**Goals of Tort**

* Deterrence, Compensation, Corrective Justice, Expressive value, Autonomy

**Intentional Torts and Defenses**

**Battery**

* Battery = 🗹 **intentional**,🗹 **harmful** or **offensive** 🗹 **contact** with another(Vosburg)
  + Contact *must* be intentional (though not harm)
    - Intent to harm NOT necessary for battery
  + Must involve intentional act (not omission)
  + EXCEPTION: Intentional act + knowledge of **substantial certainty** of contact = constructive ‘contact’ (e.g. pulling chair out from under woman sitting down) (Garrat v. Dailey)
* RST § 13(b)—Battery = intentional offensive contact **that causes harm**
  + In jdx accepting RST, some technical batteries will fail
* In some jdx, mere pleasantry can be battery (all intentional nonconsensual contact = battery) (e.g. White v. Univ. of Idaho)
* Once there is a battery, ∆ liable for all harms that **directly result**, however unforeseeable
  + Direct = something more than but-for causation (doesn’t extend to boy with injured leg being subsequently mauled by an escaped lion)

**Defenses to Battery**

* Consent (explicit *or* implicit) = fundamental limitation on battery
  + Implicit consent is contextual, like implicit license of the playground in Vosburg
  + Spirit of pleasantry—tapping a stranger on the shoulder to ask directions usually not actionable
  + Surgery is battery unless there is (informed, specific) consent (Mohr v. Williams).
    - EXCEPTION—**emergency rule** (unconscious patient facing serious risk implicitly consents)
  + Most courts—∏ has burden of showing non-consent as element of tort
  + Some courts—consent is an affirmative defense pled by ∆
* Self-Defense
  + **Subjective** standard: **Reasonable belief** that one is being attacked is a license to self-defense (Courvoisier)
  + ONLY such force as is **necessary and proportionate under the circumstances**
  + Affirmative **duty to retreat** (clear and safe escape)
* Defense of Property
  + Some jurisdictions allow for the use of deadly force to defend property (Bird); some do not (Katko)
  + Bird—may use spring gun only if one posts notice
  + Restatement—may use spring gun ONLY if ∆, **were he present**, would be privileged to use force
* Recapture of Chattels
  + Only when: (1) possession by owner; AND (2) purely wrongful taking (Kirby)
  + MUST be immediate / hot pursuit. Otherwise, use the courts.
  + **Narrower** than defense of property b/c: unlimited recapture not as deterrent; doesn’t promote rule of law; legal possession isn’t always obvious
    - POLICY**:** accommodate human impulse (when someone grabs your purse, you hit him); no ambiguity of title in the moment

**Trespass**

* Trespass to property= EVERY 🗹 **unauthorized** 🗹 **entry** into 🗹 **another’s close**
  + EVEN unenclosed / uncultivated land
  + EXCEPTIONS: Emergency / first-responders; public officials; defense of property; consent / license; places of public accommodation
  + **NEED NOT** **prove damage**
    - EXCEPTION—an **intangible trespass** MUST cause physical damage (e.g. from electromagnetic radiation)
  + Unfounded claim of right (mistake of fact) NOT a defense (Dougherty v. Stepp)
* Trespass to chattels = intentional intermeddling with another’s chattel ONLY WHEN (a) harmful to ∏’s materially valuable interest OR if ∏ is deprived of the use of the chattel for a SUBSTANTIAL time
  + **MUST** prove damage
  + MUST be in possession of ∏
  + Unauthorized use alone insufficient (Intel v. Hamidi)

**Conversion**

* Conversion = 🗹 **Intentional** 🗹 **exercise of ownership rights** over 🗹 property **of another**
  + Strict liability offense—no mens rea w/ respect to “of another”
  + Ownership rights = Buying, selling, using, altering, delivering, or refusing to surrender
* If ∆ acted in good faith (mining on land he thought was his, e.g., Maye v. Tappan) credited for cost of labor. If in bad faith, no credit

**Defense to Trespass / Conversion: Necessity**

* Necessity = use of another’s property without consent to avoid physical harm to people OR property
  + Overcomes strong background rule: right of landowner to keep others out
  + Defeats land-owner’s defense of property claim; If ∏ uses force to prevent ∆ from using his property in time of necessity, ∆ can cross-claim for trespass (Ploof v. Putnam)
* **Incomplete privilege** **of trespass**: EVEN IN cases of necessity, injured party can collect damages (compensatory only) Vincent v. Lake Erie
  + Vincent-type liability is **strict liability**—must show intentional act of nonconsensually using another’s property to save one’s own
* POLICY—incentives to establish **efficient** allocation of risk; corrective **justice** for nonconsensual use of property (otherwise party claiming necessity is unjustly enriched)
  + Compensation itself is not a value—only when it serves efficiency or justice
  + Vincent rule requires more careful calculation (CBA) than Ploof rule, so more efficient
* **Public Necessity** = **ABSOLUTE privilege of trespass (when objectively reasonable)**
  + NO collection of damages
  + POLICY—Vincent-liability would incentivize AGAINST intervention (greater social cost)

**Negligence**

**Did ∆ owe ∏ a duty of reasonable care that was breached AND that proximately caused compensable damages?**

* SL—internalizes all costs on actor; reduces activity level
* Negligence—encourages activity; More CJ (only culpable parties compensate)

