
§LIABILITY

Negligence:

- 1) Duty
- 2) Breach
- 3) Causation
- 4) Injury (harm) => Damages (compensation for harm)

Hommontree (epileptic seizure drove into bike shop)

H: Sudden illness that renders the driver unconscious is not grounds for strict liability or negligence.

RESPONDANT SUPERIOR

Employers vicariously liable for employees.

Christensen (hit motorcycle picking up lunch)

H: Employer vicariously liable if employee acted in scope of employment.

Birkner criteria, act is in scope of employment only if:

- 1) doing what hired to do
- 2) space and time
- 3) motivated by employer's interest

Roessler (radiologist saw perforated viscus missed abdominal abscess)

H: Employers are liable for independent contractors who act with apparent authority.

Apparent Authority only if:

- 1) representation of the principal (hospital)
- 2) reliance on the rep. by 3rd party
- 3) change in position by 3rd party in reliance on rep.

Dis.: Favor *Nondelegable Duty*: Hospitals are vicariously liable for independent contractors if patients have no other meaningful options.

§NEGLIGENCE

Duty of Care: general duty to exercise reasonable care.

CASES: Brown (eye injury breaking up dog fight with stick)

H: Ordinary care required, not extraordinary care.

Ordinary Care: care that prudent and cautious people would use under similar circumstances.

STD. of CARE

Adams (boy swinging wire electrocuted by trolley powerline)

H: Co. exercised reasonable precautions to avoid predictable dangers.

Carroll Towing (lines holding tug to a barge broke, b hit tanker; bargee absent)

H: Learned Hand's Formula: $B < PL$.

REASONABLE PERSON

As opposed to pure fault.

Bethal (bus' wheelchair accessible seat collapsed)

H: Duty of common carriers is no longer extraordinary care.

Roberts (suffered a stroke; drove anyway and caused accident)

H: Held to reasonable person std. unless unconscious.

Bashi (hit and run, "my family has history of mental problems")

H: Mentally ill still held to reasonable person std.

NOTE: *Children*:

Blended Std.: Age and ability.

Adult Activities: Held to adult std.

JUDGE & JURY

Goodman (truck hit by train at crossing)

H: Holmes est. std. of care as "must stop, get out of vehicle, and look."

Pokora (car hit by train at crossing)

H: Cardozo limits *Goodman*; reasonable care is a jury question.

Andrews (briefcase fell from plane's overhead compartment)

H: Common carriers have a heightened std. of care. Still a jury question.

CUSTOM

Trimarco (fell through apt.'s glass shower door)

H: Custom is not conclusive. Jury must decide reasonableness.

(Exception: Rx)

STATUTES

Martin (car hit buggy with no lights)

H: Cardozo "breach of statutory duty is negligence in itself." *Prima Facie*.

Tedla (two junk collectors walking on right side of highway hit)

H: Statute can be ignored with good reason and good cause. Spirit.

De Haen (man killed when radiator fell down construction shaft)

H: Statute violated for failing to erect barrier to protect worker from falling in. Intent of statute is not limited and may apply to objects falling in. (Contrast with sheep falling overboard due to lack of pens required for disease control.) (Contrast with lack of driver's license. Must prove unskilled. Lack of license is irrelevant to tort claim.)

NOTE: *Federal Regulations*: Compliance is not necessarily sufficient to fulfill duty.

PROOF

Π must prove (preponderance of evidence) Δ's conduct fell below standard of reasonable care.

Negri (slipped on broken baby food jars in convenience store)

H: Δ had *constructive notice*: defect is visible and apparent for a sufficient period of time prior to the accident to permit employees to discover and remedy it (v. actual notice).

Gordon (slipped on hot dog wax paper on museum steps)

H: No constructive notice. Paper not dirty, not seen, may have fallen just minutes before. (Blackened banana peel: can't know when)

Randall (slipped on loose bird seed in K-Mart)

H: *Mode of Operation* rule: business practices that create a reasonably foreseeable risk of harm to invitees. Applies to self-service such as produce, but not here.

