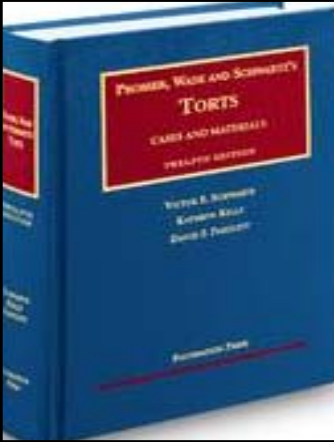


# Torts

Professor Pope

Class 1: Aug. 23, 2011



11<sup>th</sup> or 12<sup>th</sup>  
will work  
fine

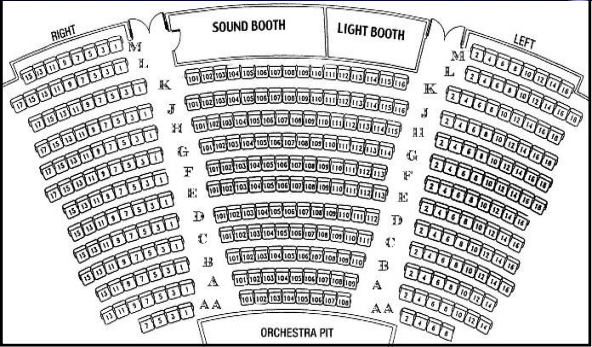


## Attendance Chart

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

Primary Source, LLC

## Name + Brief background



This week only

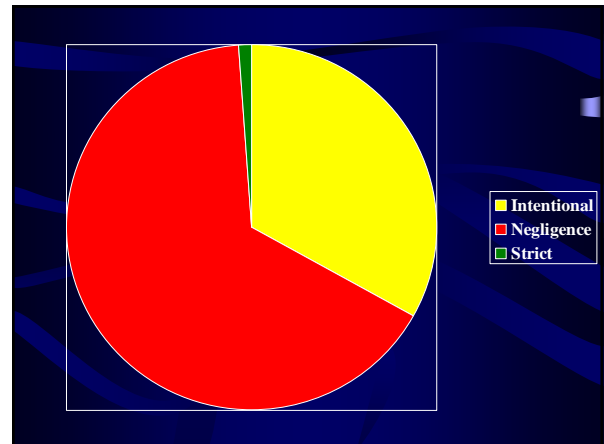
Thursday      Vale Moot Ct

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

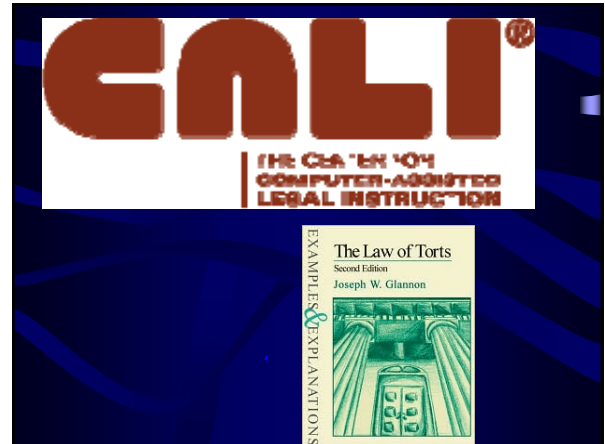
[law.widener.edu/LawLibrary/  
Services/ExamArchive.aspx](http://law.widener.edu/LawLibrary/Services/ExamArchive.aspx)

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

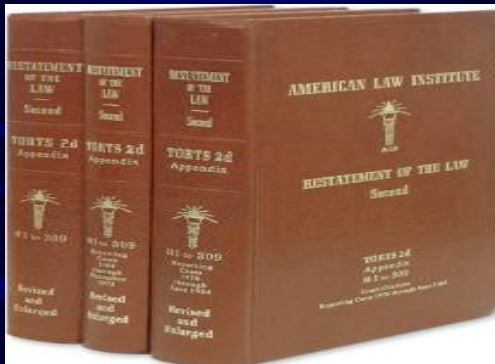
2 elements

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)

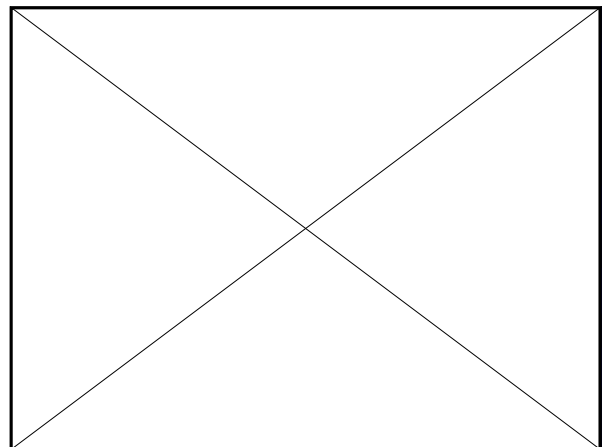
Intend to do act

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

Westlaw

HOME WESTLAW WESTLAW NEXT TWE LAW SCHOOL EXCHANGE™

Legal Guides | Training | Ask Westlaw Features | General Feedback | Faculty Resources

WELCOME

Hodding Student Update  
University of California, Hastings College of the Law

SIGN OFF

SUPPORT

Your Account Manager is: Mark Cozart

Your student reps are:  
Sena Vidal  
Michelle Garfinko  
Janias Nachway

Professor's Guide to TWE

WestlawNext Live Help

LEGAL RESEARCH CENTER

Research Shortcuts

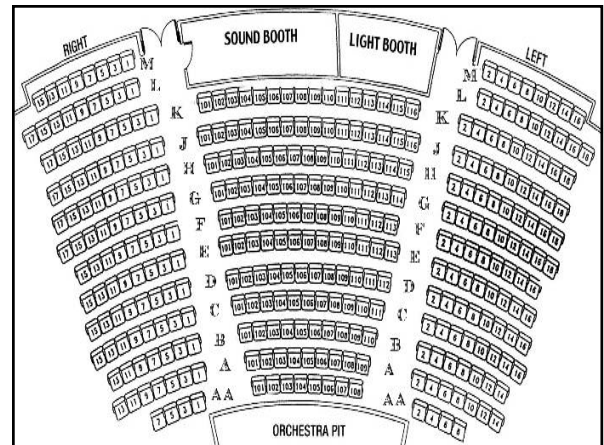
Retrieve a Document:  Select an Option:  Fine  KeyCite  BriefIt

OR:

Run a Search:  Select an Option:  ALR  Law/Reviews

LEGAL NEWS

- People v. Park, 2010 App. Super. 1 - September 13, 2010. Criminal Justice - Requirement that city issue notice of automated traffic enforcement system 30 days prior to enforcement applied to each particular intersection at which automated photographic system was installed. A statute reou...
- Qui v. M.D., 2010 App. 10 Dist. 1 - September 13, 2010. Family Law - Surrogacy agreement was enforceable, rebutting presumption that surrogate was "natural mother" to baby not genetically related to either party. A surrogacy agreement was valid and enforceable under which a gestation...
- International Women's Sex-Mercy Platform Committee v. City of San Antonio, 2010 S.Ct. 1001 - September 10, 2010. Civil Rights - Ordinance imposing fees on march organizers provided viable alternatives for unorganized expression. A San Antonio ordinance imposing fees for traffic control and cleanup costs on march organizers proved ample altern...



