Torts Exercise

Learn
Analyze
Present

What Each Intentional Tort Requires

1. ACT
2. CAUSATION
3. INTENT

These are not specific elements!!!
Act

- Depending on the type of Intentional Tort, the act will be different.
  - Conduct
  - Contact
  - Confinement

Causation

- The act will result in something.
- If that something is a legally prescribed harm, then causation is established.

Causation

- Each Causation will be different
- These are the legally prescribed harm:
  - Causing apprehension (for Assault)
  - Causing offensive touching (for Battery)
  - Causing loss of liberty (for False Imprisonment)
Intent

- Consciously aware of what you are doing and the consequences of that action.
- If the defendant acts voluntarily with a desire to bring about a result, the defendant intended that result.

Formula Elements: Intentional Torts

1. **Act**: some bodily action
2. **Causation**: causing a specific harm
3. **Intent**: specific intent

Assault and Battery

- **ACT**: Doing something
  - All intentional torts requires the actor (tortfeasor) to do something wrong intentionally
  - The biggest difference between Assault and Battery is the conduct
ACT: Assault and Battery

- ASSAULT:
  - Conduct by the defendant that the plaintiff believes will lead to contact or imminent apprehension that the plaintiff is about to be faced with contact

- BATTERY:
  - Conduct by the defendant that causes contact to the plaintiff

Assault

- Definition:
  - Intentional attempt or threat to do injury or commit a battery.
    - To sustain a cause of action to recover damages for assault, there must be proof of physical conduct placing the plaintiff in imminent apprehension of harmful contact.
  - Intentional placing of another person in fear of imminent harmful or offensive conduct.

Elements of Assault

<table>
<thead>
<tr>
<th></th>
<th>ACT</th>
<th>CAUSATION</th>
<th>INTENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Threat of physical contact against plaintiff.</td>
<td>Creating a reasonable apprehension of immediate physical harm.</td>
<td>Made with the intention to cause apprehension or contacts.</td>
</tr>
</tbody>
</table>
CAUSATION:
Victim’s Subjective State Of Mind

- It requires AWARENESS
  - If you don’t see it, it can’t be in your mind
  - Since there is no contact with assault, it is all about what is in the plaintiff’s mind.

Victim’s Subjective State of Mind

- EXAMPLE: An unloaded gun pointed at a plaintiff is actionable as an assault, if plaintiff’s subjective belief was that the gun was loaded.
  - Plaintiff must believe that harm will happen

Defendant’s Present Ability …

- Defendant’s Present Ability To Effectuate That Threat Upon The Victim
  - A playful gesture made toward a robust man might not be an assault
  - A playful gesture made toward an elderly woman might be.
Elements of Battery

<table>
<thead>
<tr>
<th></th>
<th>ACT</th>
<th>CAUSATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Defendant makes physical contact with the Plaintiff</td>
<td>The physical contact must be offensive in nature</td>
</tr>
<tr>
<td>2</td>
<td>CAUSATION</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>INTENT:</td>
<td>The defendant intended to make physical contact with the plaintiff</td>
</tr>
</tbody>
</table>

**ACT: There must be contact**

- Examples:
  - Stabbing plaintiff with knife
  - Offensive shove in the playground
  - Forcible removal of plaintiff’s hat.
  - Placing a hand on the shoulder

**CAUSATION: The physical contact must be offensive in nature**

- Must there be a physical injury like a broken arm or death?
  - NO
- The harm is the offensiveness of the contact
- Offensive to whom? The plaintiff
- Offensive is subjective
Offensive Contact

- Offensive Contact = wrong under the circumstances.
- “Wrong under the circumstances” excludes contact which is inevitable in a crowded world
- Consent is assumed as to all ordinary contacts which are customarily and reasonably necessary to the common intercourse of life, such as:
  - a tap on the shoulder to attract attention; or
  - a casual jostling on the subway.

Intent

- The intent is to make contact

The Concept of Defense

- “Yea, I did it, but I had to do it!”
- What happens if your client “has to” commit an intentional tort?
  - Peter touches Donna’s breasts & Donna slaps Peter on the face
  - Did Donna commit Battery? YES!
    - Is she liable . . . .
Proof of Defense

- It is only after the plaintiff proves the tort, does the defendant then get an opportunity to present a legally recognized defense.

The Defenses for Assault and Battery

1. Defense of Consent
2. Defense of Privilege
3. Defense of Justification

Defense of Consent

- Ordinary acts excluded
- The consent given by the plaintiff must relate to the particular act committed by the defendant and must be given with knowledge of the consequences of the act consented to.
- Willful participation in a sports game or other contest is usually consent to physical contact consistent with the understood rules of the game.
- Assumption of Risk
  - Sporting Events
  - Rough and tumble play
Defense of Privilege

- Where a person injures another in doing an act which it is his or her duty to perform, that person is not liable for assault and battery.

Privilege (e.g., Police Officers and Public Duty)

- Applies to
  - Police/Peace Officer.
  - Parents.
  - Teachers.

- Police and other peace officers should be able to do their lawful duties without inordinate exposure to assault and battery liability.
- Qualified privilege to use reasonable force in their duties of pursuing peace and maintaining order.
- Defense not available for force employed carelessly or unnecessarily.
Justification (e.g., Self-defense)

- Defendant can use this defense if he or she had a fear of bodily injury from apparent danger.
- Cannot exceed the force needed to repel the attack.
- If the result of the repelling is a greater injury to the initial attacker, so be it.

Defense of Justification

- Self-Defense
  - Amount of Force Used
  - Type of weapon used
  - Duty to Retreat
- Deadly Force:
  - Only if deadly force is being used
  - Duty to retreat

Justification (e.g., Self-defense)

- Deadly Force:
  - Only if deadly force is being used
  - Duty to retreat
- Deadly force in Home:
  - No Duty to Retreat
False Imprisonment

- **Imprisonment:** wherever restrained.
- This may be on an
  - open street,
  - a store,
  - a travelling automobile, OR
  - compelled to go along with defendant.

Elements of False Imprisonment

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ACT</td>
<td>Act of confinement</td>
</tr>
<tr>
<td>2</td>
<td>CAUSATION</td>
<td>Loss of liberty</td>
</tr>
<tr>
<td>3</td>
<td>INTENT</td>
<td>Intent to confine</td>
</tr>
<tr>
<td>4</td>
<td>AWARENESS</td>
<td>Plaintiff must be aware of his/her confinement</td>
</tr>
</tbody>
</table>

Defense of Consent

- If the plaintiff consents to a confinement, then there is no false imprisonment
  - E.g., Hospitalization
Defense of Privilege

- **Arrest:**
  - For an arrest, probable cause must exist at the time of the arrest. It does not matter if the defendant is found guilty. (Separate issue)

- **Parents**

Exercise

- You will get a fact pattern
- You will make a presentation
  - Facts
  - Elements
  - Facts to support that element
  - Possible defenses

Exercise

- The tort is …
- The first element is …
- The facts to support this element are …
- The second element is …
- The facts to support this element are …
- …