1. A first look at Torts
   1. Ch. 1: Aims, Approaches, Processes
      1. What is Tort Law?
         1. Definitions:

TORTS are wrongs recognized by law as grounds for a lawsuit

All TORTS involve conduct that falls below some legal standard

* + - 1. Requires Harm:
         1. All TORTS result in harm to another. The law is willing to say what constitutes a legal injury.
         2. Some but not all crimes are torts.
         3. There is a line of demarcation: Tort law vindicates individual’s rights.
    1. Goals
       1. KNOW the two kinds of systems:
          1. Corrective Justice/Individual Justice

Moral responsibility to correct a wrong the defendant has brought upon the plaintiff. Liability for harms caused on others.

* + - * 1. Social Justice

Dominant concern is not justice to the individual; it is to provide a system of rules that, overall works for the good of society.

* + - * 1. Conflicts of the two systems: a city is burning down and the city chooses to knock down houses. Harms the individual but protected the society.
        2. Fault and Damage Awards

Tort law imposes liability upon defendants for conduct the law treats as wrong.

Morally faulty conduct:

Intentional misconduct (Intentional)

Unreasonable Risky (Negligent)

Without fault:

Strict Liability

Risk distribution: cost of paying compensation can be incorporated into the cost of products.

* + 1. The role of fault
       1. **CASE Van Camp v McAfoos**
          1. ***Purpose: to illustrate fault***
          2. Does NOT establish what is fault. Establishes you NEED fault.
          3. Fault must be plead
          4. Tried to recover merely by the proof of an accident caused by another, independent of fault or wrongdoing.
          5. If an essential element of the cause of action is missing, the issue is not what may be shown under the pleading but whether a cause of action has been plead.
          6. No allegation Mark did anything wrong. **No liability without fault.**
    2. Implementing with Damage Awards
       1. Compensatory Damages
          1. Plaintiff has the burden of proof
          2. Entitled to: lost wages or earning capacity, medical expenses, pain and suffering endured (including mental or emotional).
       2. Awards that shock
          1. Additur – add to an award that is too low
          2. Remittur – Reduce excessively high award
       3. Attorney’s fees
          1. American rule – each party pays their own fees
       4. Punitive Awards
          1. Authorized when a tortfeasor has acted maliciously or willfully or wantonly in causing injury.
       5. **CASE: Dillon v Frazer**
          1. ***Purpose: to illustrate damages and show additur, new trial.***
          2. Rule: Must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive as to shock the conscience.
          3. Two motions filed:

Procedure: Trial court erred in not granting motion

Substantive: Facts of the case

From class: The procedural issue was the judge denying the motion for a new trial and his abuse of discretion. Substantive issue was the adequacy of the jury verdict and the argument of disparity.

* + - * 1. Standard of Review: When establishing for a new trial based on the inadequacy of excessiveness of the jury’s verdict the trial court must distinguish between awards that are merely unduly liberal or conservative and wards that are actuated by passion, caprice, prejudice, or some other improper motive.
        2. Injured person must prove defendant liable.
        3. Determining amount of damages is the jury’s job.
      1. CASE: McDonalds
         1. Purpose: Illustrates punitive damages. Illustrates Remittur.
    1. OTHER CLASS COMMENTS
       1. Torts are state laws
       2. Trespass -> Direct -> Intentional Tort
       3. Trespass on the Case -> Indirect -> Negligence
       4. Law types:
          1. Common Law: Judge made law
          2. Civil Law: Roman Codal Law (Louisiana)
       5. Causation: Direct result of the action. If an element is missing in a cause of action then the complaint is dismissed.
  1. Ch2: Trial Procedures
     1. Looking for Facts, Rules, Reasons
        1. Facts: Influence judge in deciding appropriate legal rules
        2. Substantive Issues: the jury will decide these.
        3. Procedural/Legal – Judge will decide these.
        4. Allocation of decision making between a judge and jury is a major process element in many cases.
     2. Procedures at Trial
        1. ALL decisions about tort law are made in deciding some procedural point (pg. 21)
        2. Trial procedure is designed to resolve two kinds of disputes:
           1. Facts: Almost all trials involve at least some factual dispute
           2. Law: Most trials dispute what the legal rules are or how they should be applied to a particular case.
           3. Procedures

Motion to Dismiss or Demurrer – Filed by defendant. Assumes all facts are true but there is no legal claim based on the plaintiff’s complaint.

