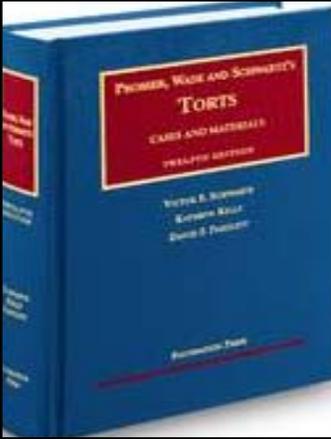


Torts

Professor Pope

Class 1: Aug. 23, 2011



11th or 12th
will work
fine

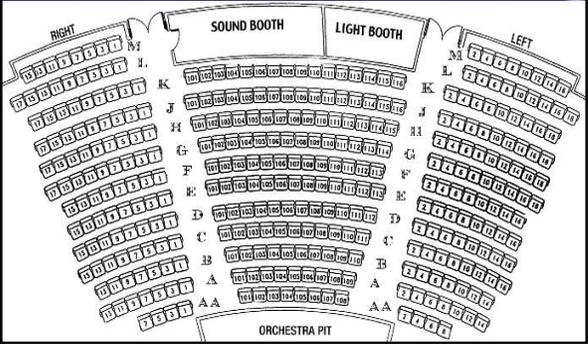


Attendance Chart

- children are in our class.
- children are here today.
- children are absent today.

Primary Source, LLC

Name + Brief background



This week only

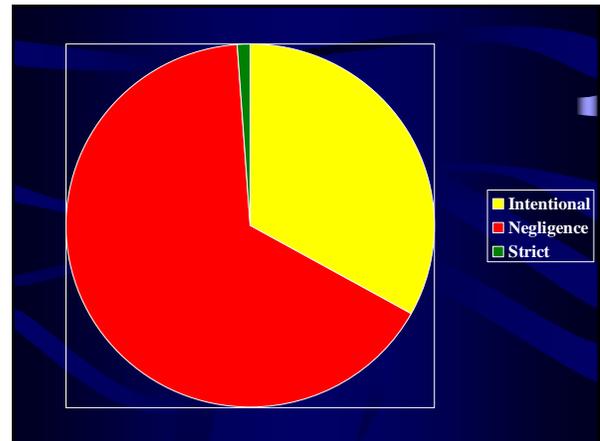
Thursday Vale Moot Ct

Friday P-302

30,000 feet

**THE
MBE**
MULTISTATE BAR EXAMINATION

- Constitutional Law (31)
- Contracts (33)
- Criminal Law and Procedure (31)
- Evidence (31)
- Real Property (31)
- **Torts (33)**



Negligence	50%
Intentional torts	12.5%
Products liability	12.5%
Strict liability	12.5%
Business torts	12.5%

Torts is
deceptively
easy

DiGeronimo v. Fuchs (N.Y. Sup. Ct. 2011)

JW said “no transfusion”
Bleeding after delivery
Dr. Fuchs transfused
JW sued for med mal

Learning tort rules
and doctrines is
only one goal of
this course

3hr study per classroom
hour

4 class hour x 3 = 12
outside hours

Passive

Read cases

Read hornbook

Active

Briefing

Outlining

Practice exams

Lots of evaluation

Midterm

Quizzes

Final exam

Learn **from**
(and not just **for**)
the midterm

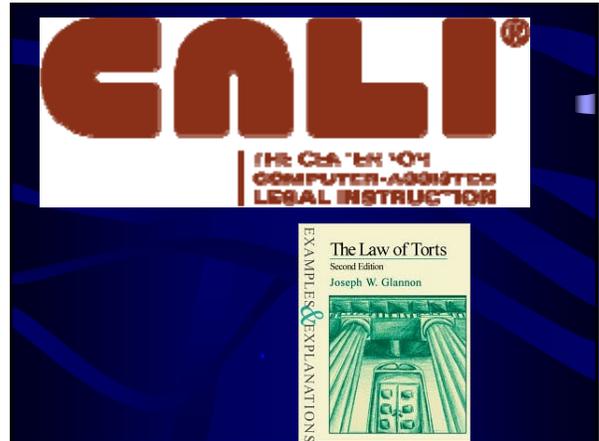
[law.widener.edu/LawLibrary/
Services/ExamArchive.aspx](http://law.widener.edu/LawLibrary/Services/ExamArchive.aspx)

Old midterms

Old final exams

Feedback memos

Model answers



Intentional Torts

- Intentional torts**
- Battery
 - Assault
 - False imprisonment
 - IIED
 - Trespass to property
 - Trespass to chattels
 - Conversion

Plaintiff must establish elements of each tort she brings

One element of each of these is intent

- PRIVILEGES**
- Self defense
 - Defense others
 - Defense property
 - Recover property
 - Consent
 - Authority law
 - Discipline
 - Public necessity
 - Private necessity
 - Justification

Interest invaded	Torts	Privileges
Physical	Battery False imprisonment	Consent Self-defense Defense others Discipline Justification
Mental	Assault IIED	same
Property	Trespass land Trespass chattel Conversion	Recovery property Public necessity Private necessity Consent

- I. Intentional torts
- A. Harms to the person: assault, battery, false imprisonment, infliction of mental distress
 - B. Harms to property interests: trespass to land and chattels, conversion
 - C. Defenses to claims for physical harms
 - 1. Consent
 - 2. Privileges and immunities: protection of self and others; protection of property interests; parental discipline; protection of public interests; necessity; incomplete privilege

Intentional torts

Done, late September

Sole coverage of Midterm
(Friday, October 14, 2011
from 10:00-11:15 a.m.)

Intent

Introduction

These are battery & assault cases (except Ranson)

We will look at battery & assault over the next 3 classes

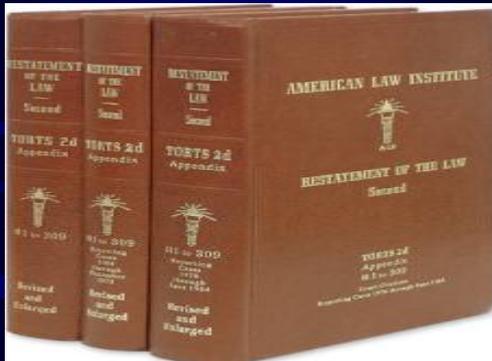
Here, our focus is on just 1 element of battery & assault (and all intentional torts): **intent**

Battery

2 elements
Plaintiff's burden

1. DEF **intended** a harmful or offensive contact with PTF 
2. DEF caused a harmful or offensive contact with PTF

Restatement of Torts



The ALI **distills** "black letter law" from cases, to indicate a trend in common law, and, occasionally, to recommend what a rule of law should be.

In essence, they **restate** existing common law into a series of principles or rules

Justice Cardozo (1924)

When, finally, it goes out . . . after all this testing and retesting, it will be something less than a code and something more than a treatise.

It will be invested with unique authority, not to command, but to persuade. . . .



Rest.2d Torts 8A

Intent includes **both**
general intent
and
specific intent

Either one is
sufficient to
establish intent

Specific intent

“All consequences which the actor **desires** to bring about are intended.”

General intent

“If the actor **knows** that the consequences are **certain, or substantially certain**, to result from his act, and still goes ahead, he is treated by the law as if he had in fact desired to produce the result.”

Specific intent: want it to happen

General intent: know it substantially certain to happen

~~**Reckless:** know it very likely to happen~~

~~**Negligence:** know it might happen~~

Desired

Certain

Substantially certain

Very probable

Probable

Possible

Impossible

EITHER is sufficient

Desire conduct to cause consequences (HOC)

Know conduct **substantially certain** to cause consequences (HOC)

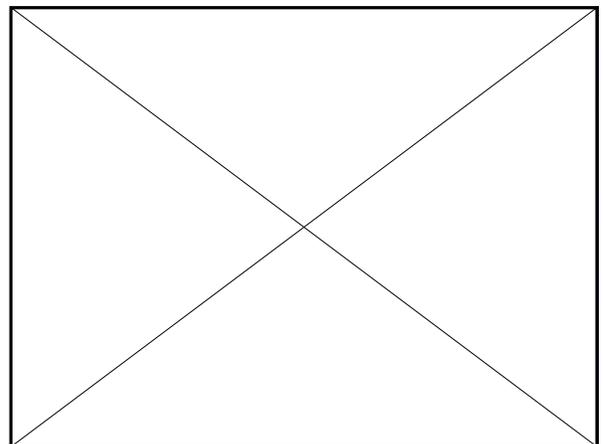
Intend to do act

Intend act with knowledge that risking consequences

Intend act knowing consequences substantially certain to result

Intend consequences of act

~~Intend to cause specific harm~~



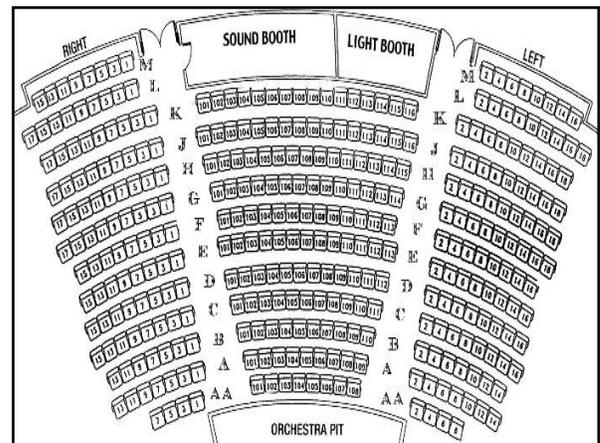
Torts

Professor Pope

Class 2: Aug. 25, 2011

Tomorrow P-302

All other days P-401



IRAC

Issue: Did Vincent commit a battery on Marvin

Rule: Battery if
DEF intended HOC
DEF caused HOC

Analysis: The most important of IRAC, by far

Conclusion: No battery

Analysis

“Match-up” rules and facts

Make your argument as strong as possible

Recognize weaknesses

Elements	Facts
HOC	DEF shot PTF in face
Intent	Subjective desire No evidence for this
	Knowledge with substantial certainty Some evidence for this

M v. V: Battery

Vincent **caused HOC** on Marvin. He pulled trigger of a loaded gun and shot Marvin in the face.

Vincent shot Marvin **with intent** because he knew that it was substantially certain to happen where he was holding a loaded gun, pointing at Marvin, while driving over a bumpy road

Intent Cases

PWS 17

Garrat v. Dailey



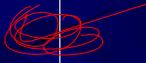
Procedural posture

We are usually reading **appellate** cases

What **trial** court ruling is at issue

PTF is suing for battery

Did Brian intend HOC	
Did Brian cause HOC	

	Subjective desire that PTF fall	Knowledge that substantially certain fall
Brian testimony		
Ruth testimony		



But Brian is only 5-years-old

How does that affect the analysis

PWS 20

Spivey
v.
Battaglia



Must be 1 or the other

Negligence → can proceed

Battery → barred by SOL

Trial court: Battery → summary judgment for DEF

DEFs want it to be intentional

Shorter SOL

No vicarious liability

No insurance coverage

DEF argue intentional

PTF argue **not** intentional

Spivey court reasoning
strained

Notwithstanding result,
DEF **did desire** to cause
HOC

Irrelevant that did not desire
or know about specific HOC
consequences (paralysis)

Did desire to cause OC, even
if not HC

PWS 24

Ranson v. Kitner



©Tanja Askani / fishing4

PWS 25

McGuire v. Almy



Intent Summary

Either is sufficient for intent

Desire conduct to cause
consequences (HOC)

Know conduct **substantially certain**
to cause consequences (HOC)

Garrat v. Dailey

No *per se* exception for

Children	<i>Garrat v. Dailey</i>
Insane	<i>McGuire v. Almy</i>

Intent **not negated** by
mistake of identity

Ranson v. Kitner

Torts

Professor Pope

Class 3: Aug. 25, 2011

Next week

Back in P-401

PWS 17

Garrat
v.
Dailey

Page 19

“mere absence of any intent to injure plaintiff would not absolve him if in fact he had such knowledge . . . With substantial certainty that plaintiff would attempt to sit”

PWS 20

Spivey
v.
Battaglia

If DEF had intent to cause OC
Then DEF conduct = battery
Then action barred by SOL
Then SCOFILA wrong

Page 23

Courts sometimes “bend”
the rules to reach a
compassionate result

Even if legally strained

Note 1A

Not enough to just do the act

Must look into the brain of DEF

Specific intent to cause HOC

General intent to cause HOC

Note 1C

Not necessary to show DEF
intended the specific actual
consequences (e.g. paralysis)

