**Torts Outline**

**INTENTIONAL TORTS**

**Elements of Intent**

The test meets one of two elements:

1. Acting with a purpose
2. Acting with **substantial certainty** that a wrong will occur.
3. It cannot be based on intent (because then anyone could claim that they did not intend to bring harm).
4. If society thinks it is a tort, then it is a tort. Spivey v. Battaglia
5. **Transferred Intent**
6. This means that when a person intends to injure one person but brings harm to another, then the injurer is still held liable for an intentional tort.

**Battery**

1. Battery happens when a contact is 1) harmful and 2) It is offensive.
2. It is easy to determine when a contact is harmful because it brings about an injury, but it is harder to determine when a contact is offensive.
3. To determine if a contact is **offensive** a court will look at the **time, place, and manner** of the contact.
4. So if a person gets shoved in a crowded train station, this is expected, but if a person gets shoved in an empty parking lot at 10pm then it is offensive because of the time, place, and manner of the contact.
5. “in a crowded world a certain amount of personal contact is inevitable an must be accepted” – Wallace v. Rosen
6. If an object is intimately connected to the body, and harmful, offensive contact occurs to that object, then this is a battery – Fisher v. Carrousel Motor Hotel.
7. Examples: If someone is holding something and that object is hit, if someone is sitting on a horse and that horse is hit, if someone is sitting in a car and holding the steering wheel and someone his the car. But if someone is sitting in an office and someone hits the wall, then this is not battery.

**Assault**

1. Elements of Assault:
2. An intent
3. Create an apprehension of imminent battery
4. Have an apparent ability to act on that threat
5. Words are not enough to be considered a threat. Moving hands to pockets is an example of apprehension of imminent battery.
6. If a plaintiff does not see an assault coming, then it is not an assault.
7. Scenarios: If someone says that they're going to throw a javelin 1000 feet to hit someone, there is not an assault because its impossible to throw a javelin 1000 feet. If someone pretends to load a gun and shoot at you but it’s actually empty, it depends on whether the person being assaulted knows it’s unloaded or not. If he knows that it’s not loaded then its not an assault but if he doesn't know then its an assault because it creates fear.

**False Imprisonment**

1. There is a difference between confinement and exclusion.
2. If one is not being allowed into a concert this is considered exclusion and has nothing to do with false imprisonment.
3. False imprisonment deals with **confinement.**
4. A confinement area cannot be too large. A city is too large and would be considered exclusion in all likelihood.
5. Scenario: If a person is stopped because they were speeding, then there was a legal justification for that stop and there cannot be false imprisonment, but if that person was stopped because they were black, then there is no legal justification and this would be considered false imprisonment.
6. If a person is insane, then there is a legal justification for confinement.
7. **"Shopkeepers Privilege":** This is a nationally recognized defense to false imprisonment. This makes so that if someone is caught stealing from a store, then you have to let them go. Why? Because if you're a minority and you're caught stealing but are actually innocent and the only reason is because of your race, then its false imprisonment. So some shops say to choose certain people to confront and to some to not confront. To get around shop keepers privilege you have to have reasonable suspicion. So if most of your customers are a minority, then you can ask for the receipts at the door because of probable suspicion. A receipt is a contract and proof that the item is yours.
8. **A person has to be conscious of their confinement.**  Just because they don’t remember a confinement, doesn’t mean they were not aware of it at the time. Parvi v. City of Kingston.
9. **If one feels like they can leave at any moment, then it is not false imprisonment** even if they feel inclined to stay.
10. Enright v. Groves
11. If the only means of escape is withheld from a person then this is false imprisonment.

**Intentional Infliction of Emotional Distress (IIED)**

1. Two Components of IIED
2. Intentional
3. **extreme outrageous nature of the conduct**
4. Causal connection between wrongful conduct and distress
5. **the severity of the emotional distress**
6. 2 and 4 are the more important of the four
7. Harris v. Jones states there are two types of people that you should be on notice when insulting: children and the elderly.
8. How does one prove that they have severe emotional distress (element 4)? They go to therapy and have documented proof of the severity.
9. **It cannot just be a mere emotional distress, but it has to be a SEVERE emotional distress**. Something we just have to put up with.
10. Cat calling women is so common that IIED usually does not apply.
11. An adult insulting a child in passing is extreme outrageous conduct (element 2) but it usually does not create severe emotional distress (element 4).
12. Transferred Intent does not apply in IIED. The intent has to be for the victim.
13. There’s an exception for family members if the defendant knew of the presence of the family member.
14. Prof. says he could combo Assault an IIED together (or some other tort)

**Trespass to Land**

1. Your land is the land that you own and the air above it (not all air because of flying restrictions).
2. **The right to possession** is the key to bringing a claim for trespass to land.
   1. As long as you have rightful legal possession then you have the right for a claim. This includes a short term lease or being a house sitter.
   2. There are situations where your right to ownership can be gone: if your lease is terminated, if you breach your lease, if you do something illegal with the land.
   3. A landowner has to deal with certain protocol when dealing with a renter. A landowner has the right to protect their property, but they have to abide by the rights of the renter and the contract. E.g. giving 24 hours notice before painting the rented house.
   4. Someone who over stays their welcome could be a trespass to land.

