

TORTS I OUTLINE

Introduction

- I. Vicarious Liability
 - a. liability of one person for the action of another
 - i. may be responsible because of relationship
 - b. Respondent Superior
 - i. Employer is liable for the tortious acts of the employee when the employee is acting within the scope and duties of his employment
 1. Or was negligent when hiring or training
 2. Employer is not liable for constitutional torts
 3. If tort is done in the presence of employer, employer can be held directly liable for negligence
 - ii. Foreseeable zone of deviation
 - c. Policy: Deep Pockets
- II. Workers Compensation
 - a. No fault system that holds employer's liable for injuries suffered in course of or arising out of their duties
 - i. the work itself or from the stresses, tensions, the associations, the working environments, human as well as material
- III. Wrongful Death
 - a. Any wrongful act that leads to the death of another
- IV. Survival of Action
 - i. The estate has the right to bring any tort that the dead could have brought

INTENTIONAL TORTS

- require a degree of fault (conscious decision)
 - Intent is not necessarily an intent to do harm, may be a prank, or trying to help
 - Voluntarily intoxication or addiction is not a defense for intentional torts
- I. Assault
 - a. An intentional act, coupled with the apparent present ability, that causes **awareness and reasonable apprehension** of an immediate harmful or offensive touch without consent
 - i. Intentional Act
 1. Intend the consequence or the consequences are substantially certain to occur
 2. Transferred intent applies
 - a. Ie. A aims at B, B ducks, Shoots C. A transferred intent to C
 - ii. Present ability
 1. Must be apparent, over act, ie. Gun in hand
 - iii. Reasonable apprehension
 1. awareness of the threat, which creates apprehension (fear)
 - iv. Immediate Harm
 1. Physical harm can be carried out now
 - b. Verbal Threats
 - i. Statement by itself is not an assault,
 - ii. But words can give meaning to gestures, motion
 - II. Battery
 - a. The intentional harmful or offensive touching of another without consent
 - i. Intent

1. Purposeful act must have desire to cause result or with knowledge that the contact is substantially likely to occur
2. Transfer intent applies
3. Affirmative, deliberate act
- ii. Harmful or offensive
 1. Harmful- causes pain, injury, impairment
 2. Offensive- to a reasonable persons sense of dignity
- iii. Touching
 1. Setting the force of another object in motion that causes touching
 2. Does not have to be visible (ie. STD)
 3. Actual physical contact is not necessary
 4. Includes anything closely identified with the body
 - a. Touching something that is touching the body
- iv. Without Consent
 1. Invasion without permission

III. False Imprisonment

- a. The intentional confinement of another without consent and Π is without knowledge of a reasonable means of escape and has awareness of the confinement and/or is injured
 - i. Intent
 1. Purposeful act to confine
 2. Transferred intent applies
 - ii. Without consent
 1. Is able to withdraw consent
 - iii. Confine
 1. Restraint must be physical and not merely a moral influence
 2. Confinement may be fixed or moving boundaries
 3. Exclusion is not confinement
 - iv. Knowledge
 1. Victim must have knowledge at time of confinement
 2. EXCEPT: when injured

IV. Trespass to Land

- a. Intentional intrusion upon the land of another without consent
 - i. Intent
 1. Intent to do the act that causes intrusion
 - ii. Intrusion
 1. Physical invasion
 2. Exceeding the invitation
 3. If you own land, you own the space above and below it
 4. Include property attached to the land
- b. Damage on property
 - i. Liable for all damages that flow out of the trespass
 - ii. Even when not foreseeable

V. Conversion

- a. Intentional dispossession of personal property of another without consent or privilege which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel
 - i. Intent
 1. To take chattel in the manner in which he did

- 2. Mistake is irrelevant
- ii. Dispossession
 - 1. Assume ownership of the chattel
 - 2. More serious than trespass to chattel
 - 3. permanently deprive, destroy, or alter the original state of the chattels
 - 4. Extent and duration of the actors exercise of control
 - 5. Inconvenience and expense caused
 - 6. Clearly taken for personal ownership
- iii. Personal property
 - 1. An act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein
- iv. Without Consent
 - 1. Not when acting as custodian of the goods
 - 2. When no longer recognizing the owners rights is conversion
- b. Conversion to a third party
 - i. When one receives a property that has been stolen, they are subject to liability or conversion to a third person

