

# Tort Law for Paralegals: Chapter 8

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Chapter 8

### Defenses to Intentional Torts

**Introduction**  
This chapter discusses defenses to intentional torts. Defenses are legal justifications relieving one party of liability to the other. Generally, defenses are used by defendants to counter plaintiffs' claims and avoid liability. Defenses say, in essence, "I'm not responsible for your damages." If a plaintiff claims, for example, that a defendant doctor is guilty of battery, the doctor can argue in self-defense that the plaintiff was a patient who consented to a medical procedure. Thus, although the procedure may have been painful or intrusive, if the patient consented to the treatment, she cannot now sue the doctor for battery.

## Chapter 8

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The defenses to intentional torts are: self-defense, defense of persons or property, rightful repossession, consent, mistake, privilege, necessity, public officer's immunity for legal process enforcement, warrantless arrest by law enforcement official or citizens, statute of limitations, and workers' compensation.

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## Lecture Notes

### Tort Law for Paralegals: Chapter 8

**Lecture Notes**

**I. CONSENT**

A. Occurs when victim of intentional tort voluntarily agrees to tortfeasor's actions.

B. Victim must have understood (or reasonably should have understood) consequences of tortfeasor's actions.

C. Elements:

1. Victim's voluntary acceptance of intentionally tortious act
2. With full knowledge or understanding of consequences.

D. Informed consent:

1. Tort victim must willingly and knowingly agree to tortfeasor's conduct.
2. Victim's ability to consent (volition factor) depends upon victim's mental capacity to agree (e.g., lack of consent with mentally retarded or

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2. Victim's ability to consent (volition factor) depends upon victim's mental capacity to agree (e.g., lack of consent with mentally retarded or incapacitated persons, or intoxicated individuals).

E. Expressed or implied consent:

1. Consent may be expressed (e.g., victim openly agrees to tort) or implied (e.g., athletes playing contact sports).

2. Classic implied-consent scenario is emergency medical treatment.

F. Consent is a defense to intentional torts. A defense can relieve a defendant of liability of the tort.

## **II. INTRODUCTION TO DEFENSES**

A. Defenses are legal justifications exonerating one party from liability to another party. Usually, defenses are used by defendants to counter plaintiffs' claims and avoid liability.

B. Defenses are responsive in nature.

1. Defenses are used only when the first party (usually plaintiff) states a bona fide cause of action against the other litigant (usually defendant).
2. One litigant states a cause of action against another litigant.
3. The other litigant replies with a defense, absolving himself or herself from liability.

## **III. SELF-DEFENSE**

A. Defendant's exercise of reasonable force to repel attack upon his or her person or to avoid confinement.

B. Routinely used against claims of assault, battery, or false imprisonment. Typical scenario: Plaintiff attacks defendant in some way; defendant responds with neutralizing force; plaintiff sues defendant for battery.

C. Elements:

1. Defendant's use of reasonable force
2. To counter attacking or offensive force
3. Necessary to prevent bodily injury, offensive contact, or confinement.

D. Reasonable force:

1. Neutralizing force that defendant may use under this defense is limited to that degree of force reasonably necessary to dispel the attacking force.
2. Once attacking force has been neutralized, defendant cannot turn aggressor and attack the attacker. This would constitute assault and battery and would cripple the defense.
3. Reasonable force is defined by the reasonable person standard and depends on the specific factual circumstances of each case. Would a reasonable person have used the same force that defendant used to counter plaintiff's attack?
4. When faced with deadly force, defendant may respond with deadly force.
5. When faced with intruder inside defendant's home, defendant may use deadly force (castle rule).

E. Countering attacking or offensive force: Defendant's actions must be in opposition to an attacking or offensive force.

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F. Necessary force: That degree of force reasonably necessary for defendant to neutralize an attacking or offensive force or avoid confinement.

#### **IV. DEFENSE OF PERSONS OR PROPERTY**

A. Defense commonly used in assault, battery, and false imprisonment cases.

B. Elements of defense of persons:

1. Defendant's use of reasonable force
2. To defend or protect third party from injury
3. When third party is threatened by attacking (or offensive) force.

