1. **Intentional Torts**
   1. **Intent** 
      1. **Cases**
         1. Garrett v. Dailey (page 16, 08/19/11)
            1. **INTENT IS NECESSARY for intentional torts**
            2. **Tender years doctrine** (for negligence) – very young children cannot fail to exercise reasonable care because they are presumed to be incapable of knowing what reasonable care is or requires
         2. Caudle v. Betts (pg. 20 8/23/11)
            1. **Harm does not need to be intended to cause battery**
         3. Davis v. White (pg. 23 8/23/11)
            1. Transferred intent – White intended to hit someone, so the **intent is transferred to the victim**.
   2. **Battery**
      1. Definition
         1. An act, intended to cause the plaintiff a contact, that amounts to either:
            1. Harm,
            2. Offense to plaintiff’s personal dignity, or
            3. Unlawful invasion of plaintiff’s interests (not permitted or consented to, or in violation of a particular law)
         2. No actual damage needed => just prove intent to cause a contact
      2. Leichtman v. WLW Communications (pg 26 08/24)
         1. Facts
            1. Anti-smoking advocate has smoke blown into his face during a radio interview
         2. Is smoke substantive enough to constitute battery? Yes, no actual contact needed, just **offensive contact** to a reasonable sense of personal dignity (*Ohio Supreme Court)*
         3. **Indirect contract can suffice**
   3. **Assault** 
      1. Elements (page 32, 36)
         1. Intent
         2. Apprehension of imminent battery
            1. Imminent – within seconds or minutes (Immediate)
         3. Overt act or reasonable means to complete battery (not words)
      2. Dickens v. Puryear (pg. 33 8/26)
         1. A **mere threat, without an offer or attempt to show violence, is not an assault. (North Carolina)**
   4. **False Imprisonment**
      1. **Four elements**:
         1. Intentionally confined or restrained by defendant
            1. Confinement can be restrictment of movement
            2. Can be mental restraint
         2. Plaintiff is conscious of confinement
         3. Plaintiff must not consent to confinement
         4. The confinement is not privileged
      2. Parvi v. City of Kingston (pg. 37 8/26)
         1. Is this false imprisonment?
            1. Yes, intent was present and elements were met
   5. **Intentional Infliction of Emotional Distress (08/30)**
      1. Elements (from Nickerson)
         1. Conduct was extreme and outrageous – does not include mere insults or threats; person should be expected to endure certain amount of rough language
         2. Emotional distress or mental anguish suffered was severe
         3. Distress suffered must be such that no reasonable person could be expected to endure it – Restatement 2d §46
         4. Intent to distress
      2. Difference from other intentional torts
         1. Injury must be proven
         2. Conduct
   6. **Property Torts (08/31)**
      1. **Intro**
         1. Elements
            1. Act
            2. Intent to accomplish the result
            3. Result
      2. **Trespass to Land** – protects possessory interest in real property (land and home)
         1. Definitions
            1. Restatement 2d §158

Enters land or causes a third person to enter the land in possession of another

Remaining on land after possessor withdraws consent, or

Failing to remove something from land possessed by another that the defendant is under a duty to remove

* + - * 1. **No requirement to prove damages**
        2. Trespass be committed on, beneath, or above surface of the earth
      1. Herrin v. Sutherland (pg. 49 8/31)
         1. Is firing a gun over someone’s land a trespass? Yes
         2. Trespass includes to the air space and this causes loss of enjoyment and use
    1. **Trespass to Chattels** – protects possessory interest in personal property against interference with possession
       1. May be committed by intentionally using or intermeddling with the chattel in possession of another – Rest. 2d §217b
          1. Intermeddling – intentionally bringing about a physical contact with the chattel… an act which brings the actor into an intended physical contact with a chattel in possession of another
       2. One who commits a trespass to chattel is subject to liability only if:
          1. He disposes the other of the chattel
          2. The chattel is impaired as to its condition, quality, or value, or
          3. The possessor is deprived of the use of the chattel for a substantial time, or
          4. The bodily harm is caused to the possessor, or harm is caused to some person or thing in which the possessor has a legally protected interest
       3. An unprivileged use or other intermeddling with a chattel which results in actual impairment of its physical condition, quality, or value to the possessor makes the actor liable for the loss thus caused – using a toothbrush and they no longer want to use it
       4. **Proof of damages required**
       5. Compuserve v. Cyber Promotions (pg 52 9/01)
          1. Does trespass to chattel extend to spamming internet customers and electronic property? Yes
    2. **Conversion** –protects possessory interest in personal property against dominion or control by another (theft, destroy, or impair so you can’t use anymore)
       1. Conversion in LA committed when any of the following occurs:
          1. Possession is acquired in an unauthorized manner
          2. The chattel is removed from one place to another with the intent to exercise control over it
          3. Possession of the chattel is transferred without authority
          4. Possession is withheld from the owner or possessor
          5. The chattel is altered or destroyed
          6. The chattel is used improperly, or
          7. Ownership is asserted over the chattel

1. **Defenses to Intentional Torts**
   1. **Consent – Implied or Express**
      1. Notes
         1. Can be withdrawn at any time
         2. Must be explicit, but can be implied through actions
         3. Cannot be under fraud or duress
      2. Cole v. State of LA
         1. Prison guard sued for battery after getting beat during a riot control exercise
         2. Is a plaintiff able to collect for intentional torts that occur during **course of employment**? Sometimes
         3. Cole consented to the activity by being a prison guard. Such **exercises are expected in employment. However, the force used was excessive and this can draw a claim.**
         4. Workers Compensation Act LA R.S. 23:1032 => provides employer with immunity from injuries that occur in course, scope and arises out of employment. Employer may be liable in tort if the employee’s injury is caused by an intentional tort (intentional tort must arise out of work, i.e., battery from work dispute about performance).
   2. **Necessity** – natural event or violent act of a third person imposes on the defendant the necessity to harm the plaintiff (page 75)
      1. Distinct from self-defense – necessity arises from events unrelated to plaintiff’s behavior
      2. Two types (09/07/11)
         1. **Public**: person acts on behalf of several other
            1. Arises where natural forces or third parties require destruction of the property of some to save the lives or property of others
         2. **Private**: person acts for her own exclusive benefit or for the benefit of a third party
            1. Necessary for a person to harm another to avoid her (or a third party’s) **suffering death, serious injury, or severe property damage**
            2. Zero-Sum game: if someone will also befall the same damage, you are still liable. E.g. kill someone when you are about to be killed
   3. **LA Aggressor Doctrine** (09/07/11) – victim-fault defense to which aggressor and victim is precluded from tort recovery for damages
      1. Was initial aggressor if:
         1. His own aggression provoked a person to use physical force against him; and
         2. The retaliator did not use excessive force to repel aggression
      2. Mere words of provocation do not trigger aggressor doctrine, but they might afford a partial defense or mitigation of damages
      3. Not dead in LA, survives in some statutes
         1. LSA-R.S. 14:21 – A person who is the aggressor or who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict.
         2. LSA-RS 23:1081 (Workers’ Comp.) – No comp allowed for an injury caused by the injured employee’s willful intention to injure himself or to injure another, or to the initial physical aggressor in an unprovoked physical altercation, unless excessive force was used in retaliation against the initial aggressor

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| --- | --- | --- |
| **Aggressor Doctrine and Self Defense Comparison** |  |  |
| **Mere Words used by aggressor** | **Provocation. Hostile words and acts that falls short of imminent threat of force or violence.** | **Imminent Threat of Force or Violence** |
| Self Defense: N/A  ----------------------------------  Aggressor: Full recovery for plaintiff/victim  If threatening enough, plaintiff/victim might receive only partial recovery | Aggressor Doctrine: No recovery for plaintiff/aggressor. He invited battery through hostility. Full defense for defendant unless retaliated with excessive force.  Self Defense: full recovery for plaintiff/victim/aggressor  And defendant may not be able to invoke self-defense | Aggressor Doctrine and Self Defense: provide full defense for defendant and no recovery for plaintiff as long as it was a reasonable force to protect and it was a serious and imminent threat. |

* 1. **Self Defense** (09/07/11)
     1. Overview
        1. Privilege or justification for using force against person who presents an actual or apparent and imminent threat to claimant or third parties
        2. Does not justify retaliation or revenge
        3. Must be reasonable, necessary, proportionate
           1. Reasonable: honestly believed physical well-being or life were in danger from imminent and unlawful attack
           2. Necessary: Defendant was at a place where he had right to be or could not flee
           3. Proportionate: defendant used only as much force as they reasonably believed was necessary to repel the attack
        4. May not be triggered by threats or insults alone
     2. Slayton v. McDonald (page 81)
        1. Analyze all the **facts to see if fear is reasonable**
           1. Character and reputation of attacker
           2. Size and strength difference
           3. Overt act by the attacker
           4. Threats of serious bodily harm

|  |  |  |
| --- | --- | --- |
| Article 2323 Summary of LA Comparative Fault |  |  |
|  | **B and C are negligent** | **B and C committed intentional tort** |
| **A is innocent** | B and C fully liable | B and C fully liable |
| **A is negligent** | Comparative fault among A, B, and C | B and C fully liable |
| **A commits intentional tort** | B and C probably not liable | Court extrapolated from La CC art 2323c that fault can be compared (Landry) |