Byrne (barrel of flour fell on pedestrian)

H: Accident alone is *prima facie* evidence of negligence. *Res Ipsa*.

McDougald (tractor's spare tire broke loose over RR tracks hit Π's windshield)

H: *Res Ipsa* ("thing speaks for itself"):

- 1) Instrumentality must be under Δ's exclusive control.
- 2) Accident would not occur ordinarily without negligence. (or far more likely than other explanations, e.g., Farina).
- 3) No contributory negligence.

Ybarra (appendectomy, woke up with arm paralysis)

H: *Res Ipsa*. Patient is unconscious, all those with control are liable.

PROOF: MEDICAL MALPRACTICE

Sheeley (complications arising from episiotomy)

H: Overrule strict locality and *similar locality rule* in allowing an expert witness from another state. Std. of care is what a reasonably competent practitioner, in the class to which he belongs, would do under similar circumstances.

States (removal of ovarian cyst, anesthesiologist injured arm)

H: Expert testimony can be used to bridge gap in jury's knowledge in res ipsa cases.

Matthies (bed rest instead of hip replacement)

H: *Informed consent*: Physician should explain medically reasonable invasive and noninvasive alternatives including risks and likely outcomes.

Subjective: what would the patient have chosen.

Objective: what would a reasonable person have chosen.

§DUTY: PHYSICAL INJURIES

AFFIRMATIVE DUTY

Harper (boat operator did not tell passenger water is too shallow for diving)

H: No SP here. *Special Relationship*: Only if ¶ is:

1) under Δ's custody.

2) deprived of normal opportunities for self-protect.

NOTE: *No Duty to Act*: impunity for allowing preventable risk to strangers.

Innocent Creation: duty if you unintentionally create risk to strangers.

Farwell (beaten, friend gave him ice pack and left him in car. Died.)

H: If performance has begun (rescue commenced), then duty to care.

Companions engaged in a common undertaking have a SL.

NOTE: *Nonfeasance*: Failure to act when it is your duty to do so.

Misfeasance: Performing a duty improperly.

Moch (co. failed to supply adequate water to hydrants, building burned)

H: To apply negligent performance would unduly and indefinitely extend the zone of duty. Denial of a benefit, not commission of a wrong.

Randi (letters of reference for school adm. with history of sexual misconduct)

H: *Negligent misrepresentation*. Duty not to misrepresent if it is foreseeable that they would be detrimentally relied resulting in injury to the other or a third party.

Tarasoff (killed by patient of psychologist who knew of intent)

H: Special Relationship of Control between ¶ & Δ imposes a duty to a 3rd party.

Uhr (school failed to examine student for scoliosis, statute violation)

H: Violation of *Statutory Duty* can result in tort. *Sheehy test* if:

1) ¶ belongs to class for whose benefit it was enacted

- 2) tort would promote legislative purpose
- 3) right to tort would create enforcement mechanism

POLICY REASONS FOR NO DUTY

Strauss (fall injury resulting from NYC blackout)

H: No contract with Π , no duty. *Indeterminate Class*: Must limit orbit of duty on policy grounds.

NOTE: *Determinate Class*: Duty when there is a limited and identifiable group.
Foreseeability: Does not create a duty, but limits a duty's scope once est.

Reynolds (underaged nephew got drunk at reception, car accident)

H: Social hosts not liable on policy grounds.

Vince (aunt and car salesman sued for incompetent nephew's accident)

H: *Negligent Entrustment*: Entrustor knew or should have known entrusting the item was foolish b/c person was incompetent and it may result in unreasonable risk to himself and others.

NOTE: *Negligent Hiring*: employer negligent in hiring, retaining, or supervising an employee who has committed a tort.

LANDOWNERS

Carter (slipped on ice on driveway at home of Bible study host)

H: No liability, social guest is a licensee.

