

TORTS (NOT A PIECE OF CAKE)

MATERIALS

- 1) Namecards/nametags for you and the students (provided in the PICC).
- 2) Enough handouts for each student (attached to lesson and available in the PICC).
- 3) Re-useable white board, markers, eraser – if you want one (provided in the PICC).
- 4) Role Assignment Slips (attached to lesson—please cut out for class).

TAKEAWAYS

- Students will understand the difference between civil and criminal law.
- Students will understand basic civil remedies.
- Students will have a better feel for how lawsuits work, including possible tort charges and defenses.

QUICK INTRO

(Time Check: 1 minute)

Tell the class: Your names, that you're law students from Stanford Law School, and you're there to teach a StreetLaw class.

- Remind the students about StreetLaw rules: don't talk about the specifics of your case, respect your classmates and your teachers.

ICEBREAKER: An Eye For An Eye...Or Money Damages?
(Time Check: 5 minutes)

Tell the class that you want to talk about punishment—specifically, what the best punishment would be for a few different situations.

Tell the class that you're going to give them a few hypothetical situations in which someone did something hurtful or wrong to them. For each situation, how would you want that person to be punished if *any form of jail or prison was not an option*. What other punishments are there? And what would they want if they were the victim?

Hypo 1: Someone broke into your car and took your cd player, your new jacket, and your backpack (with whatever might have been in there). How should they be punished?

Hypo 2: Someone beat you up. How should they be punished?

Hypo 3: Someone stole your identity, opened a credit card and bought a bunch of stuff under your name. Now you're broke and your credit rating sucks, and debt collectors are calling your house. How should they be punished?

Thank the class for participating, ask them to take their seats.

LECTURE: Intentional Torts
(Time Check: 15-20 minutes)

Tell students that today we're going to talk about *torts*. Ask if anyone knows what a "tort" is. Chances are no one will.

Tell the students that a lot of people (myself included, actually) haven't even heard of torts until they come to law school. What we're going to be covering today is first-year law-student stuff, so when they leave the classroom today they should feel proud that they know stuff most non-lawyers don't!

What Is A Tort?

Define torts for students—**torts are wrongs for which the wrongdoer can be sued.**

Examples

- A person who punches another person and injures them can be sued for the tort of *battery*.
- A doctor that performs surgery on a patient and amputates the wrong leg can be sued for the tort of *medical malpractice*.
- A company that makes its employees work in unsafe conditions that result in the death of a worker can be sued for the tort of *wrongful death*.

- A person who leaves so much garbage out on their lawn that the neighborhood is overtaken by stray cats can be sued for the tort of *nuisance*.
- A person who destroys a rival's reputation by spreading vicious lies can be sued for the tort of *defamation*.
- A person who locks someone in the closet and refuses to let them out can be sued for the tort of *false imprisonment*.

Note that both people and companies can commit torts—just like a person who causes injury to another person can be sued by the person they injured, a company that does something wrong and causes injury can be sued by the injured person or persons. A company who injures a whole *lot* of people can be subject to what's called a *class action* suit—where there are many plaintiffs who were all injured the same way, suing the entity that injured them.

NOTE: Give an example (such as the exploding soda cans).

The Difference Between Civil and Criminal Law

Explain that even though there are some things that are both crimes and torts (like assault and battery) torts are governed by *civil* law, not criminal.

Go back to the example of the person who punches the other person—ask if anyone in the class remembers learning about *battery*. Hopefully someone will. Ask them what they think of as the usual punishment for battery—chances are, they will say jail or some other *criminal* remedy.

Point out that *battery* is a crime, and a person who commits a battery can be charged with that crime, tried in a criminal trial, and possibly convicted and sentenced to prison (or probation, if they're lucky).

But *battery is also a tort*. This means that a person can *also* be sued by the injured person, have a *civil trial*, and, if they lose, have to pay the injured person an amount of money, which we call *damages*.

