

# TORTS

“The American Recipe”

- PROF. CRAIG CHARLES BELES
- Seattle, Washington, USA

# OUTRAGE – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

**DEFINITION: D ACTS IN AN EXTREME AND OUTRAGEOUS MANNER WITH THE INTENT OR RECKLESSNESS TO CAUSE PL SEVERE EMOTIONAL DISTRESS AND CAUSES SUCH DISTRESS**

**“EXTREME & OUTRAGEOUS”** – BEYOND ALL POSSIBLE BOUNDS OF DECENCY REGARDED AS ATROCIOUS & UTTERLY INTOLERABLE IN A CIVILIZED COMMUNITY

**“INTENT OR RECKLESSNESS”** – DESIRE, SUBSTANTIAL CERTAINTY OR ACTING IN DELIBERATE DISREGARD OF A KNOWN HIGH PROBABILITY THAT SEVERE EMOTIONAL DISTRESS WILL RESULT

# DEFENSES TO INTENTIONAL TORTS

CONSENT

DEFENSE OF:  
SELF, OTHERS, PROPERTY

NECESSITY:  
PRIVATE & PUBLIC

AUTHORITY

# CONSENT

## ISSUES

EXPRESS OR IMPLIED

SCOPE OF CONSENT

CAPACITY TO CONSENT

INSANE, INFANTS, INTOXICATION

CONSENT INDUCED BY FRAUD or DURESS

CONSENT TO AN ILLEGAL ACT

# SELF DEFENSE

## ISSUES

USE OF REASONABLE FORCE and  
D HAS AN OBJECTIVELY REASONABLE SUBJECTIVE BELIEF THAT  
FORCE IS NECESSARY TO PREVENT IMMEDIATE HARM TO SELF.

WHAT IS "REASONABLE FORCE?" PROPORTIONALITY  
IS RETREAT NECESSARY?

WHAT IS "REASONABLE BELIEF IN IMMEDIATE HARM?"  
RETRIBUTION?  
PRE-EMPTIVE STRIKE

# DEFENSE OF OTHERS

SAME AS SELF DEFENSE, EXCEPT:

SPLIT OF AUTHORITY RE YOUR REASONABLE BELIEF, i.e.,

DO YOU GET BENEFIT OF YOUR REASONABLE MISTAKE?

or

DO YOU STAND IN SHOES OF ONE BEING DEFENDED?

# DEFENSE OF PROPERTY

MORE LIMITED DEFENSE: Deadly Force is Prohibited

USE OF MECHANICAL DEVICES TO PROTECT PROPERTY?

Restatement Second of Torts, section 85, comment d, states. "The user of a device likely to cause death or serious bodily harm is not protected from liability merely by the fact that the intruder's conduct is such as would justify the actor, were he present, in believing that his intrusion is so dangerous or criminal as to confer upon the actor the privilege of killing or maiming him to prevent it. The actor is relieved from liability only if the intruder is, in fact, one whose intrusion involves danger of life and limb of the occupants of the dwelling place.

RECOVERY OF PROPERTY?: Hot Pursuit, Right Person, Words First

# NECESSITY

**PRIVATE**: “Limited” Privilege to Harm PI’s Prop When Greater Harm Threatens D, D’s Prop, 3<sup>rd</sup> Person or Prop

- Negates PI’s Right to Defend
- But D Must Pay for any Damage

**PUBLIC**: “Complete” Privilege to Harm PI’s Property When Greater Harm Threatens the Public.

- Negates PI’s Right to Defend
- And D Has No Duty to Pay for any Damage

## **ISSUES:**

- Government Taking?
- Use of Deadly Force?



# LEGAL JUSTIFICATION

## PRIVATE CITIZENS' RIGHTS To ARREST

Breach of the Peace in Presence

Felony out of Presence With Reasonable Grounds

No Mistake Permitted in Either

Shopkeeper's Right re Suspected Shoplifter

Reasonable Grounds

Investigation On or Near Premises

Only Reasonable Force Necessary to Detain

Limited Time Period (Statutes – Until Police Arrive)

## POLICE RIGHT TO DETAIN

Probable Cause or Reasonable Suspicion

Can Use Deadly Force to Stop Fleeing Felon

# NEXT WEEK - NEGLIGENCE

1. DUTY TO PL – NECESSARY RELATIONSHIP BETWEEN PL & D
2. **\*\*STANDARD OF CARE** – REQUISITE LEVEL OF CONDUCT
3. **\*\*BREACH OF DUTY** – FAILURE TO MEET STANDARD
4. CAUSE IN FACT – BREACH OF DUTY RELATES TO INJURY
5. PROXIMATE CAUSE – POLICY RE EXTENT OF LIABILITY
6. INJURY – REQUISITE HARM

# DEFINING "STANDARD OF CARE"

THE REASONABLE PERSON – CHARACTERISTICS?

UNREASONABLENESS – BREACH OF DUTY

HOW TO MEASURE? U.S. v. Carroll Towing (2d Cir 1947)

HOW TO PROVE? RES IPSA LOQUITUR

SPECIAL STANDARDS OF CARE

PROFESSIONAL NEGLIGENCE – MEDICAL, LEGAL

LAND OCCUPIER – TRESPASSER, LICENSEE, INVITEE