* + - * 1. Impossibility of peaceful retreat
    1. Landry v. Bellanger (page 83)
       1. *In response to aggressor who is not very threatening, a man throws one punch that causes severe and permanent injuries, is he entitled to invoke either the aggressor doctrine or self-defense?*
          1. *If aggressor doctrine is invoked, is the victim still entitled to mitigated damages?*

Fault was entirely on the aggressor. He provoked Bellanger to act in self-defense. Therefore, under interpretation CC Art 2323, Bellanger does not owe any damages

* + - 1. Landry’s conduct was not merely negligent, but intentional
  1. **Defense of Third Parties**
     1. Patterson v. Kuntz pg. 96
        1. *Does self-defense justify a defendant shooting a person who is trespassing on property at night and whom defendant reasonably but mistakenly believes is a prowler who has been harassing his family for over a year?*
           1. Yes, it was justified self-defense
        2. Defense of Others - Restatement 2d §76 – the actor is privileged to defend a third person from a harmful or offensive contact or other invasion of his interests of personality under the same conditions and by the same means as those under and by which he is privileged to defend himself if the actor correctly or reasonably believes that:
           1. The circumstance are such to give the third person a privilege of self-defense, and
           2. His intervention is necessary for the protection of the third person
        3. Defense of Property - Restatement 2d §77 – an actor is privileged to use reasonable force, not intended or likely to cause death or serious bodily harm, to prevent or terminate another’s intrusion upon the actor’s land or chattels, if
           1. The intrusion is not privileged or the other intentionally or negligently causes the actor to believe it is not privileged, and
           2. The actor reasonably believes that the intrusion can be prevented or terminated only by the force used, and
           3. The actor has first requested the other to desist and the other has disregarded the request, or the actor reasonably believes that a request will be useless or that substantial harm will be done before it can be made
        4. Defense of Possession by Force Threatening Death or Serious Bodily Harm - Restatement 2d §79 – the intentional infliction upon another of a harmful or offensive contact or other bodily harm by a means which is intended or likely to cause death or serious bodily harm, for the purpose of preventing or terminating the other’s intrusion upon the actor’s possession of land or chattels, is **privileged if, the actor reasonably believes that the intruder, unless expelled or excluded, is likely to cause death or serious bodily harm to the actor or to a third person whom the actor is privileged to protect**
  2. **Defense of Property**
     1. Authority
        1. Defense against Intrusions of Property - Rest2d §77 – An actor is privileged to use reasonable force, not intended or likely to cause death or serious bodily harm, to prevent or terminate another’s intrusion upon the actor’s land or chattels, if
           1. Intrusion is not privileged or the other intentionally or negligently causes the actor to believe it is not privileged, and
           2. The actor reasonably believes that the intrusion can be prevented or terminated only by the force used, and
           3. The actor has first requested the other to desist and the other has disregarded the request, or the actor reasonably believes that a request will be useless or that substantial harm will be done before it can be made
        2. Rest. (2d) § 79. Defense Of Possession By Force Threatening Death Or Serious Bodily Harm
           1. The intentional infliction upon another of a harmful or offensive contact or other bodily harm by a means which is intended or likely to cause death or serious bodily harm, for the purpose of preventing or terminating the other's intrusion upon the actor's possession of land or chattels,
           2. is privileged if, but only if, the actor reasonably believes that the intruder, unless expelled or excluded, is likely to cause death or serious bodily harm to the actor or to a third person whom the actor is privileged to protect.
        3. Rest. 2d §142 Felonies
           1. The use of force or the imposition of a confinement intended or likely to cause death or serious bodily harm is privileged if the actor reasonably believes that the commission or consummation of the felony cannot otherwise be prevented and the felony for the prevention of which the actor is intervening is of a type threatening death or serious bodily harm **or involving the breaking and entry of a dwelling place**.
     2. Automatic Spring Guns
        1. Rest. 2d §85
           1. The actor is so far privileged to use a device intended or likely to cause serious bodily harm or death for the purpose of protecting his land or chattels from intrusion that he is not liable for the serious bodily harm or death thereby caused to an intruder **whose intrusion is, in fact, such that the actor, were he present, would be privileged to prevent or terminate it by the intentional infliction of such harm**.

1. **Gross, Willful, Wanton Conduct (09/21) – between intentional and negligence**
   1. Recklessness (page 121) – conscious (or knowing) disregard of a substantial and unjustifiable **risk**
      1. Or conduct where the actor does not desire harmful consequence but foresees the possibility and consciously takes the risk
      2. Or extreme departure from ordinary care in circumstances in which a reasonable person would exercise heightened care
2. **Parent – Child Relationships (09/21)**
   1. Authority
      1. LSA-C.C. Art. 215 Filial Honor and Respect – a child, whatever be his age, owes honor and respect to his father and mother
         1. Rule is founded on the fifth commandment – honor thy father and mother
      2. LSA CC Art. 216 Parental Authority – a child remains under the authority of his father and mother until age of majority or emancipation
         1. Authority of father prevails
      3. “ Art 217 Filial Obedience – as long as the child remains under authority of his father and mother, he is bound to obey them in every thing which is not contrary to good morals and the laws
      4. “ Art 218 Parental Custody and correction – an unemancipated minor can not quit the parental house without the permission of his father and mother, who have the right to correct him, provided it be done in a reasonable manner
      5. “ Art. 221 Parental Administration of Child’s Estate – father is, during the marriage, administrator of the estate of his minor children and the mother in case of his interdiction or absence during said interdiction or absence. This administration ceases at time of majority or emancipation.
      6. “ Art 237 Parent’s liability for offenses or quasi-offenses of children - Fathers and mothers are answerable for the offenses or quasi-offenses committed by their children, in the cases prescribed under the title: *Of Quasi-Contracts, and of Offenses and Quasi-Offenses* [LSA-C.C. ALSA-C.C. Art. 2318. Acts of a minor.
      7. “ Art. 2318 Acts of a minor- The father and the mother are responsible for the damage occasioned by their minor child, who resides with them or who has been placed by them under the care of other persons, reserving to them recourse against those persons. However, the father and mother are not responsible for the damage occasioned by their minor child who has been emancipated by marriage, by judgment of full emancipation, or by judgment of limited emancipation that expressly relieves the parents of liability for damages occasioned by their minor child. The same responsibility attaches to the tutors [legal guardians] of minors.
      8. “ Art 365 Emancipation - There are three kinds of emancipation: judicial emancipation, emancipation by marriage, and limited emancipation by authentic act.
         1. Art 366 Judicial Emancipation - A court may order for good cause the full or limited emancipation of a minor sixteen years of age or older.
      9. LSA-R.s. 9:571 General rule that Child May Not Sue Parent – a child who is not emancipated cannot sue
         1. Either parent during their marriage when the parents are not judicially separated; or
         2. The parent who is entitled to custody and control, when the marriage of the parents is dissolved, or parents are judicially separated
      10. Rest. (2d) § 316. Duty of Parent to Control Conduct of Child - A parent is under a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent
          1. knows or has reason to know that he has the ability to control his child, and
          2. knows or should know of the necessity and opportunity for exercising such control
      11. Turner v. Bucher (pg. 447 9/23)
          1. Established strict liability for parents under LA CC Art 2318, even though parents weren’t negligent
          2. Boy was at fault because his conduct would have been considered negligent if he had been capable of discernment
          3. Therefore, boy’s father is liable
      12. **Flow chart for child causes third party injuries (09/23)**
          1. **If child is capable of discernment but not negligent => parents not liable**
          2. **Child capable of discernment AND negligent => parents vicariously liable**
          3. **Child incapable of discernment**
             1. **BUT, all else being equal, if had been capable of discernment, would have been negligent => parents strictly liable**
             2. **AND, all else being equal, would not have been negligent if HAD been capable of discernment => parents not liable**
   2. LSA CC Art. 2321 Damage caused by animals – the owner of an animal is answerable for the damage caused by the animal
      1. However, he is answerable for the damage only upon a showing that he know or, in the exercise of reasonable care, should have known that his animal’s behavior would cause damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care
      2. Nonetheless, the owner is strictly liable for injuries or property damage caused by the dog and which the owner could have prevented and which did not result from the injured person’s provocation of the dog
      3. Wild animals – injuries caused by wild animals is absolute liability (liability even if precautions taken)
   3. LSA CC Art 2322 Building Owner - The owner of a building is answerable for the damage occasioned by its ruin, when this is caused by neglect to repair it, or when it is the result of a vice or defect in its original construction.
      1. However, he is answerable for damages only upon a showing that he knew or, in the exercise of reasonable care, should have known of the vice or defect which caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care.
3. **Negligence (09/27)**
   1. Overview
      1. General Definition – failure to exercise reasonable care under the circumstance
      2. Legal definition – tort with four elements
         1. **Harm**
         2. **Caused by**
            1. **Cause in Fact**

**Starts with but-for**

**Goes to substantial factor, if not met**

**Alternative Market Factor**

**Lost Chances**

* + - 1. **Breach–** must be ease of association between harm and breach of duty
      2. **Duty** 
         1. Traditional Duty

