

## Intentional Torts

- Way to remember: BAFFITTC
  - Battery, Assault, False Imprisonment, IIED, Trespass to Land, Trespass to Chattels, Conversion
- Intent
  - Two types:
    - General = substantial certainty a result will occur
    - Specific = D desires to bring about a certain result w purpose
  - Transfer of Intent
    - Mistake doesn't negate intent
    - intent to hit A but actually hit B = still liable for the damage caused to B
    - Torts it applies to:
      - Battery
      - Assault
      - False imprisonment
    - If you intend to cause one of these torts but actually cause another = intent transfers
    - Not a consideration of negligence
    - Situations it applies to:
      - Person to person
      - Tort to tort
    - Doesn't apply to property

## Types of Intentional Torts

- Battery
  - Intentional infliction of harmful or offensive bodily contact
  - Elements:
    - **Intentional**
      - Purpose of causing the contact OR the substantial certainty a consequence will occur
    - **Harmful or offensive bodily contact**
      - Pain = harmful contact
      - Offensiveness = state of mind; damaging to a reasonable sense of dignity
        - Motive irrelevant for offensiveness
        - Would the RPP find this offensive?
      - Doesn't have to be body-to-body contact
        - Can be contact through an object
        - Can occur if the D comes in contact w something intimately associated w P's person
          - *Fisher v. Caroussel* = Case where black man at hotel conference had plate snatched + slur
    - **Causation**
  - P doesn't have to prove any damage for battery
    - Can be awarded nominal damages

- Some small amount for winning case
  - Not necessary for P to be actually aware of the contact at the time it occurs
  - Mistake does not negate intent here (leads to problem of transferred intent)
  - Contact beyond level consented to
    - Can occur when D goes beyond level of contact P consented
      - Sporting event
      - Medical procedure
  - Damages can include recovery for mental distress caused by the battery
  - No such thing as a recklessly caused battery\*
  - Crowded world test:
    - In a crowded world, we have to accept that we will bump into each other
    - Cannot isolate self in a crowded world
    - Looking for something demonstrating action was **reasonable** (objective question)
    - *Warren v. Rosen* = created crowded world test
  - Potential defenses/privileges:
    - Consent
    - Self Defense
- Assault
  - Intentional causing of an apprehension of harmful or offensive contact
  - Elements
    - **Intentional**
      - Purpose to cause apprehension of contact OR
      - Substantial certainty that apprehension of contact will result
      - If act fails, intent to cause contact can fall under this too
    - **Apprehension of harmful or offensive contact**
      - Cannot be limited to fear alone; must be **apprehension** (perception or anticipation of harmful/offensive contact)
      - Must be **imminent**
        - Threats for the future = not assault
      - Has to appear to P that D is capable of causing harm
    - **Causation**
  - Words alone **not** sufficient to constitute assault
    - Can't recover if apprehension of harm to **other** people
      - P must have apprehension of harm to **themselves**
    - **Not necessary for actions to be made in hostility**
  - P must be aware of the threatened contact
  - Can be awarded nominal damages
  - Mostly applies to mental distress
- False Imprisonment
  - Elements:
    - **Intent**
    - **Restraint or confinement to a bounded area**

- Can be accomplished through force, threat of imminent force, duress, or asserted legal authority
      - Can't be for threats of **future** actions
  - **Causation**
  - **Awareness or injury**
    - P must be aware that they are confined **while** they are being confined
  - Can recover for any mental distress that is the product of it
  - No actual damages needed
  - Means of escape NOT reasonable if:
    - Not apparent
    - P doesn't know it exists
  - If escape is left open w/o physical/safety consequences = not FI
  - Not just causing confinement but **keeping** in confinement
  - Moral persuasion case:
    - Confined out of sense of obligation
    - Confined in words but not in threat
    - NOT sufficient for FI
  - Situations it can apply to:
    - Moving vehicles
    - Actionable confinement can be as large as a state
    - Retention of property can sometimes qualify
  - Means of causing FI:
    - Accompanied by force, threat of imminent force, duress, or asserted legal authority (beyond physical barriers)
      - Threats of future action = NOT FI
    - False arrest = FI when done by police
      - Requires grounds for arrest
      - *Enright v. Groves*
  - Potential Defenses/Privileges:
    - Consent
    - Shopkeeper's privilege
    - Privilege of arrest
- Intentional Infliction of Emotional Distress
  - Elements:
    - **Intent**
      - D desires to cause P emotional distress
      - D knows w substantial certainty emotional distress will occur
      - D recklessly disregards high probability of emotional distress
        - Only intentional tort where recklessness will serve as a replacement for intent
    - **Extreme and outrageous conduct**
      - "Beyond all possible bounds of decency"
      - Using reasonable person test to measure