VI. Trespass to chattel

- a. The intentional invasion and temporary use of the personal property of another without consent
 - i. Intentional
 - 1. Intended to deal with chattel the way it was
 - 2. Mistake is immaterial
 - 3. Transfer intent applies
 - ii. Use of Chattel
 - 1. Temporary dispossession, not stealing permanently
 - 2. Intermeddling
 - a. Interference with the property rights of another without any intent to assert ownership
 - b. Ie. Egging a car, beating another's animal

VII. Emotional Distress

- a. Act or extreme and outrageous conduct that **intentionally or recklessly** causes severe emotional distress to another
 - i. Act of extreme or outrageous conduct
 - 1. Exceeding all bounds usually tolerated by decent society
 - a. Ie. Racial slurs
 - b. Not mere insults, but social mores declare something's unacceptable
 - 2. Encourages a certain level of emotional toughness
 - 3. No right to harass
 - ii. Intentionally or recklessly
 - 1. Intent to cause severe mental anguish or deliberate disregard of high degree of probability that emotional distress will follow
 - 2. To a member of such persons immediate family who is present at the time
 - 3. To any other person who is present at the time if such distress results in bodily harm
 - iii. Severe emotional distress

1. May or may not lead to bodily harm

VIII. Prima Facie Tort

- a. Intentional infliction of damages to another if his conduct is generally culpable and not justifiable under the circumstances.
 - i. Catch all box- intentional infliction of economic damages unless you can justify them

DEFENSES TO INTENTIONAL TORTS

I. Intoxication

- a. **Voluntary Intoxication does not nullify intent.**

II. Consent

- i. Words or actions that would lead a reasonable person to believe that their conduct is authorized, but Π must have knowledge of what they are consenting to and it can be withdrawn at any time
- ii. Looking through Δ 's perspective- what they reasonably thought
- b. Actual Consent
 - i. Words or conduct in fact that are intended by Π to express willingness for Δ 's conduct to occur
- c. Implied Consent
 - i. Incidental contact by being in society
 - ii. Any words or actions that would lead a reasonable person to believe that Δ 's conduct was authorized, and which are understood to mean that Δ has permission
- d. Nullified Consent
 - i. State may nullify consent of an individual because the action is against the law
 1. Ie. Statutory rape
 2. Alcohol/drugs- renders your ability to consent
 3. Can't consent to your own death
- e. State Authorized Consent
 - i. The state may authorize conduct on behalf of the individual
 1. Reasonable person would have consented
 - ii. State has special interest in protection of children

III. Privileges

- i. Legal justification to excuse violation of Π rights
- ii. No question of legal wrong, but Privilege absolves the wrong
- b. Self-Defense
 - i. The use of reasonable force to prevent any threatened, harmful, or offensive bodily contact or any confinement, whether intentional or negligent
 1. All reasonable force
 - a. Limited to force sufficient to protect yourself
 - b. Can't be excessive
 - ii. When threat ends, so does the privilege
 1. Needs to be an immediate attack/threat
 2. Δ allowed to make a mistake
 - iii. Deadly force
 1. Can't use deadly force when not threatened with deadly force
 2. Retreat Rule-(minority Rule)
 - a. Any person being attacked must retreat prior to the use of deadly force

