### Torts

## Intentional Torts

#### Battery

1. Actor intends harmful or offensive contact (*Vosburg)*
   1. Actor liable for all harms that result (*Vosburg*, eggshell plaintiff) (*Talmage*, transferred intent)
2. Actor intends contact that is later found to be harmful or offensive (*White*, “crescendo case”)
   1. Open controversy whether contact must be intended to be harmful or offensive
3. Actor knows harmful or offensive contact is a substantially certain consequence (*Garratt v. Dailey)*
4. Actor knows contact is a substantially certain consequence of his action, and that contact is later found to be harmful or offensive
5. Offensive battery (*Alcorn v. Mitchell*, spitting case)
6. Generalized knowledge is insufficient to satisfy the intent requirement for battery (*Shaw*, tobacco case).

#### Trespass

1. Entry to the property of another is trespass (*Dougherty*)
   1. Controlling intent is intent to trespass, not intent for injury (*Cleveland Park Club*, ball in drain)

#### Assault

1. Intent to cause harmful or offensive contact or apprehension of such a contact
   1. Intent to commit battery, assault, and false imprisonment are all transferrable
2. Imminent apprehension of contact
   1. Fright is unnecessary
      1. Reasonable fear? (*Beach v. Hancock)*
   2. Words are often not enough (*Tuberville*, dueling) (*Brower*, voicemail)

#### False Imprisonment

1. Knowledge/intent to confine movement
   1. Three walls do not a prison make (*Bird v. Jones)*
   2. How confined is confined enough? (*Whittaker v. Sandford*, yacht)
   3. Reasonable justification for imprisonment?
   4. Generally no liability for negligent imprisonments
2. Causation – Did defendant’s actions actually cause plaintiff’s imprisonment?
3. Plaintiff must know that they are imprisoned
4. Did the plaintiff have a reasonable means of escape?
   1. Did plaintiff consent? (*Herd v. Weardale Steel*, trapped miners)
5. What kind of confinement is being used (physical, emotional)? (*Chellen v. John Pickle Co.,* travel docs)

#### Intentional Infliction of Emotional Distress

1. Extreme and outrageous conduct (*Wilkinson*)
   1. Limited by First Amendment (*Snyder v. Phelps*) (*Hustler Magazine v. Falwell*)
2. Severe emotional distress
   1. Repetition or exploitation of a particular sensitivity may create an action for IIED
   2. Liability for family members present, anyone else present if physical harm results

### Defenses

#### Consent

1. Implied-in-fact no consent (default position) (*Mohr v. Williams*, ear operation)
2. Implied-in-fact consent (*O’Brien v. Cunard Steampship Co.*, vaccination)
3. Implied-in-law consent (*Kennedy v. Parrott*, major internal operations) (emergency rule)
4. Implied-in-law no consent (*Hudson v. Craft*, boxing)
   1. Statutory rape (*Barton v. Bee Line*) (contrast *Christensen v. Royal School District*, follows RST)
   2. Athletic injuries (Within risk of game?) (Proscribed penalty?)
5. Substitutionary consent (minors, incompetents)

#### Insanity

1. Insane people generally liable for their own torts
   1. Incentivize caretakers to ensure insane people don’t cause injury
   2. Victim should be compensated
      1. If these considerations are absent, no liability (*Anicet v. Gant*, similar to fireman’s rule)
   3. Difficulties in determining mental capacity
      1. If insane person is capable and had intent, liable as a normal person (*McGuire v. Almy)*

#### Self-Defense

1. Did the defendant believe that he was, in fact, threatened?
   1. Mistake is permitted in self-defense (*Courvoisier v. Raymond*) (*Morris v. Platt*, bystander harm)
      1. Incentivize self-help, deters violent conduct, value of liberty and autonomy
2. Would a reasonable person in that situation also have, in fact, felt threatened?
   1. What may animate determination of reasonableness? (Age, physical status)
      1. Allow too many considerations and the test becomes one of good faith
3. Would a reasonable person have been justified in using the degree of force that was actually used?
   1. No duty to retreat if not using serious bodily harm or in a home

#### Defense of Property

1. Permissible, but not serious bodily injury unless similarly threatened (*Bird v. Holbrook*, spring gun garden)
   1. Can’t do indirectly (via trap) what you also can’t do directly (*Katko v. Briney*, spring gun robbery)
2. Force may not be permissible if no force is being used to trespass (*M’Ilvoy v. Cockran*, tearing down fence)