Must only show intended a HOC

Transferred Intent

Alternative way
to establish
intent

Transferred intent
establishes intent
element **as effectively**
as establishing it
directly

Only these 5

Battery

Assault

False imprisonment

Trespass to property

Trespass to chattels

Not IIED

Not conversion

Intend tort **A**
on P

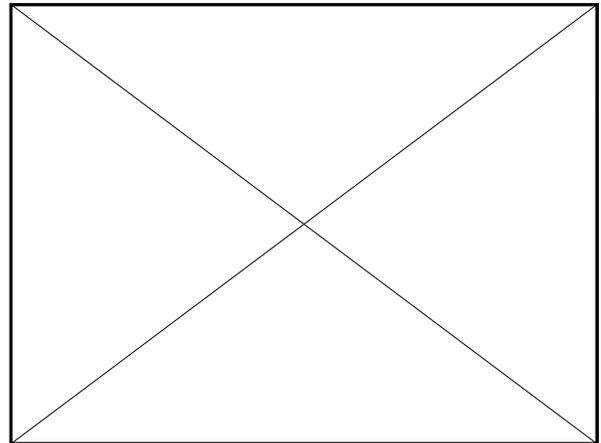
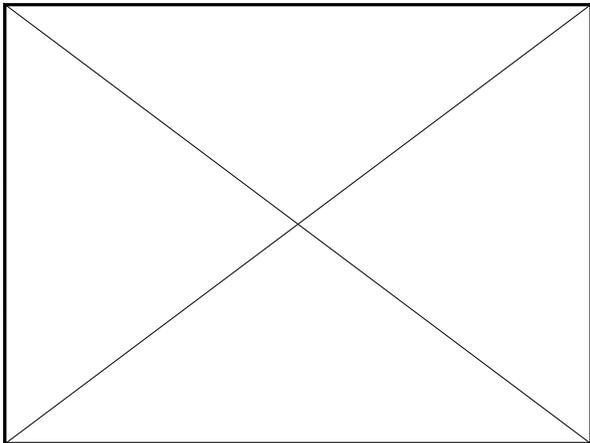
Commit tort **B**
on P

Intend tort
against **P1**

Commit tort
against **P2**

Intend tort **A**
against **P1**

Commit tort **B**
against **P2**



CRIME & COURTS

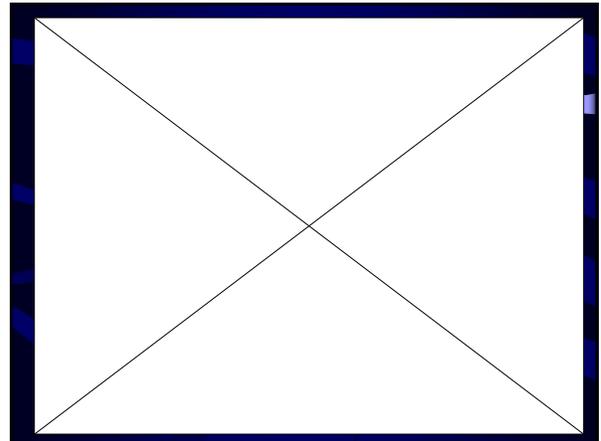
Carmel grad faces charges in slaying
 Suspect says gun prank in Purdue apartment went awry

By John Tuohy
 Posted: August 24, 2009

A Carmel High School graduate jailed in the fatal shooting of a friend at Purdue University was released on \$10,000 bond Sunday.

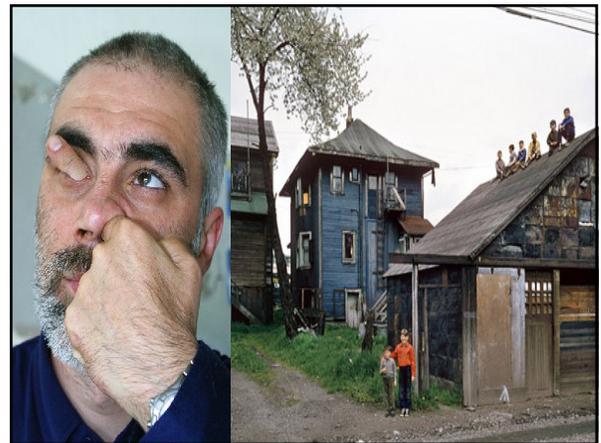
Philhower said Lynch and his roommate, William Calderon, 22, Fort Wayne, were playing a joke on Siela when a semi-automatic handgun discharged and the bullet struck Siela in the neck.

"They said they wanted to scare him when he came out of the bathroom," Philhower said.

PWS 28

Talmage
v.
Smith



Trespass = battery

Can transfer intent from assault to battery

Intended
 Assault on P1

Committed
 No imminent apprehension
 But a HOC

Intended
Battery on P1

Committed
No HOC
But imminent apprehension

Intended
Trespass on P1

Committed
Trespass +
HOC

Intended
Assault P1

Committed
Assault P2

Intended
Assault P1

Committed
Battery P2

Intended
Assault, Battery...

Committed
by same conduct
Elements assault battery but no
intent or shaky on intent, transfer

Battery
Introduction

	TORT	CRIMINAL
Plaintiff	Party harmed	State or federal prosecutor
Purpose	Compensation Deterrence	Punishment, deterrence, rehabilitation
Burden proof	Preponderance	Beyond a reasonable doubt
Relief	Money Injunction	Imprisonment, fine, capital punishment

PWS 33

Restatement 2d. § 13

1. "Intend"
 - Harmful or offensive contact **or**
 - Imminent apprehension of such contact

AND

2. Harmful or offensive contact results

PWS 33

Restatement 2d. § 13

1. Intend (i.e. act with the desire to cause **or** with substantial certainty that actions would cause)
 - Harmful or offensive contact **or**
 - Imminent apprehension of such contact

AND

2. Harmful or offensive contact results



Battery Cases

Cole v. Turner

How has definition of battery changed

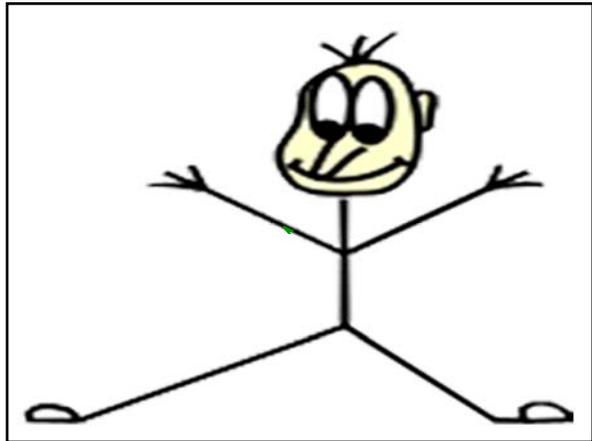


Wallace v. Rosen



PWS 35

Fisher v. Caroussel Motel



Battery

Review

- ### Element 1 of 2: Intent HOC
- Desire or knowledge with substantial certainty that conduct will cause HOC
- Not matter if funny, helpful, mean . . .
 - Need only intend HOC, not the actual consequences
 - Not negated by mistake of identity
 - Can use transferred intent

Element 2 of 2: Cause HOC

Contact

- Can be PTF body or extension
- Can be indirect – causal chain (Batman)

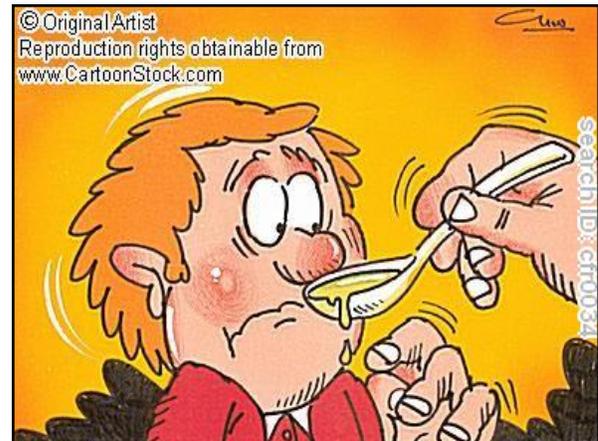
Contact: harmful or offensive

- Offensive measured by reasonable person (*e.g.* not everyday crowded world contacts)
- Unless DEF knows peculiar sensitivity

PTF need not be aware of contact

	Intend HOC	HOC
Garrat		
Spivey		
McGuire		

Mateo v. Kirshner (Camden County Superior Court, N.J. 2008)



Torts

Professor Pope
Class 4: Aug. 30, 2011

PWS 30

Wallace v. Rosen



An intended contact

But NOT an intended **HO** contact

DEF no desire or know HO

Even if PTF finds it HO

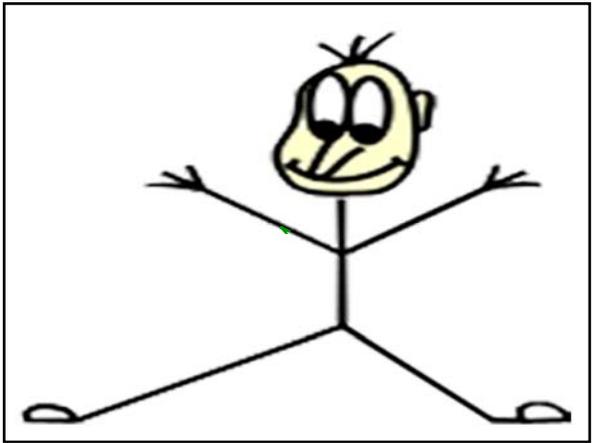
Not sufficient to intend conduct
that **happens** to cause HOC

Must intend the HOC

(unless transferred)

PWS 35

Fisher v. Caroussel Motel



Battery

Review

Element 1

Intend HOC

DEF desire **or** knowledge
to substantial certainty
that conduct will cause
HOC

Not matter if funny, helpful...

Need only intend HOC, not the
actual consequences

Not negated by mistake identity

Can use transferred intent

Element 2

Cause HOC

Contact

Can be PTF body **or** extension

Can be indirect

Causal chain

Batman, Bond

PTF need not be aware of contact

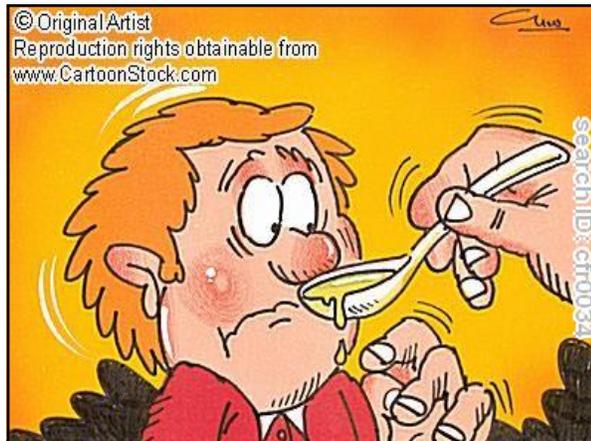
Harmful **or** offensive

Measured by reasonable
person (*e.g.* not everyday
crowded world contacts)

Unless DEF knows peculiar
sensitivity

	Intend HOC	HOC
Garrat		
Spivey		
McGuire		

Mateo v. Kirshner (Camden County Superior Court, N.J. 2008)



Battery

3 Relevant Tangents

Purposes of tort

Compensation

Kid in Talmage has no eye

Deterrence

Individuals, companies structure conduct to avoid liability *Fisher*

Penalty

Broader social theory *Fisher*

Punitive (exemplary) damages

PTF normally gets **compensatory**
damages

Medical bills

Lost wages

Punitive damages are extra
To “punish” or make “example”

Awarded in only 2% civil cases
that go trial

Only if:

Injury intended

or

Oppression, fraud, or malice

Vicarious Liability

We will cover this
directly near the
end of the course
in November

PTF

DEF
(hotel)

DEF (hotel)
employee



Assault

Introduction

Restatement 2d sec. 21

Actor subject to liability for assault if

(a) he acts intending to cause imminent apprehension of HOC

AND

(b) the other is reasonably thereby put in such imminent apprehension

Rewritten to build-in transferred intent

(a) he acts intending to cause: (i) imminent apprehension of such a contact **OR** (ii) HOC, **OR** (iii) confinement, **OR** (iv) entry land, **OR** (v) impair chattel

AND

(b) the other is reasonably thereby put in such imminent apprehension

PTF must think HOC

imminent, immediate

(*e.g. Siliznoiff*)

