

Intentional Tort Hypo

In Hollywood, Barbie and Ken, two big celebrities, were planning on getting married. To throw off the media, they pretended to break up, with each flying to a different part of the country. Unbeknownst to the public, however, they had secretly met up at their Southern California hideaway.

One day, the two appeared at the County's Licensing Office for gun permits and marriage licenses. When Clerk #1 saw Ken's name on the paperwork for a marriage license, she started shaking with excitement, saying, "Oh my gosh. I'm your biggest fan! Is it okay if I kiss you?" Without waiting for an answer, the woman ran around the long filing counter to where Ken was standing. Before Clerk #1 reached him, however, Barbie grabbed her wrist, yelling "Don't you dare touch my man! I've got five bodyguards right outside this door and I do NOT share!" The clerk, enraged that Barbie had come between her and Ken, punched Barbie in the face. When Barbie let go of her wrist, she quickly went back behind the counter. Barbie stood up and for 10 seconds shrieked with outrage. She then jumped up on the counter and pushed the clerk, who fell onto the table behind her.

In the frenzy, neither Ken nor Barbie noticed clerk #2 leave the office with a copy of the marriage license. When, 5 minutes later, they realized that it was gone, they ran out the door to find her. They ultimately did so an hour later at the office of a major tabloid. When Clerk #2 refused to return the document, Ken snatched it of her hand before leaving the building.

Everyone is angry over the days events. To the delight of the tabloids, everyone sues. You are a legal reporter for Court TV and are asked to assess the causes of action and defenses likely to be raised.

Ken vs. Clerk: Assault

Define: Act that is intended to and does place P in apprehension of immediate unconsented touching.

1. Apprehension: was aware that she was trying to touch him. Fear is not required.
2. Imminence - she was running toward where he was standing. Likelihood of battery in immediate future.
3. Apparent ability? Depends perhaps on how big the counter was, how close she actually came before Barbie stopped her. Probably enough given that she was running toward him & close in terms of space.
4. Overt act - went around counter
5. Defense: consent?
 - A. Define: appearances created by words or acts that lead the defendant to

reasonably believe that P assented to conduct, even if P did not.

- B. Silence?
 - 1. = consent here: He didn't run away, didn't protest. He was a celebrity & might be used to this common conduct
 - 2. does not = consent here: Generally kissing a stranger would not be socially acceptable, and no different here. Fact that he did not actively protest probably does not indicate consent given the short time frame.

Clerk #1 vs. Barbie: Battery & False Imprisonment

- 1. Battery based on: (a) grabbing wrist; and (b) pushing clerk
 - A. Define: intentional harmful or offensive contact
 - B. Intent: Barbie clearly desired to touch and to offend – she was angry at the time she both grabbed and pushed the clerk.
- 2. False imprisonment based on grabbed wrist:
 - A. Define: FI = Unlawful restraint, through force or threat of force, which confines to a bounded area.
 - 1. Intent: she desired to restrain – she grabbed her to prevent her from going further
 - 2. Force: She used physical force to hold her wrist
 - 3. Confined to bounded area: during time B held her wrist, she could move no further.
- 3. Affirmative Defense to both Claims: Defense of third parties
 - A. Define: B would have privilege to defend Ken where she use reasonable force under reasonable belief that it was necessary to stop the invasion against him.
 - B. With respect to Barbie holding Clerk's wrist:
 - 1. Reasonable belief that battery imminent:
 - A. Based on appearances as they appeared to B.
 - B. Clerk stated that she was going to kiss Ken.
 - C. As described above, reasonable person would conclude

unprivileged battery was about to occur based on her running toward Ken.

2. Reasonable force:
 - A. Response of grabbing wrist proportionate to threat
 - B. Looks like minimal force to repel invasion
- C. With respect to pushing:
 - A. Reasonable belief:
 1. Threat had terminated by the time this had happened.
 2. No imminent invasion in terms of time or space
 3. Looks like retaliation – not protected.
 - B. Reasonable force:
 1. Again, no imminent invasion, so force unnecessary to stop a battery at this point.

Clerk #1 vs. Barbie: Assault

1. Based on threat: “I’ve got five bodyguards right outside that door and I do not share”
2. Define: Act that is intended to and does place P in apprehension of immediate unconsented touching.
3. Apprehension: Certainly. She heard the threat.
4. Apparent ability?
 - A. Most would question whether there were any bodyguards
 - B. But – this is a celebrity. Even if can’t see them, it is reasonable to conclude they are out there.
5. Imminent? Questionable.
 1. Close in space: Not clear. They are outside the door, not immediately in range. Would need further facts on distance of door to encounter. It may be that they could be there quickly.
 2. Close in time? This is a conditional threat
 - A. Barbie indicates that battery will not occur if Clerk does not touch Ken

- B. She has the right to insist on this condition – clerk is not privileged to touch Ken

Barbie vs. Clerk: battery for punch in face

- 1. Harmful or offensive touching: clearly
- 2. Affirmative Defense: self-defense.
 - A. Define: privilege to reasonable force under reasonable belief that it is necessary to protect self
 - B. Holding on to wrist.
- 3. Reasonable force:
 - A. Must be proportionate.
 - B. A punch in response to wrist holding looks to be excessive force. She likely could have gotten away by pulling her arm away or pushing Barbie. On the other hand, it may be that punch was only way to end invasion.

Clerk would be liable for all excessive force used to the extent that punch is privileged.
 - C. Reasonable Belief?
 - 1. Probably not. Clerk was the initial aggressor. Barbie most likely had the privilege to defend third parties and used proportionate force to stop Clerk.
 - 2. Looks retaliatory rather than anticipating imminent harmful contact.

Ken & Barbie vs. Clerk #2: Trespass to chattels

Define: Intentional interference with chattel which results in harm or damage to the chattel

- 1. Intent? Clearly took the document and desired to exercise control over it.
- 2. Property?
 - A. Doesn't itself represent value of any kind in and of itself. Not like literary work or patent.
 - B. But: Definitely has value b/c of worth to newspapers. Different than

copies in that regard.

3. Harm in chattel?
 - A. Marriage license itself is not harmed, so in that respect, no. In addition, this was only a copy – original was not involved.
 - B. Was dispossessed of it for a certain period of time, which destroyed any secrecy attached to it.
 - C. But: public document. Not clear that entitled to secrecy anyway.

Clerk #2 vs. Ken & Barbie - battery

1. Intent? Clearly desired to make contact with the paper. The way in which grabbed likewise suggests a desire to offend.
2. Touching:
 - A. Did not touch Clerk herself
 - B. Did touch something in plaintiff's hand.
 1. Usually enough if touching something so intimately connected with person that fair to consider as part of the body.
 2. Although paper may not be equivalent of a pipe or cane, it was held closely to the body and probably would satisfy this requirement given the objectionable nature of the encounter.
3. Harm/offense? Not harmful, but certainly offensive to a reasonable person to snatch a piece out of their hand.
4. Affirmative Defense: defense of property
 - A. Define: D has the right to use reasonable force to recapture property under a reasonable belief that force is necessary so long as pursuit is fresh.
 - B. Reasonable force / Reasonable belief: snatching the paper away is minimal invasion. However, usually have to make a demand before using any force, so possibly a violation.
 - C. Fresh pursuit?
 - A. They left within 5 minutes of discovery, but did not find the clerk

for more than one hour after the paper was taken.

- B. Probably still fresh – started quickly and did not stop looking until found P.