

Torts Outline¹

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1 Intent

1. Intent requires desire or substantial certainty.
2. Can a child meet the requirements for intent? *Garratt v. Dailey*: A five year old moved a chair from the place where the plaintiff was about to sit. The plaintiff fell and fractured her hip. The plaintiff's battery claim requires proof that the defendant had intent to cause contact that was not consensual or otherwise privileged. The Second Restatement indicates that intent exists if the actor is **substantially certain** that the harmful contact will occur. Court finds that it's unclear whether the defendant had substantial certainty. Remanded to trial court for clarification.
3. Can an insane person meet the requirements for intent? *Williams v. Kearbey*: Minor shot up a school and claimed insanity. Court held that defendant intended to commit the action (even if his motivation was irrational) and is therefore liable.
4. Other notes on torts:
 - (a) Torts are generally excepted from workers' comp immunity.
 - (b) In most jurisdictions, you can't insure against intentional torts.
 - (c) The constitution's Supremacy Clause leads to three kinds of preemption of federal laws over state laws:
 - i. *Express preemption*: Explicit or implicit overriding of a state statute.
 - ii. *Conflict preemption*: In case of direct conflict, federal law preempts state law.
 - iii. *Field preemption*: Congress legislates for an entire field of regulation, leaving no room for states to regulate.

2 Battery

1. Battery requires intent to cause **harmful or offensive contact** and that harmful or offensive contact directly or indirectly results.
2. Is battery actionable for very small harms? *Leichtman v. WLW Jacor Communications, Inc.*: A cigar smoker blew smoke in the face of an anti-smoking advocate. The court finds that "No matter how trivial the incident, a battery is actionable..." But it rejects the "smoker's battery" (which imposes liability if there is substantial certainty that second-hand smoke will touch a nonsmoker).
3. Does compliance with safety standards affect liability for intentional torts? Can radiation constitute contact? *Bohrmann v. Maine Yankee Atomic*

Power Co.: University of Southern Maine students took a tour of a nuclear power plant. Plaintiffs allege the company knew a flushing procedure would release radioactive gases during the tour, and that tour guides knowingly took students through plumes of unfiltered radioactive gases. Plaintiffs also allege the company falsely told them they had not been exposed to “bad” radiation. The court holds that compliance with federal safety standards does not affect the defendant’s liability for intentional acts.

3 Assault

1. The threat or use of force on another that causes that person to have a **reasonable apprehension of imminent harmful or offensive contact**.
2. The Second Restatement does not require apprehension to be “reasonable,” but most courts do.
3. Assault in torts is different than assaults in criminal law.
4. Can damages be awarded if physical harm did not occur? *I de S et Ux v. W de S*: Defendant tries to buy wine from the plaintiff. He beats on the door with a hatchet. When the plaintiff’s wife asks him to stop, he tries to hit her with the hatchet (but did not hit her). The court ruled that the plaintiff was entitled to damages even though no physical harm was done.
5. Can forward looking verbal threats suggest imminent harm? *Castro v. Local 1199, National Health & Human Services Employees Union*: Plaintiff has asthma, which prevented her from working in extremely hot or cold situations. After a disability leave, she attended a meeting where she didn’t receive her usual assignment. She asked what was going on, and Frankel (another employee) replied, “If I was you, I would take whatever they give me, because you could lose more than your job.” When asked he was threatening her life, Frankel said, “Take it any way you want.” The court held that **verbal threats, without “circumstances inducing a reasonable apprehension of bodily harm,” do not constitute an assault**. Here, the threat was “forward-looking” and did not suggest imminent harm. The court granted the defendant’s motion for summary judgment.
6. More questions on assault:
 - (a) Is it possible to rationalize the difference between the criminal and tort definitions of assault?
 - (b) Why prevent assault?
 - (c) Why must assault be imminent?

- (d) Can words alone ever be enough to constitute assault? See *Campbell v. Kansas State University*, where a university head said “he felt like hitting his assistant on the buttocks, after he had already slapped her on the buttocks,” which the court held to be assault (Diamond 20).

4 Transferred Intent

1. Historically, transferred intent means that intent to commit any of the five traditional torts (battery, assault, false imprisonment, trespass to land, trespass to chattel) can constitute the necessary intent to commit any of the other five.
2. The Second Restatement only incorporates transferred intent for assault and battery.
3. Generally, **intent towards anyone for anything is intent towards anyone else for anything else**.
4. Does the intended target matter? *Alteiri v. Colasso*: The defendant threw a rock that hit the plaintiff in the eye, but he intended to scare somebody else. He did not intend to hit anyone, and he did not throw the rock recklessly. The court ruled that there was no error in the jury’s verdict for willful battery.

5 False Imprisonment

1. Intentional, unlawful, and unconsented restraint.
2. *Additur* and *remittitur*: after jury delivers damages, judge adjusts them up or down.
 - (a) Should appellate courts be allowed to issue remittances? Levy says no, because appellate courts get a thin version of the case (only transcripts, etc.) and more is needed to make an accurate determination about damages.
 - (b) There are generally no limits on the damages a jury can award (with a few exceptions).
3. *Shopkeeper’s privilege*: Shopkeepers can detain suspected shoplifters.

6 Intentional Infliction of Emotional Distress

1. empty

7 Defenses to Intentional Torts

7.1 Self Defense

Force intended to inflict death or serious injury is only reasonable in response to the immediate threat of serious bodily injury or death.

The Restatement of Torts also requires retreat if safely possible (except from the victim's own dwelling) before the victim can respond with force intended to inflict serious bodily injury or death. Diamond notes that most courts disagree.¹

1. *Drabek v. Sabley*: Ten-year-old Drabek and friends were throwing snowballs at passing cars. One driver, Sabley, stopped, caught Drabek, took him by the arm to his car, and drove him back to the village of Williams Bay. He turned Drabek over to the police. Drabek was with Sabley for a total of 15-20 minutes. The court held that Sabley was justified in preventing the commission of a crime, and so it was reasonable to admonish Drabek and march him home. But it was not reasonable to detain him and take him to the police station, so Sabley is liable for false imprisonment and nominal battery. Remanded to determine compensatory (but not punitive) damages.

7.2 Private Necessity

"Private necessity is a privilege which allows the defendant to interfere with the property interests of an innocent party in an effort to avoid a greater injury. The privilege is incomplete since the actor must still compensate the victim for the property."²

1. *Vincent v. Lake Erie Transp. Co*: Defendant was moored at the plaintiff's dock to unload goods when a severe storm struck. Defendant kept his boat secured (and repeatedly replaced damaged or broken lines) to the dock throughout the storm, causing \$500 in damages to the dock. The court held that an actor is justified in using another's property in extreme circumstances, but will be held responsible for any damages incurred.

¹Casebook p. 64.

²Casebook pp. 69–70.