**Trespass to Chattels**

1. This deals with hurting someone’s personal property. Deals with things that can move or can be moved.
2. Glydden v. Szybiak: dog bites girls nose, family sues. Owner claims that the girl did a trespass to chattel and as such could not sue. **Court said that since she did not HARM the dog, that there was no trespass to chattel.**
3. Compuserve case says that Trespass to Chattel does not have to be physical. In this case cyber promotions was sending spam that actually affected compuserve’s business and as such it was a trespass to chattel.

**Conversion**

1. Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with right of another to control it that the actor may justly be required to pay the other the full value of the chattel.
2. Ways in which an actor may convert a chattel into dominon and control over it that so seriously interferes with the owner’s right to control: acquiring possession of it through stealing, damaging or altering it (such as intentionally running over a pet), using the chattel, receiving it (like if a thief sold something he stole), disposing of it (wrongfully selling a chattel), misdelivery (delivering to the wrong person by mistake and chattel is lost), refusing to surrender the chattel.
3. A chattel must be interfered with in a **complete or very substantial way**.
4. In Pearson v. Dodd, the court found that photocopied documents that were printed in a newspaper could not be considered conversion because the documents themselves were not altered in anyway.

**Consent**

1. Consent is a privilege that would make an action that was otherwise unactionable, actionable. Where do you draw the line in consent? Rape deals with this. When a husband hugs his wife it is considered implicit consent because they are married, but consent can be explicit.
2. A sex tape: when someone says it’s only for themselves, theres consent, but if they go around showing it to their friends, there was no consent for that.
3. **If a person’s actions give consent, then it is consent.** Obrien v. Cunnard showed that a doctor was justified in giving a patient a shot because she never objected to the vaccine.
4. In a sport, you can claim a tort if a person does an action that is outside the rules of the sport and it causes injury. But if the action was within the rules, then no claim can be made. Hackart v. Cincinatti Bangals.
5. **If a person is deceived into consent, then it is not consent** and a person can bring a claim. De May v. Roberts. This works for saying that you’re clean (sexually).

**Defense of Property**

1. pg. 108
2. Unless a person is in your house using violence or an act that would be punishable by death, the owner of a property cannot use a weapon or any sort of action that would cause death or serious injury.

**Recovery of Property**

1. A person should not use force to obtain their rightful property unless if the person holding your property becomes the aggressor.

**NEGLIGENCE**

The four elements of negligence are DUTY, BREACH, CAUSATION DAMAGES

Duty, breach, and causation deal more with foreseeability while damages deals more with rules.

**Duty**

1. Reasonable person standard. Would a reasonable person have done the same in the situation? Every person owes a duty to behave as a reasonable prudent person would under the circumstances or similar circumstances.
2. Duty and Breach are intertwined with the Carroll Towing test. Is there a duty? And was the duty breached.

**Breach**

The first thing we must ask ourselves in Breach is whether there was a duty to act differently. This is determined by the test established by United States v. Carroll Towing.

