Battery

- Battery is what kind of Tort?
- Intentional Tort
- What are the elements of Common law Battery?
- Harmful or offensive contact with a person that results from the defendant’s intent to cause the contract or to cause an apprehension of imminent contact.
ACT

- There must be an act by the defendant that leads to contact with the plaintiff’s person.
- Must be a voluntary movement of the body.
- Is this a battery? ➔ If Dan’s arm hits Linda during a sleep walk?
- NO ➔ there is NO act—no voluntary movement of Dan’s body that caused the contact.
PERSON

• One’s body, anything attached to one’s body, or anything so closely associated with one’s body as to be identified with it.

• Examples of broader definition of person…
  ° Defendant knocks off the plaintiff’s hat
  ° Defendant pulls a plate out of the plaintiff’s hand
  ° Defendant stabs or shoots a horse while plaintiff is riding it
Consciousness

• The tort of battery is designed to protect the personal integrity of one’s body against intentional invasions…which can occur even if one does not know it at the time.

• The plaintiff does NOT have to be conscious of the invasion

• Example ➔ Jim kisses Lena while she was sleeping…Jim has committed a battery.
INTENT

• The desire to bring about imminent harmful or offensive contact or to bring about an imminent apprehension of that contact.
• Imminent $\rightarrow$ immediate in the sense of no significant delay
• Apprehension $\rightarrow$ an understanding or awareness of an imminent contact (sufficient to establish the element of intent)(111)
Garratt v. Dailey

- **Background**: Garratt (plaintiff) suffered a fractured hip from a fall that occurred when 5 year old Daily removed the chair that Garratt was about to sit in.

- In this case... Garratt could not prove that Daily knew with substantial certainty that the plaintiff would attempt to sit where the chair had been.

- Without such knowledge, there would be nothing wrongful about Daily’s act in moving the chair.

- No wrongful act = No liability
Transferred Intent

• It is no defense to argue that the person hit is not the one the defendant intended to hit
  ° Ex: Helen fires gun at Paul. She misses and strikes Rich, whom she did not see
  ° Helen has battered Rich

• Under the rule of transferred intent, Helen’s intent to hit Paul is transferred to Rich
Motive

• Motive is irrelevant
• If the defendant intends a harmful or offensive contact….a battery has been committed
• As long as the contact is harmful or offensive…the tort has been committed
Harmful or Offensive Contact

• Contact is **harmful** if it brings about physical damages, impairment, pain, or illness.

• Contact is **offensive** if it offends the personal dignity of an ordinary person who is not unduly sensitive.

• Any physical damage, impairment, pain or illness—no matter how trivial or slight—is considered harmful.
Harmful or Offensive Contact

• If there is no harmful contact, the plaintiff may still be able to recover if the contact is offensive

• An **objective standard** is used to determine when contact is offensive

• TEST: whether a reasonable person—someone not unduly sensitive—would be offended by the contact
  
  ° Exception: if the defendant knows that the plaintiff has a peculiar—even unreasonable—sensibility about being touched…the court may find the contact to be offensive
Brzoska v. Olson

- Patients of Delaware dentist, Raymond Owens, sued for battery based on “offensive touching” during treatment when they found out their doctor had died of AIDS.
- The Supreme Court of Delaware found that without actual exposure to HIV, the risk of its transmission is so minute that any fear of contracting AIDS is per se unreasonable.
Brzoska v. Olson

• As a matter of law, the incidental touching of a patient by an HIV-infected dentist while performing ordinary, consented-to dental procedures is insufficient to sustain a battery claim in the absence of a channel for HIV infection.
• Such contact is “offensive” only if it results in actual exposure to the HIV virus.
• The court adopted an “actual exposure” test, which requires the plaintiff to show “actual exposure” to a disease-causing agent as a prerequisite to prevail on a claim based upon fear of contracting disease.
Consent and Privilege

- **Consent** is a complete defense
- There is NO liability for battery if the plaintiff permitted the contact
- Similarly...if the plaintiff has a **privilege** to cause a contact with the plaintiff, the latter cannot win a suit for battery
- Privileges include...self-defense, the defense of others, the defense of property, discipline, and arrest.
THE END