

### Battery

Battery is an intentional harm effectuated through physical means. A person is subject to liability for battery when he acts intending to cause a harmful or offensive contact, and when a harmful or offensive contact results. There are two elements of battery: (1) the intent to cause a harmful or offensive contact, and (2) the act results in a harmful or offensive contact. The first element of intent can be achieved in two ways: (1) purpose was to cause harm and (2) knowledge to a substantial certainty that harmful or offensive contact would result (*Garra v. Dailey*). The element of intent can also be split into dual or single intent depending on the jurisdiction. Single is the intent to make contact without intending it to be harmful or offensive while dual is the intent to make contact and that it be harmful or offensive. (*White v. Muniz / Colo. / Dual*) (*Wagner v. State / Utah / Single*). Insanity is not a defense. It does not destroy the intent. Mistaken intent is still intent. Mistakes do not destroy the intent. The element of intent can also manifest itself through transferred intent: when one intends to commit a tort against a third party, but tort occurred against the plaintiff. (*Baska v. Scherzer / HS party*). Recklessness is not enough to satisfy intent. The second element of battery goes to whether the act caused a harmful or offensive contact. A harmful contact of battery is contact causing physical impairment or injury, while an offensive contact of battery is a contact that is offensive to reasonable sense of personal dignity. Contact which is not offensive to society can still be offensive if an individual communicated sensitivities and a defendant agreed to respect those sensitivities. (*Cohen v. Smith*). *Synder v. Turk / DI / Reasonable minds test\**

### Assault

Assault is defined as an intentional act that puts another person in reasonable apprehension of imminent harmful or offensive contact. There are two elements of assault: (1) the intent to cause a reasonable apprehension of an imminent battery and (2) causes a reasonable apprehension of imminent battery. No physical contact is required. It is a "touching of the mind, if not of the body." Apprehension is not defined as fear but as anticipation. Assault is judged by a "reasonable person" standard meaning that under the 3rd restatement of torts, assault should be judged using a subjective rather than objective standard, expect where a claim is grounded primarily in words rather than deeds. Damages for assault is based on the invasion of plaintiff's mental peace." (\*\**Cullison v. Medley*)

### False Imprisonment

False imprisonment is defined as an intentional act where one person engages in an act of restraint on another person which confines that person in a restricted area. There are four elements of false imprisonment: (1) a person's conduct, (2) is intended to, and does in fact, (3) "confine" another "within boundaries fixed by the actor," and (4) where the victim is either "conscious of the confinement" or "is harmed by it." All the elements are required to argue false imprisonment. An individual can be either conscious or unconscious yet still harmed by it. Bad motive is not needed. If an individual can reasonably escape, then you are not falsely imprisoned. However, a means of escape is not reasonable if you do not know of it, and it is not apparent. (\*\**McCann v. Walmart Stores, Inc*; confinement can be for any time, however short)

### Trespass (Land)

Trespass to land is defined as intentionally entering another owner's property or land without permission. There are three elements of trespassing to land: (1) plaintiff has ownership or possessory interest in land; and (2) defendant intentionally entered land or caused an object to enter it (3) in a way that harms plaintiff's interest in exclusive possession. With the second element of intent; intent to trespass is not needed only the intent to enter. You cannot be held liable for trespass if you entered a property against your will, however if you have the will to leave and refuse then you can be held liable for trespass. Trespass requires tangible invasion (i.e. entering the land); intangible intrusions such as noise or odor are not considered trespass but nuisance. Trespass accounts for space above and below the property (drones; drilling beneath the property).

\*Damages = monetary (sometimes only nominal), possibly an injunction



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### Trespass (Chattels) + Conversion

Trespassing to chattels is intentional, unjustified physical interference with plaintiff's use and enjoyment of his or her property, which thereby causes plaintiff harm. The substantial certainty of causing such interference also suffices. There are three elements for trespass to chattels: (1) D intentionally and physically interfered with P's use and enjoyment of P's chattel; (2) without justification; (3) thereby causing the P actual harm. **Must show some sort of injury due to impairment of the property or the loss of its use** Liability is based on actual damage either in the form of actual harm of the chattel itself or interference with P access or use\*\* School of Visual Arts v. Kuprewicz (Pornographic emails/ damage to computer system)

