INTENTIONAL TORTS
Damages available: Nominal, Compensatory and Punitive

Battery – Intent, Harmful or Offensive touching, Causation

Intent to Inflict Harmful or Offensive Touching:
(1) Desire to cause result OR
(2) belief that result was substantially certain to occur.

\textit{Vosburg}
Intent satisfied if act is unlawful given time, place and effect.
Responsible for unanticipated and unforeseeable consequences
(Thin Skull Plaintiff)

\textit{Garratt}
Intent if belief that contact was \textit{substantially certain} to result
from the act (moving the chair)

\textbf{Constructive Intent} – We’ll presume actual intent when act is
reasonably expected to produce the result to a substantial
certainty; (Did D “reasonably expect” the consequence of his
act to a substantial certainty?)

\textbf{Transferred Intent} – A tries to punch B, but hits C instead → if
A would have been liable for battery if he hit B, he is liable for
hitting C

\textbf{Harmful OR Offensive Touching}:
(1) Harmful = loss, detriment, injury (not just changes)
§15 “any physical impairment of the condition of another’s body, or
physical pain or illness”
(2) Offensive = offends \textit{reasonable} person’s sense of dignity.
§19: “if it offends a reasonable sense of personal dignity”
Not supersensitive (can’t erect glass cage around one’s self)

\textit{Fisher}
Offensive Touching if contact with something closely
associated to P is \textit{coupled} with an offensive statement.

\textit{Leichtman}
Offensive Touching if one deliberately and purposefully
smokes in a sensitive person’s fact. (D must have knowledge
of P’s sensitivity)

Assault – Intent, Apprehension, Causation

\textbf{Intent to cause apprehension or immediate harmful/offensive touching}

Same as Battery
**Suffering of Apprehension**
1. Present Ability to Carry Out Threat
2. Must be Imminent
3. Usually not Conditional

*Read v. Coker* (break neck)
Threat of violence + present ability to carry it out
Apprehension must be objectively reasonable (and it is!)

*Beach v. Hancock* (fired unloaded gun at plaintiff)
Apparent ability to inflict touching suffices
Assault if P had reason to believe the gun was loaded

**IIED – Intent, Extreme and Outrageous Conduct, Causation, Severe ED**

*Siliznoff* (trash truck)
Not assault b/c threat was not imminent.
IIED b/c D intentionally subjected P to severe mental suffering by making extreme and outrageous threats.

**False Imprisonment – Intent, Confinement, Knowledge of Confinement or Harm, Causation**

- **Intent**
  Same as Battery

- **Confinement**
  Unlawful restraint with or without physical touching

  *Whittaker v. Sanford* (woman on boat)
  Satisfied if control means of egress and refuse to let person use those means

  *Firestone Tire*
  Not confined if you do not request to leave
  Must show an actual desire to leave

  *Coblyn*
  Only way to avoid physical harm is submitting

- **Knowledge of Confinement or Harm**
  Must be aware at the time you’re confined or be harmed by it

**When it is Okay to Confine Another without Consent**
Protection of property or people under one’s care (i.e. teacher/students)

*Sindle* (Bus Driver refused to let kids off bus)
Lawful to restrain kids to protect them and his bus
Statute allows it (shopkeeper’s privilege)

*Coblyn* (old man in store accused of shoplifting)
Okay if done in reasonable time, reasonable manner and with reasonable grounds.
False imprisonment if executed outside bounds of statute

**Escape**
To collect damages for injuries sustained, escape attempt must be reasonable
Kid can’t collect for injuries sustained while jumping out of moving bus.

**AFFIRMATIVE DEFENSES**

**Consent (Actual or Implied)**

Contract rules apply: can’t consent by fraud or duress

**Crime**

*Barton v. Bee Line* (statutory rape)

Even if act is criminal, P can’t recover in tort when she consents.

This is the minority view.

**Doctors and Patients**

*O’Brien* (vaccination on immigrant ship)

Because patient could have walked away when she saw doctor vaccinating others, her behavior indicated consent.

Silence and inaction within the context of the surrounding circumstances may constitute privilege; Court looks at plaintiff’s conduct, not her subjective beliefs.

