Defenses to Charges of Intentional Torts - Consent

Can be:

Express

- The plaintiff must have capacity to consent

OR:

Implied; e.g.:

- Taking part in an athletic contest
- Must not be prohibited by law
- Invalid for cases where severe injury or death is contemplated
- Automatically implied if the contact is necessary to save the person's life (e.g. applying the Heimlich maneuver to help a choking victim)

Defenses to Charges of Intentional Torts - Self Defense

(similar to the same defense in the criminal law context)

- The force used must be proportional:
    - o Non-deadly force cannot be used to combat or prevent deadly force
- The threat must be imminent
- The danger must not have passed already

Special rules for deadly force:

- o There is, in some jurisdictions, a duty to retreat before using deadly force. However, in one's own home, there is no duty to retreat
- o Entry on to a third person's land using a third person's chattel is justified (privileged) if it's necessary to save a life.

QUIZ TIME

Defense and Recovery of Property

- Non-deadly force can be used to protect property or to recover it. Deadly force can never be used to protect or recover property!

- Thus, setting deadly traps to defense property is also illegal and is a tort

- Recovery of property:

  - For personal property, non-deadly force can be used to recover stolen property

  - For real property, most states do not allow “self help” repossession, because the potential for violence and disorder are too great and the fact that remedies in court are adequate (the property isn’t going to disappear)

  - Shopkeepers have a privilege that allows them to temporarily detain suspects accused of shoplifting; but the grounds must be reasonable!

Tort defenses- Necessity

- This tort defense applies if the commission of one tort is necessary to prevent a greater harm from occurring.

Private necessity

- This occurs when the looming harm is to an individual and that individual is the one committing the tort to prevent it
- This does justify the commission of the tort (no punitive damages, another person cannot legally prevent the tort from being committed, etc.), but the person still must pay for any damage he or she caused

Public Necessity

- The looming harm is to the public at large
- The person who commits the tort need not pay any damages

Tort defenses- Discipline/ Justification

- The defense that the tortfeasor was using reasonable discipline against the victim is available against most intentional torts (assault, battery, false imprisonment, etc.),as long as:

1. The tortfeasor is responsible for the safety and/or upbringing of the "victim" (e.g., parent child). This also can apply to temporary stewardships, such as babysitters, etc.

2. The tort committed must be reasonable under the circumstances

- Strangers and other non-responsible people cannot generally use the defense of discipline, but may be able to use the necessity defense if applicable.