

INTENTIONAL TORTS

RTT §1: Intent

A person intentionally causes harm if the person brings about that harm either purposefully or knowingly. (1) Purpose. A person purposefully causes harm if the person acts with the desire to bring about that harm. (2) Knowledge. A person knowingly causes harm if the person engaged in action knowing that harm is substantially certain to occur. (8). Also RST §8A.

RST §2: Act

Act is used to denote an external manifestation of the actor's will and does not include any of its results, even the most direct, immediate, and intended. A muscular reaction is always an act unless it's a purely reflexive reaction in which the mind and will have no share. (33)

RST §21: Assault

(1) An actor is subject to liability to another for assault if (a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and (b) the other person is thereby put in such imminent apprehension. RT §24(b) distinguishes between apprehension and fright. (64).

RST §§13, 18: Battery

(1) An actor is subject to liability to another for battery if (a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and (b) an offensive contact with the person of the other directly or indirectly results. (2) An act which is not done with the intention stated in (1)(a) does not make the actor liable to the other for a mere offensive contact with the other's person although the act involves an unreasonable risk of inflicting it and, therefore, would be negligent or reckless if the risk threatened bodily harm.

Protection afforded against offensive battery covers not only cases of direct contact with P's person, but also contact with anything so closely attached to P's person that it's customarily regarded as a part thereof and which is offensive to a reasonable sense of personal dignity. (66)

Knowledge that unpermitted conduct has taken place isn't necessary to establish battery.

RST §36: False Imprisonment

The area within which another is completely confined may be large and need not be stationary. Whether the area from which the actor prevents the other from going is so large that it ceases to be a confinement within the area and becomes an exclusion from some other area may depend upon the circumstances of the particular case and be a matter for the judgment of the court and jury. (69)

(2) If there is a reasonable means of escape, but P doesn't know of it, still imprisonment.

Usually the D must intend to confine the P, with *no liability for negligently caused imprisonments*. RST §35. (70).

RST §46: Outrageous Conduct Causing Severe Emotional Distress

(1) One who by *extreme and outrageous* conduct *intentionally or recklessly* causes *severe* emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm. (2) Where such conduct is directed at a third person, the actor is subject to liability if the intentionally or recklessly causes severe

emotional distress (a) to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm, or (b) to any other person who is present at the time, if such distress results in bodily harm. (78-79). Once bodily harm is shown, one can recover for purely emotional harm as well.

(F) The extreme and outrageous character of the conduct may arise from the actor's knowledge that the other is *peculiarly susceptible* to emotional distress, by reason of some physical or mental condition or peculiarity. The conduct may become heartless, flagrant, and outrageous when the actor proceeds in the face of such knowledge, where it would not be so if he did not know" (79). Thus D probably had to be aware of the peculiar sensitivity.

(K) If P suffered emotional harm, has sought medical attention & act was outrageous, physical harm is not required, except for in a minority of courts - but it's good evidence of IIED.

Recklessness: deliberate disregard of a high probability that the distress would occur.

RST §435B: **Scope of Liability**

The intentional tortfeasor will be liable for virtually every result stemming directly or even somewhat indirectly from his conduct, however unlikely it might have seemed at the time of his act that this result would follow. Given poison in the hospital example.

DEFENSES TO INTENTIONAL TORTS

RT §§60, 61: **Consent** (Hudson v. Craft)

An assent which satisfies the rules stated "prevents an invasion from being tortious and, therefore, actionable, although the invasion assented to constitutes a crime." (22)

Exception: "Where it is a crime to inflict a particular invasion of an interest of personality upon a particular class of persons, irrespective of their assent, and the policy of the law is primarily to protect the interests of such a class of persons from their inability to appreciate the consequences of such an invasion, and it is not solely to protect the interests of the public, the assent of such a person to such an invasion is not a consent thereto." (23)

RST §197: **Necessity**

Necessity is a conditional or incomplete privilege. The D may use or damage P's property in ways that he could not do in the absence of necessity, but, in contrast to self-defense, he must pay for the privilege with reasonable rental value or compensation for lost or damaged property, as the case may be. (56)

RTT §2: **Recklessness**

An actor recklessly causes harm if: (1) the actor knows of the risk of harm created by his conduct, or knows facts that make that risk obvious to anyone in the actor's situation, and (2) the precaution that would eliminate or reduce that risk involves burdens that are so slight relative to the magnitude of the risk as to render highly blameworthy the actor's failure to adopt the precaution. (27) (addressing injuries in athletics).