Reasonable care is what would an ordinary, prudent person do under like circumstances

Negligence per se

Custom

Res Ipsa

Hand Formula

“Special Duties”

* + - * 1. Scope of duty (legal cause)

Scope of risk

Scope of plaintiff

Scope of manner – not in the exact manner, but generally

Policy factors

* + 1. TEST – first identify the negligent act and actor and go from there. Start with the person closest to the injury, then discuss all other relevant potential suits.
    2. Rest. 2d §282 Negligence Defined - In the Restatement of this Subject, negligence is conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm. It does not include conduct recklessly disregardful of an interest of others.
  1. **Duty**
     1. Rest. 2d §285 How Standard of Conduct is Determined
        1. Standard conduct of a reasonable man may be
           1. **established by a legislative enactment or administrative regulation which so provides**, or
           2. adopted by the court from a legislative enactment or an administrative regulation which does not so provide, or
           3. established by judicial decision, or
           4. applied to the facts of the case by the trial judge or the jury, if there is no such enactment, regulation, or decision.
        2. Roberts v. State (129) – no breach of duty
           1. Is a blind adult negligent if he walks without a cane in a public space containing heavy pedestrian traffic? No
           2. Reasoning:

It is not uncommon for blind people to rely on (techniques other than using a cane) when moving around in a familiar setting

* + - 1. Emergency Situations
         1. Sudden Emergency Doctrine (09/28)

In a sudden emergency not of defendant’s making, the defendant is held to the standard of care of a reasonable person in an emergency

Used in assessing degree of fault in comparative fault

* + - * 1. Rest. 2d §296 Emergency

In determining whether conduct is negligent toward another, the fact that the actor is confronted with a sudden emergency which requires rapid decision is a factor in determining the reasonable character of his choice of action

* + - * 1. The fact that the actor is not negligent after the emergency has arisen does not preclude his liability for his tortious conduct, which has produced the emergency.
    1. **Negligence Per Se**
       1. Notes
          1. Extracts the duty from other, non-civil statutes (criminal)
          2. **Scopes must be satisfied:**

**Statute must be designed to protect this class of plaintiff**

**And the class of risk or injury caused by the defendant**

If both are met, in LA it is only evidentiary – not binding

* + - * 1. Usually has to be violation of conduct oriented law, rather than violation of purely administrative law
      1. Common defense: excuse
         1. Argue that there is a good reason for violating statute and so a statutory/regulation-based duty of care was not owed in the first place
      2. Other tests to see if this establishes breach of duty from Rains v. Bend of the River
         1. Is statute the sole source of ∆’s duty to π?
         2. Does the statute clearly define the prohibited or required conduct?
         3. Does the statute impose liability without fault?
         4. Does invoking this shortcut result in disproportionate damages to statutory violation?
         5. Is π’s injury a direct or indirect cause of the violation of the statute?
      3. Rest. 2d §286 When Standard of Conduct Defined by Legislation or Regulation Will Be Adopted
         1. The court may adopt as the standard of conduct of a reasonable man the requirements of a legislative enactment or an administrative regulation **whose purpose is found to be exclusively or in part**

to protect a class of persons which includes the one whose interest is invaded, and

to protect the particular interest which is invaded…

…against the kind of harm which has resulted, and

…against the particular hazard from which the harm results.

* + 1. **Custom**
       1. Everyone else does it and you don’t – you are liable
       2. Everyone else does it, why should I be liable – weak
       3. The T.J. Hooper
          1. Can ships be liable for negligently failing to carry radios, which would have enabled them to hear weather reports, avoid storms, and thereby avoid losing cargo, if most other ships do not carry such radios? Yes
          2. Following Industry customs does not satisfy reasonableness
    2. **Res Ipsa Loquitur (10/7) – Would ya just look at it!!!**
       1. Overview
          1. Relieves plaintiff of providing direct evidence – circumstantial suffices
          2. Can’t use if there is direct evidence against π
          3. “the things speaks for itself”
          4. Certain events are, as a matter of common experience, so likely to be the result of a person’s negligence that the plaintiff is relieved from the usual burden of producing proof that the defendant was in fact negligent.
          5. **Plaintiff need merely show that this kind of accident happened by a preponderance of evidence and that it caused the injuries**

**Does not need to negate all other possibilities, just the most plausible explanation**

* + - 1. Three elements
         1. Kind of event that injured the plaintiff **tends to occur only when there is carelessness**;
         2. The object or instrumentality that caused the injury must have been in the defendant’s exclusive control at the time of the injury; and
         3. The plaintiff must have been relatively passive – did not contribute to their own injury through fault or active participation
      2. Linnear v. Centerpoint Energy Entex/Reliant Energy Pg. 151 (10/7)
         1. First formal element not satisfied – injury was a kind that can occur absent of negligence - People trip and fall all the time w/o negligence
    1. **Hand Formula (09/30)**
       1. If B<LP, there is a duty to prevent
          1. B= burden of prevention
          2. L = magnitude of injury
          3. P = probability of injury
       2. Alternative – Utility/Risk – defendant is liable in negligence if the utility of the activity was less than the likelihood of a more costly accident
       3. Preexisting Conditions Rest. 3d §31 - When an actor's tortious conduct causes physical harm to a person that, because of preexisting physical or mental condition or other characteristics of the person, is of a **greater magnitude or different type than might reasonably be expected, the actor is nevertheless subject to liability for all such harm** to the person.
       4. Foreseeability of Harm Rest. 2d §435(1) - If the actor's conduct is a substantial factor in bringing about harm to another, the fact that the actor **neither foresaw nor should have foreseen the extent of the harm** or the manner in which it occurred does not prevent him from being liable.
          1. Louisiana Courts generally do not agree with “or the manner”
          2. **They sometimes regard scope requirements to apply not only to plaintiffs and to harm, but also to manner of causation**

Exception

“[A] risk is not excluded from the scope of the duty simply because it is individually unforeseeable.

A particular unforeseeable risk may be included if the injury is easily associated with the rule relied upon and with other risks of the same type that are foreseeable and clearly within the ambit of protection.”

* + 1. **Special Duties**
       1. Fiduciary duties
          1. When one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first
          2. When one person assumes control and responsibility over another
          3. When one person has a **duty to act for or give advice** to another on matters falling within the scope of the relationship; or
          4. when there is a **specific relationship** that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.
       2. Negligence with People hired for Services
          1. Rest. 2d §323 - One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

His failure to exercise such care increases the risk of such harm, or

The harm is suffered because of the other’s reliance upon the undertaking

* + - 1. Misuraca v. City of Kenner
         1. Officer’s duty was to **protect motorists, not bystanders**
         2. Officer **reasonably discharged duties by instructing plaintiff’s husband to stop handling guy-wire and making sure it was not charged**
    1. Creating unreasonable danger is often a breach of duty
       1. Not found to be a unreasonable danger
          1. Depression in sidewalk – Boyle v. Board of Supervisors
          2. Uneven expansion joint in parking squares
          3. Unevenly timed parking light – Boykin v. Louisiana Transit
  1. **Cause in Fact** 
     1. Overview
        1. Harm would not have occurred without breach
        2. Standard of proof – plaintiff must prove that this proposition is more probably true than not
     2. **But-for**
        1. Overview
           1. Is it more probable than not? (50% or greater)
           2. Take out the unreasonable conduct, replace it with reasonable conduct, and see if the injury still would have occurred
        2. Salinetro v. Nystrom Pg. 163
           1. Plaintiff did not know about pregnancy at the time of x-ray, even if doctor would have asked, she would have said no. Harm would have occurred either way.
     3. **Substantial factor** – perkins v. entergy, Anderson
        1. Overview
           1. If but for is not met, go here
           2. If it is 50/50, this standard can tip the scales for π to continue with the suit
        2. Perkins v. Entergy Corp pg. 170 (10/12) – substantial factor IN LA
           1. **When there are concurrent causes of accident, the question is: whether the conduct in question was a substantial factor in bringing about the accident?**
        3. Anderson v. Minneapolis pg. 168– multiple causes; not in LA
           1. The railway is joint and severally liable, even though either fire would have destroyed plaintiff’s property on its own
           2. Same reasoning: if a fire set by the railroad unites with another fire of an unknown cause, it is still liable for damage
     4. **Lost Chances**
        1. Overview
           1. Depriving the victim of all or part of the chance of survival
           2. Doesn’t change the but for standard – just the injury
        2. Jenkins v. St. Paul Fire pg. 171 – case within a case
           1. The plaintiff does not have the initial burden of proving that he would have won his case, but has the burden of proof if ∆ can show that π would have lost the case
        3. Smith v. State of LA Dept of Health and Hospitals 10/18
           1. What is the proper method by which to calculate damages not for causing death per se but rather for causing lost chance for survival?
           2. Lost Chance Doctrine (Black’s Law)

Rule in some states providing a claim against a doctor who has engaged in medical malpractice that, although it does not result in a particular injury, decreases or eliminates the chance of surviving or recovering from the preexisting condition for which the doctor was consulted.