Main Differences Between Civil And Criminal

So far, we've only discussed *criminal laws* in Streetlaw. Criminal laws govern *crimes*—those actions that the government has decided are so harmful, they are considered injuries to the *community*, not just to the victim.

Crimes—criminal wrongs—are punished by the criminal justice system, and charged by the government—the government brings a charge against an individual.

This is why, in a criminal case, the case is usually called “The People vs. So-and-so” or “California vs. So-and-so” or even “The United States vs. So-and-so.” The person charged with a crime is the defendant, and the person claiming to be injured is a representative for the people—the whole community.

Civil laws, though, provide *remedies for the violation of private rights*.

One individual or group—not the government—can charge another individual or group with causing them injury.

If they win, they get a *civil remedy*—instead of the defendant winding up in jail, they have to pay money to the injured party, or maybe obey a court order forcing them to stop whatever it is they're doing wrong.

Jail is off the table. Incarceration is not a remedy for a tort.

In other words, when a person wants to sue someone for something, that's a *civil* suit.

Also, in a criminal trial the person bringing the charges is usually referred to as the *prosecutor* (or the *prosecution*). In a civil trial, the person who brings the charges is the *plaintiff*. Mnemonic device: it sounds like “complain” and the *plaintiff* is the complaining party.

So why should some things be both crimes and torts? Isn't that double-punishment?

- Not always. Let's say someone assaults me and kicks my ass all over the street. Let's say there were no witnesses, and the cops don't believe me, because I have a criminal record and a bad relationship with the police. So no charges get pressed against the jerk that assaulted me. If I want to, I can bring a *civil suit* against that individual for the wrong they did me.
 - NOTE: You can also use the OJ Simpson criminal murder & civil wrongful death trials as an example of how someone can be civilly liable without being criminally punished for the same conduct
 - NOTE: Make sure to make clear that there is a lesser standard of proof

Ask the class: Why else might we need both criminal law and torts? Why do we let the courts make some people pay other people money for doing things wrong? Is this better than putting them in jail? Worse? Discuss.

DAMAGES

Introduce civil damages by reference to the icebreaker—take an example where someone said they'd want to punish the wrongdoer with money, and use that to explain money damages.

Explain that the main purpose of having torts is to let people get paid back when someone takes something from them. While crimes are usually punished with community service, jail time, and sometimes fines or payments to the victim, torts are almost always punished with either money or an *injunction*—a court order ordering the party committing the tort to stop what they're doing.

Money is often referred to as “*damages*.” When a person has been the victim of a tort, they can sue the person who committed the tort, and ask the court (sometimes a judge, sometimes a jury) to award them a certain amount of money.

This amount of money isn’t random—a person has to explain why they want that amount of money, and why the other person should have to pay it.

Ask the class: What Do You Think Damages Are Based On?

There are a few things damages are usually based on:

- **The dollar value of the loss** incurred by the victim (if, for example, the tort resulted in the destruction of the victim’s property)
- **The cost of fixing the damage** done by the tort (repairs to property, or, in a lot of cases where someone was injured, the cost of medical care for the victim)
- **Lost earnings** (either the wages the person lost out on while they were recovering from the tort, if they missed work or lost their job as a result of the tort, or, possibly, if the tort made the victim unable to work permanently, *all future lost earnings that victim could possibly have made in his or her lifetime*.)
- **Pain and suffering** (this is where damages go really high, because unlike the other bases for damages, there’s no dollar value for pain and suffering.
- **Punitive damages** – these are money damages awarded just to punish the person or company who committed the tort, and are *only possible in cases where the tort was intentional*.

Intentional Torts

Tell the class that there are two main kinds of torts—*intentional* and *negligent*. We’re not going to talk about negligent torts today, but basically negligence is when one person doesn’t mean to do any harm, but fails to act reasonably in a given situation and their unreasonable act causes another person injury (for example: texting while driving).

Today we are going to focus on intentional torts.

An *intentional tort* happens when a person:

- 1) **Intended the physical consequences** of his or her action and
- 2) **Knew, or should have known, that the consequences were substantially certain to occur** as a result of that action.

