

INTRODUCTION

This program is designed to provide a review of basic concepts covered in a first-year torts class and is based on DeWolf, Cases and Materials on Torts (<http://guweb2.gonzaga.edu/~dewolf/torts/text>). You have accessed the tutorial for Chapter 12, “Prima Facie Case” Prior to doing these exercises you should read the relevant material in DeWolf, Cases and Materials on Torts. A brief overview of this Chapter is provided below.

OVERVIEW

INTENTIONAL TORTS

Intentional torts were among the first causes of action recognized at common law (and earlier legal systems) as ones requiring the defendant to pay compensation. However, they have receded in importance as a result of the prominence of insurance as the compensating mechanism. Most insurance policies exclude coverage for injuries caused intentionally; the typical insurance contract language provides coverage only for an "occurrence," which is usually defined as some kind of accidental harm. However, many cases still arise, frequently in the context of an employer whose employee oversteps his bounds (in law enforcement, debt collection, or the like).



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Ch. 12. The Prima Facie Case

The elements for each cause of action are specified in the RESTATEMENT OF TORTS, and there is no substantial departure in any jurisdiction from the elements of the torts of battery, assault, or false imprisonment. The essence of battery is a touching either harmful or offensive. In both cases the defendant must act intending to cause either the touching or the apprehension of such a touching, although under the doctrine of "transferred intent" it is possible for the plaintiff to show intent by proving that the contact was intended for a third party. The essence of assault is causing fear—imminent apprehension—of harmful or offensive contact by the defendant. The same rules about transferred intent apply. As to false imprisonment, the key issues are whether the defendant intended to confine the plaintiff, and whether the confinement is complete. Finally, the tort of outrage (RESTATEMENT § 46, Intentional Infliction of Emotional Distress) allows a recovery for cases where (1) the distress is inflicted intentionally (in some jurisdictions, or recklessly); (2) the conduct is extreme and outrageous; and (3) severe emotional distress results.




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To Exercise

EXERCISE

Each question gives you a fact pattern, and then you must choose an answer that best reflects the law as you understand it. Be careful to read the question and the suggested answers thoroughly. Select your answer by clicking on it. If you give an incorrect answer, you will be given feedback on what was wrong with your answer. By clicking on the feedback you will be taken back to the question to try again. Once a correct answer is selected, click on the feedback to go to the next question.

You may begin the exercise by click on a question number below. Throughout the tutorial three Shortcut Buttons will be located in the bottom right-hand corner of each page. The Return Button  brings you back to this page allowing you jump to questions of your choice if you prefer. The Information Button  takes you to the Torts Glossary. The Home Button  takes you to the Torts Tutorial Home Page.

Questions:

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Question #1

Mike, an experienced basketball player, was working out in the gymnasium when he saw his friend Joe with his arms full of books. Intending to surprise Joe and remind him of Mike's superior athletic talent, Mike called out, "Here, Joe, Catch!" and pretended to throw a cross-court pass toward him. Joe reacted instinctively by moving backward. He stumbled and fell, causing himself injury. Can Joe recover for his injuries from Mike based on the tort of battery?

- (1) Yes.
- (2) Yes, if a reasonably prudent person would have anticipated Joe's reaction;
- (3) No, if Mike didn't intend to cause Joe's injuries.
- (4) No, because the ball did not actually "touch" Joe.



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(1)Yes.

(2)Yes, if a reasonably prudent person would have anticipated Joe's reaction;

(3)No, if Mike didn't intend to cause Joe's injuries.

(4)No, because the ball did not actually "touch" Joe.

That's correct. Mike intended to cause the apprehension of a harmful or offensive contact (by the ball), and that action directly or indirectly caused physical harm to Joe. Consequently, Joe has committed a battery.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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- (4) No, because the ball did not actually "touch" Joe.

Sorry, that's incorrect. Unlike negligence torts, the tort of battery doesn't revolve around an objective standard of what the reasonable person would have done or thought. Instead, it focuses on whether the actor subjectively intended to cause certain kinds of consequences. In this case, whether Mike could have reasonably anticipated Joe's reaction or not is irrelevant. Try again.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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- (4) No, because the ball did not actually "touch" Joe.

Sorry, that's incorrect. Even if Mike didn't intend to cause Joe's injuries, he did intend that certain consequences (apprehension), and that coupled with a harmful touching produced an injury to Joe. Try again.