RST §895J: **Insanity**

An insane person may have an intent to invade the interests of another, even though his reason and motives for forming that intention may be entirely irrational. (33) (Napoleon ex.).

RST §283(b): Insanity

Insanity is generally not a defense in tort cases except for intentional torts. (171)

RST §§65, 66: Self-Defense

D may use whatever degree of bodily force is necessary to defend against imminent harmful or offensive contact. The D may not use deadly force unless she herself is in danger of death or serious bodily harm. Even where D is threatened by death or serious bodily harm, she may not use deadly force if a lesser degree of force would suffice to dispel the danger.

Institute expresses no opinion as to whether there is a similar privilege of self-defense against conduct which the actor recognizes, or should recognize, to be entirely innocent. (36)

RST §75: Self-Defense Liability to Third Parties

The Defendant is liable to the innocent third party “only if the actor realizes or should realize that his act creates an unreasonable risk of causing such harm.” (36)

RST §76: Defense of Third Parties

A person is privileged to defend a third party “under the same conditions and by the same means as those under and by which he is privileged to defend himself if the actor correctly or reasonably believes” that the third party is entitled to use force in self-defense and that his own intervention is necessary to protect that party. (38)

RST §77: Defense of Property

The property owner may use only as much force as appears necessary to protect the property. (C) The owner must first make a verbal demand that the intruder stop, before using force, unless it reasonably appears that violence or other harm will occur immediately, or that the request to stop will be useless.

RST §85: Use of Mechanical Device Threatening Death or Serious Bodily Injury

The actor is so far privileged to use a device intended or likely to cause serious bodily harm or death for the purpose of protecting his land or chattels from intrusion that he is not liable for the serious bodily harm or death thereby caused to an intruder whose intrusion is, in fact, such that the actor, were he present, would be privileged to prevent or terminate it by the intentional infliction of such harm. (46)

RST §143: Two Tiered Privilege for the Use of Force

For felonies in general any “peace officer or private person” may use force “which is not intended or likely to cause death or serious bodily harm” as long as lesser force cannot achieve the same end. But when the felony threatens either death or serious bodily harm, or involves breaking and entering a dwelling, then the actor may use force or impose confinement “intended or likely to cause death or serious bodily harm,” again if lesser means to prevent the crime are not available. (46)

RST §101: Recapture of Chattels

The privilege of recapture is allowed when one person wrongfully obtained possession of the chattel by either force, fraud, or without claim of right. (48-49).

NEGLIGENCE

RST §282: Negligence

Negligence is defined as engaging in “conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm.” (154)

RTT §4: Negligence - The Balancing Approach

The test to determine negligence is commonly said to require a “balancing of interests” to determine whether the risks taken by D are justified by the ends sought. (154)

An actor is negligent if engaging in conduct if the actor does not exercise reasonable care under all the circumstances. Primary factors to consider in ascertaining whether conduct lacks reasonable care are the foreseeable likelihood that it will result in harm, the foreseeable severity of the harm that may ensue, and the burden that would be borne by the actor and others if the actor takes precautions that eliminate or reduce the possibility of harm. (192)

RST §299: Beginners and Experts

Endorses a rule requiring a D meet the objective standard of care. When a D has greater skills than most people in that line of endeavor, the D is “required to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities,” but that standard is subject to an important caveat - “unless he represents that he has greater or less skill” than the average. (164-5)

RTT:GP §10: Beginners and Experts

The case for this rule is strongest when two parties have a prior consensual arrangement, or when D is engaged in dangerous activities. But it expresses some doubt as to whether the skilled D should be held to a higher standard if sued for a skiing accident or highway collision. Below average skills and judgment are ‘generally ignored’ in order to resist the multiplication of separate standards and to forestall risk of fraud. But the differential may be taken into account when inexperienced D received driving instructions from P, even when that special status would be irrelevant to a suit brought by an injured pedestrian who did not assume the risk. (164-5).

