

Barbri Torts Outline

I Intentional Torts

A) Basic Elements

- 1) Act: must be volitional
- 2) Intent: may be specific (D intended to cause specific consequences) or general (D "KSC"). Transferred intent. Everyone is capable of it (including kids, mentally incompetent, drunk Incapacity not a defense)
 - (a) Scenarios (3): 1) when D intends to commit a tort against A but commit a different tort against B 2) when D commits the same tort D intended but against a different person 3) when D commits a different tort against a different person.
 - (b) Applicability: Battery, Assault, False Imprisonment, Trespass (Land/chattels)
- 3) Causation: D's conduct must have been a substantial factor in bringing about the harm

B) Battery Elements

- 1) Harmful or offensive contact:
 - (a) Defined by reasonable person. Offensive contact (if it would be unpermitted by a person of normal sensitivity. No taking account extreme sensitivity). E.g., tapping on shoulder v guy stroking hair coming onto girl
 - (b) May be direct (striking P) or indirect (setting a trap)
 - (i) NO need for it damages to happen instantaneously. D can set it in motion. E.g., poison P's sandwich. P becomes ill 3 hrs later.
 - (c) Not offensive if consented to. Consent implied for ordinary contacts of everyday life (e.g., bumping into in crowds)
- 2) To P's person: includes anything connected to the P (e.g., if P driving car, the windshield). E.g., Woman's horse slapped while woman riding.
- 3) D intended (specific/general)
- 4) Causation

C) Assault

- 1) A volitional act by D + creating reasonable apprehension in the P
 - (a) Definition apprehension: knowledge (not fear). E.g., Scrawny David threatens big Goliath. Wrong answer – Goliath isn't placed in reasonable apprehension.
 - (b) Doctrine of apparent ability: D must merely have apparent ability to commit battery (If D looks like he can + P thinks he can). E.g., "unloaded gun" P thinks is loaded.
- 2) Of immediate harmful or offensive contact to P's person (anything connected w/)
 - (a) Words alone not sufficient to create immediacy unless coupled w/conduct (conduct may be slight: shaking fist). But may negate reasonableness of P's apprehension ("If I wasn't your friend, I'd kill u")
 - (b) Words that promise action in future insufficient (E.g., Wait till 3 PM. I'll beat you)
- 3) Intent (general/specific) &
- 4) Causation

D) False Imprisonment

- 1) An act OR omission by D that causes a person of reasonable sensitivity to be confined or restrained P
 - (a) Sufficient acts to restrain are: physical barriers, physical force/threats of, invalid use of authority & failure to release. Insufficient acts include moral pressure & future threats. E.g., Door wide open but D says, "If you leave I'll kill your son I kidnapped" (reasonable) v "If you leave, I'll blow up Jupiter."

- (b) Omissions may be acts of restraint if D has a pre-existing duty to help P move about (E.g., flight crew not giving wheelchair)
- (c) Duration of restraint/confinement irrelevant
- (d) Duration of restraint/confinement irrelevant
- 2) To a bounded area: where freedom of movement limited in all directions + No reasonable means of escape + known to P/reasonably discovered
 - (a) No requirement P be constrained by physical boundary: May be constrained by threat
 - (b) Unreasonable to make P climb through rat hole/only way of escape is 'secret passageway'
- 3) P must know of confinement OR be harmed by it (E.g., Roommate locks other roomie's door but roomie sleeping. No c/a. vs Roommate locks roomie's door & roomie can't get out to take pill at, dies c/a)
- 4) Intent
- 5) Causation

E) IIED

- 1) Extreme and outrageous conduct by D (transcends all bounds of decency)
 - (a) Mere insults don't qualify as outrageous - but "outrageous to exploit P's known sensitivities" – esp in "fragile" class of ppl – elderly, pregnant, kids & D knows or D common carrier/inn keeper). E.g., insults law student v knowingly targets kid!
 - (b) Conduct not normally extreme & outrageous may become so if 1) continuous (VISA – 3 AM) 2) D knowingly directs it toward a certain type of P (kids, elderly, pregnant, "sensitivities") & 3) if committed by certain type of D (common carriers/inn keepers liable for even gross insults)
 - (c) Don't take into account extreme sensitivities (except if D knows: adds to outrageousness). E.g., D puts fake snake on co-worker's chair. Coworker has huge phobia & has heart attack. No c/a unless D knew about co-worker's phobia.
- 2) D committed intentionally or recklessly (substantial disregard as to the effect of conduct)
- 3) Causation
 - (a) Bystander recovery if shows: D intentionally caused physical harm to 3rd person & P suffered emotional distress as a result. 2 ways to recover: 1) either show p/f IIED or show 1) were present when injury occurred 2) were a close relative (not fiancée) & 3) D knew P was present & close relative
 - (b) **Tip:** IIED is "fallback" tort. Choose another answer if can.
- 4) Damages: Severe emotional distress, not annoyance. no req for observable physical symptoms.

F) Trespass to Land

- 1) Potential Ps: anyone in actual/constructive possession (including lessees)
- 2) Intent to physically invade P's property:
 - (a) no requirement D know land belongs to another
- 3) Physical invasion of P's real property:
 - (a) Physical invasion may be by a person/object (kid "skipping stones", even if motivated by charitable impulses – watering shrubs & decide to water neighbor's. Water falling is trespass. If intangible: nuisance claim (e.g., sight, sound & smell).
 - (b) Real property includes reasonable airspace & subterranean space (E.g., Delta ok v 5 ft above jet)
- 4) Causation
- 5) Intent:

G) Trespass to Chattel

- 1) An act by D that interferes w/P's right of possession in a chattel
 - (a) Either intermeddling or dispossessing – keying someone's car
- 2) Intent to do about the act that caused the interference
- 3) Causation
- 4) Damages
 - (a) Recovery of actual damages from harm to chattel or loss of use (if dispossession, damages based on rental value)

H) Conversion – More Serious Trespass to Chattel

- 1) Same potential Ps as w/trespass to chattel
- 2) An act by D that so seriously interferes w/P's right of possession as to warrant the D to pay the chattel's full value – totaling someone's car. "You break, steal, substantially change – you pay."
 - (a) E.g., wrongful acquisition (theft), wrongful transfer, wrongful detention, substantially changing, severely damaging or misusing
 - (b) The longer the detention & the more extensive the use the more likely it's conversion & not mere trespass to chattel
 - (c) Only tangible personal property & intangibles reduced to physical form (promissory notes) subject to conversion
- 3) Intent to do about the act that caused the interference
- 4) Causation
- 5) Damages: fair market value of chattel at time of conversion (e.g., forced sale of chattel) OR recover chattel (replevin)