Motion for Summary Judgment – Developed on a set of facts (depositions, discovery, etc.). Assumes all facts are true but there is no good legal claim and the judge would find for the moving party (defendant).

Motion for Directed Verdict – Defendant usually moves for this after plaintiff rests or defendant rests. Motion asserts the proof offered by the plaintiff is legally insufficient for the jury to award for the plaintiff. Evidence considered favorable for the plaintiff. Denied if reasonable people could disagree.

Objections to Evidence and Offers of Evidence – Trial judge’s admission of evidence over objection or refusal to admit evidence because of objection raises legal issues. Key with evidence is “is it relevant” to the legal issues.

Proposed Jury Instructions and Objections to Them – An instruction is supposed to represent a correct statement of the law, and one on which the jury will act; an erroneous statement of the law would be ground for appeal.

Motion JNOV/ Post Trial Motion for a Judgment as a Matter of Law – The motion asserts the evidence is not legally sufficient to justify a jury verdict for the plaintiff. EXTREME measure and would set aside the jury verdict.

Motion for a New Trial – If an error was committed in the trial and the judge now recognizes this, there is a possibility the error influenced the jury. Second kind is because the damages are irreconcilable: verdict against the weight of the evidence.

* + 1. OTHER CLASS COMMENTS
       1. Why read cases?
          1. Good lawyers can learn the governing legal principles
          2. Can envision what other legal rules could develop from these principles
          3. Can learn to identify recurring issues, distinguish seemingly similar cases
       2. Demurrer – wait or stay
       3. Disputes
          1. About the facts. Facts decided by the jury.
          2. About the law. Law decided by the judge.
       4. \*\* Decisions are embedded in procedure \*\*
       5. Remedies: Injunctive relief, restitution, damages
       6. Damages: Compensatory, Punitive, Nominal (a right infringed but no damages).
       7. Fees: American rule. Tort attorneys use contingency.
       8. Recklessness: Conscious disregard of the risk of harm
       9. IMPORTANT TO KNOW: the issue depends on the procedural posture in a case. A motion to dismiss is very different than a jury instruction.

1. Intentional Torts (the Trespassory Torts)
   1. Ch 3: Claims for Intentional Torts
      1. Four torts:
         1. Battery
            1. Act with Intent to Touch
            2. Intent is harmful or offensive (or LACKS CONSENT)
            3. Results in a touching
            4. That is harmful or offensive
         2. Assault
            1. Act with intent to cause apprehension of a harmful or offensive contact
            2. Results in apprehension of an Immediate battery
         3. False Imprisonment
            1. An intent to and results in confinement (restraint)
            2. To a bounded area
            3. Where the victim is aware or is harmed
         4. Torts to Property
            1. Trespass to Land

Intent to enter land (purpose or substantial certainty)

Enter the land of another

* + - * 1. Conversion of Chattel – Trover

Intent to exercise substantial dominion

Results in seriously interfering with plaintiff’s right of possession

* + - * 1. Trespass to Chattel

Intent to act on chattel

Interference with chattels

Results in HARM = Dispossession or lost use OR harm to chattel OR plaintiff

* + 1. GENERAL
       1. All tort claims have their own elements.
          1. ELEMENTS – a plaintiff must prove
       2. Prima Facie – sufficient to establish a fact.
       3. Organize into two dimensions:
          1. Interests they protect

Physical injury (personal or property)

Emotional harm (dignity)

Economic harm

* + - * 1. Level of culpability

Wrongdoing (intent or malice)

Negligence (lack of reasonable care)

No fault (strict liability)