**Negligence—Basic Standard of Care**

**“Reasonable Person”**

* General rule—OBJECTIVE standard (reasonably prudent person)
  + Why not exempt the clumsy man? Holmes: we aren’t bothered less by the invasion of a clumsy man than an able man
  + POLICY: subjective standard allocates too much risk to society
  + POLICY: too easy to feign “clumsiness” (line-drawing problem)
* EXCEPTIONS
  + **Physical disability**
    - POLICY: Blind man objectively blind (no provability problem)
    - POLICY: Can’t require a blind man to see at his peril
    - POLICY: all can recognize that a blind man is blind, and adjust their conduct (non-obvious disabilities? Maybe included b/c morally compelling)
    - City must maintain streets safe for all, including blind (reasonable precaution for sighted man insufficient for blind citizen) City of Aberdeen v. Fletcher
    - Threshold for neg. lower for blind driver
  + **Age**
    - OLD: no exception
    - YOUNG: usual child of his years, maturity, and experience
      * RST: <5 yrs CANNOT be negligent
      * Possibly—only exception for child-∏, for contrib.. neg, and not child-∆ (dictum in Roberts v. Ring)
      * EXCEPTION: no age-appropriate standard for inherently adult activities, like driving (Daniels v. Evans)
  + **Mental Disability**
    - Sudden onset insanity = defense (Breunig)
    - Permanent insanity NOT a defense, EXCEPT when ∆ institutionalized (Gould)
      * Non-conforming conduct of institutionalized is foreseeable, AND no issue of verifiability (who fakes insanity for 5 yrs?)
    - POLICY: most important aspect of reasonable man standard the moral/intellectual core. Insane man lacks intellect and will required to conform his conduct.
  + **Gender**
    - Generally, NO EXCEPTION
    - POLICY: Risk of rape correlated to sex. Standard for sexual harrasment?
  + **Wealth**
    - Generally: NO EXCEPTION (Denver & Rio Grande R.R.)
    - Maybe it should matter b/c rich person values each marginal $ less than a poor person (affects Hand balancing)
* Would a reasonable person risk his life to save another’s?
  + Saving a life not wrongful unless “rash or reckless”. Eckert v. Long Island R.R.
    - Court assumes ∏ self-preservation to avoid contrib..negl. (not so typically)
    - Legal rule won’t affect judgment in the moment
  + Insurance fraud risk? Debatable.

**Calculus of Risk**

* Terry/Seavey 5-factor test:
  + 1) Risk %
  + 2) Value of the thing risked
    - Product of (1) and (2) is **expected loss**
  + 3) Value of the collateral goal (reason to run the risk)
  + 4) Probability of obtaining the collateral goal; **utility of risk**
  + 5) Probability that collateral goal would not have been obtained w/out the risk; **necessity of risk**
    - Product of (3), (4), and (5) is **expected gain**
* **Hand Formula**
  + **If B < PL, liability**
    - B = Burden of adequate precautions
    - P = Probability of loss
    - L = Magnitude of resulting loss
  + Articulated in U.S. v. Carroll Towing(1947)
  + Problem—declining marginal benefits of additional precautions.
    - SL and negligence both incentivize efficient precaution
    - SL BUT NOT negligence incentivizes efficient activity level
  + DIFFERENT from Bolton test b/c takes cost/burden of precautions into account (Bolton court did not)

**Custom**

* Custom as **shield:** compliance w/ custom 🡪 NOT negligent
* Custom as **sword:** ∏’s argue that violating custom 🡪 negligent
* **Pro-custom**: Titus v. Bradford (1890)—Duty of ∆ to meet the ordinary usage of the business (custom as shield)
  + Is this unfair to employees? No, b/c custom also dictates **wage premium**.
* **Anti-custom**: Mayhew v. Sullivan Mining Co. (1884)—Custom NOT dispositive of ordinary prudence and totally irrelevant (if everyone jumped off a bridge, you still shouldn’t)
* **Synthesis:** The T.J. Hooper (1931; Hand)—Custom not dispositive, but often aligns w/ prudence (**relevant, but not dispositive🡪BLL**)
  + Deference to custom must strike a balance. Custom should be weighted more when the parties are repeat players in an on-going contractual relationship than in situations involving strangers
* EXCEPTION: **Medical Malpractice**—custom IS **dispositive**
  + Higher standard of care (reasonable physician)
  + ∏ must show (1) basic norms of knowledge and medical care applicable nationally (**custom**); (2) proof that Dr. failed to follow these norms; (3) causation (Lama v. Borras)
    - ∏ has **affirmative burden** to show the standard of care
    - Pre-Lama, “strict locality” rule (local standard; gone)
    - DO NOT apply Hand formula (jury can’t balance risks)
  + EXCEPTION—Helling v. Carey (Wash. 1974) cited T.J. Hooper in rejecting customary care standard in a missed glaucoma diagnosis (strict liability boomlet). Not good law.
  + EXCEPTION—Standard in “**informed consent**” cases NOT customary care
    - Custom is relevant, but NOT dispositive (TJ Hooper)
    - ∏ must show that a reasonable person/patient IN the patient’s circumstances would want to know [risk] before deciding (would deem risk **material**)(Canterbury v. Spence)
      * NOT a subjective standard
      * EXCEPTIONS: emergency; “therapeutic privilege” (disclosure of risk would harm patient psychologically; conflicts w/ notion of materiality / autonomy)
    - Causation—failure to disclose CAUSED injury (objective standard)
    - **POLICY:** customary care standard🡪 disrespects patient autonomy; subjective standard🡪 too reliant upon benefit of hindsight
      * Possible that customary care standard would result in *more* disclosure (b/c bright-line rule)
  + Defense?
    - Custom🡪 Two schools of thought
    - Causation🡪 high bar (had Dr. not done X, Y would NOT have resulted)
  + **POLICY**: Why is custom dispositive in Med-Mal?
    - Expertise required (but this is true in other fields)
    - Large area of litigation
    - Society wants to protect doctors (not to disincentivize practice / reduce activity levels)
    - Presumption that Doctors (unlike railroads) are looking out for their patients / internalize their interests, b/c Hippocratic Oath
  + **POLICY / Tort Reform:** Current Med-Mal regime creates mismatch between lawsuits and negligent adverse results
    - Threat of lawsuits🡪 +unnecessary tests, —transparency, —activity in high risk fields, —development of best practices
    - Solutions🡪
      * Damage caps
      * Administrative system (like worker’s comp.)🡪 broader coverage, but sub-compensatory (certain, quick, low rewards)
        + PROS: Lower admin. costs, more horizontal equality (no juries), fewer uncompensated harms, removes disincentive to discuss bad outcomes🡪improve process
        + CONS: Less patient autonomy; no expressive function of jury verdict; less incentive for docs to take due care; uncompensated harms; all ‘technical’ decisions are policy choices; less overall compensation
      * Tweak rules of liability to encourage best practices
        + ∆ hospital could use disclosure / best practices as a defense
        + Tort law as a lever to reward self-regulation (with more favorable treatment w/in tort system)