#### Necessity

1. Use of another’s property requires compensation. Necessity is a limited privilege (*Vincent v. Lake Erie*)
2. Preservation of human life is more valuable than property (*Ploof v. Putnam*)
   1. No affirmative duty to aid, but duty not to impede

## Negligence

#### Negligence or Strict Liability?

1. Negligence when either intention is unlawful or defendant is at fault (*Brown v. Kendall*, stick in eye)
   1. Holmes supports negligence, since defendant’s conduct is subject of inquiry
   2. Negligence preferred; men must rise above the conditions of barbarism (*Brown v. Collins*)
2. Strict liability if person “for his own purposes brings on his land[] and collects and keeps there anything likely to do mischief if it escapes” (*Rylands v. Fletcher*)
   1. Societal risk-benefit analysis for “likely to do mischief”
      1. Persons benefitting from an activity should pay for the resulting harm (*Powell v. Fall*)
   2. Exceptions for acts of God, non-natural uses
3. If negligence is sufficient (reasonable care could have prevented harm), no reason to use SL (*Cyanamid*)

#### Negligent Infliction of Emotional Distress

1. Gradual shift along spectrum of recovery:   
   Physical harm -> Parasitic emotional harm -> Zone of danger -> Special relationship -> Special occupation
   1. Parasitic physical harm is necessary; there is no duty to refrain from inflicting emotional harm
   2. Historically no cause of action for NIED (*Mitchell v. Rochester)*; loosened in *Dulieu v. White*
      1. No concern about spurious claims, since juries can sort it out
      2. Plaintiff must still fear for her own physical safety
   3. Three requirements to expand NIED beyond “zone of danger” (*Dillon v. Legg*)
      1. Spatial relationship to incident
         1. Requires plaintiff to have personally observed accident (*Thing v. La Chusa*)
            1. Opts for rule in order to reduce imposition of liability disproportionate to defendant’s actions
      2. Whether plaintiff saw the incident
         1. Telephone notification insufficient because of lack of foreseeability of consequences (*Kelley v. Kokua Sales and Supply*)
      3. Close relationship between plaintiff and victim
         1. Co-habitants held insufficient (*Elden v. Sheldon*) (but see *Dunphy v. Gregor*)
   4. Being a direct victim of the harm is sufficient (*Molien v. Kaiser Foundation Hospitals*, syphilis)
      1. Inquiry is whether the defendant has assumed a duty to the plaintiff, not foreseeability
   5. Once found liable for physical harm, defendant is liable for emotional harm resulting from the physical harm, or from the conduct which causes it (*Norfolk v. Ayers*)

### Breach

#### Reasonable Person

1. Is the reasonable person aspirational, or descriptive?
2. Below-average intellect is not an excuse (*Vaughan v. Menlove*, combustible hay rick)
3. Below-average age is an excuse (*Roberts v. Ring*)
   1. Older people are put on notice that their faculties are diminished and they must be more careful
   2. Youth is not an excuse when performing an adult activity (*Daniels v. Evans*, driving motorcycle)
      1. Inability to provide notice to others, licensing requirements
4. Beginners are held to a normal standard of care; experts are too, unless they represent themselves to be more or less skilled than they are
5. Insanity can be a defense, but only if there was no notice (*Breunig v. American Family*, Batman)
6. Physically disabled persons are held to a lower standard of care, raising others’ standard of care with regard to them (*Fletcher v. City of Aberdeen*, blind person on sidewalk)

#### Calculus of Risk

1. Negligence is the defined by a reasonable man’s actions in ordinary course (*Blyth v. Birmingham*, frost)
   1. Should negligence be a dynamic standard, changing standards of care to match circumstances?
2. No negligence in an attempt to save human life unless plaintiff acted rashly (*Eckert v. Long Island R.R.*)
   1. In moment of emergency, reasonable person standard dilutes to good faith standard
3. No negligence if competing duties are balanced in a reasonable manner (*Cooley*, exploding phone line)
   1. Compare *Powell v. Fall*. Should benefitting party be required to pay for all harm?
4. Is burden (B) greater than probability of loss (P) times magnitude of loss (L)? (*U.S. v. Carrol Towing*)
   1. Fails to capture risk associated with repeated actions; also fails when applied to marginal costs
   2. Assumes that actors are rational and risk-neutral
   3. Exception for common carriers, who must do all possible for safety (*Andrews v. United Airlines*)
      1. Rationales are transportation’s danger and passengers’ dependence on carrier for safety
      2. Only applies to risks related to transportation (*Kelly v. Manhattan Ry.*, slips on platform)

