

INTENTIONAL TORTS

PERSON

1. Prima Facie Case Generally

- a. Volitional movement/act
- b. Causation
- c. Intent
 - i. **Specific**—subjective goal cause consequences/harm
 - ii. **General**—substantial certainty (intend-injury **NOT** required)
 - iii. **Transferred**

2. Battery

- a. Intent/Transferred
 - i. Purpose/dire to contact
 - ii. Substantial certainty
- b. Contact: Harmful/Offensive (Reasonable Person)
 - i. Direct **OR** Indirect
 1. Sets in motion force
 - ii. Pain **NOT** required
 - iii. Offensive if **NO** consent
 1. **BUT** implied for ordinary everyday contacts
- c. But-For Causation
- d. To a person

3. Assault

- a. Affirmative/overt act → Apprehension immediate harmful/offensive contact
 - i. Reasonable apprehension **AND**
 - ii. Immediacy of harmful/offensive contact (**BUT** fear **NOT** required)
 1. Required: **π's** knowledge of act
 2. Words **NOT** sufficient generally w/o reasonable apprehension
 3. **Δ's** apparent ability to act
- b. Intent/Transferred
 - i. Bring about apprehension
 - ii. Failed battery
 - iii. Substantial certainty
- c. Causation

4. Intentional Infliction of Emotional Distress

- a. Extreme & Outrageous Conduct
 - i. Goes beyond all possible bounds of decency in society
 - ii. Consider special relationships
 1. **Brandon** [police/LGBT] → offensive/insulting language
 2. **Alcorn** [white boss, black fired]
 3. **Swenson** [f/m \$ job]
 4. **Logan v. Sears** [queer/phone → X]
- b. Intent **✓** recklessness
- c. Damages: sever emotional distress happens
 - i. Reasonable person
 - ii. Evidence: IIED
 - iii. Intensity/duration
 - iv. Directed to **π**
- d. Causation

-----PRIVILEGES & DEFENSES-----

1. Consent

- a. **Express**—explicitly allowing tort against you
 - i. **Effective/Actual**—victim subjectively consents even though surroundings otherwise
- b. **Implied**—apparent where reasonable person could infer ✓
 - i. **By Law**—ex: emergency situation → π **CANNOT** consent
- c. **Exceptions Negate:**
 - i. By mistake: Δ knows it's mistake
 - ii. Fraudulent concealment: expectation of disclosure
 - iii. Outright fraud
 - iv. Duress
 - v. Unequal power trip
 - vi. Incapacity (mental/age)

2. Self Defense

- a. Requirements
 - i. Actual/apparent necessity
 - ii. Δ's believes necessary to act
 - iii. Proportionality/reasonableness of response
 - 1. *Consider response-force, excessive force, retreat, failure of verbal provocation alone to be trigger*
- b. § 63: Without Deadly Force
 - i. Reasonable belief of impending
 - ii. Unprivileged
 - iii. Intentional
 - iv. Harmful contact
 - v. Force proportional
- c. § 65: Deadly Force
 - i. Reasonable belief of impending
 - ii. Intentional contact or other bodily harm
 - iii. Resulting in
 - 1. Peril of death
 - 2. Serious bodily harm
 - 3. Ravishment
 - iv. Deadly force use = immediate
 - v. For safe prevention
 - vi. **Exception**
 - 1. Correct/reasonable belief: avoid w/ complete safety by
 - a. Retreat
 - i. *No need to retreat in own dwelling that is not also dwelling of aggressor*
 - b. Relinquish Right
 - i. *Don't need to give up privilege to prevent intrusion/ dispossession of dwelling OR lawful arrest*

3. Defense of Others

- a. Majority: as long as 3rd party can use force to defend himself → another can too
 - i. Good Samaritan risk
- b. Minority: as long as one reasonably believes there is need to use force → ✓

-----**PERSONAL PROPERTY**-----

1. Trespass

- a. Intentional use/intermeddling with chattel: possession of another
 - i. When: Deprived for period of time **OR** property damage
 - 1. Recoverable: Temporary loss of use **AND** Repair costs

2. Conversion

- a. Intentional exercise dominion/control seriously interferes w/ right to control
 - i. When: Deprived length period of time **OR** lost/destroyed
 - 1. Recoverable: fair market value of goods

3. Balancing Test:

- i. Extent and duration of
 - 1. Exercise of dominion/control
 - 2. Resulting interference with other's right to control
- ii. Actor's
 - 1. Intent: assert right in fact inconsistent w/ other's right to control
 - 2. Good faith
- iii. Harm done to chattel
- iv. Inconvenience/expense caused to other

