

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?

INTENTIONAL TORTS HYPO 1

Dan, age 14, was scrawling gang slogans on the wall surrounding Paul's yard. Paul arrived home from work and saw what Dan was doing. Paul approached Dan and yelled, "Hey! Stop that! You're ruining my wall!" Dan yelled back, "Get away from here, old man, or I'll make you sorry!"

Paul turned and muttered to himself, "Now I'll have to repaint the entire wall." Dan overheard Paul and screamed, "Repaint my work and you're going to have a disaster at your house—while you and your kids are asleep!"

Paul sues Dan for assault and intentional infliction of emotional distress. Discuss.

INTENTIONAL TORTS HYPO 2

Davis and Potter were both first year law students. Davis knew that Potter was about to celebrate her 30th birthday, so he arranged for their fellow students to throw her a surprise birthday party. On the appointed day, Davis brought streamers and balloons to decorate the student lounge. Fearing that Potter may enter the student lounge before it was fully decorated, Davis went to the library where Potter was studying. Davis saw Potter in a study room through a crack where the door was not completely closed. Davis quietly closed and secured the study room door so that it could not be opened from the inside. Unknown to Davis, Potter had fallen asleep in the room while studying.

Unseen by Davis, Abrams, another student, was also in the study room. When Abrams tried to leave, he found that he was locked in. After checking and finding no other way out of the study room, Abrams pounded on the door and called for help. Upon hearing his call, Davis realized what had happened and let him out. Potter slept through the entire incident.

This entire incident took only a few minutes, but it caused Abrams, who had neurotic fears of confinement, to suffer severe emotional distress, with momentary symptoms of dizziness, shortness of breath, and accelerated heartbeat. He did not, however, suffer any physical damage, nor did he incur any medical expense or economic loss as a result of the incident.

When Potter awoke, she left the study room and entered the student lounge. At Davis' direction, the students gathered in the lounge jumped out at Potter and screamed "Happy birthday!" Potter was frightened by the noise and immediately left the lounge.

What intentional tort claims, if any, could Potter and Abrams assert against Davis? Explain.

INTENTIONAL TORTS HYPO 3

Doug was playing golf with some friends one afternoon. As they approached the third hole, Doug noticed that there were some houses along the left side of the fairway.

Doug was not worried about this, since he rarely hit his golf shots to the left. Doug hit his shot, and the ball traveled down the middle of the fairway until it hit a branch of a tree that hung over the middle of the fairway. The golf ball bounced off of the tree limb and flew into the yard of the house owned by Peter, who lived in one of the houses that lined the fairway.

Doug saw his golf ball enter Peter's yard. He climbed the short wall that ran between the golf course and Peter's property to recover his golf ball. Doug honestly believed that it was permissible for a golfer to enter the yard of people living along the golf course to retrieve golf balls that had entered their yards. As he picked up his golf ball, he noticed that Peter had an apple tree growing in his yard. Since Doug was quite hungry, he picked an apple off of the tree and began to eat it. As he turned, he saw another apple laying on the ground. Since the apple had just fallen off of the tree, he picked it up and put it in his pocket, intending to eat it later.

Doug then returned to the golf course and started walking to join his friends. At that moment Peter, who had witnessed the entire episode from his upstairs bedroom, ran out and yelled at Doug for stealing his apples. Doug yelled back, "I didn't know the apples meant so much to you. Here, you can have this one back!" Doug then took the apple from his pocket and threw it at Peter. The apple missed Peter by several feet, but broke a window in a storage shed Peter had erected on his property.

Discuss any intentional torts Doug may have committed against Peter.