

Intent = desire or knowledge w/ substantial certainty

Transferred Intent

- Intent to commit one of 5 Intentional Torts is intent to commit another: (1) battery, (2) assault, (3) false imprisonment, (4) trespass to land, (5) trespass to chattel.
- Mistake, Infancy, or Insanity are not defenses

Battery = D intentionally causes:

- (1) Harmful, OR
- (2) offensive – personal dignity of ordinary guy
- (3) contact with person or extension

Assault = D intentionally causes:

- (1) *subjective* apprehension of (**split** on reasonable)
- (2) imminent (NOW, not future)
- (3) Harmful OR offensive
- (4) Contact with person or extension

False Imprisonment = D intentionally:

- (1) confines OR restraints plaintiff, AND
 - (2) in a bounded area, AND
 - (3) plaintiff is aware of confinement (**split** - or harmed)
- **Means of Confinement:** physical barriers, force, threat of immediate force, omission, **false arrest**(improp assert legal auth)
 - No reasonable exit (Blocking preferred path ≠ FP)
 - Coercion must be immediate & physical – econ/firing/threat of disclosure doesn't work

Malicious Prosecution = D wrongfully sues P

- (1) institution of a criminal/civil proceeding against the victim
 - (2) termination favorable to victim
 - (3) absence of probable cause
 - (4) improper purpose
 - (5) damages
- Judges/prosecutors immune

Abuse of Process = D uses legal process to for purpose for which it was not designed.

- Termination/ lack of probable cause not required

Intentional Infliction of Emotional Distress = Defendant engages in:

- (1) Outrageous AND extreme conduct
- (2) With the intent *OR recklessness* (disregard/high degree of prob)
- (3) to cause plaintiff extreme mental distress
- (4) Plaintiff actually suffers extreme mental distress (more than anger)

- **Outrageous/Extreme** = intolerable in civ soc
 - If D knows P is “vulnerable”, that counts
- **3rd Party Recovery** if: harm, anyone; no harm, family members; in practice, present & close family & D knew present
- **Public Figure** req *NY Times Malice* = pub of knows false
- **Common Carrier Rule:** only req gross insult, not full IIED

Intentional Interference w/Contract or Econ Expectancy

- (1) Valid contract or economic expectancy btwn the P and a 3rd party.
 - (2) D has knowledge of the valid contract or economic expectancy.
 - (3) D intends to interfere (***Split*** Intent v purpose only)
 - (4) D causes interference (w/o privileges/justifications)
 - (5) P suffers damages.
- SPLIT – Who has burden to show lack of defenses, P or D?
 - **Five “Golden Privileges”/Defenses (for K or EE)**
 - Stating truthful info or if asked, honest advice
 - Protecting another’s welfare if responsible for it
 - Contract illegal or against pub policy
 - Good faith assertion of bonafide interest

- “Catch All” – conduct, motive, other’s interest, social context, remoteness, relationship.
- **Privileges/Defenses for Econ Expectancy only**
 - Fair competition btwn competitors
 - Protecting your own financial interest.
- 1st Am right to voice opinion
- Boycotts - political boycotts ok, econ boycotts not ok
- Sports Results **Maj:** Allows **Min:** Does not allow
- Elections **Maj:** Need proof of EE **Min:** Even if no EE

Wrongful Termination of Employment Contracts

- When contradicts public policy:
 - (1) Listed in constitution/statutes
 - (2) Affect public @ large, not just the employer/company
 - (3) Policy is well established at time of discharge
 - (4) interests are substantial, fundamental, important
- Can discharge at-will employees @ anytime

Breach of the Covenant of Good Faith & Fair Dealing = a breach of contract where there is a fiduciary relationship has an implied covenant of good faith & fair dealing.

- Requires BAD FAITH
- **Maj:** Mostly for insurance. **Min:** Anything?