#### Custom

1. Markets are better equipped to decide appropriate levels of care (*Titus v. Bradford*, round bottom trains)
   1. Argument against is that markets won’t protect (*Mayhew v. Sullivan*, hole in mining platform)
2. Appropriate role of custom in determining negligence remains controversial
   1. Custom can be an easier, more reliable way to determine duties than court-imposed standards
   2. Usually, departure from custom is stronger evidence of negligence
   3. BPL analysis can impact whether custom is appropriate or not (*TJ Hooper*, radios)
   4. Can internal customs/mandatory safety precautions dictate the required standard of care?
      1. No; resulting perverse incentives should be discouraged (*Fonda v. St Paul City Ry.*)
      2. Yes, because defendant may have relied on reputation/knowledge of internal standards
3. Medical custom is much stronger than in other areas
   1. Custom may be used a sword as prima facie evidence of negligence (*Lama v. Borras*, back pain)
   2. Use of different schools of thought is sufficient to establish custom as a shield (*Jones v. Chidester*)
   3. A physician is not necessarily negligent because of an error in judgment (*Hirahara v. Tanaka*)
      1. It is a breach if the physician reasonably should have known the judgment was in error
   4. Package inserts and warnings are not dispositive of the standard of care (*Morlino*)
   5. BPL has been used as a way to fight against custom (*Helling v. Carey*, glaucoma test)
      1. Incorrect assessment of how small the B was lead to rejection of *Helling*’s result
   6. Proper standard is an average practitioner, regardless of geographic location (*Brune v. Belinkoff*)
      1. Available resources may be taken into consideration
      2. Trainees are held to the average practitioner standard (*Clark v. University Hospital*)

#### Statutes

1. Violation can be dispositive (negligence per se), prima facie (rebuttable presumption), evidence, or irrelevant to determination of negligence
2. Violation creates liability if statue was designed to protect the specific plaintiff from the type of harm suffered (*Osborne v. McMasters*, exploding poison) (see also RST §286)
   1. Statutes can have multiple purposes (*Stimpson v. Wellington Service*, heavy truck breaks pipes)
   2. No statutory standard if plaintiff doesn’t belong to protected class (*Burnett v. Imerys Marble*)
   3. No statutory standard if harm wasn’t envisioned by statute (*Gorris v. Scott*, drowning sheep)
   4. No statutory standard for licensing violations if injury is unconnected to lack of license (*Brown v. Shyne*, unlicensed chiropractor)
   5. Why should defendant not be liable simply because harm was outside of statute’s scope?
3. If one of the risks animating statutory creation is realized, there is negligence per se (*Martin v. Herzog*)
   1. Common sense (custom) can overrule statute if statute creates danger (*Tedla v. Ellman*, walking on the wrong side of the road)

### Duty

1. Defendant’s conduct places plaintiff in harm
   1. There is a wide gulf between causing and preventing an injury (*Buch v. Amory*)
      1. Attractive nuisance may be an exception to *Buch*’s harsh rule
   2. When defendant assumes a duty and does not adequately perform it, they are liable for resulting damages (*Montgomery v. National Convoy*)
2. Defendant begins to help
   1. Defendant must not omit to do what an ordinary man would do in performing a task after starting to help (*Zelenko v. Gimbel Bros.*)
3. Duty of owners and occupiers
   1. If the occupier of land is aware of a concealed condition and is aware that a person is about to come in contact with it, a failure to warn or repair is negligence (*Rowland v. Christian*)
      1. Factors relevant to liability include: 1) foreseeability of plaintiff’s harm, 2) degree of certainty of injury, 3) connection between defendant’s action and injury, 4) defendant’s moral blameworthiness, 5) prevention of future harm, 6) cost to defendant and community of imposing a duty of care and 7) availability, cost and prevalence of insurance for the risk
   2. Owners must take reasonable action to prevent injury or further injury to a trespasser (*Pridgen v. BHA*)
4. Relationship between defendant and person who will be injured
   1. Defendants who have exclusive ability to reduce risk are required to take reasonable care to protect plaintiffs (*Kline v. 1500 Mass*. *Ave.*)
      1. Better able to minimize losses and spread costs (*Sindell v. Abbot Laboratories*)
      2. Does not absolve plaintiff of duty to not act negligently (*Wassell v. Adams*, hotel rape)
      3. Colleges, common carriers and condos all found to have similar duties
      4. Shopping mall lessor has no duty if crime is unforeseeable and cost is prohibitive (*Ann M. v. Pacific Plaza Shopping Center*)
   2. Reasonable measures to assist invitees endangered by imminent or ongoing criminal assaultive conduct on the premises is required (*Delagdo v. Trax Bar*)
      1. Response different than preventive measures (*Morris v. De La Torre*)
5. Relationship between defendant and person who may injure victim
   1. Some public policies are subordinate to the policy of protecting others (*Tarasoff*)
      1. Three justifications for expansion: 1) victim has been identified, 2) defendant facilitated tort/crime and 3) breach of some promise to a future victim
      2. Disagreement about magnitude of B in BPL analysis