* + - * 1. Method of Determining Lost Chance of Survival – assess evidence of percentage rates of survival for certain periods after discovery of the disease at various stages of the disease
        2. Three possible methods in this case

Value lost chance as a lump sum award based on all the evidence in the record, as is done for any item of general damages

Allow full survival and wrongful death damages for the loss of life partially caused by malpractice, without regard to the chance of survival

Value the lost chance as the percentage probability by which the defendant’s tortious conduct diminished the likelihood of achieving some more favorable outcome

Estimate the compensable value of the victim’s life if he survived and

Reduce that estimate according to the percentage chance of survival at the time of malpractice

* + - * 1. LA SC chose the first method
        2. In a medical malpractice case seeking damages for the loss of a less-than-even chance of survival because of negligent treatment of a pre-existing condition, the plaintiff must prove by a preponderance of the evidence:

The tort victim had a chance of survival at time of negligence

Tortfeasor’s actions or inactions deprived victim of all or part of that chance

The value of the lost chance, is the only item of damages at issue

* + 1. **Market Share**
       1. Black v. Abex Corp pg. 181 – market share v. alternative liability
          1. *Market Share Liability –*

Requirements

Illness due to a design hazard with each having been found to have sold the same type of product in a manner that made it dangerous

∆s all produced a fungible product

Inability to ID the specific manufacturer

Joinder of enough manufacturers to represent a substantial share of the market

Court held that each ∆ is liable to a proportionate share of the judgment based on its share of the market unless it proved that it did not make the product causing the injury

* + - * 1. Alternative Liability – two people shoot a gun and kill someone, no way to prove whose bullet killed, so both are liable
        2. Argument

Market share - ∆s amount of asbestos manufactured in products ranged from 7-75% asbestos, so it would be unfair to use market share when some ∆s products would cause more damage

Alternative Liability – all ∆s who may be liable were not brought into court, so there is no A.L. claim

1. **Legal Cause/Scope of Duty** 
   1. SHOULD THIS DEFENDANT BE RESPONSIBLE IN THIS CASE
   2. Foreseeable plaintiff
      1. Overview
         1. The risk reasonably to be perceived defines the duty to be obeyed: it’s risk to others within the range of apprehension
         2. Reasonably foreseeable
      2. Palsgraf v. Long Island R. Co. pg. 188
         1. Liability for negligence requires that resulting injury be reasonably foreseeable
            1. It was reasonably foreseeable that conductor’s actions of pushing man with package may hurt the man or property
            2. It was not reasonably foreseeable from his action that conductor would injure Palsgraf (bystander far away from train)
   3. Foreseeable Risk – at the time of the act, the consequences of the act were reasonably foreseeable
      1. The Wagon Mound pg. 194
         1. May a party be liable in negligence for spilling oil into water without dispersing it and thereby helping to cause a nearby wharf and vessel to catch fire when:
            1. The triggering cause of the fire (molten metal falling from wharf, causing cotton to burst into flames) was unforeseeable; and
            2. The injured party was aware of, and took precautions against, the oil spill?
         2. No
            1. Replaced Polemis rule (liable for anything in direct causation) that negligent tortfeasor should be liable only for all reasonably foreseeable consequences of her negligence
      2. Hill v. Lundin pg. 204
         1. Is a house-repair company that leaves a ladder against a house for several days liable in negligence to a person who trips over the ladder if a third party previously lay the ladder in the yard?
            1. No

**Reasonably foreseeable scope of risk applies**

Lundin could not have “reasonably anticipated” that a third party would remove the ladder from its upright position and lay it down in the yard

Even if Lundin was the but-for cause, it was not the legal cause

* + 1. Rest. 2d §435 Foreseeability of Harm or Manner of Its Occurrence –
       1. If the actor's conduct is a substantial factor in bringing about harm to another, the fact that the actor neither foresaw nor should have foreseen **the extent of the harm or the manner** in which it occurred does not prevent him from being liable.
       2. The actor's conduct may be held not to be a legal cause of harm to another where after the event and looking back from the harm to the actor's negligent conduct, it appears to the court **highly extraordinary** that it should have brought about the harm.
    2. Rest. 2d §435a. Intended Consequences - A person who commits a tort against another for the purpose of causing a particular harm to the other is liable for such harm if it results, **whether or not it is expectable**, except where the harm results from an outside force the risk of which is not increased by the defendant's act.
       1. Note: no liability if, although harm was of the same nature as that intended, the ∆’s act did not increase the risk of harm
       2. Ex) one is chasing another and threatening, and the chased is struck by lightning, chaser is not liable if the risk was not increased by the chase
    3. Rest. 2d §435B Unintended Consequences of Intentional Invasions
       1. Where a person has intentionally invaded the legally protected interests of another, his
          1. Intention to commit an invasion,
          2. The degree of his moral wrong in acting, and
          3. The seriousness of the harm which he intended
       2. Are important factors in determining whether he is liable for resulting unintended harm
    4. Rest. 2d §437 Actor’s Subsequent Efforts to Prevent His Negligence From Causing Harm - If the actor's negligent conduct is a substantial factor in bringing about harm to another, the fact that after the risk has been created by his negligence the actor has exercised reasonable care to prevent it from taking effect in harm does not prevent him from being liable for the harm.
    5. Rest. (2d) § 439. Effect of Contributing Acts of Third Persons When Actor's Negligence Is Actively Operating
       1. If the effects of the actor's negligent conduct actively and continuously operate to bring about harm to another, the fact that the active and substantially simultaneous operation of the effects of a third person's innocent, tortious, or criminal act is also a substantial factor in bringing about the harm does not protect the actor from liability.
       2. Example: Tortfeasor 1 negligently causes accident that injures π; tortfeasor 2 at later time aggravates injury; in addition to tortfeasor 2, tortfeasor 1 may be liable for aggravation
    6. Rest. 2d §440 Superseding Cause Defined – **GETS YOU OFF THE HOOK**
       1. A superseding cause is an act of a third person or other force which by its intervention prevents the actor from being liable for harm to another which his antecedent negligence is a substantial factor in bringing about.
       2. Comment: Superseding cause relieves the actor from liability, irrespective of whether his antecedent negligence was or was not a substantial factor in bringing about the harm
          1. Therefore, if in looking back from the harm and tracing the sequence of events by which it was produced, it is found that a superseding cause has operated, there is no need of determining whether the actor's antecedent conduct was or was not a substantial factor in bringing about the harm.
    7. Rest. 2d §441 Intervening Force Defined
       1. An intervening force is one which actively operates in producing harm to another after the actor's negligent act or omission has been committed.
       2. Whether the active operation of an intervening force prevents the actor's antecedent negligence from being a legal cause in bringing about harm to another is determined by the rules stated in §§ 442-453.
    8. Rest. 2d §442 Considerations Important in Determining Whether an Intervening Force is a Superseding Cause
       1. the fact that its intervention brings about **harm different in kind** from that which would otherwise have resulted from the actor's negligence;
       2. the fact that its operation or the consequences thereof **appear after the event to be extraordinary** rather than normal in view of the circumstances existing at the time of its operation;
       3. the fact that the intervening force is **operating independently** of any situation created by the actor's negligence, or, on the other hand, is or is not a **normal result** of such a situation;
       4. the fact that the operation of the intervening force is due to a **third person**'s act or to his failure to act;
       5. the fact that the intervening force is due to an act of a third person which is **wrongful** toward the other and as such subjects the third person to liability to him;
       6. the **degree of culpability** of a wrongful act of a third person which sets the intervening force in motion.
    9. 57B Am. Jur. 2d Negligence § 816. Generally
       1. Momentary forgetfulness – should apply only in those instances where there is evidence of circumstances reasonably sufficient to have diverted the plaintiff's mind from the danger in question, and **mere forgetfulness or lapse of memory is not excusable absent adequate diverting circumstances.**
    10. 57B Am. Jur. 2d Negligence § 817. As Negligence Per Se
        1. **absentmindedness is not a satisfactory standard of care in the modern world.**
    11. 57B Am. Jur. 2d Negligence § 1016. Momentary Forgetfulness
        1. Momentary forgetfulness has been considered an adequate response to a defense of contributory negligence
    12. 57B Am. Jur. 2d Negligence § 818. Distraction or Diversion Rule
        1. **The "distraction doctrine" holds that one is not bound to the same degree of care in discovering or apprehending danger in moments of stress or excitement or when the attention has been necessarily diverted.**
        2. Where a plaintiff's attention is distracted by a natural and usual cause, a lesser degree of prudence may be sufficient to constitute ordinary care, **unless the distraction is self-induced.**
  1. Intervening v. Superseding Cause (10/28)
     1. All superseding causes are intervening, but not all intervening are superseding
     2. If the intervening cause interrupts and takes over the causal chain, then it is superseding
     3. If the intervening cause merely “contributes” to the causal chain, then it is NOT superseding
  2. **Different Circumstances**
     1. **Employment relationship** – covered in Vicarious liability
        1. LSA-C.C. Art. 2320. Acts of servants, students, or apprentices. –
           1. Masters and **employers are answerable for the damage occasioned by their servants** and overseers, **in the exercise of the functions in which they are employed**.
           2. Teachers and artisans are answerable for the damage caused by their scholars or apprentices, while under their superintendence.
           3. In the above cases, **responsibility only attaches when the masters or employers, teachers, and artisans might have prevented the act which caused the damage...**
        2. Rest. (2d) § 317. Duty of Master to Control Conduct of Servant - A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if
           1. The servant

Is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or

Is using a chattel of the master, and

* + - * 1. the master

knows or has reason to know that he has the ability to control his servant, and

knows or should know of the necessity and opportunity for exercising such control

* + 1. **Rescuers**
       1. Rest. (2d) § 314. Duty To Act For Protection Of Others. - The fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon him a duty to take such action.
       2. Rest. (2d) § 314A. Special Relations Giving Rise To Duty To Aid Or Protect
          1. A common carrier is under a duty to its passengers to take reasonable action

to protect them against unreasonable risk of physical harm, and

to give them first aid after it knows or has reason to know that they are ill or injured, and to care for them until they can be cared for by others.