-----**DEFENSES & PRIVILEGES**-----

1. Necessity

- a. Privilege to trespass to property claim
- b. Private Necessity
 - i. If it reasonably appears to be necessary
 - ii. To prevent serious harm
 - iii. To actor or property
 - iv. Possessor of land has duty to permit persons on land
 - v. Incomplete privilege: entitled to necessity **BUT** must compensate for damage caused
 - 1. **NO COMPENSATION**: owner consents to damages that possibly arise (Lake Erie)
- c. Public Necessity
 - i. Reasonable belief of necessity
 - ii. To avert imminent public disaster
- d. Elements (Eilers v. Coy = False Imprisonment)
 - i. Reasonable belief danger
 - ii. Lasts only as long as necessary to get person to proper lawful aid/authorities
 - iii. Must use least restrictive means of prevented apprehended harm

2. Defense of Property

a. § 85: Automatic Weapon	b. § 77: Non-Deadly Force <i>Reasonable/proportional force: terminate</i>	c. § 79: Deadly Force
i. Cannot use if Δ couldn't use force had he been present ii. Reasonable force: <i>justified when crime felony or other people/lives/limbs serious danger</i> iii. Life outweighs land	i. Unprivileged AND ii. Reasonable belief iii. Intrusion only terminate by force AND iv. EITHER <ol style="list-style-type: none"> 1. Request: stop/desist 2. Request useless 3. Substantial harm prior request 	i. Same as § 77 but ii. Reasonable belief intruder likely causes death SBH unless expelled from property

NEGLIGENCE

DUTY

1. Basic Standard

- a. Objective standard measured vs. average person:
 - i. Consider: reasonable woman? (*Edwards v. Johnson*)

2. Balancing Risk & Untaken Precautions

- a. Burden: Probability of risk * Loss
 - i. Burden: \$\$ Δ spends for precaution
 - ii. Probability: precaution prevents harm
 - iii. Loss: \$\$ π stands to lose if preventable accident doesn't happen
- b. Burden less Δ negligent

3. Custom

- a. Conduct of others in substantially similar conditions relevant
- b. Prima facie claim of negligent **BUT NOT** dispositive
- c. Unreasonable custom **NOT** acceptable
- d. Compliance **NOT** necessarily enough
- e. Relevance and reliability comes from direct bearing on
 - i. Feasibility
 - ii. Practicality of precaution in actual operation
 - iii. Readiness with which it can be employed

4. Negligence Per Se: Safety Statutes & Regulations

- a. Reasonable person standard altered: violation of statute = breach
- b. Statute = duty of care
 - i. **BUT** adherence **NOT** necessarily proof of non-breach (ex: speed limit in rain?)
- c. Test (Evidence only: still goes to jury for breach)
 - i. Statute applies to conduct/clearly defined?
 - ii. π = statute's protected class?
 - iii. Statute intent to prevent harm/injury that occurred?
- d. Justifiable Excuses
 - i. Compliance caused more danger
 1. Or involves greater risks
 - ii. Compliance beyond Δ 's control
 - iii. Incapacity
 - iv. No knowledge: occasion for compliance
 - v. Inability after reasonable diligence to comply
 - vi. Emergency
 - vii. *Minority: reasonableness under all circumstances notwithstanding violation*
- e. Compliance = evidence of due care **BUT NOT** conclusive proof
 - i. Reasonable man would take additional precautions

5. Professional Skills

- a. Doctors: under similar conditions/like circumstances ordinarily employed by medical profession general
 - i. Custom sets standard of care
 - ii. *Note*: **NOT** reasonable person
- b. Lawyers: possess knowledge of those plain/elementary principles of law commonly known by well-informed lawyers **AND**
 - i. Discover additional rules of law **NOT** commonly known **BUT** readily discoverable by standard research techniques

Variations

6. Superior Skills

- a. Must employ competence available
 - i. Reasonable person **AND** superior qualities/facilities
 - ii. Sometimes required to perceive dangers normal person wouldn't

7. Emergency

- a. **Sudden Emergency**—unforeseen combination of circumstances → immediate action
 - i. Caused by someone else's act (**NOT** your negligent acts)
- b. Reasonable person under those circumstances

8. Children

- a. Typically child of same age, intelligence, maturity, training, experience
 - i. Under 7: **NOT** responsible at all
 - ii. Age 7-14: child standard
- b. Adult standard
 - i. Engaged in adult-like activity **OR**
 - ii. Inherently dangerous activity

9. Physical Differences

- a. Taken into account **BUT**
 - i. Expected to know handicaps → exercise care person with such knowledge
 1. Usually allow sudden coughing fits