* + - 1. Causes of action: protecting against intentional physical injuries
    1. **Battery**

|  |  |  |
| --- | --- | --- |
| An Act with  Intent to Touch | INTENT to Harm or Offense  (Offensive⬄LACK OF CONSENT -> Consent implied or express) | |
|  | INTENT: Purpose | INTENT: Substantial Certainty will occur |
| Result of Touching | Results in Harm or Offense | |

* + - 1. Rule: RS § 13: (a) Acts intending to cause a harmful or offensive contact with the person of the other or a third person and (b) a harmful (or offensive) contact with the person of the other directly or indirectly results.
      2. Dual is harder to prove
         1. We will use the dual intent standard
      3. **CASE: Snyder v Turk**
         1. ***Purpose: illustrated elements of intent. There cannot be a battery without intent.***
         2. Turk argued he did not cause harm. However, he did cause offense.
         3. Offensive: an affront to a reasonable sense of dignity
         4. Conclusion: a person does not have to be physically harmed for a battery. And, the intention of the actor does not have to be physical harm.
      4. **Case: Cohen v Smith**
         1. ***Purpose: illustrates offensive. The key to offense is “without consent”***
         2. Does not have to do physical harm. Must accept the plaintiff’s allegation because only the plaintiff can give consent. Becomes offensive without consent.
         3. Conclusion: Offensive (LACK OF CONSENT) contact “offends a reasonable sense of dignity.
      5. Damages
         1. No need for physical harm
         2. Writ of Trespass – these are the torts for which you can get damages
         3. Trespass on the Case – damages are NOT presumed
      6. Intent
         1. The mental resolution or determination
         2. Produce a consequence or knowledge thereof it will occur
         3. **CASE: Garratt v Dailey**

***Purpose: to illustrate intent. Intent does not have to be to cause an injury but instead create an act. Illustrates the Substantial Certainty Test.***

Five year old pulled chair from under a woman.

INTENT

PURPOSE

Knowledge with substantial certainty

RS3 § 1: To produce a consequence as either a purpose to produce that consequence or knowledge that the consequence is substantially certain to result.

* + - * 1. Intent versus negligence: legal fault is usually for intent or negligence. Negligence is conduct that creates an unreasonable risk of harm.
      1. Child Liability
         1. \*\* General rule is children are liable \*\*
         2. Some states hold that children under a particular age are conclusively presumed to be incapable of committing any tort at all.
         3. Damages are capped
      2. Parental Liability
         1. Common law: parents are not vicariously liable for the torts of their children simply by virtue of being their parents.
         2. Statutes exist around child liability
      3. Single Intent
         1. Professor Koons does not see single intent arguments as valid
      4. Mentally Impaired
         1. With insanity the ordinary rules of battery remain.
         2. An insane person may have intent to invade the interest of another even though his motives are irrational.
         3. **A person with a mental disability may be liable for an intentional tort if the person has the type of intent required. It is not necessary that the reasons be rational. So minors and incompetents *can* have the requisite intent.**
      5. Transferred Intent
         1. It is enough that the actor intends to produce some effect upon some other person – whether or not it is the plaintiff.
         2. CLASS SLIDE:

|  |
| --- |
| **Tort P1 -> P2** |
| *Defendant intends tort on one person, commits a tort on another* |
| **Tort A -> B** |
| *Defendant intends one tort (Assault), commits another (Battery)* |

* + - * 1. Applies to ALL Trespassory (Intentional) Torts
        2. **CASE: Baska v Scherzer**

***Purpose: to illustrate the concept of transferred intent***

Rule: Intent to cause a harmful or offensive contact of another – even if the harm comes upon a person that was not the original target.

Examples: throw a rock at someone in a crowd. Hitting anyone becomes battery.

Conclusion: Battery may be committed even though the person struck is not the intended person.

* + - * 1. Extended liability

Defendant, who commits an intentional tort, at least if it involves conscious wrongdoing, is liable for all damages caused, not merely those intended or foreseeable.

Applies to property torts (guy who lights a barn on fire even though he didn’t mean to).