- 1) Licensee - warn of known dangers (social guest)
- 2) Invitee - warn of dangers should know of (Δ gets material benefit)
- 3) Trespasser

NOTE: Not liable to anyone for open and obvious dangers.

NOTE: *Attractive Nuisance*:

- 1) artificial condition
- 2) children likely to trespass
- 3) unreasonable risk of harm
- 4) children do not appreciate the danger
- 5) burden to eliminate the risk is less than potential danger

Heins (slipped on snow exiting hospital door)

H: Abolish licensee/invitee classification. Duty of reasonable care for all lawful visitors.

Dis: End up owing a duty to unwanted solicitors.

Posecai (robbed in Sam's parking lot)

H: Liability for reasonably foreseeable criminal acts of a 3rd party.
Fours Ways to Test for Foreseeability:

- 1) Specific Harm Rule (aware of specific imminent harm)
- 2) Prior Similar Acts
- 3) Totality of Circumstances
- 4) Balancing Test (burden v. foreseeable harm)*

INTRAFAMILY

Broadbent (mom left child left in pool to answer phone, brain damaged)

H: *Parental Immunity* does not apply if:

- 1) Acting in scope of employment
- 2) Willful or reckless
- 3) Acting guardian, not parent
- 4) Parent or child dies
- 5) Child is emancipated

Reasonable Parent Test: reasonable parent under similar circumstances.

GOVERNMENTAL

Riss (hired thug to throw lye on ex's face; "Crazy Love")

H: Police not liable for not protecting her after multiple requests for help.
Sovereign Immunity. Crushing liability.

Cuffy (neighbor attacked family members after police failed to show up)

H: Police create special relationship if:

- 1) promise on part of police
- 2) knowledge inaction could led to harm
- 3) direct contact (e.g., 911 call)
- 4) reasonable reliance on promise

Lauer (medical examiner's autopsy ruled child's death homicide, mistake)

H: Governmental Acts:

Discretionary: grounded in policy. (immunity)

Duty must run directly to injured person. Fix orbit of duty.

Friedman (3 separate car accidents due to no median barrier)

H: Not discretionary. Delay in putting up barrier was unreasonable since risk was known.

NOTE: Federal Torts Claim Act: Gov't liable if a private entity is liable for same act.

Cope (National Parks Service failed to maintain rd and post warning signs)

H: Discretionary but not grounded in policy (aesthetic considerations).

§DUTY: NONPHYSICAL HARM

EMOTIONAL HARM

Falzone (almost hit by car, fell ill and needed medical attention)

H: Physical injury directly traceable to fright, but no physical impact, is still harm. Fear must be reasonable.

Metro-North (fear of cancer due to asbestos contact from pipe insulation)

H: Need physical impact or placed in immediate risk. This was only exposure. No symptoms manifested.

Gammon (severed leg in a bag instead of deceased's personal belongings)

H: Vulnerability of family of recent decedents overcomes physical impact. Not eggshell personality. Objective std.: reasonable person.

Portee (watches child suffer and die in elevator shaft)

H: Emotional distress caused by watching an loved one injured is harm.

Dillon (CA) factors:

- 1) Near the scene (e.g., not live TV broadcast)
- 2) Contemporaneous sense perception
- 3) Close relative
- 4) Severity of emotional distress

Bovsun (NY approach, more restrictive)

H: Liability for emotional distress only if:

- 1) Zone of danger
- 2) Immediate family
- 3) severe and verifiable emotional distress

Johnson (NY: baby abducted from hospital for 4.5 months)

H: Not in zone of danger.

NOTE: *Loss of Consortium*: loss of spouse's income and companionship.

ECONOMIC HARM

Nycal (3rd party used accounting firm's annual report as basis for purchase)

H: False info. must be intended for a specific group, who relied on it detrimentally.

532 Madison Ave. (office tower collapse shuts down 15 blocks, business loss)

H: No duty to protect against economic loss. Limit scope for duty for policy reasons. Only duty against physical damage.

