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Torts (Law: Quick Study)

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TORTS & LEGAL REFERENCE GUIDE

**Quick
Study**
LAW

TORTS

INTENTIONAL TORTS

PRIMA FACIE CASE

- **ACT**
 - 1. Voluntary
 - 2. Excludes actual physical touching (assault)
 - 3. Excludes act when there is a legal duty
- **INTENT**
 - 1. Deliberate and purposeful state of mind or knowledge with substantial certainty that consequences would result from act
 - 2. Disregarded from negligence, which requires a reasonable risk which a reasonable person would run
 - 3. Knowledge with substantial certainty requires knowledge of more than a probability of the consequence resulting
 - 2. Includes transferred intent
 - Example: Person A shoots a gun at Person B, missing and hits Person B. But the bullet hit Person C instead. Person A is liable to Person C for the intentional tort of battery
 - 3. Alternative: "With that state: Deliberate, assault, false imprisonment, invasion, trespass to chattels, if Person A intends to commit tort with respect to Person B, then constitutes a different tort with respect to Person B. Person A is liable for second tort even though intent was that required to commit first tort
- **CARELESSNESS**
 - 1. Disregarded when negligence is that consequence need not be specifically proven
 - 2. **REASONABLE**
 - Normal variability
 - 2. Generally, greater liability imposed for acts intended to invade another's rights than for acts in disregard of consequences

TORTS TO PERSONS

- **BATTERY**
 - 1. Resulted in offensive contact judged by reasonable person standard
 - 2. Physical contact of victim's person that is intentionally or recklessly to victim's person that is not commonly accepted as part of person's life
 - 3. No actual injury required
 - 2. Taking indirect threats without contact such as a slap on the buttocks
 - May be used as alternative pleading in actual harassment case
 - 3. Damages
 - Victim entitled to nominal damages and compensation for resulting mental distress
 - Positive damages may be awarded if injury when defendant has desire of or intent to injure
- **ASSAULT**
 - 1. Reasonable apprehension of immediate harmful or offensive contact
 - 2. Apparent ability to cause harm is sufficient
 - 3. Mental invasion of victim's peace of mind
 - 3. Requirements of intent act
 - Must be coupled with intent
 - No proof of harm required
 - 4. Damages available are same as for Battery
- **FALSE IMPRISONMENT**
 - 1. Act or omission of defendant is fraudulent or a. Restrictive must be against victim's will
 - 1. Voluntary restriction requires imprisonment
 - 2. Requirement of confinement as injury resulting from confinement
 - 3. Not required if intent of accountable means of escape
 - 3. Length of time period immaterial
 - 3. Damages

- 1. Compensation for resulting losses, including physical and mental distress, special and consequential damages, and trouble, punitive damages
- **INTENTIONAL INFLECTION OF PHYSICAL INJURY**
 - Act of capture and restraining conduct
 - Special duty of restaurant owners and landlords to patrons (including tourist controlled restaurants)
 - Known, reasonable (young children, pregnant women, infirm, elderly, adults, elderly)
 - May include willful, wanton or malicious behavior including deliberate disregard of a known high degree of risk
 - 2. Actual damages required
 - Evidence of physical harm or extreme distress
 - Defendant liability only where defendant knew that Plaintiff in present

TORTS TO PROPERTY

- **TRESPASS TO LAND**
 - 1. Physical invasion
 - Intention to intrude without authorization and without privilege under law
 - Intentionality with possession of another's property
 - Absence of fault as to ownership of property is irrelevant
 - Distinct from private nuisance, which requires interference with use and enjoyment of property
 - Example: Floodlight projecting onto neighboring property or smoke from fireplace carried by air onto neighboring property is not physical invasion actionable under trespass but would be interference with use and enjoyment actionable under private nuisance
 - 4. Damages: Damages based on neighboring property causing it to flood is physical invasion actionable as trespass
 - 2. No proof of actual damage required
 - 1. Liability for all consequences
 - 4. Strikely of use is no defense
 - **RESPONSE TO CHALLENGE**
 - Not consistent with right of possession
 - 2. Physical damages or deprivation of use for substantial period of time
 - 3. **CONVERSION**
 - Unlawful detention or control depriving full value damages
 - 2. **Common Law** - Defendant who found lost goods converted them to his/her own use rather than returning them
 - Measure of law as to fault is no defense
 - 4. **Modern Law** - Interference must be sufficiently serious to amount to conversion

