

Battery

Act	Voluntary act that is unconsented to by another party	
Harmful/offensive touching	<i>Harmful:</i> Causing physical injury <i>Offensive Touching:</i> Offending a person's reasonable sense of personal dignity	Offensive Touching Factors: i. Parties relationship ii. P's vulnerability/sensitivity iii. Context iv. nature of D's Act v. D's motive

Battery (cont)

Intent	Purpose or substantial certainty result will occur	Single Intent: 1. Intends to cause a touching of another & 2. The V finds the touching harmful or offensive or the touching would be harmful/offensive to a person of ordinary sensibilities Dual Intent 1. Intends to cause a touching of another && 2. Intends the touching to be harmful/offensive *don't forget to ask if V is a person of ordinary sensibilities
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Trespass to Land

Rule	Intentionally ----enters or causes -----entry on the land -----of another
Intent	Even if mistaken of who the property belonged, the intent to enter is all that matters

Trespass to Chattles

Rule	Intentional ---intermedling -----with the property -----of another
Damages?	Plaintiff must suffer loss of use of property Stealing a car v. a 10 minute joyride

Assault

Intentionally putting another in apprehension of an imminent harmful or offensive touching

Overt Act

---->	Apprehension	An awareness of an imminent touching = anticipation
---->	Imminence	Does not have to be instantaneous, but would occur without delay

intent	Purpose or substantial certainty result will occur
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Assault (cont)

- - If battery occurs, **transferred intent**
- - makes D guilty of battery even if they
- - did not intend the touching to occur but
- - want intended for the apprehension

*Words alone do not make the actor liable for assault **unless** together w/acts or circumstances they put the other in reasonable apprehension*

Transferred Intent: Occurs when a Defendant intends to commit one tort and ends up committing another

[IIED]

Extreme & Outrageous Conduct

Exceeds bounds of tolerable decency

Factors:

- Repetitive/pattern of abuse
- chronic
- power differences
- severity of conduct
- vulnerabilities
- context
- discriminatory language
- death [Howard Stern example]

Intent/recklessness

Purpose/substantial certainty is not required

recklessness

Disregard of substantial risk, precondition health

[IIED] (cont)

Severe Emotional Harm

*When issue spotting, look for person's emotional well-being: i.e. -didn't eat, distraught

3rd Party claiming for IIED

- Plaintiff must be present
 - Defendant knows plaintiff was present
 - Blood relationship
- *if not family member, then the plaintiff must have suffered bodily harm

DUAL INTENT V. SINGLE INTENT

**Intent*

Single Intent 1 & 3

- Intends only to cause a touching (of another)
- V finds the touching harmful or offensive
// the touching would be harmful/offensive to a person of ordinary sensibilities

Dual intent 2

- Intends to cause a touching
- intends the touching to be harmful/offensive**

Thin Skull Rule

Responsible for injuries and any harm reasonably foreseeable after initial injury

Conditional Assaults

A show of force accompanied by an unjustifiable or unlawful command compiles as battery is an assault

(EX) If it wasn't Tuesday I cut your throat

Conversion

Rule

Intentional
---exercise of dominion
-----over property
-----of another

4 factors

- Assumes control
- deprives someone of use
- refuse to return on demand
- destroying property

mistakes do not matter

-joyrides do not count

-Plaintiff has lost use, dispossession, lost/damages

False Imprisonment

Confinement

- Physical restraint
- Duress of goods
- Physical barriers: No reasonable means of escaping
- Improper false assertion of legal authority
- Threat of physical force to person, family, or property