WRONGFUL BIRTH & LIFE

NOTE: *Wrongful Life*: child sues

Wrongful Birth: genetic misdiagnosis, child is disabled

Wrongful Conception: botched sterilization

Wrongful Prolongation of Life: disregard DNR directive

Emerson (botched sterilization results in unwanted pregnancy)

H: *Limited Recovery*: related medical expenses, loss of wages, loss consortium, but emotional distress is offset by joy of keeping child instead of aborting or putting up for adoption.

Dis.: Full Recovery: expense not offset by joy.

§FACTUAL CAUSATION

CAUSE IN FACT (but for)

Stubbs (typhoid fever caused by contaminated water system)

H: Wolf Std. does not apply, only need to est. reasonable certainty.

NOTE: *Wolf Std.*: Need to exclude other possible causes (tenant found at foot of stairs).

Burgos (sued landlord in small complex for assault by unrecognized assailant)

H: More reasonable than not that assailant was intruder, not tenant.

Zuchowicz (prescribed overdose caused PPH which led to death)

H: Daubert Rule. When “but for” cannot be est., then:

Substantial Factor Test:

- 1) Increased the chances a particular type of accident occur
- 2) said accident did occur

LOSS OF CHANCE

Alberts (Dr.’s negligence failed to id gangrene, leg had to be amputated)

H: *Loss-of-Chance* requires evidence that the harm for which Π originally sought treatment was made worse by the lost chance. Damages are percentage of difference in harm between original condition and condition after negligence. E.g., 70% chance of saving leg, now 60%, Dr. must pay 10% difference.

NOTE: Some states deny recover unless original chance was >50%.

JOINT & SEVERAL LIABILITY

Joint= Each Δ liable for full amount. Π goes after one that is solvent. Indemnify others.

Several= Each Δ liable for %.

Summers (hunters’ shotgun pellets injured bystander Π ’s face)

H: Δ s acting in concert (*Oliver*) vs. this holding=*Alternative Liability*: each Δ acted independently but has the burden of proving the other was the sole cause of the harm.

Hymowitz (Π injured by drug ingested by their mothers during pregnancy)

H: Each drug producing Δ pays damages per its *National Market Share*.

Dis: If a Δ can prove it was not their pill, then that Δ should be exculpated.

§PROXIMATE CAUSATION

UNEXPECTED HARM & MANNER

Benn (Π had a history of heart disease died of heart attack after car accident)
H: *Eggshell Rule* (“Thin Skull”): Take the victim as you find them.

NOTE: *Medical Aggravation Rule*: Liability for coincidental Rx injury.
Not liable for other coincidental injuries.

Polemis (fire destroyed ship when plank fell into the hold and sparked)
H: *Direct Test*: injury cause by direct physical contact.

Smith (passing trains sparked dry grass fire burning field and cottage)
H: Extent of injury need not be 4C. (NY Fire Rule is extent must be 4C)

Wagon Mound (discharged oil burned wharf when molten metal fell on rag)
H: Injury has to be 4C. (overrules Polemis)

Wagon Mound No. 2 (same case, separate action)
H: *Type of injury* has to be 4C.

Doe (Π raped behind bushes on Δ’s commercial property)
H: An *intervening* wrongful act cannot break the chain of causation if the risk was 4C. (In this case, type of injury was ~4C)
The *manner* in which the injury is caused need not be 4C.

UNEXPECTED VICTIM

Palsgraf (unmarked fireworks package falls on tracks, scale falls on Π)
H: Liable only for 4C victims.
Dis: (Andrews) “Duty to the public at large.”

NOTE: “Danger invites rescue.” Rescuers are 4c.

§DEFENSES

Immunity: charity, family, and gov’t.

Contributory Neg.: Duty owed to one’s self. (exception: children)

Last Clear Chance: Δ had last clear chance to avoid the accident even though Π was contributorily neg..

Comparative Neg.: Compare Π and Δ’s negligence.

a) *Pure*: Assign % to each party.

b) *Modified*: If Π >50% neg., then suit dismissed.

