

Restatement of the Law 3rd

Intentional Torts *[drafts]*

*Battery, Assault, False Imprisonment,
Transferred Intent, Consent*

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APPENDIX B

BLACK LETTER OF SECTIONS APPROVED BY MEMBERSHIP

Note: The text shown below is for reference only. It may not yet have been revised to reflect discussion at the applicable meeting.

§ 1. Battery: General Definition (T.D. No. 4) (approved 2019)

An actor is subject to liability to another for battery if:

- (a) the actor intends to cause a contact with the person of the other, as provided in § 2, or the actor's intent is sufficient under § 11 (transferred intent);
- (b) the actor's affirmative conduct causes such a contact; and
- (c) the contact (i) causes bodily harm to the other or (ii) is offensive, as provided in § 3.

§ 2. Battery: Required Intent (T.D. No. 1) (approved 2015) (formerly § 102)

The intent required for battery is the intent to cause a contact with the person of another. The actor need not intend to cause harm or offense to the other.

§ 3. Battery: Definition of Offensive Contact (T.D. No. 4) (approved 2019)

A contact is offensive within the meaning of § 1(c)(ii) if:

- (a) the contact is offensive to a reasonable sense of personal dignity; or
- (b) although the contact is not offensive to a reasonable sense of personal dignity, the actor knows that the contact is highly offensive to the other's sense of personal dignity, and the actor contacts the other with the primary purpose that the contact will be highly offensive.

Liability under Subsection (b) shall not be imposed if the court determines that imposing liability would violate public policy.

§ 4. Purposeful Infliction of Bodily Harm (T.D. No. 4) (approved 2019)

An actor is subject to liability to another for purposeful infliction of bodily harm if the actor purposely causes bodily harm to the other, either by the actor's affirmative conduct or by the actor's failure to prevent bodily harm when the actor has a duty to prevent such harm.

§ 5. Assault (T.D. No. 4) (approved 2019)

An actor is subject to liability to another for assault if:

(a) (i) the actor intends to cause the other to anticipate an imminent, and harmful or offensive, contact with his or her person, or

(ii) the actor's intent is sufficient under § 11 (transferred intent);

and

(b) the actor's affirmative conduct causes the other to anticipate an imminent, and harmful or offensive, contact with his or her person.

§ 7. False Imprisonment: General Definition (T.D. No. 4) (approved 2019)

An actor is subject to liability to another for false imprisonment if:

(a) the actor intends to confine the other within a limited area, or the actor's intent is sufficient under § 11 (transferred intent);

(b) the actor's affirmative conduct causes a confinement of the other, as provided in §§ 8 and 9, or the actor fails to release the other from a confinement despite owing a duty to do so; and

(c) the other is aware that he or she is confined or the other suffers bodily harm as a result of the confinement.

§ 8. False Imprisonment: What Constitutes a Confinement (T.D. No. 3) (approved 2018) (formerly § 108)

An actor confines another within the meaning of § 7(b) if:

(a) the actor employs physical barriers that preclude, or appear to preclude, the other from exiting the area of confinement, and the other is unaware of a readily available and safe means of exit;

(b) the actor employs physical force or restraint, or the actor makes an express or implied threat of immediate physical force or restraint, and the other submits to the force, restraint, or threat rather than exiting the area of confinement;

(c) the actor causes duress, other than by a threat of force or of restraint, and the other submits to the duress rather than exiting the area of confinement; or

(d) the other submits to the actor's assertion of legal authority, as provided in § 9.

§ 9. False Imprisonment: Confinement by Assertion of Legal Authority (T.D. No. 3) (approved 2018) (formerly § 109)

An actor confines another within the meaning of § 8(d) if:

(a) the actor asserts the legal authority to take the other into custody or to otherwise confine the other; and

(b) the other submits to such confinement because the other believes either that he or she has a duty to comply with the assertion of authority or that he or she might face adverse legal or physical consequences for failure to comply.

§ 10. Participation in an Intentional Tort (T.D. No. 3) (approved 2018) (formerly §§ 109A and 109B)

An actor who knowingly and substantially instigates, encourages, or assists another person's commission of an intentional tort of battery, purposeful infliction of bodily harm, assault, intentional infliction of emotional harm, or false imprisonment is subject to liability for that tort, even if the actor's conduct does not independently satisfy all elements of the underlying tort.