Example: Mr. Karl gets into a fight with his mechanic, and the mechanic, in a moment of rage (Mr. Karl is a real jerk) punches Mr. Karl in the nose. Mr. Karl gets a bloody nose. Was that an intentional tort?

Answer: Yes, it was. It doesn’t matter if he didn’t mean to give Mr. Karl a bloody nose, he meant to punch him. That makes it an intentional tort.

The Less-Than-Intuitive Definition Of “Intend”

Point out for the class that when we say the person must *intend* their action, that doesn't mean they have to intend—or even think of—the consequences of their actions. In other words, if [Teacher A] lightly taps [Teacher B] on the back of the head, and [Teacher A] has no idea that [Teacher B] has a freakishly thin, fragile skull, and never meant for the light, playful tap to cause [Teacher B] to have to go to the hospital and get surgery and almost die, *it's still intentional*. [Teacher A] meant to tap [Teacher B]. The consequences—whatever they are—are on [Teacher A].

ACTIVITY 1: TortFight!
(Time Check: 20 minutes)

Hand out the information sheets for this exercise at the beginning.

Tell students that now they're going to get a chance to argue some tort cases themselves. Everybody is going to randomly get assigned a case, and a client. You will get a slip of paper with the facts of your case, and who your client is. One person will have the *plaintiff* of a certain case, another person will have the *defendant*.

After you read your case, figure out how to represent your client best—if you have the plaintiff, you should figure out what you can sue the other party for, and what damages you want to ask for. If you're the defendant, you should figure out what your client might be sued for, and come up with reasons why it's not your client's fault, or why your client shouldn't have to pay—*defenses* against the suit.

After about 5-10 minutes of planning (during which teachers will walk around from student to student helping prep and plan cases) the teachers will start calling out case numbers. When your number is called, you will argue your case against your classmate. The class will be the jury. The class can decide to (a) award the plaintiff whatever they're asking for as damages (b) award the plaintiff *part* of what they're asking for as damages or (c) award the plaintiff nothing, and rule in favor of the defendant.

There are only four possible torts in your cases. You have a handout with the definitions of these torts, but we'll go over them quickly once before we get started. *Note: try to keep this part quick and let students ask questions later once they're working. This isn't a lecture, it's more of a quick prep to get students ready to play the game.*

Explain each of these torts in plain language as you go through them. Also, remind students who have had the Assault and Battery lesson that this is very similar to what they studied before, but in this case, it's not a crime, so the person charged is looking at *money damages*, not a trip to the slammer.

Assault – an assault happens when a person *threatens* to cause bodily injury to another person, by force. An assault causes a *well founded fear of imminent peril*, because there is an *apparent* present ability to carry out the threatened act. Even if there is *no contact* between people, there can still be an assault if one person gets a good (and reasonable) scare.

- **Have one teacher throw a crumpled piece of paper at another teacher and miss.**

Battery – A battery is the *willful or intentional touching* of a person *against that person's will*. It can be touching by another person, or by an object put into motion by another person. It can be just *offensive touching*—*does not have to cause injury*.

- **Have one teacher throw a crumpled piece of paper at another teacher, but this time hit them.**

False imprisonment – when a person *intentionally confines* another person, either *physically* or *just by overcoming their will*, to a *definable area* from which there is no apparent means of escape, it's an intentional tort.

Intentional infliction of emotional distress (IIED)– when a person acts *intentionally or recklessly*, and the person's conduct is *extreme or outrageous*, and it *causes another person severe emotional distress*, it can be grounds for a suit.

Note: make sure you clarify for the class that the distress has to be SO SEVERE IT ACTUALLY CAUSES PAIN. Just being upset ≠ enough.

Defenses

Tell the students that for those of them who are assigned to the role of *defendants*, they should think up reasons why their client shouldn't have to pay damages.

There are a few defenses to battery defined in the law—such as consent, police action, or self defense—listed on the sheet. BUT, just because there are no legally-defined defenses to the other torts *that doesn't mean there's nothing you can do*.

