

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. Carousel* = 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

- 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

- 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
 - *Stachneiwicz*
 - 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