RTT:GP §8: Culpability of Children

A child is held to the standard of “a reasonably careful person of the same age, intelligence, and experience.” A child under five years is not capable of negligence. (168-9)

RTT:GP §4: Comparative Negligence

Comparative negligence reduces the impact of a finding of comparative negligence by allowing apportionment of loss between the parties, and specifically for children. Some differences may still be required in professional interactions between physicians and patients, given the fundamental difference in roles. (170).

RTT:GP §9(a): Physical Disabilities

The conduct of a person with a physical disability “is negligent if it does not conform to that of a reasonably careful person with the same disability.” (174)

RTT:GP §7: Emergency Instruction

“If an actor is confronted with an unexpected emergency requiring rapid response, this is

a circumstance to be taken into account in determining whether the actor's resulting conduct is that of the reasonably careful person." (177)

RST §281: Risk to Class of Which Plaintiff is a Member

If the actor's conduct creates a recognizable risk of harm only to a particular class of persons, the fact that it causes harm to a person of a different class, to whom the actor could not reasonably have anticipated injury, does not render the actor liable to the persons so injured. (Following Cardozo's Palsgraf decision) (511)

RST §291-295: Shifting of Liability

The law doesn't contemplate a shifting duty that requires care towards A, then discovers a duty to avoid injury incidentally suffered by B because there was due care with respect to A. Such a shifting is entirely inconsistent with the fundamental conception that the duty of due care requires precisely the measure of care that is reasonable under all the circumstances. (188)

RTT:GP §11(a): Custom

Compliance with community's custom is evidence that an actor's conduct isn't negligent, but doesn't preclude a finding of negligence, while departure from custom in a way that increases risks is evidence of actor's negligence, but doesn't require finding of negligence. (209)

RTT:GP §12: Statutory Violations as Negligence Per Se

An actor is negligent if, without excuse, the actor violates a statute that is designed to protect against they type of accident the actor's conduct causes, and if the accident victim is within the class of persons the statute is designed to protect. [Consider as excuse: necessity, emergency, incapacity] (247)

A statute involved in a negligence case provides for some penalty to be administered by the state, usually a fine, but sometime incarceration or, on occasion, injunctive relief. (242-3)

Distinguish case where driver doesn't have a license because he failed to file for renewal from one where D doesn't have a license because he failed a driving test. Where evidence is presented which raises an issue regarding a driver's incompetence or inexperience as a causal factor in an accident, the jury may be instructed that it may draw an inference of negligence from the violation of the licensing statute. (256-7)

RTT:GP §13(b); RST §288A: Excusing Violations of a Statute

Statutory violations may be excused by necessity, emergency, or by reason of incapacity, as is the case with various forms of common-law negligence. Statutory causes of action should be judged by negligence, not strict liability standards, by providing that a statutory violation is excused when "actor exercises reasonable care in attempting to comply with the statute." (253)

RST §876: Serving Alcohol

Persons who give substantial assistance to the party who actually served the alcohol could be sued for accomplice liability. (265)

RTT:GP §5(d): Following *Pokora*

Rejects the idea that uniform rules can decide concrete cases: "what looks at first to be a constant or recurring issues of conduct in which many parties engage may reveal on closer inspection many variables that can best be considered on a case-by-case basis." (276)

RST §328(D): **Res Ipsa Loquitor**

(1) It may be inferred that harm suffered by P is caused by negligence of D when (a) the event is of a kind which ordinarily doesn't occur absent negligence; (b) other responsible causes, including conduct of P and third persons, are sufficiently eliminated by evidence; and (c) the indicated negligence is within the scope of D's duty to P. (2) It is the court's function to determine whether the inference may be reasonably drawn by the jury, or whether it must be necessarily drawn. (3) It is the jury's function to determine whether the inference is to be drawn in any case where different conclusions may be reasonably reached. (284)

RTT §15: **Res Ipsa Loquitor**

It may be inferred that the D has been negligent when the accident causing the P's physical harm is a type of accident that ordinarily happens because of the negligence of the class of actors of which the D is the relevant member. (284)

Only in very unusual situations does the P's *res ipsa loquitor* claim justify a directed verdict in favor of the P. (288)

