

## Tort Law for Paralegals: Chapter 6

### Chapter Outline

**Tort Law for Paralegals: Chapter 6**

Lecture Hints

Answers to Case Questions

Problems

Problem Answers

Project

Project Answers

Chapter Quiz

Chapter Outline

Chapter 6

**Intentional Torts: Injuries to Persons**

**Summary:** This chapter introduces students to some of the intentional torts involving injuries to persons: assault, battery, false imprisonment, sexual harassment, tortious interference with expectations of inheritance, patient dumping, and spoliation of evidence. Injuries to persons has been divided into two chapters (Chapters 6 and 7) to cover all the torts. You may combine these two chapters or not, depending on how much emphasis you wish to give to this topic. This chapter begins the substantive level of intentional tort study familiar from law school days. The text explains each element with

### *Step Text*

#### Chapter 6

### Intentional Torts: Injuries to Persons

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give to this topic. This chapter begins the substantive level of intentional tort study familiar from law school days. The text explains each element with illustrative examples. Within the text there are “complete” hypotheticals to demonstrate elements, as well as a running marginal glossary to define terms. Reprinted case excerpts illustrate each tort.

## CHAPTER OUTLINE

### I. INTENTIONAL TORTS: GENERAL CONCEPTS

A. Definition: Conduct that is fashioned to harm another person or his or her property.

B. All intentional torts contain two elements.

1. Intent: Desire to accomplish harmful consequences of tortfeasor’s actions. Not malice or ill will; simply intent to produce harmful results.

2. Injurious behavior: Conduct that causes the intended harm.

3. Intent and injurious behavior: Must occur simultaneously (or very close together) in sequence of events; that is, “I thought it, then I did it.”

C. Crimes versus torts: It is important to note that a single act can be the basis for both a tort action and a criminal action.

### II. ASSAULT AND BATTERY

A. Assault: Tortfeasor’s attempt to make harmful or offensive contact with another person without consent.

1. Assault = attempted battery.

2. Elements:

a. The tortfeasor’s attempt to make harmful or offensive contact with victim without consent

b. The tortfeasor’s actions must place the victim in reasonable apprehension for his or her physical safety. Apprehension means the victim reasonably fears for his or her physical safety or has anxiety in anticipation of being struck by unconsented, harmful, or distasteful contact.

c. Threat of imminent contact

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B. Battery: Tortfeasor's intentional, unconsented touching of another person in offensive or injurious manner.

1. Elements:

a. Unconsented to physical contact

b. Offensive or harmful contact ("offensive" defined by reasonable person standard)

c. The tortfeasor intended to touch the victim in an offensive or injurious manner.

2. Transferred intent occurs when the tortfeasor intends to commit battery upon one person but inadvertently strikes another individual. Example: Bob throws a rock at George, but George ducks, and the rock strikes Betty. Intent is carried along with rock and is "transferred" to Betty.

3. Battery = completed assault.

4. Physical contact required with victim's body or extensions thereof (clothing or objects in contact with victim, such as purses, briefcases, backpacks, automobiles, furniture, etc.)

5. Consent:

a. A victim may expressly or impliedly consent to battery.

b. Example of express consent: Participants in sporting events expressly consent to the ordinary physical contact associated with the sport, simply by playing.

c. Example of implied consent: Incidental contact between members of large crowds in public places.

C. Brief definitions of intentional torts:

1. Battery: When tortfeasor touches another person without consent.

2. Assault: Attempted battery.

3. False imprisonment: When person is intentionally confined against his or her will.

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### III. FALSE IMPRISONMENT

A. Definition: When tortfeasor confines victim without victim's consent. Modern cases often involve detention of shoplifting suspects. All states have shoplifting detention statutes to prescribe acceptable conduct.

B. Elements:

1. Victim's confinement without consent
2. Tortfeasor's intent to confine victim
3. Confinement for appreciable length of time
4. No reasonable means of escape

C. Confinement defined

1. All methods of confinement include:

- a. Restriction of victim's freedom of movement
- b. Victim's awareness or fear of restriction
- c. Victim's nonconsent to restriction

2. Confinement may be accomplished by physical barriers or express or implied threats of force.

- a. Physical barriers: Most common method includes locked rooms, moving automobiles with locked doors, fences, walls, and the like.
- b. Express threats of force: Usually tortfeasor's intimidation of victim (threats of physical or emotional injury).
- c. Implied threats of force: Usually tortfeasor's suggest that if victim leaves the place of confinement, unpleasant consequences, such as criminal arrest, may result.

