GENERALLY – legal wrong other than breach of K, that law will grant civil remedy

I. DAMAGES
   A. Nominal – (int. torts) small in amount to est. for record P was harmed
   B. Compensatory – (preponderance . of evid.) comp. for out of pocket expenses & pain/suffering, lost wages, can’t introduce evidence as to wealth of D
   C. Punitive/Exemplary – (clear/convincing evid.) punish, large amounts, used when D acted with actual malice in unintentional torts, always available in intentional torts (Ownens – claim for asbestos, no facts, ct. held above rule)(employers can be held liable where meet employee is manager – Fisher)
   D. Bifurcated trial – splitting trial up to determine compensatory and punitive damages b/c of the diff. standards of proof for each, way of limiting punitive damages

II. PLEADINGS
   A. Complaint, Answer (admit or deny), Motion to Dismiss (failure to state a claim), Motion for Summary Judgment (no dispute as to facts)

III. TRIAL
   A. Non-jury trial – quicker, judge makes findings of fact
   B. Motion for directed verdict (as a matter of law after presentation of P’s evidence)
   C. Jury Instructions
      1. General verdict, special verdict (answering specific questions of fact, judge makes dec. of law)
         a. extra legal factors on jury decisions make jury selection important
            i. juries tent to award less when they know D not insured
   D. If pty made motion for directed verdict, then can make motion for JNOV

IV. APPEAL
   A. Only decisions of law by judge, not findings of fact by jury

V. PURPOSE OF LIABILITY
   A. Compensate, Punish, Deter, Behavior Modification, Put loss where it belongs
   B. Normative – right/wrong
   C. Teleological – policy

VI. THEORIES
   A. Instrumentalist – determining liability est. rules, the more institutional the actor (professionals/corporations) the more likely they are to be influenced by the rules.
   B. Non-instrumentalist – liability just. on grounds of fairness, D imposes nonreciprocal risks

INTENTIONAL INFLICTION OF HARM

I. BATTERY – Restatements 2d §13
   A. Intent – actor subjectively desires consequences flow from act (Garratt)
      1. If act is wrong, liable for consequences even if not intended (thin skull rule, Vosberbg)
      2. Children held to lesser standard of judgment and accountability (Garratt)
         a. knowledge w/ substantial certainty (Garratt)
      3. Must fall outside reasonable expectations (sports, etc.)
   B. To cause harmful/offensive contact w/ person or 3rd pty or imminent apprehension of contact.
1. offensive invasion of body space or contacting an object same as physical contact (Fisher, Leichtman)
2. offensive = offense a reasonable sense of personal dignity (Restatements §19)
C. Harmful/offensive contact results
II. ASSAULT – Restatements 2d § 21
A. Intent, to cause commit battery or cause imminent apprehension to person or 3rd person that battery is about to be committed.
   1. Same as battery
B. Imminent apprehension results
   1. must demonstrate a present intent and ability to do harm (Read v. Coker D’s men surrounded him in D’s shop but said b/c they conditioned their threat on P not leaving, ct. held it was not an assault...)
      a. but can’t be forced to give up a right to avoid the present threat
   2. if P perceives a “reasonable fear of personal harm, then assault (Beach v. Hancock “unloaded gun in office”)
   3. do not confuse w/ fear, fear is not a factor (Mike Tyson hypo)
C. If apprehension not intentional, then may still be liable for neg’l (Restatements)
III. FALSE IMPRISONMENT – Restatements 2d §35
A. Intentional
B. Restraint of another in a bounded area
   1. May be justified (Sindle – bus driver keeping kids on bus)
C. Directly or indirectly results in restraint
   1. Whittaker – held aboard yacht but allowed to make trips ashore
D. P is aware of restraint or harmed by it
   1. P must make his intentions to leave known (Rougeau – held in guardhouse)
E. Statutes – restraint lawful if performed in authority with law: (Coblyn – shoe store)
   1. Reasonable manner
   2. Reasonable length of time
   3. Reasonable Cause
IV. INTENTIONAL INFILCTION OF MENTAL UPSET – Restatements §46
A. Intentional
B. Extreme and outrageous conduct
   1. must be really bad/go beyond all bound of decency (Restatements comment)
      a. examples where normally would not be but is b/c of circumstances
         i. continuous (Samms v. Eccles – repeated unwanted marriage proposals)
         ii. type of P (elderly, small children)
         iii. type of D (common carrier to passengers)
   2. mistreatment of bodies by funeral parlors is classic example
C. Which causes bodily harm (only int. tort to require physical harm) to person or 3rd person
   1. liable even if mental upset not intended to cause physical harm (Siliznoff “garbagemen”)
   2. Judged by reasonable person standard, hypersensitivities of P not taken into account
   2. States vary on whether emot. upset has to manifest actual physical harm
D. Looks to conduct of D, rather than battery which looks to P’s injuries b/c hard to see mental upset
V. TRESPASS – protect P’s interest in exclusive possession in land
A. Unauthorized, physical invasion onto P’s land by an object controlled by D
   1. Intentional, or
   2. Caused by D’s reckless or neg’l, or
   3. Result of D carrying on an ultra hazardous activity.
B. D may be privileged if social benefit of trespass outweighs risks of harm to land
C. P entitled to at least nominal damages and injunctive relief.

