

Insurance

Closing Thoughts on Intentional Torts

With intentional torts, always consider

1. The legal interest that each intentional tort addresses
2. The requirements of the defendant
3. The requirements of the plaintiff
4. Any objective requirements, including analysis that the judge or jury must conduct

The legal interest that each intentional tort addresses

Battery

Freedom from harmful or offensive contact

Assault

Freedom from apprehension of harmful or offensive contact

False Imprisonment

Freedom from confinement

IIED

Freedom from emotional distress

Example of False Imprisonment

1. Legal interest

Freedom from confinement

2. Requirements of defendant

Intentional act to confine

3. Requirements of the plaintiff

Aware of confinement (or harmed by it)

4. Objective requirements

Plaintiff was confined

First party insurance

Collateral source rule

Subrogation

Understanding these rules in combination

A defendant injures a plaintiff. The plaintiff's health insurance provider covers most of the plaintiff's medical bills. The plaintiff wins a lawsuit against the defendant.

Consider the process and outcomes for this case under three different legal regimes:

1. Only the collateral source rule exists — no subrogation
2. Only subrogation exists — no collateral source rule
3. Both the collateral source rule and subrogation exist (our actual legal regime)

Straightforward example: a house fire



But it gets complicated with:

- Personal injury
- Settlement

Liability Insurance

First party insurance

versus

Third party (liability) insurance

How does liability insurance affect tort law?

1. Changes how damages are paid.
2. Changes what lawsuits are filed.
3. Can affect substantive tort law itself.
4. Can affect policy rationale / justification for legal rules.

Remember the Rowland Factors?

- foreseeability of harm
- certainty of plaintiff's injury
- connection between defendant's conduct and plaintiff's injury
- moral blame
- policy of preventing harm
- burden to defendant
- consequences to community
- **availability of liability insurance**

Pavia v. State Farm

Hypos on Impact of Insurance

First party insurance for plaintiff in
Vincent v. Lake Erie Transport Co.

Liability insurance for defendants in
Randi W. v. Muroc Joint Unified School District

Office hours are at 1pm today.