I) Defenses to Intentional Torts

- 1) P's Valid Consent:
 - (a) Valid consent: P can't consent to a criminal act + P must have capacity to consent (not drunk, very young kid, or dev disabled). **Tip**: Everyone capable of intent but not consent to tort)
 - (i) Kids & consent: may consent to age appropriate activities but not activities that would normally require adult j'ment (e.g., sex)
 - (ii) How consent may be given:
 - (1) Express consent: Spoken/written words that grant D permission to behave in what would otherwise be tortious manner. General rule D not liable. Exceptions (3): 1) Consent is result of P's mistake + D knew & took advantage of it 2) Consent was induced by fraud + goes to an ESSENTIAL, NON-COLLATERAL matter 3) Consent was obtained by duress, unless duress was only future threats of harm/future economic deprivation.
 - a. E.g., One night stand. One partner gives the other STD. C/a. No consent to STD bc w/holding material information is fraud & nullifies consent.
 - (2) Implied consent may be a defense:
 - a. Apparent consent: where a reasonable person would infer P's consent from custom, usage or D's objective conduct (E.g., consent to what's customary in sports even if violates game's rules – hockey; ring bell not trespass bc implied consent by maintaining front walk w/o gate; date lights candles etc – reasonable to infer consent to kiss)
 - b. Consent implied by law: when action necessary to save a person's life/some important property interest

- (b) D liable for exceeding scope of consent (E.g., invite friend to living room. Friend pokes around in attic. E.g., P consents to heart surgery & Doctor also includes nose job. Battery. Exceeds scope)
- 2) Self-Defense Of Others & property
- (a) Only applies to torts being committed/about to be committed. Not to torts already committed (E.g., grab someone's hand to stop them before they slap you v next day, punching them)
- (b) General rule for Defense of Self & Defense of Others:
- (i) A person may use such force as is reasonably necessary to protect herself or another against injury if she reasonably believes that she or another is being or is about to be attacked.
 - (ii) No duty to retreat for non-deadly force. Duty to retreat for deadly force if can be done safely unless actor in home
 - (iii) Reasonable mistake as to existence of danger permitted
- (c) Defense of Property
- (i) General Rule: Reasonable force may be used to defend lawfully possessed property so long as 1) a timely request to desist/leave is first made unless it would be futile/dangerous & 2) deadly force is not permitted in the absence of serious threat of bodily harm (e.g., also indirectly, traps)
 - (ii) Reasonable mistake: permitted as to whether intrusion has occurred/request to desist required BUT NOT as to whether entrant has a privilege. Privilege supersedes property rights.
 - (iii) Recapturing chattels
 - (1) **NO mistake as to D's right to recapture OR to enter another's land permitted** (Exception: shop-keeper's privilege: may detain for a reasonable period of time individuals she reasonably believes are in possession of shoplifted goods). Mistake permitted
 - (2) Force in hot pursuit permitted if property wrongfully taken & may enter on the land of another at a reasonable time/manner after first making demand. No force against 3rd persons to recapture
 - (3) If another's possession began lawfully, only peaceful means available to recover chattel.
 - (4) If chattel on land of innocent party + landowner given notice: chattel owner may enter on innocent party's land but liable for actual damage entry causes
 - (5) If chattel on another's land through chattel owners fault: no privilege to enter on the land.
- 3) Privilege of Arrest: permits entry onto another's land to effect the arrest
- (a) Felony Arrest by a Police Officer:
- (i) Arrest is privileged if: 1) the officer reasonably believes that a felony has been committed + the person he arrested has committed it. (reasonable mistake is a defense)
 - (ii) Amount of force allowed: The degree of force reasonably necessary to make the arrest; deadly force only when suspect poses a threat of serious harm
- (b) Felony Arrest by Private Citizen
- (i) Arrest is privileged if: 1) The felony IN FACT must have been committed & 2) the citizen must reasonably believe the person he arrests has committed it. No defense of mistake re whether the felony was committed but defense as to identity of the arrested
 - (ii) Amount of force: Same as w/with felony arrest by police officer!
- (c) Misdemeanor Arrests: 1) must be for a breach of peace & 2) action must take place in front of D.
Amount of force: Degree of force reasonably necessary to make arrest but NEVER deadly force
- 4) Discipline of child using reasonable force by parent/teacher
- 5) Necessity: Defense ONLY to property torts: trespass to land, chattels, or conversion.

- (a) Rule: A person may interfere w/another's real/personal property when it's reasonably & apparently necessary to avoid harm substantially more serious than the interference would cause.
- (b) 2 types of necessity: private & public
 - (i) Private necessity: D invades P's property in an emergency not of his own making to protect interests of his own. D has "right of sanctuary" – right to remain on P's land so long as ongoing emergency. No liability for nominal or punitive damages but for actual damages. (E.g., D hikes in woods & sees bull. Trespasses on Pete's land. Pete kicks him off. Dies. Pete liable)
 - (ii) Public necessity: D invades P's property in an emergency not of his own making to protect the community as a whole/significant group of ppl. Absolute defense. No req to pay for damages (E.g., Dog about to attack kids. You kill it. Conversion of personal prop. No liability. Public necessity)

II Harm to Economic & Dignitary Interests

A) Defamation (Reputation is economic asset)

1) Question 1: Does the statement involve a matter of public concern/statement about a public figure?

(a) If Yes → P's p/f case:

(i) D must make a Defamatory statement: allegation of fact that reflects negatively on P's character trait & tending to adversely affect one's reputation. (E.g., common traits – honesty: embezzled, cheated on taxes; loyalty – falsified reports; courage – physically afraid; sex morality – promiscuous); competence (education, job etc)

(1) If statement of opinion, actionable only if based on specific facts + express allegation Name calling not enough

(2) If not defamatory on its face: P may plead additional facts to establish defamatory meaning by innuendo or inducement

(3) P must be a living person. Corporations, partnerships etc may be defamed

(ii) Of or concerning the P: a reasonable person would understand the defamatory language referred to P

(1) If statement doesn't refer to P on its face, P may plead "colloquium" – extrinsic E.