## 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
<b>HOC</b>	DEF shot PTF in face
<b>Intent</b>	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



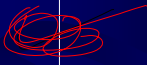
Procedural posture

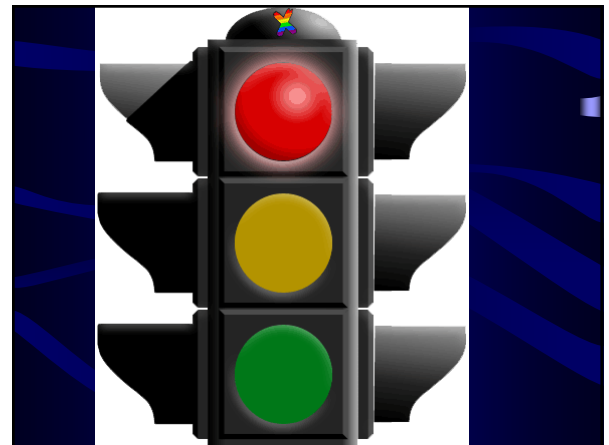
We are usually reading **appellate** cases

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

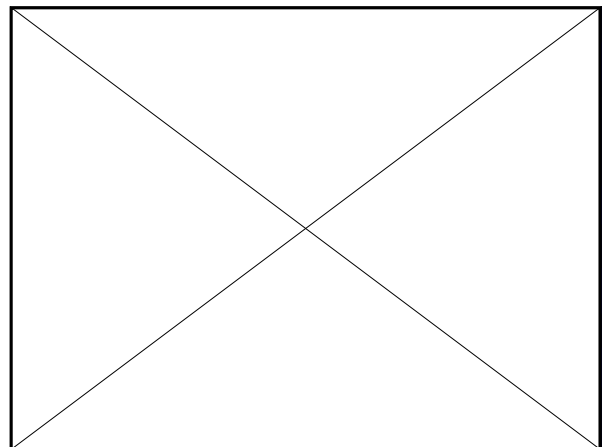
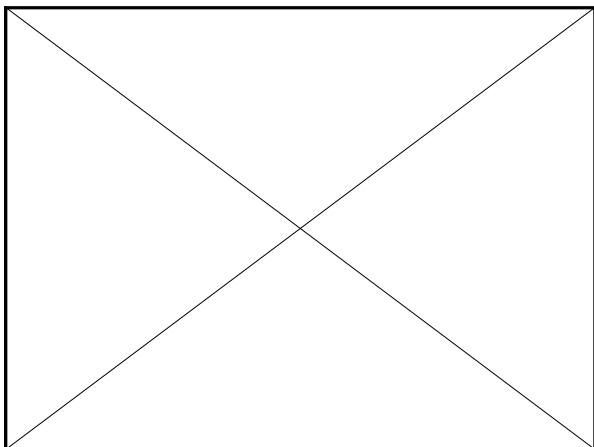
Commit tort **B**  
on P

Intend tort  
against **P1**

Commit tort  
against **P2**

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

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



**CRIME & COURTS**

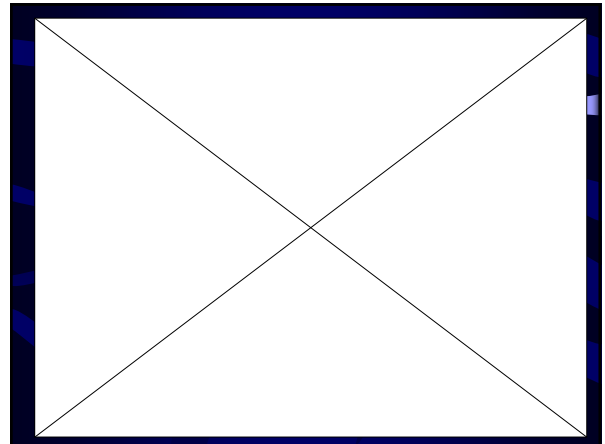
**Carmel grad faces charges in slaying**  
 Suspect says gun prank in Purdue apartment went awry

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**

	<b>TORT</b>	<b>CRIMINAL</b>
<b>Plaintiff</b>	Party harmed	State or federal prosecutor
<b>Purpose</b>	Compensation Deterrence	Punishment, deterrence, rehabilitation
<b>Burden proof</b>	Preponderance	Beyond a reasonable doubt
<b>Relief</b>	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



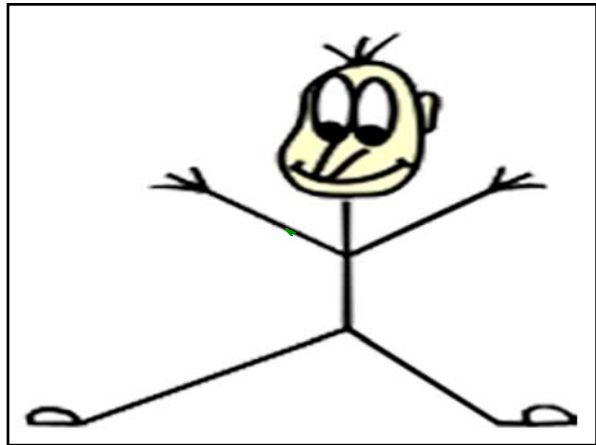
# Wallace v. Rosen





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)

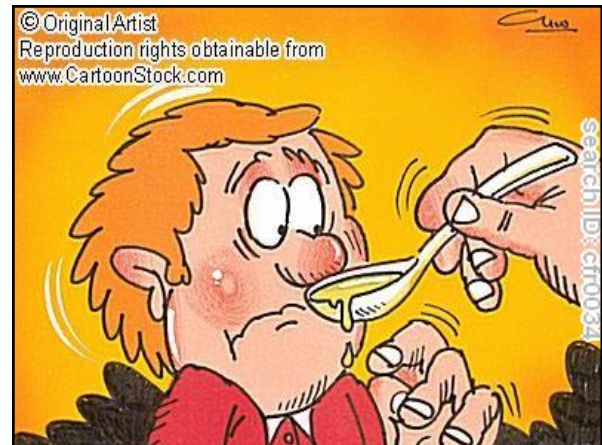
### Contact: harmful or offensive

- 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

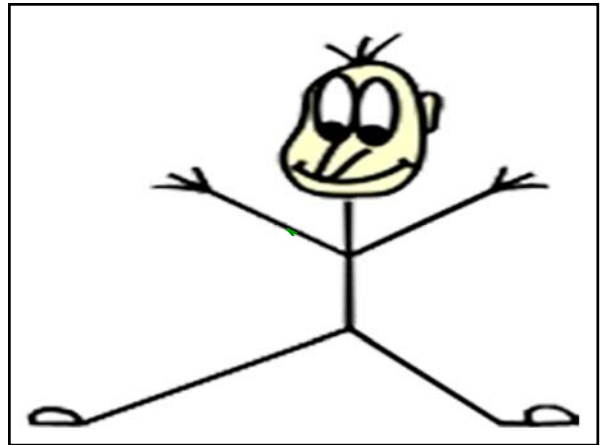
Even if PTF finds it HO

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

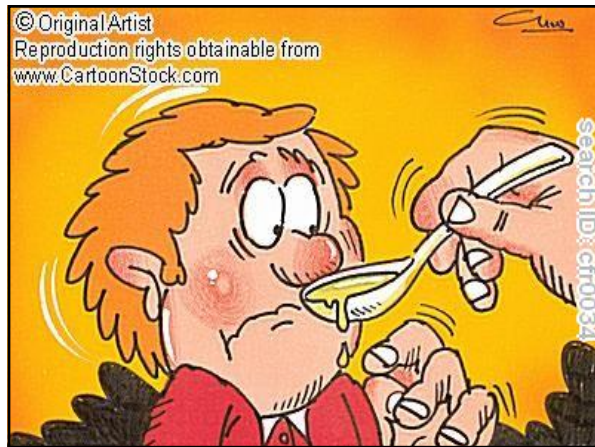
Harmful **or** offensive

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**

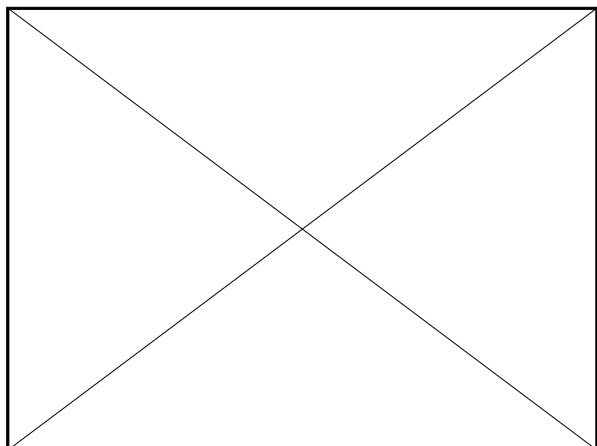
(*e.g. Western Union*)