* + - 1. CLASS COMMENTS
         1. Extended personality (think Fisher v Carrousel –cafeteria tray)

Degree to which an object is associated with a person (she mentioned wheelchair)

* + - * 1. Offensive – an affront to a reasonable sense of dignity.
      1. FROM BARBRI
         1. Intent to produce the legally certain consequence.
         2. Transferred intent is a legal fiction it's not necessarily intentional but it happens
         3. Battery is a tort that the protects the integrity of the body as it moves around the world.
         4. For the exam:

Talk about whether there's been a harmful or offensive contact another

Talk about if the contact is with the plaintiff’s body or his person.

Example Paula will sue Daniel for a battery. To be a battery she will have to show that he acted intentionally to create cause harm or offense that resulted in a touch that was harmful or offensive.

You can use the word like self-evidently.

A bullet wound is self-evidently harmful to the body.

Because I touch on the shoulder

A touch on the shoulder is routinely a way to get in touch with somebody in our society, it does not meet the reasonable person standard of inappropriate contact.

Good language for an exam. I am doubtful the court once stretched the principal this far.

Offensive. If it offends a reasonable sense of dignity.

* + 1. **Assault**
       1. Two elements to have an assault:
          1. The act was intended to case apprehension or harmful or offensive contact
          2. The act indeed caused apprehension in the victim that harmful of offensive contact would occur.
       2. Basic Elements:
          1. D intends to cause an apprehension of an imminent battery
          2. P is put in reasonable apprehension
          3. Of an imminent battery
       3. Elements
          1. Harmful or Offensive touch or the apprehension of touching
          2. Apprehension of an immediate battery
       4. CLASS SLIDE

|  |  |
| --- | --- |
| Intends | To Cause (1) apprehension of a (2) (a) harmful or (b) offensive contact |
| Succeeds |

* + - 1. **CASE: Cullison v Medley**
         1. ***Purpose: to illustrate Assault. Specifically to illustrate apprehension.***
         2. Facts: family confronted Cullison, motions near gun, had no way of knowing gun not loaded.
         3. Rule: One acts intending to cause a harmful for offensive contact with a person of the other or with an imminent apprehension of such contact.
         4. Conclusion: looking for apprehension of imminent battery.
      2. CLASS NOTES:
         1. The distinction between battery and assault is “a touching of the mind” and “imminent”
         2. Apprehension

Generally means fear. HOWEVER,

An awareness of an imminent touching that would be battery if completed.

Think – “intent to scare”

* + - * 1. Words alone do not create an assault

RS2 § 31: words alone do not make the actor liable for assault unless together with other acts or circumstances they put the other in reasonable apprehension of imminent contact.

Illustration: dark alley, mugger.

* + - * 1. Words that negate

A condition put upon the threat that negates it.

Illustration: I’d break your nose if that police officer wasn’t here.

* + - * 1. Words with alternatives

Illustration: “I won’t beat you up if you give me your basketball tickets”

* + - * 1. Imminent

RS2 § 29: The apprehension must be one of imminent contact, as distinguished from contact in the future. Imminent does not mean immediate, in the sense of instantaneous. It rather means no significant delay.

Illustration: go home, pack your clothes, or I will kill you.

* + - 1. BARBRI
         1. Assault need to show that the defendant place the plaintiff in reasonable apprehension. Need to demonstrate that the apprehension is of an immediate battery.
         2. Look for conduct, look for a menacing gesture
         3. Apparentability can create a reasonable apprehension.
         4. It must relate to an immediate or imminent battery.
         5. From the restatement we know that words alone lack immediacy. Need gestures.
         6. Words can negate the immediacy.
         7. Look at the words, understand the words
    1. **False Imprisonment**
       1. Occurs when:
          1. A person confines another
          2. Intentionally
          3. Without his consent
          4. Within a limited area
          5. For any appreciable time
       2. Elements of False Imprisonment
          1. D intends to confine P
          2. D commits an “act of restraint”
          3. P must be confined in a bounded area
          4. P must be aware of confinement or be harmed
       3. Per Koons:
          1. An intent and an act results in:

Confinement

Bounded Area

Victim is aware or is harmed

* + - 1. **CASE: McCann v Wal-Mart**
         1. ***Purpose: to demonstrate false imprisonment.***
         2. Facts: McCann’s stopped by two employees and told the police were being called. Let go 65 minutes later.
         3. Rule: Common Law Tort is – conduct by the actor which is intended to, and does in fact, confine another within the boundaries fixed by the actor where, in addition, the victim is either conscious of the confinement or is harmed by it.
      2. “Without his consent” – from the Barbri lecture must be aware of the confinement. For instance, lock door while someone is sleeping. Give up and unlock because they are still asleep. If they never knew the door was locked it cannot be false imprisonment.
      3. Confinement to a limited range.
      4. Methods of confinement
         1. Confinement by physical barrier or force

Think moving car. The door is an exit but you cannot jump out.

* + - * 1. Physical force

Threats made at him or his family

* + - * 1. Confinement by threats or duress

Threats or demands – “you must wait here until the police arrive”. Frequent law school exam question.

Assertion of Authority – submission to an officer’s assertion of arrest under colorable legal authority.

Duress of goods – defendant grabs plaintiff’s pants from a dressing room or clothes stolen at a locker room.

* + - * 1. Failure to provide means of escape- handicap passenger left on an airplane.
      1. Insufficient
         1. Future threats – something will happen sometime in the future
         2. Moral pressure – will not cause a causation
      2. Damages: Trespassory tort so the plaintiff can recover damages.
      3. CLASS COMMENTS:
         1. Smallness of the amount of time will only go to the amount the plaintiff can recover.
         2. Baby in the safe example. Even if the plaintiff is not aware you can still show actual harm.
      4. FROM BARBRI
         1. Need to show that the defendant created an

act of restraint

confinement in a bounded area.

* + - * 1. Threats – a plausible threat is an act of restraint

Write about whether the threat would be operative on the mind of a reasonable person. Kill your child or kill a kangaroo.

* + - * 1. Acts of restraint

Can be the failure to do something you were supposed to do:

Let you out of the car

Handicap person on airplane

* + - * 1. Plaintiff be aware of the restrain or be physically harmed by the restraint. If you got a cold because you're locked in the drafty basement you were harmed.
        2. If area is bounded if there is a no or reasonable method of escape.

Reasonable means you get to argue, on the one hand and on the other hand. The escape cannot be humiliating or disgusting.

There will be a space (dangerous, disgusting, humiliating) that is not a means of escape.

Fire escape – heights

Sewer pipe

Locker room

* + - * 1. Threatened

May or may not operate on the mind of a reasonable person. Talk about that on the exam.

* + 1. **Torts to Property**
       1. **Trespass to Land**
          1. Elements

Must prove ownership or possessor interest

It is an intentional and tangible

* + - * 1. From Barbri – the example is that you put one foot in front of the other
        2. Trespass is an invasion of the plaintiff’s interest in the exclusive possession of his land where as nuisance is an interference with his enjoyment.
        3. Entitled to damages

Nominal or cost of repairs

Injunctive relief

Can get punitive if malicious or deliberate

Extended liability – burns down the barn. Liable even if never intended harm and could not foresee a harm

* + - * 1. ELEMENTS from CLASS

Intent to enter land (Purpose or Substantial Certainty)

Enter the land of another

* + - * 1. COMMENTS FROM CLASS

Intent to enter

This is NOT Intent to Trespass, it is intent to enter

Airspace and subspace

Person OR object

* + - * 1. From Barbri

The intent issue is about walking, not to be on the land.

Intent is a desire to perform the forbidden contact.

* + - 1. **Conversion of Chattels - Trover**
         1. Elements

Defendant must intend to exercise substantial dominion over the chattel

Does not have to be conscious of wrongdoing

* + - * 1. ELEMENTS from CLASS

INTENT to exercise dominion over chattel

ACT seriously interfering with plaintiff’s right of possession

* + - * 1. Creates the question, what is substantial dominion?

It depends on how serious the interference is

Extent and duration of control

Defendants intent to assert a right to the property

The defendants good faith

The harm done

Expense of inconvenience caused

* + - * 1. Remedies

Value of the chattel

* + - * 1. COMMENTS FROM CLASS

Serial conversions: stealing something. Continues.

