**Torts Short Outline**

**INTENTIONAL TORTS**

* Prima Facie Elements
	+ Act
	+ Intent
		- Desire/purpose
		- Knowledge with substantial certainty
	+ Causation
	+ Injury
* Types of Intentional Torts:
	+ Battery/Offensive Battery
		- Harmful/Offensive Contact
			* RST19: Offensive if it “offends a reasonable sense of personal dignity”
		- Causation
		- Intent
	+ InjuryTrespass (almost SL)
		- Intent = intent to complete physical act (making intent with the ground).
	+ Assault
		- Intent
		- Apprehension of an imminent harmful/offensive contact
	+ False Imprisonment
		- Mental Harm due to Physical Incarceration. 1) act/omission that confines/restrains the P to a bounded area, 2) intent, 3) causation.
			* Prisons can be intangible (keeping travel documents), but cannot use emotional threats for FI.
		- Needs to be effective confinement – three walls won’t work.
		- Intent (no liability for negligently caused imprisonment)
		- Need to know they’re imprisoned whiled imprisoned.
		- Consent can be an effective defense.
	+ IIED (intentional infliction of emotional distress) – tempered by 1st amendment rights.
		- Extreme and Outrageous Conduct
		- Intentionally or Recklessly Causes Severe Emotional Distress
		- If to third person, liable if immediate family who is present (w/ or w/o bodily harm) or any other who is present at the time (w/ bodily harm)
* Defenses to Intentional Torts
	+ Consent
		- Implied in Law No Consent. *Hudson v. Craft*
		- Implied in Law Consent – emergencies.
		- Implied in Fact Consent. *O’Brien v. Cunard* (woman held arm out)
	+ Insanity
		- Traditional: irrelevant. Same as normal person. *Mcguire v. Almy*
		- Exception: purposes being met. *Anicet v. Gant*
	+ Self-Defense
		- Use force that is reasonable.
		- Duty to retreat if death/serious bodily injury. Except in home.
	+ Defense of Property
		- Must use reasonable force. No great bodily injury. *Katko v. Briney*
	+ Necessity
		- No affirmative duty, but you cannot stop. *Ploof v. Putnam*
		- Right to be there, but have to compensate for damages, unless act of God. *Vincent v. Lake Erie*

**NON-INTENTIAL TORTS**

* Elements
	+ Duty
		- Duty defined by risks reasonably foreseen to categories of ppl for particular conduct. *Palsgraf*
		- Duty based on land ownership. Three categories. *Rowland* factors.
		- Duty to use ordinary care/diligence to maintain in reasonably safe condition. *Kline*
		- Duty to use reasonable care to protect third party victims. *Tarasoff*
		- Duty to act if cause dangerous situation or voluntary decide to help. (RTT) *Montgomery*
		- No tradition duty for inaction.
	+ Breach
		- Standards of Care
		- Risk needs to be reasonably foreseeable. *Blyth v. Birmingham*
	+ Causation
		- But-For
			* If too uncertain, no causation. *New York Central R.R. v. Grimstad*
			* One of the risks that made conduct negligent is realized 🡪 jury. *Zuchowicz*
			* J&S liability if two causes act synergistically (RTT) or if harm cannot be divided (*Smith v. J.C. Penney*) or if we don’t know cause b/c of D’s neg (*Summers v. Tice*)
		- Proximate
			* “Natural and ordinary” (*Ryan v. NY Central*) or “substantial factor” (RST/Andrews) or “reasonably foreseeable risks” *Wagon Mound* or
	+ Injury
* Standards of Care
	+ Reasonable Person
		- Average Intelligence. Take into account youth & disabilities.
		- Mental delusions/sudden incapacitation ok if had no notice.
	+ BPL Test
	+ Custom
		- Sword: non-compliance w/ custom is significant indicator of negligence
		- Shield: compliance w/ custom is evidence of non-negligence
	+ Statutes
		- Violation of statue is negligence per se. *Thayer*
		- RTT: negligent if violates statute designed to protect the type of accident and within class of persons statute is designed to protect.
			* Lack of license not negligent per se. Must violate safety standards enforced by licensing.
		- Might be negligent, but still need to cause harm. *Martin v. Herzog*. Look at intent of leg. *Tedla*
	+ Common Carrier Exception
		- Heightened duty. Utmost care.
	+ Medical Exception
		- Custom is generally dispositive. Average prudent reputable physician.
* Affirmative Defenses: Plaintiff’s Conduct
	+ Contributory Negligence
		- Recovery barred if not taking reasonable and ordinary care. *Butterfield v. Forrester*
		- Negligence still must contribute to harm. *Gyerman*
		- Doesn’t apply to use of own property. *LeRoy Fibre*
	+ Comparative Negligence
		- Direct proportion to fault. *Li v. Yellow Cab*
	+ Assumption of Risk
		- Accepts dangers as long as they are obvious and necessary. *Murphy v. Steeplechase*
		- Liable release agreements void if violate public policy. *Dalury*
* Emotional Distress
	+ Courts nervous – zone of danger, direct victims & foreseeable harms, *Dillon* guidelines.

**STRICT LIABILITY**

* Wild Animals
	+ SL for wild animals, even if owner exercised utmost care.
	+ No SL for domesticated animals UNLESS know/reason to know animal has dangerous propensities.
* Ultrahazardous or Abnormally Dangerous Activities
	+ RST: In determining whether activity is **abnormally dangerous**, consider factors:
		- (a) existence of a **high degree of risk** of some harm to the person, land or chattels of others (“P”)
		- (b) **likelihood** that the harm that results from it **will be great** (“L”)
		- (c) **inability to eliminate the risk** by the **exercise of reasonable care** (negligence not good enough; want ***more***, pay or stop)
		- (d) extent to which the activity is NOT a **matter of common usage** (reciprocity; if everyone’s doing it, then risks imposed are returned. ex. cars)
		- (e) **inappropriateness** of the activity in the **place** where it is carried on (geographic
		- (f) extent to which its **value to the community is outweighed** by its dangerous attributes (social value notion)
	+ RTT: abnormally dangerous if:
		- (1) the activity creates a **foreseeable** and **highly significant risk** of physical harm even when **reasonable care** is exercised by **all actors**; and
		- (2) the activity is NOT one of **common usage**
	+ RST 522: One carrying on abnormally dangerous activity is subject to SL for the resulting harm, although it is caused by the unexpectable
		- * (a) **innocent, negligent or reckless** conduct of a **third person**, or
			* (b) action of an **animal**, or
			* (c) operation of **force of nature**
	+ RST 523: Assumption of risk bars recovery.
	+ RST 524: CN is not a defense.
* Product Liability
	+ RST 402A: One who sells any product in a **defective condition** ***unreasonably dangerous*** to the user or consumer or to his property is subject to liability for **physical harm** thereby caused to the ultimate user or consumer, or to his property, if:
		- (a) the seller is engaged in the business of selling such a product, and
		- (b) it is **expected** to and **does reach** the user **without substantial change** in the condition in which it is sold.
	+ RTT 1: One engaged in the business of selling or otherwise distributing products who sells or distributes a **defective product** is subject to liability for harm to persons or property caused by the defect.
	+ RTT 2: A product is defective, when, at the time of sale or distribution, it contains a **manufacturing defect**, is **defective in design**, or is defective because of **inadequate instructions or warnings**