Assignment #1 (for Monday, August 17, 2015)

Welcome to Civil Procedure & Torts! There are two required texts for Civil Procedure and one required text for Torts. You will need your Torts casebook before you need your Civil Procedure materials.


We will spend the first two weeks of the semester on Torts, and we will begin our Civil Procedure course on Monday, August 31, 2015. Please read the Introduction of your Torts Casebook, pages 1 – 8. Then come back to this handout.

We will begin our study of tort law by focusing on the intentional torts. Intentional torts are a group of torts that all have one common requirement – the person being held responsible must have acted “intentionally.” We will discuss the concept of intent in some depth in assignment #2.

First, a brief note about a phrase that was used in the prior paragraph: “the person being held responsible.” What do I mean by this? I am referring generally to the process of civil litigation. When one person is injured by another, the injured person may be able to bring a civil lawsuit against the person who injured him or her. If the injured person brings a lawsuit, the injured person is called the plaintiff. The person against whom the lawsuit is brought is called the defendant. If the plaintiff can prove that the defendant violated some body of law—for our purposes, tort law—then the defendant can be held responsible—liable—for the plaintiff’s injuries. This often means that the defendant will have to pay money to the plaintiff (“damages”). We will discuss damages and also the process of civil litigation later. (Indeed, our Civil Procedure class is about the process of civil litigation and the legal doctrines that govern that process.)

**Battery**

The first intentional tort that we will study in this course is battery. The “definition” of battery is as follows: Battery is the intentional infliction of a harmful or offensive bodily contact upon another. Put another way, a defendant can be held liable to a plaintiff for battery if the defendant intentionally causes a harmful or offensive contact with the plaintiff. These can be considered “definitions” or “rule statements” for the tort of battery.
Look again at the second rule statement for battery: A defendant can be held liable to a plaintiff for battery if the defendant intentionally causes a harmful or offensive contact with the plaintiff. If you look carefully at this rule statement, you can deduce that the defendant can be held liable to the plaintiff for battery only if:

1. There is a contact “with the plaintiff,” and
2. The contact is “harmful or offensive,” and
3. The defendant “caused” the harmful or offensive contact, and
4. The defendant “intentionally” caused the harmful or offensive contact.

In other words, these are separate requirements for imposing liability on the defendant, and the defendant will not be held liable to the plaintiff unless all of the requirements are met. These requirements are called “elements.”

**Example:** If the defendant intentionally caused the plaintiff to experience a contact with the plaintiff’s body, but the contact was not harmful or offensive, then the defendant cannot be held liable for battery; *i.e.* the defendant cannot be required to pay any damages to the plaintiff.

For ease of discussion, here is the same list of elements, but with a name for each element included:

1. **With the plaintiff:** There is a contact “with the plaintiff,”
2. **Harmful or offensive contact:** The contact is “harmful or offensive,”
3. **Causation:** The defendant “caused” the harmful or offensive contact, AND
4. **Intent:** The defendant “intentionally” caused the harmful or offensive contact.

There is actually one element missing from the above list. It is the “voluntary act” element, but we will ignore it for now and come back to it later.

It is important to understand that the “definition” of battery, as well as the associated list of elements, is law. Law comes from a variety of sources. The law of battery was developed by courts through judicial opinions. More specifically, the law of battery was largely developed by *state* courts. Indeed, much of tort law was developed by state courts through judicial opinions. This type of “judge-made law” is called “common law.” Thus, much of tort law is state common law. Because tort law is largely state law, there are often some variations from state to state. We will sometimes learn particular state approaches to tort law, but we will mostly learn tort law as a general matter. We will therefore read a variety of sources of tort law.
Back to battery: The battery rule statements and the resulting list of elements that I have provided above came from judicial opinions. In other words, we learn from judicial opinions what the elements of battery are. And, just as importantly, we learn what those elements mean and what they do not mean.

**Harmful or offensive contact:** For example, judicial opinions teach us that “harmful” means “physically harmful,” and “offensive” means “offensive to a reasonable person.” More specifically, “[F]or a bodily contact to be offensive, it must offend a reasonable sense of personal dignity. [I]t must be one which would offend the ordinary person and as such one not unduly sensitive as to his [or her] personal dignity. It must, therefore, be a contact which is unwarranted by the social usages prevalent at the time and place at which it is inflicted.”¹ These are two “rules” about the “contact” element of battery. To fully understand battery, you must understand not only that battery requires a contact that is harmful or offensive; you must also understand what “harmful” means and what “offensive” means.

**What is an example of a contact that is harmful? What is an example of a contact that is offensive?** You may create an example of a contact that is both harmful and offensive, but make sure that you can separately explain why it is harmful and why it is offensive.

**With the plaintiff:** As another example, “with the plaintiff” has been interpreted to mean “with the plaintiff’s body or with an item closely connected to the plaintiff’s body.” Your task now is to read a judicial opinion (a case) that announces this rule about the “with the plaintiff” element of battery. The case is *Fisher v. Carrousel Motor Hotel*, 424 S.W.2d 627 (Tex. 1967), on page 31 of your Torts Casebook. (As you will see, that case will teach you about more than just the “with the plaintiff” element of battery.) Please read Torts Casebook pages 31 – 34.

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¹ This quoted language is taken from a judicial opinion: Brzoska v. Olson, 668 A.3d 1355 (Del. 1995).