C. Elements of defense of property:

1. Defendant's use of reasonable force
2. To protect his or her (or another's) property from damage or dispossession
3. When another person (invader) attempts to injure or wrongfully take possession of property.

D. Reasonable force is defined in the same way as for self-defense. Most courts prohibit use of deadly force for protection of property.

E. Ejectment: Use of reasonable force to repel a trespasser. However, land owners cannot set dangerous traps to snare trespassers (e.g., spring-loaded guns). This is not legally justifiable defense of property.

#### **V. RIGHTFUL REPOSSESSION**

A. Owner of personal property generally has right to repossess chattel that has been wrongfully taken or withheld.

B. Owner may use reasonable force to repossess.

C. Defense used most often in cases of trespass to land, trespass to chattel, conversion, assault, and battery.

D. Elements:

1. Defendant's (chattel owner's) use of reasonable force (defined as for self-defense)
2. To retake possession of his or her chattel
3. Of which owner has been wrongfully dispossessed (or of which owner is wrongfully denied possession).
4. Defendant's efforts to retake chattel must be made promptly after original dispossession or denial of possession occurs (sometimes called hot pursuit by courts, but this is usually criminal law term).

E. Repossession:

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1. If someone has wrongfully dispossessed owner of his or her chattel, then owner has right to enter upon dispossessor's land to recover chattel.
2. This provides a defense to trespass to land.

F. Prompt repossession:

1. Older common-law cases required owner to try to repossess chattel promptly after initial dispossession.
2. What is "prompt" depends on specific facts of case. Reasonableness standard is applied.

G. Wrongful denial of possession: Occurs when someone possessing owner's personal property wrongfully fails to return it to owner upon request or at agreed time. Example: Bailments, when bailee refuses without justification to return chattel to bailor.

H. Wrongful dispossession or denial of possession:

1. For defense to apply, chattel owner must have been wrongfully dispossessed, or possession must have been wrongfully denied.
2. Means that dispossessor or retainer must not have legal right to possess or retain owner's chattel.

## **VI. MISTAKE**

A. Good-faith belief, based upon incorrect information, that defendant is justified in committing intentional tort under the circumstances.

B. Elements:

1. Good-faith belief that defendant's actions were justified
2. With belief based upon incorrect information.
3. Defendant's conduct otherwise would be considered tortious, but for the erroneous belief.

C. Good-faith belief:

1. Defendant's reasonable belief that his or her intentional tort was justified.
2. Reasonableness standard applied.

D. Belief based upon incorrect information: For the mistake defense to apply, defendant's reasonable belief must be based on erroneous details which, if they had been true, would have justified defendant's tort.

E. Otherwise tortious behavior: Defendant must have committed tort (with mistaken belief) for defense to come into play.

## **VII. PRIVILEGE**

A. Legal justification to engage in otherwise tortious behavior to accomplish compelling social goal. Example: Defendant committing trespass to land to save drowning child.

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B. Elements (balancing test):

1. Do actor's motives for engaging in intentional tort outweigh injury to victim or victim's property?
2. Was actor justified in committing intentional tort to accomplish his or her socially desirable purposes, or could a less damaging action have been taken instead?

C. Motive: Goal that defendant wishes to accomplish by committing particular tort. Motive = intent.

D. Socially desirable goals: For privilege to apply, defendant's intentional tort must have been motivated by some socially desirable objective, such as protecting property from fire damage, saving lives, capturing a criminal suspect, and so on.

E. Less injurious alternatives: Could defendant have achieved socially desirable goal through actions less harmful than the intentional tort committed?

F. This defense is similar to the necessity defense.

### **VIII. NECESSITY**

A. Tortfeasor is justified in engaging in intentional tort to prevent more serious injury from external forces.

B. Type of privilege.

C. Elements:

1. Defendant commits intentional tort
2. To avert more serious harm
3. Caused by force other than defendant
4. And defendant's actions were reasonably necessary to avert greater threat.

D. Thwarting more substantial harm:

1. Choice of lesser evils. Example: Defendant jettisons cargo to prevent damaged ship from sinking (and drowning passengers and crew). Assume that ship hit floating mine left over from Persian Gulf war, rather than being damaged by defendant's actions.

E. External force:

1. Greater threat cannot have been created by defendant. Example: Ship damaged by floating mine (preceding example). Defendant was not responsible for mine being there.