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

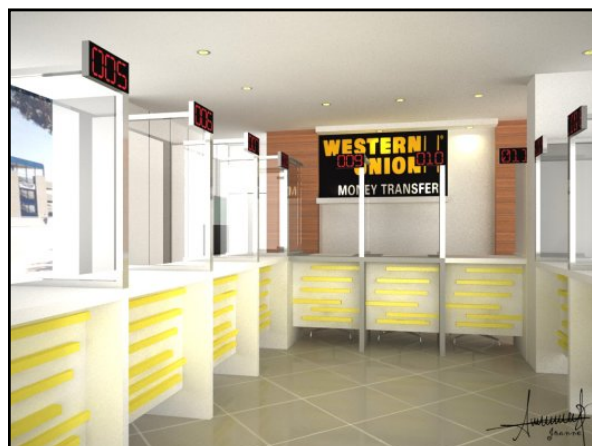
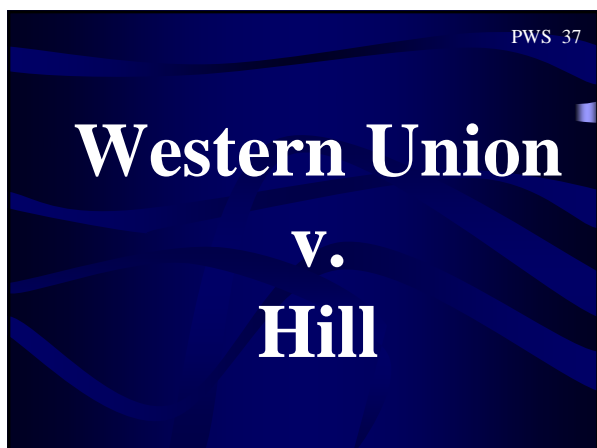
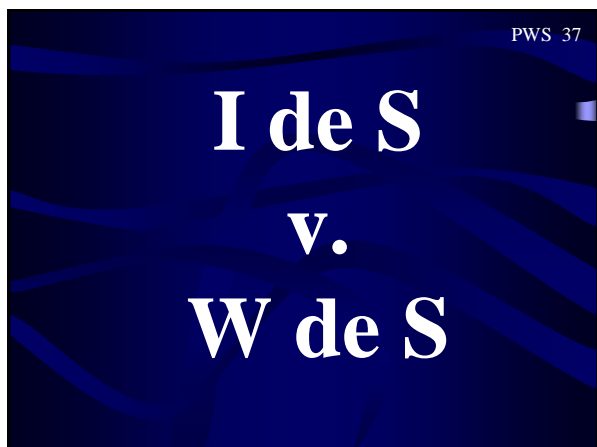
**Not** whether DEF had **actual ability** to make HOC

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”

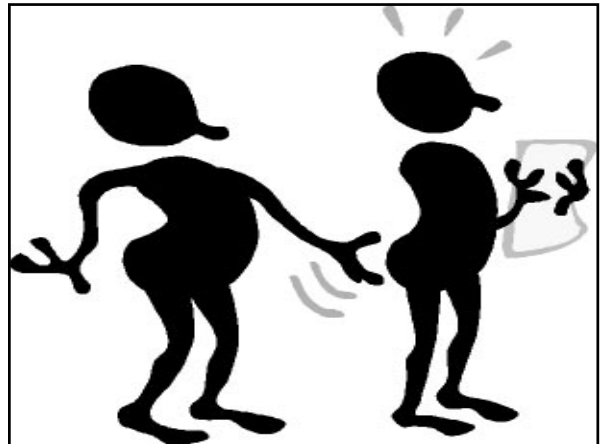
**False**

Can have B without A

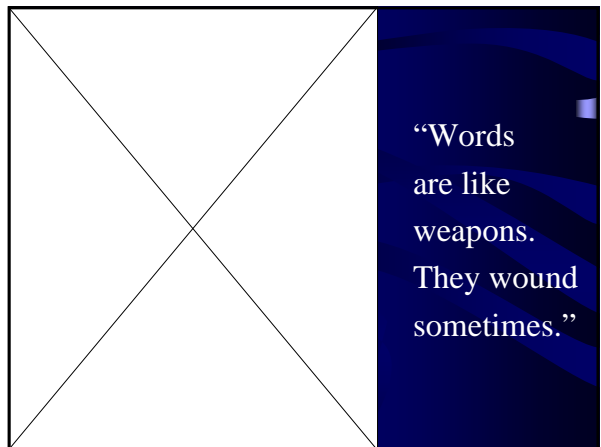
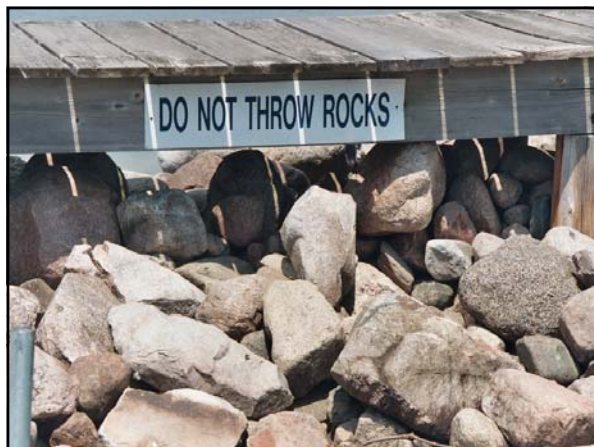
Can have A without B

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

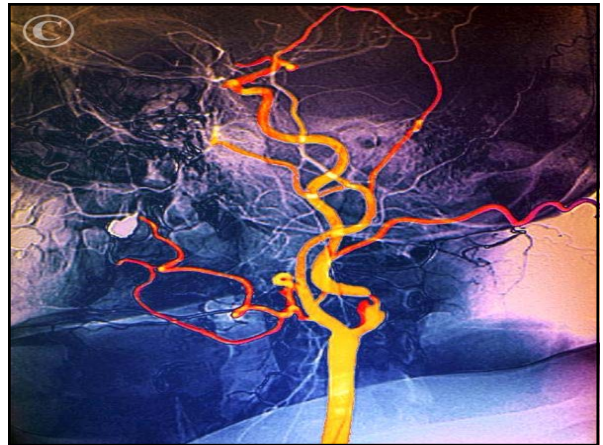
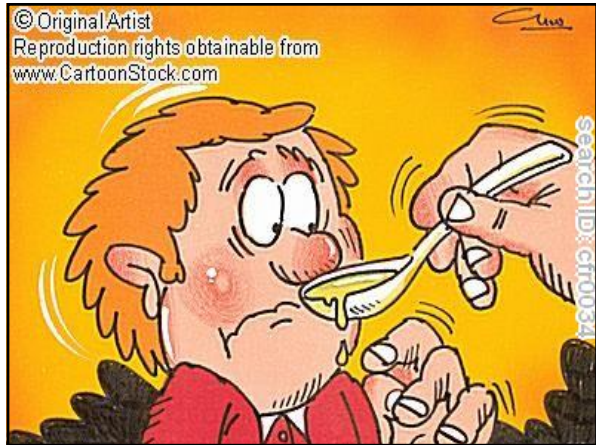
Contrast IIED where mental distress (damages) is an element of liability



# Torts

Professor Pope

Class 5: Sept. 1, 2011



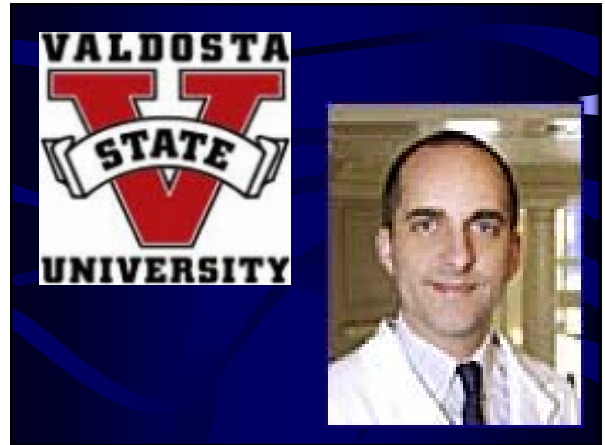
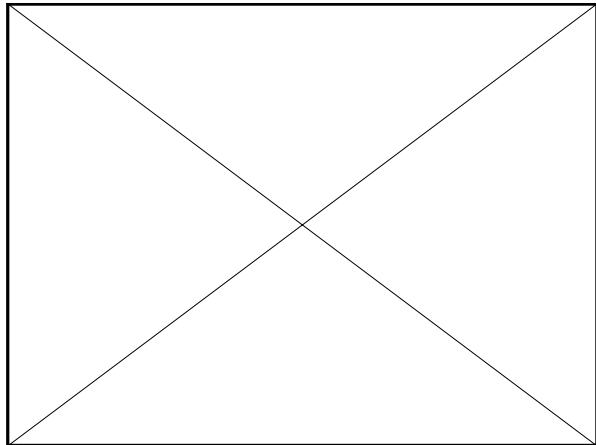
Legal training helps you recognize fact patterns **as** specific torts issues