**Statutes / Negligence per se**

* Statutes: (1) guide juries; (2) help judges **constrain** juries; (3) create private rights of action outside the common law
* Negligence per se
  + Violation of a safety statute normally negligence per se, UNLESS the harm is CLEARLY different from the harm statute deisgned to protect, and UNLESS activity is clearly safer
    - Osborne—When a statute creates a duty, violating the statute is negligence as a matter of law—but the negligence tort is still a suit *at common law* (labeling poison)
    - Martin v. Herzog (Cardozo)—∏ buggy-driver who drove w/out lights was contributorily negligent per se. Jury can’t reopen legislature’s negligence inquiry (in buggy-light statute).
      * Jury workaround—causation (not all ∏ negligence is contributory negligence)
    - EXCEPTION: Gorris—No statutory liability when statute enacted w/ **entirely different purpose** (penning sheep on a boat)
    - EXCEPTION: Tedla—No statutory liability when **safety statute prescribes OBJECTIVELY less safe conduct** (e.g. walking on the left side of the road when traffic is much heavier on the right)
      * Here, custom is relevant
  + Causation—Safety statute that w/ **purpose** of avoidingrisk *from third-party conduct* still creates a statutory duty
    - Ross v. Hartman—∏ who left an unlocked car w/ keys in ignition LIABLE for damage done by thief who stole it b/c negligence per se
    - Dram shop statutes—bartender who serves visibly intoxicated person negligent for harm resulting from person’s drunk driving?
      * Clear negligence per se (legislative purpose to avoid drunk driving accidents)
      * Old law—no liability, b/c drinker still had a choice
      * Now—more liability (b/c changing views on drunk driving, better tech. to catch fake IDs)

**Judge vs. Jury: Who decides?**

* Holmes—aggregation of cases under reasonable man standard will evolve into codified law (inevitable shift juries🡺judges)
  + Baltimore & Ohio RR v. Goodman (S.Ct. 1927; Holmes)—holds that all drivers (in the nation) have a common law duty to stop, get out of car, look, and listen at railroad tracks
  + Pokora v. Wabash Ry. (S.Ct. 1934; Cardozo)—overrules Goodman b/c sometimes it’s more dangerous to get out of the car; case doesn’t occur w/ enough national uniformity to lay down a RULE
* Other checks / measures of jury control
  + Jury instructions
  + Oversight w/ respect to law; judge decides **whether evidence *permits* reasonable finding of negligence** (Metropolitan Ry. v. Jackson)
    - BUT judge CAN’T **weigh** the evidence (Wilkerson)
  + CBA?
  + Reliance on custom (mostly in med. mal.)
  + Negligence per se (leg. decides what’s negligent)
    - One-way ratchet b/c compliance w/ statute is NOT proof of reasonableness

***Res Ipsa Loquitur***

* Doctrine—allows proof of negl. by **circumstantial evidence**
  + (1) **unusual occurrence** (NOT Act of God or non-negligence) (2) ∆ had **exclusive control**; (3) no evidence that ∏ caused/contributed
  + What’s different? ∏ DOESN’T have to prove specific breach (untaken precautions)
  + Sometimes creates rebuttable presumption (Byrne); usually creates permissible inference (enough for ∏ to get to jury); rarely dispositive
* Cases
  + Byrne v. Boadle (UK)—∆ ware-house owner has burden to show that falling flour barrel wasn’t b/c of his negligence
  + Escalator continues but hand-rail stops? Unusual (Colmenares Vivas). Escalator stops? Not unusual AND can’t rule out third parties (b/c stop button) so NO *res ipsa* (Holzhauer)
  + Hit by a train? Can’t rule out ∏ negl., so NO *res ipsa*. (Wakelin)
  + Larson—hotel not liable for mysterious falling chair (might have been a guest); BUT Connoly—hotel *liable* for mysterious falling chair b/c management had NOTICE of tomfoolery (rowdy convention)
  + Car crossing median🡪 *res ipsa* (Pfaffenbach)
    - ∆ could rebut by proving mechanical failure
    - ∆ could rebut by showing Act of God (Bauer)
  + Newing—case SO strong in plane crash case (perfect day, ∏ a passenger, alcohol on ∆’s breath) that *res ipsa* is dispositive
  + **Possible Act of God** (e.g. ship sinking in unknown circumstances)🡪 NO *res ipsa* (Walston)
* *Res* in Med Mal. (Ybarra)
  + Unconscious victim can sue all ∆s who more likely than not caused the harm
  + Goal🡪 get ∆s to turn on one another; if not, all jointly liable (*res* creates substantive liability)
  + POLICY—prevent uncompensated harm in case of egregious information asymmetry that ∆s are taking advantage of to avoid liability
  + Today—less necessary b/c broader discovery; increased expert testimony (dropping strict locality rule)
* NOT SL—∆ CAN rebut presumption / inference of negligence
* POLICY—burden-shifting b/c information asymmetry

**Negligence—Defenses Based on ∏’s Conduct**

* Denials = ∏ hasn’t proved some element of her prima facie case (duty / breach / causation / compensable harm)
* Affirmative defenses = ∏’s case fails NOT b/c internal deficiency / inconsistency, but b/c new facts regarding ∏’s conduct
  + ∆ **bears burden of proof** (NOT just burden of production) to show by a preponderance of the evidence

**Contributory Negligence**

* + If ∏ (1) **had a duty to take reasonable care** AND (2) failed AND (3) failure **proximately contributed** to (4) injury, ∏ is contributorily negligent AND ∆ prevails
  + Common law (and some jdx today)—COMPLETE defense
    - POLICY—Incentive to take reasonable care to protect oneself (efficiency)
      * BUT residual risk of uncompensated injury (w/out contrib.. negl.) should be enough; contrib.. negl. as full bar REDUCES optimal incentives on ∆ to take adequate precautions
      * No need for contrib. negl. in SL world b/c impossibility of uncompensated injury (∆ always liable)
    - POLICY—Unfair to hold ∆ liable for things that are ∏’s fault (corrective justice)
    - POLICY—∏ has unclean hands; doesn’t merit recovery
  + Paradigmatic case—Butterfield (∏ galloping too quickly hits ∆’s pole)
  + W/ railroad ∆s, courts bent doctrine to avoid finding contrib. negl. (e.g. Beems)
  + EXCEPTION—(most courts) contrib. negl. NOT a defense in *negligence per se* case
  + EXCEPTION—∏ who left flammable hay on property abutting RR easement NOT contrib. negl. b/c imposition on property rights (Leroy Fibre)
    - Holmes, concurring—∏ must accommodate reasonable operation of RR; RR’s property right to easement INCLUDES right to reasonably operate a RR!
      * BUT—maybe RR should have bought an easement large enough to permit this reasonable operation in all cases
      * Holmes—∏ is least cost avoider (otherwise, all RRs would need large easements, raising transport costs for everyone)
    - When entitlement goes to ∏ (as here), aggregate transaction costs will exceed losses; RR will take excessive precautions.
  + EXCEPTION—∏ who wasn’t wearing seatbelt NOT CN (Derheim)
    - POLICY—usually contrib. negl. regards CAUSE of accident, not extent of harm. Slippery slope; administrability
  + **EXCEPTION Last Clear Chance**—Even if ∏ places himself in peril, if ∆ subsequently becomes aware of the peril he is OBLIGATED to attempt to avoid it (Fuller)
    - MUST be **sequential conduct**; ∏ **peril MUST be apparent**
    - POLICY—allowing contrib. negl. defense here dis-incentivizes ∆ to avoid avoidable harms (inefficient)
  + EXCEPTION—FELA (no contrib. negl. defense)