Generally, no matter what tort your client might be charged with, you should think of *common sense reasons* why they're not at fault—feel free to make up more facts to add to your case if you want.

The point is just to try and negate the elements of the tort—if my client is being sued for false imprisonment, for example, I might argue that my client didn't *mean* to confine the plaintiff, therefore it wasn't *intentional* (remember it has to be intentional).

Or if my client is charged with IIED, I might argue that they weren't *really* that upset—I mean, how can they *prove* it? It's really hard to prove emotional pain, so the defense has an advantage there.

Tell the students that the handouts have a bunch of questions to help plaintiffs and defendants make their cases. Follow the questionnaire for your role, and you should be able to build a solid case!

Let the games begin!

Hand out the scenarios. You can have students grab them from a hat, or call off numbers, or whatever you like so long as it's random. *Make sure you have one plaintiff for each defendant and vice versa! If you have an odd number, make a group of three.*

Move from group to group/student to student and help them with their arguments. Try to keep things moving so you have time to get through all the scenarios. Have fun!



Case #1: PLAINTIFF - TYLER

Joe (defendant), reasonably believing that Tyler (plaintiff) is going to spit in his face, firmly pushes Tyler away, causing Tyler to fall to the ground and skin his knee.

Case #1: DEFENDANT - JOE

Joe (defendant), reasonably believing that Tyler (plaintiff) is going to spit in his face, firmly pushes Tyler away, causing Tyler to fall to the ground and skin his knee.

Case #2: PLAINTIFF - ANGELA

Natalie (defendant), reasonably believing that Angela (plaintiff) is going to punch her, hits Angela with a baseball bat.

Case #2: DEFENDANT - NATALIE

Natalie (defendant), reasonably believing that Angela (plaintiff) is going to punch her, hits Angela with a baseball bat.



Case #3: PLAINTIFF – ALEX

Alex (plaintiff) challenges Steve (defendant) to a fight after school, and the two boys agree to meet behind the school later that day. During the fight, Steve punches Alex once in the nose, causing permanent disfigurement.

Case #3: DEFENDANT – STEVE

Alex (plaintiff) challenges Steve (defendant) to a fight after school, and the two boys agree to meet behind the school later that day. During the fight, Steve punches Alex once in the nose, causing permanent disfigurement.

Case #4: PLAINTIFF - ALEX

Alex (plaintiff) challenges Steve (defendant) to a fight after school, and the two boys agree to meet behind the school later that day. During the fight, Steve knocks Alex to the ground and then kicks him repeatedly in the head.

Case #4: DEFENDANT – STEVE

Alex (plaintiff) challenges Steve (defendant) to a fight after school, and the two boys agree to meet behind the school later that day. During the fight, Steve knocks Alex to the ground and then kicks him repeatedly in the head.



Case #5: PLAINTIFF - KATIE

Katie (plaintiff), a high school senior and the star forward on her school's basketball team, is driving for a basket early in the state championship game, when Erica (defendant) flagrantly fouls her, causing her to hit the ground so hard that she badly dislocates her shoulder. Katie is unable to continue playing in the game, which her team loses. Katie also loses her scholarship to Stanford and ends up not being able to attend college.

Case #5: DEFENDANT – ERICA

Katie (plaintiff), a high school senior and the star forward on her school's basketball team, is driving for a basket early in the state championship game, when Erica (defendant) flagrantly fouls her, causing her to hit the ground so hard that she badly dislocates her shoulder. Katie is unable to continue playing in the game, which her team loses. Katie also loses her scholarship to Stanford and ends up not being able to attend college.

Case #6: PLAINTIFF - JOE

Joe (plaintiff) has an embarrassing speech impediment. Aaron (defendant) verbally and physically mimics Joe over 30 times in front of numerous other people. As a result, Joe is quite shaken up. Joe has been under a doctor's care for years, but does not seek additional care as a result of Aaron's conduct.