Fritts (¶ dies following surgery, Δ Dr. argues cont. neg. b/c DUI)
H: ¶'s DUI is irrelevant to the medical malpractice.

ASSUMPTION OF RISK

Express: written or oral release waiving Δ's liability.

Implied: conduct.

Primary: ¶ knowingly and voluntarily assumes risk (Δ has no duty).

Secondary: ¶ knowingly and voluntarily assumes risk (Δ has duty).

Dalury (¶ collided with metal pole on Δ's ski resort)

H: Release form may be unenforceable if it violates public policy.

Violation of public policy determined by (*Wolf*): "totality of circumstances against backdrop of current societal expectation."

Hitting a pole is not an "inherent risk" of skiing.

Waiver language must be unambiguous.

Murphy ("The Flopper," fractured knee cap)

H: One who takes part in a sport assumes inherent risks as long as they are obvious and necessary. "The timid should stay at home."

(Liable for intentional or reckless injuries)

Davenport (fell down apt. stairs with known broken light, other stairwells avail)

H: Assumption of risk does not bar recovery if Δ's neg. > ¶'s neg.

§DAMAGES

Compensatory: make the ¶ whole. (~taxable)

Specific: Rx, wages.

General: pain & suffering

Punitive: deterrence (amount depends on Δ's wealth) (1st ¶ collects all against a corp.)

Seffert: (serious heel injury when bus door closed on ¶ and dragged her)

H: \$ is excessive if it shocks the conscience and suggests jurors were motivated by passion, prejudice, or corruption.

Collateral Source Rule: ¶ still recovers full amount from Δ.

Subrogation: Ins. recovers what it paid out from collateral sources.

Arambula (injured in car accident, continued to receive paycheck)

H: CSR allows ¶ to still recover wage from Δ.

Taylor (repeat drunk driver caused accident; punitive damages for malice)

H: Malice b/c behavior was willful and wanton.
(Holding later revised: malice proven by clear and convincing evidence)

State Farm (appealed \$145m punitive damage award)

H: There should be a single digit ratio between punitive and damage awards. May Δ not punish for harm to others.

NO FAULT

No Fault Scheme: don't have to prove fault, waive right to neg. suit, get damages quickly, and no litigation costs. (e.g., worker's comp., 9/11 Fund)

§STRICT LIABILITY

Traditional SL

Replace duty w/ abnormally dangerous activity.

Replace breach w/ did Δ engage in that activity.

-Incentive to invest in testing

-Cost Spreading, Accident Avoidance, and Judicial Economy

Rylands (reservoir leaks into ancient shaft flooding neighbor's mine)

H: Strictly liable for anything anything potentially harmful *not naturally there* brought to the land and that escapes. (SL differs from neg. in that Π does not take upon any risk such as in driving, sports, etc.) On Appeal, strictly liable for *non-natural use*.

NOTE: Later unreasonable use of land.

Sullivan (dynamite blast hurls tree fragment onto highway killing Π)

H: For policy reasons, safety of property in general is more important than a particular use of a property by a single owner. Use your property such as to not harm others. (Contra-Losee: industrial activity=general good outweighs accidental injury)

Indiana (toxic chemical leaked from train, RR sued chemical manufacturer)

H: Rst1,2: SL for "ultrahazardous" or "abnormally dangerous" activities. Leak here is neg b/c could be avoided by reasonable care. Rst refers to activities, not properties of substances. Purpose of SL is to relocate, change, or reduce the activity.

NOTE: *Abnormally Dangerous Activity*: (Rst3) Foreseeable risk of harm that cannot be eliminated by utmost care and not a matter of common usage. (Value to the community and appropriateness of location have some bearing).

Airplanes: SL for crash damage and falling objects.

Defective Product SL (manu. defect is the only true SL)

Replace duty w/ Δ supplied the product.

Replace breach w/ product was defective.

Winterbottom (19th cent., mail coach collapses, but Δ was seller not manufacturer)

H: No privity of K, no liability.