**Assumption of the Risk (AOTR)**

* Forerunner: **fellow servant rule**—worker assumes risk of co-worker’s negl. (Farwell)
* **Primary** AOTR—∆ **has no duty**; ∏ assumed **reasonable risk**
  + Lamson—∏-employee assumed risk of obvious / negligent workplace hazard
    - POLICY—court assumes Ee received wage premium (Lochner-era faith in the marketplace)
    - Empirically, wage premiums exist (but reduced as regulation makes workplaces safer)
  + Murphy v. Steeplechase Amusement Co.—∏-rider of Coney Island ride assumed foreseeable risk of injury from falling
    - Burden of precautions very high b/c w/out the risk (i.e. if the ride were slower), the essence of the activity would be lost
  + Dalury—∏-skiier probably primarily assumed the risk of hitting a pole (and may have been contrib. negl. b/c skiing too fast); BUT summary judgment motion turned on enforceability of waiver
    - Court—waiver unenforceable b/c POLICY (race to the bottom; resorts can’t contract out of duty of care)
    - Tunkl test for waivers—necessary activity? Bargaining strength? Uses position to create adhesion contract?
* **Secondary** AOTR—∆ has duty; ∏ recognizes peril and takes risk regardless (proceeding despite the risk)
  + Meisterich—jury could find that ∏-ice skater, who saw that the ice was too slippery but skated anyway, assumed the risk of falling

**Comparative Negligence**

∏ negl. doesn’t bar recovery; reduces recovery in amount PROPORTIONAL to ∏ negl.

* **Pure Comp. Negl.**—∏ recovery reduced by % of ∏ responsibility (so if ∏ is 60% negligent, recovers 40% of total damages)
* **Modified Comp. Negl.**—∏ barred if ∏’s negl is > OR ≥ 50% (so if ∏ is 60% negligent, recovers NOTHING)
  + ≥50 regime—∏ recovers NOTHING if ∏ and ∆ are equally culpable (an anchoring point that is a not uncommon jury finding)
* Instituted judicially in CA in Li v. Yellow Cab
* Forerunner—maritime allocation of liability (e.g. Carroll Towing)
* POLICY
  + Fairness—overwhelmingly favors comp. negl. regime
  + Efficiency—comp. negl. is a broader deterrent, but DOESN’T encourage due care by potential victims (trade-off)
  + Administrability—MORE complicated for juries; HIGH cost of uncertainty (if judicially instituted shift) which FAVORS wealthy (who can afford protracted litigation)
* Effects on other doctrines
  + Last Clear Chance—no longer relevant (∆ who doesn’t take LCC is *more* negl.)
  + Primary AOTR—might still have traction
  + Secondary AOTR—can be folded into comp. negl. analysis
  + Negl. per se—∏ negligence per se more likely to enter comp. negl.
  + Intentional Tort—majority: no effect; some jdx: can consider ∏ negl. in assessing damages
  + SL—Only a factor in jdx that previously allowed ∏ negl. as a defense in SL actions; but what do you weigh ∏ negl. against if no ∆ negl.?

**Negligence—Causation**

**Cause in Fact**

* Generally, ∏’s burden to prove by a preponderance of the evidence (51%+ likelihood) that but-for untaken precaution, harm would not have occurred (Grimstad)
  + MUST know theory of liability before asking causation Q
* But-for causation; insufficient to prove legal causation
* EXCEPTION—WHEN undisputed negligence AND strong **likelihood that untaken precaution would have prevented the damage** (AND ∆ negl. 🡪 no witnesses?), burden shifts to ∆ to disprove causation (Haft v. Lone Palm Hotel; Cal. 1970)
* EXCEPTION—When negl. is wrongful because it **increases the** **same kind of risk** that injured ∏ (e.g. prescribing an overdose of a drug)🡪 rebuttable presumption of causation / burden-shifting (Zuchowicz)
  + Essentially—when correlation is high enough and type of risk / harm precludes easy proof (even though risk of *post hoc ergo propter hoc*)
  + Solves problem of recurring miss (∏s in aggregate failing to meet causation burden, creating problem of fairness AND deterrence)
  + POLICY
    - Fariness / CJ—should *THIS* ∆ compensate *THIS* ∏ (negligence in the air doesn’t mean ∆ owes every potential ∏ all the moneys)
    - Efficiency—uniform penalization of risk-creation not administrable; BUT causation is luck-dependent, and might undercompensate actual victims of small risks
* EXCEPTION—**“lost chance liability.”** When ∆ conduct decreased ∏’s chance of surviving preexisting peril, AND ∏’s chance of survival was ALWAYS below (50%) (so, logically, ∆ can’t “more likely than not” have *caused* ∏’s death), ∆ liable ONLY for reduced chance of survival attributable to ∆’s conduct. (Herskovits)
  + E.g. if responsible for 20% decrease in chance, liable for 20% of total wrongful death damages.
  + PROBLEM—could lead to overdeterrence (∆ fully liable for 51% liability, so ∆s systematically overtaxed for harms they didn’t cause)