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- (1) Yes.
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- (3) No, if Mike didn't intend to cause Joe's injuries.
- (4) No, because the ball did not actually "touch" Joe.**

Sorry, that's incorrect. Even though the ball didn't actually touch Joe, there was a harmful or offensive contact (with the floor), which was directly or indirectly caused by Mike's actions of moving the ball to make it look like a pass was coming right at Joe. Thus a touching did occur, satisfying that aspect of the test for a battery.



Question #2

Sally and Ann were roommates. They had a disagreement over whether the windows should be left open or closed at night. Sally saw Ann at the cafeteria while they were both drinking a cup of coffee. Ann said something insulting toward Sally and Sally spit out a mouthful of coffee, intending to come close to Ann but not to actually strike her. By chance Tom was walking past and was struck by a few drops of the coffee blast. Has Sally committed a battery toward Tom?

- (1) Yes, if Sally had reason to know Tom was walking past;
- (2) Yes, regardless of whether Sally had reason to know of Tom's presence;
- (3) No, because Sally didn't intend harmful consequences toward Tom;
- (4) No, if Sally didn't intend harmful consequences toward Ann.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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- (2)Yes, regardless of whether Sally had reason to know of Tom's presence;
- (3)No, because Sally didn't intend harmful consequences toward Tom;
- (4)No, if Sally didn't intend harmful consequences toward Ann.

Sorry, that's incorrect. It doesn't matter whether Sally knew or had reason to know that Tom was walking past. Try again.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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- (2) Yes, regardless of whether Sally had reason to know of Tom's presence;**
- (3) No, because Sally didn't intend harmful consequences toward Tom;
- (4) No, if Sally didn't intend harmful consequences toward Ann.

That's correct. The intent to cause apprehension of an offensive contact would be "transferred" from Ann to Tom. In the language of the Restatement, the intent to cause an offensive contact (or apprehension thereof) with a "third person" (Ann), if it causes an offensive contact with another (Tom) will create a battery.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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- (4) No, if Sally didn't intend harmful consequences toward Ann.

Sorry, that's incorrect. Under the Restatement, harm intended toward a third person can be "transferred" to the plaintiff. Thus, if Sally intended harm toward Ann, it can be transferred to Tom even if Sally wouldn't have wanted to cause harm toward Tom. Try again.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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- (2) Yes, regardless of whether Sally had reason to know of Tom's presence;
- (3) No, because Sally didn't intend harmful consequences toward Tom;
- (4) No, if Sally didn't intend harmful consequences toward Ann.**

Sorry, that's incorrect. Even if Sally didn't intend to cause *harmful* contact with Ann, she did intend to cause an *apprehension of offensive* contact toward Ann. That is sufficient intent if, coupled with the actual offensive contact with the person of the other, to constitute a battery. Try again.



Question #3

Mary and her daughter Lisa went to a small boutique to buy a set of earrings. Juanita, the owner, had suffered heavily from shoplifting. Five minutes after they arrived Juanita saw a woman wearing a skirt that still had a price tag on it heading toward the front door. Juanita rushed out and locked the front door, preventing her escape. Juanita didn't see Mary and Lisa in the back, and for the next five minutes she was arguing vociferously with the woman in the skirt. Mary and Lisa thought about leaving through the back, but they didn't know whether it was actually an exit (it was). After five minutes Juanita unlocked the door, and Mary and Lisa ran out. Lisa now has nightmares and refuses to go into confined spaces like elevators. Can Lisa successfully sue Juanita for false imprisonment?

- (1) No, because Mary and Lisa were not actually confined;
- (2) No, if Juanita didn't know they were there;
- (3) No, because Juanita has a privilege to detain suspected shoplifters;
- (4) Yes, because Lisa actually felt confined.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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(2)No, if Juanita didn't know they were there;

(3)No, because Juanita has a privilege to detain suspected shoplifters;

(4)Yes, because Lisa actually felt confined.

Sorry, that's incorrect. In a false imprisonment case the plaintiff must prove confinement, which means that the plaintiff is not free to go. Confinement may exist even where there is actually a means of escape, if that means of escape is unknown to the plaintiff. Try again.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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- (3) No, because Juanita has a privilege to detain suspected shoplifters;
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That's correct. Since false imprisonment requires an intent to confine, there can be no false imprisonment where the defendant didn't intend to confine the plaintiff. Unlike assault and battery, the intent can't be transferred from one person to another.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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- (2) No, if Juanita didn't know they were there;
- (3) No, because Juanita has a privilege to detain suspected shoplifters;**
- (4) Yes, because Lisa actually felt confined.