### Causation

#### But-for Cause

1. Inquiry is if harm would have occurred without negligence (*New York Central R.R. v. Grimstad*, no life vest)
   1. Softened to permit hypothetical non-negligence since proof of counterfactual is absent (*Reyes*)
2. If injury that occurred is one of the risks that makes the conduct negligent, there is negligence (*Zuchowicz*)
   1. This is a presumption that is rebuttable by the defendant
3. If defendant’s conduct makes it impossible to determine cause, the BoP shifts (*Haft v. Lone Palm Hotel*)

#### Joint and Several Liability

1. Single cause-in-fact, but multiple potential causes (*Summers v. Tice*)
   1. Especially applicable when tortfeasors’ negligence causes inability to prove causation
2. More than one cause, but only one was necessary (*Paroline v. United States*)
3. 2 causes, both necessary, neither sufficient (*Smith v. J.C. Penney*)
   1. Injury must be indivisible and not able to be apportioned between tortfeasors
4. 3 causes, 2 were sufficient
5. The likelihood of injury may be linked to relative market share (*Sindell v. Abbott Laboratories*)
   1. This approach arises from an evidentiary problem and courts adapting to new injuries
   2. Defendant is better positioned to minimize losses and spread costs across parties
   3. Product must be fungible in order to apply market share liability fairly (*Skipworth v. Lead*)
6. Loss of chance of survival is actionable, even if more likely than not causation is impossible (*Herskovits*)
   1. Otherwise, no standard of care for individuals with survival rates below 50%

#### Proximate Cause

1. Restrictions on proximate cause:
   1. An unnatural and unexpected (foreseeable) cause (*Ryan v. New York Central R.R.*)
      1. True rationale of *Ryan* is concern about multiplicity of actions
      2. Reasonable human conduct is natural course of events (*City of Lincoln*, sinking ship)
   2. Risk is not the risk that made the conduct negligent (*Berry*, speeding train falling tree)
   3. Remoteness of harm (*Central of Georgia Ry. v. Price*, missed train stop & hotel lamp explodes)
   4. Active force of defendant’s negligence is at rest (*Pittsburg Reduction v. Horton*, dynamite cap)
2. Actions that do not cut off proximate cause:
   1. Plaintiff’s reasonable (not rash) reaction to emergency (*Jones v. Boyce*, jumps from coach)
      1. Narrow foreseeability of plaintiff’s action limits recovery (*Mauney*, trips on chair)
   2. Subjecting plaintiff to risk that was realized (*Hines v. Garrett*, missed train stop & multiple rapes)
   3. Foreseeable criminal activity of third party (*Brower v. New York Central*, stolen kegs) (*Britton v. Wooten*, grocery arson of trash) (*Bell v. Board of Ed.,* after-school rape)
   4. Attempt to rescue plaintiff from danger (*Atherton*, ambulance crash) (*Wager*)
   5. Foreseeable negligence of third party (*Bigbee*, phone booth)
3. *Polemis*, *Wagon Mound* and *Palsgraf*
   1. *Polemis* argues that if harm is foreseeable, degree is irrelevant. There are no additional inquiries once foreseeable harm has been established
   2. *Wagon Mound* opposes *Polemis*, and argues that inquiry should extend to the extent of harm
      1. Largely unable to hold on because of the eggshell plaintiff rule (*Smith v. Brain Leech*)
   3. Cardozo’s majority in *Palsgraf* institutes a reasonable foreseeability test regarding the specific defendant, and may even attempt to limit the eggshell plaintiff rule (similar to zone of danger)
      1. Andrews’ dissent argues for a general duty not to harm others, and that proximate cause is an arbitrary line that represents common sense
   4. RST uses a substantial factor test, while RTT adopts a reasonable foreseeability test à la *Palsgraf*
4. Proximate cause requirements may be read into statutes that don’t expressly have one (*Paroline v. U.S.*)
   1. Purposes of criminal restitution and tort law differ; those differences must factor into considerations of applicability of joint and several liability for criminal restitution