**Multiple Liability**

* **Joint Liability**—(OLD rule) ∏ can sue either equally culpable ∆ for full amount (Union Stockyards)
  + Less liable ∆1 can sue more liable ∆2 for TOTAL indemnification of entire liability (e.g. Boston Gaslight)
  + Basis—concert of action
  + Doesn’t make sense in era of comp. negl., so discarded
* **Joint and Several Liability**—∏ can sue any ∆ for full amount; ∆s can then allocate liability among themselves
  + Allocates risk of insolvent / judgment-proof ∆ among the ∆s
* EXCEPTION—for **indivisible harms** (like two fires merging in Kingston), **RST 443A** prescribes **joint** liability
  + Kingston court: “morally certain” that 2nd unknown fire was set by a human agent to avoid undercompensating injured ∏ (if Fire2 Act of God, Fire1 ∆ off the hook)
  + BUT for aggregate harm (like trespass of cattle of two or more owners) can apportion liability proportionally
* **Alternative Liability**—When **either A or B, but not both, is causally responsible** for ∏’s harm, shift burden to ∆s to disprove causation (Summers v. Tice)
  + Summers—not concert of action b/c ∏ (fellow hunter) was engaged in same joint enterprise as ∆s, and would therefore share liability
  + ALL potential ∆s must be joined
  + POLICY—information asymmetry (like Ybarra); fairness / CJ (∏ shouldn’t go uncompensated when we KNOW that one ∆ is liable)
* **Market Share Liability**—IF (1) ALL named ∆s are potential tortfeasors; (2) harmful products were fungible (e.g. generic drug); (3) ∏ CAN’T identify which ∆ caused harm; **AND** (4) substantially all **relevant** tortfeasors are named ∆s, 🡺 Court can assign liability for ∏’s harm proportionally based on market-share at the time of injury
  + Note—liability even though much less than 50% chance that each individual ∆ *caused* the particular injury; fair in aggregate (anticipating flow of lawsuits)
  + Sindell v. Abbot Labs (Cal. 1980)—introduces doctrine b/c generic morning-sickness drug that caused birth defect w/ long latency (too late to prove which mfr produced the DES that ∏’s mother ingested)
  + Skipworth—no market-share liability for lead-paint producers b/c lead additives not fungible and b/c producers exited/entered market over 150 years, and no signature injury (HUGE causation issue)
  + MTBE—commingled product market-share liability (extra requirement of proof that ∆s product was present at site)
  + POLICY—Information asymmetry; deterrence (otherwise big pharma insulated from long-term liability); CJ
  + Market Share Liability in RTT: (1) generic nature of product; (2) long latency period; (3) ∏ inability to identify which ∆ caused injury AFTER discovery; (4) clear casual connection between ∆’s product and ∏’s harm; (5) absence of OTHER causes; (6) availability of sufficient market share data

**Proximate Cause**

POLICY limitation on remoteness / scope of liability.

* Possible breaks in the causal chain—supervening cause; unforeseeable type of harm (Polemis fine if direct, WM bad); unforeseeable extent of harm (fine); unforeseeable ∏ (Palsgraf); too remote in time / place; too much liability
* Ryan v. NY Central RR—fire ∆ set on own property that spread to ∏’s house NOT a proximate cause / too remote (even though foreseeable); BAD LAW
* In Re Polemis—doesn’t matter that extent of harm (Vosburg / eggshell rule) or TYPE of harm is unforeseeable; if negligence is in the air, that’s enough; minority view
* **Supervening Cause / Directness**
  + Human conduct NOT a supervening cause UNLESS negligent OR unrelated to / independent of initial events/ harm
    - ∏ acting in good faith to minimize risk of loss from ∆’s dangerous situation DOESN’T sever causal connection (direct causation)
  + **Continuing consequence**—∏ placed in peril by ∆ who tries and fails to escape peril ISN’T a supervening cause, so long as he’s acting under conditions created by ∆ (City of Lincoln)
  + Jones v. Boyce—∏ who jumped out of ∆’s out of control carriage NOT a supervening cause (or contrib. neg.) b/c reasonable response to **emergency**
* **Palsgraf—**∆ conductor negligently pushed passenger onto train, who dropped fireworks, which exploded and knocked down scales, which injured ∏ (Mrs. Palgraf)
  + Cardozo—NO proximate cause b/c ∆ didn’t foreseeably put ∏ at risk (**unforeseeable ∏ with respect to ∆’s conduct**)
    - Implicitly—∏ was a foreseeable ∏ w/ respect to passenger’s negligently carried fireworks; she should sue him instead!
  + Andrews (dissent)—∆’s conduct was a **“substantial factor” in bringing about the harm**; ∆ breached duty of care owed to society
    - What can cut off the causal chain? Supervening cause; temporal / spatial remoteness; common sense standard (jury can muddle through)
* **Foreseeability**
  + Wagon Mound 1—∆ boat negligently spilled oil, which ∏ wharf-owner didn’t believe was flammable. ∏ continued welding work; oil caught fire.
    - Court—Rejecting Polemis; **test should be reasonable foreseeability of the harm**. Fire not reasonably foreseeable, so finds for ∆
    - Wagon Mound 2—same accident; ∏ is ship owner whose vessel was burned in the fire. Court finds for ∏.
      * What’s different? Maybe underlying sense in WM 1 that ∏1 was liable (contrib. negl. or assumption of the risk)
* RTT—Liability limited to physical harms that result from the *risk that made the actor’s conduct tortious* (**Harm within the Risk)**
* **Eggshell-skull rule**
  + Brain Leech—∏ burned🡪unforeseeable cancer. ∆ liable even under Wagon Mound b/c eggshell skull rule survives.
    - Unanticipated scope; foreseeable kind of harm
  + Steinhauser—unforeseeable type of harm (mental illness) to foreseeable ∏ (car accident victim). ∏ can recover SO LONG AS ∆’s conduct was precipitating cause (even if ∏ had underlying predisposition)
  + Kinsman Transit Co.—∏ landowners suffered flooding b/c ∆1’s poorly tied boat rammed into / dammed ∆2’s should-have-been-raised drawbridge
    - Court—if there’s a high risk of a low injury, and a low risk of a high injury from the same kind of negligence (not tying the boat well), you take your victim as you find him (rejecting Wagon Mound; embracing Palsgraf or Polemis)
* The mere passage of time doesn’t cut off liability (long latency)
* **Liability for Negligent Infliction of Emotional Distress (NIED)**
  + At CL—no liability for fright or consequences from fright (Mitchell)
    - Emotional harms only compensable when there is also physical injury (**impact rule**)
    - POLICY—check on manufactured / fraudulent claims
  + **Zone of Danger** test—IF w/in zone of physical injury AND could have feared for own life, ∏ can sue for NIED (rejecting Mitchell impact test)
    - Eligible ∏ = foreseeable (to ∆) ∏; fits w/ Palsgraf
  + Dillon v. Legg—Balancing test: (1) physical proximity; (2) direct perception of accident; (3) relationship between ∏ and decedent; ALSO ∏ must prove *physical* injury from the shock (rejecting Zone of Danger)
    - ∏ mother saw her daughter get hit by a car; wasn’t in zone of danger (so w/out rejecing zone of danger, risk undercompensating injured ∏)
    - Still based on foreseeable ∏, but **not ANY foreseeable ∏** (excluded neighbors, classmates)
    - POLICY—Fairness trumps Administrability concerns

**Duty**

Element of EVERY Torts case (but generally very easy to show)