Bona Fide purchaser – still liable even if purchased in good faith

* + - 1. **Trespass to Chattels**
         1. To establish must prove that the defendant is intentionally and without justification or consent, physically interfered with the use and enjoyment of personal property in plaintiff’s possession and plaintiff was thereby harmed
         2. Thus one who intentionally interferes with another’s chattel is liable only if there results in harm to the owner’s materially valuable interest in the condition.
         3. ELEMENTS of Trespass to Chattel

Intent to act on chattel

Interference with chattels

HARM = Dispossession or lost use OR harm to chattel OR plaintiff

* + - * 1. COMME NTS FROM CLASS

Trespass to chattel involves something less than the conversion

Liability – only on interference

CONVERSION v Trespass

Conversion ->Pay for whole car

Trespass -> Rental

* + 1. Forcible Harms and Civil Rights Violations
       1. Section 1983 –most tort law
       2. Default defense of qualified immunity
       3. Benefits
          1. Recover attorney’s fees
          2. Use a federal court
       4. Most common amendments are 14th, 4th, 8th
  1. Ch 4: Defenses to Intentional Torts
     1. Overview
        + 1. Do not challenge the elements of the plaintiff’s prima facie case; rather they supply a good legal reason or justification for the defendants actions that render those actions non-tortious
          2. Prima Facie – alleges facts to support the elements
          3. Affirmative Defense: means defendant has the burden of pleading and proving them

Not denial, but raising new matters.

* + 1. Protecting Against Plaintiff’s Apparent Misconduct
       1. Three types:
          1. Self-defense

Touchet v Hampton (car dealer fight)

* + - * 1. Defense and Repossession of Property

Katko v Briney (spring loaded shotgun)

Brown v Martinez (farmer with melons)

* + - * 1. Arrest and Detention

Gortarez v Smitty’s Supervalu (stole vaporizer)

* + - 1. Overview
         1. Mistakes are allowed. The word “reasonable” becomes critical. EXCEPT for repossession of goods - except shopkeepers privilege
         2. Force must be reasonable
         3. Deadly force to counter deadly force
      2. **Types of Affirmative Defenses**
         1. Self-Defense

Self-Defense

Privilege to use

Reasonable force

To defend against unprivileged acts (battery, assault, false imprisonment)

Reasonably believe to be inflicted

Defense of others

* + - * 1. Defense of Property

Defend against Trespass (traps, weapons)

The force used must be appropriate to the defense of property

Repossession of Chattles (get your stuff back)

Private Citizen Arrest - If the defendant acts in “fresh pursuit” he is privileged to use a reasonable amount of force to defend his possession.

Shopkeeper’s privilege

Reasonable belief plaintiff took goods

Proper purpose for detention

Reasonable manner of detention

* + - * 1. Consent

Legal capacity

NO - Minors

NO - Adults (Crazy pople)

Express

Implied

Medical

* + - * 1. Public and Private Neccessity

RS §196: Public Necessity

….necessary for averting an imminent public disaster

RS §197: Private Necessity

…necessary to prevent serious to actor, his chattels, or 3rd person; subject to liability for any harm done

* + - 1. FROM BARBRI:
         1. Things to check. Two items:

Timing. Have to be acting in the heat of the moment. Have to act to a threat in progress. Cannot act after and seek revenge

You’ve got to have a reasonable belief the threat is genuine.

* + - 1. **Self-Defense**
         1. ELEMENTS

Privilege to use

Reasonable force

To defend against unprivileged acts (Battery, Assault, False Imprisonment)

Reasonably believed to be inflicted

* + - * 1. Overview

One is privileged to use reasonable force to defend against harmful or offensive bodily contact and against confinement. Privilege depends on apparent necessity of self-defense and not actual reality

D’s privilege extends only so far as reasonably necessary to prevent the harm; if the harm threatened is not death or serious bodily injury, then defendant can’t use deadly force

Provocation is not sufficient to raise SD privilege

SD permits one to resist false imprisonment, as well as assaults and batteries

* + - * 1. **CASE: Touchet v Hampton**

***Purpose: to illustrate a legitimate self-defense case by using a bad case.***

Facts: Words said. Period of time had elapsed. Standing up was not imminent threat upon him.