§ 11. Transferred Intent (T.D. No. 1) (approved 2015) (formerly § 110)

(a) For purposes of liability for battery, purposeful infliction of bodily harm, assault, or false imprisonment, the intent requirement for the tort is satisfied if the actor intends to cause the relevant tortious consequence to a third party, rather than to the plaintiff, but the actor's conduct causes that consequence to the plaintiff.

(b) For purposes of liability for battery, the intent requirement for the tort is satisfied if the actor either intends to cause a contact with the person of another or intends to cause the other to anticipate an imminent, and harmful or offensive, contact with his or her person.

(c) For purposes of liability for assault, the intent requirement for the tort is satisfied if the actor either intends to cause a contact with the person of another or intends to cause the other to anticipate an imminent, and harmful or offensive, contact with his or her person.

(d) The liability of an actor under rules (a), (b), and (c) is subject to the ordinary tort-law requirement that the actor's conduct must be a factual cause of the relevant tortious consequence within the scope of the actor's liability.

§ 12. Categories of Consent That Preclude Liability (T.D. No. 4) (approved 2019)

An actor is not liable to another for the actor's otherwise tortious intentional conduct if the other gives legally effective consent to that conduct. Consent is legally effective, and thus precludes liability, if the criteria of any of the following categories of consent are satisfied:

- (a) Actual consent, as provided in §§ 13, 14, and 15;
- (b) Apparent consent, as provided in § 16(a);
- (c) Presumed consent, as provided in § 16(b); or
- (d) Emergency doctrine, as provided in § 17.

§ 13. Actual Consent: Definition and Conditions (T.D. No. 4) (approved 2019)

A person actually consents to an actor's otherwise tortious intentional conduct if:

- (a) the person is willing for that conduct to occur, and such willingness

may be express or may be inferred from the facts;

(b) the actor's conduct is within the scope of the person's consent, as provided in § 14;

(c) the person has the capacity to consent, as provided in § 15(a); and

(d) the consent is not given under duress or under substantial mistake, as provided in § 15(b) and (c).

§ 14. Actual Consent: Scope Conditions (T.D. No. 4) (approved 2019)

(a) A person's actual consent extends to conduct of the actor that is not substantially different in nature from the conduct that the person is willing to permit.

(b) If a person places a condition upon his or her actual consent that limits the consent with respect to time, area, or otherwise, the consent is legally effective only within the limits of the condition.

(c) If a person clearly communicates a revocation of his or her actual consent to the actor, the consent is no longer legally effective, unless it would be unreasonably burdensome for the actor to comply immediately with the revocation of consent.

(d) A person's actual consent is legally effective even if the conduct consented to is a crime. However, the person's actual consent is not legally effective if the conduct is made criminal in order to protect a class of persons without regard to their actual consent and if the person is a member of that class.

(e) Actual consent does not extend to past conduct.

§ 15. Actual Consent: Requirements of Capacity, Absence of Duress, and Absence of Substantial Mistake (T.D. No. 4) (approved 2019)

A person does not actually consent to the actor's conduct if any of the following circumstances exists:

(a) The person lacks the capacity to consent, unless another person gives valid substitute consent; or

(b) The person gives consent because of duress caused by the actor; or

(c) (i) The person gives consent because of a substantial mistake

concerning either the nature of the invasion of the person's interests, the extent of the expected harm, or the actor's purpose in engaging in the conduct; and

(ii) The actor knows of the mistake or causes the mistake by affirmative misrepresentation or fraud.

§ 16. Apparent and Presumed Consent (T.D. No. 4) (approved 2019)

An actor is not liable for otherwise tortious intentional conduct if either apparent or presumed consent exists.

(a) Apparent consent exists if the actor reasonably believes that the other person actually consents to the conduct, without regard to whether the person does actually consent.

(b) Presumed consent exists if:

(1) under prevailing social norms, the actor is justified in engaging in the conduct in the absence of the other person's actual or apparent consent, and

(2) the actor has no reason to believe that the person would not have actually consented to the conduct if the actor had requested the person's consent.