TORTS

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I. INTENTIONAL TORTS

A. PRIMA FACIE CASE

To establish a prima facie case for intentional tort liability, it is generally necessary that plaintiff prove the following:

(i) ***Act*** by defendant;

(ii) ***Intent***; and

(iii) ***Causation***.

1. Act by Defendant

The "act" requirement for intentional tort liability refers to a ***volitional movement*** on defendant's part.

Examples: 1) Chauncey tripped and was falling. To break the fall, Chauncey stretched out his hand, which struck Darby. Even though the movement was reflexive, it nonetheless was one dictated by the mind, and hence will be characterized as volitional.

2) Lulu suffered an epileptic attack. During the course of it, she struck Darby. This is not a volitional act.

3) Chauncey pushed Lulu into Darby. Chauncey has committed a volitional act; Lulu has not.

2. Intent

The requisite intent for this type of tort liability may be either specific or general.

a. Specific Intent

An actor "intends" the consequences of his conduct if his ***goal*** in acting is to bring about these consequences.

b. General Intent

An actor "intends" the consequences of his conduct if he ***knows with substantial certainty*** that these consequences will result.

Example: D, five years old, pulls a chair out from under P as she is sitting down. Even if D did not desire that she hit the ground, if he knew with substantial certainty that she was trying to sit and would hit the ground, he will have the intent necessary for battery. [Garratt v. Dailey, 279 P.2d 1091 (Wash. 1955)]

c. Actor Need Not Intend Injury

The intent of the actor that is relevant for purposes of intentional torts is the intent to bring about the consequences that are the basis of the tort. Thus, a person may be liable even for an unintended injury if he intended to bring about such "basis of the tort" consequences.

Example: A intends to push B and does so. B falls and breaks his arm. This conduct gives rise to a cause of action for battery. The "consequences"

that are the basis of this tort are harmful or offensive contact to the plaintiff's person. In this case, the actor intended to bring about harmful or offensive contact to B. Hence, he will be liable even though it was not intended that B break his arm.

d. Transferred Intent

1) General Rule

The transferred intent doctrine applies where the defendant intends to commit a tort against one person but instead (i) commits a different tort against that person, (ii) commits the same tort as intended but against a different person, or (iii) commits a different tort against a different person. In such cases, the ***intent to commit a tort against one person is transferred to the other tort or to the injured person*** for purposes of establishing a prima facie case.

Example: A swings at B, intending only to frighten him. A's blow lands on C. A's intent to commit assault on B is transferred to C, and A's act constitutes a battery on C.

2) Limitations on Use of Transferred Intent

Transferred intent may be invoked only where the tort intended and the tort that results are both within the following list:

a) Assault;

b) Battery;

c) False imprisonment;

d) Trespass to land; and

e) Trespass to chattels.

e. Motive Distinguished

Motive impels a person to act to achieve a result. ***Intent*** denotes the purpose to use a particular means to effect that result. ***Only the intent is relevant*** for purposes of establishing the prima facie case. Thus, for example, even though defendant acts without a hostile motive or desire to do any harm, or even where he is seeking to aid the plaintiff, he may be liable.

Note: Evil motive is not an essential element of most torts, but ***malice*** or ulterior purpose is an essential element of some (*e.g.,* malicious prosecution, abuse of process). Further, malice may sometimes negate a privilege that defendant might have, and it may permit the recovery of ***punitive damages***.

f. Minors and Incompetents Can Have Requisite Intent

Under the majority view, both minors and incompetents will be ***liable*** for their intentional torts; *i.e.,* they are held to possess the requisite intent.

3. Causation

The result giving rise to liability must have been legally caused by the defendant's act or

something set in motion thereby. The causation requirement will be satisfied where the ***conduct of defendant is a substantial factor*** in bringing about the injury.

B. PRIMA FACIE CASE—INTENTIONAL TORTS TO THE PERSON

1. Battery

a. Prima Facie Case

To establish a prima facie case for battery, the following elements must be proved:

1) An act by the defendant which brings about ***harmful*** or ***offensive contact*** to the plaintiff's person;

2) ***Intent*** on the part of the defendant to bring about harmful or offensive contact to the plaintiff's person; and

3) ***Causation***.

b. Harmful or Offensive Contact

Whether any given contact is to be construed as harmful or offensive is judged by whether it would be considered harmful or offensive by a ***reasonable person*** of ordinary sensibilities. Contact is deemed "offensive" if the plaintiff has not expressly or impliedly consented to it (*see* D.1., *infra*).

c. Meaning of "Plaintiff's Person"

For purposes of a battery, anything ***connected*** to the plaintiff's person is viewed as part of the plaintiff's person.

Example: Chauncey grabbed Lulu's purse, which was hanging from her shoulder. He may be liable for a battery. (He would also be liable if he had grabbed an article of clothing she was wearing, a cane she was holding, etc.)

d. Causation

The defendant is liable not only for "direct" contact, but also for "indirect" contact; *i.e.,* it will be sufficient if he ***sets in motion a force*** that brings about harmful or offensive contact to the plaintiff's person.

Examples: 1) Chauncey, intending to set a trap, dug a hole in the road upon which Lulu was going to walk. Lulu fell in. Causation exists.

2) Horace struck a glass door so that the breaking glass cut Bowater. Causation exists.

e. Apprehension Not Necessary

A person may recover for battery even though he is not conscious of the harmful or offensive contact when it occurs (*e.g.,* unauthorized surgery performed on unconscious patient).

f. Transferred Intent

The doctrine of transferred intent ***applies*** in battery cases.