1. The test for examining one’s breach is **probability x gravity > burden (PxG>B)**
2. When it comes to **probability (p)** one has to see the foreseeability of the exposure to risk of harm. If the exposure to the risk of harm is unreasonable then P is huge. Lubitz v. Wells determines this.
3. So what is unreasonable exposure to risk of harm? One way is to see what a reasonable person would have done. If one does not do something a reasonable person would have done or does something a reasonable would not have done then they are held negligent. (this is not as important as the rest of the ways P is determined)
4. the existence of a situation at hand of such appreciable weight and moment so as to provide the defendant notice that they do something differently.
5. **Foreseeability is not merely looking to the average circumstance but the existence of such a situation where the defendant should have done something different based off of the notion that the defendant KNEW or SHOULD HAVE KNOWN.**
6. Its not enough to look at the average circumstance. Sometimes looking at the average is okay if no case on that subject existed but sometimes there are situations when an individual should’ve known. An example would be tires on a car. If your tires look like they are going to explode, and they do, just the fact that it looked like they were going to blow, is a situation where one should’ve known better.
7. In pipher v. parsell, a passenger pulled on a steering wheel and killed the people in another car. P was high in this case because the passenger had pulled on the wheel once and the driver was aware that the idiot was capable of doing it again.
8. In some cases, like a blind person, the reasonable standard test is changed to compensate for a person’s abilities.
9. When it comes to **Gravity (G)**, it is high if the injuries or the cost of injury will be big. So if a person were to see that his tires were going to blow, then G would be high because the damage that could be caused by tires blowing out are huge.
10. When it comes to **Burden (B)**, it is high if it would be too difficult to accomplish the measures necessary to stop what is foreseeable.
11. An example of this would be in David v. Snohomish County where it was held that it would be too much of a burden for a county to make railways for high-elevated areas to protect drivers from running off the road.
12. If something is reasonably known, then B cannot be raised.
13. There’s a reasonable person standard for every kind of person. Theres a reasonable child standard, a reasonable blind standard, etc. What would a similar person have done in that situation? Mentally retarded people do not get a change in the reasonable standard test (menlove case)
14. **External Circumstances:** sometimes there are external circumstances that make burden really high because of the stress being brought against you. For instance, if a person is holding a gun to your head, your are not expected to follow all the rules of the road. Cordas v. Peerless transportation Co.
15. **Internal Circumstances:** Such as being blind also affect Burden.
16. The reasonable person standard is changed by some courts according to the situation. Internal /external circumstances.
17. If a child does an adult like activity, such as driving a car or using a gun, then that child would be held to the reasonable standard of an adult. Robinson v. Lindsay.
18. Professionals have their own reasonable standard. For instance a reasonable pilot test. The test is not subjective to how much training a person has but objective to just the profession. Heath v. Swiftwings.
19. Is following the industry standard a defense against negligence? No, the industry standard could be wrong.
20. **Rules of Law (violation of a statute and applicability)**
21. This deals with statutory law. If a person breaches a statute then they have committed negligence. There is a difference between using statutory breach and the Carroll towing test. Statutory is better because you don’t have to go through the analysis of Carroll towing in the common law.
22. First question we have to ask ourselves in rule of law is whether the statutory law is applicable. To do this we use the test established by **Stachniewicz v. Mar-Cam Corp.**
23. Which asks if the violation of the legislation results in injury to a member of the class of persons intended to be protected by the legislation and if the harm is of the kind which the statute or regulation was enacted to prevent. (pg 215). **So you have to determine if the statute has the same subject matter as your case.** Then you have to go into the jurisdictions that this can be applied in…
24. **There are 3 jurisdictions to the Mar-Cam test: Negligence *per se*, presumption, and evidence.** If you are in a negligence per se jurisdiction, and you violate the statute, then duty and breach have been violated. If you are in a presumption district, the Court will take into consideration emergencies as a reason to suspend duty and breach. If evidence is taken into account, then that means that evidence is taken into account along with everything else in the case.
25. If you establish that the negligence is **per se** through the statute then you move on to **causation**, but if you find that there is no negligence per se, then you move on to the **Carroll towing analysis**.
26. **Res Ipsa Loquitur**
27. The fact that there is an accident means that there is negligence.
28. The number of events where res ipsa can be applied is rare.
29. Things like if a patient is under and becomes injured, there has to be negligence on the part of the surgeons because the patient was not conscious and could not control anything. Ybarra v. Spanguard.
30. The plaintiff has the burden of proof in res ipsa (except in the rare case of the patient put under scenario)
31. To prove this, the plaintiff has to prove that the accident is so rare, that only under negligence could the accident have happened. Things like faulty mechanic work on an airplane.
32. A defense to the doctrine requires that reasonable evidence be shown that the accident was not caused by the defendant’s negligence.

**Causation**

Causation is two things: causation in fact and proximate cause. An action must be both cause in fact and proximate cause of a plaintiff’s injuries. Causation in fact must be proved before proximate cause.