(2) If defamatory statement refers to all members + small group, ea member may establish the "of or concerning" element by alleging he is a group member

(3) May not do this if P is a member of a large group

(4) If statement refers to some members of small group: P must show a reasonable person would view statement as referring to P

(iii) Publication by D to a third person: D intentionally OR negligently communicated it to a 3rd person (E.g., D intends to send a letter to P accusing him of embezzling but mistakenly misaddresses it. C/A)

(1) Each repetition is a separate publication. EXCEPTION: magazines, newspapers etc – all copies treated as a "single publication"

(2) **Tip**: no liability if defamatory statement said to D directly (E.g., Proff tells student he has syphilis even though factual allegation reflecting negatively on sex morality not defamation)

(iv) Damage to P's reputation

(1) If libel: written/printed publication/in permanent form: general damages presumed & P need not prove special damages (i.e., pecuniary loss)

- (2) If slander (spoken): P must prove special damage (emotional distress not enough – NEED economic harm), unless statement is slander per se – then damages presumed, like libel (4):
 - a. adversely reflects on one's conduct in business/profession (E.g., Proff no law school & forged transcripts. Adversely reflects on competence & honesty. Damages presumed)
 - b. woman is unchaste (sexism)
 - c. one has a loathsome disease – 2: venereal disease or leprosy
 - d. one is guilty of a crime involving moral turpitude

(3) Distinguishing bw slander & libel:

- a. If original defamation libel → any repetition, even oral → libel.
- b. Written repetition of slander is libel.
- c. Radio & TV programs treated as libels if sufficiently 1) permanent 2) premeditated & 3) broadly enough disseminated

(v) Falsity of Defamatory language

- (1) P must show statement is false (if true: P may have cause for IIED or invasion of privacy)

(vi) Fault on the part of D:

- (1) If Actual malice (knowledge or reckless disregard as to truth or falsity) damages for libel or slander per se are presumed.

(b) If no → P need not prove malice

- (i) If P is a private person w/matter of public concern (what's not public concern: if someone embezzled from company, cheated on taxes, has venereal disease. But matters of public concern: whether mayor takes kickbacks, popular athletes use steroids, army lies about casualties)

- (1) P must prove D was negligent as to statement's truth or falsity

- (2) Damages: only for proved actual injury BUT if P proves actual malice, presumed & punitive damages available

- (ii) If P is a private person w/matter of private concern:

- (1) No requirement P prove fault (negligence or otherwise)

- (2) Presumed damages for libel or slander per se under CL + punitive if shows malice

(c) Defenses to Defamation:

- (i) Consent: Complete defense (same rules as w/intl torts)

- (ii) Truth of D's defamatory language: heavily tested

- (iii) Privileges (Most heavily tested)

- (1) Absolute Privilege: based on the speaker's status, Can never be lost: Remarks made during judicial proceedings, legislators in the House, executives in course of duties, between spouses, compelled broadcasts, Ls/judges in proceeding, parties in legal proceeding

- (2) Qualified Privilege may be lost: Not based on speaker's status. Arises where there is public interest in promoting candor. E.g., letters of reference, credit reporting, statements for police investigations.

- a. Grounds subject to loss: 1) if statement not w/in scope of privilege (E.g., reference letter but Proff says student has leprosy) or 2) speaker acted w/malice (intentionally, reckless w/falsity – need reasonable belief in truth)

- (iv) Mitigating Factors: not defenses but relevant to damages (retraction, malice etc)

B) Invasion of Right to Privacy

- 1) Limitations on the right of privacy: Does not survive P's death/extend to family + NA corp
- 2) Appropriation of P's Picture/Name: D's unauthorized use of P's name/picture for commercial advantage. NO need for D to make a profit. EXCEPTION: newsworthiness (Sports Illust puts Tiger Woods on cover: ok)
- 3) Intrusion upon P's private affairs/seclusion: D's prying/intruding on one's private affairs/seclusion + is objectionable to a reasonable person + P has a reasonable expectation of privacy. E.g., photos taken in public places don't qualify. Does not require trespass to land (E.g., telescope)
- 4) Publication of Facts Placing P in a False Light: The widespread dissemination (publicity) of a material falsehood about the P + that is objectionable to a reasonable person + even if D believed it to be true
 - (a) If matter is of public interest: P must prove D acted w/malice
 - (b) May overlap w/defamation (consider 2 torts together) but while defamation always negative + economic damages, false light may be positive traits + dignitary damages (ppl shunned me)
- 5) Public Disclosure of Private Facts about P: Public disclosure of private information about P + objectionable to a reasonable person + D's acts caused the invasion
 - (a) even if the statement is true, Truth no defense
 - (b) Possible First Amendment bar if issue of legitimate public interest/newsworthy: E.g., not a tort to publish Obama's medical charts but tort to do same to private citizens. Broadly interpret
 - (c) Matters in public records not "private"
 - (i) E.g., "Dual life patterns." Heavily tested. P does something in 1 sphere he doesn't want other sphere to know about. P "out" w/family & friends but not at work. Saturday he goes to gay rally & co-worker sees him & publicly discloses he's gay. But no C/A bc not a private fact; conservative mayor found patronizing nudist camp. Not private fact.
- 6) Defenses: Consent (similar to defamation) BUT NOT TRUTH.

C) Misrepresentation

- 1) Intentional Misrepresentation/Deceit/Fraud: Elements
 - (a) D's Misrepresentation + of a material fact
 - (i) No duty to disclose & opinion not actionable unless rendered by someone w/superior skill, selling property & likely P won't uncover material information, or fiduciary relationship
 - (ii) Silence not enough to constitute misrepresentation (except if D speaks & utterance deceives P – must take affirmative steps). Active concealment actionable
 - (b) Made w/scienter: D knew/believed the statement was false/groundless when made it
 - (c) D intended to induce P to act/refrain from acting in reliance upon D's misrepresentation
 - (d) Causation: P actually relied on D's misrepresentation
 - (e) P's reliance was justifiable:
 - (i) Reliance not justified as to opinion/future events, but justified as to fact, statements of law (if superior knowledge, law enforcement).
 - (f) Damages: P must suffer actual pecuniary loss
 - (g) NO Defenses
- 2) Negligent Misrepresentation
 - (a) D's misrepresents + a material fact
 - (b) IN a business/professional capacity
 - (c) Breaching duty towards the particular P - was reliance by the particular P contemplated (e.g, preparing a stock report for client, don't expect it to be used by client's brother)

- (d) Causation (P actually relied)
- (e) P's reliance was Justified
- (f) Damages: limited to misreps made in commercial/business setting

D) Wrongful Institution of Legal Proceedings

- 1) Malicious Prosecution - elements
 - (a) Institution of criminal proceedings against P
 - (b) termination in P's favor
 - (c) absence of probable cause
 - (d) improper purpose
 - (e) Damages (prosecutor immune from liability)
- 2) Wrongful Civil Proceedings (same elements for malicious prosecution)
- 3) Abuse of Process: 1) wrongful use of process for ulterior motive & 2) definite act or threat of process against P to accomplish ulterior motive

E) **Interference with Business Relations - elements**

- 1) Valid contractual relationship/business expectancy bw P & a 3rd party
- 2) D has knowledge of the relationship/business expectancy
- 3) D's intentional interference induces a breach/termination of relationship/expectancy
- 4) Damages
- 5) Privileges: where D is properly attempting to obtain business/protect interests (esp if P has no existing K)

III Negligence

A) General P/F Case for Negligence

- 1) D owes a duty to + conform to a specific standard of conduct so as to not pose an unreasonable risk of harm to **foreseeable Ps**
- 2) D breached that duty
- 3) D's breach is the actual & proximate cause of P's injury
- 4) P suffered damages
- 5) Defenses?