MacPherson (wheel on Buick collapsed injuring Π)

H: If 4C third party use of negligently made products that are dangerous, then lack of privity does not bar liability. (+bystanders)

NOTE: Warranties do not cover injury (only cost of product) & non-transferable.

Escola (coke bottle exploded as Π waitress moved it into frig.)

H: Res Ipsa. Burden on Δ to disprove.

Con.: Absolute liability. Do not need negligence.

Policy reasons: Res Ipsa is needlessly circuitous legally.

Manufacturer-> Burden of cost, better designs, discourage marketing dangerous or defective products.

NOTE: SL extended to retailers, lessors, franchisers, successor co.'s, emotional distress to product users, but ~Used, ~Finance, ~Built to spec..

DESIGN DEFECT

Cronin: Rejected Rst.'s "Defective + "unreasonably dangerous" b/c rings of negligence. Only prove defective. Applies to manufacturing defect as well as design defect.

Barker: Intended or reasonably 4C manner.

"Ordinary customer expectation" or "excessive preventable danger."

Soule (claimed faulty Camaro bracket design resulted in ankle injury)

H: *Ordinary Customer Expectations*: when a product, used in a reasonably foreseeable manner, fails to perform as safely as an ordinary customer would expect due to a manufacturing defect and causes injury.

In complex products, where customer's everyday experience does not deal with the situation, the test is *Excessive Preventable Danger*. benefits of the design outweigh its risks (Δ has the burden of proof).

NOTE: Rst. 3 Defective=RAD Π must prove that a reasonable alternative design would have reduced the 4C risk of harm.

SL: 1) Did D supply product to P? 2) Product defective? 3) Causation 4) Injury
SL Product Defects: 1) Manufacturing 2) Design 3) Instruction/Warnings

Camacho (severe leg injury due to lack of leg bars on motorcycle)

H: *Crashworthiness Test*: Defect, does not cause accident, but enhances the injuries. (common-law)

Focus in SL should be on the product: not what the user contemplated.
Reliance on consumer expectation is inappropriate b/c manufacturer is in a better position to know technical info. relevant to complex products.

Ortho: seven factor risk-benefits test. (pg.588)

NOTE: *Simple Tools*: Benefits and risks are evident to everyone. No liability.

Food: Consumer expectation test applies.

Market and Adversing: create consumer expectations.

WARNINGS AND INSTRUCTIONS

No duty to warn of open and obvious dangers. (vs. latent dangers)

1) Give warning? 2) Adequate? 3) Cause 4) Injury

Hood (removed guards from miter saw and blade flew off; severed thumb)

H: Do not need encyclopedic warning of every possible mishap.

Must balance more detailed warnings with benefits (costs, likeliness of consumers to read; too many detailed warnings undermine effectiveness)

Criteria for warning adequacy: 1) scope of danger 2) extent of harm 3) physical aspects adequate to alert a reasonable person 4) consequences of failure to follow 5) means to convey must be adequate. (jury question)

Heeding Presumption: party responsible for inadequate warning must show consumer would *not* have heeded an adequate warning. (shifts burden to D)

Edwards (died while wearing two nicotine patches and smoking)

H: *Learned Intermediary Doctrine*: manufacturer does not have to warn b/c physician's duty to warn of risks.

Exceptions: 1) mass immunization 2) FDA mandates 3) advertising drugs

In this case, manufacturer did not meet FDA mandate.

Three SL Tests: Was the product defective?

1. consumer expectation

2. risk-utility
3. RAD
4. Unreasonably dangerous

WARNINGS (neg. warn.=duty to warn, breach, etc...; SL warn.=D supplied warn, etc..)

NOTE: "State of the art": std at time of trial not time of manufacture (Beshada asbestos)

- Beshada is only std. that does not contain some negligence
- Feldman: Expert in the field std.. (most states followed)
 - Limited Beshada to asbestos. (b/c turns manu. into insurer)
- FLA: Best knowledge available (general and prevailing info.) std.