* + - * 1. An innkeeper is under a similar duty to his guests
        2. A **possessor of land who holds it open to the public** is under a similar duty to members of the public who enter in response to his invitation.
        3. One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection is under a similar duty to the other.
      1. Rest. (2d) § 315. General Principle of Good Samaritan - There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless
         1. a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or
         2. a special relation exists between the actor and the other which gives to the other a right to protection.
      2. Rest. (2d) § 321. Duty to Act When Prior Conduct Is Found to Be Dangerous
         1. If the actor does an act and subsequently realizes or should realize that it has created an unreasonable risk of causing physical harm to another, he is under a duty to exercise reasonable care to prevent the risk from taking effect.
         2. The rule stated in Subsection (1) applies even though at the time of the act the actor has no reason to believe that it will involve such a risk.
      3. Rest. (2d) § 322. Duty to Aid Another Harmed by Actor’s Conduct - If the actor knows or has reason to know that by his conduct, whether tortious or innocent, he has caused such bodily harm to another as to make him helpless and in danger of further harm, the actor is under a duty to exercise reasonable care to prevent such further harm
      4. Rest. (2d) § 323. Negligent Performance of Undertaking to Render Services - One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if
         1. his failure to exercise such care increases the risk of such harm, or
         2. the harm is suffered because of the other's reliance upon the undertaking
      5. Rest. (2d) § 324. Duty of One Who Takes Charge of Another Who Is Helpless - One who, being under no duty to do so, takes charge of another who is helpless adequately to aid or protect himself is subject to liability to the other for any bodily harm caused to him by
         1. the failure of the actor to exercise reasonable care to secure the safety of the other while within the actor's charge, or
         2. the actor's discontinuing his aid or protection, if by so doing he leaves the other in a worse position than when the actor took charge of him.
      6. Gann v. Matthews (pg. 231 11/4)
         1. Professional Rescuer’s Doctrine -   
            “a professional rescuer, such as a fireman or a policeman, who is injured in the performance of his duties, ‘assumes the risk’ of such an injury and is not entitled to damages.” (IMPLIED CONSENT)
         2. The assumption-of-risk rationale bars recovery from most dependent risks - i.e., risks arising from the very emergency that the professional rescuer was hired to remedy - except when:

the dependent risks encountered by the professional rescuer are **so extraordinary** that it cannot be said that the parties intended the rescuers to assume them, or

**the conduct of the defendant may be so blameworthy** that tort recovery should be imposed for the purposes of punishment or deterrence.”

* + - * 1. Gann was barred by the Professional Rescuer’s Doctrine – Reasoning

“In the present case, Officer Gann testified that although Terrance was not fully cooperative, he was not resisting arrest… Furthermore, Officer Gann was aware that Terrance was drunk and did not expect him to stand perfectly still.”

* + 1. **Controlling 3rd Parties** – courts do not put a duty on them unless there is a ‘special relationship’ with the actor of the actor’s potential victim
       1. Rest. (2d) § 318. Duty of Possessor of Land or Chattels to Control Conduct of Licensee - If the actor permits a third person to use land or chattels in his possession otherwise than as a servant, he is, if present, under a duty to exercise reasonable care so to control the conduct of the third person as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if the actor
          1. knows or has reason to know that he has the ability to control the third person, and
          2. knows or should know of the necessity and opportunity for exercising such control
       2. Rest. (2d) § 319. Duty of Those in Charge of Person Having Dangerous Propensities - One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm
       3. Rest. (2d) § 320. Duty of Person Having Custody of Another to Control Conduct of Third Persons - One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal power of self-protection or to subject him to association with persons likely to harm him, is under a duty to exercise reasonable care so to control the conduct of third persons as to prevent them from intentionally harming the other or so conducting themselves as to create an unreasonable risk of harm to him, if the actor
          1. knows or has reason to know that he has the ability to control the conduct of the third persons, and
          2. knows or should know of the necessity and opportunity for exercising such control
    2. **Slip and Fall –** 
       1. Ballas v. Kenny’s Key West (pg. 235 11/8)
          1. If an independent contractor slips and falls at a bar while on business, is the bar automatically or strictly liable for his injuries under La. 9:2800.6?
          2. No.

R.S. 92800.6 applies to Kenny’s

Under the broad definition of merchant, defendant's establishment sells goods and food at a fixed place of business.

“In his reasons for finding there was no liability on the part of defendants, the trial judge stated that there was no testimony or evidence that there was a puddle on the floor.”

* + - * 1. LSA-R.S. § 9:2800.6. Burden of proof in claims against merchants

A merchant owes a duty to persons who use his premises to exercise reasonable care to keep his aisles, passageways, and floors in a reasonably safe condition. This duty includes a reasonable effort to keep the premises free of any hazardous conditions which reasonably might give rise to damage.

In a negligence claim brought against a merchant by a person lawfully on the merchant's premises for damages as a result of an injury, death, or loss sustained because of a fall due to a condition existing in or on a merchant's premises**, the claimant shall have the burden of proving, in addition to all other elements of his cause of action, all of the following**:

The condition presented an **unreasonable risk** of harm to the claimant and that risk of harm was **reasonably foreseeable**.

The merchant either created or had actual or constructive notice of the condition which caused the damage, prior to the occurrence.

**The merchant failed to exercise reasonable care**. In determining reasonable care, the absence of a written or verbal uniform cleanup or safety procedure is insufficient, alone, to prove failure to exercise reasonable care.

“Constructive notice” means the claimant has proven that the condition existed for such a period of time that it would have been discovered if the merchant had exercised reasonable care. The presence of an employee of the merchant in the vicinity in which the condition exists does not, alone, constitute constructive notice, unless it is shown that the employee knew, or in the exercise of reasonable care should have known, of the condition.

“Merchant” means one whose business is to sell goods, foods, wares, or merchandise at a fixed place of business. For purposes of this Section, a merchant includes an innkeeper with respect to those areas or aspects of the premises which are similar to those of a merchant, including but not limited to shops, restaurants, and lobby areas of or within the hotel, motel, or inn.

* + 1. **Grossly Negligent Actors**
       1. When there is a Victim (V), person whose negligence initiated V’s injury (N), and G, a person whose gross negligence:
          1. Occurs after N’s initial negligence
          2. Helps to cause V’s injuries; and
          3. Would not have caused V’s injuries without N’s initial chain of causation
       2. Should N still be partially liable to V?
          1. Curry v. Johnson – DOTD’s negligence does not include gross negligence of third party motorist
          2. Graves v. Page – DOTD does not have duty to clear vision of vegetation when motorist was hit by fleeing felon, would not have occurred if felon’s vision not obstructed
    2. **Alcohol Providers**
       1. Berg v. Zummo (pg. 239 8/11)
          1. Can merely serving alcohol to a minor result in liability for injuries subsequently caused by the minor’s being intoxicated?
          2. Yes

The Boot had a criminal, and (therefore) civil, duty to refrain from selling or serving alcohol to minors.

The Boot breached this duty by serving alcohol to Zummo, who was 17 years old.

The Boot’s substandard conduct was 40% cause-in-fact of Berg’s injuries.

Berg was within the **scope of plaintiffs and his injuries within the scope of risk** of The Boot’s negligence: “We find that the risk that a minor who is served alcohol might become intoxicated and get into a fight and injure someone with his car is clearly within the scope of the duty of The Boot not to serve alcohol to a minor.”