Case #6: DEFENDANT – AARON

Joe (plaintiff) has an embarrassing speech impediment. Aaron (defendant) verbally and physically mimics Joe over 30 times in front of numerous other people. As a result, Joe is quite shaken up. Joe has been under a doctor's care for years, but does not seek additional care as a result of Aaron's conduct.



Case #7: PLAINTIFF - AMY

Officer Smith (defendant), a Seattle policeman, suspects that Amy (plaintiff) has let her dog run wild without a leash, violating a city ordinance. Officer Smith asks Amy for her driver's license. Amy refuses, at which point Officer Smith tells Amy that he will be forced to take her to jail if she does not comply. Amy refuses again, at which point Officer Smith arrests her, even though the city ordinance does not require citizens to produce a driver's license for not keeping their dog on a leash.

Case #7: DEFENDANT – OFFICER SMITH

Officer Smith (defendant), a Seattle policeman, suspects that Amy (plaintiff) has let her dog run wild without a leash, violating a city ordinance. Officer Smith asks Amy for her driver's license. Amy refuses, at which point Officer Smith tells Amy that he will be forced to take her to jail if she does not comply. Amy refuses again, at which point Officer Smith arrests her, even though the city ordinance does not require citizens to produce a driver's license for not keeping their dog on a leash.

Case #8: PLAINTIFF - MATILDA

Lenny (defendant) induces Matilda (plaintiff) to sail from Syria to America, promising Matilda that he will let her off the boat as soon as they arrive in the United States. The ship arrives, but Lenny refuses to give Matilda a row boat so that she can get to shore.

Case #8: DEFENDANT - LENNY

Lenny (defendant) induces Matilda (plaintiff) to sail from Syria to America, promising Matilda that he will let her off the boat as soon as they arrive in the United States. The ship arrives, but Lenny refuses to give Matilda a row boat so that she can get to shore.



Case #9: PLAINTIFF – GERALD

Gerald (plaintiff), an African-American male, is attending a lunch at a hotel when an employee (defendant) snatches Gerald's plate right out of Gerald's hands and says that Gerald can't be served because he is black. Gerald is not hurt or frightened, but he is embarrassed.

Case #9: DEFENDANT – HOTEL EMPLOYEE

Gerald (plaintiff), an African-American male, is attending a lunch at a hotel when an employee (defendant) snatches Gerald's plate right out of Gerald's hands and says that Gerald can't be served because he is black. Gerald is not hurt or frightened, but he is embarrassed.



FACTUAL SCENARIOS – PREDICTED / ACTUAL RESULTS (TEACHER COPY ONLY)

Scenario 1 Predicted Result

Theory of liability: Battery. **Best affirmative defense:** Self-defense. **Predicted outcome:** Defendant wins. **Explanation:** According to the facts, Joe reasonably believed that Tyler was going to spit in his face. The threat of such action constituted an assault by Tyler, which entitled Joe to use such reasonable force as was necessary, or which at the time reasonably appeared to be necessary, in self defense to protect himself from bodily harm. Joe’s act of pushing Tyler away was reasonably proportionate to the threat of being spit upon.

Scenario 2 Predicted Result

Theory of liability: Battery. **Best affirmative defense:** Self-defense. **Predicted outcome:** Plaintiff wins. **Explanation:** According to the facts, Natalie reasonably believed that Angela was going to punch her. As in the previous example, Natalie was entitled to use reasonable force to protect herself from bodily harm. The problem here is that hitting someone with a baseball bat is not reasonably proportionate to the threat of being punched. As a result, the defense of self defense is not available to justify Natalie’s act of battery.

Scenario 3 Predicted Result

Theory of liability: Battery. **Best affirmative defense:** Voluntary (mutual) combat. **Predicted outcome:** Defendant wins. **Explanation:** This is a clear case of a plaintiff (Alex) voluntarily engaging in a fight with a defendant (Steve) just for the sake of fighting and not as a means of self-defense. In such a case the plaintiff may not recover for an assault or battery unless the defendant uses unreasonable force.