Intentional Misrepresentation =

- (1) Material is representation by D (past present fact only)
 - (2) D knew statement was false or reckless disregard to the truth (intentionally not learning truth)
 - (3) Intent to induce (intended victim or D knew 3d party would hear)
 - (4) Causation – causes reliance
 - (5) Justifiable reliance by P upon misrepresentation (**SPLIT** – Subjective v Objective)
 - (6) Damage
- **Material Fact** – what RP would use to make decision
 - Affirmative = misrepresentation
 - Fraudulent = concealment
 - **Maj:** past/present fact, not future **Min:** present intent (CA)
 - **Failure to Disclose** – not element unless a duty to disclose (fiduciary & recognized unintentional mistake)

Defenses to Intentional Torts

- 1) **Self-Defense** = reasonable force in response to immediate threat
- 2) **Defense of Others** = reasonable force in response to an immediate threat to third person.
 - a. **Maj:** only if 3rd party has right of self-defense. **Min:** reasonable mistakes ok (good Samaritan)
 - b. **Citizen’s Arrest** = reasonable force & reasonable belief of arresting right person for FELONIES ONLY + breach of peace misdemeanor.
- 3) **Defense of Property** = non-deadly force allowable
- 4) **Privilege to Arrest** = reasonable force to arrest
 - **Private Citizen** – felony occurred + reasonable belief he did it, or misdemeanor if breach of peace
 - **Police** – Reasonable belief he did felony (no felony req)
- 5) **Private Necessity** = can interfere to save property of greater value, but must compensate for loss.
- 6) **Public Necessity** = interfere with property to prevent injury/death, no compensation required (Civil Disobedience ≠ defense)

7) **Consent** = if consent, act is privileged and not tort

- Express, implied in fact (silence, custom), implied in law (emergency)

Immunities

1) **Parents**

- Maj: Yes, allow; Min: No

2) **Spouse**

- Maj: No; Min: Yes

3) **Charity**

- Maj: No; Min: Yes

4) **Government**

- Discretionary (policy) - No
- Ministerial (implementation/other) - Yes

I. DUTY

- To whom D owes obligation to conform to std of care
- **Foreseeability** – *SPLIT*
 - **Maj:** foreseeable victim “Zone of Danger” – Cardozo
 - **Min:** “Everyone in the World” – Andrews

LIMITS ON DUTY

- **Failure to Act/Help/Warn** (generally no duty)
 - Special relationships (parents, etc; not police)
 - D or Instrument under D’s control creates peril
 - D voluntarily acts and puts P in worse position
 - Parents if know of child’s threat
 - Psychologists to victims (not property)
- **NIED** – generally ok to be negligent to mental health
 - If physical harm – can recover p&s, emotional harm
 - **Maj:** In zone of danger & phys manifestation
 - **Min:** Dillon Rule – near scene w/ contemp observation & close relative & phys manifestation
 - **Min:** Other Dil - aftermath ok & phys manifestation
 - **Min:** Other Dil – Thing Rule (CA) – at scene & legally close relation & distress (NO phys man required!)
 - **Fear of Future Harm** – **Maj:** if 50%+ chance of harm
- **Wrongful Death** – When family member dies of tort
 - Must be close relative – CA domestic partners
 - **Recoverable Damages** – *SPLIT*
 - **Maj:** only pecuniary loss
 - **Min:** pec + loss of companionship
 - **Min:** pec + loss of companionship + grief
 - CA no punitive damages, other states ok
- **Survival Actions** – tangible torts can be inherited
 - **Split** – sue for personal injury allowed
 - **Split** – **Maj:** econ loss + p&s / **Min:** just econ
- **Loss of Consortium** – loss of companionship, comfort, sex
 - Must prove loss and D’s conduct must be tortious
 - *SPLIT* **Maj:** legal spouses only; **Min:** kids also
- **Wrongful Life/Birth/Conception**
 - Life – child’s claim for own birth **Maj:** Not allowed; **Min:** yes
 - Conception – parent claim for unwanted healthy child
 - Birth – parent claim for unwanted *unhealthy* child
- **Landowners & Occupiers**
 - **Maj:** 3 visitor categories **Min:** RP, unless tresps commit felony
 - **Trespassers** – visitors w/o privilege
 - Unanticipated: no liability for accident; no willful injury
 - Anticipated: Activities = RP std; Conditions = warn OR make safe known concealed artificial conditions.
 - **Licensees** – social guests; Activities = RP std; Conditions = warn OR make safe known concealed conditions
 - **Invitees** – business guests – no limited duty (RP std)
- **Landowner’s to P’s Off Land**
 - **Maj:** Liable for artificial conditions only
 - **Min:** urban trees; rural & urban trees; all natural
- **Economic Loss** – No personal/prop damage, just econ
 - **Maj:** Generally no recovery