VI. NUISANCE – interference w/ P’s use and enjoyment of land.
   A. only important in the sense of strict liability (see below)

VII. AFFIRMATIVE DEFENSES - Privileges
   A. Consent
      1. Actual consent – willingness in fact for conduct to occur (Restatements §892)
         a. no cause of action where consented to action which was criminally
            sanctioned (Barton – underage woman agreed to have sex w/ bus driver)
            i. civil law may look to criminal statute for guidance but not binding
      2. Implied consent – Did D believe there was consent? Would a reasonable person
         believe there was consent? (O’Brien – immigrant got shot in the arm)
         a. if no emergency, dr. needs consent b/f operation (Bang – spermatic cords)
         b. if consent to surgery, dr. has duty to extend surgery as required by good
            medicine and not liable (Kennedy – rem’vd appendix, found/rem’vd cysts)
            i. way around this is having patient sign informed consent K
         c. Players in contact sports do not consent to all manner of contact (Hackbart – NFL)
      3. Refusal of Consent - if person w/ legal capacity and not under duress refuses to submit
         to contact, ct.’s will honor the refusal (includes life saving medical treatments)
   B. Self Defense
      1. Non-deadly force – when believe another is about to commit battery on you, no duty to
         flee or comply with other’s demands (Restatements 2d §63)
      2. Deadly force – when believe another is about to use deadly force on you, can only use
         outside of dwelling or attempting arrest if you can’t escape (Restatements 2d § 65)
         a. reasonable man standard to det. if force justified (Courviosier – shot cop in street)
   C. Defense of Property
      1. Non-deadly force – when intrusion is not privileged, will not leave, and only
         prevented by reasonable force. (Restatements §77)
      2. Deadly force – only if reasn’bly believes intruder going to kill owner/occupants (§79)
         a. law places greater value on life than property (Katko – spring gun)
   D. Necessity – prov. to enter land or sacrifice. per. prop. of another to avoid serious harm to
      a person’s body, land, property. Obligation to pay for whatever harm caused.
      a. party who sacrifices other’s property is liable for damages (Ploof, Vincent)
         i. encourages parties to minimize costs of damage (ec. efficiency)
   E. Immunities
      a. Intrafamily immunity – reluctance to hear claims b/t spouses and against parents
         i. teachers also allowed similar immunity when standing in place of parents
      b. Gov’t – no assault, battery, defamation, int. w/ K, liability for breach of discretion duty
      c. Charities – limits liability for neg’l (want to encourage charities)
      b. Arrest/prevention of crime, (Coblyn – shoe store imprisonment) enforce’mnt of
         mil’try orders, recapture of land/chattels – reasonbl’ness of perception and harm inflicted
NEGLIGENCE – unreasonable risk of harm to another (risks outweigh benefits from act)

I. BACKGROUND
   A. Began as strict liability, moved to fault based liability
      1. wanted to encourage risky enterprises (industrial revolution)
   B. Trespass on the case – damage resulted from consequential acts of D.
      1. D could escape liability by showing he’s not at fault
   C. Moved to standard that D must act w/ reasonable care under circumstances