But “picture” not always clear, complete

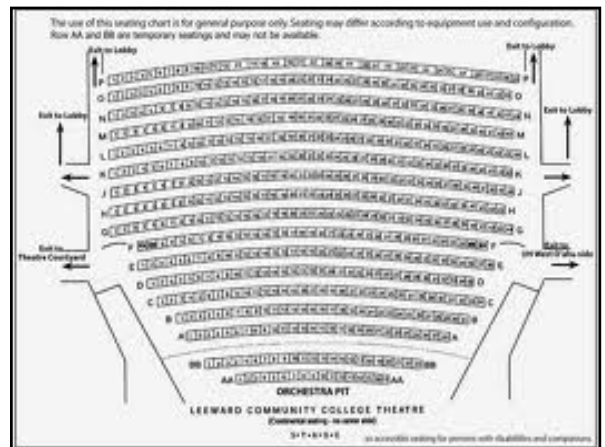
You can recognize fact patterns as **potential** torts issues

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





Trespass to land  
*Bradley v. American Smelting*  
Not in 12<sup>th</sup> 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

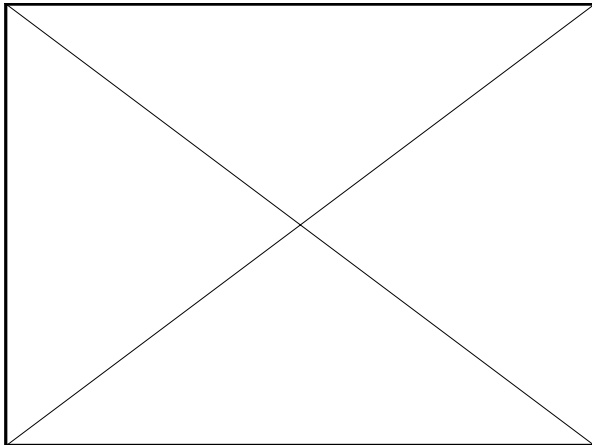
Whether DEF had **actual ability** to make IHOC

Required

Awareness of IHOC

NOT required

Fear of IHOC



**Assault**  
**Cases**

PWS 37

**I de S**  
**v.**  
**W de S**



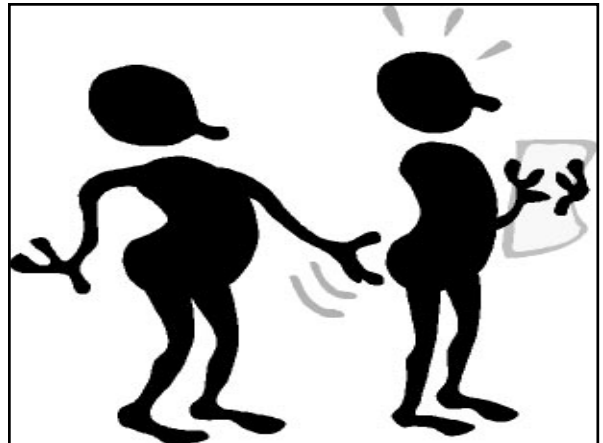
# Western Union v. Hill



“Every battery includes an assault”

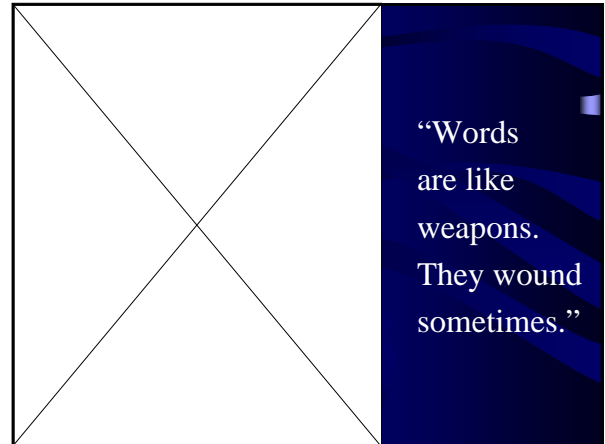
**False**

- 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”

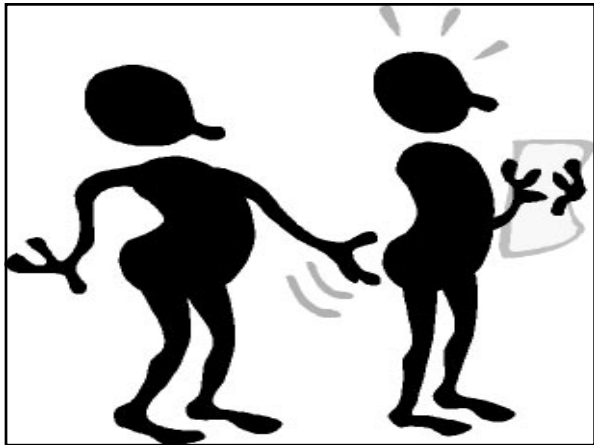
**False**

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) →  
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 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

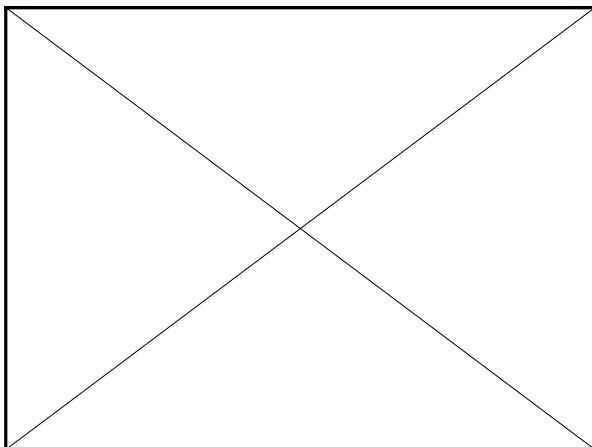
1. DEF **intends** to confine

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	

~~Persuasion~~  
Coercion  
Threat  
Physical force

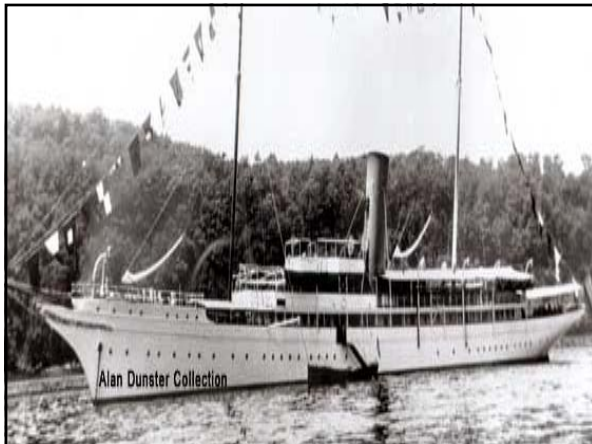


# Enright v. Groves



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

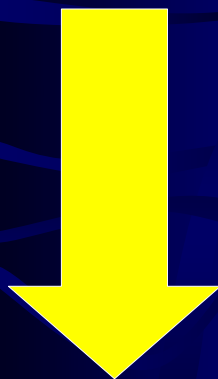
If sufficient facts from which reasonable juror **could conclude** conscious awareness