The exclusive control requirement functions as a poor proxy for negligence, giving as its example a car whose brakes fail one day after the initial purchase. Although the driver is in exclusive control of the care, good reason lies to fix the blame on the manufacturer. (295)

RST §§479 and 480: **Last Clear Chance: Helpless P and Inattentive P** (333)

RST §491: **Imputed Negligence, Joint Enterprise & Vicarious Liability**

Although a joint enterprise could conceivably be found from the simple driver-passenger relationship, the courts have tended to construe the requirements of a joint enterprise narrowly, sometimes dwelling on the "community of interest" that such an enterprise presupposes. (339)

RST §496(E): **Voluntary Assumption of the Risk**

Lesser of two evils; the boar and neighbor example. (352)

RST §323: **Liability for Rendering Aid & Lost Chance Doctrine**

One who undertakes to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm. (455)

RST §448: **Intentionally Tortious or Criminal Acts Done Under Opportunity Afforded by Actor's Negligence.**

The act of a third person in committing an intentional tort or crime is a superseding cause of harm to another resulting therefrom, although the actor's negligent conduct created a situation which afforded an opportunity to the third person to commit such a tort or crime, unless the actor at the time of his negligent conduct realized or should have realized the likelihood that such a situation might be created, and that a third person might avail himself of the opportunity to commit such a tort or crime. (See Brower) (493)

RST §449: **Tortious or Criminal Acts the Probability of Which Makes Actor's Conduct Negligence.**

If the likelihood that a third person may act in a particular manner is the hazard or one of

the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious, or criminal does not prevent the actor from being liable for harm caused thereby. (See Bigbee) (493)

RST §281(c): Risk to Class of Which Plaintiff is a Member

If the actor's conduct creates a recognizable risk of harm only to a particular class of persons, the fact that it causes harm to a person of a different class, to whom the actor could not reasonably have anticipated injury, does not render the actor liable to the persons so injured. (Following Cardozo's duty reasoning in Palsgraf) (511)

RST §322: Duty to Aid Another Harmed by Actor's Conduct

If the actor knows or has reason to know that by his conduct, whether tortious or innocent, he has caused such bodily harm to another as to make him helpless and in danger of further harm, the actor is under a duty to exercise reasonable care to prevent such further harm. (562)

RST §324: Duty of One Who Takes Charge of Another Who is Helpless

One who, being under no duty to do so, takes charge of another who is helpless adequately to aid or protect himself is subject to liability to the other for any bodily harm caused to him by (a) the failure of the actor to exercise reasonable care to secure the safety of the other while within the actor's charge, or (b) the actor's discontinuing his aid or protection, if by so doing he leaves the other in a worse position than when the actor took charge of him. (564)

RST §327: Preventing the Aid of Third Parties to the Injured

Any person who knows or has reason to know that a third person is giving or is ready to give another aid necessary to prevent physical harm to an endangered person is tortiously liable if he negligently prevents or disables the third person from giving such aid. (564)

RST §431: What Constitutes Legal Cause: Substantial Factor Test

The actor's negligent conduct is a legal cause of harm to another if (a) his conduct is a substantial factor in bringing about the harm, and (b) there is no rule of law relieving the actor from liability because of the manner in which his negligence has resulted in the harm.

Comment a distinguishes between substantial cause and cause in the philosophical sense. (Adopting Andrews' dissenting opinion from Palsgraf, regarding what constitutes legal, or proximate, cause) (512)

RST §433A: Apportionment of Harm to Causes (in Joint & Several Liability)

(1) Damages for harm are to be apportioned among two or more causes where (a) there are distinct harms, or (b) there is a reasonable basis for determining the contribution of each cause to a single harm. (2) Damages for any other harm cannot be apportioned among two or more causes. (See Kingston) (464)

RST §315: Conduct of Third Parties

There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless (a) a special relationship exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relation exists between the actor and the other which gives the other a right to protection. (See Weirum) (606)

STRICT LIABILITY

RST §504: Treatment of Trespassing Animals

Strict liability of the “possessor” of trespassing livestock does not extend to harm (a) not reasonably to be expected from the intrusion, (b) done by animals straying onto abutting land while driven on the highway, or (c) brought about by the unexpected operation of a force of nature, action of another animal or intentional, reckless or negligent conduct of a third person. (E) Regarding bailments. (643)