II. DUTY
   A. Gen’l Duty
      1. To whom:
         a. to all who are reasonably foreseeable subject to harm by D’s acts
            i. majority view –
               Palsgraff Cordozo – reasonably foreseeable victims by P – question for jury)
               Weirum – Radio D.J
               Kinsman dissent – need to be foreseeable b/f hand, retrospectively saying D
               should have known his actions could extend to unforeseeable vics. not fair
            ii. minority view –
               Palsgraff dissent (Andrews – duty to all injured unless chain of events too
               tenuous)
               Kinsman majority – where damage results from type of injury that could have
               been foreseen, who is injured and extent of injury does not limit duty
         2. To do what:
            a. exercise reasonable care where conduct poses a risk of physical harm (3d §6)
               Brown – breaking up dog fight
               i. where D has limitations (physical/mental) judge by how reasonable person
               w/ that disability would have acted
            b. how to determine reasonable care
               i. judged by how reasonable man would act under like circumstance (§283)
               ii. Hand Formula (Carol Towing – bargee left at night)
                   \[ \text{B(burden)} < \text{P(probability of event causing injury)} \times \text{L(magnitude of loss)} = \text{Neg’l} \]
                   if cost from taking precaution (burden) outweighs benefit (PL), don’t do it.
                   Need to review problem 11, don’t really understand
               iii. measure burden against totality of risks, not case by case
                   Washington – no duty for eclec. co. to insulate wire above P’s house
   B. Modified Duty
      1. Possessors of land – equal to or less than gen. standard
         a. invitee – public invitee (encouraged or induced to come onto land), business visitor
            i. liable for harm caused by condition known or discoverable by reasonable
               care, invitee will not discover, owner does not protect against danger. (ordinary
               care)
         b. licensee – guest (privileged to enter by owner’s consent)
            i. liable for harm known/has reason to know of, licensee will not
            discover, owner does not protect from danger.
         c. trespasser – person who remains on land w/out permission or consent
            i. refrain from wanton or willful conduct
d. constant trespasser (§335)
   i. liable if **fails to warn** trespassers of condit. which owner **knows** is dangerous
      - P must prove owner knew of dangerous condit.

e. known trespassers (§ 337)
   i. liable if fails to warn trespasser of condit which **has reason/know** is dangerous

f. trespassing children (§339) attract nus. doctrine/turntable doctrine
   i. liable if 1) knows/rtk children trespass, 2) k/rtk posses risk to children, 3) children to not discover b/c youth, 4) burden<risk to children, 5) fails to warn

Note: Majority view now (CA the 1st) has standard of ordinary care for both invitees and licensees (Rowland –owner liable for bathroom fixture injury to guest)

2. Common Carriers – engages in transportation of public indifferently
   a. high than gen. standard in most states (“highest degree of care”, “utmost care”)

3. Motorist re: passengers – Minority have lower standard (auto guest statutes)
   a. most states = ord. care & duty to rescue

4. Exceptions to No duty to rescue (§314)
   a. preexisting relationship b/t potential rescuer/rescuee may impose duty (§314A)
      ex. innkeeper/guests, driver/pass. (Tubbs – diver resp. for add. injuries to pass.)
      doctor/patient/ppl. dr. det. (AMA standard) patient threatens (Tarasoff – duty to warn 3rd pty of patients threat to kill)
      b. duty to rescue create where actor causes sit. to render vic. helpless (§322, Tubbs)

5. Duty created where pty voluntarily performs a action to protect that public comes to rely on (Erie R. Co. – must maintain voluntary watchman @ train crossing)

III. BREACH

1. Res Ipsa Loquitur – D’s neg’l inferred when D in exclusive control of instrumentality that caused injury and in absence of neg’l this type of accident does not usually occur
   a. where D under exclusive control of instrument, P can’t make reasonable inspection to determine neg’l defect (Boyer – bleacher collapse)
   b. where evid. destroyed in neg’l act, Res Ipsa is applicable (Siegler – gasoline truck)
   c. doesn’t apply where P has means to inspect instrument to show neg’l (Shutt - shoe stand fell on head)
   c. P must prove D was in exclusive control when neg’l act occurred (City of L’ville – P couldn’t prove D in control when drunk got hurt, Escolla – P proved D in control when bottle faulty manufactured)
      i. no need to show who spec. in charge if group of ppl (Ybarra – surgery staff)

2. Violation of statue setting standard of care is neg’l per se/matter of law (Martin – driving w/out headlights), no room for judicial discretion
   a. harm suffered by violation must be w/in risk envision by legis. (Gorris/3d §14)
   b. Statute gov. gen’l rule of conduct may be deviated from w/ good cause (Tedla – kids hit by car walking on wrong side of road)
      i. violation of stat. not nec neg’l (Brown – chiropractor operating w/ med. license)

