

## Intent in Tort Law: A Summary

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Different types of torts require different types of intent. The chart below summarizes. The types of intent grow more specific, and harder to prove, as you move from left to right. Because the chart shows only the minimal level of intent required to establish a given tort, a successful claim might go further than necessary on that count. A plaintiff thus might, for instance, prove trespass to real property by showing the defendant deliberately violated the plaintiff's property rights. Notes follow on the next page.

<b>Type of Intent<sup>1</sup></b>	(Inaction or Nonvolitional Action) <sup>2</sup>	Act <sup>3</sup>	General Pattern of Behavior or Creation of a Condition	Rights Interference	Harm
<b>Type of Tort</b>	(None)	Trespass to Real Property <sup>4</sup> and Strict Liability Torts <sup>5</sup>	Negligence, and (generally) Defamation <sup>6</sup>	Assault, <sup>7</sup> Battery, <sup>8</sup> False Imprisonment, <sup>9</sup> Conversion, <sup>10</sup> and Trespass to Chattels <sup>11</sup>	I.I.E.D. <sup>12</sup>
<b>Example</b>	reflex action	entering another's land or keeping a wild animal	carelessly failing to post a watch on a moored barge	playfully kicking another student during class	urging suicide on a known depressive

**Minimal Level of Intent Required for Various Torts**

## Notes to Chart

<sup>1</sup> See RESTATEMENT (2D) OF TORTS § 8A (defining "intent").

<sup>2</sup> See *id.* § 2, comment a ("There cannot be an act without volition.").

<sup>3</sup> See *id.* § 2 (defining "act" as "an external manifestation of the actor's will . . .").

<sup>4</sup> See *id.* § 163 ("One who intentionally enters land in the possession of another is subject to liability to the possessor for a trespass . . ."). See also *id.* § 164 (explaining that mistake offers no defense); § 166 (exempting from liability "an unintentional and non-negligent entry on land in the possession of another . . .").

<sup>5</sup> See *id.* § 507(1) ("A possessor of a wild animal is subject to liability to another for harm done by the animal" despite attempts to "prevent it from doing harm."); § 519(1) (imposing similar, strict liability on one who carries on an abnormally dangerous activity).

<sup>6</sup> See *id.* §§ 580A-580B (distinguishing between defamation by primary versus secondary publisher and of private versus public figures).

<sup>7</sup> See *id.* § 32(1) (requiring intent "to inflict a harmful or offensive contact upon the other or to [] put the other in apprehension of such contact."). See also *id.* § 32(2) (similar rule with regard to intent towards a third party).

<sup>8</sup> See *id.* §§ 13 (requiring intent "to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact . . ."). See also *id.* § 16 (offensive contact), § 20 (harmful contact).

<sup>9</sup> See *id.* § 35 (requiring intent "to confine the other or a third person within boundaries fixed by the actor . . .").

Although *id.* illustration 2, addresses the matter confusingly, it should not be taken to suggest that merely negligent confinement can suffice to establish false imprisonment. It describes this scenario: "Just before closing time, A, a shopkeeper, sends B into a cold storage vault to take inventory of the articles therein. Forgetting that he has done so, he locks the door of the vault on leaving the premises." It concludes that, if B becomes ill due to prolonged exposure to the cold, A "is subject to liability to B for the illness so caused." But that goes only to establish liability for negligence—not for false confinement. The text of § 35 plainly requires more than merely careless confinement, and the case cited as inspiration for illustration 2, *Mouse v. Central Sav. & Trust Co.*, 120 Ohio St. 599 (1929), sounded in negligence. See also *id.* § 44, comment a ("To make the actor liable under the rule stated in § 35, it is only necessary that he intend to confine the other or a third person or that he know that such confinement will, to a substantial certainty, result.").

<sup>10</sup> See *id.* § 222A(c) (making good faith a factor in establishing conversion), *but cf. id.* § 224, comment c ("[D]efendant may be liable for conversion . . . although he may be quite unaware of the existence of the rights with which he interferes.").

<sup>11</sup> See *id.* § 217, comment c ("The intention required to make an actor liable for trespass to a chattel is similar to that necessary to make one liable for an invasion of another's interest in bodily security, in freedom from an offensive contact, or confinement.").

<sup>12</sup> See *id.* § 46, comment i (premising liability on intention "to inflict severe emotional distress" or action with knowledge "that such distress is certain, or substantially certain, to result from [the actor's] conduct.").