- b. Except:
 - i. In his own home or place of employment
 - ii. unsafe to attempt to retreat
 - 3. Police: Deadly force can only be used when a suspect threatens an officer or there is probable cause to believe that he has inflicted or will inflict serious bodily harm
 - c. Defense of a Third Party
 - i. The defender may do whatever the person attacked might do to protect himself
 - 1. Cannot be excessive
 - ii. Mistaken belief that intervention was necessary
 - 1. Traditional View: Privileged to come to the aid of a third party is not more than the privilege of 3rd party to defend itself. Can't make a reasonable mistake.
 - 2. Modern View (Minority rule): one who intervenes in a struggle between strangers under mistaken but reasonable belief that he is protecting another is not criminally liable
 - d. Defense of Property
 - i. One in lawful possession of real or personal property has a privilege to restrain or detain another in a reasonable time and manner to prevent this person from damaging such property
 - ii. Limitations
 - 1. Cannot use deadly force when only property is threatened
 - 2. You must ordinarily give warning when force is used
 - 3. Can't do indirectly that which you couldn't do directly
 - a. Ie. Spring loaded rifle traps
 - 4. All force used must be reasonable
 - e. Privilege to Recapture Chattels
 - i. When wrongfully disposed one is privileged to recapture chattels when in fresh pursuit.
 - 1. Wrongfully dispossessed
 - 2. Fresh pursuit
 - a. Prompt attempt by the rightful owner to recover the chattel
 - b. Can result to self help if there is no time to resort to the law
 - f. Shopkeeper's Privilege
 - i. If a shopkeeper has reasonable cause to believe one has shoplifted, the shopkeeper may detain and question the person if it is for a reasonable time and in a reasonable manner for the purpose of investigation
 - g. Privilege to Arrest for Crime
 - i. Arrest with warrant
 - 1. An officer is privileged to execute a warrant
 - 2. If officer sought the warrant himself, then they must be objectively reasonable in seeking warrant
 - 3. Not privilege if officer knows warrant to be bad
 - ii. Arrest with no warrant:
 - 1. Officer is privileged to arrest without a warrant one who has committed, is committing, or attempting to commit a felony, or one the officer reasonably believes to have committed a felony in the past

- 2. Citizen is privileged to arrest for a felony when a felony has in fact been committed
 - a. Can be mistaken as to who, but the felony must have been committed by someone
 - iii. Breach of Peace (misdemeanor or non-felonies)
 - 1. Privilege to arrest without a warrant if the breach of peace was committed in their presence or they are in fresh pursuit
 - a. Privilege of officer and citizen is the same
 - iv. Police officer has duty to identify themselves,
 - 1. Except when: actor is acting dangerously, useless, unnecessary, or likely to frustrate the arrest
- h. Other
 - i. Parent/teacher/guardian entrusted with care of children
 - 1. Justified to take reasonable means to protect
 - ii. Bounty hunting
 - 1. Privilege to assert force in kidnapping
 - iii. Corporal Punishment at public schools
 - 1. Teacher is privileged to use reasonable force to maintain discipline and promote children's welfare if
 - a. Act is not out of anger or passion
 - b. Nature of punishment is reasonable under the circumstances
 - i. Age and physical condition of student
 - ii. Resulting injury
 - iv. Parents privilege of corporal punishment
 - 1. Reasonable means
- i. Necessity
 - i. Right to destroy property in the face of extreme emergency
 - ii. Public Necessity
 - 1. A person is privileged to go upon another's property if it appears to be necessary to prevent a public disaster
 - a. Complete privilege, not liable for any damages
 - b. Threat to community, public interest
 - c. Private property rights give way to public interest
 - d. Able to make reasonably mistakes is good faith
 - iii. Private Necessity
 - 1. A person may enter another's land and interfere with his chattels where it appears necessary to protect any person from death or serious harm
 - a. Harm prevented must exceed the harm caused by the invasion
 - b. Δ is liable for any damages to property or chattels
 - c. no duty to come to aid of fellow man, but can't put them in harm's way

CONSTITUTIONAL TORTS: CIVIL RIGHTS

I. 42 USC §1983

- a. Anyone who under the color of state law or custom who deprives another of any federal constitutional or statutory rights shall be liable
 - i. Freedom of speech, religion, to assemble, due process, cruel/unusual punishment, right to bear arms
 - ii. Claim is against an individual

1. The employer, if the government, is only liable if has some degree of fault involved, such as inadequate training, inadequate supervision, condoning a pattern of misconduct, etc.
 2. State cannot be sued, but lesser bodies of government can
- b. Bivens Cause of action for federal agents violate federal rights
- II. Privileges
- a. Absolute Immunity
 - i. (Judges, Legislators, US President)
 - ii. Complete immunity from tort liability for acts carried out within the scope of their duties, even if there is malice, corrupt, or of abuse of discretion
 - b. Qualified Immunity
 - i. (Police, members of cabinet, etc.)
 - ii. reasonable behavior done in good faith
 1. more power, more discretion, more immunity
 - a. Circumstances as they appear at the time
 - b. Reasonable grounds and good faith belief