PTF must **think** DEF has

present ability

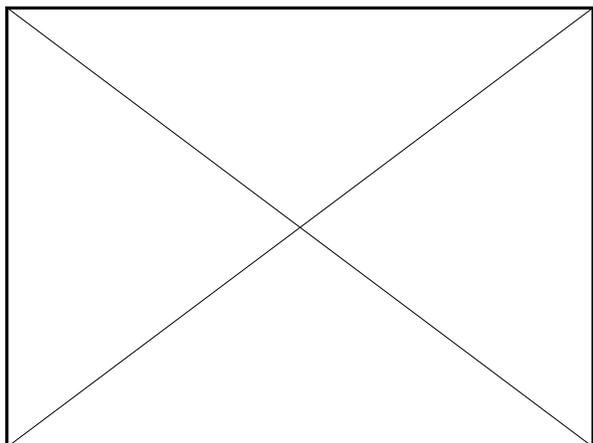
(*e.g. Western Union*)

What matters is whether a reasonable person in PTF position would reasonably be in apprehension of an imminent HOC

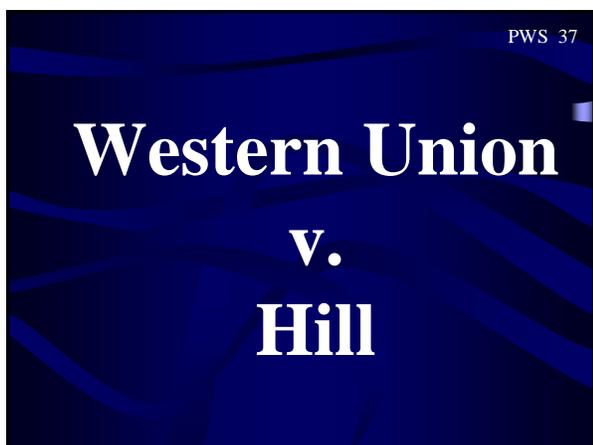
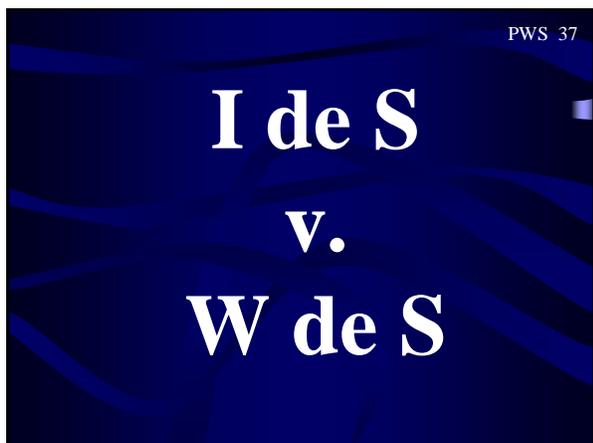
Not whether DEF had **actual ability** to make HOC

HOC measured by reasonable person (*e.g. Rosen*), unless DEF on notice

Need not be fear just **awareness**



Assault Cases



Western Union

“Every battery includes an assault”

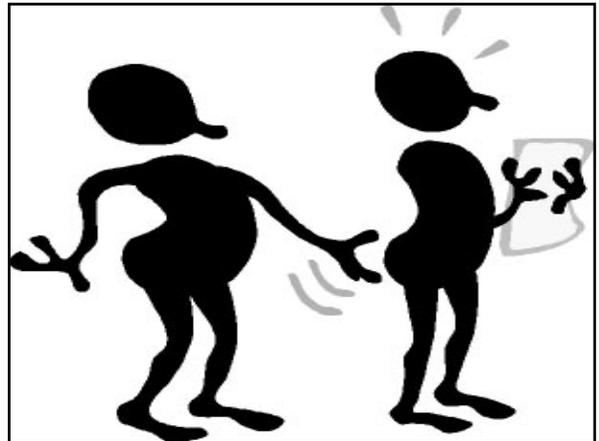
False

Can have B without A

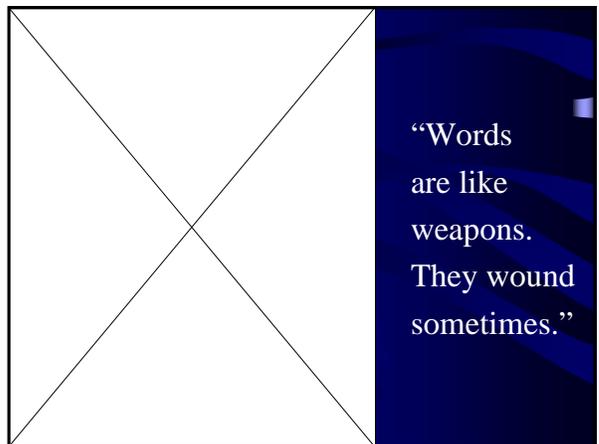
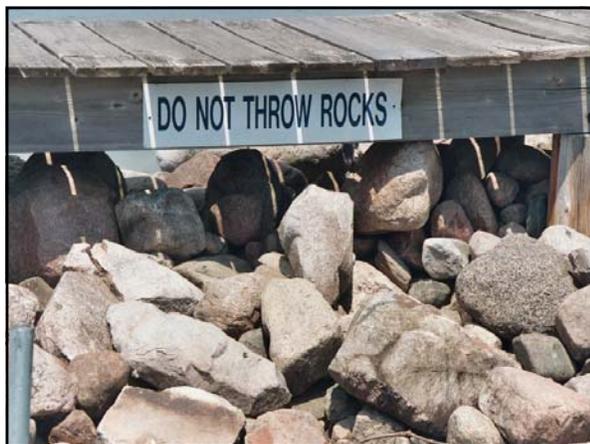
Can have A without B

Can have both

Can have neither



Assault
Hypos in
the notes



Damages

Our focus is primarily on liability

e.g. for assault: intent to cause AHOC + AHOC

If no actual damages →
recover nominal damages

If actual damages resulted
(e.g. heart attack) →
those are recoverable

Normally, no need to show **damages** for intentional torts

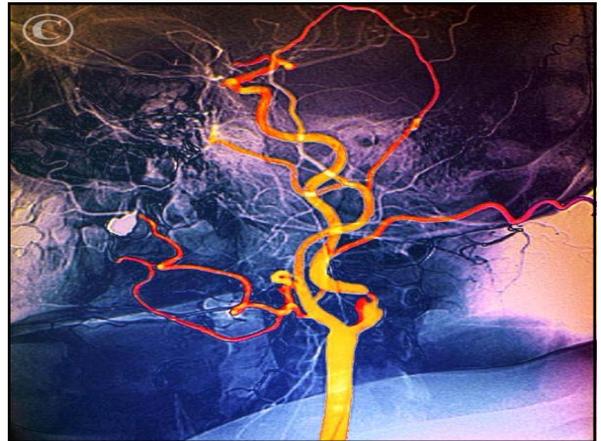
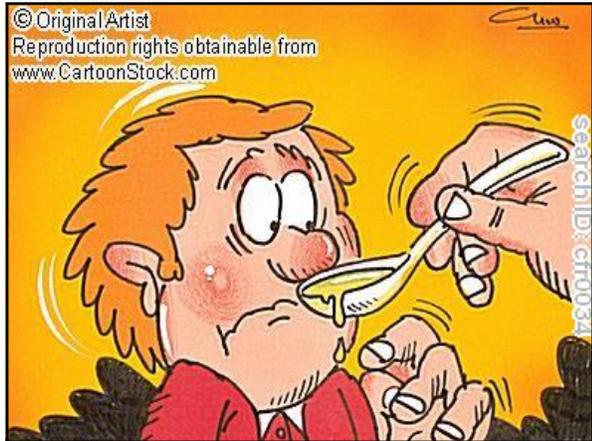
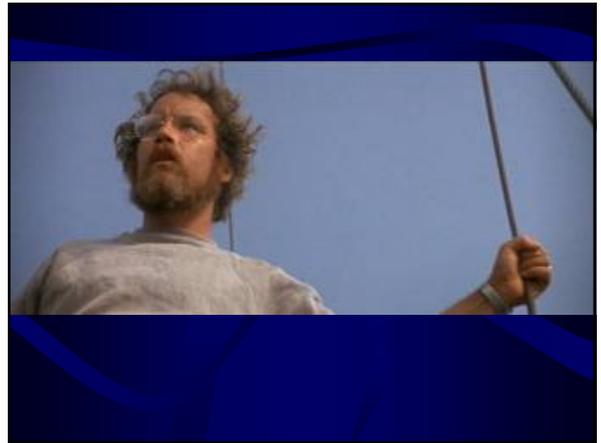
But if prove them, PTF gets damages caused by DEF tortuous conduct

Contrast IIED where mental distress (damages) is an element of liability

Torts

Professor Pope

Class 5: Sept. 1, 2011

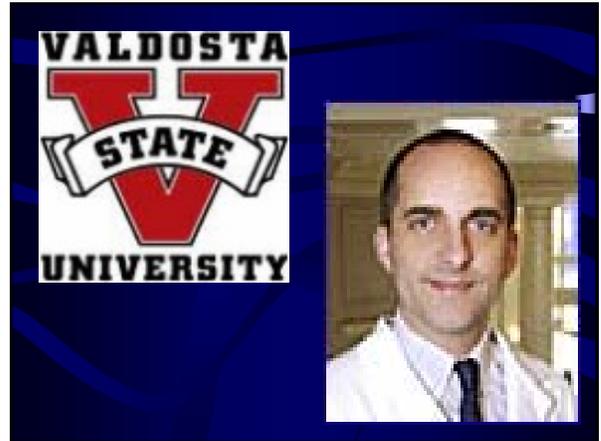
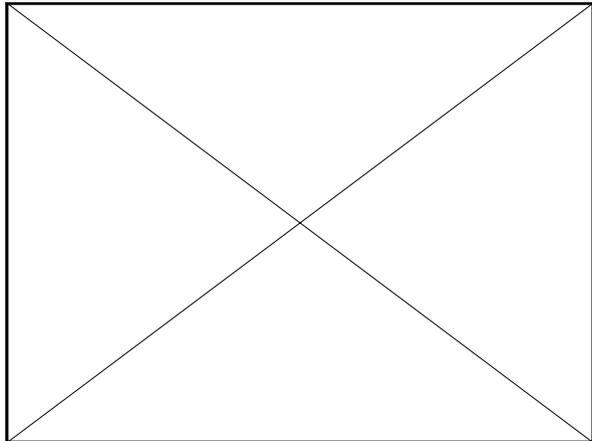
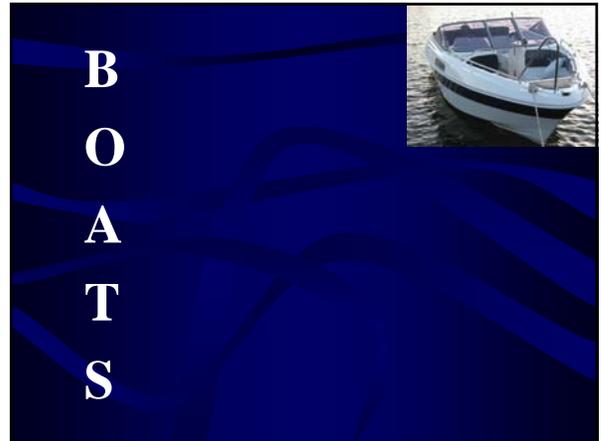


Legal training helps you recognize fact patterns **as** specific torts issues

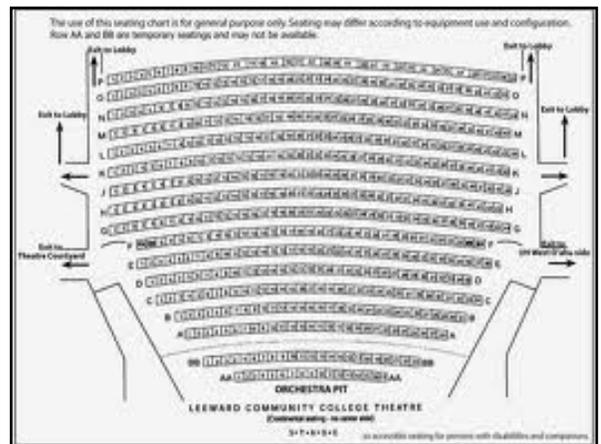
But “picture” not always clear, complete