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

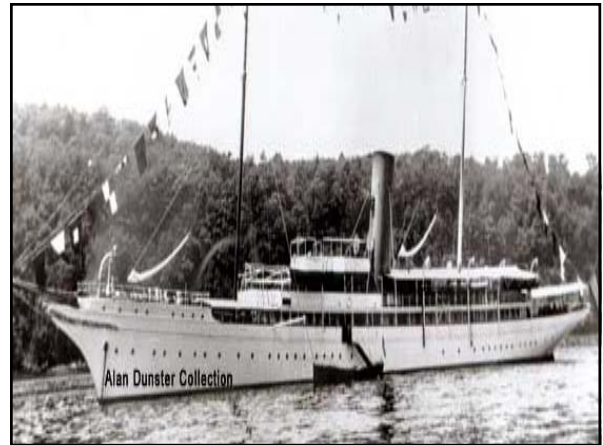
# Enright v. Groves



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

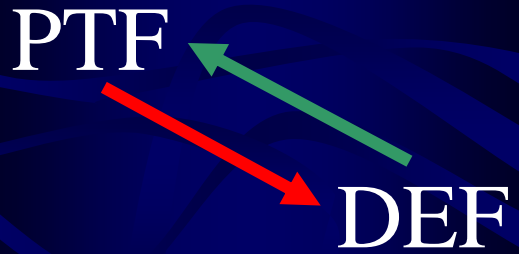
<b>Extreme &amp; outrageous conduct</b>	Not just rude (Slocum) Not just insult, offense Outside the bounds
<b>Intentional <u>or</u> reckless</b>	(1) DEF wants, or (Taylor) (2) knows, or (3) very likely should know
<b>Causes</b>	The E&O conduct will give PTF
<b>Severe emotional distress</b>	Must be severe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

## Egregiously insensitive and deceptive withdrawal of life support





# State Rubbish v. Siliznoff



# Slocum v. Fair Food



# Torts

Professor Pope

Class 8: Sept. 8, 2011

## Quiz 1

Format issues

2 elements

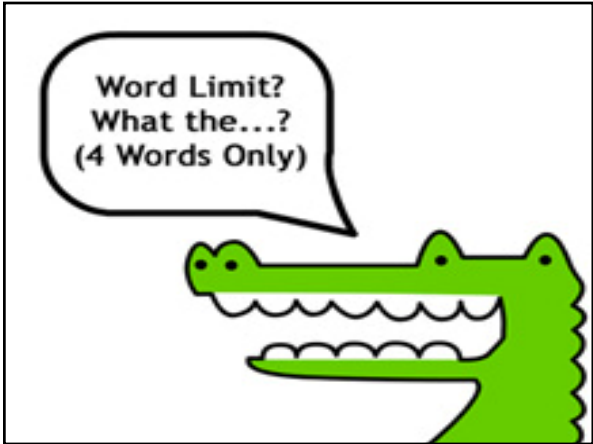
2 paragraphs

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

A cartoon crocodile with a green body and a wide, toothy grin. A speech bubble is positioned above its head, containing text.

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

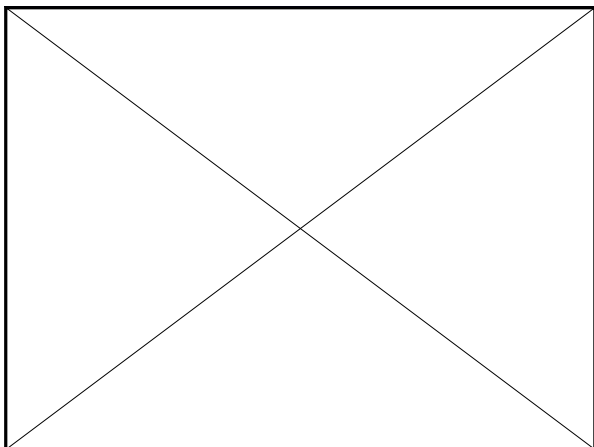
# IIED

## 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].

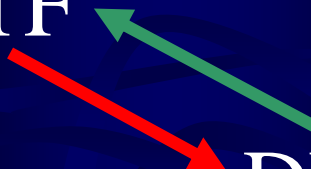
1. Extreme & outrageous
2. Intentional **or** reckless
3. That causes
4. **Severe** emotional distress



# 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





Extreme and outrageous?  
Severe emotional distress?  
**Jury question**

PWS 57

**Harris  
v.  
Jones**



PWS 57

**Taylor  
v.  
Vallelunga**





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

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

# Torts

Professor Pope

Class 9: Sept. 9, 2011

PWS 57

# Taylor v. Vallelunga



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

<b>Causes</b>	E&O conduct is the reason for PTF SED <i>Harris</i>
<b>Severe emotional distress</b>	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

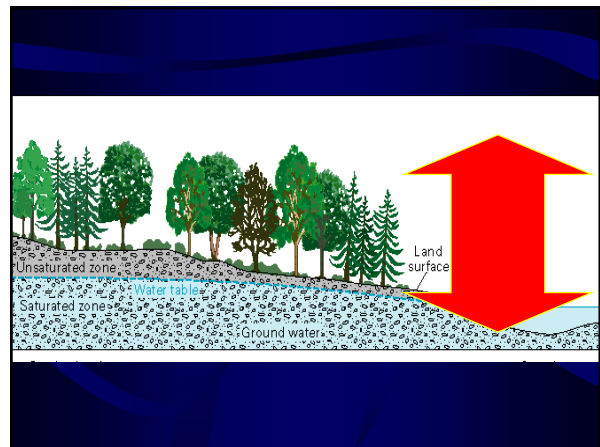
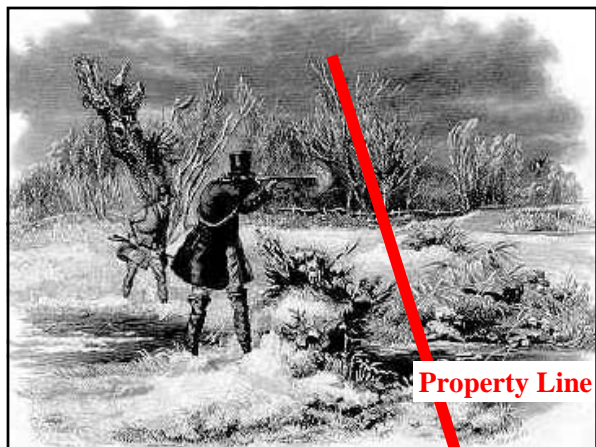
“No matter where you go, there you are”