**Affirmative Duty to Rescue**

* There is NO affirmative duty to rescue
  + Even if you see a toddler on the train tracks!
  + POLICY—decentralized tort system; much greater monetary liability; relaxed burden of proof (relative to criminal law)
    - BUT—no expressive value to conviction (unlike at criminal law)
* Doctor autonomy / liberty of contract means doctor has NO affirmative duty to come render services (Hurley)
  + Freedom to contract based on freedom NOT to contract, based on tort law / duty
* Good Samaritan laws—immunize rescuers from tort liability

**Duties of Owners / Occupiers of Land**

* CL Framework
  + **Tresspassers = one who enters w/out license** (= permission, express or implied) or privilege (as in case of necessity)
    - **NO DUTY** EXCEPT to NOT engage in wanton / willful disregard (trap)
    - Addie—child who played on unfenced equipment that looked fun still a trespasser; no duty
      * There is negligence (dangerous activity, no precautions); there is but-for causation; but NO DUTY, so NO liability
      * Excelsior—similar facts to Addie, but Court found wanton recklessness b/c ∆s knew that children constantly played on machine
    - Buch v. Amory—∆ mill-owner didn’t keep ∏ minor trespasser from injuring himself on machinery; no liability
    - Gould—wanton / willful disregard STRETCHED to cover child (trespasser) who fell out of window w/ broken screen (EVEN THOUGH duty to repair screen was to keep flies out)
  + **Licensees** = **social guests**
    - **NO DUTY of reasonable care**; **MUST WARN of concealed danger (trap)**
    - POLICY—good enough for the owner, good enough for the guest
  + **Business Invitees** = enticed onto landfor **business/financial benefit of owner**
    - Entitled to **reasonable care**, like all strangers
* Rowland v. Christian (Cal. 1968)—overturns CL scheme; **reasonable care EVEN for trespassers** (though status may still be a factor, no longer dispositive)
  + POLICY—CL is overly complex and better suited to agrarian past than industrialized urban society
  + POLICY—Harsh to apply; reasonable care should be baseline
* Premises liability doesn’t apply: car accidents; products liability; med mal; workplace accidents (b/c worker’s comp); nuisance; 3rd party ∆ on someone’s land (BUT if landowner is also ∆, may implcate premises liability); landlord-tenant (governed by special relationship duties, though defects in the premises may involve premises liability)

**Special Relationships**

* EXCEPTIONS to affirmative duty to rescue
* Kline—landlord liable to tenant for untaken security precautions; **duty to protect against FORESEEABLE third-party attacks**
  + **Liability for nonfeasance** ONLYb/c special duty
    - Precedent–innkeeper duty
  + Negligence—landlord on notice of risk of violent attacks, and precautions (in place when ∏ first moved in) were reasonable / cost-justified
  + But-for Causation—w/in the risk of the untaken precautions; breach 🡪 inference of causation (like Haft)
  + Proximate Causation—foreseeable harm (higher-than-average risk of intrusion) and foreseeable ∏
  + CAN’T contract out of liability b/c policy (non-waiveable minimum)
  + EXPANSIONS of institutional liability for third-party violence(like Kline)
    - Ann M.—∆-mall NOT liable to woman attacked in her shop b/c NOT foreseeable
    - Colleges owe duty to students (Peterson)
    - Common carriers owe duty to passengers (Lopez)
    - Condo boards are de facto landlords and covered under Kline
    - POLICY—land-owner = best cost-avoider
    - PROBLEM—Kline doesn’t present useful stopping point (so duty to protect against 3rd-party attacks normalizing)
* Tarasoff—when a patient poses a **serious danger of violence,** therapist owes duty to exercise reasonable care to **protect the foreseeable victim** of his patient
  + POLICY—therapist has control over patient (like custodial relationship)
  + No slippery slope b/c relationship is confinable and well-established
  + In CA—“serious threat” to “identifiable victim” (therapist isn’t a public investigator)
* **Bottom Line**—judicially imposed duty to protect (imposition of liability for nonfeasance) when danger is **probable and predictable** (MORE than we typically expect ‘foreseeable’ to do)

**Strict Liability**

**Vicarious Liability**

* Employers is SL (through respondeat superior) when employee commits a tort within the scope of his employment (NOT on a frolic or detour)
  + **Motive test**—negligent act must be motivated by purposes of serving employer’s interest (Prevailing rule; discarded by 2d Cir.)
  + Bushey—accident characteristic of the enterprise (broader; goes to foreseeability / nexus between nature of enterprise and harm)
  + POLICY—
    - (Implicit—employers has deeper pockets; avoids undercompensation of injured ∆; employer best cost-spreader)
    - Efficiency—employer = best cost-AVOIDER
    - Fairness—actor should bear liability regardless of fault (and servant is an extension of the master)

**Abnormally Dangerous / Ultrahazardous Activity**

* Origins = Rylands (one who artificially brings something dangerous onto property does so at his peril/ becomes SL for resulting harm)
* RST—One engaged in abnormally dangerous activity SL from **harm w/in the risk** (so not SL if the box of dynamite your carrying falls and breaks someone’s toe)
  + Abnormally dangerous = high P; high L; no extant B; extent to which not commonly done; inappropriateness of activity to setting; value to the community
* RTT—One engaged in abnormally dangerous activity SL for physical harm resulting
  + Abnormally dangerous = foreseeable AND highly significant risk of physical harm EVEN when reasonable care is exercised; AND not one of common usage
* POLICY—nature of accident destroys evidence of negligence; reduces activity level or incentivizes relocating
* American Cyanimid—Posner does NOT apply SL to **shipper of ultrahazardous material** b/c accident was a product of negligence and could have been prevented by exercise of due care; rail shippers can’t relocate b/c trains run through cities

**Nuisance**

* (**1) SUSBSTANTIAL, non-trepsassory invasion of another’s interest in use and enjoyment of land**
  + Threshold test —at CL, this is the ONLY step
    - Automatic injunction test (like NY) privileges passive enjoyment over active enjoyment of property (SO enjoins socially beneficial conduct)
  + Competing incompatible land uses—necessary, but not sufficient
* **(2) Unintentional but Negligent**
* **(2) intentional AND Unreasonable**
  + Intentional = w/ knowledge / substantial certainty of effects
  + REMEDIES—
    - **IF Harm > Social Utility 🡪 Injunction**
      * Harm = extent of harm; social value of ∏’s use; suitability of ∏’s use to locality; burden to ∏ of avoiding harm
        + PROBLEM—doesn’t capture all harms (right to stay embedded in community; harms to non-named ∏s; idiosyncratic harms; latent harms)
      * Social Utility = social value of ∆’s use; sutiability of ∆’s use to locality; impracticality of ∆’s preventing harm
      * E.g. Copart
      * Del Webb—(**minority; purchased injunction**) ∏ granted injunction (b/c suburbs now better suited for housebuilding) but required to compensate ∆ for cost of shutting down
        + Ensign v. Walls—**coming to the nuisance NOT a categorical defense** (but may be persuasive)