You can recognize fact patterns as **potential** torts issues

And you know what to **look for** to confirm



Trespass to land
Bradley v. American Smelting
Not in 12th ed.
PDF on TWEN



Submit Quiz 1 **before** noon on Tuesday



Assault

Introduction

Restatement 2d sec. 21

Actor subject to liability for assault if

(a) he acts intending to cause imminent apprehension of HOC

AND

(b) the other is reasonably thereby put in such imminent apprehension

Rewritten to build-in transferred intent

(a) he acts intending to cause: (i) imminent apprehension of such a contact **OR** (ii) HOC, **OR** (iii) confinement, **OR** (iv) entry land, **OR** (v) impair chattel

AND

(b) the other is reasonably thereby put in such imminent apprehension

PTF must think HOC
imminent, immediate
(*e.g. Siliznoiff*)

PTF must **think** DEF has
present ability
(*e.g. Western Union*)

HOC measured by
reasonable person
(*e.g. Rosen*), unless
DEF on notice

Required

Whether person in PTF position would **reasonably be** in apprehension of an IHOC

NOT required

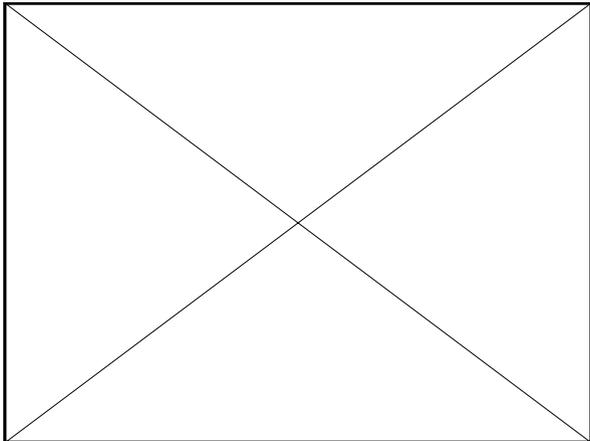
Whether DEF had **actual ability** to make IHOC

Required

Awareness of IHOC

NOT required

Fear of IHOC



Assault
Cases

PWS 37

I de S
v.
W de S



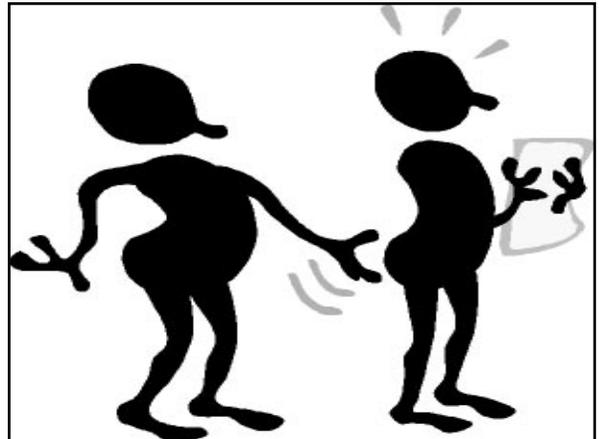
Western Union v. Hill



“Every battery includes an assault”

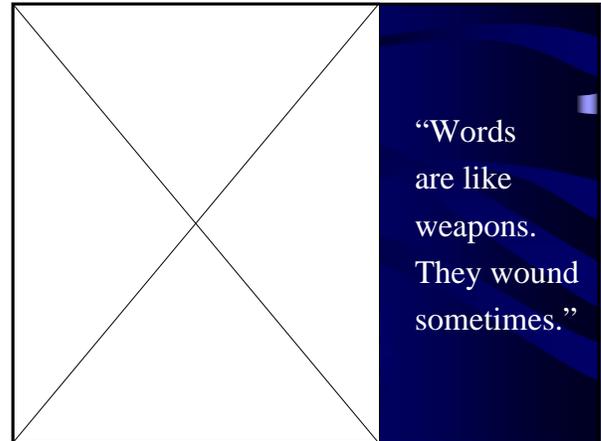
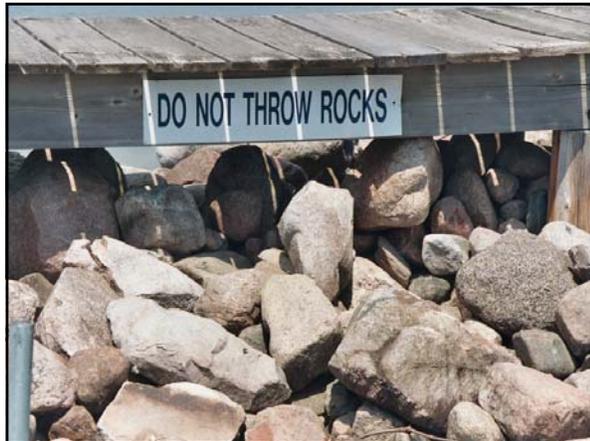
False

- Can have B without A
- Can have A without B
- Can have both
- Can have neither



Assault
hypos in
the notes





Damages

Our focus is primarily on **liability**

If no actual damages →
recover **nominal damages**

If actual damages resulted
(e.g. heart attack) →
those are recoverable

No need to show **damages**
for intentional torts

But if proven, PTF gets **all**
damages caused by DEF
tortuous conduct (even if
unintended)

Contrast IED where
mental distress
(damages) is an
element of liability

Torts

Professor Pope

Class 5: Sept. 1, 2011



If suing for battery →

Grant motion to dismiss
Or summary judgment

No facts from which reasonable juror **could find** necessary element of HOC

Element	Facts to support
Intent (desire or know with substantial certainty) that conduct will cause apprehension of imminent HOC	DEF knew with substantial certainty that PTF would be in A of IHOC because it was obvious that by beating on door with hatchet while and during when woman stuck head out, she would be afraid of getting hit.
PTF apprehension of imminent HOC	The PTF was in A of IHOC because when DEF struck the hatchet near her head, she was afraid she would get hit.

If suing for assault →

Deny motion to dismiss
Deny summary judgment

Sufficient facts from which reasonable juror **could find** satisfaction of necessary elements

PWS 37

Western Union

v.

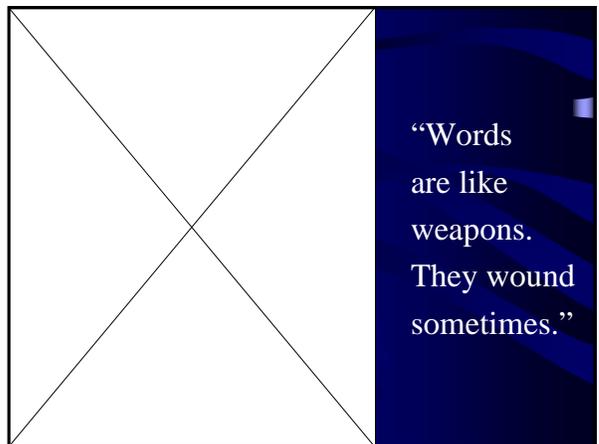
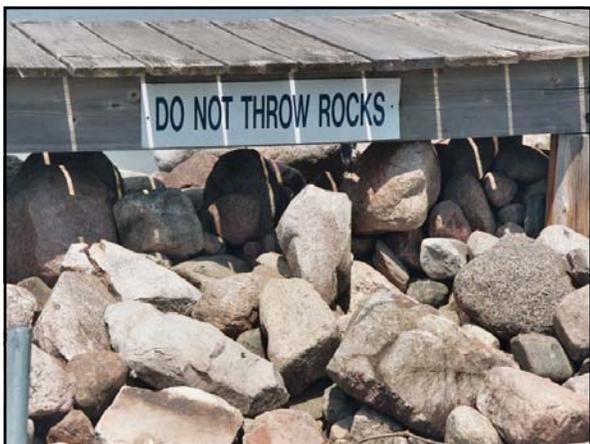
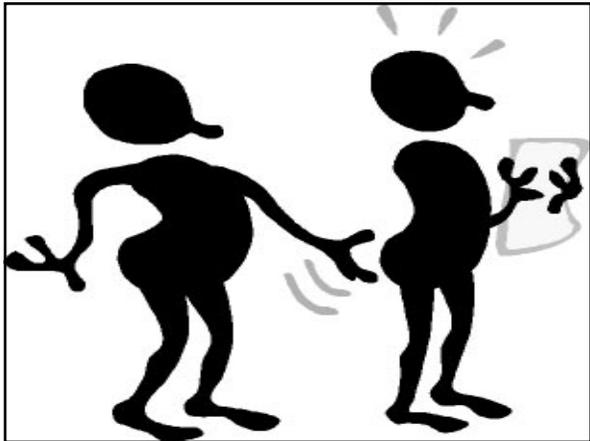
Hill



“Every battery includes an assault”

False

- Can have B without A
- Can have A without B
- Can have both
- Can have neither



“Words are like weapons. They wound sometimes.”

Damages

Our focus is
primarily on
liability

If no actual damages →
recover **nominal damages**

If actual damages resulted
(e.g. heart attack) →
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No need to show **damages**
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tortuous conduct (even if
unintended)

Contrast IIED where
mental distress
(damages) is an
element of liability

**False
Imprisonment**
Introduction

Rest.2d sec 35(1): Actor liable . . .
for false imprisonment if:

(a) he acts intending to confine . . .

AND

(b) his act directly or indirectly
results in . . . confinement . . .

AND

(c) the [PTF] is conscious of
the confinement **OR** is
harmed by it,

AND

(d) [DEF] lacks consent or
legal justification

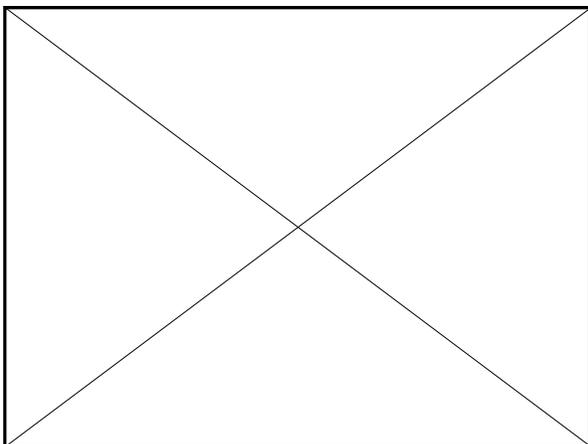
1. DEF **intends** to confine

2. DEF does **confine**

PTF sees no “reasonable”
means escape (like assault:
measured by reasonable
belief)

3. PTF **aware** of
(**or injured** from)
confinement

4. Without consent or
legal justification



**False
Imprisonment
Cases**

Big Town NH v. Newman



09-19-68

09-22-68

11-11-68

Element of FI	Facts that establish
Intent to confine	
Act confines	
Conscious or harmed	
Absence justification	

Parvi v. City Kingston



Required

Contemporaneous awareness

Like assault

If sufficient facts from which reasonable juror **could conclude** conscious awareness

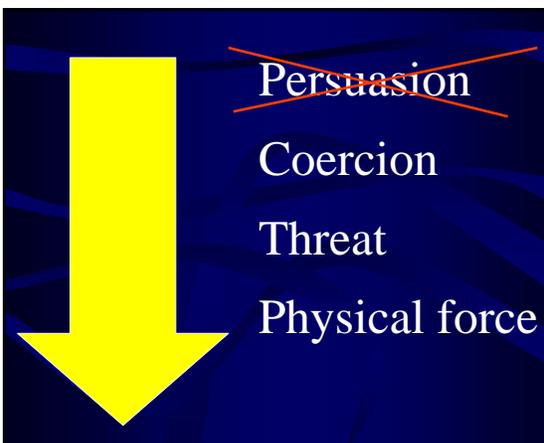
Then trial court error to dismiss

Hardy v. LaBelle Distributors

PWS 44



Element of FI	Facts that establish
Intent to confine	
Act confines	
Conscious or harmed	
Absence justification	

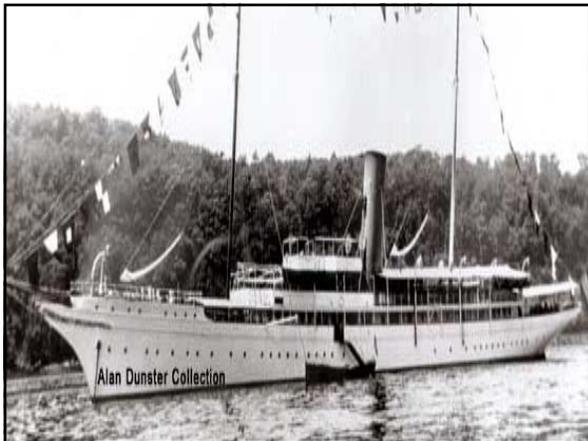


Enright v. Groves



Element of FI	Facts that establish
Intent to confine	
Act confines	
Conscious or harmed	
Absence justification	