* + - 1. LSA-C.C. Art. 2315.4. Additional damages; intoxicated defendant. - In addition to general and special damages, exemplary [punitive] damages may be awarded upon proof that the injuries on which the action is based were caused by a wanton or reckless disregard for the rights and safety of others by a defendant whose intoxication while operating a motor vehicle was a cause in fact of the resulting injuries.
      2. LSA-R.S. § 9:2800.1. Limitation of liability for loss connected with sale, serving, or furnishing of alcoholic beverages.
         1. The legislature finds and declares that the consumption of intoxicating beverages, rather than the sale or serving or furnishing of such beverages is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person.
         2. Notwithstanding any other law to the contrary, **no person holding a permit** under either [LSA R.S. 26:1 et seq. or 26:241 et seq.], nor any agent, servant, or employee of such a person, who sells or serves intoxicating beverages of either high or low alcoholic content to a person over the age for the lawful purchase thereof, **shall be liable** to such person or to any other person or to the estate, successors, or survivors of either **for any injury suffered** off the premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were sold or served.
         3. Notwithstanding any other law to the contrary, **no social host** who serves or furnishes any intoxicating beverage of either high or low alcoholic content to a person over the age for the lawful purchase thereof **shall be liable** to such person or to any other person or to the estate, successors, or survivors of either **for any injury suffered off the premises**, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were served or furnished.
         4. **No social host** who owns, leases, or otherwise lawfully occupies premises on which, **in his absence and without his consent**, intoxicating beverages of either high or low alcoholic content are consumed by a person over the age for the lawful purchase thereof **shall be liable** to such person or to any other person or to the estate, successors, or survivors of either **for any injury suffered off the premises**, including wrongful death and property damage, because of the intoxication of the person who consumed the intoxicating beverages.
         5. **The insurer of the intoxicated person shall be primarily liable with respect to injuries suffered by third persons.**
         6. The limitation of liability provided by this Section shall not apply to any person who causes or contributes to the consumption of alcoholic beverages **by force or by falsely representing that a beverage contains no alcohol.**
      3. Minor Social Hosts
         1. Minors who throw parties for other minors do not owe a duty to not serve alcohol. Any liability is grossly negligent actor’s fault.
         2. Storeowner does not have duty either (a) to refrain from selling alcohol to major when major is accompanied by minors or (b) to ask major lawfully purchasing alcohol whether or not she plans to provide any to the minors.
         3. Motel liable through respondeat superior for injuries caused in part by security guards’ failure to enforce law prohibiting minors from possessing alcohol.
      4. Employer that allows employees to drink alcohol at the end of a workday is social host entitled to the protection of LSA-R.S. 9:2800.1.
      5. Alcohol Statutes (11/9)
         1. LSA-R.S. § 14:93.11. Unlawful sales to persons under twenty-one

Unlawful sales to persons under twenty-one is the selling or otherwise delivering for value of any alcoholic beverage to any person under twenty-one years of age unless such person is the lawful owner or lawful employee of an establishment to which the sale is being made and is accepting such delivery pursuant to such ownership or employment. Lack of knowledge of the person's age shall not be a defense.

* + - * 1. LSA-R.S. § 93.13. Unlawful purchase of alcoholic beverages by persons on behalf of persons under twenty-one.

It is unlawful for any person, other than a parent, spouse, or legal guardian, as specified in R.S. 14:93.10(2)(a)(ii), to purchase on behalf of a person under twenty-one years of age any alcoholic beverage.

* + - * 1. LSA-R.S. § 93.14. Responsibilities of retail dealers not relieved

Nothing in R.S. 14:93.10 through 93.13 shall be construed as relieving any licensed retail dealer in alcoholic beverages any responsibilities imposed under the provisions of Title 26 of the Louisiana Revised Statutes of 1950.

* + - * 1. § 90. Acts prohibited on licensed premises; suspension or revocation of permits.

No person holding a retail dealer's permit and no agent, associate, employee, representative, or servant of any such person shall do or permit any of the following acts to be done on or about the licensed premises:

Sell or serve alcoholic beverages to any person under the age of twenty-one years, unless such person submits any one of the following:

A valid, current, Louisiana driver's license which contains a photograph of the person presenting the driver's license…..

Each form of identification listed above must on its face establish the age of the person as twenty-one years or older, and there must be no reason to doubt the authenticity or correctness of the identification.

No form of identification mentioned above shall be accepted as proof of age if it is expired, defaced, mutilated, or altered.

Sell or serve alcoholic beverages to any intoxicated person.

Intentionally entice, aid, or permit any person under the age of eighteen years to visit or loiter in or about any place where alcoholic beverages or beer are the principal commodities sold, handled, or given away…

* + 1. **Strict Liability Again**
       1. Δ is strictly liable if she is presumptively liable even though she was not negligent
       2. She may also be negligent, but the point is that she may not be
       3. 3 defenses: third party fault, victim fault, fortuitous occurrence
    2. **NIED** - When plaintiff is able to prove physical injury, courts typically allow injured party to recover for mental anguish associated with – or parasitic on – the physical injury
       1. Bystander Damages
          1. LSA-C.C. Art. 2315.6. Liability for damages caused by injury to another

The following persons who view an event causing injury to another person, or who come upon the scene of the event soon thereafter, may recover damages for mental anguish or emotional distress that they suffer as a result of the other person's injury:

The spouse, child or children, and grandchild or grandchildren of the injured person, or either the spouse, the child or children, or the grandchild or grandchildren of the injured person.

The father and mother of the injured person, or either of them.

The brothers and sisters of the injured person or any of them.

The grandfather and grandmother of the injured person, or either of them.

To recover for mental anguish or emotional distress under this Article,

the injured person must suffer such harm

that one can reasonably expect a person in the claimant's position to suffer serious mental anguish or emotional distress from the experience, and

the claimant's mental anguish or emotional distress must be severe, debilitating, and foreseeable.

* + - 1. Trahan v. McManus (pg. 248 11/9)
         1. Is a doctor who negligently reads the wrong patient chart and, on the basis of this error, discharges a patient who actually needed urgent medical attention liable for mental anguish of patient’s parents who watched him die seven hours later?
         2. No

**“This negligence of omission, while a concurrent cause of the death (if plaintiffs proved cause-in-fact, an issue we do not reach), was not an injury-causing event in which the claimant was contemporaneously aware that the event had caused harm to the direct victim,** as required for recovery of Article 2315.6 damages.”

* + 1. Emotional Damage Directly to Plaintiff
       1. Moresi v. State Dept. of Wildlife and Fisheries (pg. 257 11/11)
          1. Did federal agents’ alleged harassment and intimidation of duck hunters cause negligent infliction of emotional distress (NIED)?
          2. No

“Under the general rule followed by the great majority of jurisdictions, if the defendant's conduct is merely negligent and causes only mental disturbance, without accompanying physical injury, illness or other physical consequences, the defendant is not liable for such emotional disturbance.”

“In our jurisprudence, there have been deviations from the general rule. A number of courts have allowed **recovery against a telegraph company for the negligent transmission of a message, especially one announcing death**, indicating on its face a potential for mental distress.”

“Some others have allowed similar recovery for the

**mishandling of corpses,**

**failure to install, maintain or repair consumer products,**

**failure to take photographs or develop film,**

**negligent damage to one's property while the plaintiffs were present** and saw their property damaged, and

in cases allowing damages for **fright or nervous shock**, where the plaintiff was actually in great fear for his personal safety.”

“There may be other cases, but all of these categories have in common **the especial likelihood of genuine and serious mental distress, arising from the special circumstances, which serves as a guarantee that the claim is not spurious.**”

“[T]he plaintiffs' mental disturbance was not severe, or related to personal injury or property damage, and the plaintiffs were not in great fear for their personal safety.”

* + 1. Mental Anguish from Property Damage
       1. “[T]he plaintiffs' mental disturbance was not severe, or related to personal injury or property damage, and the plaintiffs were not in great fear for their personal safety.”
          1. When property is damaged by an intentional or an illegal act;
          2. When property is damaged by an act for which the tortfeasor will be strictly liable or absolutely liable;
          3. When property is damaged by acts constituting a continuing nuisance;

In Gaynor, it was held that plaintiff could not recover mental anguish damages under either the “zone of danger” doctrine or the “damage to property” doctrine for hearing, but not seeing or being near enough, another car’s crashing into her own.

* + - * 1. **When property is damaged at a time in which the owner thereof is present or situated nearby and the owner experiences trauma as a result.**
    1. NIED from Negligent Exposure
       1. Can collect for fear of contracting AIDs if she establishes the presence of HIV and a “channel” for infection from the carrier to the plaintiff
       2. Can collect for a slightly increased risk of a certain disease
       3. Fear is compensable if there is any possibility, no matter how remote, that this fear will be realized
       4. Emotional distress will not be recognized if tests for diseases turn out negative
       5. Rest. (2nd) § 46. Outrageous Conduct Causing Severe Emotional Distress
          1. One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm
          2. Where such conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress

to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm, or

to any other person who is present at the time, if such distress results in bodily harm

* + - 1. Rest. (2d) Torts § 313. Emotional Distress Unintended
         1. If the actor unintentionally causes emotional distress to another, he is subject to liability to the other for resulting illness or bodily harm if the actor

should have realized that his conduct involved an unreasonable risk of causing the distress, otherwise than by knowledge of the harm or peril of a third person, and

from facts known to him should have realized that the distress, if it were caused, might result in illness or bodily harm.

