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Torts (Law: Quick Study)

AMERICAN LEGAL REFERENCE GUIDE

TORTS

<p>INTENTIONAL TORTS</p> <p>PRIMA FACIE CASE</p> <p>• ACT</p> <ol style="list-style-type: none"> Voluntary Failure to act when there is a legal duty <p>• INJURY</p> <ol style="list-style-type: none"> Defendant had purposeful state of mind or knowledge with substantial certainty that consequences would result from act Distinguished from negligence, which requires a foreseeable risk which a reasonable person would avoid Knowledge with substantial certainty requires knowledge of more than a possibility of the consequence resulting <p>2. Includes transferred intent</p> <p>• Example: Person A shoots a gun at Person B, intending to harm Person B, but the bullet hits Person C instead. Person A is liable to Person C for the intentional tort of battery.</p> <p>• Alternative Example: With that same battery, assault, false imprisonment, trespass, attempt to defraud, if Person A intends to commit tort with respect to Person B, but commits 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.</p> <p>• CAUTION</p> <ol style="list-style-type: none"> Distinguished from negligence in that caution need not be specifically proven DAMAGES Not actual Generally, greater liability imposed for acts tending to invade another's rights than for acts in disregard of consequences 	<p>• COMPUTATION for resulting losses, including physical and mental damages, special and consequential damages, and finally, punitive damages</p> <p>• INTENTIONAL VIOLATION OF EMOTIONAL DISTRESS</p> <ol style="list-style-type: none"> Act of outrage and outrageous conduct Special duty of common carriers and bankers to patrons (including remark emotional responses) Known necessity (towing children, program viewers, representative adults, etc.) May include willful, wanton or reckless behavior including deliberate disregard of a known high degree of risk <p>2. Actual damages required</p> <ol style="list-style-type: none"> Evidence of physical harm or extreme outrage Standard liability only where defendant knows that plaintiff is present 	<p>3. Capacity required</p> <ol style="list-style-type: none"> Unavailability of contracting person in acceptance, intentional or knowing child <p>• SELF-DEFENSE</p> <ol style="list-style-type: none"> Reasonable belief as to apparent necessity Force reasonably proportionate to the harm threatened Available when victim has privilege of self-defense Limited to use of force reasonably necessary <p>• DEFENSE OF PROPERTY</p> <ol style="list-style-type: none"> Limited to preventing commission of tort Exception: "hot pursuit" Reasonable belief as to apparent necessity Reasonable use of force permissible Use of deadly force unreasonable unless personal safety is threatened Use of deadly mechanical devices is impermissible <p>• NECESSITY</p> <ol style="list-style-type: none"> Applies when threatened injury is substantially more serious than that resulting from the tort committed Person necessary Liability for damages Private interests threatened Public necessity No liability for damages Public interests threatened Defendant acts reasonably Emergency is great enough to justify action
<p>TORTS TO PERSONS</p> <p>• BATTERY</p> <ol style="list-style-type: none"> Harmful or offensive contact judged by reasonable person standard Physical invasion of victim's person or something so connected to victim's person that it is customarily regarded as part of person No actual injury required Taking indirect liberties without consent such as a slap on the buttocks May be used as alternative pleading in actual harassment case Damages Victim entitled to mental damages and compensation for resulting mental disturbance Punitive damages can be awarded where defendant has defense of mistake of fact <p>• ASSAULT</p> <ol style="list-style-type: none"> Reasonable apprehension of immediate harmful or offensive contact Apparent ability to cause harm is sufficient Mistake of victim's place of mind Requirement of overt act Words coupled with conduct No proof of harm required Damages available are same as for Battery <p>• FALSE IMPRISONMENT</p> <ol style="list-style-type: none"> Act or omission of defendant so harmful as to restrain victim's will Restraint must be against victim's will Voluntary submission negates imprisonment Awareness of confinement or injury resulting from confinement Not bounded by means of reasonable means of escape Length of time period immaterial Damages 	<p>TORTS TO PROPERTY</p> <p>• TRESPASS TO LAND</p> <ol style="list-style-type: none"> Physical invasion Intention to intrude without authorization and without privilege under law Interference with possession of another's property Mistake of fact as to ownership of property no defense Directed from private individual, which requires interference with use and enjoyment of property Example: Floodlight projecting into neighboring property or smoke from barbecue carried by air onto neighboring property is not physical invasion actually under program but would be interference with use and enjoyment activities under private nuisance Act interferes with right of possession Physical damages or deprivation of use for substantial period of time No proof of actual damage required Liability for all consequences Mistake of law is no defense <p>• TRESPASS TO CHATTEL</p> <ol style="list-style-type: none"> Actual damages or deprivation of use for substantial period of time <p>• CONVERSION</p> <ol style="list-style-type: none"> Exercising dominion or control over another's full value damages Common Law - Defendant who found lost goods converted them to his/her own use rather than returning them Mistake of law or fact is no defense Modern trend - interference must be sufficiently serious to amount to conversion 	<p>NEGLIGENCE</p> <p>PRIMA FACIE CASE</p> <p>• DUTY</p> <ol style="list-style-type: none"> Obligation to prevent another against unreasonable risk of injury <p>• BREACH OF DUTY</p> <ol style="list-style-type: none"> Failure to perform obligation <p>• CAUSATION: PROXIMATE LEGAL CAUSE</p> <p>• CAUSE IN FACT</p> <ol style="list-style-type: none"> Cause causal connection between action and injury Actual tests sufficed
<p>• DEFENSES</p> <p>• CONSENT</p> <ol style="list-style-type: none"> Voluntary Manufactured by words or actions Example: Patient consents to routine medical procedure Manufactured by silence and inaction where a reasonable person would speak if she objected or been special interference Example: No consent where reasonable person would object to high risk experimental medical procedure Not valid if induced by fraud Mistake of fact is essential matter which serves as an inducement for consent Example: Essential matter - Patient consents to treatment, collateral matter - Doctor is not licensed to practice medicine 	<p>DEFINITION</p> <ol style="list-style-type: none"> Negligence occurs when an individual's actions fall below standard of conduct imposed by law which grants others against unreasonable risk of harm Reasonable person should anticipate risk of harm An individual acts unreasonably by not guarding against risk of harm which should be apparent Doctor from intentional tort, which is based on ability to cause harm or knowledge with substantial certainty that consequences will follow <p>• NOTE on BELIEF</p> <ol style="list-style-type: none"> Probability that event will occur (i.e. child will play on a railroad track) - P Degree of harm resulting from occurrence of event (i.e. child's foot is crushed at ankle) - L Barren, such as incompetence or costs, of taking adequate precautions to prevent occurrence of event (i.e. placing lock on handle) - B If B > PL, the precautions should have been taken 	<p>DUTY OF CARE</p> <p>OBJECTIVE STANDARD</p> <p>• REASONABLE, ORDINARY, PRUDENT PERSON</p> <ol style="list-style-type: none"> Physical characteristics considered Average mental ability essential disabilities not considered



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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