Whitaker v. Sanford



Element of FI	Facts that establish
Intent to confine	
Act confines	
Conscious or harmed	
Absence justification	

Ginger McGuire v. United Airlines
(Wayne Cty., Mich. 2010)



Torts

Professor Pope

Class 7: Sept. 6, 2011

1. DEF **intends** to confine

2. DEF does **confine**

PTF sees no “reasonable”
means escape (like assault:
measured by reasonable
belief)

3. PTF **aware** of
(**or injured** from)
confinement

4. Without consent or
legal justification

PWS 42

Parvi
v.
City Kingston



Required

Contemporaneous awareness

Like assault

If sufficient facts from which reasonable juror **could conclude** conscious awareness

Then trial court error to dismiss

Hardy v. LaBelle Distributors



Element of FI	Facts that establish
Intent to confine	
Act confines	
Conscious or harmed	
Absence justification	



~~Persuasion~~
Coercion
Threat
Physical force

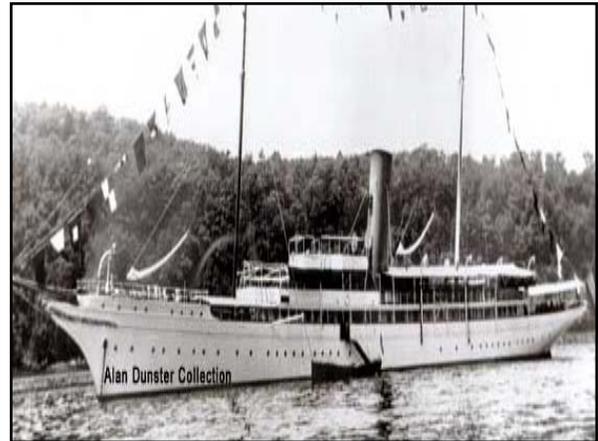
Enright v. Groves



Element of FI	Facts that establish
Intent to confine	
Act confines	
Conscious or harmed	
Absence justification	

PWS 48

Whitaker v. Sanford



Element of FI	Facts that establish
Intent to confine	
Act confines	
Conscious or harmed	
Absence justification	



Intentional Infliction of Emotional Distress

Restatement 2d sec 46(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.

1. Extreme and outrageous conduct
2. Intentional **or** reckless
3. That causes
4. **Severe** emotional distress

http://www.youtube.com/watch?v=iLi_Ae_xPok

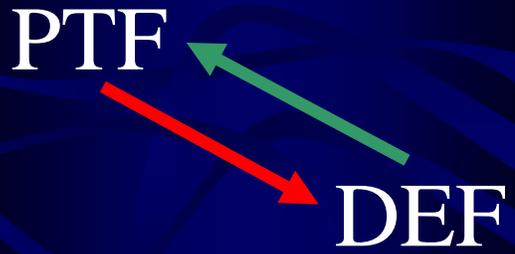
Extreme & outrageous conduct	Not just rude (Slocum) Not just insult, offense Outside the bounds
Intentional <u>or</u> reckless	(1) DEF wants, or (Taylor) (2) knows, or (3) very likely should know
Causes	The E&O conduct will give PTF
Severe emotional distress	Must be severe Can show w/ physical symptoms But physical harm not required

Egregiously insensitive and deceptive withdrawal of life support



State Rubbish v. Siliznoff

PTF
DEF



A diagram on a dark blue background with wavy patterns. The text 'PTF' is positioned above 'DEF'. A green arrow points from 'DEF' to 'PTF', and a red arrow points from 'PTF' to 'DEF'.



Slocum v. Fair Food



Torts

Professor Pope

Class 8: Sept. 8, 2011

Quiz 1

Format issues

2 elements

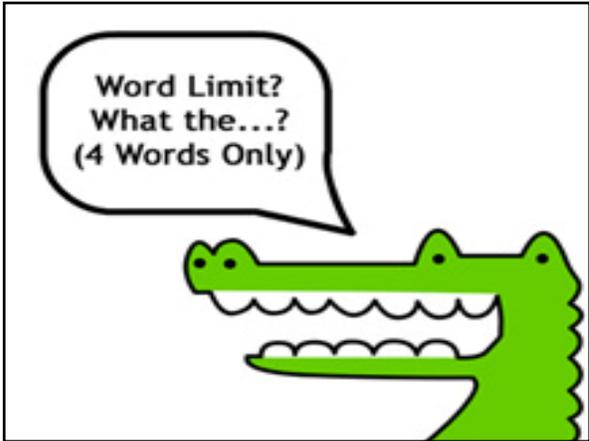
2 paragraphs

Unless instructed,
never restate or
summarize the
facts

No paragraphs of pure fact

No paragraphs of pure law

Get to the **analysis** --
application of law to facts



Word Limit?
What the...?
(4 Words Only)

Quiz 1

Analysis issues

(1) H or O contact

DEF caused his fluid to
contact PTF
He put it in her bottle
She drank it

The contact DEF caused was
offensive & harmful



Fisher irrelevant
Battery through
guns & grenades

(2) Intent H or O contact

DEF **knew** PTF would
drink the water

It was still on her desk

It was unfinished

She would have tossed it, if
she were done

DEF **wanted** PTF to drink
the water

To have some sort of
“connection” to her

“lips touched it” – and
would again

~~Intent C~~

Intent HOC

DEF **knew** PTF drinking
water would be HO

“as close as he could get”

Did it while she was away -
secretively

“Michael can be found
guilty”

In civil law →
found “liable”

“I can safely say that there is
specific intent to commit an
offensive contact”

Then do it

“The defendant . . .
should have known . . .”

Irrelevant for battery
analysis

“he **obviously** wanted to ejaculate into Tiffany’s water bottle”

What facts show intent?

This is only intent to do act

Need intent for C

Need intent for C that is HO

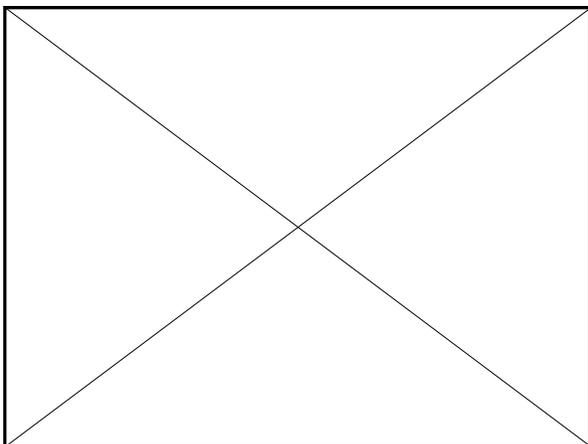
IIED

Introduction

Restatement 2d sec 46(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 for any bodily harm that results].

1. Extreme & outrageous
2. Intentional **or** reckless
3. That causes
4. **Severe** emotional distress



IIED

Cases

State Rubbish v. Siliznoff

PTF
DEF



Slocum v. Food Fair



Not outrageous
that reasonable
person would
have SED

Might establish **if**
DEF knew special
PTF vulnerability



MOL

Extreme and outrageous?
Severe emotional distress?

Jury question

MOL

PWS 57

**Harris
v.
Jones**



PWS 57

**Taylor
v.
Vallelunga**





Extreme & outrageous conduct	Not just rude, offensive Totally outside bounds <i>Slocum</i>
Intentional or reckless	DEF wants or knows or EVEN very likely should know <i>Taylor</i>

Causes	E&O conduct is the reason for PTF SED <i>Harris</i>
Severe emotional distress	Must be severe Can show w/ physical symptoms (but not required)

Torts

Professor Pope

Class 9: Sept. 9, 2011

PWS 57

Taylor v. Vallelunga



Extreme & outrageous conduct	Not just rude, offensive Totally outside bounds <i>Slocum</i>
Intentional or reckless	DEF wants or knows or EVEN very likely should know <i>Taylor</i>

Causes	E&O conduct is the reason for PTF SED <i>Harris</i>
Severe emotional distress	Must be severe Can show w/ physical symptoms (but not required)

Trespass to Land

Rest. 2d sec. 158

One is subject to liability . . . for trespass . . . if he intentionally

(a) enters land in the possession of the other, or causes a thing or a third person to do so,

OR

(b) remains on the land

OR

(c) fails to remove from the land a thing which he is under a duty to remove.

PWS 66

Dougherty v. Stepp



Intent – easy

DEF desired/knew
going to that
location on Earth

Compare

Intent to: cause HOC

Intent to: cause IA-HOC

Intent to: be outrageous

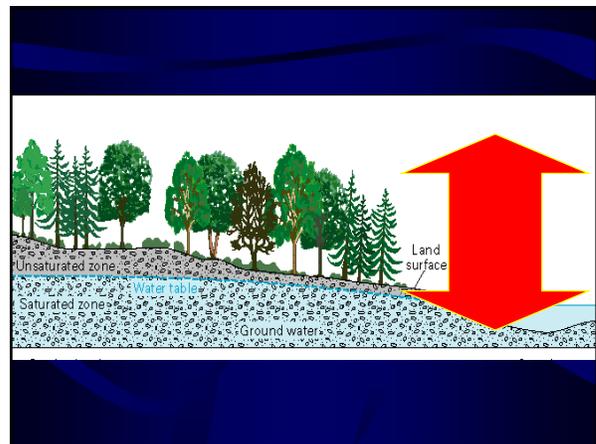
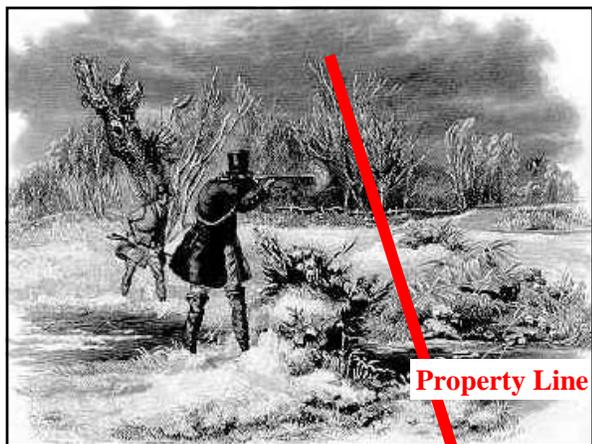
“No matter where you go, there you are”

Sufficient that you intend to go where you go (i.e. on another's land)



PWS 70

Herrin v. Sutherland

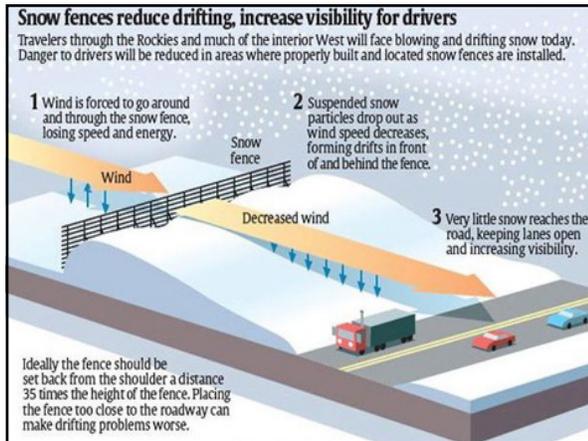


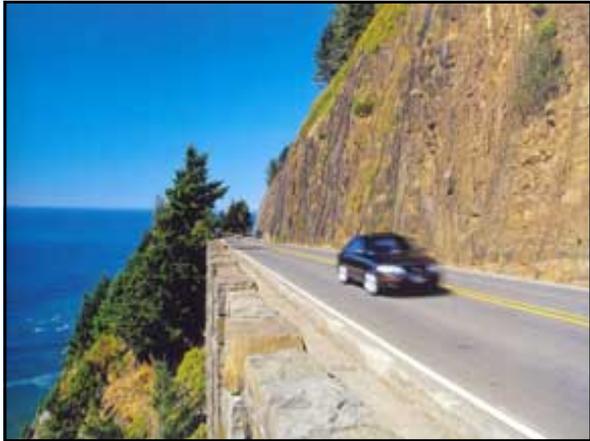
Trespass

Space	Step onto PTF land No permission at all
Time	Had permission to step on PTF land But stayed past permitted time
Purpose	Had permission to do X on PTF land But did Y and Z

PWS 72

Rogers v. Kent Cty.