* + - * 1. The rule stated in Subsection (1) has no application to illness or bodily harm of another which is caused by emotional distress arising solely from harm or peril to a third person, unless the negligence of the actor has otherwise created an unreasonable risk of bodily harm to the other.
      1. Rest. (2d) Torts § 436. Physical Harm Resulting From Emotional Disturbance.
         1. If the actor's conduct is negligent as violating a duty of care designed to protect another from a fright or other emotional disturbance which the actor should recognize as involving an unreasonable risk of bodily harm, the fact that the harm results solely through the internal operation of the fright or other emotional disturbance does not protect the actor from liability.
         2. If the actor's conduct is negligent as creating an unreasonable risk of causing bodily harm to another otherwise than by subjecting him to fright, shock, or other similar and immediate emotional disturbance, the fact that such harm results solely from the internal operation of fright or other emotional disturbance does not protect the actor from liability.
         3. The rule stated in Subsection (2) applies where the bodily harm to the other results from his shock or fright at harm or peril to a member of his immediate family occurring in his presence.
    1. **Negligent Misrepresentation**
       1. Overview
          1. Elements

Existence of a legal duty to supply correct info or to refrain from supplying incorrect info

Breach of the duty

Damages from the breach

* + - * 1. Policy: to keep businesses and services of high quality and who charge fees responsible
      1. Barrie v. V.P. Exterminators (pg. 264)
         1. Does a termite inspector have a duty to exercise reasonable care and competence in obtaining and communicating information in a termite inspection report, so as to protect third persons for whose benefit and guidance the information was sought and supplied, and who may detrimentally rely on its contents thereby suffering pecuniary loss?
         2. Termite inspectors do have a duty to protect third person

Termite inspector owed contractual duty to provide accurate information to the seller because they were paying for it

In addition, the inspectors knew that third parties would use the information and extending liability for third parties promotes high quality of services and imparts confidence in the persons performing services

SC here used the foreseeable rule from below, but did not prescribe a method to adopt

* + - 1. Common Law Torts of Misrepresentation
         1. Negligent Misrepresentation – when made in the course of rendering service pursuant to a contract, when made with an **honest belief in its truth**, but because of lack of reasonable care or an absence of skill or competence in ascertaining the facts or making the opinion, and/or in the manner of communicating the facts or opinion, the representation causes **economic loss** to be suffered by a **third party**, but an intended user of the information, who relies on the information to their detriment.

Elements:

Plaintiff suffers damages

“akin to privity” – only people involved in a contract

the foreseeable plaintiff

The Rest 2d 552 view - The misinformer need only know its client intends to use the inaccurate information to influence a particular business transaction, or a “substantially similar” transaction to follow

As a result of

Defendant’s breach of

Legal duty to supply correct info or refrain from providing false info

* + - 1. Rest. (2d) § 310. Conscious Misrepresentation Involving Risk Of Physical Harm
         1. An actor who makes a misrepresentation is subject to liability to another for physical harm which results from an act done by the other or a third person in reliance upon the truth of the representation, if the actor

intends his statement to induce or should realize that it is likely to induce action by the other, or a third person, which involves an unreasonable risk of physical harm to the other, and

knows

that the statement is false, or

that he has not the knowledge which he professes.

* + - 1. Rest. (2d) § 311. Negligent Misrepresentation Involving Risk Of Physical Harm
         1. One who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information, where such harm results

To the other, or

To such third persons as the actor should expect to be put in peril by the action taken

* + - * 1. Such negligence may consist of failure to exercise reasonable care

In ascertaining the accuracy of the information, or

In the manner in which it is communicated

* + 1. **Negligent Hiring and Training**
       1. Overview
          1. Definition – duty imposed on municipal employer in arming deputies to exercise reasonable care in hiring, commissioning, training, and retaining its deputies
          2. Alternative to vicarious liability
          3. Just scope of risk/duty
       2. **Analysis for Employer Liability**:
          1. Employee must be engaged in some respect furthering the employer’s business
          2. Employee and plaintiff were in places where each had a right to be when the act occurred
          3. The plaintiff met the employee as a direct result of employment
       3. LSA-R.S. 23:291. Disclosure of employment related information; presumptions; causes of action; definitions.
          1. Any employer that, upon request by a prospective employer or a current or former employee, provides accurate information about a current or former employee's job performance or reasons for separation shall be **immune from civil liability** and other consequences of such disclosure provided such employer is not acting in bad faith.
          2. An employer shall be considered to be acting in **bad faith** only if it can be shown by a preponderance of the evidence that the information disclosed was **knowingly false and deliberately misleading**.
          3. Any prospective employer who reasonably relies on information pertaining to an employee's job performance or reasons for separation, disclosed by a former employer, shall be **immune from civil liability** **including liability for negligent hiring, negligent retention**, and other causes of action related to the hiring of said employee, based upon such reasonable reliance, unless further investigation, including but not limited to a criminal background check, is required by law.
       4. Employer’s are only liable if: employment of a felon created a unique opportunity to commit a crime
          1. E.g. Repeated DUIs given beer delivery truck job
    2. **Negligent Entrustment**
       1. A lender can’t be found liable for loaning something to a competent person or to a person not known to be a risk or threat to other persons
       2. Rest. (2d) § 308. Permitting Improper Persons To Use Things Or Engage In Activities.
          1. It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.
       3. Rest. 2d § 390. Chattel For Use By Person Known To Be Incompetent**. -** One who **supplies** directly or through a third person a chattel for the use of another whom the supplier **knows or has reason to know** to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for **physical harm** resulting to them.
    3. **Subsequent injury**
       1. Regular medical negligence is within scope of risk of original tortfeasor
       2. Grossly negligent medical negligence is not
       3. Eggshell skull doctrine:
          1. Duty of a tortfeasor not to injur a victim included the risk that, due to his weakened physical condition, the victim would require the assistance of a medical device or appliance to accomplish his daily tasks
    4. Other terms
       1. Wrongful birth – suit for defective child
       2. Wrongful life – suit for child being born, not awarded
       3. Wrongful conception – recover general expenses of unintended conception
       4. General harm is foreseeable even if the precise manner it came about is not

1. **General Defenses to Negligence**
   1. **The victim’s own unreasonably risky conduct**
      1. Articles 2323 and 2324 bring comparative fault into LA. Did away with solidary liability.
      2. Definitions
         1. *Contributory negligence* – all or nothing; plaintiff is precluded from recovery if her injuries were at all caused by her own negligence
         2. *Pure Comparative Fault Doctrine* – the liability of each tortfeasor is to be assigned in proportion to her degree of fault; even if 99% at fault, recovers for 1%
         3. *Modified Comparative Fault* **–** liability is assigned in proportion as long as either plaintiff is 0-50 or 49% (changes in different states)
         4. *Last Clear Chance Doctrine* – the party who has the last chance to avoid the accident bears the loss
         5. Assumption of risk is grouped under contributory negligence
      3. LA C.C. Art. 2323. Comparative fault.
         1. In any action for damages where a person suffers injury, death, or loss, the degree or percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined, regardless of whether the person is a party to the action or a nonparty, and regardless of the person's insolvency, ability to pay, immunity by statute, including but not limited to the provisions of R.S. 23:1032, or that the other person's identity is not known or reasonably ascertainable. If a person suffers injury, death, or loss as the result partly of his own negligence and partly as a result of the fault of another person or persons, the amount of damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death, or loss.
         2. The provisions of Paragraph A shall apply to any claim for recovery of damages for injury, death, or loss asserted under any law or legal doctrine or theory of liability, regardless of the basis of liability.
         3. Notwithstanding the provisions of Paragraphs A and B, **if a person suffers injury, death, or loss as a result partly of his own negligence and partly as a result of the fault of an intentional tortfeasor, his claim for recovery of damages shall not be reduced.**
      4. LSA-C.C. Art. 2324. Liability as solidary or joint and divisible obligation.
         1. He who **conspires** with another person to commit an intentional or willful act is answerable, **in solido**, with that person, for the damage caused by such act.
         2. If liability is not solidary pursuant to Paragraph A, then liability for damages caused by two or more persons shall be a joint and divisible obligation. A joint tortfeasor shall not be liable for more than his degree of fault and shall not be solidarily liable with any other person for damages attributable to the fault of such other person, including the person suffering injury, death, or loss, regardless of such other person's insolvency, ability to pay, degree of fault, immunity by statute or otherwise, including but not limited to immunity as provided in R.S. 23:1032, or that the other person's identity is not known or reasonably ascertainable.
      5. Dumas v. State pg. 297
         1. After 1996 amendments to LSA-C.C. Arts. 2323 and 2324 abolishing solidary liability and contribution among joint negligent tortfeasors, is the original tortfeasor liable for 100% of the damages to her victim even though the victim was subsequently further injured by a negligent medical provider?
         2. No, comparative fault must be done. Original tortfeasors are generally fully liable and continue to ensure full compensation
   2. **Assumption of Risk** – no wrong is done to one who is willing
      1. Overview
         1. Expressly – waiver
         2. Implied primary – presumed to consent because voluntarily participated in an activity that involves inherent and known risks. Question of duty.
         3. Implied secondary – π knew of the unreasonable risk created by ∆’s conduct and chose to encounter that risk – allocation of fault
      2. Rest. 2d Torts §496A - A plaintiff who voluntarily assumes a risk of harm arising from the negligent or reckless conduct of the defendant cannot recover for such harm.

|  |  |  |  |
| --- | --- | --- | --- |
| Comparison of Types of Fault (09/13/11) |  |  |  |
| Contributory | Pure Comparative Fault | Modified Comparative (50) | Modified Comparative (51) |
| Plaintiff/victim does not recover if responsible to any degree | P/V recovers in proportion to defendant’s fault, even if 1% | P/V recovers in proportion to defendant’s fault unless responsible for 50% or greater; if over, then no damages | Same except 51% |