B) **Element 1: To Whom is a Duty Owed** (Specific Standards of Care & Reasonably Foreseeable Ps)

- 1) Examples of Reasonably foreseeable Ps: 1) rescuers where D negligent placed herself/3rd person in peril. No duty of care owed to unforeseeable Ps who are outside the zone of danger (always lose: Ms. Palsgraf Opposite side of platform).
- 2) Duty of care owed to:
 - (a) A viable fetus for failure to diagnose/perform surgery etc. But not for wrongful life
 - (i) Ps may recover damages for wrongful birth/pregnancy + additional medical expenses + pain & suffering but not ordinary child rearing expenses
 - (b) Intended beneficiaries of economic transactions: 3rd party for whose economic/legal benefit *business transaction was made (e.g., beneficiary to a will)*
- 3) **Standards of Care:**
 - (a) General Rule/plain vanilla: D's conduct must be that of a reasonable person + account for same physical characteristics + under similar circumstances (don't account for drunk, mentally ill, dev disabled – objective stnd)

- (b) If D has superior knowledge/skill: must act as a RPP w/that skill or knowledge (E.g., race car driver)
 - (c) If D has particularized knowledge even if D is stupid must act as a RPP w/that additional knowledge (E.g., D is stupid but knows an intersection is particularly dangerous)
 - (d) Professionals: must possess the knowledge & skill of a member of the average member of that profession/occupation in good standing + in similar communities. (Medical specialists held to a national stnds. Doctors have duty to disclose tx risks). Custom of proff sets stnd of care.
 - (i) Specialists: owe a duty of care to avrg to that of avrg member in similar community of like specialists
 - (e) Children: Subjective stnd. Held to a stnd of a child (age 4-18) of like age, education, intelligence & experience under similar circumstances. (child under 4 lacks capacity to be negligent & owe no duty of care). Kids engaged in adult activities may have to conform to adult stnd. Subjective stnd. Pro D bias (if kid has no experience, education or intelligence – really low. Billy tricycle).
 - (f) Common Carriers/Innkeepers: very high degree of care. P must be a passenger/guest.
 - (g) Automobile Driver to Guest: duty of ordinary care
 - (h) Emergency situations: D must act as a reasonable person under the same emergency conditions (but if D created emergency, emergency won't be considered)
 - (i) Owners/Occupiers of Land: Stnd of Care Depends on P's status as trespasser, licensee or invitee. P called "entrant, victim or P." D is possessor but not always owner (e.g., lessee). Stps: 1) Consider how entrant got hurt & 2) Status of entrant
 - (i) If P is an UNDISCOVERED Trespasser: No duty of care owed bc e.g., of unforeseeable victim for dangerous conditions (static) or activities
 - (ii) If Trespasser is Known/Reasonably Should have been anticipated: E.g., ppl have routinely used a portion of your land as a shortcut.
 - (1) Activities: RPP under similar circumstances. E.g., driving tractor. See hiker. "Discovered." RPP not run over him
 - (2) Dangerous Conditions: Owe a duty to protect known/anticipated trespasser from + artificial + highly dangerous (death, serious bodily harm, not slightly – twisted ankle) + concealed conditions + known to possessor but not to trespasser. "duty to protect from man-made death traps"
 - a. No duty owed for natural conditions (e.g., rock slides, tree limbs, avalanches, rapids). Condition must not be apparent. D has no duty to inspect property
 - b. E.g., D owns ranch. Wooden bridge. Looks safe. But D knows it's not – can fall on canyon below. D sees a hiker. Known trespasser. Duty to protect.
 - (3) If P is a child: Attractive Nuisance Doctrine. "KIDE"
 - a. General Rule: Occupier/Land owner has a duty to exercise reasonable care to avoid a reasonably foreseeable risk of harm to kids caused by artificial conditions on the property if (4):
 - i. There is a dangerous condition on the land that the owner is/should be aware of
 - ii. The owner knows/should know kids frequent he vicinity of the condition ("kid magnet")
 - iii. The condition is likely to cause injury (bc of kids' inability to appreciate risk. 2 yr v 14 yr w/pool next door; doesn't matter if kid read the warning)
 - iv. The expense of remedying situation is slight compared w/magnitude of risk
- III **Tip**: child does not have to be attracted onto the land

- (iii) Duty owed to licensee (e.g., social guest): one who is permitted to come onto property but who does not confer a commercial benefit
 - (1) Artificial/Natural Conditions: Possessor must warn/make safe dangerous condition (serious bodily harm/death) that's concealed (not readily apparent) + one that possessor has prior knowledge. No duty to repair/inspect. "all known traps on the land" (not just man-made). E.g., buy a rug that slips. Duty to warn guest.
 - (2) Active Operations: duty of RPP under similar circumstances (pour coffee example)
- (iv) Duty owed to invitee:
 - (1) Definition: Either come on to the land for purpose of conferring a commercial benefit on the land possessor or members of public for a purpose for which land is held open to public (E.g., go to work, to hospital to visit friend, airport to pick someone up)
 - (2) Artificial/Natural Conditions: Possessor must protect invitee from concealed conditions + the possessor knows about/would have discovered through reasonable inspection. Duty to warn about or make safe. Protect from all "reasonably knowable traps on the land"
 - a. No duty to warn/make safe open & obvious conditions (E.g., chair in theater. Yellow tape)
 - b. Reasonable inspection: sufficient thoroughness & frequency to comport w/reasonable std
 - (3) Active operations: duty of RPP under similar circumstances
- (v) Other situations:
 - (1) Firefighters & police officers: treated as licensees w/implied permission to enter. Never recover for injuries related to inherent risks of job. E.g., don't recover for D negligently leaving
 - (2) Landowner who permits general public to use land for recreational purposes w/o charging: not liable unless willfully & maliciously
 - (3) Duties of Lessor & Lessee of Realty: Lessee's general duty to maintain premises. Lessor must warn of existing defects he knows/reasonably should know of + lessee not likely to discover on reasonable inspection.
 - a. If lessor covenants to repair → lessor liable for unreasonably dangerous conditions
 - b. If lessor volunteers to repair & negligently repairs → lessor liable
 - i. **Tip:** If guest of tenant is injured, tenant & landlord may be liable
 - (4) Duties of vendor of realty: Must disclose to vendee concealed, unreasonably dangerous conditions vendor knows/reasonably should know vendee not likely to discover on reasonable inspection
- (j) **Statutory Standard of Care:** May replace general CL duty of care if: i) statute provides for criminal penalty ii) statute clearly defines standard of conduct iii) P w/in protected class & iv) statute designed to prevent the type of harm suffered by P. If P succeeds → statutory violation is negligence per se (duty & breach proved)
 - (i) 2 exceptions where violation of statute may be excused & not negligence per se:
 - (1) Violation may be excused if compliance would cause more danger than would violation OR where compliance beyond D's control (E.g., D driving on curvy road. Sign says 'no passing.' Passes to avoid hitting child & P gets hit. P member of protected class & accident meant to be protected but bc compliance more dangerous, no negligence per se)
 - (2) If compliance would be impossible under the circumstances (E.g., D has heart attack & can't stop at red light)
 - (ii) P's Assumption of risk not a defense if P is member of protected class contemplated by statute