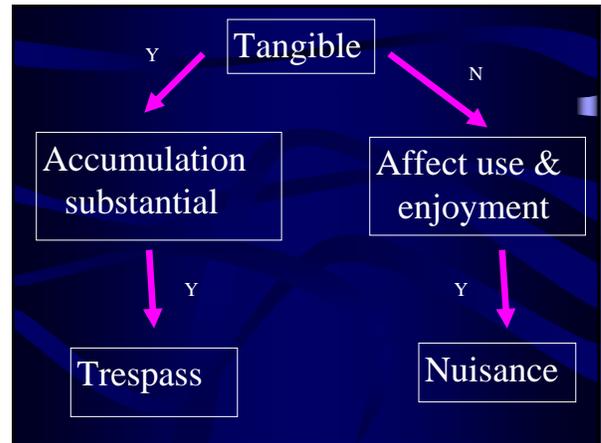
PWS 68

Bradley v. Am Smelting



“Environmental” Trespass

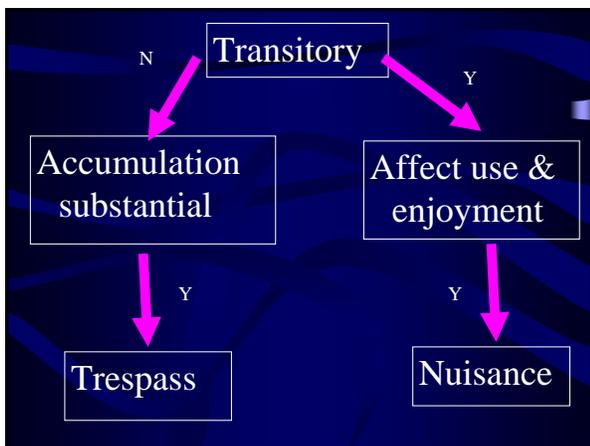
Transitory Not interfere with exclusive possession, only use & enjoyment	Nuisance
Non-transitory Accumulation interferes with possession rights	Trespass – but only if actual & substantial damages





Transitory	Nuisance
Not interfere with exclusive possession, only use & enjoyment	

Non-transitory	Trespass
Accumulation, interferes with possession rights	But only if actual & substantial damages



**Trespass
Chattels**

Movable personal
property

(not real estate)

Rest. 2d 217: A trespass to a chattel
may be committed by intentionally

(a) dispossess PTF

or

(b) use or intermeddle

Dispossession

“You took it”

OR

Damage

“You broke it”

No nominal damages

Cf. IIED (because
SED is an element)

PWS 74

Glidden
v.
Syzbiak



Any person to whom or to whose property damage may be occasioned by a dog . . . **shall be entitled** to recover . . . of the person who owns . . . the dog . . . **unless . . .**

unless the damage was occasioned . . . while she was engaged in the commission of a **trespass** or other tort

Element	Facts
Deprive for non-demimus time	
OR	
Reduce quality, condition, value	



PWS 77

CompuServe v. Cyber Promotions

We don't care which computer you buy. We'll help you get the most out of it.

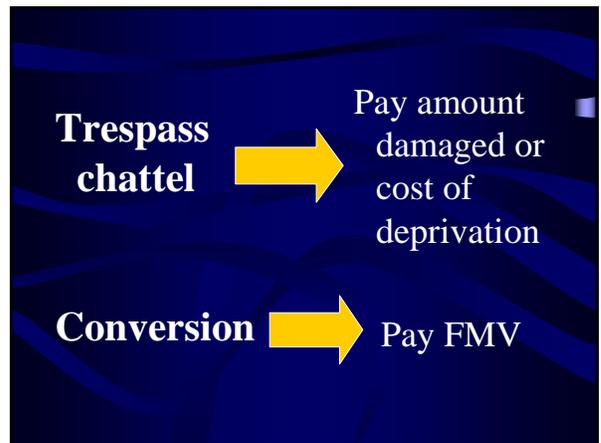
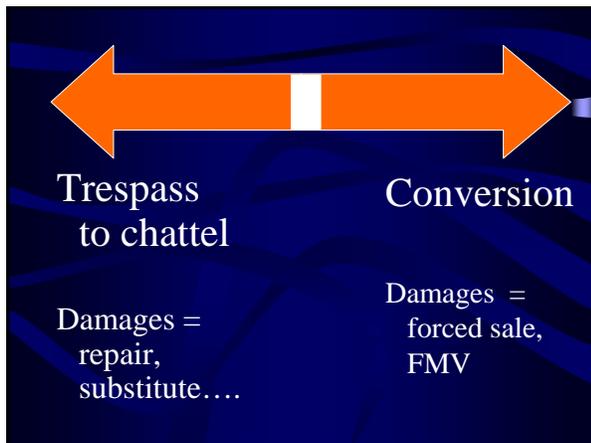
CompuServe puts a world of information, communications, and entertainment at your fingertips.

CompuServe is the easy-to-use videotex service designed for the personal computer user and managed by the communications professionals who provide business information services to over one fourth of the Fortune 500 companies. sophisticated financial data. Plus, a communications network for videoconferencing, a facilities board for selling, acquiring, and personal services and a traffic-charged CD simulator. You get access on CompuServe, Inc. To learn more about CompuServe, call toll-free 1-800-838-8379 for our illustrated guide to the CompuServe Information Service. The videotex service for you, no matter which computer you buy.

CompuServe



Conversion



- Factors to determine SERIOUSNESS, *inter alia***
- (d) extent and duration of interference
 - (e) harm done to the chattel
 - (f) inconvenience and expense caused

PWS 81

Pearson v. Dodd

1967

Sen. Dodd
censured
by Senate



Pearson:

“corruption even broader”

Dodd sues for conversion

DCT: summary jmt for Dodd

CTA: reverse summary jmt



A man went into his neighbor's garage without permission and borrowed a chain saw to clear broken branches on the man's property. After he finished, the man noticed several broken branches on his neighbor's trees that were in danger of falling on his neighbor's roof. While the man was cutting his neighbor's branches, the saw broke.

The neighbor sued the man for conversion.

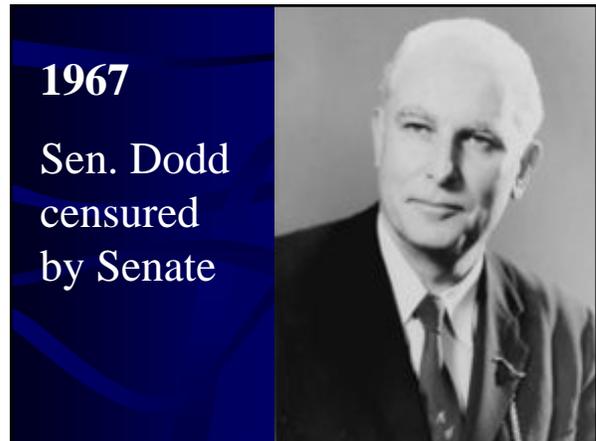
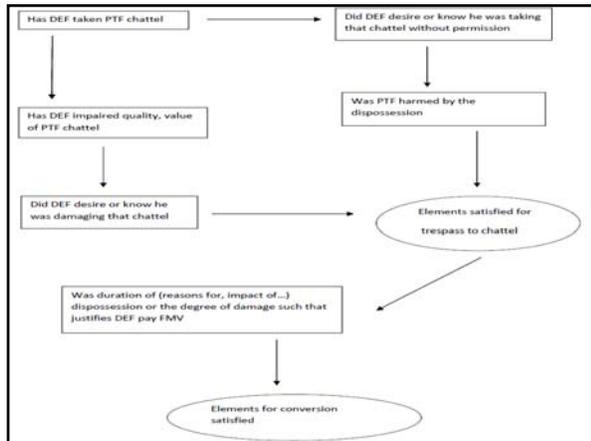
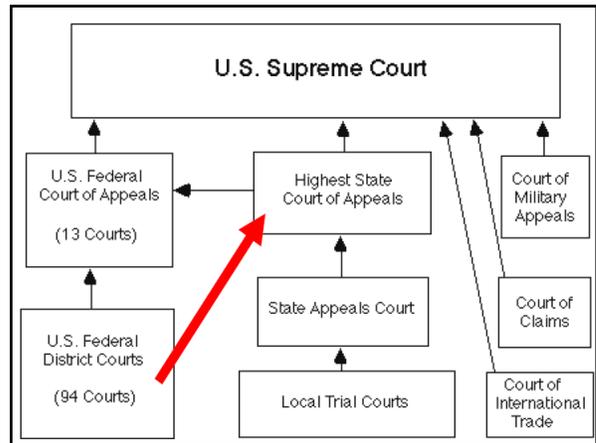
Will the neighbor recover?

- (A) Yes, for the actual damage to the saw.
- (B) Yes, for the value of the saw before the man borrowed it.
- (C) No, because when the saw broke the man was using it to benefit his neighbor.
- (D) No, because the man did not intend to keep the saw.

Torts

Professor Pope

Class 11: Sept. 15, 2011



A man went into his neighbor's garage without permission and borrowed a chain saw to clear broken branches on the man's property. After he finished, the man noticed several broken branches on his neighbor's trees that were in danger of falling on his neighbor's roof. While the man was cutting his neighbor's branches, the saw broke.

The neighbor sued the man for conversion.

Will the neighbor recover?

(A) Yes, for the actual damage to the saw.
 (B) Yes, for the value of the saw before the man borrowed it.
 (C) No, because when the saw broke the man was using it to benefit his neighbor.
 (D) No, because the man did not intend to keep the saw.

Privileges to Intentional Torts

Rest. 2d 890

One who otherwise would be liable for a tort is **not liable** if he acts in pursuance of and within the limits of a **privilege**

DEF can defeat PTF *prima facie* case

Show that PTF cannot establish one or more necessary elements

DEF can establish a **privilege**

Independent reason for non-liability **even if** PTF makes her prima facie case

Burden of Proof

PTF

All prima facie elements for each alleged theory

1. Must allege (*Taylor*)
2. Must establish with preponderance of the evidence

DEF

All prima facie elements for each alleged privilege

1. Must allege
2. Must establish with preponderance of the evidence

Organization

Parties first

P1 v. D1

P1 v D2

P2 v D1

Claims second

P1 v. D1

Battery

False Impr

P1 v D2

Intent

PTF argument(s)

DEF argument (if any)

HOC

PTF argument(s)

DEF argument(s) (if any)

Privilege

DEF argument(s)

PTF argument(s) (if any)

Not all privileges go to all
intentional torts

Some just for property

Some just for persons

- | | |
|-------------------------|---------|
| 1. Consent | 91-103 |
| 2. Self-defense | 103-107 |
| 3. Defense of others | |
| 4. Defense of property | 107-113 |
| 5. Recovery of property | 113-118 |
| 6. Necessity | 118-125 |
| 7. Authority | 125-127 |
| 8. Discipline | 127-128 |
| 9. Justification | 128-130 |

That will conclude the scope of coverage that will be tested on the midterm.

We will move onto negligence before October 14. But that will **not** be on the midterm.

Before the midterm, we will

Practice MBE questions

Practice essay writing

Review intentional torts

Discuss exam taking

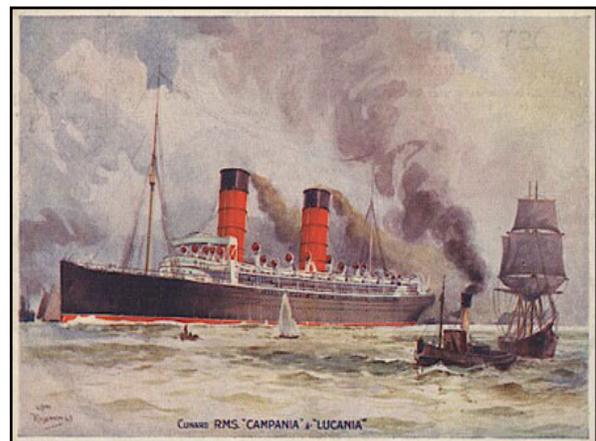
Consent

Rest. 2d 892A

One who effectively **consents** to conduct of another intended to invade his interests cannot recover in an action of tort for the conduct or for harm resulting...

PWS 91

O'Brien
v.
Cunard Co.