Awareness

Victim has awareness or suffers injuries if there was no awareness

Example-when a woman with diabetes was accidentally locked in the library and had an attack overnight

intent

D acted with purpose or substantial certainty

DEFENSES 4 intentional torts

Recapturing Chattel

1. You can use reasonable force to obtain property, but no room for mistake (hot pursuit) &&
2. TIME AND MANNER

Shopkeeper Privilege

1. Reasonable believe,
2. Room for mistake

DEFENSES OF PROPERTY

1. Reasonable force to defend property [no deadly force plz]

You cant do by mechanical device what you can't do by person, i.e.-spring gun

Brown v. Martinez

Transferred intent from assault to battery (don't matter if touching occurred, intended to apprehend, therefore harmful touching, a normal person would find offensive/harmful

In Loco Parentis

Parents can/are privilege to discipline their children
-->(and anyone else who stands in the place of parents, such as bus drivers, teachers, etc)

Cannot maintain privilege if using deadly force just because of a posted warning sign

Defense rule: Privilege to use reasonable force to protect yourself from imminent danger

----->defense of others?

A: Split jurisdiction on mistake

Children & Mentally Impaired

Children

Bright line rule: not really one, but normally any child below the age of seven or six, depends on state statutes that declare when a child is able to or not able to form the intent to be guilty of a tort

Garrett v. Daley:

Dailey's intent to cause a harmful bodily contact is inferred from his knowledge that the contact would occur

Mentally Impaired

State by state, depends on whether the person ins able to form the intent or not

Wagner v. State:

State immune from battery cases, and so long as patient had intent to touch, that was enough to satisfy a battery, doesn't matter if he intended the touching to be malicious or not

NEG: DAMAGES \$\$\$\$\$

1. Actual Harm

Physical injury and/or property damage

When more than 1 possible defendant? **Joint & Several Liability**

Two test:

1. Multiple defendants acted in concerted (express or implied) engagement in a certain conduct
-->i.e., Dragracing
2. When multiple defendants negligence combined in an indivisible injury
-->One that cannot be reasonably apportioned with reasonable certainty

NEG: DAMAGES \$\$\$\$\$ (cont)

Triggering JSL: Anyone defendant can be liable for the indivisible harm

->Under pure joint several liability Jdx, plaintiff can get 100% damages from D1, even if D1 is only 25% at fault, but is more reasonable for P to obtain damages from D1 if it is unlikely D2 will be able to pay the 75% [or whatever it may be]. And then D1 can seek **contribution** of 75% from D2 on their own.

->In a pure several liability jdx, P is strictly limited to receiving 25% of damages from D1 and 75% from D2

->**Pure joint jdx**, P is able to receive 100% from D1 if D2 has indemnity

3. Contribution and Indemnity

NEGLIGENCE

D/B/AC/PC/\$\$\$

Negligence Per Se

Negligence Per Que?

This means that violation of the statute, even though that statute itself does not say it, actually determines the actor's duty and breach

1. Safety Statute?

2. Class of Person?

3. Excuse?

NEG: DUTY

(1) Is there a duty owed?

Trespasser: On land w/o permission; no privilege

Duty not to intentionally or recklessly injure any T

Discovered T:

1. Duty to warn if know of danger and that T about to encounter

Undiscovered Exceptions:

1. Duty to reasonable warn only if Landowner knows or has reason to know of danger and that P might encounter (Reasonable care for activities) **OR**
2. Duty of reasonable care if T deviates in minor way from public highway or mislead into thinking it's public highway

No duty to inspect/discover Trespasser

Child Trespasser: On land w/o permission; no privilege

Duty to warn/make safe reasonably where:

1. Trespass by kis is foreseeable
2. L knows or has reason to know of daner from artifical condition
3. Kids too young to appreciate dangers and avoid them

Licensee: Permitted to enter land; entry for P's benefit

Duty to reasonably warn *only if L knows or has reason to know of danger and that P might encounter*

No duty to inspect/make safe

EXAMPLES: *Social guest, T's privileged because of necessity, etc..*

NEG: DUTY (cont)

Invitee: Business visitor or public invitee on land for benefit to L or mutual benefit or because open to public

Duty of reasonable care *including duty to inspect and make safe non obvious dangerous conditions and obvious conditions if injury foreseeable despite P's knowledge or if P must confront danger regardless of warning*