*Kennedy v. Parrott* (extension of operation)

Consent will be construed as general unless explicitly stated otherwise.

Must have informed consent.

Doctor has implied consent to extend operation in pt’s best interest.

Can still be held liable for negligence.

**Bang** (spermatic cord)

Doctor must obtain informed consent from plaintiff.

In emergencies, we assume implied consent.

**Athletes**

*Hackbart*

Typically, athletes assume the risk.

But, athlete does not necessarily consent to all manners of violent contact outside of the rules/scope of the game.

**Self-Defense** (objective standard applied)

Nondeadly Force

Can be used if reasonably believe somebody is about to inflict imminent bodily harm. Force must be reasonable necessary to prevent the harm. No duty to retreat.

Deadly Force
Can be used if reasonably believe somebody is about to inflict death or serious bodily harm. Majority View: No duty to retreat. Minority View: Duty to retreat if safe.

**Courvoisier**
- Shooting of third party justified if (a) acted honestly in using force,
- (b) fears were objectively reasonable given the circumstances, and
- (c) means made use of were objectively reasonable.

**Defense of Others**
- Can use deadly force to repel an attack on a complete stranger. Limited to the level of force the stranger could legally use.

**Defense of Property**
- Generally, can use nondeadly force if intrusion is unprivileged, reasonably believe force is necessary to prevent or stop intrusion, and make demand prior to use of force.

**Mechanical Devices**
- *Katko* (spring gun shot dumb burglar; nobody home)
  - Can’t set up spring gun when trespasser is not endangering human life or committing a felony.
  - Court emphasizes “indiscriminate nature of a spring gun.”

**Defense of Necessity**
- *Ploof* (trespass by docking boat in storm)
  - Can commit what would otherwise be a tort to preserve human life or, in some cases, property.

*Vincent v. Lake Erie* (boat damaged commercial dock during storm)
- Can trespass or use somebody’s property to protect your own when the circumstances require it (e.g. storm), but you will be held accountable for any damage you cause.

**DAMAGES FOR INTENTIONAL TORTS**

- **Nominal**
- **Compensatory**
- **Punitive**
NEGLIGENCE
1) Duty
2) Breach of Duty
3) Causation
4) Injury

**Duty**: Matter of law

**Normal Standard**: Duty to behave as a **reasonable person** would **under the same or similar circumstances**. *(Brown v. Kendall dog case applies “prudent and cautious” standard)*

**Industry Standard**
*Carroll Towing* (bargee leaves boat during day)
   Situation peculiar to industry ➔ court may use industry custom as standard of care.
   **Hand Formula: B < PL**
   Negligent because burden of precautions (ensuring bargee is on board) is less than the probability barge would break away times the injury it caused.

*Louisiana Power Co.* (Man electrocuted; he and power company aware of risk)
   No duty when burden of precautions (insulating *all* power lines) is greater than the probability of loss.

*Weirum* (Real Don Steele)
   Foreseeability of risk can (but not always) indicate negligence
   Negligent because failed to foresee its actions would create atmosphere in which teenage drivers chasing prize may do so recklessly.

**Standards of Duty to Land Entrants**
(Highest to Lowest)
**Invitee**: someone who comes onto land held open to public; business visitor
   Negligent if (a) you know or, by reasonable care, should know about danger, (b) should know that they won’t discover or realize it, and (c) fail to exercise reasonable care to protect them from it.

**Licensee**: someone privileged to be on land with owner’s consent.
   Negligent if (a) know or have reason to know of the danger, (b) fail to exercise reasonable care to make the condition safe or to warn of condition and risks, and (c) licensees do not know or have reason to know of the condition and the risk.

**Trespasser**: someone on the land without privilege.
   **If adult**, duty to refrain from wanton and willful conduct.
If constant trespasser or known trespasser, duty to fix and/or warn.
If child, must eliminate danger if cost is low compared to the risk.