Express
OR
Implied

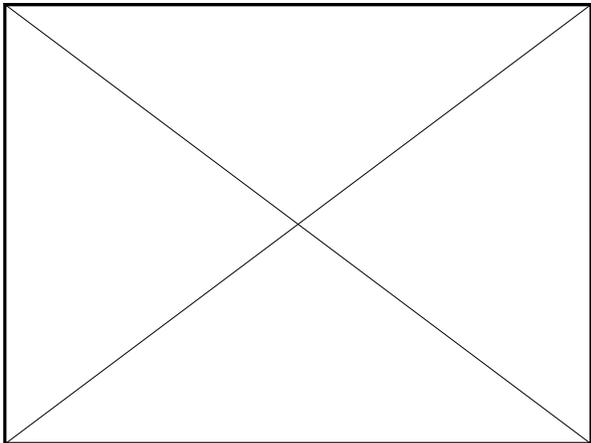
Implied consent
Focus on the ostensible
What is manifested
What would reasonable
DEF think

Consent & Intent
If DEF reasonably thinks
PTF consents to contact
Then, how can DEF intend
contact to be OC



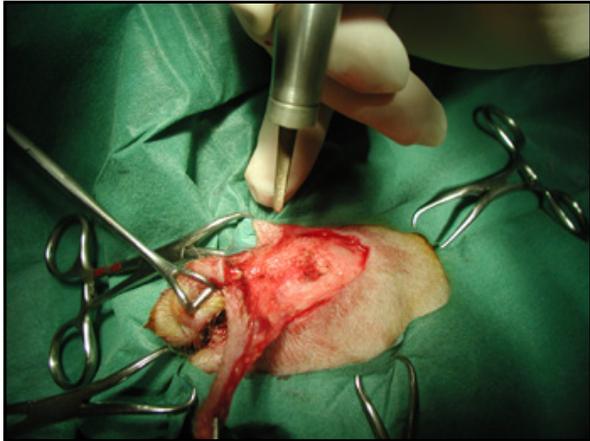
PWS 92

Hackbart v. Cincinatti Bengals



PWS 94

Mohr v. Williams

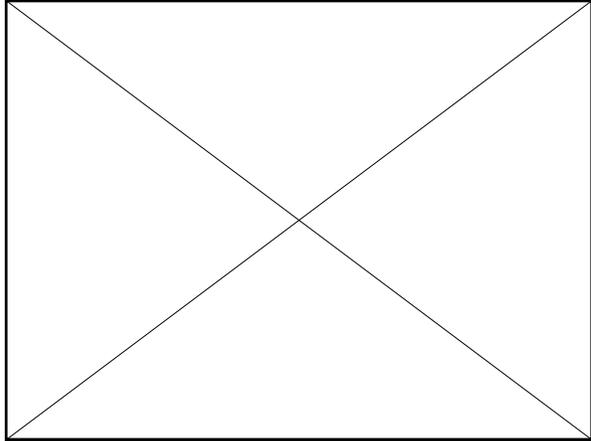


Emergency exception

Patient lacks capacity
Waiting to get consent from patient (or surrogate) risks **serious** harm
Reasonable person would consent
No reason to think this **particular patient** would not consent

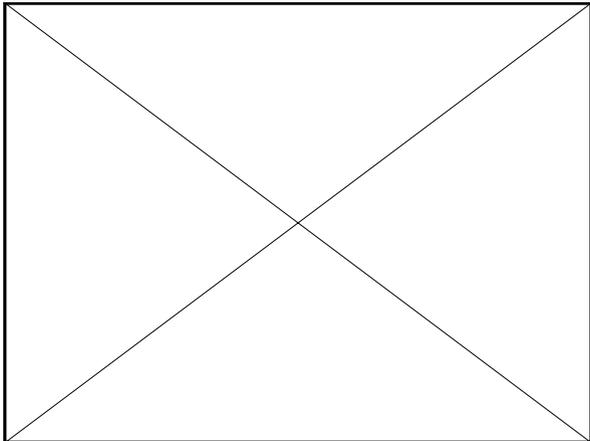
PWS 99

DeMay v. Roberts



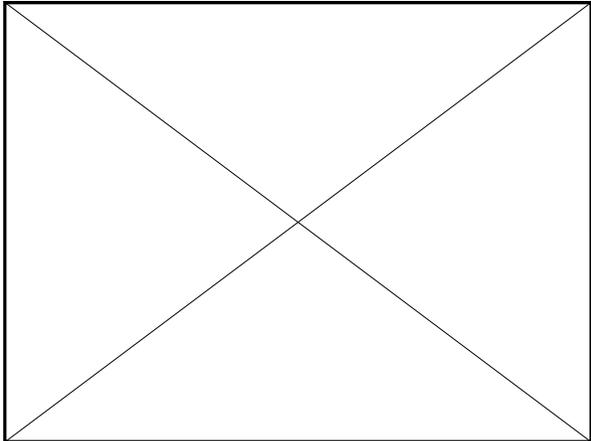
Consent not valid if
fraudulently obtained

Fraud must go to very
nature of the act

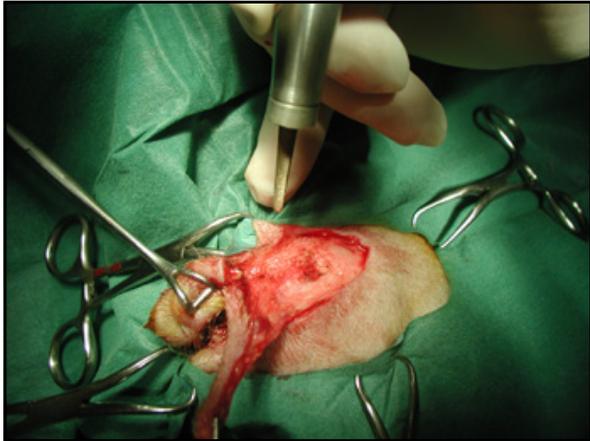


Torts
Professor Pope
Class 12: Sept. 16, 2011

Existence of consent
Scope of consent



PWS 94
Mohr
v.
Williams

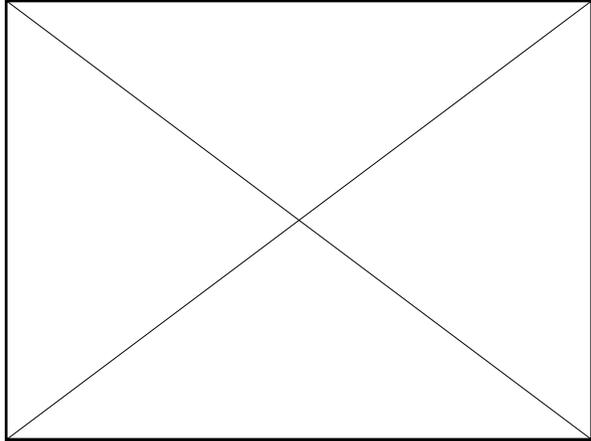


Emergency exception

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Reasonable person would consent
No reason to think this **particular patient** would not consent

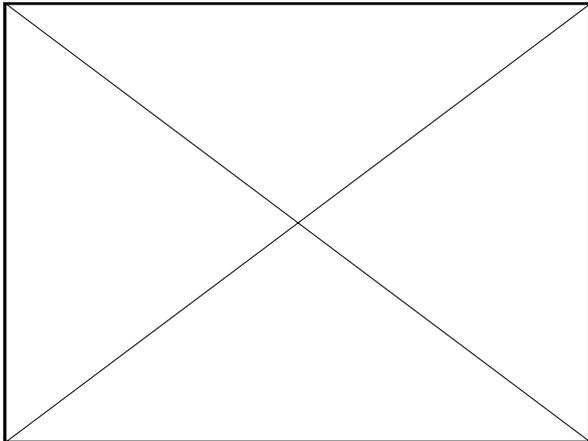
PWS 99

DeMay v. Roberts



Consent not valid if
fraudulently obtained

Fraud must go to very
nature of the act



Rest.2d 69

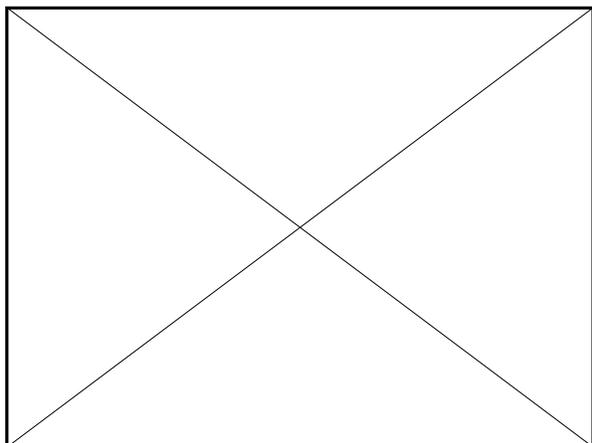
If the actor has **consented** to any . . .
.invasion of his interests of
personality, he is **not privileged** to
defend himself against such an
invasion unless his consent was
obtained by fraud or has been
withdrawn;

Self-Defense

Reasonable belief sufficient

Defense, not retaliation

Defense must be proportional



And its bad, bad Leroy Brown
The baddest man in the whole damn town
Badder than old King Kong
And meaner than a junkyard dog
....
He got a 32 gun in his pocket for fun
He got a razor in his shoe

Special rule for lethal force

Retreat, if possible

BUT

No need to retreat if in own home

Defense of Others

Can defend others too

Must have reasonable
belief other in danger

Must be proportional





Torts

Professor Pope

Class 13: Sept. 20, 2011

TUE	20	27	4	11
	Priv	Neg	Neg	No cls
THU	22	29	6	13
	Priv	Neg	Neg	Rev
FRI	23	30	7	14
	Rev	Neg	Neg	Exam

Consent

Intended HOC = battery

Mohr

Consent

But HOC outside scope
= no privilege

PTF actually helped

Reflected in damages

But does not impact liability

Self-Defense

1. When

2. How

You **reasonably**
believe in danger
You need not be right

Amount of force must
be **proportional** to
reasonably perceived
threat

Conversion

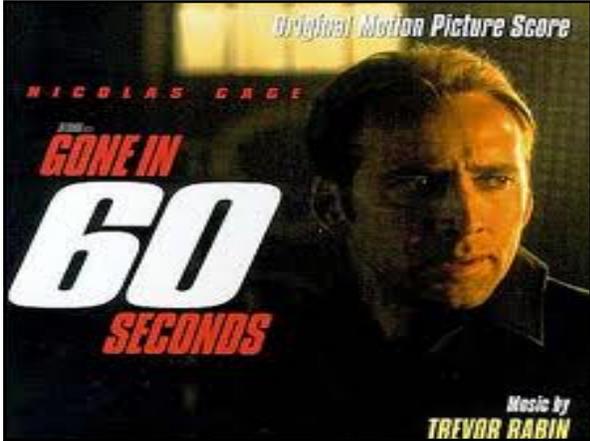
222A Factor	Degree satisfied
D extent, duration control	
D intent assert ownership	
D good faith	
Harm to chattel	
P's inconvenience, expense	

1
3
5
7
9
11

“Not divisible
by 2”

Judgment -
developed with
experience





**Privilege 4:
Defense of
Property**

Rest.2d 81

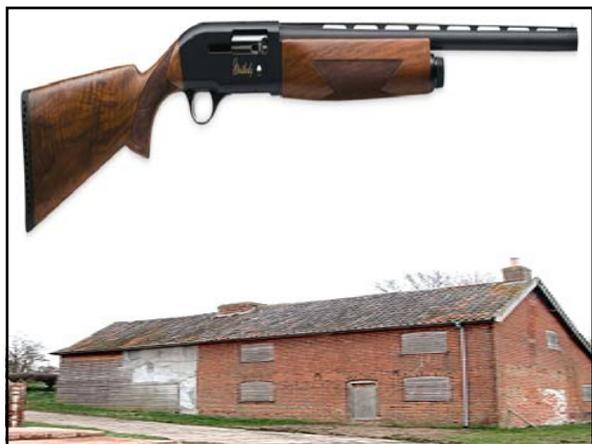
(1) The actor is **not** privileged to use **any** means of defending his land or chattels from intrusion . . .

[DEF cannot] cause bodily harm or confinement in excess of that . . . reasonably believes . . . necessary to prevent or terminate . . . intrusion.

(2) The actor is privileged . . . To put another in **immediate apprehension** of a harmful or offensive contact or other bodily harm or confinement **in excess** of that which the actor is privileged to inflict

PWS 107

Katko
v.
Briney



NO TRESPASSING
Violators
will be
shot.
Survivors
will be shot
again.