POLICY—would let first user impose his choices on the generations; incentivizes speedy development regardless of net social utility; freezes land use patterns

* + - **IF Harm < Social Utility AND Harm “serious” AND burden of damages won’t shut down socially useful ∆ 🡪 Damages**
      * Boomer—grants permanent damages (reduction in value of ∏’s property); forces ∏ to sell ∆ a servitude/entitlement/right to commit a nuisance (Coasean arrangement)
      * PROBLEM—sanctions ongoing harm; doesn’t incentivize improvement
    - **IF Harm < Social Utility AND Harm “severe”🡪 crippling damages**
      * Severe = greater than ∏ should be required to bear
* POLICY—LESS absolute than right to freedom from physical invasion b/c much MORE common / LESS avoidable
* Right to farm law = legislative override of CL nuisance
* CL vs. Restatement
  + CL—strong presumption in favor of injunction b/c values traditional land uses
  + RST—(1) allocate entitlement to maximize utility; (2) who should fairly bear the cost resulting from this allocation? Utilitarianism trumps fairness.

**Products Liability**

**Manufacturing Defects**

* CL—no duty except to original purchaser, even if ∏ = foreseeable user (no privity, no liability) (Winterbottom)
  + Exceptions—imminently dangerous product (Thomas v. Winchester—mislabeled poison); known / latent defect (Kuellig)
* MacPherson (Cardozo 1916)—if product by its nature is reasonably certain to be dangerous if defective (like a car), negligent ∆-mfr liable W/OUT privity
  + POLICY—rise of mass manufacture, mass advertising (customers trust the brand, not the dealer)
  + Privity STILL required for contract action; *then* Baxter (1932)🡪implied warranty of fitness from mfr to consumer
* Escola (Traynor concurrence, 1944)—lays groundwork for move to SL (current negligence regime w/ *res ipsa* was needlessly circuitous)
  + POLICY—mfrs cheapest cost avoider (can take greater care); here, decreased activity level good (b/c we want fewer exploding bottles on the market)
  + POLICY—mfrs best cost-spreader (we all pay a little more for a safer marketplace)
    - BUT this is unfair? Let people buy Benny’s discount coke and trust warranty regime to shake things out? BUT ppl are terrible at assessing risk
  + POLICY—negligence / res ipsa regime costs too much to administer
  + POLICY—*fairer* to put burden on the loss-creator
* Henningsen—discaimer of warranty voided b/c not fairly obtained
* Greenman—SL adopted for products liability (makes warranty side irrelevant)
* RST—SL for anyone who sells defective product
  + (didn’t include bystanders; today, liability extend to them too)
  + MUST be engaged in the business of selling (not SL for one-off Coases transaction)
  + Defect = dangerous beyond what was contemplated by reasonable consumer (consumer-expectations)
  + MUST warn of dangerous ingredients if not obvious
  + Unavoidably unsafe products (like rabies vaccine)—no SL
  + Contrib. Negl. NOT a defense when ∏ fails to identify defect
  + Assumption of the risk REMAINS a defense
* Speller—SL version of *res ipsa* in RTT (if ∏ can reasonably eliminate alternative causes AND show that defect *could* cause the harm, inference/ burden-shifting)

**Design Defects**

* Micallef—overruled Campo; (1) duty runs to bystanders; (2) includes risks from reasonably foreseeable *mis*use (e.g. off-label use); (3) EVEN open/obvious hazards may be actionable
  + With REALLY obvious hazards, ∏’s misuse will be **unforeseeable** so no liability
* Can use EITHER test:
* **Consumer-expectations test**—product MORE dangerous than reasonable consumer would expect
  + More ∏-friendly
  + PROBLEM—sometimes consumers don’t have expectations; works better w/ coke bottles (shouldn’t explode!) than industrial equipment
  + PROBLEM—might ossify expectations
* **Risk-benefit /Utility /Reasonable Alternative Design**—∏ must show that a RAD outweighs the risk (L\*P) AND benefits of the existing design did not outweigh the foreseeable and preventable dangers (NOT SL)
  + Piper Aircraft—∏ bears burden of proof
  + Barker allows burden-shifting if ∏ can make prima facie case that some non-intrinsic feature of the design proximately caused the injury; then, Hand formula (POLICY—information asymmetry)
  + PROBLEM—leaving product design to a jury? Competence?
    - BUT—encourages ∆s to settle b/c this honky grandma be trippin
  + PROBLEM—if ladders get too spendy (b/c safety), poor man will start stacking chairs

**Duty to Warn**

* When it’s NOT cost-effective to redesign (e.g. w/ drugs)
* **NOT SL**—governed by a version of negligence: **foreseeable risk** that could have been reduced / avoided by a **reasonable warning**
* POLICY—prevents ∏ misues of product; deter use altogether (give ∏ chance to decide)
* ∏ MUST SHOW **causation** (e.g. with proper warning, ∏ wouldn’t have done X)
  + PROBLEM—hindsight bias (BUT we want corrective justice, so we ignore it)
* **Learned intermediary doctrine**—Pfizer doesn’t have to warn patient, doctor does
  + EXCEPTION—when Pharma markets direct-to-consumer (or w/ birth control?) courts apply duty to warn to the drug company (McDonald)
* Even when **danger is clear**, court *may* still find duty to warn (Liriano)
* PROBLEM—w/ too many warnings, label clutter and consumers ignore them (Hood)
* PROBLEM—increased warnings can deter socially beneficial activity (vaccines)
  + Solution—administrative regime a la worker’s comp?