Scenario 4 Predicted Result

Theory of liability: Battery. **Best affirmative defense:** Voluntary (mutual) combat. **Predicted outcome:** Plaintiff wins. **Explanation:** As in the previous example, the plaintiff (Alex) challenged the defendant (Steve) to a fight. Alex therefore could not recover damages for injuries one might reasonably expect to result from a fight. The problem here, unlike in the previous scenario, repeatedly kicking someone in the head after knocking them down constitutes unreasonable and excessive force. As a result, the defense of voluntary (mutual) combat is not available to Steve, and thus Alex may recover for battery.

Scenario 5 Predicted Result

Theory of liability: Battery. **Best affirmative defense:** consent. **Predicted outcome:** Defendant wins. **Explanation:** Katie’s injuries resulted from Erica’s violation of a rule that is part of ordinary play in the game of basketball. A court would accordingly hold that by playing the game of basketball, Katie consented to the possibility that someone like Erica might foul her hard – even flagrantly. As a result, Katie cannot recover for battery.

Scenario 6 Predicted Result

Theory of liability: Intentional Infliction of Emotional Distress. **Best affirmative defense:** None. **Predicted outcome:** Defendant wins. **Explanation:** In this case, while Joe, the plaintiff



would claim intentional infliction of emotional distress, the conduct would not likely be treated as severe enough to rise to the level of recovery under an IIMD theory. The defendant's actions would have had to have been the cause of severe emotional distress. Here, Joe did not seek further medical care, from which it would be inferred that the emotional distress was not so severe.

Scenario 7 Predicted Result

Theory of liability: False imprisonment. **Best affirmative defense:** None. **Predicted outcome:** Plaintiff wins. **Explanation:** In this case Officer Smith unlawfully imprisoned Amy by arresting her, since there was no legal grounds for an arrest for failure to produce a driver's license for not keeping a dog on a leash. The court found under similar circumstances, in *Enright v. Groves* (1977), that a false arrest arises when someone is taken into custody by a person who claims, but does not have legal authority to do so. Here, since there was no law that required a person to show her driver's license on demand for such a leash law violation, Amy's refusal to do so was not an offense that could lead to arrest.

Scenario 8 Predicted Result

Theory of liability: False imprisonment. **Best affirmative defense:** None. **Predicted outcome:** Plaintiff wins. **Explanation:** In this case, the defendant Lenny confined the plaintiff Matilda to a definable area from which there was no reasonably apparent means of escape. The fact that Lenny refused to allow Matilda a row boat to get ashore meant that Matilda had no practical means to get ashore, and was thus imprisoned on the boat against her will. The court found for a plaintiff in similar circumstances in *Whittaker v. Sanford* (1912), that the restraint was physical, and that the sea was the physical barrier, and that refusal of a boat to get ashore constituted unlawful imprisonment.

Scenario 9 Predicted Result

Theory of liability: Battery. **Best affirmative defense:** None. **Predicted outcome:** Plaintiff wins. **Explanation:** In this case, the snatching of the plate out of Gerald's hands would be a battery, since the plate was directly touching Gerald's hands. The court in *Fisher v. Carousel Motor Hotel* (1967) found that the intentional grabbing of the plaintiff's plate and racial epithet constituted a battery. The court noted that it was not necessary to touch the plaintiff's body, but that touching anything connected with his person, when done offensively would count as a battery.

NOTE: The following handouts may be too heavy/difficult to distribute to the students, so use your own discretion.



Intentional Torts

Intentional torts occur where a defendant:

- 1) Intended the physical consequences of his or her action; and
- 2) Knew, or should have known, that the intended consequences of his or her action were substantially certain to occur.

Assault

An intentional, unlawful threat to cause bodily injury to another person by force; (2) under circumstances that create a well-founded fear of imminent peril; (3) where there exists the apparent present ability to carry out the threatened act. Assault can be committed even if there is no actual contact with the plaintiff, and even if the defendant had no actual ability to carry out the apparent threat.