Sorry, that's incorrect. Although there is usually a statutory privilege to detain suspected *shoplifters*, that would not apply here, since the privilege to detain someone would apply only to the lady with the skirt. Juanita would have no reason to detain Mary and Lisa, since she would not have reasonable grounds to detain them. Try again.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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Sorry, that's incorrect. Although their feeling of confinement is necessary to a false imprisonment claim, and it would be met under the facts of this case, it is not enough to constitute the tort. Try again.



Question #4

George, a well-known lawyer, agrees to meet his wife Sheila at Louie's, a fancy restaurant downtown. George is fifteen minutes late, and in the meantime Sheila has arrived and has been seated. George appears at the maitre d's stand and announces his name. Louie (the owner) sees George, and tells him to get out. (Louie is angry with George because George successfully defended a man accused of holding up a neighborhood liquor store.) George has very important business to discuss with his wife, and pleads with Louie to let him in, but Louie simply summons his burly busboy, who doubles as a bouncer. George is frightened of the busboy and goes home. Has Louie committed the tort of false imprisonment against George?

- (1) No.
- (2) No, unless the bouncer actually intended to make George afraid of him.
- (3) Yes, if George in fact had no other way of contacting his wife.
- (4) Yes, if Louie actually intended to intimidate George.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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(2)No, unless the bouncer actually intended to make George afraid of him.

(3)Yes, if George in fact had no other way of contacting his wife.

(4)Yes, if Louie actually intended to intimidate George.

That's correct. The tort of false imprisonment requires actual confinement, which consists of keeping a person in a confined area. It doesn't mean simply preventing a person from going where they want to go, even if they claim a right to go there.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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- (3) Yes, if George in fact had no other way of contacting his wife.
- (4) Yes, if Louie actually intended to intimidate George.

Sorry, that's incorrect. Even if the bouncer actually intended to make George afraid, that wouldn't constitute the tort of false imprisonment. It might conceivably be assault, but in this case there's no showing that George had an imminent apprehension of a harmful or offensive contact. In any event, it's not false imprisonment.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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- (3) Yes, if George in fact had no other way of contacting his wife.**
- (4) Yes, if Louie actually intended to intimidate George.

Sorry, that's incorrect. Even if George had a right to contact his wife, it wouldn't become false imprisonment by denying him that right. False imprisonment requires confinement. Try again.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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- (4) Yes, if Louie actually intended to intimidate George.**

Sorry, that's incorrect. Even if Louie intended to cause him to fear a harmful or offensive contact, that wouldn't be false imprisonment; it would be an assault. (Actually, it doesn't seem to be even that under these facts, but that's beside the point.) Try again.



Question #5

Walt, an insurance adjustor, was working on a file involving an automobile accident. He went to the home of Muriel, who was a witness to the accident. Walt discovered early on in the interview that Muriel was partial to the accident victim, and would testify against the party Walt was hired to help defend. After enduring several sarcastic comments about his company, Walt decided to terminate the interview. As he got up to leave, Muriel said, "Oh, you can't wait to get back to your cushy office to screw some more innocent people, huh?" "Well," said Walt, "it beats hanging out in a pigsty like this with dregs like you." Muriel is still angry about the experience and would like to sue Walt for causing her emotional injury. Can she recover for the tort of outrage?

- (1) Perhaps; it's a jury question.
- (2) No, because there is no showing that her injuries were severe.
- (3) No, because Walt's conduct was not outrageous.
- (4) Either (2) or (3).



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

Walt, an insurance adjustor, was working on a file involving an automobile accident. He went to the home of Muriel, who was a witness to the accident. Walt discovered early on in the interview that Muriel was partial to the accident victim, and would testify against the party Walt was hired to help defend. After enduring several sarcastic comments about his company, Walt decided to terminate the interview. As he got up to leave, Muriel said, "Oh, you can't wait to get back to your cushy office to screw some more innocent people, huh?" "Well," said Walt, "it beats hanging out in a pigsty like this with dregs like you." Muriel is still angry about the experience and would like to sue Walt for causing her emotional injury. Can she recover for the tort of outrage?

(1) Perhaps; it's a jury question.

(2) No, because there is no showing that her injuries were severe.

(3) No, because Walt's conduct was not outrageous.

(4) Either (2) or (3).