Rule: To escape liability for damages resulting from a battery the defendant may prove that his actions were privileged or justified, such as self-defense.

Defendant’s actions can be justified as self-defense if there was an actual or reasonably apparent threat to his safety and the force applied was not excessive in degree or kind.

* + - * 1. Key considerations:

Privilege of self-defense is based on the prevention of harm to the actor, not the desire for retaliation or revenge, no matter how understandable the desire

Provocation - usually not sufficient to raise the self-defense privilege

Words – even though designed to excite or irritate, cannot excuse a battery.

Mistake – if a defendant mistakenly believes he is being attacked he can still use self-defense.

Excessive Force – the privilege only extends to the use of reasonable force. Any excessive for is unprivileged and the defendant is liable for it.

Nullifies the privilege

Assault or imprisonment – entitled to commit if needed for self-defense.

* + - * 1. Defense of others
        2. CLASS COMMENTS

Can force to forestall and attack

Forfeiture principle – one cannot use for one’s own wrong

* + - 1. **Defense of Property**
         1. **Defend against Trespass**

**CASE: Katko v Briney**

***Purpose: to demonstrate excessive force in defense of property***

Facts: Spring loaded shotgun

Rule: The value of human life outweighs the interest in the possession of land

Illustrates reasonable force

**CASE: Brown v Martinez**

***Purpose: illustrates excessive force***

Rule: The force used must be of a kind appropriate to the defense of the property. The law places a higher value upon human safety than the defense of property.

Can recapture stolen property immediately or in hot pursuit. Once possession has been lost, one cannot forcibly recapture property (like a week later)

CLASS COMMENTS

Use the case of transferred intent on Brown v Martinez

It was sent back as battery but should have been assault (intent to scare)

Understand reasonableness to resort to firearms

There is no privilege to use deadly force for Defense of Property

Both the self-defense privilege and the privilege to defend property allow the defendant to use “reasonable force”

Home Defense Stand your ground allows for two elements: (1) presumption of fear, (2) no duty to retreat.

A warning sign does not make it OK

* + - * 1. **Repossession of Chattel**

Any privilege to regain possession of chattels is limited. In general must go to court.

HOWEVER – if the defendant acts in “fresh pursuit” he is privileged to use a reasonable amount of force to defend the possession

Mistake – there is no privilege.

Observing privileges

In self-defense the issue is frequently whether the defendant reasonably believed that the defense was necessary and then whether he used the amount of force reasonable to cope with the apparent threat.

In false-imprisonment cases a defendant might be privileged to detain for investigation for a short time, but not for a long time.

In common law cases the “degree” is typically not important. However, when considering privilege then degree becomes significant.

* + - * 1. **Arrest and Detention**

**Shopkeepers Privilege**

**CASE: Brown v Martinez**

***Purpose: to illustrate the shopkeepers privilege***

Facts: Plaintiff stole a vaporizer and was detained, head locked, in parking lot outside store.

Rule: Private persons may make an arrest of a misdemeanor of breaching the peace.

ELEMENTS (shopkeepers privilege):

Reasonable cause – must have reasonable cause to believe something stolen

May be incorrect, as long as the belief was reasonable

Purpose of detention – can only be for questioning or calling the authorities

Reasonableness of the detention – must detain in a reasonable manner and for a reasonable time

* + 1. **The Special Case of Consent**
       1. Child and Parent Issues
          1. Discipline – parental immunity of appropriate and reasonable force
          2. Similar notions apply to teachers and bus drivers
       2. Defense of consent
          1. In battery cases, consent or apparent consent conveys the idea that a touching is not offensive
          2. Implied consent subject to custom in usage (e.g. you play football, you should expect to get knocked down)
          3. Consent is not effective if a person lacks capacity to give consent (*Reavis v. Slominski* p.92)

Incapacity of an adult P renders her consent ineffective only if her condition substantially impairs her capacity to understand and weigh the harm and risks of harm against the benefits flowing from the proposed conduct