Examples: *Customers, building inspectors...*

Trad'tl approach

Open & obvious doctrine: P barred from suing landowner for open and obvious dangerous situations

Modern: certain situations where duty to foresee

examples-> *grocier, ambulance paramedic, sometimes no choice but to confront obvious danger*

Professional Rescuers

Usually same as *licensee*: L not liable for negligence creating fire, risks inherent in rescue or ordinary negligence that creates occasion for presence of rescuer at place where she's injured. Extended to prof. rescuers outside land. may be liable for independent acts or risks beyond scope of duties

Examples: *Fire fighters & cops & safety officers--Status determined by nature of work*

NEG: DUTY (cont)

Special Duties

FFR: T as necessity privilege= firefighters?

Doctors

->duty defined by *expert testimony*

Traditional approach-**pure locality**

-->expert testimoney can only come from a local practitioner w/in same field and area

modified locality:

-->A physician of the same degree of care, skill and proficiency from a similiar community

Majority rule:

-->National standard of care of other specialist in the field{{n}}

Informed Consent 50/50 A doctor's failure to disclose adequate information

Materiality standard

-->Doctor has a duty to disclose all significant information that would be material to patients decision of operation

Alternative Approach-Medical Standard of Disclosure

-->Looks to what other medical professions would disclose vis a vi locality rules in jdx

What should be disclosed?

1. Nature and probability of risks
2. benefits
- 3.irreversability
- 4.Unpredictability
- 5.alternatives
- 7.Risks of refusing

-->a.Causation for IC: ((1))Risk materialized ((2)) P must show had she known, she would have refused ((3)) A reasonable prudent person would have refused

(2)What is the standard of care?



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Page 4 of 6.

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NEG: DUTY (cont)

->Default?

---->Reasonable prudent person under the circumstances

->Child?

---->Reasonable child of similar age, intelligence, experience, and mental ability
UNLESS acting in adult activity

NEG: BREACH

Hand formula

Specific Conduct v. Alternative Conduct, evaluate whether conduct was then reasonable via foreseeability

B < PL

B: Burden of precautions to eliminate or reduce the risk of harm

->information

->cost/benefit

->giving up social activities

P: The foreseeable severity of any harm that may ensue

L: Likelihood that the person's conduct will result in harm

*HF is most useful with conduct that is a deliberate choice

Common Understanding

An actor is negligent only if his conduct created a foreseeable risk and the actor recognized or a reasonable person would have recognized that risk? OR is it just as simple as don't run a red light?

Private practice

Manuals are persuasive-> *Walmart v. Wright*;

->however reasonable care is an objective standard, not a private practice standard (w/ the exception with Doctors and other specialist)

NEG: BREACH (cont)

Custom

R: A person's departure/compliance from/with custom of the community or of others in like circumstances can either help or hurt defendant

->Existence of a safety custom might prove that harm was foreseeable

->Manuals and standard of care **does not** equal law

->Safety manual reflects a higher standard of care *sometimes*

->Complying with statutes are the bare minimum, reasonable care may require higher standard of care, i.e.-TJ HOOPER

Notice of Opportunity

Circumstantial Evidence:

Defendant created dangerous condition **OR**

Defendant *knew* of condition and failed to remedy

Res Ipsa

R: Under certain circumstances, the very fact that an accident occurred leads to an inference that the accident was caused by negligence

Requires:

1. Does not ordinary occur without negligence
2. Other causes are sufficiently eliminated
-->Trad'tl: Control Rule-Plaintiff had to show that defendant had exclusive control of instrumentality that caused the harm
-->Modern: Restatement version-Considers Power of Control, Managing Control, Physical Control
3. Within the scope of defendant's duty--Up to the jury

Rule to start breach: "The defendant who breaches the duty of care is negligent"

NEG: ACTUAL CAUSE

But For

But for the defendant's negligent conduct, plaintiff would not have been injured [or as injured]

