fact** - interference must be sufficiently serious to amount to conversion

DEFENSES

• CONSENT

1. Voluntary

- a. Manifested by words or action
 - i. Example: Patient consents to routine medical procedure
 - b. Manifested by silence and inaction where a reasonable person would speak if not subjected to intentional interference
 - c. Example: No consent where reasonably person would object to high risk experimental medical procedure
2. Not valid if induced by fraud
 - a. Must go to essential matter which makes it harmful rather than collateral matter which serves as an inducement for consent
 - i. Example: Essential matter - Patient consents to treatment of cancer, but is not told of cancer

3. Capacity required
 - a. Unavailability of consenting person is immaterial, immateriality of young child

• SELF-DEFENSE

1. Reasonable belief as to apparent necessity
2. Force reasonably proportionate to the harm threatened

• DEFENSE OF OTHERS

1. Available where victim has privilege of self-defense
2. Limited to act of force reasonably necessary

• DEFENSE OF PROPERTY

1. Limited to preventing commission of tort
 - a. Examples: "Alibi person"
2. Reasonable belief as to apparent necessity
3. Reasonable use of force permissible
 - a. Use of deadly force reasonable unless personal safety is threatened
4. Use of deadly mechanical devices is impermissible

• NECESSITY

1. Applies when threatened injury is substantially more serious than that resulting from the tort committed
2. Private necessity
 - a. Liable for damages
 - b. Private interests threatened
3. Public necessity
 - a. No liability for damages
 - i. Public interests threatened
 - ii. Defendant acts reasonably
 - iii. Necessity to great enough to justify action

NEGLIGENCE

PRIMA FACIE CASE

- **DUTY**
 1. Obligation to protect another against unreasonable risk of injury
- **BREACH OF DUTY**
 1. Failure to perform obligation
- **CAUSATION: PROXIMATE LEGAL CAUSE**
- **CAUSE IN FACT**
- **OTHER CAUSAL CONNECTION: HARMFUL ACTION AND INJURY**
- **DAMAGES**
 1. Actual losses suffered

DEFINITION

- **CONDUCT**
 1. Negligence occurs when an individual's actions fall below standard of conduct imposed by law which protects others against unreasonable risk of harm
 - a. Reasonable person should anticipate risk of harm
 - b. An individual acts unreasonably by not guarding against risk of harm which should be apparent
 2. Distinct from intentional tort, which is based on ability to cause harm or knowledge with substantial certainty exposure with follow
- **RISK vs. BENEFIT**
 1. Probability that event will occur (i.e. children will play on a school building) - P
 2. Degree of harm resulting from occurrence of event (i.e. child's foot is crushed in window) - B
 3. Grades, such as inexcusable or worse, of taking adequate precautions for prevention occurrence of event (i.e. placing lock on hallway) - B
 4. **PB > PL**, the precautions should have been taken

DUTY OF CARE

OBJECTIVE STANDARD

- **REASONABLE ORDINARY PRUDENT PERSON**
 1. Physical characteristics considered
 2. Average mental ability (mental disabilities not considered)

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Anthony S. Fauci



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