10. Mental Differences

- a. **NOT** taken into account
- b. Relief **NOT** expanded for sudden mental fit where plain mental illness **NOT** defense

11. Limited Duty to Act Affirmatively to Prevent Harm

- a. Duty to Act or Rescue
 - i. **NO** duty to act affirmatively **UNLESS**:
 1. Special relationship:
 - a. Δ should know of peril → take due care under circumstances
 2. Voluntary assumption of risk/begun to assist
 3. Innocent prior conduct
 4. Contract/Reliance on gratuitous promise
 5. Shielding/preventing aid by others
 6. Interdependency
 7. Statute
 - ii. Where Δ causes risk that ultimately results in harm
- b. Protective Measures Against 3rd Party Risks: Controlling Conduct of Others
 - i. Doctor-Patient relationship may impose duty upon Dr. → balance:
 1. Foreseeability of harm to π (**MOST IMPORTANT**)
 2. Degree of certainty that π suffered injury
 3. Closeness of connection between Δ's conduct ⊕ injury suffered
 4. Moral blame attached to Δ's conduct
 5. Policy of preventing future harm
 6. Δ ⊕ Community: burden/consequence imposing duty/resulting liability
 7. Availability, cost, prevalence of insurance for risks involved
 - ii. Dr. assumes duty to act re: safety: patients **AND** foreseeable victims
 1. Does **NOT** extend duty to protect non-identifiable/foreseeable victims

BREACH

Results in **NO** directed verdict for Δ \Rightarrow case now can go to jury to answer \checkmark / \times negligence

1. Reasonable Person

2. Custom

3. Violation of Statute

4. Circumstantial Proof

- a. Inference \checkmark \Rightarrow Fact inferred more probable than nonexistence

5. Res Ipsa Loquitor

- a. Inference of negligence
 - i. Facts of accident, common knowledge/sense, expert
- b. Inference that Δ negligent/breached duty to π
 - i. Multiple Δ s/Control Element \Rightarrow Δ 's exclusive control
 - ii. Negligence likely occurred when instrumentality under Δ 's control
 - iii. Disprove 3rd party negligence
 - iv. Remove π as contributor **or** at least < 50%
 - v. Injury suffered probably result negligence
 - vi. Must connect Δ to harm-causing event
 - vii. No other responsible causes
 1. π did **NOT** cause or contribute any act or negligence
- c. Defenses: 1 of 3 factors \sim proven **or** Δ can prove exercised due care

6. Legal & Other Professionals

- a. Must use such skill, prudence, and diligence as lawyers of ordinary skill/capacity commonly possess **AND** Exercise in performance tasks they undertake (**NO** ignorance/own knowledge!)
- b. **NOT** negligent for mistaken advice when well-informed lawyers entertain reasonable doubt as to proper resolution of particular legal question involved

-----FACTUAL CAUSE-----

Even if there are other possibilities $\Rightarrow \pi$ does **NOT** need to disprove them all

Single Tortfeasor

1. But-For Causation

- Cause in fact but-for Δ 's action
- Requires at least enough evidence that more likely than not π 's version of facts is correct
- Concurrent Causes**—several acts combine: injury **but** neither alone sufficient

2. Substantial Factor

- Natural/reasonable: Δ 's negligence substantial factor contributing to injury
- Δ 's conduct = cause where:
 - Joint causes bring about injury **AND**
 - Any one alone would have been sufficient to cause injury
- Note: *Even where multiple possible causes: π DOES NOT need to disprove all of them*

3. Untaken Precautions (Inaction takes but-for causation) \Rightarrow inference

- Where causal link between negligence and harm occurs is strong
- π must prove but-for:
 - Act increased chance particular accident occurs **AND**
 - Accident of very sort occurred **THEN:**
 - Burden shifts to Δ to bring evidence:
 - Deny but-for cause **AND**
 - Suggest but-for was **NOT** substantial factor

Multiple Tortfeasors

1. Indivisible Harm: Joint and Several

- Where 2+ independent negligent parties cause single indivisible harm
- True Joint Tort**—concert of action: group/agent
- Single Indivisibility Rule**—where multiple actions occurring in rapid succession producing single end result **AND NO** substantial proof as to what damage was caused by each $\Delta \Rightarrow$ each Δ liable for entire harm (**NO** proportionate share)
- Vicarious Liability**
 - Principle/Agent