**Preemption**

* Two regulatory options—ex ante federal regulation, or ex post state torts liability
  + PROBLEM—federal regs can be a one-way ratchet b/c compliance ≠ defense
  + PROBLEM—50 state standards, juries = thousands of regulators,
    - BUT—torts incentivize improvement; provide feedback to mfrs; no risk of agency capture
* Regulatory *violation* = negligence per se; regulatory *compliance* not a defense
* **Express Preemption** = explicit statement (easy case)
* **Implied Preemption**
  + **Field Preemption**—occupying entire field (no room for state regs) e.g. labor law
  + **Conflict Preemption**
    - **Impossiblity**—IMPOSSIBLE to comply w/ fed. and w/ state law
    - **Obstacle**—state law an obstacle to achieving a Congressional objective
  + In areas of traditional state power, there’s resistance to finding implied preemption
* Geier (typical)—express preemption of ex ante state regulation, but savings clause for ex post tort liability
  + COURT—Congress intended mix of airbags & seatbelts 🡪 objective was experimentation 🡪 state tort law, by imposing uniformity, is an *obstacle* to this objective (therefore preemption in spite of savings clause)
* Bates—not all torts verdicts are “requirements” for purposes of conflict
* Wyeth—FDA can’t up and decide that its regulations now preempt; they didn’t, so they don’t

**Damages**

**Compensatory Damages**

* **Pecuniary**—economic / quantifiable (lost wages, cost of care)
* **Non-pecuniary**—pain and suffering, loss of enjoyment of life, loss of consortium
* POLICY—compensating injured victims **(making them whole)** TO THE EXTENT that it serves the primary interest in deterrence/efficiency or corrective justice
* McDougald—some cognitive function necessary for damages for loss of enjoyment of life
  + PROBLEM—perverse incentive to cause more harm
  + Maybe future ∏s in aggregate are happier knowing their families will be compensated (and denying this causes present loss of enjoyment?)
* Duncan—courts have **enormous discretion** in deciding what’s “reasonable”
  + Reduced life expectancy reduces most damages, but NOT lost wages
* Damage Caps?
  + *Guarantee* a mismatch between severity of harm and compensation (as harm increases, adequacy of compensation decreases)
  + Makes some cases unattractive to ∏’s bar
  + SO—decreases total damages; decreases # of cases
* Role of Attorney Compensation in Shaping Torts
  + American rule (each side responsible for own fees) 🡪 contingency 🡪 more court access BUT undercompensation of ∏s (unless juries correct through non-pecuniary damages)
  + Alligns attorney and ∏ incentives

**Punitive Damages**

* Limited to **more than negligent** conduct
  + IMPORTANT—insurance won’t pay if harm was intentional (incentive NOT to seek punitive damages from non-corporate ∆s)
* POLICY—even though optimal deterrence achieved by ∆’s full internalization of costs, not all costs are compensable or discoverable in practice
  + W/ willful harm, NO concern w/ over-deterrence / reduction of activity level
* POLICY—risk of unpredictable very large judgment can balance incentives when ∆ has ungodly sums of money
* POLICY—expressive value
* State CAN’T (poltically) control amount of punitive damage, so SCOTUS does it
* State Farm—Substantive Due Process limitation on extreme punitive damages
  + Gore Guideposts: (1) degree of reprehensibility; (2) disparity between compensatory and punitive (MUST be single-digit ratio); (3) disparity between this case and other cases
* Grimshaw—is CBA required, or reprehensible?

**Intentional Torts**

Vosburg: eggshell ∏

Garratt: pulling chair out (subst. cer.)

White: mere pleasantry (piano teach)

**Necessity**

Ploof: ∆ can cross-claim for trespass

Vincent: ∆ strictly liable for damages caused in using ∏’s property to save his own

**SL vs. Negligence**

Brown/Kendall: fighting dogs (no liability for accidents)

Rylands: SL bring onto property

Losee: No *Rylands* in US(steam boiler)

Powell: *Rylands* for tractor spark (UK)

Stone/Bolton: Cricket (don’t consider B)

**Reasonable Person**

Roberts: Reasonableness standard for child

Daniel v. Evans: Child driver-obj. standard

Breunig: Sudden onset mental disability

Fletcher v. City: Safe street for blind ∏

Carroll Towing: Hand formula

Cooley: Power lines / loud noise

Andrews: Airline / overhead nets

**Custom**

Titus: narrow gauge R.R.

Vincent: hole in mining platform

TJ Hooper: boat radios; relevant, not dispositive

**Med Mal**

Lama/Borras: reas. physician standard

Canterbury: Informed consent (∏ didn’t ask, but ∆ didn’t tell risk of back surgery)

Ybarra: RIL for unconscious victim (smoking out evidence)

**Negligence *per se***

Osborne/McMasters: poison

Martin/Herzog: buggy lights

Gorris: sheep

Tedla: walking on wrong side of street

Ross/Hartman: unlocked car w/ keys

***Res Ipsa Loquitur***

Byrne: Flour barrel (rebuttable presumption)

Colmenares: Escalator hand-rail (RIL)

Holzhauer: Escalator (no RIL)

Wakelin: Hit by a train (no RIL)

Larson: Falling chair (no RIL)

Connoly: Falling chair w/ notice (RIL)

Pfaffenbach: Car crosses median🡪 RIL

Walston: ship disappeared (no RIL b/c KBH)

**Contributory Negligence**

Butterfield: ∏ speeding (paradigmatic)

Beems: Juries bent when RR ∆s

Gyerman: ∆ bears burden of proof

LeRoy Fibre: stacks of flax

Derheim: seatbelt defense

Fuller: LCC (crossing train tracks)

**Assumption of the Risk**

Lamson: Falling hatchets

Murphy/Steeplechase: Coney Island

Tunkl: Waiver test

**Causation/Alternate Liability**

Grimstad: No life preserver?

Lone Palm: No lifeguards

Zuchowicz: Drug overdose

Herskovits: Lost chance (cancer)

Summers/Tice: Two hunters

Polemis: Negl. in the air

Palsgraf: Unforeseeable ∏

WM I: Unforeseeable type of harm

Kinsman Transit: Eggshell skull

**Duty**

Hurley: Doc has no duty to rescue

Rowland: Eliminates CL premises scheme

Kline: 3rd party assault in apartment lobby

Tarasoff: Psychotherapist

Bushey: *Respondeat Superior* (boat)

**Nuisance**

Del Webb: Purchased injunction (feedlot)

Boomer: Permanent damages (H<SU)

Ensign: No ‘coming to nuisance’

**Products Liability**

MacPherson: Cdozo ends privity bar

Escola: Traynor / coke bottles

Greenman: SL for prods. Liability

Speller: RIL kinda (freezer fire)

Piper Aircraft: No burden-shifting

Barker: Design defect burden-shifting

MacDonald: birth control (learned int.)

Hood: Label clutter/kind of harm?

Liriano: New immigrant vs. meat grinder