- Problem for jury to determine
    - *Slocum v. Food Fair* = failure to prove this aspect
  - **Severe mental distress**
    - Distress severe enough to seek medical aid (double check)
    - Big difference between mental distress and severe mental distress
  - **Causation**
- Transferred intent in IIED:
  - Immediate family exception where it applies:
    - D directs conduct towards immediate family of P
    - P is **present**
    - P's presence is **known** to D
    - *Taylor v. Valluga*
- Trespass to Land
  - Elements:
    - **Intent**
      - Makes entry actionable
    - **Entry upon land**
      - Mistake not an excuse
      - Air space applies too
        - Can be privileged
      - Can be a person or a physical object
    - **Possessed by another**
      - Don't have to know land is possessed by another
      - P doesn't have to own the land (only possess)
    - **Causation**
  - When it occurs
    - 1) D intentionally enters P's land w/o permission
    - 2) D remains on P's land w/o right to be there
    - 3) D puts object on P's land (or refuses to remove) w/o permission
  - Damage not an element
  - Property doesn't have to be fenced
  - Potential Defenses:
    - Consent
- Trespass to Chattels
  - Explained:
    - Can be more temporary;
  - Elements
    - **Intent**
      - Purpose w substantial certainty; doesn't have to have to know its someone else's property
    - **Interference w personal property**
      - Loss of possession
    - **Possessed by another**

- May not be the owner of the property; can just be the one possessing it
- **Causation**
- **Damages**
  - Physical harm or substantial deprivation or dispossession
    - Dispossession = stealing; taking property permanently
    - Deprivation = taking property more temporarily
    - P must prove that property was physically harmed/damaged (however slight or severe)
- Remedies for Trespass to Chattel:
  - P would get the damages for the value of the item AND the item back
- Mistake is no defense here
- Conversion:
  - **Substantial** physical harm or dispossession
    - Theft = automatic grounds for conversion
  - Elements:
    - **Intent**
    - **Interference w property**
    - **Possession by another**
    - **Causation**
    - **Damages**
      - P must show substantial harm or dispossession
  - Remedy for Conversion:
    - Treat it like a forced sale; P entitled to full value of item in question
      - If successful, the P would get the value of the property and the D would get to keep the object
  - Different ways to commit conversion:
    - Acquiring possession
      - Stealing
    - Receiving
      - Bona fide purchaser of stolen goods = conversion, even if unaware goods were stolen
    - Transfer to 3rd person
      - D transferring chattel to one who is not entitled to it
    - Withholding good
      - Refusing to return goods to owner; refusal lasts for substantial time
    - Destruction
      - Destroying or fundamentally altering good
    - Damaging or altering it
      - Killing animal, for example
    - Disposing of good

## **Privileges**

- Process of analysis:

- First, has there been a tort?
  - Second, are there privileges?
  - You admit committing the tort, but the reason is defensible
- Consent
  - Two types:
    - Express
      - Straightforwardly spoken or in writing
    - Implied
      - doesn't have to be said outright or signed in writing
      - Types:
        - Course of conduct
        - Social conventions
        - Circumstances
        - Relationship of parties
      - You can withdraw implied consent
  - Consent obtained by fraud = not valid consent
  - Intoxication does not negate intent
  - **Consent can apply to any intentional tort**
  - Athlete's consent
    - In unusually violent sports (ex: football)
    - Generally **not** considered consent to all injuries inflicted
      - Scope of implied consent
        - Liable for all contacts **beyond** ones impliedly consented
        - Common sense review of what is involved in implied consent
      - Significance of sport's rules and customs
        - Categories:
          - Conduct allowed by rules
          - Conduct punishable but not "beyond bounds" of sport
          - Reckless or intentionally-harmful conduct beyond usual bounds
            - Liability here
    - Consent to criminal acts = not a privilege
    - Consent, but withdrawn = actionable
    - Emergency situations (with physicians):
      - Consent not possible
      - Risk of death or extreme bodily harm
      - Reasonable person would agree
      - No reason for patient to refuse
      - Nominal damages can be given
  - Self-Defense
    - Affirmative defense = D must specifically plead + burden of proof on D