F. Reasonably necessary action:

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1. Defendant's actions must have been reasonably necessary to avert greater harm from external force.
2. Reasonableness standard applied.

## **IX. PUBLIC OFFICER'S IMMUNITY FOR LEGAL PROCESS ENFORCEMENT**

A. Process serving (service of process) = method by which defendant in lawsuit is notified that plaintiff has filed suit against defendant.

1. Personal service of process usually involves law enforcement officer personally delivering summons to defendant.
2. Such officers are immune from intentional tort liability (such as trespass to land) while serving process.

B. Execution (sheriff's) sales:

1. Law enforcement officers are immune from intentional tort liability (such as trespass to chattel or conversion) for seizing property for execution sales.
2. Execution sales = public sales of defendant's property to satisfy outstanding judgment.

C. Attachment or replevin:

1. Attachment = court-ordered remedy in lawsuit, in which court orders law enforcement officers to attach, or seize, defendant's property to prevent its sudden disappearance as defendant attempts to avoid having assets to satisfy judgment for plaintiff.
2. Replevin = court-ordered remedy in lawsuit, in which court orders law enforcement officers to seize chattel that defendant wrongfully possesses, and return it to plaintiff, who is lawfully entitled to possession.
3. Law enforcement officials are immune from intentional tort liability (such as trespass to chattel, trespass to land, or conversion) for making such court-ordered seizures.

D. Arrest by warrant: Law enforcement officials are immune from intentional tort liability (such as false imprisonment, assault, battery, or infliction of emotional distress) for arresting criminal suspects pursuant to a lawfully issued arrest warrant.

## **X. WARRANTLESS ARREST BY LAW ENFORCEMENT OFFICIALS OR CITIZENS**

A. Law enforcement officers are immune from intentional tort liability (such as assault, battery, false imprisonment, infliction of emotional distress, trespass to land) for making a lawful arrest without a warrant. Classic case: Police officer sees suspect commit misdemeanor or felony offense and takes suspect into custody.

B. Citizen's arrest:

1. At common law, private citizens could arrest suspects if citizens witnessed suspects commit felony or breach of peace.
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2. Includes situations in which citizen reasonably believes that suspect has committed such crimes.
3. Citizens making such arrests are immune from intentional tort liability (such as assault, battery, false imprisonment, infliction of emotional distress, or trespass to land).
4. Consider shoplifting or night watchman examples.

## **XI. STATUTES OF LIMITATIONS**

A. Statutes restricting time period within which plaintiff may file intentional tort action against defendant.

B. Common time periods: two- and three-year statutes.

## **XII. WORKER'S COMPENSATION**

A. A state's workers' compensation statute is a defense to an intentional tort action.

B. This is a form of strict liability, a no-fault system by state.

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## Application

**Application**

In the following hypotheticals, identify the intentional torts and available defenses involved, if any, and support your answers.

1. Kim drives a delivery truck for The Dough Boy, a local bakery. One day, while making a delivery, Kim saw an automobile parked along the side of the street begin to move. There was no one inside the car, and it appeared to have slipped out of gear. The car rolled with increasing speed down a hill toward a crowded sidewalk along which several businesses were having outdoor sales. None of the shoppers saw the runaway vehicle approaching. Kim rammed her truck into the rear right side of the car, causing it to spin sideways. This stopped it from rolling into the pedestrians. The auto owner sued Kim for damaging the car, and the owner of The Dough Boy also sued Kim for injuring the delivery truck.

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2. Todd, a student at the city college, visited the school bookstore to purchase some notebooks. Outside the bookstore were a series of locking boxes within which students placed their backpacks, briefcases, or other belongings that the bookstore forbade customers to bring into the store.

Todd placed his backpack into one of the lockers and entered the bookstore. However, he forgot to take the key from the box. Luke, another student, opened the box and thought the backpack was his, as he owned a pack almost identical to Todd's. Luke had placed his own pack in one of the boxes but had also forgotten to take the key. Later, Todd discovered the pack missing, and a bookstore cashier described Luke as the culprit. Luke had not examined the pack closely but had thrown it into his car trunk and forgotten about it. Todd sued Luke.