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



PWS 70

# Herrin v. Sutherland

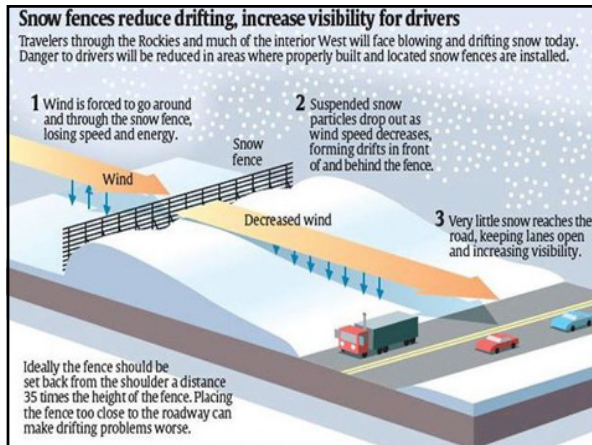


## Trespass

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

PWS 72

# Rogers v. Kent Cty.

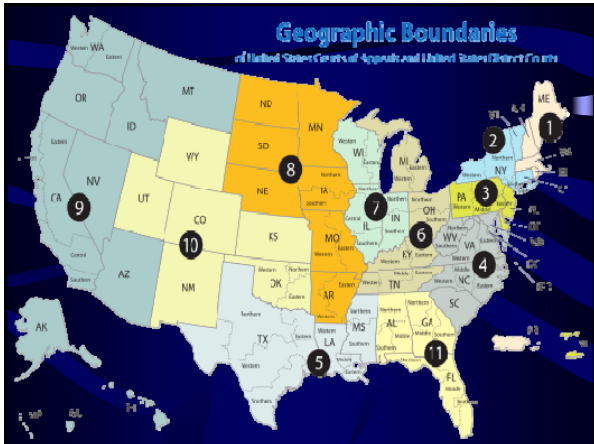






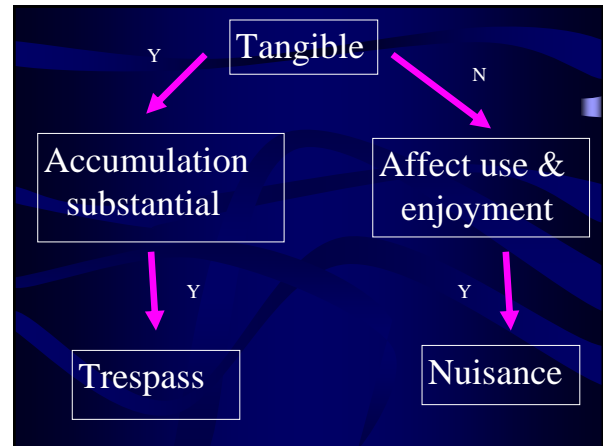
PWS 68

# Bradley v. Am Smelting



## “Environmental” Trespass

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



# Torts

Professor Pope

Class 10: Sept. 13, 2011

Possessor **OR** owner

*E.g.* tenant sues  
landlord for entry not  
authorized by lease

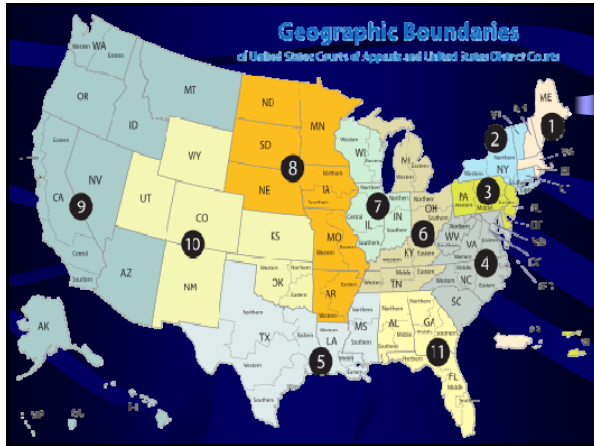
PWS 68

# Bradley v. Am Smelting

Extra trespass element

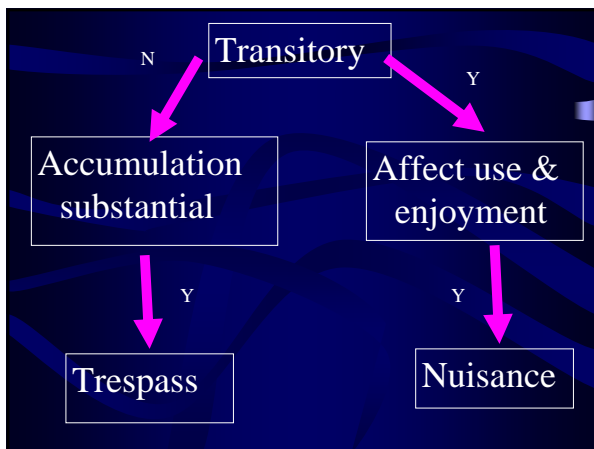
**Only** required in  
environmental  
pollution context





<b>Transitory</b>	Nuisance
Not interfere with exclusive possession, only use & enjoyment	

<b>Non-transitory</b>	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

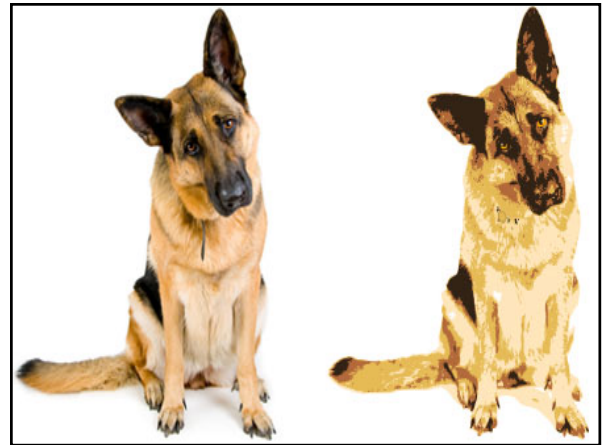




Any person to whom or to whose property damage may be occasioned by a dog . . . **shall be entitled** to recover . . . of the person who owns . . . the dog . . . **unless . . .**

**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	
<b>OR</b>	
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.**

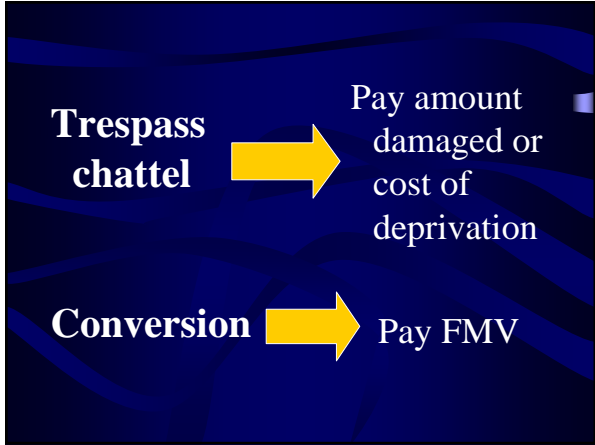
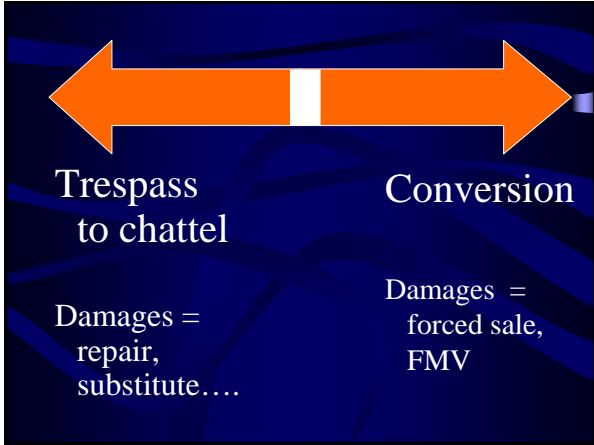
CompuServe is the easy-to-use videotex service designed for the personal computer user and managed by the communications professionals who provide business information services to over one fourth of the Fortune 500 companies. sophisticated financial data. Plus, a communications network for videoconferencing, a bulletin board for selling, swapping, and personal notices and a traffic-charged CD simulator. You get access on CompuServe, Inc. To learn more about CompuServe, call toll-free 1-800-831-3379 for our illustrated guide to the CompuServe Information Service. The videotex service for you, no matter which computer you buy.

**CompuServe**





# Conversion



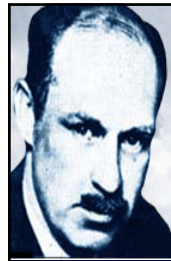
- Factors to determine SERIOUSNESS, *inter alia***
- (d) extent and duration of interference
  - (e) harm done to the chattel
  - (f) inconvenience and expense caused

PWS 81

# Pearson v. Dodd

1967

Sen. Dodd  
censured  
by Senate



*Drew Pearson's*  
Washington  
Merry-Go-Round

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.

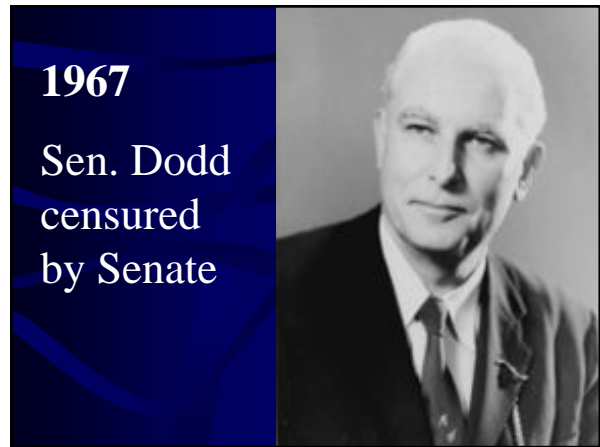
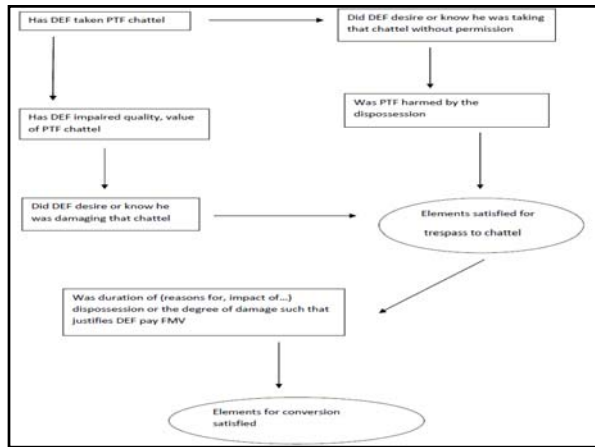
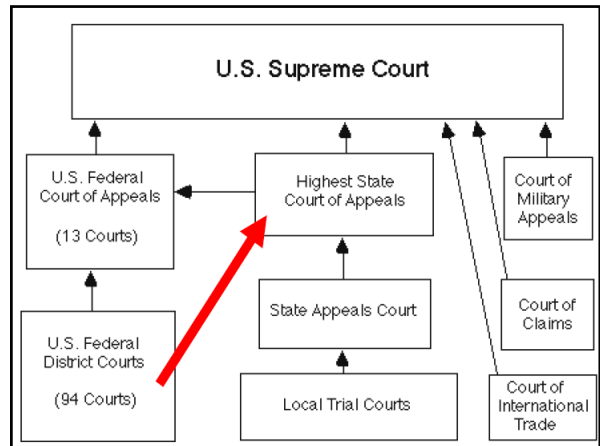
Will the neighbor recover?