Conversion of chattels is when a defendant intentionally exercises "substantial dominion" over a chattel, thus interfering with or, more often, entirely defeating the plaintiff's ability to control it. (generally applicable when interference is such that the chattel is effectively stolen or destroyed). There are four elements of conversion of chattels: plaintiff must show (1) title to the property or the right of possession, (2) actual possession by the defendant, (3) demand for return of the property, and (4) refusal by defendant to return the property. The intent to deprive another of property is not required, only the exercise of substantial dominion is necessary. **damages = value of chattel at the time of conversion or the return of the chattel** *can use good faith purchaser as defense unless chattel was stolen. P can only win if a third party stole it unless D bought it from a business in the business of selling stolen chattels* *Substantial dominion factors: extent/duration of control; D intent to assert a right to the property; D good faith; harm done; and expense or inconvenience caused\**

### IIED + Discipline

Intentional Infliction of Emotional Distress (IIED) is defined as when one acts intentionally or recklessly causing another to suffer severe emotional distress. The four elements of IIED: (1) extreme and outrageous conduct, (2) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (3) a causal connection between the conduct and injury and (4) severe emotional distress resulting from conduct. To satisfy the first element, the conduct must go "beyond all possible bounds of decency." and must be "atrocious" and "utterly intolerable in a civilized community." **Chanko v. American Broadcasting Co., (death filmed in NY, no consent, court no IIED, no 1st element)** **GTE Southwest v. Bruce** (yes to 1st element, why? = position of power, regular harassment, ongoing + common) \*\* hard to bring by itself; can bring with another tort claim

Discipline: (MA) (1) force used against the minor child is reasonable; (2) the force is reasonably related to the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of the minors misconduct; and (3) the force used neither causes, nor creates a substantial risk of causing, physical harm (beyond fleeting pain or minor, transient marks), gross degradation, or severe mental distress." *teacher/babysitters/other may have limited privilege*

### AD (Self, Other, Property, Consent)

Self-defense is when a person reasonably believes that use of unlawful physical force is occurring or will imminently occur against him/herself or another and they employ reasonable force, meaning that it was reasonable to use force + amount of force was reasonable, for the prevention of harm. (not retaliation or revenge) **some states requiring retreating first when safe to do so except in home** **Grimes v. Saban** Force must be proportional\*\*

Defense of other: if 3rd party has privilege of self-defense, D is privileged to use reasonable force on 3rd party's behalf



### AD (Self, Other, Property, Consent) (cont)

Defense of property is when a defendant is privileged to use a reasonable amount of force to prevent a tort against his property. **less than the amount of self-defense and almost never deadly** Katko v. Briney (Briney's/shotgun/bedroom in inhabited farmhouse) (value of human life outweighs potential property damage exception applies only when trespasser is committing a violence w/potential to endanger human life)  
\*\*Brown v. Martinez (Martinez injures brown while he was stealing watermelons from D property) (no privilege to use any force calculated to cause serious injury or death when ONLY property is threatened).

Recovery of property is when a D is privileged to use reasonable force to recover wrongfully obtained chattel. D must be in uninterrupted fresh pursuit. Mistakes destroy the privilege except for shopkeepers who reasonably suspect a person of shoplifting. \*Gortarez v. Smitty's Super Valu (cousin/clerk+SG)(shopkeepers privilege allows merchants to detain suspects for shoplifting on premise for investigation w/ reasonable cause, in reasonable manner, and for a reasonable time without facing liability for FA + F(imp))

Consent (2nd restatement) is willingness in fact for conduct to occur. It may be manifested by action or inaction and need not to be communicated to the actor. If words or conduct are reasonably understood by another to be intended as consent, they constitute apparent consent and are as effective as consent. **Robin v. Harris / officer + prisoner / no consent / power difference** Kaplan v. Mamelak / Dr limited to procedures consent was for or complication \* *Doe v. Johnson / HIV / req. To disclose disease, held liable if know or infer from lifestyle*

### Necessity (public + private) / Damages

Public necessity is a defense that can be used against charges of trespass. There are three elements of public necessity: (1) public rather than just private interest involved, (2) D had reasonable belief action was necessary and (3) action taken was reasonable response to need. **Surocco v. Geary / house destroyed stop fire/ tortious actions can be undertaken for greater interests of society** *Private necessity: an entry upon land to save personal goods which are in danger of being lost or destroyed by water or fire is not a trespass. One may sacrifice the personal property of another to save his life or the lives of fellows.* Ploof v. Putnam / storm + family Vincent v. Lake Erie Trans. Co. / steamship – cargo – storm / party acting under private necessity is liable for damages incurred to property of others\*

*Dillon v. Frazer / car accident - Canada / jury grossly inadequate award / Judge additur*\* Van Camp v. McAfoos / child tricycle hit achilles of women / refuse to admit child was negligent



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