3. Leroy frequented a pub called Bottom's Up! Late one Saturday night, an intoxicated man began shouting obscenities at a woman sitting at the table next to Leroy's. The woman ignored the man and continued to drink her beer. The man approached the lady, looking ominous. Leroy stood and asked the fellow over to the bar for a drink. The man grumbled that Leroy should mind his own business. The man reached out and grabbed the woman's wrist, and Leroy neatly twisted the man's other arm behind his back while restraining him with a neck hold. The man protested vehemently, but Leroy did not let go. Leroy placed the man firmly into a chair and told him not to move or else Leroy would have to punch him. The woman told Leroy that the man was her husband and asked him to leave them both alone. Leroy left the bar. The man sued Leroy.
  4. Peter Delaney works as an assistant manager at a local clothing store. One evening, while emptying trash outside the back of the store, Peter saw someone toying with a lock on the back door of another store. He could not see who the person was. Peter telephoned the police from inside his store and returned to the alley. He yelled out to the mysterious person not to move, because he was armed, and the police were coming. In fact, Peter did not possess any weapons, but bluffed to scare the culprit. The suspicious character turned out to be a new employee at the neighboring store who was trying to determine which key opened the rear door lock. Peter did not know this individual. The person sued Peter.
  5. Alyssa was purchasing some merchandise on layaway at a local department store. She had made her final payment and had requested that the items be delivered to her house. After a few days, she telephoned the store manager to complain that the goods had not been delivered. The manager explained that she would first have to pay the entire purchase price before delivery would be possible. Alyssa protested that she had, in fact, paid in full. She went to the store and showed the layaway clerk her payment receipts. The clerk refused to produce the merchandise. Alyssa walked behind the counter, went up the stairs to the layaway storage area, and retrieved her items. The clerk notified store security, who took Alyssa into custody and locked her in an empty storeroom next to the restrooms. The room was unlit and not heated. The police arrived after an hour to question Alyssa, and after a few minutes
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she was released. Alyssa sued the store and the store counter-claimed against Alyssa.



## Application Answers

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**Application Answers**

1. Kim would have a successful necessity defense against both the automobile owner and her boss, the truck owner, for damaging the vehicles. Kim committed trespass to chattel by damaging the vehicles. However, she was legally justified, because her actions were reasonably necessary to avert the more serious harm of having the runaway car crash into the pedestrian crowd at the bottom of the hill. The car became runaway by external forces (slipping out gear, with no parking brake on), through no fault of Kim's. The threat to lives posed by the runaway car far exceeded the value of the damaged chattels, so Kim's actions were reasonable.

You could also apply the privilege defense to these facts. Kim was justified in damaging the runaway vehicle to achieve the socially desirable goal of saving lives. Kim could not have taken

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You could also apply the privilege defense to these facts. Kim was justified in damaging the runaway vehicle to achieve the socially desirable goal of saving lives. Kim could not have taken any less damaging action to stop the runaway car, since she had little time to act before the car crashed into the crowd.

2. Todd sued Luke for trespass to chattel and conversion, but Luke could use the mistake defense. Luke had a good-faith belief that his taking Todd's

backpack was justified, because Luke reasonably thought that the backpack belonged to him (incorrect information upon which belief was based).

Did Luke act reasonably by not carefully examining the backpack's contents to determine his error? One might ask whether, under similar circumstances, the average person would check the contents of a backpack which he or she presumes to be his or hers. How easy it would be for someone to grab what appears to be the right backpack and, without another thought, toss it into the back seat of his or her car!

3. The man sued Leroy for battery and probably assault and, perhaps, even false imprisonment (because of the "don't get out of that chair, or else" threat). Leroy would apply the defenses of defense of persons and mistake.

For defense of persons, Leroy used reasonable force to defend and protect the woman from injury when the man threatened her with physical injury by grabbing her wrist. Leroy reasonably believed that his actions (grabbing the man's arm, twisting it behind his back, using the neck hold, and forcing him to sit in a chair) were necessary to prevent the man from injuring the woman. A reasonable person would have acted similarly under these circumstances. Thus, Leroy used necessary force to counter the attacking force.