- (iii) E.g., Woman comes home & smokes dope. Had left gas leaking from stove. Statute prohibits possession of dope. Explosion. Burns down upstairs apt. Not neg per se bc P not in protected class & statute not designed to prevent the type of harm suffered by P.
- (k) General Rule re Affirmative Duties: one does not have a legal duty to act
 - (i) BUT - if D voluntarily undertakes to act, D must do so as RPP under similar circumstances.
 - (ii) Generally no duty to rescue someone in peril ("Olympic swimmer can let baby drown") EXCEPT:
 - (1) If D has undertook to rescue someone, D must do so as RPP under similar circumstances
 - a. Exception: States w/Good Samaritan Statutes (vary w/states) may shield rescuers
 - (2) D has a duty to assist someone he has negligently/innocently placed in peril.
 - (3) Special relationship bw parties: land possessor to invitee, contractual, family (even if not limited by blood – mother-in-law), Parent-child, common-carriers, innkeepers, shop-keepers (also have duty to prevent injury to guests by 3rd parties)
 - (4) Duty to control 3rd persons: General rule – no duty. But if D has actual ability + authority to control a persons' actions & knows/should know person is likely to commit acts requiring exercise of control, D has a duty
 - (5) Duty to rescue reasonable. Never obligated to put own life in jeopardy
 - (l) Negligent Infliction of Emotional Distress: P's p/f case
 - (i) D had a duty to act as a RPP/not cause emotional distress + P was a RF P in zone of physical danger (E.g., "Near miss," crossing the street & missed by 2 feet).
 - (ii) Breach: D breaches this duty by negligently causing a threat of physical impact that leads to emotional distress OR causing severe emotional distress that by itself is likely to result in physical symptoms (E.g., rash, not nightmares but constant tears ok). Rationale: to rule out fraud
 - (iii) Causation/Damages: D's conduct must cause tangible physical injury (e.g. miscarriage)
 - (iv) Bystander Recovery When Another is Physically Injured:
 - (1) Negligent D causes a direct bodily trauma to a third person + which causes P to suffer emotional distress. P must show 1) she was closely related to 3rd person 2) was physically present & 3) observed the injury contemporaneously (D didn't have to know, unlike IIED so discuss IIED & NIED together)
- C) **Element 2: Breach of Duty** when D's conduct falls below the required stnd of care. How P demonstrates breach (**Tip:** Always say "D acted unreasonably because")
 - 1) D's failure to comply w/custom or usage: but not dispositive bc ct may find entire industry acting negligently
 - 2) D violated an applicable statute
 - 3) **Res Ipsa Loquitor: (Heavily Tested)**- Applies when P lacks information
 - (a) Elements (3): 1) The accident causing the injury is a type that would normally not occur unless someone was negligent (probability statement – don't need to rule out remote possibilities) + 2) negligence is attributable to D (can be shown if P demonstrates the instrumentality causing the injury was in D's exclusive control). + 3) P was not negligent
 - (b) Effect: P has made p/f case for D's negligence. Permissible inference of negligence. No directed verdict for D, but won't grant directed verdict for P. May grant D's motion if P has failed to establish res ipsa + present other E.
- D) **Element 3: Causation:** P must demonstrate both actual cause (cause in fact) & proximate cause
 - 1) **Factual cause**

- (a) **“But for test”** – The injury would not have occurred but for D’s act/omission (**Tip:** use words ‘but for’)
- (b) **Joint Causes – IF 2+ Ds** - Substantial Factor Test: Where several causes bring about P’s injury + any one alone would have been sufficient to cause P’s injury + all Ds’ conduct is an actual cause if it was a substantial factor in causing the injury + Ds jointly liable. E.g, A & B camping 5 mi from ea other. Both coincidentally leave camp fires burning. Fire burns down Yosemite. Both substantial factors & jointly liable).
- (c) **Alternative Causes Approach** : Where there are two acts + but only one causes the injury + it is not possible to ascertain which act caused the injury + the burden of proof shifts to the D + each D must show his negligence is NOT the actual cause of P’s injury. *Summers v Tice* (E.g., Lucy & Efle shot off guns at same time. Only 1 D hit Fred’s eye but can’t tell who. Both jointly liable unless can show other D committed the harm)
 - (i) **Tip:** Joint causes v alternative causes: Joint causes – only one act caused the injury. Alternative causes: 2 acts but not *possible to tell which one*

2) Proximate/Legal Cause: (Think fairness)

- (a) General Rule: D is liable for all harmful results that are the normal foreseeable incidents caused by D’s act
- (b) **Liability in Direct Cause Cases:** In a direct cause case, where there is an uninterrupted chain of events from D’s negligent act to the P’s injury (no intervening forces), D is liable for all foreseeable harmful results, regardless of unusual manner or timing UNLESS outcome is freakish & bizarre (E.g, D running red light & hits car carrying explosives. Whole city burns)
- (c) **Liability in Indirect Cause Cases:** In an indirect cause case where a subsequent intervening force combines w/D’s act to cause P’s injury: D is liable for all foreseeable results caused by foreseeable intervening forces
 - (i) Dependent Intervening forces almost always foreseeable: 1) subsequent malpractice/med negligence but not recklessness foreseeable 2) rescuers’ negligence 3) defense of self/another/property 4) subsequent diseases caused by weakened condition (“egg shell P” – D liable for all damages assoc w/aggravation of existing condition, even if extent/severity of damages unforeseeable) & 6) subsequent accidents substantially caused by original injury – protection/reaction forces (E.g., D runs red light & crowded intersection. Pedestrian breaks leg. Other peds panic & trip over his face. D liable for leg & face)
 - (ii) Independent intervening forces not foreseeable as a natural response/reaction to D’s conduct: 1) 3rd persons’ negligence, intentional torts & crimes 2) acts of God
 - (iii) D not liable for unforeseeable results caused by unforeseeable intervening forces bc intervening force is “superseding.” Breaks the causal connection bw D’s initial negligent act & P’s ultimate injury