Vassallo (sued for defective warnings on silicone breast implants)

H: D not held liable under implied warranty of merchantability for failure to warn or provide instructions about risks not reasonably 4C at the time of sale or could not have been discovered by reasonable testing prior to marketing. "Expert in the field std."

Royer (sued hospital for defective prosthetic knee)

H: Medical services are not retail marketing. Sale of goods are incidental to the service. Also public policy for medical services. Not the same as buying tires and having them installed.

NOTE: Usually no SL for pharmacists, but negligence applies. Can pick up duty by making warning or filling prescription incorrectly.

NOTE: Food SL for foreign object, but unexpected chicken bone is negligence.

- Foreign v. Natural Object
- "Cow's Eye Test" (in sandwich) -could not recover under CA test.
- Is a fly foreign or natural?

DEFENSES to SL

Defenses to failure to warn:

1. State of the Art vs. Hindsight
2. Heeding Presumption
3. Specificity or amount of warning
4. Learned Intermediary Doctrine

General SL Defenses:

1. Causation-at what point in process of getting product home did defect get introduced.
2. Ordinary Contributory Negligence
(failure to discover the defect) ~a defense
3. Usual seller of the product?
(used seller held at lower std.)

Assumption of the Risk (discovers defect and uses product) (e.g., tobacco)

Comparative Responsibility Preemption

Sanchez (truck parked between gears, pops in R and pins D; bleeds to death)
H: *Comparative Responsibility*: No duty discover or guard against defect, but other conduct is subject to CR. Did not exercise duty of care.
More is expected of an operator b/c have to be licensed.

Jones v Ryobi (guard removed from printing machine; hand injured)
H: Third-Party Modification (by employer)
Dis.: Modification that renders product unsafe is 4C.
Invites modification.
Unreasonably dangerous.
Defenses: 1) Open & Obvious Danger 2) 4C by party who made the modification.

PRE-EMPTION

1. Statutory p. 503 1+5 cigarette warnings
2. Field p. 504
3. Conflict (fed.overrides state)

Geier (no driver's side airbag)
H: Fed. Statute std. does not require airbags; suit preempted.

Riegel (catheter exploded in heart when used for alternative purpose)
H: Design defect suit preempted by FDA b/c states would impose different requirements than federal government.

§INTENTIONAL: BATTERY & ASSAULT

Only but-for causation.
Eggshell P applies.
Self-Defense is a defense.
Held to reasonable objective person std.
Prove: 1) Act 2) Intent 3) Causation.

Battery - intentional inflection of harmful bodily contact w/o other person's consent.
a) purpose or b) substantial certainty that contact would result.

Transferred Intent - contact hits a third party. Aim for A and hit B or hitting A injures/ scares B.

Garratt (boy pulled chair out from under lady; broke hip)
H: *Substantial certainty* that the contact was going to occur.

Infants are liable for intentional torts.

Vosburg (kicked other schoolboy in the leg)

H: Liable despite lack of intent to harm. Eggshell P.

Assault - Physical act of threatening nature that creates a reasonable apprehension of immediate offensive contact. P must feel the apprehension.

Offensive Contact - It offends a reasonable sense of personal dignity.

Picard (A&B by D when he pointed at her camera in a threatening manner)

H: Camera was extension of P's body. She fell back and injured back.
Provocation is not a defense.

Conditional Threats - are not torts unless imminent. But unlawful conditions for you to do something are.

Wishnatsky (attorney shut door and pushing paralegal back into hallway)

H: No actual physical contact required for battery. Could be indirect.

§INTENTIONAL: ALIEN TORTS CLAIM ACT

Foreign nationals can bring tort suit in US Federal Dist. Ct. (since 1789)

Gave jurisdiction, but did not define triable actions.

Need to find the right statute to sue under, e.g., Torture Victim Act.

US cannot be sued for a claim arising in a foreign country. (per FTCA)

Sosa case: no statute applies and ATCA does not cover kidnapping.