Rowland (bathroom faucet/social guest)
Court says standard of care should be same for all three.
Negligent because failure to warn or repair

The Impact of Special Relationships on Creating Standards of Duty

Erie RR (RR track/lack of watchman – “a trap”)
When a party imposes a higher standard of care on itself and fails to meet it, may be held liable if practice is known to P and he relies on it.

Tubbs (D crashes and abandons car in which P is a passenger)
Generally, there is no duty to rescue.
However, may be negligent if D controlled instrumentality that caused P’s injuries—“constituting a sufficient relationship to impose a duty to render reasonable aid and assistance.”

Tarasoff
Therapist who determines (or should determine) a patient is planning to kill or harm someone has a duty to exercise reasonable care to protect the foreseeable (identifiable) victim by warning the victim.
Calling the police is not enough because that does not satisfy the duty to exercise reasonable care to the victim.

When Do You Owe a Duty

No duty when reasonable person would not have foreseen injury to anyone from the conduct.

• Duty when plaintiff is foreseeable: when plaintiff is located in a “zone of danger.” (Palsgraf)
  OR
• Duty when plaintiff is unforeseeable as long as he suffered injury as a proximate result of defendant’s breach of duty (Palsgraf dissent)

Breach of Duty

Must prove:
(1) What actually happened (factually)
(2) D acted unreasonably under the circumstances

Violation of a Statute
Remember—violation of statute can be evidence of negligence even when it is not negligence as a matter of law.
Martin (Amish buggy)  
   Early Rule: **Violation of safety statute is negligence as a matter of law.**

Tedla (Pedestrians struck while walking on “wrong” side of highway)  
   New Rule: **Violation of safety statute is not negligence as a matter of law if by doing so, one is likely to prevent rather than cause the harm which the statute was written precisely to avoid.**

Brown v. Shyne (Chiropractor violated statute by practicing medicine without license)  
   The act of failing to obtain a license does not necessarily prove his actions were inconsistent with the standard of care.  
   **Violation of statute means duty breached only if there is a logical connection between the proven neglect of statutory duty and the alleged negligence.**

Gorris (Sheeps lost at sea)  
   Violation of statute was the **cause**, but injury was not what the statute was enacted to prevent.  
   **Violation of statute is not negligence as a matter of law when it results in a completely unrelated harm to the plaintiff.**

Action Inconsistent with Industry Standards

Trimarco (shattered shower door)  
   If a certain precaution is taken as a matter of custom, a defendant’s failure to adhere to the custom provides evidence of breach of duty.  
   For the jury to decide if cost + availability of safety glass + growing custom turned what used to be reasonable into something unsafe and unreasonable.

The T.J. Hooper (tug negligently unseaworthy b/c not equipped with radio)  
   Negligent because failure to take simple, feasible precaution—despite industry custom being not to do so.

Helling (Ophthalmologist’s failure to diagnose glaucoma; test not custom)  
   What ought to be done is fixed by a standard of reasonable prudence, whether it is complied with or not by others in the industry.  
   Remember—this is an unusual decision; typically, the “standard of care” in med-mal cases is the custom of the industry.

Proving Breach by Res Ipsa Loquitur

To assert, P must prove:  
   1) Exclusive control of the instrumentality by Defendant
2) The incident does not ordinarily happen in the absence of negligence
3) Burden shifts to Defendant to prove something else caused the injury (i.e. to prove there was no breach of duty)

*Boyer* (Bleachers)

Court says *jury could find* (note: inference, not presumption) that D’s failure to inspect (breach of duty to exercise due care) was the cause of the plaintiff’s injury.

*Shutt* (shoe store)

No res ipsa allowed because if D were negligent, P could have demonstrated that in a number of ways.

Can’t use res ipsa when P can demonstrate D’s breach if there was a breach.

*City of Louisville* (subdural hematoma in jail)

Can’t use res ipsa when P has failed to demonstrate that D had exclusive control or that the occurrence wouldn’t have happened with reasonable care exercised.

*Escola* (Coke bottle cracking)

If plaintiff shows the bottle was not damaged or defective at any other time, and if defendant fails to show that the product was not defective while in its control, a *jury could find* the defendant liable under res ipsa.

Remember—it’s just an inference that shifts the burden