For mistake, Leroy had a good-faith belief that his actions were justified to prevent the man from injuring the woman. This belief turned out to be mistaken, since the man and woman were spouses and, apparently, the husband did not intend to hurt his wife. Still, Leroy could not have known this, especially since husbands have been known to strike wives (and vice versa) in bars. Thus, Leroy's belief was reasonable and his actions were legally justified.

Accordingly, Leroy would not be liable to the man for any of the intentional torts mentioned, because of these two defenses.

4. The person sued Peter Delaney for false imprisonment and probably, if she had good counsel, intentional infliction of emotional distress. Both torts would be based upon Peter's bluff with the nonexistent weapon to intimidate the captive.

Peter would attempt to use the defense of citizen's arrest. Peter reasonably believed that an unknown person, seen late at night toying with a store lock in an alley, might be a burglar. He could not see clearly what the person was doing with the lock, because it was dark. He could not have identified the person as a store employee, because he did not

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know the individual. Peter's actions were reasonably necessary to detain the suspected felon. The defense should protect Peter from liability.

There is some question as to whether Peter's weapon threat was excessive and unreasonable. However, if Peter reasonably believed (as he did) that he was dealing with a felon, it seems reasonable for him to have used the weapon ruse to protect himself and immobilize the culprit. A reasonable person would have acted similarly.

(Actually, a reasonable person probably would have watched the suspect until police arrived, rather than endangering himself or herself as Peter did.)

5. Alyssa sued the store for false imprisonment, assault, battery, infliction of emotional distress, and trespass to chattel (this last because the store wrongfully denied her possession of her chattels). The store counter-claimed against Alyssa for trespass to land, trespass to chattel, and conversion, the latter two because she took what the store perceived to be its personal property.
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## Chapter Review

Tort Law for Paralegals: Chapter 8



**Chapter Review**

1. What are defenses? How are they applied against intentional torts? In what type of situation would a defense most likely be raised?
2. Explain self-defense. Against which intentional torts might this defense be used? What is reasonable force? How is it defined? How is it similar to necessary force?
3. Discuss defense of persons or property. How is it similar to self-defense? Different? How is defense of persons different from defense of property? Similar? How is reasonable force defined for this defense?

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4. What is rightful repossession? What type of property is involved? Against which intentional torts might this defense be applied? How is reasonable force defined? What is the role of wrongful dispossession or denial of possession? Must the property owner's efforts to repossess be taken within a certain time frame? What is this called?
  
  5. Describe consent. Is the defense widely applicable to the intentional torts? What is informed consent? Implied consent?
  
  6. Explain mistake. What is the role of the good-faith conviction? Why must the information believed be inaccurate? How broad is the defense?
  
  7. Does privilege include all defenses to intentional torts? Why? Against which intentional torts would the defense be utilized? What are its characteristics? What is the role of motive? Of socially acceptable goals? Of less injurious alternatives?
  
  8. What are the elements of necessity? How is it used as an intentional tort defense? What is the significance of external forces? Why must the action be reasonably necessary?
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9. Discuss the various types of public official immunity for legal process enforcement. What intentional torts might apply to these cases? How does the defense operate in each such instance?
  
  10. What is warrantless arrest? Citizen's arrest? How are these protected from intentional tort liability?
  
  11. What are statutes of limitations? What is the time period most commonly used for tort causes of action? How can statutes of limitations be used as a defense to intentional torts?
  
  12. What kinds of activities that result in injury at work would not be covered under workers' compensation?
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## Chapter Review Answers

Tort Law for Paralegals: Chapter 8

**Chapter Review Answers**

1. What are defenses? How are they applied against intentional torts? In what type of situation would a defense most likely be raised?  
*Defenses are legal justifications exonerating one party from liability to another party. Defenses are generally used by defendants to counter plaintiffs' claims and avoid liability. Defenses are used when one litigant states a cause of action against another litigant.*
2. Explain self-defense. Against which intentional torts might this defense be used?  
What is reasonable force? How is it defined? How is it similar to necessary force?  
*Self-defense is the defendant's exercise of reasonable force to repel an attack upon his or*

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What is reasonable force? How is it defined? How is it similar to necessary force?