- One may use reasonable force in self defense if one reasonably believes it to be necessary
  - Was decision to use force reasonable?
  - Was the amount of force reasonable?
    - Degree of force must be amount necessary to prevent the threatened harm
    - Deadly force
      - Can only be used if P is in danger of **death or serious bodily harm**
- Retaliation does NOT qualify as SD
  - As soon as the attack has stopped = over
  - SD can be employed as result of retaliation
- Mistake does NOT negate intent
  - Mistake not defense, but mistake that is reasonable may be SD
    - Can apply to mistake of identity, choice to use force, or amount of force used
  - Here = unique bc mistake is allowed sometimes in SD compared to the handling of mistake in other defenses
- Verbal Provocation = not SD
  - Physical provocation w offer of force = SD applies
  - Question of reasonableness must be applied here
- Retreat:
  - Do not have to retreat if less than deadly force
  - Majority rule = do not have to retreat before use of deadly force, if justified
- Transfer of Privilege:
  - Rules of transfer of intent apply here
  - As long as you are privileged to shoot X, you are privileged to shoot P
  - **You can only transfer privilege bc intent transferred**
    - Otherwise P can sue for negligence
- SD = can be used for **any intentional tort**
  - Must look at person causing intentional tort and then the conduct of SD
    - Not the conduct of the P to be focused on; focus instead on the D
- Defense of Others
  - Can use reasonable force in defense of others
  - Rules identical to SD, except over issue of mistake
    - Mistakenly defending someone else = liable?
      - No clear majority rule:
        - Half of jurisdictions = look at person defended
          - Since A liable, D is liable
        - Other half = D liable
          - Question of whether D acted reasonably
- Defense of Property
  - When invasion is peaceful + occurs in the presence of the possessor = use of **any force is unreasonable**

- Law of opinion that once something is stolen, it's over; must take to court then
  - Rule of fresh pursuit in recovery of property addresses this
- Reasonable mistake
  - If D's mistake about whether force necessary = protected
    - Ex: non-deadly force to stop burglar believed to be armed
  - If mistaken about whether intruder has **right** to be there = not privileged
- Deadly force
  - Where non-deadly force will not suffice
  - Owner reasonably believes that w/o deadly force, **death or serious harm** will occur
- Mechanical devices:
  - *Katko v. Briney* = no go; the home alone approach (or SAW, depending on how fucked up as a person you are) doesn't apply
    - A question of intent will be reviewed
    - Intent proven through review of how Briney set up the shotgun trap
- Recovery of Property
  - Fresh pursuit
    - If D notices property is taken as it is happening, pursuit begins promptly, is continuous, and demand made = reasonable force can be used in the recovery of property
      - Right to regain property without unreasonable violence
    - If owner of property voluntarily relinquishes the property, recovery must be made peacefully; otherwise must seek legal help
    - Rules can always escalate into SD role = escalation of reasonable force (even to deadly) then allowed
  - Shopkeeper's privilege
    - If they reasonably believe that someone has committed theft (or is about to), they are allowed a reasonable detention and investigation for a **reasonable amount of time**
      - Time frame = long enough to call the police
  - Must have reasonable force; can't be deadly
- Necessity
  - Private
    - Not liable to trespass to chattel, conversion, trespass to property under private necessity
    - Necessity = key element
      - Protecting self from serious damage or life
    - D still has to compensate P for damage to property
    - Privilege = D cannot be ejected from property
  - Public
    - Not liable for trespass to chattel, trespass to land, or conversion if not acting in the public good (protecting the public at large or public property)
      - To community or to many people



- **No right of compensation** under CL
  - You do not have to be a gov employee to exercise it and don't have to be successful in endeavor
- Authority of Law
  - Privileged
  - Police officers, military, prison officials, regulatory inspectors, + mental health facility officials
  - Liable only if acting improperly
    - Ex: excessive force
    - Mistakes in good faith also not protected
- Discipline
  - Mostly privileged
  - Relationships it applies to
    - Parent and child
    - Military + naval officers and subordinates
    - Master of ship over crew and passengers
- Justification
  - Privileges are built on right of justification
  - Not an excuse; catchall privilege (may need to cite something additional)
  - Use justification if no other privilege seems to be effective