* + 1. Rest. (2d) Torts § 496B. Express Assumption of Risk. - A plaintiff who by contract or otherwise expressly agrees to accept a risk of harm arising from the defendant's negligent or reckless conduct cannot recover for such harm, unless the agreement is invalid as contrary to public policy.
    2. Rest. (2d) Torts § 496D. Knowledge and Appreciation of Risk. - Except where he expressly so agrees, a plaintiff does not assume a risk of harm arising from the defendant's conduct unless he then knows of the existence of the risk and appreciates its unreasonable character.
    3. Murray v. Ramada Inns Pg. 314
       1. Does assumption of risk serve as a total bar to recovery by a plaintiff:
          1. In a negligence or strict liability case?
          2. In a case in which π expressly agreed to release Δ from liability?
          3. In a case in which the π has voluntarily placed herself in a situation that involves virtually unpreventable risks? Baseball game would not involve a breach
       2. Assumption of risk does not work with comparative negligence
       3. Plaintiff’s knowledge of the risk does not render the defendant free from fault
       4. This may only bar recovery if there is a waiver.
    4. Pitre v. La Tech. pg. 325
       1. *Does a Louisiana university owe dorm students a duty to warn them of, and protect them against, risks associated with sledding downhill toward area in which there are light poles with concrete bases?*
       2. Tech had no duty to warn Pitre of the obvious risks.
          1. *Test: “Whether a particular risk is unreasonable is a difficult question which requires a balance of the intended benefit of the thing with its potential for harm and the cost of prevention.” – similar to Hand formula*
    5. Workplace Immunity pg. 367
       1. Worker’s Compensation provides benefits to employees injured on the job
          1. No fault – worker does not have to show that employer was negligent or intentional in causing injuries
          2. Employers are immune from tort suits – comp is only recovery

EXCEPTION IN LA: intentional injury by employer or coworker can sue employer in tort

* + - * 1. LSA-R.S. § 23:1031. Employee's right of action; joint employers, extent of liability; borrowed employees.

**If an employee not otherwise eliminated from the benefits of this Chapter receives personal injury by accident arising out of and in the course of his employment, his employer shall pay compensation** in the amounts, on the conditions, and to the person or persons hereinafter designated.

An injury by accident shall not be considered as having arisen out of the employment and is thereby not covered by the provisions of this Chapter if the injured employee was engaged in **horseplay** at the time of the injury.

An injury by accident should not be considered as having arisen out of the employment and thereby not covered by the provisions of this Chapter if the employer can establish that the injury arose out of a **dispute with another person or employee over matters unrelated to the injured employee's employment**.

* + - * 1. Worker’s Comp if You Injure Yourself On the Job While Drunk?

LSA-R.S. § 23:1081. Defenses

**No compensation shall be allowed for an injury caused**:

by the injured employee's willful intention to injure himself or to injure another, or

**by the injured employee's intoxication at the time of the injury, unless the employee's intoxication resulted from activities which were in pursuit of the employer's interests or in which the employer procured the intoxicating beverage or substance and encouraged its use during the employee's work hours**, or

to the initial physical aggressor in an unprovoked physical altercation, unless excessive force was used in retaliation against the initial aggressor.

Vaughan – employer that allows employees to drink at the end of work day has social host protection

* + - * 1. Employer liability for death of employee

Goes to dependents or parents

* + - * 1. Employer defenses against intentional torts

Consent

Π also committed intentional tort (art 2323)

Only negligence, not intentional tort (LSA RS 23:1032)

Intentional tort by third party was superseding cause

Prescription (23:1209)

* + - * 1. Defenses against Vicarious Liability to Employee

No underlying negligence to impute

Employees tort was not in course and scope of employment

Prescription

* + - * 1. Defenses against vicarious liability to third party

Same as above

* + - * 1. Defenses against negligence liability to third parties

Π did not suffer harm

Corp. did not cause harm – not factual or legal cause

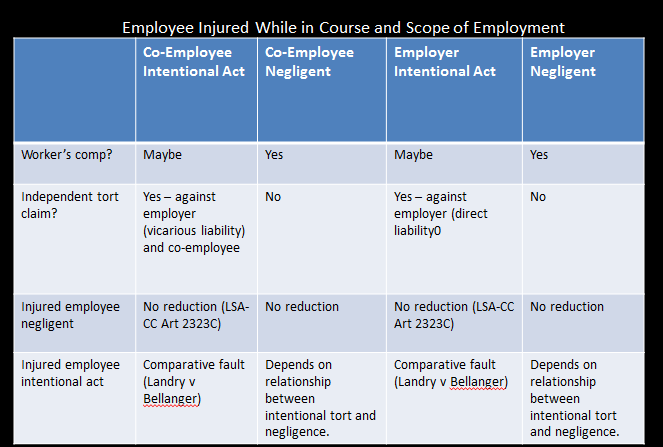
No breach of duty

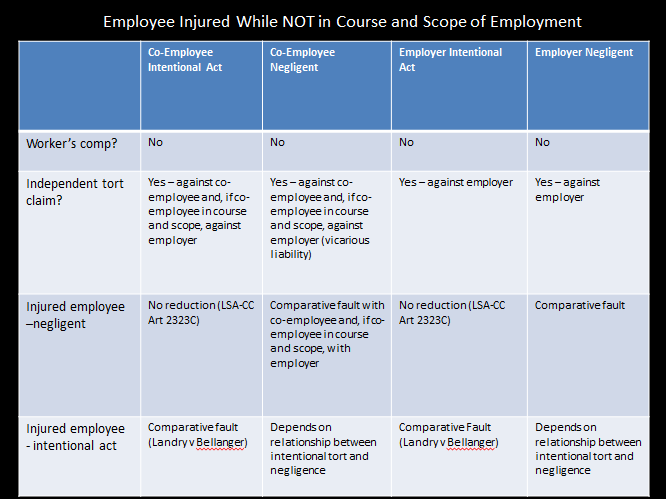
* + - * 1. Employees can sometimes recover in tort and workers comp as shown below
    1. Intentional Acts
       1. Clark v. Division Seven pg. 370
          1. *Does a foreman’s threatening to fire roof worker if he does not continue to work on roof, which is slippery and dangerous after rainfall, fall under the intentional-act exception to an employer’s immunity from tort liability under Louisiana’s worker's compensation statutes?*
          2. Yes, the employer was not immune from tort liability

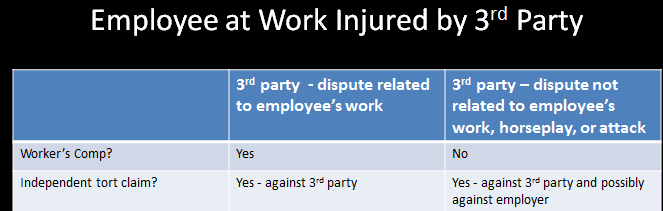
The ordering to continue work made it inevitable that this injury would occur and the behavior fell under the intentional act exception of 23:1032B

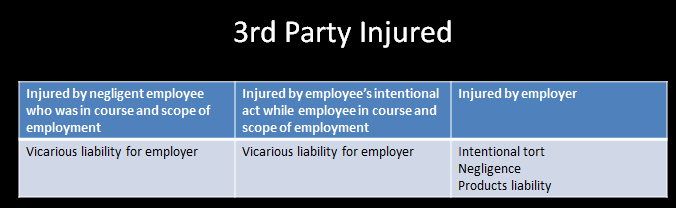
This exclusive remedy is **exclusive of all claims**, including any claims that might arise against his employer, or any principal or any officer, director, stockholder, partner, or employee of such employer or principal under any dual capacity theory or doctrine.

* + 1. Lack of Worker’s Comp Coverage
       1. *Is an injury that a nurse suffers in an elevator on her way up to work on the 11th floor considered to be an “accident arising out of and in the course of [her] employment” for worker's compensation purposes?*
       2. Although she was on her way to work, her injury was not an accident arising out of employment
          1. Arises out of if the risk of the injury is greater for the employee than someone not engaged in employment
          2. There were other alternative routes for her to reach her work station
          3. Was not clocked in. When coming from or going to work, this does not apply.
          4. An exception, known as the **threshold doctrine**, has been recognized when an accident occurs at a **place with an unusually hazardous travel risk which is immediately adjacent to, but not on, the employer's premises**.
          5. **[P[laintiff's stabbing was a random, unforeseeable criminal attack that happened in a matter of seconds without the assailant's identity or motive ever being established.**









* 1. **Waiver** – agreement in advance that the other actor need not protect the victim from certain harm
  2. **Prescription and Peremption** – failure to timely pursue the claim
  3. **Immunity** – the actor occupies such a position in society, or such a relationship with the victim, that the actor is deemed immune from tort liability to the victim

1. **Strict Liability**
   1. Unreasonable risk where knowledge is irrelevant
   2. Things – π must prove that ∆ knew or should have known about the thing’s risk/defect/vice
   3. Children – although a kid of tender years cannot act unreasonably, if the act would be a tort, except for the kid’s age, the parent is liable
      1. Liability is determined without regard to whether the parent could have prevented the injury or not
   4. Animals – negligence except dogs. Still strict liability for dogs.
      1. Π must show that dog caused damage
      2. Owner could have prevented it
      3. There was no provocation