

INTENTIONAL TORTS CHECKLIST

Most Torts questions are party-oriented problems. Therefore, the best way to approach a Torts problem is to examine the parties in the lawsuit and quickly determine the nature of the injury suffered by the plaintiff and the action (or inaction) of the defendant which caused the injury to the plaintiff. You will then be able to focus on the appropriate Tort(s) in issue.

I. Intentional torts: Each intentional tort requires a volitional act done with the requisite intent which is the cause of the resulting harm suffered by the plaintiff.

A. Potential torts when the plaintiff suffers injury to his/her body:

1. Assault.

- a. Did the defendant engage in a volitional act?
- b. Did the defendant intend to place the plaintiff in apprehension of an immediate battery?
- c. Did the actions of the defendant cause the harm to the plaintiff?
- d. Did the plaintiff suffer reasonable apprehension of an immediate battery?

2. Battery

- a. Did the defendant engage in a volitional act?
- b. Did the defendant intend to touch the plaintiff?
- c. Did the actions of the defendant cause the harm to the plaintiff?
- d. Did the plaintiff suffer a harmful or offensive touching?

3. False imprisonment.

- a. Did the defendant engage in a volitional act?
- b. Did the defendant intend to confine or restrain the plaintiff within a bounded area?
- c. Did the actions of the defendant cause the harm to the plaintiff?
- d. Was the plaintiff confined?

B. Potential torts when the plaintiff suffers injury to his/her emotions:

1. Was the emotional distress associated with a separate tortious injury to the plaintiff's body? If so, then recovery awarded under the separate tort.

Otherwise:

2. Intentional infliction of emotional distress.

a. Did the defendant engage in a volitional act?

b. Did the defendant intend to cause severe emotional distress or recklessly disregard that severe emotional distress might occur?

c. Did the actions of the defendant cause the harm to the plaintiff?

d. Did the plaintiff suffer severe emotional distress?

C. Potential torts when the plaintiff suffers injury to his/her property:

1. Injury to real property:

a. Trespass to land.

1) Did the defendant engage in a volitional act?

2) Did the defendant intend to cause a physical invasion of the plaintiff's land? (Note: intent to trespass not required.)

3) Did the actions of the defendant cause the harm to the plaintiff?

4) Did the plaintiff suffer a physical invasion of his/her land?

b. Nuisance

1) Private nuisance.

a) Did the defendant engage in a volitional act?

b) Did the defendant intend to cause a substantial and unreasonable interference with the plaintiff's use and enjoyment of his/her land? (Note: defendant can also be liable in negligence or strict liability.)

c) Did the actions of the defendant cause the harm to the plaintiff?

d) Did the plaintiff suffer a substantial and unreasonable interference with the use and enjoyment of his/her land?

2) Public nuisance.

a) Did the defendant engage in a volitional act?

b) Did the defendant intend to unreasonably interfere with the health, safety, or property rights of the public?

c) Generally, only a representative of the public can sue to abate a public nuisance. However, did the plaintiff suffer damage different in kind from those inflicted on the public?

2. Injury to personal property:

a. Conversion.

1) Did the defendant engage in a volitional act?

2) Did the defendant intend to do the act which caused the conversion?

3) Did the actions of the defendant cause the harm to the plaintiff?

4) Did the plaintiff suffer a destruction of or serious and substantial interference with his/her chattel?

5) What is the available remedy?

b. Trespass to chattels.

1) Did the defendant engage in a volitional act?

2) Did the defendant intend to do the act which caused the interference?
(Note: intent to interfere not required.)

3) Did the actions of the defendant cause the harm to the plaintiff?

4) Did the plaintiff suffer an interference with his/her chattel?

5) What is the available remedy?

D. Damages

1. If the plaintiff suffered personal injury:

1. What are the recoverable general damages?

2. Are there any special damages that can be established?

2. If the plaintiff suffered property damage:

1. Can the plaintiff recover the replacement value or market value for destruction of the property?

2. Can the plaintiff recover the diminution in value or cost of repair for damages to property?

3. Can the plaintiff recover the rental value or repair value for injuries caused by the defendant's trespass?

3. Can the plaintiff recover punitive damages?

E. Privileges and defenses to intentional torts

1. Consent

a. Did the plaintiff either expressly or impliedly consent to the defendant's action?

b. Did the defendant's actions exceed the scope of the consent?

2. Defenses

a. Self-defense

1) Did the defendant reasonably believe that he/she was under imminent and unprivileged attack?

2) Did the defendant use reasonable force in response?

b. Defense of others

1) Did the defendant reasonably believe that another person was under imminent and unprivileged attack?

2) Did the defendant use reasonable force in response?

c. Defense of property

1) Harm to property: Did the defendant use reasonable nondeadly force to prevent harm to his/her property?

2) Recover real property: May the defendant use force to recover wrongfully dispossessed land?

3) Recover personal property

a) Was the defendant tortiously dispossessed of personal property?

b) Must the defendant first make a demand for return of the property?

c) Did the defendant use reasonable non-deadly force to recover the property?

3. Authority

a. Can the defendant claim the privilege to arrest the plaintiff?

b. Can the defendant claim the shopkeeper's privilege to detain the plaintiff?

c. Can the defendant claim the right to use reasonable force to maintain discipline?

4. Necessity

a. Private necessity: can the defendant injure the property of another to avoid substantially greater harm to himself/herself or his/her property?

b. Public necessity: can the defendant injure the property of another to avoid substantially greater harm to the public?



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