## Negligence

- **Liable if ALL of elements are met**
- Note: notice is a key factor in negligence; allows for confirmation of knowledge
- Elements
  - **Duty**
    - Standard of Care (under the circumstances)
      - Everyone owes everyone else a general duty of reasonable care
    - Law doesn't impose a duty to act
      - when one does act, must submit to the reasonable standard of care
    - Note: duty does not carry the same weight as a rule
    - Liability can sometimes be limited at the duty stage
    - NO duty to rescue
      - Rescue doctrine only applies to voluntary rescue
      - Rescue Doctrine
        - **MUST SHOW BREACH OF DUTY**
        - Applies whether D negligently or intentionally places himself or someone else in peril (or creates the appearance of peril)
          - If so = breach of duty
          - This creates negligence to rescuer **if** rescue is foreseeable
        - Decision to attempt rescue was **reasonable**
          - Reasonable care in an emergency

- If rescue is foolhardy or not predictable = unreasonable
      - Difficult situations = rescuing pets
      - Punt it to jury and have a nice day
  - Rescue attempt itself is reasonable
    - Reasonableness always in context of circumstances
  - Professionals = rescue doctrine doesn't apply
    - Already compensated for rescue
      - Ex: firemen, policemen, etc.
    - (usually) can't sue for consequences
    - Common law rule
- Exception to duty to rescue/protect:
  - If D owns instrumentality causing harm = duty to rescue
  - If you undertake rescue/protection/render assistance = must act reasonably (duty of reasonable care)
  - If D placed P in peril (or potential peril) = duty
    - Must behave reasonably under the circumstances
    - Can be innocent in creating situation
      - Still applies
      - Applies to negligence too
      - Even in instance of SD where P places D in peril/potential peril
  - Instances of detrimental reliance
    - Liable if duty not performed
- Special relationships
  - Spouses
    - Often, more of an idea of a duty owed to children
  - Parents to minor children
    - Not vice versa
  - Employers to employees
    - During course of employment
  - Common carriers to passengers
  - Innkeepers to guests
  - Shipmaster to sailor
  - Jailer to prisoner
    - Custodial relationship
  - Hospital to patients
  - Teachers to students
    - Can be universities to students
- **Breach**
  - Breach of duty = failure to conform to required standard of care
  - Foreseeability of ensuing harm = makes situation blameworthy
  - Creating danger of harm

- Think of carelessness here
- REMEMBER = even if a breach of duty (negligence), not actionable unless **causation**
  - Negligence must be the cause in fact + proximate cause to be actionable
- **Cause-In-Fact**
  - Actual cause; use the **but-for test** to determine
    - “But for (X), (Y) wouldn’t have occurred”
    - Would P have been injured anyway if D’s negligent act was removed?
  - Proof of Causation
    - **Must** prove that D’s negligence caused P’s damages
      - Sine Qua Non = indispensable condition or thing; something on which something else entirely depends
  - 2 kinds:
    - General
      - Whether something is even capable of causing damage
    - Specific
      - Did it directly cause the P’s damages?
  - As long as evidence supports conclusion = no error in negligence
  - Concurrent Causes
    - Indivisible Injury
      - Instance where not capable of figuring out who is responsible for injury
        - Ds jointly liable; each liable for full amount of damage to P
          - Difficult to differentiate which D is responsible for each amount
            - Solution = P can determine amount to receive from each out of damage award
              - If possible to apportion = done instead
      - Rule made to protect P
        - Concurrent necessary causes = but for test
        - Concurrent sufficient causes = substantial factor
          - Two factors combined to cause harm, but each would have caused harm acting alone
          - Problem = but-for test fails in application here
            - Solution = **substantial factor test**
              - Were each D’s act substantial factors?
            - 2 independent acts of negligence combined to cause 1 injury = both held liable