The P’s incapacity does not render her consent ineffective unless the D has knowledge of that incapacity

* + - * 1. Power relationships have the potential to influence consent
        2. Exceeding the scope of consent can result in battery claims (e.g. agree to blood transfusion from family members, but the hospital gives you other people’s blood and you get AIDS)
        3. Battery is different from informed consent cases, where patients express consent for an operation without being adequately told about the nature/risks of the procedure
        4. Minors can consent to a number of age appropriate touching (8 yr. old can consent to football, 16 yr. old can consent to a doctor fixing his broken arm in the ER)
        5. Some courts hold that consenting to an illegal act is ineffective. Some courts will hold that no one can found a cause on an illegal act. The RS provides that consent is generally effective for an illegal act
        6. Except under certain circumstances, one revoke consent at any time by communicating that revocation to the D
        7. One who knows he has a venereal disease and knows his sexual partner does not know about it, commits a battery by having sexual intercourse
        8. In general, consent procured by fraud is not consent at all; fraud must be about the nature of consented to conduct, not about collateral matters like price or timing
      1. Facts are critical to the issue of consent
         1. Power relationships
         2. Employers
         3. Incapacity to Consent – minors
         4. Incapacity to Consent – adults
         5. Exceeding scope of consent – patients can sue when consent exceeded
         6. Emergencies – ordinary rule that it is a battery when a doctor treats a patient without his consent, or in excess of the scope of a patient’s consent. May not apply in an emergency when obtaining consent is not possible.
         7. Substituted consent
         8. Incompetence to give or withhold consent
      2. Express Consent
         1. In battery cases, consent or apparent consent conveys the idea that a touching is not offensive
         2. **Can be negated by fraud or duress**
         3. Can be denied by fraud

The Doe v Johnson case

Consent procured by fraud is not valid

Revocation – subject only to the slightest qualification, the plaintiff can consent at any time by communicating the revocation

* + - * 1. Consent to crime – when the plaintiff is injured during an illegal activity which he has agreed to participates courts have struggled to find a consistent answer
      1. Implied consent
         1. Consent by custom
         2. Case specific

And related by the plaintiff’s own conduct. A case where the defendant is interacting with the plaintiff and reads the overt gestures.

“body language consent”

* + - 1. FROM CLASS
         1. Consent – not raising new matters
         2. Consent negates a prima facia case
         3. Consent to an act will bar recovery from harm resulting from the act.
         4. Appearance of consent negates intent to offend (no prima facia case)
    1. **Public and Private Necessity**
       1. RS §196: Public Necessity (p.27) (…necessary for averting an imminent public disaster)
       2. RS §197: Private Necessity (p.28) (…necessary to prevent serious to actor, his chattels, or 3rd person; subject to liability for any harm done)
       3. Necessity defenses are next. Necessity defenses only apply to property torts. Going to involve property breaking in or the defendant is going to take personal property like stealing a car.
       4. Public necessity
          1. The the defendant invading property in an emergency as a whole to protect the community as a whole.
          2. Rule: The privilege of public necessity protects against actual harms done, where public, rather than the private interests are involved. That the defendant had a reasonable belief that action was needed and the action he took was a reasonable response to that need.
       5. Private Necessity
          1. CASE: **Ploof v. Putnam**

Purpose: Illustrates you cannot be put into harm’s way

P was justified in mooring his sloop on the dock of the D.

Rule: You can trespass out of necessity and the D had no right to unmoor the sloop, which was a trespass against it, because of the storm.

Under RS §197, to seek shelter and protect goods you are allowed to trespass

* + - * 1. CASE: **Vincent v. Lake Erie Transportation Co.**

Purpose: illustrate private necessity, limited compensation to damages done.

Facts: D’s steamship moored on Vincent’s dock. Unloading finished but there was a heavy storm. The steamship remained dock because of the poor weather conditions. The ship caused $500 worth of damage to the dock, which Vincent wants to recover

Issue: Private Necessity

Rule: Public necessity may require the taking of private property for public purposes; but compensation must be made, especially since the D availed himself to Vincent’s property.