



# CLASS 1

**TORTS AND PERSONAL INJURY**

# TORTS – INTRODUCTION

- Torts deals with the relationships between people and the liability of one person for failing to live up to society's standards for dealing with other people.
- 3 basic levels of liability:
  - Intent
  - Negligence
  - Strict ("no fault") liability

# TORTS – INTRODUCTION (CONT.)

- **Intent** occurs when:
  - The defendant knows the harm will happen and wants it to happen
  - The defendant knows the harm will happen, even if she does not want it to happen
  - (Maybe) when the defendant is reckless in allowing the harm to happen

# TORTS – INTRODUCTION (CONT.)

- **Negligence** occurs when:
  - The defendant’s conduct did not live up to the level of care society expects from people and harm to another person resulted from that failure
- **Strict (“no fault”) liability:**
  - In some cases, a defendant can be liable for harm that is caused even through no fault of his or her own

# INTENTIONAL TORTS AGAINST THE PERSON

- All intentional torts must be done with the knowledge that the tort is likely to occur!  
**Extreme recklessness** can also work in some cases.
- The “eggshell” rule: Once a tort is committed, the defendant must pay for whatever harm was caused, even if the extent of the harm was not foreseeable! This applies for all torts, not just intentional ones.

# INTENTIONAL TORTS AGAINST THE PERSON – BATTERY

- Elements:

- 1. Harmful or offensive**

- Must be offensive to the reasonable person.
- Plaintiff need not have actually taken offense or been harmed, and need not even know of the contact.
- If the plaintiff is known to be hyper-sensitive, that could ease this requirement.

- 2. Contact**

- Need not be with the actual body of the plaintiff
- Often can be with an object being held by the plaintiff.

# INTENTIONAL TORTS AGAINST THE PERSON – ASSAULT

- Elements:
  - 1) **reasonable apprehension of an**
  - 2) **immediate**
  - 3) **battery (harmful or offensive contact)**
- Applies even if the plaintiff avoids the harm; the fear is the assault
- Words alone are generally not enough unless backed up with some visual threat of force; verbal threats plus motioning can be assault in some cases

# INTENTIONAL TORTS AGAINST THE PERSON – ASSAULT (CONT.)

- Even if there was never a real threat of harm (e.g., the gun wasn't loaded), there can still be an assault as long as the plaintiff reasonably believed there was a threat of harm
  - Unlike with battery, the plaintiff's state of mind is relevant for assault.
  - Assault can also be negated by words. For example: "I will shoot you tomorrow" and point a gun...

# INTENTIONAL TORTS AGAINST THE PERSON – FALSE IMPRISONMENT

- Elements:
  - **Unlawful**
  - **Confinement**
  - **In a bound area**
- A police officer making an arrest is not false imprisonment even if the charge turns out to be false or even baseless, as long as it wasn't done in bad faith by the police officer.
- Confinement can be by threats or by putting the plaintiff in a position from which escape is unreasonably dangerous (the plaintiff is not expected to risk his or her life or put other people at risk to escape)
- “Bound area” can be in a building or even a block, but not in a country or state. What about a small city?



# QUIZ TIME

# INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

- This is an **intentional tort**, but the defendant need not have intended to cause the distress, just intended to do the action which caused the distress!
- Elements:
  - **extreme and outrageous conduct that causes the plaintiff**
  - **extreme emotional distress**
- Mere insults are not actionable; some severe or targeted insults can be
- From Restatement 2d of Torts §46, comment d:
  - “Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

# INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (CONT.)

- Normally, the conduct must be very severe; but it's lower if:
  - The defendant knows that the plaintiff is hyper-sensitive
  - The defendant is a common carrier or innkeeper
  - The plaintiff is in a particularly sensitive class of people (e.g., children, etc.)
- Can also occur if the action is directed against a third party if:
  - The third party is a close relative of the plaintiff OR the action results in bodily harm