Battery

The willful or intentional touching of a person against that person's will by another person, or by an object or substance put in motion by that other person. Offensive touching can constitute battery even if it does not cause injury, and even if it could not reasonably be expected to cause injury.

Defenses To Battery

Consent: Where a defendant has the plaintiff's consent to commit an act of assault or battery, the plaintiff may not later bring a lawsuit. In sports, injuries that result from rule violations that are part of ordinary play are unlikely to support a legal action.

Police Conduct: A police officer is privileged to apply the threat of force, or if necessary to apply actual force, in order to make a lawful arrest. A defendant who suffers injury as the result of reasonable force exerted by the police to make a lawful arrest will not be able to sustain a lawsuit against the arresting officers for assault or battery.

Self-Defense: A person can use such reasonable force as may be necessary, or which reasonably appears to be necessary, to protect himself from bodily harm. An act of self-defense must be proportionate to the threat.

Voluntary (Mutual) Combat: Where the plaintiff voluntarily engages in a fight with the defendant for the sake of fighting and not as a means of self-defense, the plaintiff may not recover for an assault or battery unless the defendant beats the plaintiff excessively or uses unreasonable force.

Defense of Property: Many jurisdictions allow the use of some amount of threat or force by a person who is seeking to protect his or her own property from theft or damage. However, there is no privilege to use force that may cause death or serious injury unless the property owner is threatened with death or serious injury.

Provocation: Words alone, no matter how insulting or provocative, do not justify an assault or battery.

False Imprisonment

When a defendant intentionally confines the plaintiff, either physically or by overcoming the plaintiff's will, to a definable area from which there is no reasonably apparent means of escape.

Intentional Infliction of Emotional Distress

The defendant must actions must be: (1) intentional or reckless; (2) extreme and outrageous; and (3) the cause of severe emotional distress.



QUESTIONS FOR PLAINTIFFS:

1) What did the defendant do to injure my client? (*you're not limited to just one answer—go with all that apply!*)

- | | |
|-------------------------|-----------|
| a) Threaten | Go to (2) |
| b) Touch / Injure | Go to (3) |
| c) Prevent from leaving | Go to (4) |
| d) Emotionally upset | Go to (5) |

2) Was your client scared? YES = **ASSAULT** NO = **NO TORT**

3) Did the defendant intend to touch your client? YES = **BATTERY** NO = **NO TORT**

4) Did they mean to? YES = **FALSE IMPRISONMENT** NO = **NO TORT**

5) Was it severe enough to cause your client pain? YES = **EMOTIONAL DISTRESS** NO = **NO TORT**

6) What did the defendant's actions cost your client?

Don't forget... The cost of medical care/therapy, the cost of any other repairs, the cost of missing work or losing potential future earnings, and **PUNITIVE DAMAGES!**

QUESTIONS FOR DEFENDANTS

1) What did your client do to injure the plaintiff? (*you're not limited to just one answer—go with all that apply!*)

- | | |
|-------------------------|-----------|
| a) Threaten | Go to (2) |
| b) Touch / Injure | Go to (3) |
| c) Prevent from leaving | Go to (4) |
| d) Emotionally upset | Go to (5) |

2) Possible **Assault**. DEFENSE: Try to think of ways to show that the plaintiff was *unreasonable* in being afraid of your client. If a reasonable person wouldn't have felt afraid, there's no tort.

3) Possible **Battery**. DEFENSE: Try to show that your client didn't intend to touch the plaintiff AND see the list of **Defenses to Battery** on the first page of this handout.

4) Possible **False Imprisonment**. DEFENSE: Try to argue that the plaintiff *could* have left—find some reason why your client's actions weren't *totally* preventing the plaintiff from leaving. OR: Try to find a way to argue that your client *didn't intend* to prevent the plaintiff from leaving.

5) Possible **Emotional Distress**. DEFENSE: Emotional defense is really, really hard to prove. Try to attack the plaintiff's lack of proof—if they can't prove that their emotional pain was really severe and caused by **OUTRAGEOUS** acts on the part of your client, there's no tort.