2. Divisible Harm w/ Limited Wrongdoers: Alternative Liability

- Δ 's actions make it impossible to determine which Δ caused harm (*Summers v. Tice*)
- Usually requires that:
 - Δ have better access to information than does π
 - All possible tort-feasors before court
- π prove by preponderance of the evidence:
 - Each Δ negligent **and**
 - Negligent acts of one Δ = cause of π 's injury **and**
 - Injury such that only results from negligent act of one Δ **and**
 - Must bring all potential Δ s before the court so they can meet burden*
 - Burden of Proof shifts to Δ
- IF π cannot reasonably establish which Δ 's negligence was cause of injury \Rightarrow all Δ s liable jointly & severally
 - BUT** if Δ can prove by preponderance of evidence that his negligence he is **NOT** proximate cause \Rightarrow **NOT** liable

-----SCOPE: PROXIMATE CAUSE-----

Limits Δ 's liability: harmful results foreseeable and natural consequences of Δ 's negligence

1. Direct Consequences

- a. Δ liable where injury directly caused by and traced to negligence of Δ \Rightarrow **NO** intervening forces

2. Foresight Test

- a. Δ **NOT** liable for harm stemming from *unforeseeable consequence* of Δ 's negligence
- b. Ask questions:
 - i. Unforeseeable **Plaintiffs**?
 - ii. Unforeseeable Consequences? No to all 3 questions: scope \checkmark under breach
 - iii. Intervening Causes? so \sim need to repeat scope analysis

3. Unforeseeable Plaintiffs

- a. Liability: foreseeable π s \Rightarrow general class reasonably anticipated to be threatened by Δ 's conduct
 - i. π must show wrong to herself **NOT** just wrong to someone else (Minority: to all)
 - ii. **Palsgraf** = Located in the **zone of danger**

4. Unforeseeable Consequences

- a. Was result within scope of risks created: foreseeable general kind of incident/harm to π ?
- b. Accident **and** Harm
 - i. Foreseeable consequence \Rightarrow general class reasonably anticipated by Δ 's negligence
 1. Exact way **or** precise manner does **NOT** matter
- c. **BUT** Liability where:
 - i. Damages *SO* typical from negligence
 - ii. Utter freakishness of coincident connection cannot be suppressed
 - iii. Foreseeability only after significant facts presented

5. Intervening Forces (Jury Question)

- a. Was intervening act a foreseeable risk of the original negligence?
- b. Criminal Conduct of Third Person: Δ **IS STILL LIABLE** liable/**NOT** superseding intervening
 - i. Normal response created by negligence
 - ii. Result = reasonably foreseeable/anticipated by reasonable person
 1. No rule/policy relieves liability because manner negligence \Rightarrow harm
 2. Freakish accident does **NOT** make it unforeseeable
 - iii. Conduct = substantial factor in harm
- c. **Shift Responsibility** \Rightarrow *does reliance on due care of 2nd party appropriate in light of factors?*
 - i. Knowledge of danger by vendee \oplus passes 3rd party w/o warning
 1. Failure warn where **means and opportunity to do so** makes 3rd party (fireman) liable \Rightarrow MFX **NOT** liable
 - ii. Consider factors to shift to 3rd party (**NOT** Δ hold jointly)
 1. Culpability of intervener
 2. Competence/reliability of person upon whom reliance placed
 3. Intervenor's understanding of facts/situation
 4. Gravity of danger
 5. Number of people @ risk of danger
 6. Time-elapse between conduct of parties
 7. Likelihood proper care exercised
 8. Ease with which each party can take precautions

6. Exceptions to Foresight Rule [even though it's unforeseeable Δ still liable]

- a. Medical Malpractice (additional complications)
 - i. Δ liable: flows from subsequent negligent treatment even if directly attributed to Dr.
- b. Eggshell Plaintiff
 - i. Δ liable even though π 's physical condition is neither known/should be that makes injury greater than which reasonable man should have foreseen as result of his conduct
 1. Includes aggravation **NOT** liable where negligence causes mental distress w/o physical injury
- c. Rescuer
 - i. Negligent Δ liable for injuries sustained by rescuer attempting to help another person placed in danger by Δ 's conduct
 1. Even if R saving Δ from own conduct
 - ii. Δ liable for normal efforts of Rescuer to avert threatened harm
 - iii. Circumstances:
 1. Property \rightarrow must be imminent peril
 2. Animals \rightarrow rescue family dog allowed
 3. Suicide \rightarrow **NOT** liable UNLESS Δ 's negligence caused V to become insane and mental disorder created irresistible impulse to commit suicide

-----DEFENSES & IMMUNITIES-----

Affirmative Defenses then Scope

1. Contributory/Comparative Negligence

- a. Compare negligence of $\pi/\Delta \rightarrow$ assign percentage of fault \oplus reduce accordingly