3. Custom
   a. gen’l accepted custom can set stand./care if jury finds reas’ble (Timarco – shower)
      i. actor must be linked to other actors so that no actors decision re: risk of harm can ignore the interests of other actors
   b. lack of cust. no excuse for not employing feasible precaut. measure (T.J. Hooper)
      i. compliance w/ prof. standards does not insulate from neg. (Helling – eye test)
IV. CAUSE
A. Actual Cause (cause in fact)
1. General cause – is D’s act capable of causing P’s injury?
   a. P been exposed to toxic substance, depends on expert testimony
      i. Fry rule – expert testimony admissible only if “generally accepted”
      ii. Daubert rule – expert testimony not limited by “general acceptance”
2. Specific cause – did D’s specifically cause P’s injury?
   a. But for D’s neg’l P wouldn’t have sustained injury (Ford – D neg’l w/ rescue boat, but P would not have been able to rescue even if not neg’l)
      i. w/ element of causation lacking even most egregious neg’l can’t result in liability (Lyons – (Ak) Even if D was speeding, still would have hit P)
   b. Substantial Factor/Loss-of-chance
      i. Cahoon – recovery from D’s neg’l following stand. of care in diagnosing cancer which sig. increased prob. of P’s injuries although likelihood of incurring injuries was > 50% in absence of D’s neg’l (§323)
         a. Loss-of-chance is minority rule (narrow application)
         ii. Substantial factor - §431cause = substantial factor in bringing about harm
            a. Kingston - case w/ two fires burned down barn?
   c. Circumstantial evidence permissible to infer causation, D burden of showing other potential causes (Hoyt – only mill shooting sparks by hotel, cause inferred)
      i. Probability that harm caused by D does not meet burden of proof (Smith – P ran off road by bus, D operated bus on that road)
      ii. judge decides if evid is admissible, jury decides weight to give it
3. Joint/Several Liability – Ds joined as single unit (joint), each D liable in full (sev.)
   a. Where two or more D are possibly sole cause & P shows at least one, if not more D definitely did cause injury, then each D’s fully liable (Summers – bird hunting, Ybarra – P injured while unconscious in surgery)
      i. D’s left to work out apportionment of damage b/t themselves by D showing fault of other D
      ii. more just to leave burden on D (neg’l pty) than on P (innocent pty)
      iii. encourages innocent D to tell on guilty D (Ybarra)
   b. Joint tortfeasors – D’s acted in concert
4. Market Share – P joins manufactures of a defective drug, burden shifts to D to prove it did not manufacturer drug or else liable for percent of market it D controls
   a. limited in applicability to DES manufact.(Sindell – note case, defective drug)
5. Successive Cause - D liable for neg’l but P’s probably future limits damages (Dillon – kid elect. wire then fell off bridge)
6. Concurrent Cause – D only escapes liability if other cause more powerful or act of God (Kingston – two fires destroy barn)
7. Vicarious Liability – “respondeat superior” let the master answer
   a. master-servant relationship – servant performs service on behalf of master (need not be paid)/master control of servant conduct
      i. servant must be acting in scope of employment
      ii. must be motivated by employment
         - folic and detour
iii. policy reasons – pressure employers to optimize how servant act
i. sub-contractors – employer’s not liable
   - will be held directly liable where neg’l in selecting sub
b. joint enterprise – partners are master/servant to each other
c. family purpose doc. – owner of auto liable if auto family car and used for family purpose by family member w/ owner’s permission