### Defenses

#### Contributory Negligence

1. Plaintiff cannot recover if injury is the result of his own negligence (*Butterfield v. Forrester*)
   1. Our required standard of care can be impacted by the negligence of others
      1. Minimizes injuries and recognizes that people often make mistakes
      2. Possibly under-deters defendants, and infringes on plaintiff’s autonomy
2. Burden of proof for contributory negligence rests on defendant (*Gyerman v. U.S. Lines*, fishmeal)
   * 1. Not strict liability – if plaintiff was sole cause of injury, no liability for defendant (*Robinson v. East Medical Center*)
3. Contributory negligence is not a defense for intentional torts (*Morgan v. Johnson*, rearview mirror)
   1. “Substantial certainty” means intentional torts are only different in degree (*Blazovic v. Andrich*)?
4. Reasonable escape from danger non-negligent (*Raimondo*) (*Bohan v. Rizzo,* dog and biker)
5. Contributory negligent not causally connected if harm is not within the risk that makes the conduct negligent (*Smithwick v. Hall*, collapsing icy roof) (*Berry*, falling tree speeding train)
   1. Broad conception of “within the risk” creates contributory negligence; narrow does not
6. Contributory negligence must cause harm, not simply exacerbate it (*Mahoney*, speeding Rolls Royce) (*Derheim*, seatbelt)
7. Contributory negligence cannot dictate what persons may do on their own property (*LeRoy Fibre*)
   1. Doesn’t hold up in complex situations, since no incentive for victims to be non-negligent

#### Assumption of Risk

1. Two requirements of assumption of risk are knowledge and voluntariness (*Lamson v. American Axe*)
   1. Based on subjective knowledge; negligence is based on objectively unreasonable behavior
2. Persons assume risks for activities when risk is obvious and necessary (*Murphy v. Steeplechase*, Flopper)
   1. Assumption of risk doctrine breaks down if risks to be assumed are very specific and precise
   2. Misjudgment of risk usually insufficient to overrule assumption of risk
3. Slowly being abandoned as a defense, in favor of an argument that defendant was not negligent
4. Assumption of risk can be voided on public policy grounds (*Dalury v. SKI Ltd.*)
   1. Introduces *Tunkl* factors for invalidating exculpatory agreements on grounds of public policy: 1) suitable for regulation, 2) service is of great public importance, 3) available to anybody, 4) bargaining power asymmetry, 5) use of adhesion contract, and 6) persons are subject to the risk of seller’s negligence
      1. Tort law can rewrite contracts to effect societal change
      2. More fair to hold business responsible to effect cost spreading
   2. If harm did not result from an inherent risk, the risk was probably not assumed

#### Comparative Fault

1. Comparative negligence is more fundamentally just than contributory negligence (*Li v. Yellow Cab*)
   1. Judges are permitted to unilaterally act to develop the common law and create just outcomes
   2. Creates administrative/litigation problems, but reflects what juries were already doing
2. Can be applied to strict liability cases under comparative causation (*Bohan v. Rizzo* dog and biker)

### Strict Liability

#### Animals

1. When wild animals are kept as pets, owner is strictly liable for injuries caused. (*Gehrts v. Batteen*)
2. An owner of an animal that owner knows or has reason to know has dangerous tendencies abnormal for the animal’s category is liable for physical harm caused by animal if the harm ensues from that tendency
   1. When no knowledge of actual dangerousness exists, plaintiff must establish that an ordinary person should have foreseen the injury and taken steps to prevent it (*Gehrts v. Batteen*)
      1. Defendant must have actual knowledge of dangerous tendencies (*Collier v. Zambito*)
   2. Zoos and national parks not liable due to strong public desire

#### Ultrahazardous Activities

1. An activity that involves a substantial risk of harm regardless of care exercised should bear costs of potential harm (*Spano v. Perini*, blasting)
   1. RST lists 6 factors to define abnormally dangerous activity: 1) activity is high-risk (P), 2) likelihood of high L, 3) inability to eliminate the risk by the exercise of reasonable care, 4) activity is not common, 5) inappropriateness of the activity to the place and 6) value to the community compared to dangerous attributes (RST §520)
   2. RTT simplifies, eliminating RST factors 5 and 6 (RTT §20)
      1. Important consideration remains reciprocity of harm
2. If negligence is sufficient (reasonable care could have prevented harm), no reason to use SL (*Cyanamid*)
3. Plaintiff may assume risk or be contributorily negligent by knowingly and unreasonably subjecting himself to risk of harm (RST §§523-24)
4. Strict liability remains if caused by an animal, force of nature, or unintentional act of another (RST §522)