STRICT LIABILITY

- a. Absolute liability imposed due to the activities inherent danger and cause harm
 - b. Contributory negligence is not a defense
 - i. Π unreasonable behavior doesn't matter
 - c. Defense: Assumption of risk
 - i. If Π voluntarily undertakes to expose himself to a known risk
- I. Trespassing Animals
- a. The possessor of livestock trespassing on the land or chattels of another is strictly liable for the trespass itself and any harm done thereby
 - i. Right to restrain animals until payment of damages
 - b. Domestic animals- if they known or should know the animal is vicious, then strictly liable for their escape
 - i. owner has to have knowledge of vicious propensity
- II. Wild animals
- a. A possessor of a wild animal is liable for the injuries of another
 - i. Except if the person is trespassing
 - b. Trained, domesticated wild animals
 - i. Will always be viewed as inherently vicious
 - ii. Definition of wild animal changes with society
- III. Non-natural Use
- a. The use of land in a non-natural way, likely to cause substantial harm if released, one will be held strictly liable if harm occurs
 - i. Natural in terms of common usage
 - b. Defense: Act of God
- IV. Abnormally dangerous activities
- a. One who carries on abnormally dangerous activities is subject to liability for harm to the person, land, or chattels of another resulting from the activity, although he has exercised the utmost care to prevent such harm
 - i. Limited to the kind of harm which makes the activity abnormally dangerous
 - b. Factors that determine an abnormally dangerous activity
 - i. A high degree of risk of harm to person, land, or chattels of others
 - ii. Gravity of harm- magnitude

- iii. Whether risk cannot be eliminated by the exercise of reasonable care
- iv. Not a matter of common usage
- v. Activity is inappropriate to the place
- vi. Value of the activity to the community

V. Automobiles

- a. Driver of an automobile is not strictly liable for damages resulting from an unforeseen condition that causes impairment while driving
 - i. Strictly liable if it was a result of a foreseen condition

NUISANCE

- I. Different between private and public nuisance is one of degree
 - a. Private: usually effects one person or a small number of people
 - b. Public: effects the rights of a community
- II. Nuisance per se- inherently bad from the beginning, even if conducted reasonable- intentional interference that clearly threatens surrounding
 - a. 3 types of nuisance
 - i. Strict liability
 - ii. Negligence
 - iii. Intentional

III. Private

- a. **An unreasonable interference with use and enjoyment of one's land. The interference must be substantial, Π must be using the land reasonable and Δ must be using the land unreasonably.**
 - i. Interference has to be substantial
 - ii. Π must be making a reasonable use of Π's land
 - iii. Δ must be making an unreasonable use of Δ's land
 - iv. Does not protect against unusual sensitivity
- b. Factors in assessing a nuisance
 - i. Gravity of harm
 - ii. Extent and duration of interference
 - 1. One time event may not be a nuisance
 - iii. Social value of land uses
 - iv. Amount of damages suffered
 - 1. loss of value cannot be speculative
 - v. Physical or personal injury
 - vi. Intent or motive
- c. Forms of Relief
 - i. Monetary Damages
 - 1. Only need to prove substantial interference
 - ii. Injunctive relief
 - 1. Balance equity
 - iii. Self-help
 - 1. Reasonable force allowable to abate nuisance
- d. Defense: coming to the nuisance
- e. Trespass: exclusive possession:: Nuisance: use and enjoyment

IV. Public Nuisance

- a. **Unreasonable interference with a right common to the general public, such as health, noise, or convenience**
 - i. Safety, healthy, comfort, convenience, morals, peace, conscious

- ii. Activity can be proscribed by statute
- iii. Action brought by the state
- iv. When reasonableness is being considered, move from trespass to nuisance
- b. Private cause of action for a public nuisance
 - i. Total loss of access to private land
 - 1. Different in degree and kind
 - ii. Suffered personal injury
 - 1. Different in degree and kind from general public
 - iii. Statutory- can give you a private cause to enjoin public action
- c. First in time is irrelevant
 - i. Accommodate needs of society with impact on neighbors
- d. 2nd Cause of action for Public Nuisance
 - i. Although normally brought by the state, a Public Nuisance can be brought by an individual with injuries of a different degree or kind”
 - 1. Can be economic injuries