E) Damages:

- 1) Egg Skull doctrine: If D negligent, D liable for all damages P suffers. E.g., cut P but P has hemophilia.
- 2) Personal Injury damages
- 3) Property Damages: reasonable cost of repair or if conversion, the fair market value at time of accident
- 4) Punitive Damages: if D’s conduct was “wanton & willful, reckless or malicious”
- 5) Non-recoverable items: interest from date of damage in PI case + attorney’s fees
- 6) P’s duty to take reasonable steps to mitigate damages (e.g, seek appropriate tx)

- 7) Collateral Source Rule: Damages not reduced just bc P received benefits from other sources (e.g., health insurance)
- F) Defenses to Negligence (MBE: Assume pure comparative negligence)
- 1) Minority Positions:
- (a) Contributory Negligence: When P's own negligence contributes to her injuries, P's right to recovery is completely barred. Is not a defense to D's intentional torts.
- (i) Last Clear Chance Exception: A P may recover despite her contributory negligence. The person w/the last clear chance to avoid an accident + who was able to avoid the accident + but who failed to do so is liable for negligence.
- (1) If P is in "helpless peril" D will be liable if knew/should have known of P's predicament
- (2) If P could have extricated herself had she been attentive, D must actually have known of P's predicament
- (b) Imputed Contributory Negligence: Contributory negligence of a 3rd party will be imputed to P where the relationship bw the third party & the P is such that the ct could find the P vicariously liable. E.g., master-servant, partner, joint venture. Negligence NOT imputed bw spouses, parents & child, & car owner & driver
- (c) Assumption of the Risk: P may be denied recovery if she assumed the risk of damages caused by the D's act in knowing of the risk + voluntarily proceeding in the face of the risk. Not a defense for intentional torts.
- (i) P may expressly (express agreement, disclaimer) or impliedly assume the risk (where the risk is one that an avrg person would reasonably appreciate).
- (ii) P has NOT assumed the risk if no available alternative or situation involves force, fraud or emergency
- (iii) Public utilities & common carriers can't limit liability by disclaimer
- (iv) Members of a class protected by statute not deemed to have assumed risk
- 2) Majority: Comparative Negligence
- (a) P's contributory negligence does not completely bar recovery but reduces available damages.
- (i) Majority of states: only permit P to recovery was equal to/less than D's negligence but "pure" comparative states permit recovery no matter how great P's contributory negligence
- (b) Unlike contributory negligence & assumption of risk, comparative negligence defense available to intentional torts, wanton or reckless tortious conduct.
- (c) No Last clear chance doctrine
- (d) 2 kinds:
- (i) Pure comparative fault: P always recovers so long as D was negligent, even if P's negligent > D's
- (ii) Modified comparative regime: P only recovers if P's negligent was not greater than D's

IV Strict Liability: Liability w/o Fault

- A) Elements of P/F Case:
- 1) Absolute duty exists on the part of the D to "make safe"
 - 2) D breached this duty
 - 3) D's breach was an actual & proximate cause of P's injury and
 - 4) Damage to P's person/property
- B) Liability for Animals

- 1) If owner's animals trespass onto another's land: owner is SL for reasonably foreseeable damage
 - 2) SL for Wild Animals: SL to licensees & invitees for injuries caused by wild animals + provided injured person did nothing to bring about the injury. Even if utmost care taken
 - 3) NO SL for Domestic Animals: unless owner has knowledge of the particular animal's dangerous propensities (**Tip:** may still be negligent on first bite, but not SL)
 - 4) No SL to trespassers except based on intl tort groups for injuries inflicted by vicious watchdogs.
 - 5) Defenses for D:
 - (a) Contributory negligence unavailable if P failed to realize danger/guard against it.
 - (b) Comparative negligence & assumption of risk available. Covers wanton, intl conduct.
- C) Ultra hazardous/Abnormally Dangerous Activities (Not fireworks)
- 1) SL for ultra hazardous activities if 1) the activity involves a risk of serious harm to persons/property 2) the activity cannot be performed w/o risk of serious harm no matter how much care is taken & 3) the activity is not commonly engaged in by the particular community. Some cts consider value of activity & appropriateness to location.
 - 2) E.g, blasting, explosions, dynamite, blowing up, chemical/biological agents (chlorine, sulfuric acid), nuclear energy, radioactive. Not fireworks
 - 3) Defenses: Not contributory negligence. Comparative neg & assumption of risk available.

V Products Liability: liability of a supplier of a defective product to someone injured (Tips: Essay – use all theories. MBE: answer according to theory but if no guidance, according to SL)

- A) 5 Theories Available to P to sue on: i) intent ii) negligence iii) SL iv) implied warranties of merchantability or fitness for a particular purpose & v) representation theories (express warranty & misrepresentation)
- B) P/F Case for Products Liability – for any theory
- 1) P must show 1) a defect & 2) existence of the defect when the product left the D's control (inferred if product moved through normal channels of distribution)
 - (a) **Tip:** no requirement P be in privity w/D. Any foreseeable ultimate user/P, inc bystander may recover
 - 2) How P Shows a Defect
 - (a) *Manufacturing Defect* – If a product emerges from manufacturing different AND more dangerous than products made properly. P must prove the product failed to perform as an ordinary consumer would expect (D must anticipate reasonable misuse)
 - (b) *Design Defect* – When all products of a line are the same + but all have dangerous propensities. P must show: D could have designed the product to 1) make it more safe 2) w/o seriously impacting its price or utility. (E.g., crib slabs).
 - (c) *Inadequate Warnings* – When a product is defective + because of a manufacturer's failure to give adequate warnings/instructions + of dangers not reasonably apparent to users.
 - (i) Warning must be understandable to average consumer (E.g., Spanish, blind, not buried in books)
 - (ii) Product may still be defective even w/adequate warnings. E.g., Flammable pajamas. Still defective even w/warnings.
 - (d) Miscellaneous:
 - (i) Product does not comply w/govt safety standard: establishes defectiveness (but compliance w/govt safety standards is not conclusive that a product is not defective)
 - (ii) D not liable for 'scientifically unknowable' risks - dangers not foreseeable at time of marketing