Substantial Factor

D1 and D2 acted in concert, and but for conduct is proved on both D1 & D2= substantial contributing factor in P's injuries, and JSL can be applied so that P may recover fully (apportioned between Ds)

Lost Chance

But for D's negligence, "destroyed a substantial possibility" of achieving a more favorable outcome

Alternative Liability

When only one defendant caused the harm, but cannot determine who

-> Triggered by indivisible injuries

NEG: PROXIMATE CAUSE, Scope of Liability

Risk Rule

The type of harm that occurs within the risk of defendant's negligence (foreseeable harm)

J.Cardozo: Narrow Approach-D is responsible for injuries that can be foreseen

J.Andrews: D is responsible for any direct injuries

1. Foreseeable Plaintiff?

2. Foreseeable harm?

->Type/manner of harm does not have to be foreseeable and *extent* of harm

NEG: PROXIMATE CAUSE, Scope of Liability (cont)

Rescue Doctrine

->Generally a rescuer can recover from the defendant whose negligence prompts the rescue if the rescuer had a reasonable belief that the victim was in peril

Intervening Causes

An intervening act is one which operates after the defendant's original negligence to bring about the harm

Must prove intervenor is superceding to relieve Defendant of liability, otherwise intervenor is defendant and is within the risk of D1's negligent conduct

Trad'tl Approach:

- >criminal intervenor = superceding
- >Acts of God and unforeseeable
- >Risk terminated
- >Suicide unless exception

Modern approach:

- >Criminal acts are not superceding if defendant exposed plaintiff
- >Suicide-->If your job is to prevent others from hurting themselves
- >D's conduct put/left P in a position of Danger (*i.e. -Derdarian & wooden horse*), cannot argue injuries from intervenor is superceding
- >dependent intervenors that are forced to operate in response to defendant's negligence
- >Rescue Doctrine

P/C Rule: A defendant is the proximate cause if the type of harm that resulted was foreseeable and within the risk of the defendant's negligence

Defendant is liable only for

1. Types of injuries foreseeably risked by D's negligence
2. To classes of persons foreseeable in the scope of risk of D's negligence

AFFIRMATIVE DEFENSES TO NEG

1. Contributory Negligence

Plaintiff's failure to exercise care for own safety (mirrors pfc of NEG)

Changes damages

Traditional/Minority Rule: **Pure**

Comparative Fault

->Plaintiff's recovery is reduced entirely if Plaintiff is found to be contributorily negligent even by a small percentage

Modified Approach

- a. 50 and less? able to recover minus portion of plaintiff's portion of comparative fault
- b. A plaintiff that shares more than 50% of fault recovers nothing

AFFIRMATIVE DEFENSES TO NEG (cont)

2. Assumption of Risk

Consent: Express AOR

Does the waiver encompass negligence and is the harm within the scope or outside the scope of D's duty
Typically found within exculpatory clauses
->Look at **Tunkle Factors** to ensure exculpatory clauses is enforceable{nl}1. Valid as a matter of policy?

---> *Nature of services*

---> *Bargaining power*

---> *Plaintiff subject to D's carelessness?*

2. Fairly entered into

3. Clear and unambiguous

Implied Assumption of Risk

Primary v. Secondary

-> Primary AOR

Plaintiff fails to show PFC, inherent risk of sports, spectating, etc

-> Secondary AOR

Must know and appreciate the risk voluntarily
->subjective standard

Majority rule w/ SAOR, use contributory negligence

If plaintiff is CN, then do NEG Analysis on P

Avoidable consequences:

plaintiff may have not reduced risk afterwards or failed to perform duty to mitigate damages, then D is not liable.

Casual Apportionment

Plaintiff is responsible for his own injuries aside from injuries sustained by defendant

Where does Bexiga Principals go?

1. Defendant knows of possible carelessness
2. Plaintiff's conduct only risk to himself