

The Intentional Torts: Consent & Self-Defense

Torts I
Professor Hensel
9/15/09



Consent may be implied by:

1. Actions;
2. Course of Conduct;
3. Social Conventions Applicable to Setting / Custom; or
4. Relationship Between the Parties.



Consent: Course of Conduct

Hackbart v. Cincinnati Bengals, Inc.

- * Statement of the Case
- * Significance of Context
- * Limits of Consent



The Limits of Implied Consent

Mohr v. Williams

- * Statement of the Case
- * The Role of Good Faith
- * Medical Provider's Ability to Act in the Absence of Express Consent
- * Consent by Minors



The Role of Fraud / Mistake

De May v. Roberts



- * Statement of the Case
- * Validity of Consent Secured Through Fraud or Mistake
- * Collateral Mistakes

Consent to Illegal Actions

Majority Position:

Consent is **NOT** valid. Participants may sue for int'l torts

Minority Position

Consent **IS** valid. Participants may **NOT** sue for int'l torts **UNLESS**:

Plaintiff is in the class of people intended to be protected by the statute.

Ask: Who is the law designed to protect?




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Self-Defense

Self-Defense is an Affirmative Defense When:

- (1) Actor uses "reasonable" force to defend against unprivileged acts; and
- (2) Actor has a "reasonable" belief that force is necessary to prevent harmful or offensive contact.




GEORGIA STATE UNIVERSITY **LAW**

"Reasonable" Force

Depends on the circumstances as they reasonably appeared to the defendant, including:


1. Nature of the Harm Threatened;
2. Alternatives Available.



GEORGIA STATE UNIVERSITY **LAW**

"Reasonable" Belief in Future Harm

- * Must have objective basis;
- * Assessed in light of what was known to D at the time
- * Words alone generally not sufficient
- * Timing is critical



GEORGIA STATE UNIVERSITY **LAW**

The Intentional Torts: Privileges & Affirmative Defenses

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Duty to Retreat?

Non-Deadly Force: No duty to retreat or comply with P's improper demand

Deadly Force: Majority rule: No duty to retreat

Minority/Restatement: Duty to retreat unless


- (a) D is in her own dwelling or;
- (b) there is the slightest reasonable doubt that retreat can safely be made.

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Self-Defense: Liability to Third Parties

Where D *intentionally* injures third party, liable.

Where D *unintentionally* injures third party, not liable in the absence of negligence.




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Defense of Others

Must have reasonable belief that:

1. Victim would have privilege of self-defense (reasonably appears that attack makes defense necessary to avoid imminent harm); and
2. Force used by D must be reasonable in light of the circumstances.




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Defense of Property

Katko v. Briney

- * Statement of the Case
- * The Permissible Use of Force to Defend Property
- * Policies Served
- * Role of Mistake




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Recovery of Property

Hodgeden v. Hubbard

- * Statement of the Case
- * "Fresh" Pursuit
- * "Reasonable" Force
- * The Role of Mistake
- * Policy Arguments



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Shopkeeper's Privilege

Bonkowski v. Arlan's Dept. Store

- * Statement of the Case
- * The Permissible Use of Force
- * Policy Rationales
- * Retaking Real Property




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Public Necessity

Surrocco v. Geary

- * Statement of the Case
- * Required Elements to Invoke Privilege



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Defense Available Where:


1. **The Public interest is involved;**
2. **There is a reasonable belief that action is necessary; and**
3. **The action taken was a reasonable response to the need.**

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Public Necessity

Surrocco v. Geary

- * Statement of the Case
- * Required Elements to Invoke Privilege
- * Availability of Privilege to Private Citizens
- * The Role of Mistake




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Private Necessity

Vincent v. Lake Erie Transp. Co.

- * Statement of the Case
- * Required Conditions for a Claim of Private Necessity



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Defense Available Where:

1. **D is threatened or reasonably appears to be threatened with**
2. **serious harm, and**
3. **The response is reasonable in light of the threat.**

Private Necessity

Vincent v. Lake Erie Transp. Co.

- * Statement of the Case
- * Required Conditions for a Claim of Private Necessity
- * Consequence of Privilege
- * Theory of the "Least Cost Avoider"



Justification



Sindle v. NYC Transit Authority

- * **Elements Necessary for Privilege**
 - A. **Actions were Reasonable and**
 - B. **Taken to Protect Others from Personal Injury or to Protect Property**
- * **Availability as Defense**