(iii) D not liable for unavoidably unsafe products: if 1) danger is apparent & 2) no safer way to make the product. E.g., knives

C) Liability Based on Intent:

- 1) Rule: D will be liable to anyone injured by an unsafe product if + D intended the consequences/KSC consequences were likely to occur. (Not common: but if intent, also consider battery)
- 2) Who can sue: Any injured P. No requirement for privity
- 3) Damages: compensatory + punitive damages (for intentional, wanton or reckless conduct)
- 4) Defenses: same as in intl torts case

D) Liability Based on Negligence: Same p/f case 1) duty 2) breach of duty 3) actual & proximate cause 4) damages

- 1) Duty: duty of care to any foreseeable P, which includes users, consumers & bystanders (can sue). No privity requirement.
 - (a) Potential Ds: commercial supplies such as manufacturers, wholesalers & retailers
- 2) Breach of Duty shown by 1) D's negligent conduct leading to the supplying of a defective product.
 - (a) Negligence stnd is same as in standard neg case. P can invoke res ipsa loquitor.
 - (b) Difficult to hold retailers & wholesalers liable for negligence bc can satisfy duty by cursory inspection
- 3) Causation: An intermediary's (e.g. retailer/wholesaler's) negligent failure to discover a defect does not supersede original manufacturer's negligence UNLESS exceeds ordinary foreseeable negligence
- 4) Damages recoverable: Claim cannot be solely for economic loss. Must be physical injury/property damage
- 5) Defenses: same as in general neg action. Disclaimers ineffective

E) Liability Based on SL

- 1) P/F case: 1) strict duty owed by a commercial supplier of a product 2) breach of that duty 3) D's breach is the actual & proximate cause of the 4) damages P suffered
- 2) Duty: to supply safe products.
 - (a) P must show that the product reached P w/o "substantial alteration"
 - (b) Potential Ds: any commercial supplier, commercial lessors (E.g, rental car company, Co leases computer offices). But casual sellers not held SL
 - (c) SL does not extend to services (even where product provided incident to services, e.g., blood during operation – no SL. Possible neg. E.g., P at Morton's & chair collapses. Morton's not SL).
 - (d) Privity not required: users, consumers & bystanders can sue + any merchant in distribution chain may be SL (E.g., P buys defective Toaster's from Macy's. Macy's & Cuisine Art may be SL)
- 3) Breach of Duty:
 - (a) D has breached duty to supply safe products if + product is defective (Supra – 3 types of defect) + product's defect makes the product unreasonably dangerous. D must anticipate reasonable misuse (E.g., P falls off defective chair. D can't claim chair was for sitting).
 - (b) Retailers held liable even if no opportunity to inspect
- 4) Damages: Mere economic loss alone insufficient. Need physical injury/property damage.
- 5) Defenses:
 - (a) Minority jxs: contributory negligence states, assumption of the risk & unreasonable misuse
 - (b) Majority: comparative negligence, unreasonable misuse

F) Liability Based on Breach of Implied Warranties of Merchantability & Fitness (in every sale):

- 1) Implied Warranty of Merchantability: goods are of average acceptable quality + generally fit for ordinary purpose for which goods are used
- 2) Implied Warranty of fitness for a particular purpose: Arises when seller knows/reasonably should know the purpose for which the goods are required + that the buyer is relying on seller's skill & judgment in selecting the goods.
- 3) Potential Ds: Cts adopt a narrow version of horizontal privity req: buyer, family, household & guests can sue for personal injuries
- 4) Breach: failing to live up to standards. Proof of D's fault unnecessary
- 5) Causation
- 6) Damages: Personal injury, property damages & purely economic loss are recoverable.
- 7) Defenses: include assumption of the risk & contributory negligence. Disclaimers ineffective
 - (a) UCC: Failure to give notice of a breach is a defense
- G) Liability Based on D's Failure to Live up to its Affirmative Representations (Duty & Breach)
 - 1) Potential Ds: any consumer, user or bystander.
 - (a) If buyer sues: warranty must have been "part of the basis of the bargain"
 - (b) If P not in privity (e.g, bystander): must show that *someone* relied on D's representation
 - (c) Warranty extends to bailments & leases
 - 2) Disclaimer effective ONLY in unlikely event it's consistent w/warranty. Generally ineffective.
 - 3) Seller will be liable for misrepresentation of facts concerning a product where 1) statement was a material fact concerning quality/uses of goods (not mere puffery) & 2) seller intended to induce reliance by buyer & 3) there was justifiable reliance (representation was a substantial factor in inducing the purchase). Reliance need not be victim's – no privity req
 - 4) Actual cause: shown by reliance. PC
 - 5) Defenses: No assumption of the risk if justifiable reliance. Contributory negligence (unless D committed *intl misrep*)

VI Nuisance: Private v Public Nuisance

A) Private Nuisance

- 1) Definition: A substantial + unreasonable + interference w/another private individual's + use or enjoyment of property + that he actually possesses + or to which he has a right of immediate possession
- 2) Substantial interference: must be offensive, inconvenient or annoying to average person. Not substantial if results merely from P's hypersensitivity/specialized use of own property
- 3) Unreasonable: severity of inflicted injury must outweigh utility of D's conduct. (Cts consider neighborhood, land values, existence of alternative courses of conduct open to D).
- 4) Unlike trespass of land: where landowners' exclusive possession interfered w/by physical invasion

B) Public Nuisance:

- 1) Definition: An act that unreasonably interferes with + the health, safety or property rights of the community (e.g., using a building for drugs).
- 2) Recovery for private person for public nuisance only if suffered unique damages not suffered by public at large

C) Remedies

- 1) Usually Ps awarded damages.