#### Strict Products Liability

1. Historical rule is without contractual relationship, there is no duty à la *Brown v. Collins* (*Winterbottom*)
2. If there is a high L and a high P, courts became more willing to impose liability (*MacPherson v. Buick*)
3. *Res ipsa loquitor* recognizes that plaintiff cannot meet burden of proof (*Escola*)
   1. Traynor argues for strict products liability, citing several rationales: 1) loss minimization, 2) loss spreading, 3) elimination of proof complications, 4) analogy to food products and 5) fairness
   2. Recognizes changing aspects of society with industrialization and retail-based economic system
   3. Traynor gets to strict liability in *Yuba*
4. RST uses an unreasonably dangerous standard determinable by custom (regional, internal, or competitive), statutory violation (sword/shield) or consumer expectations
5. RTT defines manufacturing defects using a two-prong test
   1. Incident was of a kind ordinarily occurring as a result of the product defect
   2. Was not solely the result of causes other than the product defect
      1. Plaintiffs may use circumstantial evidence of manufacturing defect even if defendant presents evidence of an alternative cause (*Speller v. Sears*, refrigerator)
6. There are two view of design defects
   1. If a danger is open and obvious, manufacturers may expect that persons will appropriately respond to the danger presented (“consumer expectations test”) (*Campo*) (RST §402A)
      1. Once plaintiff makes a prima facie case that a product’s design proximately caused injury, defendant must prove that product is not defective (*Barker v. Lull Engineering*)
   2. A reasonable alternative design exists that would make the product safer (RTT:PL §2)
      1. Drugs are not defectively designed unless reasonable doctors would not prescribe drug to any patient because foreseeable risks outweigh foreseeable benefits (RTT: PL §6(c))
7. Manufacturers have a duty to warn that can be extended to the ultimate user (*MacDonald v. Ortho*)
   1. Extenuating circumstances can impose additional duties (direct marketing, shifting role of Dr.)
   2. FDA compliance is not dispositive of meeting a duty to warn
   3. A warning need only be one that is reasonable under the circumstances (*Hood v. Ryobi*)
   4. Duty to warn extends to dangers that some users might find open and obvious, but might elude others (*Liriano v. Hobart*)

### Damages

1. Defendant’s wealth irrelevant in action for compensation (*Denver & Rio Grande R.R. v. Peterson*)
2. Loss of enjoyment of life cannot be considered separately from pain and suffering (*McDougald v. Garber*)
   1. Cognitive awareness is a prerequisite to recovery for loss of enjoyment of life
   2. Other arguments are rooted in a desire to punish the defendant, not compensate the victim
      1. Monetary damages don’t adequately compensate the plaintiff
      2. Perverse incentives if massive disability costs more than wrongful death
3. A defendant must take reasonable measures to avoid the risk of causing economic damages to an identifiable class of plaintiffs whom defendant knows or has reason to know are likely to suffer harm from its conduct (*People Express Airlines*)

### Expansion & Retraction of Tort Law

|  |  |  |
| --- | --- | --- |
| **Area of tort law** | **Expansion** | **Retreat** |
| Battery | *Vosburg v. Putney, White, Talmage* | *Shaw* |
| Assault | *I. de S. and Wife* | *Tuberville* |
| IIED | *Wilkinson* | *Falwell v. Hustler, Snyder v. Phelps* |
| Insanity | *Almy v. McGuire* | *Anicet v. Gant* |
| Adult activities | *Daniels* | *Purtle, Goss, Hudson-Connor* |
| Negligence per se | *Martin v. Herzog* | *Tedla* |
| Proximate cause | *Polemis, Wagon Mound* | *Palsgraf* |
| NIED | *Dillon, Dziokonski* | *Thing, Elden, Trombetta* |
| Abnormal danger | *Spano* | *Indiana Harbor Belt* |
| Products liability:  Res ipsa loquitur | *Escola, Greenman* | *Speller* |
| Product liability:  Duty to warn | *Barker, MacDonald, Liriano* | *Hood, Garrison* |
| Property owners | *Kline v. 1500 Mass Ave.* | *Mastriano, Atcovits, Nivens, Wassell* |