1. **Causation in fact**
2. showing a causal relationship between the plaintiff’s injury and defendants action.
3. The causation of fact test is the **but for test** established by Herskovitz v. Group Health Cooperative of Puget Sound.
4. but for test requires proof that damages or death probably would not have occurred “but for” the negligent conduct of the defendant.
5. We use the but for test if it involves a plaintiff v. a defendant but the test doesn’t always work in concurrent cases.
6. **But for test** or **Substantial Factor Test** can be used in concurrent cases. There are cases that show examples of which to use in certain scenarios.
7. **Hill v. Edmonds**: When separate multiple actors add to the cause of an accident, and but for the actions from those parties would the injury not have occurred, then the but for test can be used. In Hill, a woman was speeding, and a farmer left his tractor in the middle of the road; causing the woman to crash. But for the actions of both these individuals, the accident would not have occurred.
8. **Anderson v. Minneapolis**: two people shoot at a person, and the person gets hit. Not both caused the accident but its not possible to tell who actually hit the person. Both are liable. This is the substantial factor test
9. **On the irac in the test, professor says to always use but for, but if there’s a concurrent cause to point out that there is a concurrent cause and to point out that an Anderson test could be possible.**
10. **Proximate Cause**
11. Proximate cause is a means to limit the amount of liability a defendant can suffer. Cause in fact by itself would leave defendants open to an unceasing chain of liability.
12. There are three tests for proximate cause: The palsgraf test and the wagon mound 1 and 2 cases.
13. **Palsgraf test**: established by Palsgraf v. Long Island R.R. Co. The test established here is a test of the **foreseeability of the plaintiff** and whether a reasonable person would have done the same thing as that person.
14. **Wagon Mound 1**:This case looks to the foreseeability of injury
15. **Wagon Mound 2**:creates a test to determine what foreseeability is. It is ultimately the same thing as carroll towing test but its not the carroll towing test, it’s the Wagon Mound 2 test (PxG>B)
16. **Intervening/Superseding causes**
17. If a third party is intervening, then this has no weight on affecting the causal nexus between the plaintiff and the defendant, but if an intervening act becomes superseding, then it would break the causal nexus between the negligence and an actor. If an intervention of a 3rd party is foreseeable then it is not a superseding intervening cause. A superseding intervening act occurs when a third party intervenes and it is so extraordinary that it is unforeseeable. This unforeseeability breaks the causal nexus between the other 2 parties.
18. A criminal intentional malicious tort will usually turn an intervening cause into a superseding interveining cause because criminal acts are usually unforeseeable.
19. Times when intervening acts will always be foreseeable:
20. when defendant is under contract to protect plaintiff
21. when a defendant does an act that will certainly lead to a 3rd party intervention
22. when defendant hires a person who he should know will most likely commit a crime.
23. When a defendant takes a dangerous person into custody and fails to restrain them.
24. go to page 344 for hypos on superceding causes.
25. Suicide is generally not seen as a superseding cause.
26. **The rescue doctrine:** danger invites rescue, and as such, it cannot be viewed as an intentional tort when someone saves another person. Rescuing a person cannot be viewed as a superseding intervening cause.

**Joint Tortfeasors**

1. **Joint sever liability:** If both defendants are negligent then they are both 100% liable for damages. When youre acting in concert or together to achieve a certain goal the Court has found that your are jointly liable for 100% of the damages and you are each individually liable for 100% (meaning that if they all cant pay then its up to everyone who is liable to find who was at cause). Bierczynski v. Rogers
2. If the plaintiff was a little at fault and is trying to recover from the defendant then there are two types of jurisdictions:
3. **Comparative Negligence:** In this type of jurisdiction, if a plaintiff is 10% at fault, then they will recover 90% in damages. If a plaintiff was 45% at fault, then they will collect 55% in damages
4. **Less than and More than jurisdictions:** These jurisdictions will let a plaintiff recover if they are less than 50% at fault and not recover if they are more than 50% at fault.
5. Lets say you are a joint tort feasor and you find out that the other tortfeasor finds out that you came into money or that you were hiding money. Then that person can claim **CONTRIBUTION** which means that he wants the Court to tell you to pay what you should pay.
6. **Indemnity** means that one party will pay the damages if something goes wrong. Indemnity agreement example could be seen in a car insurance agreement.

**9 Issues in Torts**

1. Duty and Breach Analysis (common law)
2. Statute to Duty and Breach Analysis (Borrowing Statute) (Mar-Cam test)

-applicable vs. non-applicable (if non-applicable then move on to Carroll Towing test)

3) Causation in Fact question

-Could be one of two things:

-make it difficult to discern evidence to prove causation (less likely)

-multiple causes (Anderson/Hill analysis)

5) Proximate Cause test

-host of plaintiffs/defendants

6) Intervening Causes

7) difficult question that turns on understanding (difference between intentional and negligence)

8) Hodge-podge of intentional torts together

-e.g. batter/assault, assault/IIED

9) Shotgun Approach

- A bunch of little things; e.g. negligence on the part of one party.

**Employer Immunity** is the notion of sovereign immunity. Sovereign immunity says that unless the governmental office gives you permission to sue it, they cannot be sued. In most cases this applicable to a statute (that is in the material).

It is conceivable on the exam that you will deal with entities. The entities did not do a wrong, it’s the employees of the entities that did the wrong.

If an agent acts negligently while in the scope of employment. The agent is who is liable, not the entity. The employer is negligent. Its called liability without fact.