Katko	Briney
Pistol	Shotgun
Knife	Shotgun
Brass knuckles	Shotgun
No weapon	Shotgun

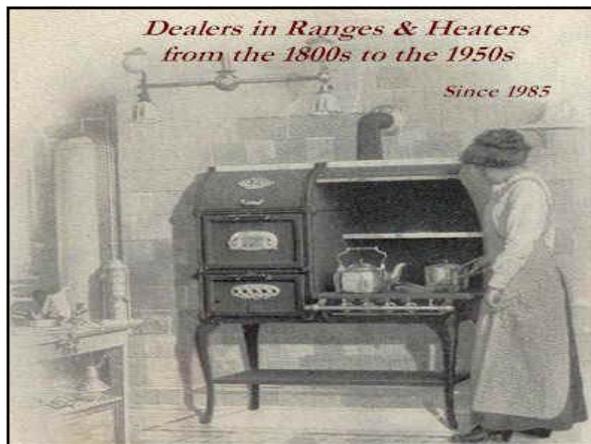
Like self-defense & defense of others

DEF must **calibrate** force to threat

Privilege 5: Recovery of Property

PWS 113

Hodgedon v. Hubbard



Reasonable force

Reasonable time

Ask first

No mistake
(unless PTF-induced)

PWS 115

Bonkowski v. Arlan's Dept Store



Reasonable belief
To detain in 1st place

Reasonable investigation
Scope
Duration



Privilege 6: Public Necessity

Public necessity	Private necessity
Save community	Save yourself
Complete privilege	Incomplete privilege
Need not pay	Privileged but must still pay

Rest.2d 196 (public necessity)

One is privileged to enter
land . . . if . . . reasonably
believes it . . . necessary
for . . . averting an
imminent public disaster.

PWS 118

Surocco v. Geary



**Privilege 7:
Private
Necessity**

Rest.2d 197 (private necessity)

(1) One is privileged to enter or remain on land . . . reasonably appears to be necessary to prevent serious harm to (a) the actor, or his land or chattels, or

(b) . . . a third person, or the land or chattels of either, **unless** the actor knows or has reason to know that the one for whose benefit he enters is unwilling that he shall take such action.

(2) [DEF] is **subject to liability** for any harm done in the exercise of the privilege . . . **except** where the threat of harm . . . caused by the tortious conduct . . . of the possessor.

PWS 121

**Vincent
v.
Lake Erie
Transp.**



**What good is
an incomplete
privilege?**

No nominal damages

Property owner deprived
of own privileges (e.g.
defense of property

Torts

Professor Pope

Class 14: Sept. 22, 2011

Privilege 6: Public Necessity

Public necessity	Private necessity
Save community	Save yourself
Complete privilege	Incomplete privilege
Need not pay	Privileged but must still pay

Rest.2d 196 (public necessity)

One is privileged to enter land . . . if . . . reasonably believes it . . . necessary for . . . averting an **imminent public disaster.**

PWS 118

Surocco v. Geary





Privilege 7: Private Necessity

Rest.2d 197 (private necessity)

(1) One is privileged to enter or remain on land . . . reasonably appears to be necessary to prevent serious harm to (a) the actor, or his land or chattels, or

(b) . . . a third person, or the land or chattels of either, **unless** the actor knows or has reason to know that the one for whose benefit he enters is unwilling that he shall take such action.

(2) [DEF] is **subject to liability** for any harm done in the exercise of the privilege . . . **except** where the threat of harm . . . caused by the tortious conduct . . . of the possessor.

Vincent v. Lake Erie Transp.



What good is
an incomplete
privilege?

No nominal damages

Property owner deprived
of own privileges (e.g.
defense of property)

**Privilege 8:
Authority
of Law**

Police

Court order of
confinement mental
institution

Privilege 9: Discipline

Rest.2d 147(1)

A **parent** is privileged to apply . . . force or . . . confinement . . . reasonably believes to be necessary for [child's] proper **control, training, or education.**

Rest.2d 147(2)

One other than a parent . . . given . . . the function of controlling, training, or educating . . . is privileged . . . **except** in so far as the parent has restricted the privilege . . .

Privilege 10: Justification

Generic, catchall privilege

- Unfair to hold DEF liable
- But no traditional privilege applies

PWS 128

Sindle
v.
NYC Transit



Midterm Exam

WHEN: Fri. Oct. 14, 2011
10:00 – 11:15 a.m.
75 minutes

WHAT: Completely open book
Bring any printed
materials

Open book **not** easier

Timing is tight

No time to look up
rules

Do **not** study less

Emotional comfort
only

To jog what is **already**
in head

Multiple choice

Essay

Multiple choice

10 questions
3 minutes each

Total time

30 of 75 minutes
20 of 48 points

Essay

1 question
45 minutes

Total time

45 of 75 minutes
28 of 48 points

**Weeks
before
the exam**



Outline

Ideally after each
unit of material

Know your outline

Practice

Pope's old exams

Others



ENLI The Center for Computer-Assisted Legal Instruction

[William Andersen](#)
Hudson Falkner Professor of Law
University of Washington School of Law

Writing Better Law School Exams: The Importance of Structure

This program is designed to be useful to students interested in improving their exam-writing techniques. In much of the written work done by lawyers (including writing exams as students), a special form of writing is used. The program begins with an explicit discussion of that form, and the structural implications it has. Within that specific context, the program goes on to discuss the tasks to be performed, the tools used in performing those tasks, and methods of sharpening those tools. The program concludes with some interactive opportunities to try the techniques described.

Approximate completion time 1.5 hours.

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During the exam

Deep breath
Check time

E.g. multiple choice = 3min
Do not spend 10 min on just one
Points max out – no “extra”
Cannot compensate for lack of
time elsewhere

Answer questions **in order**

Otherwise

You may forget to come back
May screw up timing
Exception: you cannot make
heads or tails

Read “call” of the question first

Is it a “one theory” question or
an “anything goes” question

Frames **how** you read the
question

1. Read the question
2. Read the question
3. Re-read the question

Make sure you get the facts correct

Make sure you notice all facts that might

Raise an issue

Foreclose an issue

Change the way issue is analyzed

For essay problems, spend $\frac{1}{4}$ of your time **outlining** your answers on scratch

Makes sure you do not forget to discuss an issue or sub-issue

Makes sure you stay on point

Makes sure answer is organized

Objectives

Knowledge

Understanding

Critical reading

Problem solving

Judgment

Expression

Think of your audience as a smart **non-lawyer** client

They know the facts

Do not know the law

Issue spotting

Somewhat difficult without practice

In class, often deal with one issue at a time

Casebook cases are edited to present a single issue

Have a master checklist
All doctrines, rules
Run through to see if
applicable to the facts

Most points lost by completely
missing issues



Battery → assault

Conversion →
trespass chattel

Do on scratch paper first
Generally best to organize by legal
doctrine
And make any
counterargument right then

Show each step in your
analysis

Be explicit

Be complete

Be clear

Identify theory

Elements clearly satisfied

Show why satisfied, point to facts

Can spend less time on these –
but **do not** skip altogether

Elements not clear

Show why satisfied, point to
facts

Show why not satisfied, point to
facts

Conclusion

Do **not** restate the facts

Do **not** just state the law

Do not figure out p.18 of your
outline applies

And then just copy p.18 into the
answer book

And then baldly assert a conclusion

Do not state legal conclusions without
reasons

The right conclusion is **NOT** the right answer

Signals that you are doing legal analysis

Because

Even if

However

Similarly

Alternatively

In contrast

Likewise

Signals that you are too conclusory:

Clearly

Obviously

Lay out arguments and counter-
arguments

But also indicate their relative strength
and weakness

Citation of authority

Not necessary

More relevant

Explain the principle

And how it applies to the
fact pattern

Style & Format

Use headings

Use paragraphs

If you have time

Underline or highlight key
words

**After
the exam**

Check answers

Fix punctuation and grammar

Clarify what might have been stated
too casually

Expand what might have been too
compressed

Later in October

On the TWEN site

- Exam
- Score sheet
- Model exams
- Grades
- Grade distribution

I will email your
exam upon request

I will respond to
questions not resolved
by score sheet

Torts

Professor Pope

Class 15: Sept. 23, 2011

Sindle

Unclear application of discipline or authority of law

DEF should have been permitted to plead & prove **justification**

	I HOC	IIA-HOC	HOC	Reas Appreh I HOC
Battery	1 way		X	
Assault		1 way		X

Mr. Drysdale and Miss Jane, walking on a country road, were frightened by a bull running loose on the road. They climbed over a fence to get onto the adjacent property, owned by Clampet. After climbing over the fence, Drysdale and Jane damaged some of Clampet's plants which were near the fence. The fence was posted with a large sign, "No Trespassing." Clampet saw Drysdale and Jane and came toward them with his large watchdog on a long leash. The dog rushed at Miss Jane. Jed had intended only to frighten Drysdale and Jane, but the leash broke, and before Jed could restrain the dog, the dog bit Jane.

Battery?

No, because Jed did not intend to cause any harmful contact with Miss Jane.

No, because Miss Jane made an unauthorized entry on Jed's land.

Yes, because Jed intended that the dog frighten Miss Jane.

Assault?

Yes, if Mr. Drysdale reasonably believed that the dog might bite him

No, if Jed was trying to protect his property

No, if the dog did not come in contact with him.

Yes, because the landowner did not have a privilege to use excessive force.

Drysdale for damage to plants?

Yes, because Miss Jane and Mr. Drysdale entered on his land without permission.

Yes, because Jed had posted his property with a "No Trespassing" sign.

No, because Miss Jane and Mr. Drysdale were confronted by an emergency situation.

No, because Jed used excessive force toward Miss Jane and Mr. Drysdale.

Essay Writing

PA Bar Exam Essay Problem

Theory	Elements	Relevant Facts	Arguments
Trespass to land			
Trespass to chattel			
Conversion			

Theory	Elements	Relevant Facts	Arguments
Trespass to land	1. Intent be 2. And on PTF land		
Trespass to chattel	1. Intent to 2. And take or damage	None	t/f
Conversion	1. Intent to 2. And serious TD	None	t/f

Al may have a trespass to land cause of action against Ned. Ned **intentionally** entered Al's land.

BAD

I believe that this would be a sure winner for Al. There is **plenty of evidence** to show that Ned physically trespassed on Al's land.

BAD

Ned's cause of action in negligence against Al would not be successful. . .

..
It should be Al instead of Ned suing for anything.

BAD

A trespass to a chattel may be committed by intentionally dispossessing another of the chattel, or by using or intermeddling with a chattel in the possession of another.

Restatement Torts 2d § 217

ok

When Ned stepped into Al's coyote trap and then disengaged it to set his foot free, he **intentionally dispossessed** Al of its use

BAD

Ned never found a turkey so even though he was trying to hunt Al's turkeys, he did not find out. And Ned never dispossessed Al of his coyote trap because it is never mentioned that he broke it or took it.

BAD

The interference can be **any physical contact** with the chattel in a quantifiable way, any dispossession of the chattel or intermeddling with the chattel. **(a) Ned intermeddled** with Al's coyote trap.

BAD

there are damages resulting from the conversion (a) If upon entering Al's property without permission, Ned may have **damaged Al's coyote trap by when he stepped on it.**

BAD

Al could sue Ned for trespass to land because he entered Al's land without permission. Al could sue Ned for trespass to chattel because Al "used and intermeddled" with Ned's trap that he set to catch the coyote. The trap was Al's personal property and Ned intermeddled with it when he stepped into it.

BAD

in trespass to chattel. Al will have to show **nominal damages** in order to collect, that the trap's quality or value was diminished or he was deprived of it for a substantial amount of time.

Extra BAD

I believe that Al would be able to bring three additional causes of action against Ned in a civil suit. These three causes of action are: trespass to land, trespass to chattels, and conversion.

NICE

First we will cover the cause of action for trespass to land. A trespass to land offense requires only two actions. First, the offender must intentionally enter the Plaintiff's land without permission. Second, the offender must either remain on the Plaintiff's land without the right to be there, or the offender must put an object on or refuse to remove an object from the land.

OK

Applying these two elements to our facts, **it is clear** that Ned intentionally entered Al's land without permission. It is also very likely that Ned remained on Al's land without the right to be there, because Al had posted very clear warnings across his land that hunters were not allowed on the property. It is very likely that Al would prevail against Ned under a trespass to land action.

Nice format (ok content)

Ned might assert that he had good reason to be there as he had lost his job and needed to provide food for his family.

So what