**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**