- **Min:** Based on foreseeability (CA)

- **Negligent Misrepresentation** – only for econ loss
 - Privity - close relationship/agreement
 - Foreseeability – foreseeable reliance
 - **Maj:** Intent to benefit or knowledge it would be provided

II. STANDARD OF CONDUCT

- Limit on type or kind of harm D can be liable for
- **Reasonable Person Standard** – reasonably prudent in same sit
 - **Emergency Doctrine** – RP in emergency
 - Custom is persuasive
 - **Learned Hand Test** = B < PL (Risk v Utility)
 - Physical disability considered (reasonable blind)
 - Permanent *mental* disability not considered (sudden is)
- **Child Standard of Conduct** (Under 18)
 - Reasonable child of like age, intelligence, experience
 - Dangerous activities usually done by adults = RP std
- **Professional Standard** – exercise skill/knowledge possessed by members of the prof. (Dr, law, architect. Maybe acct, engineer)
 - **Custom is binding** to set std of care (expert testimony)
 - GPs **SPLIT*** similar comm or nat/st std
 - Specialists @ national std
 - **Consent** – failure to inform is negligence
 - **Battery** – if misrep procedure
 - **Maj:** Physician Rule – med custom to inform
 - **Min:** Patient Rule – jury decides reasonable dr; need to prove no consent if knew
- **Rules of Law** – judge sets rule for pre-set std of conduct
- **Neg per se** – jury uses statute’s def of std of care not RP
 - If P is in class of persons & type of harm statute to protect

III. BREACH OF STANDARD OF CONDUCT

- **Res Ipsa Loquitur** – “the thing speaks for itself”
 - Accident doesn’t usually occur w/o neg
 - D’s exclusive control of instrument of accident
 - P not at fault
 - *SPLIT* on multiple D’s; **Maj:** No; **Min:** all liable

IV. CAUSE IN FACT

- **“But For” Test**
 - But for Ds neg, injury would not have occurred
- **Substantial Factor Test**
 - If multiple redundant factors, all liable
 - Redundant = either would have caused harm on own
- **Burden Shifting**
 - Multiple D’s breach std of care, but one causes harm
 - Shift burden to D’s to disprove liability
- **Market Share Liability**
 - When one cause and don’t know which one
 - Liable for mkt share- **SPLIT** on share
 - Most states reject, only used in DES litigation
- **Med Malpractice Rule** – *SPLIT*
 - **Maj:** neg of dr is but for of P’s injury (no if <50% chance)
 - **Related But For:** jury determines substantial factor
 - **Modern Trend:** Compensates P for lost chance of recovery
- **Toxic Causation** – no comp for enhanced risk, med monitor ok

V. PROXIMATE CAUSE

- **Foreseeability**: reasonably foreseeable type of harm w/o superceding, intervening causes
 - Type of harm must be foreseeable, not extent/manner of injury
 - Superseding = extraordinary, surprising
- **Egg Shell P** – D responsible for P's injuries even if P fragile

VI. DAMAGES

DEFENSES

- **Contributory Neg** – if P at fault for creating situation then no liability for D

- **Comparative Neg** – makes contributory neg a partial defense
 - **Maj**: “Modified” – 50/51% threshold before recovery allowed
 - **Min**: “Pure” – exact % of how much harm done
- **Assumption of Risk** – (1) Knows particular risk, (2) voluntarily (3) assumes it
 - Subjective knowledge of risk
 - If no other option = not voluntary
 - **Implied** - Partial Defense in **Maj** of jx; not written, deduced from Ps behavior
 - **Expressed** – Ie. Waiver - complete defense, invalid if it's against pub pol; too broad

IMMUNITIES