§INTENTIONAL: FALSE IMPRISONMENT

Unlawful restraint of a person's liberty or freedom of locomotion. D must have intent to restrain: know with substantial certainty that confinement will occur. Must be against P's will.

Threats of future actions do not constitute confinement.

Confinement within a country is not FI.

Lopez (donut shop cashier questioned in back room about theft)

H: No FI.

Soares (switched price tag on sneakers. Detained by dept. store security.)

H: False arrest. Malicious prosecution b/c criminal case

§INTENTIONAL: EMOTIONAL DISTRESS

Womack (fraudulently took coach's photo then given to attorney prosecuting a child molester; coach had no involvement)

H: No physical injury. IIED. Four Elements:

- 1) Intentional or reckless.
- 2) Outrageous conduct by accepted stds. of decency.
- 3) Causation.
- 4) ED is severe.

Possible exam question: Internet Suicide.

Alienation of Affection - behavior by which an outsider drives a wedge between family members.

McDermott (cheated with P's wife)

H: Statute abolished alienation of affection tort.

§DEFAMATION

Defamation - a false statement that injures another's reputation.

Libel - print

Slander - spoken

Innuendo - statement taken together with extrinsic facts makes it defamatory.

Questions can be defamatory.

Innocent Construction Rule - if statement is ambiguous, then interpreted as innocent.

(Illinois)

Large Groups - cannot sue if numbers of persons defamed is too large. (policy reasons)

4 Elements of Defamation

- 1) Defamatory Statement - harm to reputation
- 2) Of and Concerning the P - reasonable interpretation that P is the person identified
- 3) Publication - related to a 3rd party
- 4) Damages

Defense: Statement is true.

Romaine (book said P knew a junkie)

H: Threshold question: Is the statement susceptible of a defamatory meaning? Must read in context of publication as a whole.

Possible Outcomes

- 1) Defamatory as a matter of law
- 2) Dismissed
- 3) Ambiguous (jury question)

Matherson (Good Rats, rock band's statements during radio interview)

H: "fooling around with wife" is clearly libelous; "has a boyfriend" imputation of homosexuality is reasonably susceptible of defamation.

Defamation per se: Criminal activity, sexual promiscuity, disease, & business reputation.

§DEFAMATION: FIRST AMENDMENT LIMITS

Defamation is common law: state court.

Cannot defame the dead.

4 Elements of Defamation Under the First Amendment

- 1) Defamatory Statement - harm to reputation
- 2) Concerning the P
- 3) Publication - related to a 3rd party
- 4) Damages (general and punitive)
- 5) Falsity (honest mistake vs. intentional see #6)
- 6) Fault (malice)

NY Times (ad by Alabama clergy defaming police commissioner)

H: 1st amend: freedom of speech and press; 14th amend: applies most of the bill of rights to the states. For policy reasons, freedom of speech criticizing public officials is particularly important unless *actual malice* (intentionally false or reckless disregard for truth).

(old English rule did not allow this: seditious libel)

Black: unconditional constitutional right, do not need to dis/prove malice.

Goldberg: private conduct of public officials should be protected.

§DEFENSES TO INTENTIONAL TORTS

1st amend. Hustler Magazine (parody ad for Campari with Jerry Falwell)

H: Public officials and public figures cannot sue for IIED unless there is actual malice. Ad indicates that the statements are false and not actual facts. Otherwise, "chill speech." Need to give 1st Amend. "breathing room."

consent Hart (died in illegal prize fight)

(instead of H: Consent is a defense; and cannot profit from illegal activity.

assu. risk) This principle was used when women injured in illegal abortions.

self-def. Courvoisier (shot at policeman thinking he was a burglar/rioter)

H: Self-defense if reasonable under the circumstance and the means were reasonable. Means proportionate to the threat.

protect property

Katko (shotgun trap)

H: Excessive for protecting property. Can use reasonable force but not kill or inflict great bodily injury to protect property.

private necessity

Vincent (used private wharf to save cargo during storm)

H: Okay to use out of necessity, but must pay for the damages.