*Self-defense is the defendant's exercise of reasonable force to repel an attack upon his or her person or to avoid confinement. This defense is used against claims of assault, battery, or false imprisonment.*

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*Reasonable force is that degree of force reasonably necessary to dispel the attacking force.*

3. Discuss defense of persons or property. How is it similar to self-defense? Different? How is defense of persons different from defense of property? Similar? How is reasonable force defined for this defense?

*The defense of persons or property is commonly used in assault, battery and false imprisonment cases. It is the defendant's reasonable force to defend or protect third parties from injury to persons or property. Reasonable force is neutralizing force. Unlike self-defense, the defendant is not protecting himself, but someone else.*

4. What is rightful repossession? What type of property is involved? Against which intentional torts might this defense be applied? How is reasonable force defined? What is the role of wrongful dispossession or denial of possession? Must the property owner's efforts to repossess be taken within a certain time frame? What is this called?

*Rightful repossession is the right of an owner of personal property to repossess that property that was wrongfully taken or withheld. This defense is used most often in cases of trespass to land, trespass to chattel, conversion, assault, and battery.*

*Wrongful dispossession or denial of possession occurs when someone possessing an owner's personal property wrongfully fails to return it to the owner upon a request or at an agreed time. The property owner must generally make immediate efforts to regain possession of the property; this is known as hot pursuit.*

5. Describe consent. Is the defense widely applicable to the intentional torts? What is informed consent? Implied consent?

*Consent occurs when a victim of an intentional tort voluntarily agrees to a tortfeasor's actions. Informed consent is the tort victim's willing and knowing agreement to the tortfeasor's conduct. Implied consent generally occurs in an emergency situation.*

*If informed or implied consent exists, an intentional tort has not occurred.*

6. Explain mistake. What is the role of the good-faith conviction? Why must the information believed be inaccurate? How broad is the defense?
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*Mistake is a good faith belief, based upon incorrect information, that a defendant is justified in committing an intentional tort. A good faith belief is a reasonable belief that his or her intentional tort is justified.*

7. Does privilege include all defenses to intentional torts? Why? Against which intentional torts would the defense be utilized? What are its characteristics? What is the role of motive? Of socially acceptable goals? Of less injurious alternatives?

*Privilege may be a defense to intentional torts. Privilege is legal justification to engage in otherwise tortious behavior to accomplish compelling social goals (e.g., defendant committing trespass to land to save a drowning child). The motive demonstrates the intent to commit a particular tort. For privilege to apply, defendant's intentional tort must have been motivated by some socially desirable goal, such as protecting property from fire damage; no less injurious method could have been available.*

8. What are the elements of necessity? How is it used as an intentional tort defense? What is the significance of external forces? Why must the action be reasonably necessary?

*Necessity requires (1) intent to (2) avert a more serious harm (3) caused by a force other than the defendant (4) that were reasonably necessary. It is considered the choice of the lesser of two evils and reasonably necessary to avert a greater harm. In order for it to be a defense, the actions cannot be caused by the defendant, but rather an external force.*

9. Discuss the various types of public official immunity for legal process enforcement. What intentional torts might apply to these cases? How does the defense operate in each such instance?

*Immunity for legal process includes (1) process serving, (2) execution sales, (3) attachment, and (4) arrest by warrant. This defense applies to assault, battery, trespass to land, trespass to chattel, false imprisonment, etc. Immunity essentially creates a privilege to commit these actions.*

10. What is warrantless arrest? Citizen's arrest? How are these protected from intentional tort liability?
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*Warrantless arrest is an arrest without a court order by a law enforcement officer. In contrast, a citizen's arrest is an arrest by a private citizen who observed a felony or breach of the peace. The greater good of the public safety outweighs the defendant's rights.*

11. What are statutes of limitations? What is the time period most commonly used for tort causes of action? How can statutes of limitations be used as a defense to intentional torts?

*Statute of limitations are time periods restricting filing of lawsuits. The statute of limitations for torts is generally two to three years. If a suit is brought after the statute of limitations has expired, it is an absolute bar to recovery.*

12. What kinds of activities that result in injury at work would not be covered under workers' compensation?

*Under workers' compensation, an employee's injury must "arise out of" and occur in the "course of employment." If an employee is on the way to or from work and injuries are sustained, they will generally not be covered.*