- *Anderson* = case of 2 fires burning down P's house; *Summer's* test applied
  - Substantial factor test = will work every time
- **Proximate Cause**
  - Legal cause
  - NOT A FACTOR IN INTENTIONAL TORTS
  - Checklist for attacking issue: policy, foreseeability, + intervening act
  - Measured by foreseeability in relation to the result
    - Limits scope of liability for harm to harm that is foreseeable to D and their conduct
    - Foreseeability = product of breach of duty
      - Breach = before the fact analysis
      - Proximate cause = after the fact analysis
        - Ask what harm made D negligent
          - See if it connects to foreseeability
      - Affirms what happened is what was foreseeable to happen
        - If harm generally foreseeable = sufficient
        - Exact way the harm happened = doesn't have to be specific
      - Not foreseeable = not liable bc fails proximate cause
        - Total emphasis on blameworthiness
        - Foreseeability matching the breach
      - Generally a **jury question**
    - P has to prove foreseeability of D
  - Eggshell Skull Rule
    - Factor of proximate cause not related to duty or breach
      - Applied in every jurisdiction
    - Take the P as you find them
    - D liable for all harm if **any** is foreseeable
      - If you're liable for foreseeable harm, also liable for the unforeseeable portions of that harm
      - Don't have to see the full extent of harm to be responsible for it
    - Eggshell psyche rule:
      - D responsible for all mental harm
        - Not accepted by only a minority of jurisdictions
      - If D caused physical harm, mental harm adjoins to this
  - Unforeseeable P
    - If so, case is over
      - Matter of duty
    - *Palsgraf*
    - No liability because no duty; P was unforeseeable
    - Duty arises as danger presents itself
      - Doesn't apply until someone put in the zone of danger

- If damage is foreseeable = unforeseeable P disappears
- Puts judge in charge of discerning issue rather than jury
- Most issues about unforeseeable
- Intervening Causes
  - 2 part analysis:
    - 1) Did P suffer foreseeable harm?
    - 2) Was intervening cause foreseeable?
  - If intervening cause was foreseeable = D retains liability
    - If intervening cause not foreseeable = issue of intervening superseding cause + D's liability cut off
  - Other Ds can trigger the dormant negligence of a D
    - Must come **after** original D's negligence
    - Can be anything that triggers D's negligence to harm P
    - Ask = was causal factor in exist before?
  - Intervening cause + P's harm must be foreseeable for P to win
  - Things that can apply as intervening causes:
    - Intentional acts
    - Criminal acts
    - Reckless acts
    - Innocent conduct
  - Best example: trench worker (Derdarian)
    - Was the 3rd party's action foreseeable?
      - If not = liability cut off (superseding cause)
  - Act of nature = intervening cause
  - Irresistible impulse
    - Intentional but not voluntary
      - Ex: suicide
    - Most courts will say no liability here
    - Generally a jury question
- Damages
  - Actual damage suffered by P
  - Usually monetary
    - Ex: medical expenses, lost wages, pain + suffering, etc.
  - For exam, only required to recognize that they are present; acknowledge and move on
  - Pure economic loss
    - General rule = D not liable for pure econ loss
      - Out-of-pocket, monetary loss not associated
      - Ex: losing revenue due to negligence of D
        - Exception = malpractice
      - HOWEVER, if P suffers bodily injury or property damage, then able to recover for pure econ loss
  - Negligent Emotional Distress Damages
    - Applies in direct victim cases:

- Impact Rule
    - D causes impact on P but no bodily injury
    - Contact w person but no harm
    - Doesn't require a physical manifestation
    - ALL jurisdictions allow this
      - Can recover under other circumstances
  - Zone of Danger
    - Near miss situation
    - Majority of jurisdictions would allow P to recover if mental distress manifests itself **physically**
  - Emergence Rule
    - Minority rule
    - No impact, zone of danger, and mental distress not manifested physically
    - Can recover if in circumstance of true mental distress
- Bystander Rule
  - 3rd party witnesses something causing them mental distress
  - General rule = no recovery
    - However, can recover if:
      - 1) if related to party
      - 2) on scene when incident occurred
      - 3) suffering mental distress greater than normal
- Standard of Care
  - The Reasonably Prudent Person
    - Has normal intelligence
      - Objective standard
      - Not adjusted for any cognitive disabilities of D
        - Mental health issues apply under this too
    - Has normal experience, perception, memory, or knowledge
      - Knowledge = starts at basic common knowledge and then based on community where D is
    - Has all the additional skill or knowledge as the actual D (all the mental attributes)
      - Takes on any positive additional attributes of D
      - Unique knowledge or skill of D taken into account
    - Has the physical attributes of the D himself
      - Subjective standard
        - Can be increased or diminished based on D's physical condition
    - Exemptions:
      - Emergencies can apply