- (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

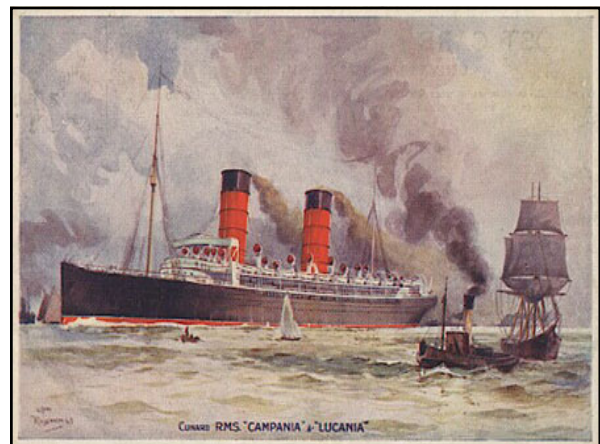
# Consent

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

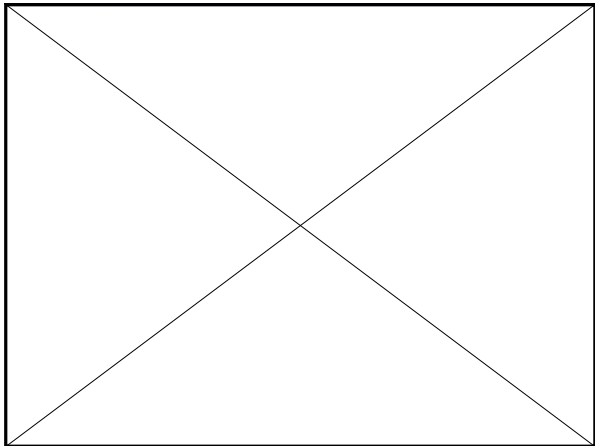
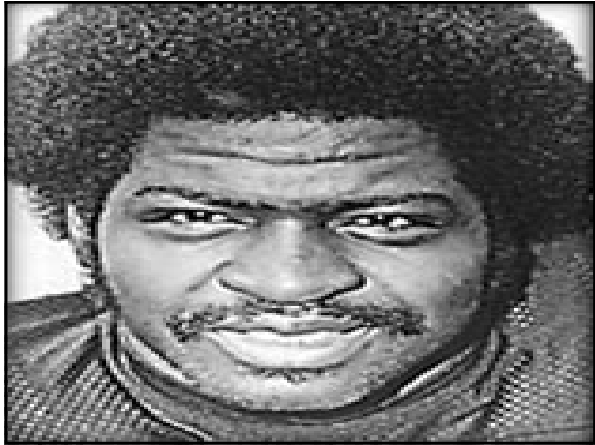
**Implied consent**  
Focus on the ostensible  
What is manifested  
What would reasonable  
DEF think

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



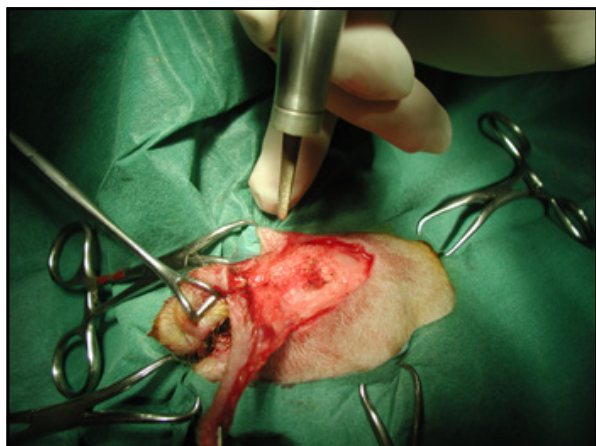
PWS 92

# Hackbart v. Cincinatti Bengals



PWS 94

# Mohr v. Williams

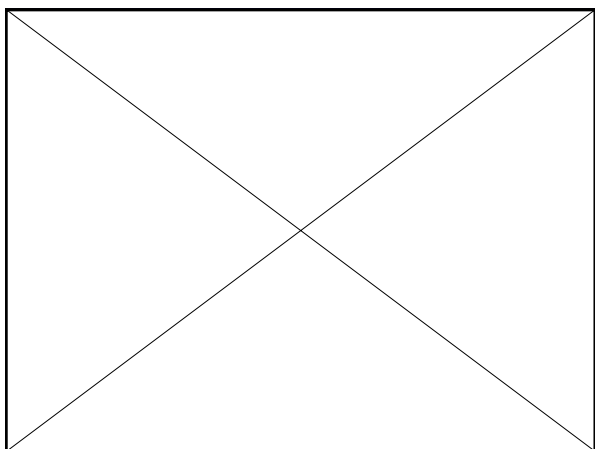


# Emergency exception

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

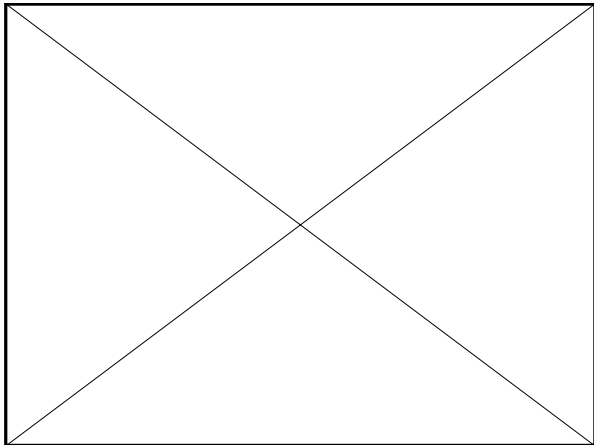
PWS 99

# DeMay v. Roberts



Consent not valid if  
fraudulently obtained

Fraud must go to very  
nature of the act



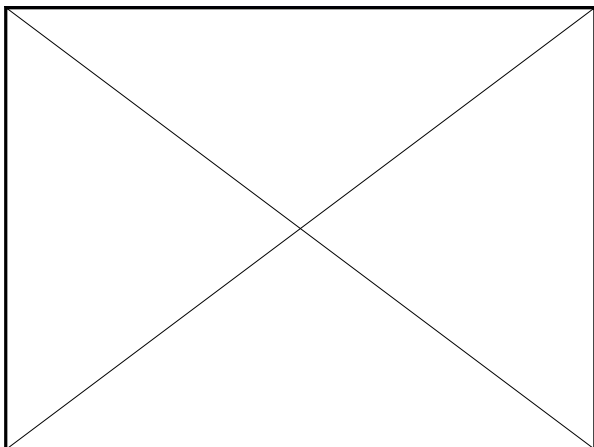
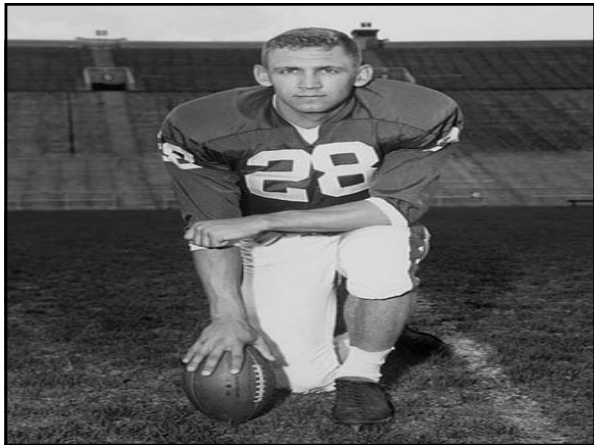
# Torts