B. Proximate Cause – (legal cause) neg’l sparks chain of events/foreseeable consequences
1. Foreseeable Plaintiffs
   a. Palsgraf – P injured by scale falling after package exploded in train station
      i. Majority (Crodozo) – Duty to foreseeable victims from D’s perspective
      ii. Dissent (Andrews) – Foreseeability judged by reasonable man, duty to all
      iii. Prox. cause det. by time, space, remoteness relationship b/t D’s neg’l and P’s injury, arbitrary cut-off of series of events after a certain point.
   b. Rescue doctrine – neg’l act of D liable to rescuer if reasonable person would have believed vic. in danger and rescue carried out in reasonable manner (Solomon – shot by cops attempting to rescue neighbor being arrested)
      i. firefighter’s doc. – prof. rescuers can’t recover under rescue doc.
2. Foreseeable Harm to Plaintiff/Results
   a. Ct.’s look to proximity of time & space b/t D’s neg’l and P’s injuries, how many intervening acts were there (Marshall – D ran P off road, P struck by another car; Andrew’s dissent in Palsgraf)
      i. judge decides if issue of prox. cause could lead to diff. results, if so jury decides as matter of fact whether results foreseeable
      ii. especially predominant in cases of car accidents
      iii. §433 – substantial factor = consider no. of extemporaneous factors, D’s neg’l creates cont. chain of events leading to P’s harm (lapse of time), creates sit. harmless until P unknowingly acts
   b. If D’s neg’l set stage where 3rd pty’s intervening act caused harm, D liable unless 3rd pty’s act was willful and wanton (Watson – gas spilled, match thrown)
   c. Where to draw line b/t D’s neg’l and chain of events leading to injury is decided on a case by case basis (Kinsman – barge broke loose, dammed river, flooded fields; Palsgraf dissent)
   d. B/c consequence unlikely to happen not mean unforeseeable (Wagon Mound)

NOTE: Ct.s’ struggle w/ question of where to draw foreseeability line, no clear cut rule
3. Foreseeable mental/emotional upset progression (NIED to bystanders)
   a. Impact rule – can’t recover w/out physical contact
   b. Zone of danger – can recover for emotional upset when caused by fear of physical injury, but can’t recover unless in physical danger (Waube – Mother can’t recover for watching her child get hit by car)
      i. D has no duty to limitless no. of ppl who might witness neg’l
      ii. would open the door for fraudulent claim, not in interest of society
   c. Dillon – opens liability door to bystanders, (mother allowed to recover for watching child get hit/killed by car) foreseeability based on gen’l criteria:
      i. must manifest physical injuries from witnessing D’s neg’l to another
      ii. proximity to scene of accident
      iii. whether shock resulted from directly witnessing the accident
iv. whether P and victim were closely related
d. Thing – Dillon standards prod. inconsistent/unpredictable result, increase liability, corrosive effect on judiciary → need more concrete standard (mother can’t recover when not at scene)
  i. close relationship
  ii. present at scene of accident (aware)
  iii. suffers emot. distress not anticipated in uninterested bystanders
  iv. concurring opinion wants to go back to zone of danger
e. Burgess – neg’l during delivery which causes injury to fetus → resultant in emotional distress to mother breaches duty owed directly to mother
  i. distinction b/t direct victim and bystander – whether preexisting relationship b/t D and P

4. Injury to personal relationships (loss of consortium)
a. Husband/Wife – typically can recover for loss of relationship benefits
  i. Feliciano – non-married couples can’t recover
b. Parent/child – majority (Ca) → can’t recover, minority → can recover
  i. Boer majority – wouldn’t really compensate (bad policy), difficult to measure damages (no real stand.), impose extended/disproportionate liability
  ii. Boer dissent – just as compensatable and measurable as husband/wife, risk of increase liability offset by procedural devices

NOTE: struggle w/ NIED – need compensate for loss of P or else unfairly dist. among society, danger to overcompensate/extend liability where not P/results not foreseeable

5. Wrongful death – statutory (look to law of the state)
a. Survival statute (all states) – claim survives death of P
  i. recovery – what P would have been able to recover
b. Wrongful death statute (majority) – estate recovers when D caused death
  i. recovery – harm caused to decedent’s family
c. Wrongful death/birth of infant
  i. Werling – fetus treated as person if fetus was viable at time of injury
    a. raises difficult questions of mother’s liability to child
  ii. Fassoulas – can’t recover for wrongful birth, can recover for damages resulting from deformities (out of ordinary expenses)

V. Injury
VI. Affirmative Defenses
  A. Contributory Neg’l – P can’t recover where use of ord. care could have avoided injury
    1. Complete defense – both pty’s actions are prox. cause (Butterfield – horse rider)
      a. allows D to move for summary judgment/avoid trial
    2. Last clear chance – even if A con’t neg’l, B is liable if his use of ord. care could have avoided P’s neg’l
      a. Davies – P recovered for donkey in road where D neg’l hit donkey w/ wagon
      b. Helpless P - § 479, P neg’l but unable to avoid D neg’l in not avoiding P
      c. Inattentive P - §480, P neg’l, D knows/should know of P’s neg’l but doesn’t avoid