- What **doesn't** apply:
    - Mental illness
    - Intoxication
- Children
  - Taken into account; can be liable for negligence
  - Age:
    - Generally starting around 4-5 y/o
    - Minority rule = rule of sevens
      - Children under 7 y/o deemed incapable
    - Age 18 = adult standard imposed
  - Compared to children of similar age, intelligence, and experience
    - Experience taken into account here; more than adults
  - When engaged in an adult activity = held to the standard of care as a reasonable adult doing that activity
    - Ex: driving
- The Professional
  - Has additional specialized training
  - Standard of care:
    - Must possess + use the knowledge/skill common to members of the profession in good standing
    - Still an objective standard
    - Used as evidence:
      - Understood through expert testimony
        - Putting professionals on stand to explain the common practice specifically
        - Doesn't have to be professional = must only be an expert within their field
          - Specialized knowledge + background
        - Malpractice = Expert testimony must be from someone trained in the field
- Rules of Law (Negligence per se)
  - Negligence as applied to a statute or rule of law
    - Make sure to know where rule fits in the standard of care
  - Outside of jury determination
  - Application of a violation of statute
    - Statute must apply to facts
    - Consider:
      - Is P a member of a protected class?
      - Is the hazard one the legislature intended to protect against?
      - Is it appropriate to impose tort liability for violations of statute?
        - If case fails on any of these 3 requirements = NPC over
        - If it passes on requirements = court can **choose** to use it
    - Regular negligence (deviation from standard of care) charge can go forward even if this one fails

- Court isn't **required** to use a criminal statute in a civil case
  - However, the court has the ability to do so under certain circumstances
  - Statute in question becomes something like a rule of law to be applied
  - Reasonable care under the circumstances still applies
  - *Stachneiwick*
    - Will use regulation as standard of care + means of statute if issue carries criminal penalty
  - *Osborne v. McMasters* = pharmacist giving improperly labeled poison
- Licensing Statutes:
  - Not used to establish a standard of care in NPC issues
  - Must operate under reasonable care under the circumstances
    - Can be held to standard of care of the professional whose activity D engaged in
- Safety statute:
  - Court has tremendous amount of discretion in using a statute as a safety statute
  - No obligation if issue is of first impression
  - Can refuse of use it; choice of application
- Res Ipsa Loquitor
  - **Thing speaks for itself**
    - Negligence so clear that it will be inferred from the circumstances; an obvious situation
    - Occurrence of the accident implies negligence
  - What P must show:
    - Not required to show direct evidence of D's conduct/ how D behaved in connection w event
    - 2 part test:
      - Object causing harm was in **exclusive control** of D
        - Not due to P's own conduct
      - Result would **not** occur commonly under standard of care; occurrence is the product of negligence
  - Will need expert testimony
    - Subject beyond expertise of the jury
    - Has specialized knowledge or insight
  - Proving damages:
    - Usually monetary
      - Ex: medical expenses, lost wages, pain + suffering, etc.
  - Still must satisfy the other elements of negligence:
    - Some foreseeability in breach of duty
    - Cause in fact = essentially covered by RIL; just must prove that D's negligence caused damages
      - Requires inference of causation for proving the damages
  - Medical malpractice = **custom becomes the standard**
    - Don't need expert testimony to prove negligence



- Locale = also an issue
  - Would need to call expert from locale of issue to testify regarding common practice/standard
- The fact that an ideal outcome has not occurred isn't always an indication of negligence
- Specialists = held to a higher standard
  - From a standard of care to the standard of care of a specialist
  - Must bring in another specialist of the same kind to testify on the standard
- If professional guaranteed outcome = not malpractice, but instead breach of contract
- Defenses to Negligence:
  - Contributory negligence (NC)
    - Negligence committed by the P
    - Complete bar to recovery
    - Must be presented to jury
      - Question of the P's role
    - If failure on the breach of duty argument, CN can be argued
      - Often very much linked based on the facts of the case
- Joint and Several Liability
  - When two independent acts of negligence come together to cause a single harm, the injury is indivisible
    - Where neither one acting alone would not have caused the injury, each tortfeasor is responsible for the entire amount of damages
  - 3 ways to establish:
    - Indivisible harm
    - Acting in concert
    - Vicarious liability

### **Strict Liability (Faultless Liability)**

- Neither intentional nor negligent but D still held responsible

### **Miscellaneous notes:**

- 12(b)(6) = failure to state a claim
- Prima facie = at face value