DIGNITY WRONGS

- a. May not cause physical/emotional injury
- b. But may affect your reputation
- I. Malicious Prosecution
 - a. The wrongful institution of criminal or civil proceedings by one private citizen against another, resulting in damages
 - i. Criminal/Civil Charge
 - ii. Acquittal
 - 1. if found guilty, assumes probable cause
 - iii. Lack of probable cause
 - 1. No honest or reasonable belief that a person has acted or failed to act in a particular manner
 - 2. Reasonable and subjective belief in guilt
 - 3. Waived by settlement
 - ii. Malice
 - 1. If you find lack of probable cause, you can presume malice
- II. Abuse of Process
 - a. An illegal or improper use of the legal process not justified by its intended purpose
 - i. Ulterior motive or purpose
 - ii. Damages resulted
 - b. It's the way the process was issued
 - i. Malice doesn't matter- if you use the law in the way it was intended
 - ii. Doesn't need to show probable cause
 - iii. Common form: use of criminal law to collect civil debts

INVASION OF PRIVACY

- I. Jack has a cause of action against Jill for invasion of privacy which protects ----. The type of invasion of privacy at issue here is ----.
 - a. Interference with the personal solitude and seclusion of another
- I. Public Disclosure of Private Facts
 - a. Public discloser of a private fact highly offensive to a reasonable person with no legitimate public interest
 - i. Public Disclosure
 - 1. Public must be many, not few

- ii. Private facts
 - 1. Doesn't matter about your expectation when photo is taken
 - 2. Once public, always public
 - 3. Good taste v. bad taste not a standard
 - 4. Private Facts
 - a. Private debts
 - b. Medical records
 - c. Personnel records
 - d. Sexual orientation
 - e. Academic records
 - f. Priest/penitent records
 - g. Attorney client conversation
 - i. Extends to anyone in the office
 - 5. Public Facts
 - a. Anything in the public record
 - b. include real estate holdings, court cases
 - c. Presumably anything on the internet
 - d. Campaign contributions
 - e. Public employee's salaries
 - f. If the photo can be taken from a public place, it is not a private fact
- iii. Highly offensive
 - 1. The matter made public must be highly offensive and objectionable to a reasonable person of ordinary sensitivities
 - 2. Acquaintances can say whatever they want
- iv. No legitimate public interest
 - 1. Media group that publishes, not liable, may be free to publish
 - 2. Public misdeeds of public officials are public facts, not private facts
 - 3. Can be involuntarily thrust into public limelight, and hence facts become public facts
 - 4. The public must not have a legitimate interest in having the information made public

II. Intrusion Upon Seclusion

- a. Intentional intrusion upon the private life and seclusion of another that is highly offensive to a reasonable person
 - i. Intrusion
 - 1. Facts improperly obtained
 - 2. How the fact is obtained is different than its publication
 - 3. Don't need a publication
 - ii. Intentional
 - 1. Intent to intrude
 - iii. Upon seclusion
 - 1. Right to be left alone
 - 2. Private affairs or concerns
 - 3. If public, almost anything goes
 - iv. Highly offensive

III. Appropriation of name or likeness

- a. The use of one's name or likeness for another's benefit without consent
 - i. Name or likeness

1. extends to the deceased
2. For commercial purposes ie. Advertising
3. can't use another products likeness for advertising
- ii. Another's benefit
 1. If public official, not actionable unless used for trade or advertising
- iii. Without consent
 1. Except if newsworthy and taken in public
 2. Publication of a party's name or likeness in the media is not Appropriation
 3. Cant withdraw consent

IV. False Light

- a. The publication of a person in a false light highly offensive to a reasonable person
 - i. Publication
 1. A reasonable # of people
 2. Publication or a telling
 3. Publication must be malicious or disregard of the falsity
 - ii. Offensive
 1. To the public, hard standard to meet
 2. Ok if in bad taste, that's what gets attention
 3. false depiction highly offensive to a reasonable person
 - iii. Can print things that happened in the public, on TV
 - iv. That is who you are at the time- not false light

V. Defense: Newsworthiness

- i. Public has the right to the dissemination of newsworthy events
- ii. Standard is higher for public officials (voluntary and involuntary)
- iii. News/media determines what is reasonable and newsworthy