D. Consent

1. A captive may expressly or impliedly consent to confinement. If so, no false imprisonment occurs.
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2. Consent = victim's awareness and acceptance of confinement.

E. Tortfeasor's intent to confine

1. Tortfeasor must have intended to confine victim for false imprisonment to occur.

2. Intent may be determined through express or implied behavior.

a. Express = tortfeasor locking victim in room without other doors or windows.

b. Implied = tortfeasor suggesting to victim that victim must remain in confinement area, "or else." May be suggested without words. Example: a store manager taking a suspected shoplifter to a room, telling the person to sit, and then leaving and closing door. The implication is for the suspect to remain in the room until the manager returns.

F. Confinement for appreciable time period

1. Appreciable confinement = confinement for unreasonable period of time.

2. Unreasonableness depends on the specific facts of the case.

a. The reasonable person standard is used to determine unreasonableness.

b. Could involve seconds (e.g., locking someone in a burning building) or an hour or more (e.g., shoplifting suspects).

c. Shoplifting detention statutes often define unreasonable length for confinement of suspects.

3. In some jurisdictions, knowledge or awareness of the confinement by the confined person confined is required.

G. No reasonable means of escape

1. Reasonable means of escape = any route that reasonable person (captive) would use under the circumstances to flee confinement.

2. Reasonableness depends on the facts of each case.

3. Use the reasonable person standard to determine reasonableness.

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#### IV. SHOPKEEPER'S PRIVILEGE

A. Definition: A shopkeeper is allowed to detain a suspected shoplifter on store property for a reasonable period of time, so long as the shopkeeper has cause to believe that the person detained in fact committed, or attempted to commit, theft of store property.

#### V. SEXUAL HARASSMENT

A. Definition: Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer to discriminate against an individual because of race, color, religion, sex, or national origin. Any unwelcome sexual advance, request for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when this conduct affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

##### B. Elements

1. Unwelcome sexual advances
2. Requests for sexual favors
3. Verbal or physical conduct of a sexual nature, which
  - a. Affects an individual's employment, or
  - b. Unreasonably interferes with an individual's work performance, or
  - c. Creates an intimidating, hostile, or offensive work environment.
4. Both males and females can be the subject of sexual harassment.

#### VI. INTENTIONAL PATIENT DUMPING

A. Definition: Denial of treatment to emergency patients or women in labor, without insurance, or transferring them to another hospital while in an unstable condition.

##### B. Elements

1. Denial of treatment,
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2. To patients without insurance, either
3. In the emergency room
4. Or women in labor, or
5. Transferring patients who have no insurance to another hospital while they are in unstable condition.

## VII. NEW TORT: SPOILIATION OF EVIDENCE

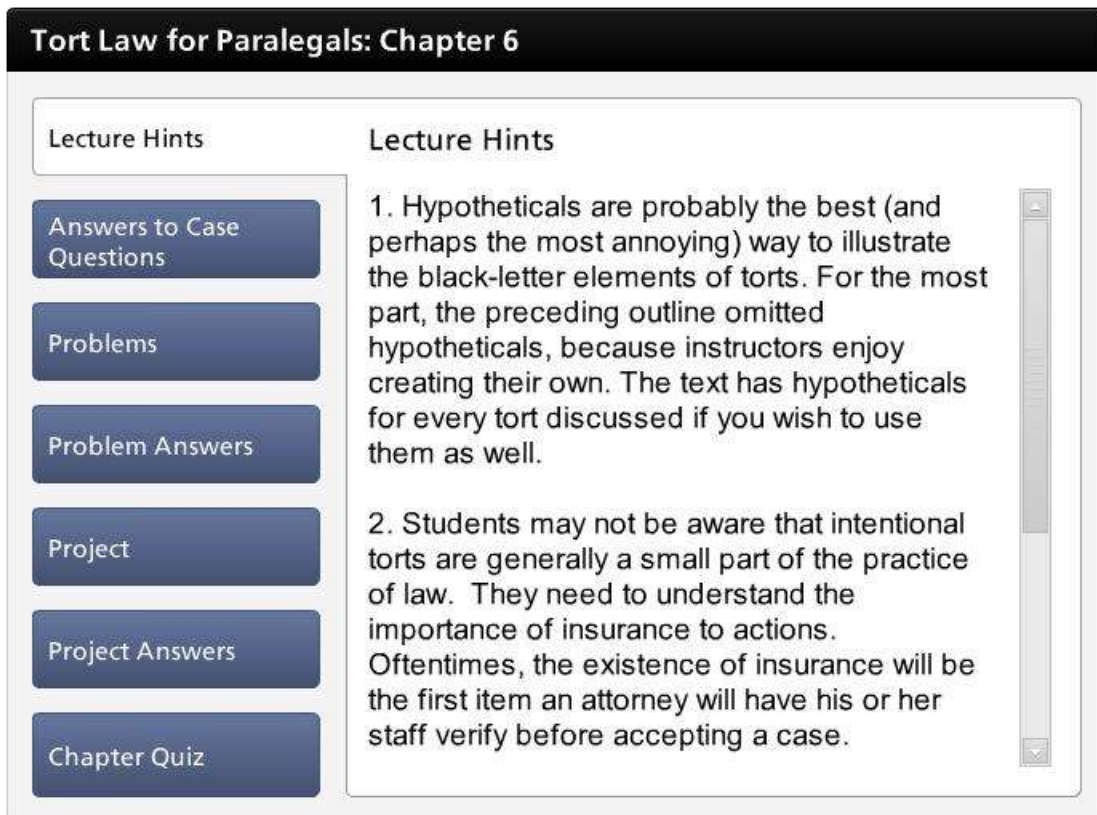
A. Definition: Spoliation is when evidence relevant to a legal proceeding is deliberately withheld, lost, or destroyed. This is a criminal act. In some states, this is a new tort as well.