DEFENSES

- **CONSENT**
 - 1. Voluntary
 - Must be free from words or actions
 - Example: Patient consents to routine medical procedures
 - Must be free from duress and coercion when a reasonable person would speak if the affected is in some subtle interference
 - 1. Example: No consent where reasonable person would object to high risk experimental medical procedure
 - 3. Not valid if induced by fraud
 - Must get to essential matter which makes it harmful rather than relevant matter which serves as an inducement for consent
 - Example: Informed medical - Patient consents to treatment; cultural matter - Doctor is not licensed to practice medicine

- 1. Capacity required
 - Unavailability of intervening person is negligence, not consent
- **SELF-DEFENSE**
 - 1. Reasonable belief as to apparent necessity
 - Force reasonably proportionate to the harm threatened
- **DEFENSE OF OTHERS**
 - 1. Actuality when victim has privilege of self-defense
 - Limited in use of force reasonably necessary
- **DEFENSE OF PROPERTY**
 - 1. Limited to preventing continuation of tort
 - Exception: "The person"
 - Reasonable belief as to apparent necessity
 - 2. Reasonable use of force permissible
 - Use of deadly force less reasonable unless person threatened
 - Use of deadly medical devices is impermissible
- **NECESSITY**
 - 1. Applies when threatened injury is substantially more serious than that which the tort committed
 - 2. Private necessity
 - Liability for damages
 - Private intention - Defendant
 - 3. Public necessity
 - No liability for damages
 - If act was negligent, defendant's liability of harm
 - Defendant acts reasonably
 - If emergency is great enough to justify action

NEGLIGENCE

PRIMA FACIE CASE

- **DUTY**
 - 1. Obligation to prevent material injury against unreasonable risk of harm
 - **BREACH OF DUTY**
 - 1. Failure to perform obligation
 - If act was negligent, defendant's liability of harm
 - Defendant acts reasonably
 - If emergency is great enough to justify action
 - 3. Close causal connection between action and injury
 - **CAUSATION**
 - Actual harm suffered

DEFINITION

- **CONDUCT**
 - 1. Negligence occurs when an individual's actions fall below standard of conduct required by law which generally require preventing unreasonable risk of harm
 - Reasonable person should anticipate risk of harm
 - No individual acts unconsciously, by not guarding against risk of harm, which should be apparent
 - 2. Distinct from intentional tort, which is based on intent to cause harm or knowledge with substantial certainty that consequences will follow
- **RISK or BENEFIT**
 - 1. Probability that event will occur (i.e. children will play on a school's swimming pool) = P
 - 2. Degree of harm resulting from occurrence of event (i.e. child's leg is severed at joints) = L
 - 3. Burden, such as inconvenience or costs, of taking steps to prevent or prevent occurrence of event (i.e. placing lock on swimming pool) = B
 - 4. If P x L, the precautions should have been taken

DUTY OF CARE

OBJECTIVE STANDARD

- **REASONABLE PERSON, ORDINARY, PRUDENT PERSON**
 - 2. Average mental ability (mental disturbance not considered)

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Synopsis

Torts, as every Law student knows, are wrongs. But this chart is so right it's scary. We have always felt a strict liability to maintain the best, most concise, most accurate study guides available. This chart is no exception. It covers just about everything you've ever been tort, er, taught. --This text refers to an out of print or unavailable edition of this title.

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