2. Assumption of the Risk

- a. Express
 - i. Contractual in nature
 - ii. π usually signs waiver/agreement to forebear from suit
 - iii. Public policy/statute limit ability of Δ to avoid liability:
 1. **NOT** available: gross negligence, reckless conduct, intentional tort
- b. Implied
 - i. Traditional (***Bowen v. Cochran***)
 1. Knowledge of risk (existence)
 2. Appreciation of risk (scope)
 3. Voluntary exposure to risk
 - ii. Modern
 1. Limited Duty: Primary Assumption of Risk (**NO** recovery for π)
 - a. Risk inherent to activity so Δ should **NOT** have to limit risk/protect π
 - b. Δ has **NO** duty to protect π from particular risk
 - i. **BUT** Δ has duty to use due care not to INCREASE risks to participant
 - c. Basically **CANNOT** sue for simple negligence
 - d. **EXCEPTION**: Participant in active sport breaches duty of care IF:
 - i. Participant intentionally injures another player **OR**
 - ii. If engages reckless conduct: outside range ordinary activity in sport
 2. Contributory Negligence: Secondary Assumption of Risk
 - a. Δ owes duty to π **BUT** π knowingly encounters risk caused by Δ 's breach
 - b. π assumes risk of Δ 's negligence:
 - i. Knows of risk **and**
 - ii. Should have taken own precautions
 - c. Jury may apportion loss relative to risk

*******STRICT LIABILITY*******

-----**GENERALLY**-----

1. Wild Animals

- a. Lions, wolves, snakes etc.
 - i. **NOT** domesticated animals (cows, dogs)

2. Abnormally Dangerous Activities

- a. 1st Restatement (*Rylands v. Fletcher*)
 - i. Activity carries risk of serious harm
 - ii. Not matter of common usage
- b. 2nd Restatement (*Klein v. Pyrodyne*)
 - i. *Is risk created so unusual either because of its magnitude or because of circumstances it as to justify imposition of SL for resulting harm even though carried out with all reasonable care?*
 - ii. Factors—any one not necessarily sufficient and ordinarily several required
 - 1. High degree of risk of harm
 - 2. Likelihood of severe harm
 - 3. Inability to eliminate risk by reasonable care → *accidents just happen*
 - 4. Activity **NOT** matter of common usage
 - 5. Inappropriate place carried on
 - 6. Value of activity: danger outweighs value of activity to community
- c. 3rd Restatement
 - i. Foreseeable **AND** highly significant risk even when reasonable care exercised
 - ii. Activity **NOT** matter of common usage

3. Defenses

- a. Express Assumption of Risk
- b. Comparative Negligence (Some JXs)
- c. Scope (usually not)
 - i. Only if acts unforeseeable in relation to extraordinary risk created by activity
 - 1. **BUT** Δ must be strictly liable even when injuries caused by intervening acts of 3rd person over whom Δ had no control

4. Analysis

- a. Is activity abnormally dangerous?
- b. Actual Cause
- c. Scope of Liability
- d. Damages
- e. Defenses

LAND

TRESPASS

1. Requirements

- a. Tangible intrusion: interference with exclusive right of possession
- b. Intent to
 - i. Enter
 - ii. Cause object/person to enter another's land
 - iii. Remain on another's land
 - iv. Failing to remove item if duty to remove
- c. Damages **NOT** required
- d. Mistake about possession **NOT** defense

PRIVATE NUISANCE



OVERLAP: SMOKE

1. **Bradley v. ASARCO** = trespass **but** must prove damage!
2. Trespass—intrusion by agent that interferes with exclusive possession of Property
 - a. Modern Trespass Test
 - i. Invasion affects interest in exclusive possession
 - ii. Intentional doing of act that results in invasion
 - iii. Reasonable foreseeability that act could result in invasion
 - iv. *Actual and substantial damage to land*
 - b. Trespass where invasion = permanent (Possession of property)
 - c. Nuisance where Invasion transitory/particles dissipate quickly (Enjoyment of property)

----- PUBLIC NUISANCE -----

1. Requirements

- a. Unreasonable interference with right common to general public
 - i. **NO** property right involved
- b. Unreasonable interference includes
 - i. Significant interference with public health, safety, peace, comfort, or convenience
 - ii. Conduct proscribed by statute

2. Standing to Maintain Claim

- a. Damages
 - i. Kind of harm different from other members of public affected by interference
- b. Injunction
 - i. Right to recover damages **or**
 - ii. Authority as public official/agency to represent relevant JX **or**
 - iii. Standing to sue as representative of general public, citizen action suit, class action