### B. Elements:

1. Evidence that is relevant to a legal proceeding, and
  2. Is deliberately withheld, lost, or destroyed.
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## Lecture Hints

5 seconds



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Lecture Hints

- Answers to Case Questions
- Problems
- Problem Answers
- Project
- Project Answers
- Chapter Quiz

Lecture Hints

1. Hypotheticals are probably the best (and perhaps the most annoying) way to illustrate the black-letter elements of torts. For the most part, the preceding outline omitted hypotheticals, because instructors enjoy creating their own. The text has hypotheticals for every tort discussed if you wish to use them as well.
2. Students may not be aware that intentional torts are generally a small part of the practice of law. They need to understand the importance of insurance to actions. Oftentimes, the existence of insurance will be the first item an attorney will have his or her staff verify before accepting a case.

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3. Students often have trouble understanding the concept of transferred intent and how it is applied. The use of hypotheticals may be the best way to enforce this concept.



## Answers to Case Questions

5 seconds

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Answers to Case Questions

Problems

Problem Answers

Project

Project Answers

Chapter Quiz

### Answers to Case Questions

**Burlington Insurance Company vs. CHWC, Inc. dba Crazy Horse; and Martinez**

1. The issue of duty to defend arises before the issue of indemnification. In some cases, indemnification might not be an issue. It would appear the duty to defend is initially more important.
2. No. No matter what the plaintiff chooses to call the event, an assault and battery occurred. The insurance excludes coverage for both assault and battery and any action arising out of an assault and battery.

**Stoshak v. East Baton Rouge Parish School Board**

1. If, for example, a student started to faint, and the teacher went to the student's aid and was injured, the "physical contact" provision would apply.
2. Even though the student did not mean to hurt the

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2. Even though the student did not mean to hurt the teacher, the student meant to hurt the other student, so the intent is transferred in this instance.

**School Board of Miami-Dade County, Florida v. Trujillo**

1. Yes, the result would have been different. The plaintiff's doctor found no physical or mental injuries.

2. To show false imprisonment, there must be (a) an intent to confine and (b) knowledge that confinement would result, or that the plaintiff was prevented from leaving or was held against his will.

**Rogers v. T.J.X. Cos.**

1. Assault: Nourse attempted to make harmful or offensive contact with the plaintiff without consent through his intimidating demands that the plaintiff be seated (against her will), instructions to the plaintiff not to touch her belongings, and warnings that Nourse could handcuff the plaintiff to the chair. In each instance, the plaintiff was placed in reasonable apprehension that a battery was imminent, because she reasonably could have believed that Nourse would use physical force to compel obedience to his directions. Battery: From the facts, it is unclear whether Nourse actually touched the plaintiff when he stopped her outside the store or at any time during the ensuing interrogation. Thus, battery cannot be established.

**Conti v. Spitzer Auto World Amherst, Inc.**

1. The testimony that was key to the judge's decision was the fact that the women testified that the harassment occurred on a daily basis, yet they also testified that they had never mentioned this to anyone before bringing the lawsuit.

2. It is hard to believe that two plaintiffs would make up such outrageous and detailed complaints, yet defendants had witnesses who supported their testimony. It is very hard to tell who is more truthful from reading excerpts of testimony; usually it is necessary to see the parties testify in person.