Sorry, that's incorrect. There are three requirements to a tort of outrage claim: (1) the intent to cause emotional distress; (2) conduct that is outrageous; and (3) severe emotional distress. There isn't even a jury question until there is evidence that would support a jury finding on each of those three elements. At least one of them is missing. Try again.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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(1) Perhaps; it's a jury question.

(2) No, because there is no showing that her injuries were severe.

(3) No, because Walt's conduct was not outrageous.

(4) Either (2) or (3).

Sorry, that's only partially correct. To qualify for the tort of outrage, in addition to showing intent and severe distress, the plaintiff must also show that the conduct was outrageous. The Restatement comments indicate that harsh words and rough language won't alone constitute outrageous conduct. Try again.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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- (1) Perhaps; it's a jury question.
- (2) No, because there is no showing that her injuries were severe.
- (3) No, because Walt's conduct was not outrageous.**
- (4) Either (2) or (3).

Sorry, that's only partially correct. Remember that for an *outrage* claim, in addition to the outrageous conduct, there must be severe emotional distress. Try again.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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- (1) Perhaps; it's a jury question.
- (2) No, because there is no showing that her injuries were severe.
- (3) No, because Walt's conduct was not outrageous.
- (4) Either (2) or (3).**

That's correct. Walt's conduct might have been unprofessional, but it wasn't conduct "so outrageous in character and so extreme in degree as to be utterly intolerable in a civilized society." Nor was the emotional distress (on these facts) severe. Thus, it wouldn't be the tort of outrage.



Question #6

Ben is throwing rocks at a tree in a park. Gary is walking past the area where Ben is throwing rocks. Ben doesn't like Gary. Instead of waiting until Gary is past, Ben continues to throw rocks at the tree. One of the rocks misses the tree and goes past Gary's head, missing him only by inches. Gary is frightened as a result. Has Ben committed an assault against Gary?

- (1) No, if Ben didn't throw the rock just to scare him;
- (2) No, if Gary's emotional distress wasn't severe;
- (3) Yes, if Ben believed the fright was substantially certain to occur;
- (4) Yes, if a reasonably prudent person would have known that the rock might miss the tree.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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(2)No, if Gary's emotional distress wasn't severe;

(3)Yes, if Ben believed the fright was substantially certain to occur;

(4)Yes, if a reasonably prudent person would have known that the rock might miss the tree.

Sorry, that's incorrect. Even if Ben didn't throw the rock just to scare him, he has the requisite intent if he knows that the result is substantially certain to occur. Try again.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

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(2) No, if Gary's emotional distress wasn't severe;

(3) Yes, if Ben believed the fright was substantially certain to occur;

(4) Yes, if a reasonably prudent person would have known that the rock might miss the tree.

Sorry, that's incorrect. In a case of assault, the plaintiff's injury doesn't have to be severe. He only has to suffer imminent apprehension of a harmful or offensive contact. In this case Gary was frightened. Unlike the tort of outrage, which requires *extreme* emotional distress, the tort of assault only requires the actual fear of an impending contact. Try again.



Torts Tutorial Chapter 12 – Intentional Torts – Prima Facie Case

Ben is throwing rocks at a tree in a park. Gary is walking past the area where Ben is throwing rocks. Ben doesn't like Gary. Instead of waiting until Gary is past, Ben continues to throw rocks at the tree. One of the rocks misses the tree and goes past Gary's head, missing him only by inches. Gary is frightened as a result. Has Ben committed an assault against Gary?

- (1) No, if Ben didn't throw the rock just to scare him;
- (2) No, if Gary's emotional distress wasn't severe;
- (3) Yes, if Ben believed the fright was substantially certain to occur;**
- (4) Yes, if a reasonably prudent person would have known that the rock might miss the tree.

That's correct. Under the Restatement test, intent is defined either as a desire that the result occur, or a belief that the result is *substantially certain* to occur. If Ben believed that it was substantially certain that Gary would be frightened as a result of the rock-throwing, then he has the requisite intent; coupled with the fact that Gary was frightened, that constitutes the tort of assault.

Congratulations. You have completed the exercises in Chapter 12. You will now be returned to the menu.



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Sorry, that's incorrect. It's not enough if a reasonably prudent person would know that the rock might miss the tree. That would satisfy a negligence standard, but for there to be an assault there must be an intent to cause injury, whether actual physical contact, or the apprehension of such contact. Try again.



END

Find more exercises at the Torts Home Page by clicking the Home Action Button