- 2) Ps may be awarded injunctive relief if damages unavailable or inadequate. (Ct will consider relative hardships to P & D. But ct won't balance hardships if D's conduct was willful/against an assertion of right by P)
 - 3) Abatement by Self help
 - (a) Private nuisance: self-help abatement available after notice to D + D's refusal to act. Only necessary force permitted
 - (b) Public nuisance: only public authority or private party who suffered some unique damage can seek injunction or abatement by self-help
- D) Defenses
- 1) Legislative authority (e.g., zoning ordinance) is persuasive but not absolute defense
 - 2) No actor is liable for all damage caused by concurrence of his acts w/others (e.g., 10 steel mills polluting a stream. Actor only liable for his mill)
 - 3) Contributory negligence not a defense unless P's case rests on negligence
 - 4) Coming to a nuisance generally not a bar to P's action unless came to nuisance for sole purpose of bringing a harassing lawsuit

VII General Considerations for all Tort Cases

A) Vicarious Liability (Tip: HEAVILY Tested)

- 1) Doctrine of Respondeat Superior: A master/employer is vicariously liable for non-intentional tortious acts committed by her servant/employee if the tortious acts occur w/in scope and course of employment relationship (E.g., Grocer commits battery on a cl. Vons not liable)
 - (a) An EE making a minor deviation for own purposes (in time, geography) still acting w/in scope but not if "frolic" – substantial deviation in time/geography.
 - (b) Exception to the Rule that ER not liable for intentional conduct by employees: i) force authorized in employment (e.g., bouncer) ii) friction generated by ER (e.g, bill collector) iii) EE is furthering business of ER (e.g, removing customers from premises bc rowdy)
- 2) ERs may be liable in negligent entrustment: in negligently selecting/supervising EEs or Ind contractor
- 3) Independent Contractor Situations: The principal will not be held vicariously liable for tortious acts of her agent if the agent is an independent contractor. **(Tip: Heavily Tested)** Exceptions:
 - (a) If the independent contractor is engaged in inherently dangerous activities (e.g. excavating, blasting)
 - (b) If the duty is non-delegable bc of public policy concerns (e.g., duty to use due care in building fence)
 - (c) Land possessor vicariously liable if Independent Contractor hurts invitee (E.g., EE of Independent contractor knocks over plant that hits you. You're at mall. Mall vicariously liable)
- 4) Partners & Joint Ventures: Vicariously liable if committed in scope & course of partnership/venture
- 5) Automobile Owner for Driver: General rule is that auto owner not vicariously liable for tortious conduct of another person driving the automobile. Exceptions:
 - (a) Principal-Agent relationship: E.g. running an errand for someone
 - (b) Family Car Doctrine: many states, owner is liable for tortious conduct of immediate family/house hold members if driving w/owner's express or implied permission
 - (c) Permissive Use: Some states impose liability on owner for damage caused by anyone driving w/owner's consent
 - (d) Negligent Entrustment: owner may be liable for own negligence in entrusting car to a driver
- 6) Bailor for Bailee: general rule – bailor not vicariously liable for tortious conduct of bailee.

- (a) Negligent Entrustment – bailor may be liable for own negligence in entrusting bailed object
- 7) Parent for Child: parent not vicariously liable for tortious conduct of a child but most statutes make parents liable for willful & intl torts of kids up to a certain amount.
 - (a) Child acting as agent for parents: vicarious liability if child committed tort while acting as agent
 - (b) Parent liable for own negligence in allowing child to do something/negligent supervision (use dangerous object alone, if apprised of child’s conduct in past – liable for not using due care)
- 8) Tavern keepers:
 - (a) CL: no liability imposed on vendors resulting from vendee’s intoxication
 - (b) Modern Law: States enacted “Dramshop Acts” creating a c/a for 3rd person injured by intoxicated vendee based on ordinary negligence principles

B) Parties: Multiple D issues

- 1) Joint & Several Liability: Where 2+ negligent acts combine to proximately cause an indivisible injury, each negligent actor will be jointly & severally liable (E.g., liable to P for entire damages incurred). If damages are divisible, each D is liable for only identifiable portion
 - (a) Ds acting in concert: Where 2+ Ds act in concert & injure P, each is jointly & severally liable for entire injury + even if injury is divisible
 - (b) Statutory Limitations: Many states abolished joint liability for 1) Ds judged to be less at fault than Ps or 2) for all Ds regarding noneconomic damages – make liability proportional to D’s fault
- 2) Satisfaction & Release
 - (a) Satisfaction: recovery of full payment. Only one satisfaction allowed. Until satisfaction, P may proceed against all jointly liable Ds
 - (b) Release: At CL – release of 1 joint tortfeasor was a release of all joint tortfeasors. Majority: release of one joint tortfeasor doesn’t discharge other tortfeasors
- 3) Contribution & Indemnity: determine how joint tortfeasors allocate damages they must pay to P
 - (a) Rule of Contribution: Apportions responsibility among those at fault + Allows a D who pays more than his share of damages under joint & several liability to have a claim against other jointly liable parties for the excess.
 - (i) Limitations: Contribution D must be originally liable to P + not applicable to intl torts
 - (ii) Methods of Apportionment
 - (1) Comparative Contribution: Most states. Contribution imposed in proportion to relative fault
 - (2) Equal Shares: minority. Apportionment in equal shares regardless of degrees of fault
 - (3) Indemnity: Shifting the entire loss bw or among tortfeasors. Typical situations
 - a. by K
 - b. vicarious liability situations – E.g., truck driver speeding. Injured party sues company & driver. Passive tortfeasor (company) can get indemnification from active (driver)
 - c. Strict products liability: (one who is passively negligent – retailer fails to investigate v one who’s actively – Macy’s from Cuisine Art bc of toaster)
 - d. identifiable difference in degree of fault

C) Survival & Wrongful Death:

- 1) Survival of tort actions allow c/a to survive death of 1+ parties. Usually torts to property + torts resulting in personal injury survive.
- 2) Torts invading intangible personal interests: (eg., defamation, invasion of right to privacy, malicious prosecution) expire on Victim’s death

- 3) Wrongful Death: grant recovery for pecuniary injury result to spouse & next of kin. Decedents creditors have no claim against amount awarded. Recovery allowed only to extent deceased could have recovered had he lived

D) Tortious Interference w/Family Relationships

- 1) Husband Wife: either spouse may bring action for loss of consortium: loss of domestic services (mowing lawn), sexual intimacy & companionship + caused by D's intentional or negligent tortious conduct against other spouse
- 2) Parent Child: Parent may maintain action for loss of child's services + caused by D's intentional or negligent tortious conduct. Child cant.

E) Tort Immunities

- 1) Intra Family Tort Immunity: most states abolish husband-wife tort immunity & slight majority abolished parent-child immunity.
- 2) Govt Tort Immunity
 - (a) Federal Govts – under Federal Tort Claims Act, US has waived immunity for tortious acts but not for
1) assault 2) battery 3) false imprisonment 4) false arrest 5) malicious prosecution 6) abuse of process 7) libel/slander 7) misrepresentation & deceit & 9) interference w/K rights
 - (b) State & Local Govt: varies
 - (c) Immunity of Public Officials: Public officials carrying out official duties immune from tort liability for acts done w/o malice or improper purpose. But liability for ministerial acts
 - (d) Charitable Immunity: Majority of jxs have eliminated