**Saewitz v. Saewitz**

1. None of the testimony concerning damages was tied to a legally relevant time period. The court needs a precise showing as to how damages were calculated.

2. The court advised the attorney for the daughters of the deceased that a subpoena or motion to compel discovery should have been brought to calculate damages more precisely, rather than estimating them to be "seven figures" or "in the millions."

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## Problems

5 seconds

### Tort Law for Paralegals: Chapter 6

Lecture Hints

Answers to Case Questions

Problems

Problem Answers

Project

Project Answers

Chapter Quiz

#### Problems

In the following hypotheticals, identify the intentional tort(s) committed, if any, and support your answers.

1. Alicia was waiting in line outside The Elegant Shop just before the store opened on the day of the shop's annual savings sale. Dozens of customers milled around the entrance in anticipation. Many patrons began to grow impatient. Suddenly, the doors were opened, and Alicia was knocked to the ground by Marie Harrington, another customer. Alicia covered her face with her arms in anticipation of being trampled. In her haste to enter, Marie stepped on Alicia's hand and broke Alicia's ring finger.
2. Malcolm is the manager of The Soft Touch, a ladies clothing store. Paris, a customer, was looking at accessory jewelry next to the full-length mirrors.

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2. Malcolm is the manager of The Soft Touch, a ladies clothing store. Paris, a customer, was looking at accessory jewelry next to the full-length mirrors.

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Malcolm glanced at the mirrors and thought he saw Paris place something in her purse. He thought it might be jewelry, but he did not actually see the object. As Paris began to exit the store, Malcolm asked her politely to stop. She did so, whereupon Malcolm identified himself and requested that she accompany him to the back room for questioning. She refused. Malcolm insisted, threatening to telephone the police if she attempted to leave the store. She then agreed and the two went to a small room at the rear of the store. Inside, Malcolm asked Paris to empty her pockets and purse, which she did. No jewelry was found. He asked her a few questions about the jewelry and what he had seen. She explained that she had put a handkerchief into her purse, and there was in fact a handkerchief inside it. Malcolm apologized for any inconvenience and Paris then left. The interview in the room lasted five minutes.

3. Patty Patient arrives via ambulance at Mercy General Hospital emergency room. Her first words to the triage nurse are, "I don't have insurance; did they bring me to the right place?" Then Patty starts moaning and passes out. The triage nurse Henry is glad he heard Patty's last words and whispers to Pete, the Emergency Medical Technician who has just wheeled Patty in, "Take her out of here." Off goes Patty to the County Medical Center. En route to that hospital, she dies. 4. Gina Lee loves her new job as office assistant. She can't believe her good luck- there are so many good-looking guys working in her department. Gina is determined to start dating someone new by the end of the month. When Gina sees her coworker Brad each morning, she tries to think of something different and provocative to say. Brad seems kind of quiet and it's hard to get a reaction out of him. Gina isn't sure if he is just trying to play it cool or what. Gina tells Brad in detail about her exciting nights with her last boyfriend. Brad does not seem to care, but Gina still thinks he is playing it cool. The next morning, Gina decides she needs to be more forward. Gina asks Brad about his sex life and whether he thinks John or Scott in the next cubicle would make good lovers. Again no response from Brad. Gina brushes against Brad's crotch with her hip and walks away. 5. Sean Leroy, the driver of one vehicle, has sued the driver of the other vehicle, Ethan Rogers, concerning a motor vehicle accident that seriously injured both drivers. Rogers was unemployed at the time of the crash and desperately needed to sell his vehicle and some other possessions for cash. Rogers takes the first offer to buy his car, despite the fact that his attorney has just advised that Rogers needs to make the car available for inspection by Leroy's expert mechanic.

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## Problem Answers

5 seconds

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- Lecture Hints
- Answers to Case Questions
- Problems
- Problem Answers**
- Project
- Project Answers
- Chapter Quiz

#### Problem Answers

1. This problem involves assault and battery, and whether Alicia impliedly consented to the incidental contact associated with the crowd milling around The Elegant Shop's entrance. First, the elements of each tort should be discussed. When Alicia was knocked to the ground by Marie Harrington, this constituted a battery. The physical contact was unconsented and offensive; by knocking Alicia to the ground, Marie clearly intended to touch Alicia in an offensive or injurious manner. Another battery occurred when Marie stepped on and broke Alicia's finger. These batteries are separate incidents. Marie also committed assault against Alicia. When Marie knocked Alicia to the ground, Alicia was exposed to possible (further) harmful offensive contact to her body without her consent. She suffered reasonable apprehension for her physical safety, and the threat of contact was imminent. Did Alicia impliedly consent to incidental contact, by gathering outside the store in a crowd before opening time? Yes. But the actual issue is whether Marie's actions were incidental contact.