RST §519: General Principle: Abnormally Dangerous Activity

(1) One who carries on an abnormally dangerous activity is subject to liability for harm to the person, land or chattels of another resulting from the activity, although he has exercised the utmost care to prevent the harm. (2) This strict liability is *limited to the kind of harm, the possibility of which makes the activity abnormally dangerous*. (652)

RST §520: Abnormally Dangerous Activity Factors

In determining whether an activity is abnormally dangerous, the following factors are to be considered: (a) existence of a high degree of risk of some harm to the person, land or chattels of others; (b) likelihood that the harm that results from it will be great; (c) inability to eliminate the risk by the exercise of reasonable care; (d) extent to which the activity is not a matter of common usage; (e) inappropriateness of the activity to the place where it is carried on and; (f) extent to which its value to the community is outweighed by its dangerous attributes. (652-3)

RST §521: Carriage of Dangerous Materials

The usual view is that common carriers are not subject to strict liability for the carriage of materials that make the transportation of them abnormally dangerous, because a common carrier cannot refuse service to a shipper of a lawful commodity. (665) * Been challenged.

RST §522: Contributing Actions of Third Persons, Animals and Forces of Nature

One carrying on an ultrahazardous activity is liable for harm under the rule stated in §519, although the harm is caused by the unexpected (a) innocent, negligent or reckless conduct of a third person, or (b) action of an animal, or (c) operation of a force of nature. (655)

RST §523: Assumption of Risk and Strict Liability

The P’s assumption of the risk of harm from an abnormally dangerous activity bars his recovery for the harm. (655)

RST §524: Contributory Negligence and Strict Liability

(1) Except as stated in (2), the contributory negligence of the P is not a defense to the strict liability of one who carries on an abnormally dangerous activity. (2) The P’s contributory negligence in knowingly and unreasonably subjecting himself to the risk of harm from the activity is a defense to strict liability. (655)

RST §524A: P’s Abnormally Sensitive Activity

There is no strict liability for harm caused by an abnormally dangerous activity if the harm would not have resulted but for the abnormally sensitive character of the P’s activity. (656)

RST 520A: Ground Damage from Aircraft (657)

NUISANCE

RST §821 : **Nuisance**

(D) Nuisance is “a nontrespassory invasion of another’s interest in the private use and enjoyment of land.” (671). They use this phrase broadly to include more than freedom from detrimental change in the physical condition of the land itself: that it comprehends the pleasure, comfort and enjoyment that a person normally derives from the occupancy of land. (672)

(F) There is liability for a nuisance only to those to whom it causes significant harm, of a kind that would be suffered by a normal person in the community or by property in normal condition and used for a normal purpose. (Following Rogers v. Elliott). (687)

RST §826: **Unreasonableness of Intentional Invasion**

An intentional invasion of another’s interest in the use and enjoyment of land is unreasonable if: (a) the gravity of the harm outweighs the utility of the actor’s conduct, or (b) the harm caused by the conduct is serious and the financial burden of compensating for this and similar harm to others would not make the continuation of the conduct not feasible. (676)

RST §827: **Substantial Injury**

Where the invasion involves physical damages to tangible property, the gravity of the harm is ordinarily regarded as great even though the extent of the harm is relatively small. But where the invasion involves only personal discomfort and annoyance, the gravity of the harm is generally regarded as slight unless the invasion is substantial and continuing. In any event it is apparent that a continued invasion of a P’s interests by nonnegligent conduct, when the actor knows of the nature of the injury inflicted, is an intentional tort, and the fact the hurt is administered nonnegligently is not a defense for liability. (677)

RST §840: **Defenses to Nuisance**

(C) Assumption of risk should be a defense in nuisance actions “to the same extent as in other tort actions.”

(D) “The fact that the P has acquired or improved his land after a nuisance interfering with it has come into existence is not in itself sufficient to bar his action, but is a factor to be considered in determining whether the nuisance is actionable.” (692)

DAMAGES

RST §908: **Punitive Damages**

An intentional tort victim may recover punitive damages, if D’s conduct was outrageous or malicious. Even if little or no compensatory damages. Punitive damages are not awardable in ordinary negligence cases.