Professor Pope  
Class 12: Sept. 16, 2011

Existence of consent

---

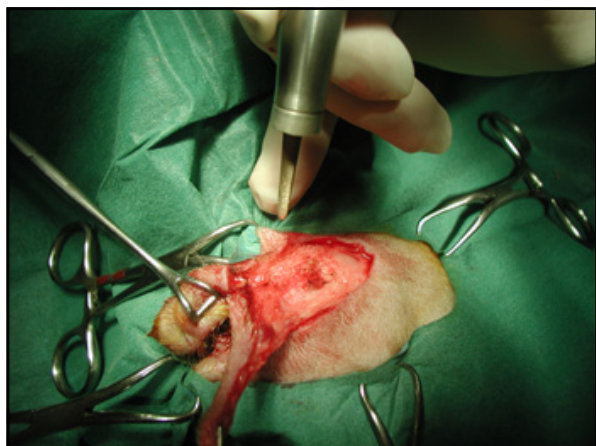
Scope of consent



PWS 94

# Mohr v. Williams



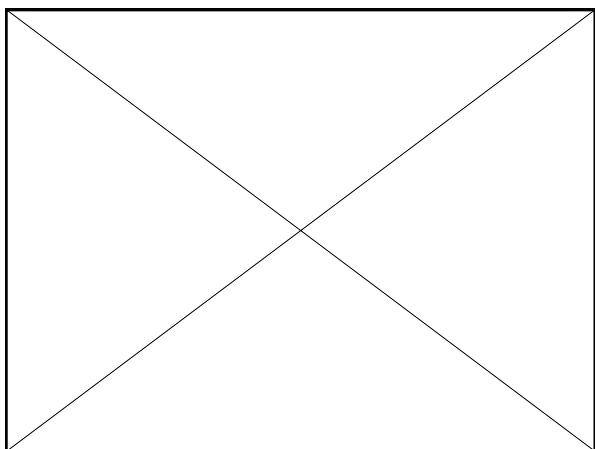


# Emergency exception

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

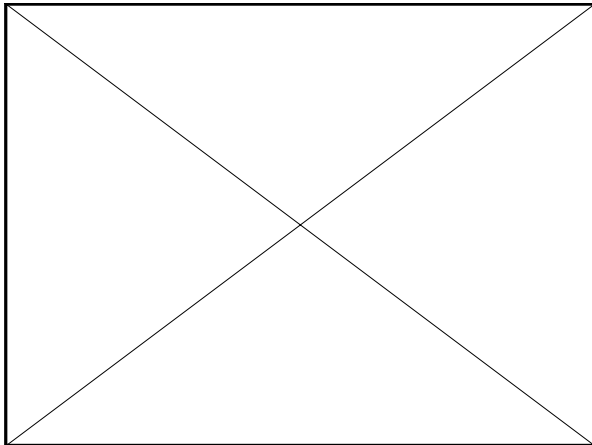
# DeMay v. Roberts





Consent not valid if  
fraudulently obtained

Fraud must go to very  
nature of the act



### Rest.2d 69

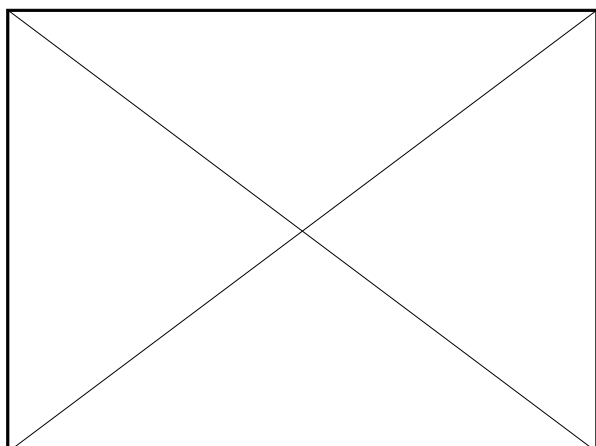
If the actor has **consented** to any . . .  
.invasion of his interests of  
personality, he is **not privileged** to  
defend himself against such an  
invasion unless his consent was  
obtained by fraud or has been  
withdrawn;

## 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

<b>TUE</b>	20	27	4	11
	Priv	Neg	Neg	No cls
<b>THU</b>	22	29	6	13
	Priv	Neg	Neg	Rev
<b>FRI</b>	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

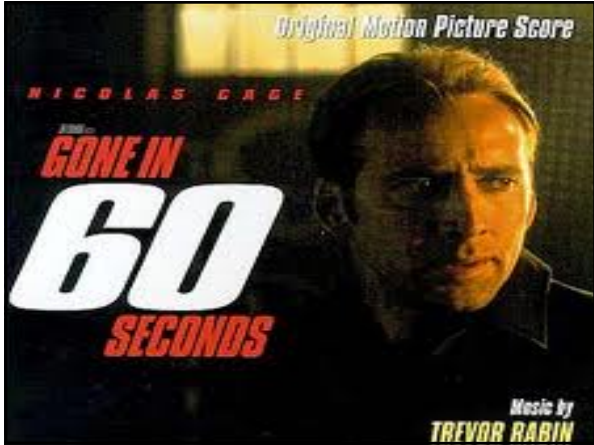
222A Factor	Degree satisfied
D extent, duration control	
D intent assert ownership	
D good faith	
Harm to chattel	
P's inconvenience, expense	

1  
3  
5  
7  
9  
11

“Not divisible  
by 2”

Judgment -  
developed with  
experience





**Privilege 4:  
Defense of  
Property**



Rest.2d 81

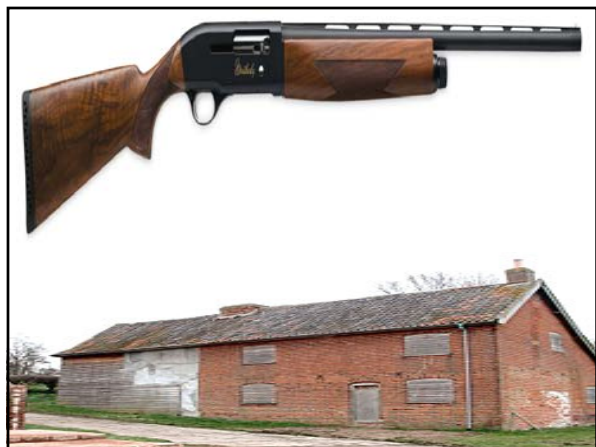
(1) The actor is **not** privileged to use **any** means of defending his land or chattels from intrusion . . .

[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.**

<b>Katko</b>	<b>Briney</b>
Pistol	Shotgun
Knife	Shotgun
Brass knuckles	Shotgun
No weapon	Shotgun

?

?

?

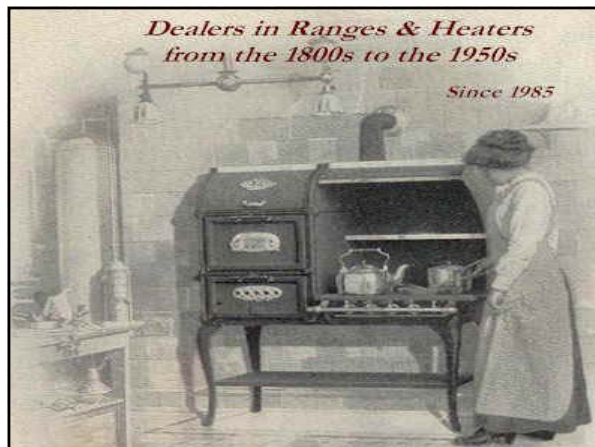
Like self-defense & defense of others

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 1<sup>st</sup> 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

Save community

Complete privilege

Need not pay

### Private necessity

Save yourself

Incomplete privilege

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.

## ExamSoft Registration Forms

### ExamSoft Registration Forms

Sign Up To Use Your Laptop for Exams: Use our [Online Form](#) to Request to type your exams with ExamSoft

*Note: All Students who wish to type their exams must provide their own laptop computer and power cord. Please complete the information below or call the numbers below for additional information:*

**In Delaware:** 302-477-2170 | **In Harrisburg:** 717-541-3904

Download the ExamSoft software at the [Widener Law ExamSoft® page](#)

# 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