### Step Text

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issue is whether Marie's actions were incidental contact. Arguably, being knocked to the ground by a member of a milling crowd could be incidental contact, although a reasonable person would consider such an incident to be unreasonably offensive or harmful. Most courts would rule that such contact is excessive and not incidental, unlike mere jostling between persons in the crowd. Definitely, when Marie stepped on Alicia's hand, this was not incidental contact. By being in the crowd, Alicia did not consent either to being knocked down or to having her finger broken. Thus, the contact was unconsented to and Marie would be liable for both instances of battery.

2. This problem focuses upon false imprisonment and perhaps infliction of emotional distress. Paris refused to accompany Malcolm to the back room for questioning. Malcolm's intent to confine was both expressed (going to the back room) and implied (police threats). Malcolm's threat to telephone the police unless Paris accompanied him to the room constituted an implied threat of force (i.e., police arrest), which satisfied the confinement element (i.e., restricting her freedom of movement, of which she was aware and to which she did not consent). Certainly, there was confinement when the two entered the small room at the rear of the store, because this created a physical barrier and an express threat of force (Paris could not leave while Malcolm was present to—more than likely—prevent her exit). The key to this problem is the length of the confinement. Was Paris confined for an appreciable length of time? Was five minutes an unreasonable length of time for Malcolm to inspect Paris's purse and ask questions? Many court decisions have held that short times such as this are reasonable, particularly in light of statutes permitting much longer periods of up to one hour or more. Consequently, one may conclude that Malcolm did not falsely imprison Paris. Infliction of emotional distress is a red herring in this problem. Malcolm's only conduct that could be considered outrageous and designed to produce mental anguish was his threat to telephone the police if Paris attempted to leave the store before the purse search and questioning. Reasonable persons would agree that Malcolm's statement was reasonably calculated to encourage Paris to comply with a reasonable request, as Malcolm reasonably believed that she had shoplifted. His request was made in good faith to protect the store from theft.

3. Nurse Henry was wrong to send Patty Patient away. Under the new cause of action of patient dumping, patients cannot be transferred to another hospital while in an unstable condition. No effort was made whatsoever to examine or stabilize Patty before she was transferred. Patty was treated differently than other patients solely because of her lack of finances.

4. Gina repeatedly bothered coworker Brad in the workplace. Repeated unwelcome sexual advances creating an offensive work environment are considered sexual harassment. After Gina made sexual remarks and Brad did

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not respond, it was her responsibility to discontinue this line of behavior, which was clearly not welcome or reciprocated.

5. After being advised that his vehicle was needed for an inspection concerning his legal claim, Rogers sold his car notwithstanding. This act can be construed as the deliberate disposal of evidence. In some jurisdictions this would be considered the civil tort of spoliation of evidence. Likewise, it could also be considered a crime.

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## Project

5 seconds

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- Lecture Hints
- Answers to Case Questions
- Problems
- Problem Answers
- Project**
- Project Answers
- Chapter Quiz

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1. Which intentional torts discussed in this chapter are included in your state's common law? Are any defined by statute? Does your state have any additional intentional torts dealing with harm to persons?
2. This chapter covers some of the more interesting fact patterns for students, such as assault and battery, false imprisonment, and sexual harassment cases. Assign students topics from this chapter either individually or in small study groups. Have the students go online and find actual cases from your jurisdiction for them to present to the class. After the case presentations, allow the class to discuss how they think the court ruled and why. Then have the students state how the court actually resolved the case.
3. Should patient dumping be a new tort? Explain

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5 seconds

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- Problems
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- Project Answers
- Chapter Quiz

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1. This project is intended to encourage students to discover how intentional torts are defined in their particular states. You may wish to provide students with your jurisdiction's specific statutory or digest citations to assist in completing this project.
2. By using actual court cases from your jurisdiction, students are encouraged to study topics in greater depth. Spirited class discussions often follow the presentation of local cases.
3. Yes, there was almost an epidemic of patient dumping. Something needed to be done to stop this practice by medical providers.

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5 seconds

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- Lecture Hints
- Answers to Case Questions
- Problems
- Problem Answers
- Project
- Project Answers

Chapter Quiz

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[Click here for the Chapter Quiz.](#)

### ***Step Text***

[Click here for the Chapter Quiz.](#)

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