    3. Assumption of Risk – Meistrich (P knew ice skating rink too slippery)
      a. primary – not a defense, just saying D didn’t owe duty (contact sports, Vosberg dicta)
b. secondary – P was aware of D’s neg’l but continued in activity anyway (P acted unreasonably)
   i. part of con’t neg’l, not a separate defense,
   ii. would be unfair as separate defense b/c give P “two bites at the apple”
c. some ct.’s held exculpatory clauses (relieving D of liability) void for pub. pol.
   i. if passes pub. policy muster, may still fail if not specific enough

B. Comparative Neg’l – recovery reduced but not nec. eliminated by P’s own fault
1. replaced cont’ neg’l in almost every jurisdiction
   a. results from unhappiness w/ con’t neg’l, juries started lowering P’s damages
   b. legislatures began adopting comp. neg’l statutes, ct.’s adopted where leg. didn’t
   c. rat. – not fair in some sit. where P con’t neg’l to not allow any recovery at all
   d. ct.’s split as to type of comp. neg’l
2. Must go to trial to det. % of fault/gives P more bargaining power/increase setl’mnts
3. Types of Comp. Neg’l
   a. Pure comp. neg’l – recovery scaled from 1 – 100% based on what % of injuries attributable to D
      i. P’s neg’l never a complete bar to recovery
   b. Modified 50% rule – P’s neg’l < D’s neg’l to recover (less than 50%)
      i. rat. – if P is equally at fault then doesn’t deserve compensation
   c. Modified 51% rule – P’s neg’l ≤ D’s neg’l to recover (less than 51%)
4. Effects of comp. neg’l on joint and several liability
   a. divides portion of fault amongst D’s (but each still fully liable for damages?)
   b. P may bring in a D who is minimally at fault but w/ deep pockets to recover
      i. some ct.’s hold each D only liable for their portion, but P may recover from one D for more than its portion if can’t get recovery from other D
   c. If each D is less at fault than P, but combined Ds are more at fault then:
      i. unit rule – look at accident in its entirety
      ii. individual rule – look at P’s fault compared to each D
      iii. ct.’s split as to which rule they use
5. Ct. used comparative neg’l in Cahoon (loss-of-chance)

**STRICT LIABILITY**

I. Trespass
   A. Unintentional trespass –liable except for recklessness, negligence, or engaging in ultra hazardous activity.
   B. Intentional trespass – intentionally enters land of another or causes a thing, or 3rd pty to enter is liable even if no damage or made by mistake.
      1. Doesn’t matter if invasion reasonable or not
      2. nonconsensual privilege may excuse liability (Ploof)

II. Nuisance – does not require a physical entry of land
   A. Public nuisance – unreasonable interference w/ right common to the public, not an Interference w/ land (§821)
      1. Public officials/agencies usually bring suit on behalf of public
      2. Indiv. can only recover if: suffered harm of a diff. kind than rest of public, or indiv. member of a class
B. Private nuisance – liable if invades P’s interest in the private use and enjoyment of land causing substantial harm.
   1. Invasion must be either intentional and unreasonable or neg’l or ultra hazardous
    a. unreasonable = harm outweighs invasion (physical or financial harm) (§826)
       i. exceptions (§829A/826B) – even if invasion outweighs harm, if harm is not fair for P to bear alone or D has ability to pay → may still recover
    a. ct.’s typically will not enjoin D but only require to pay damages
   NOTE: Interplay of Trespass & Nuisance – strict liability originated from D doing an action on their land which constituted as a private nuisance which thereby “trespassed” onto P’s land causing harm.
   NOTE: equitable remedy is typical sort of relief sought (injunction)

III. Strict Liability – liability w/out fault for harm proximately caused
   A. Animals (§504)
      1. Livestock– possessor of livestock is liable for their intrusion onto P’s land
         a. def. – domestic animals and foul normally suitable to confinement
         b. not dogs and cats b/c difficult to constrain and unlikely to cause damage to land
      2. Wild animals – owner liable for harm caused by dangerous propensities of animal
         a. public zoo liable only for neg’l in keeping the animals
         b. private zoo → strictly liable
      3. Domestic animal (§509) – liable for abnormal dangerous propensities which owner knows or has reason to know
         a. dog bit cases usually covered by statute (Mi – liability regardless knowledge)

B. Ultra Hazardous activities
   1. Person who brings onto land anything that could be dangerous, keeps it at his own peril and is liable for damages done if it escapes (Fletcher – water reservoir on land unnatural use in England, Turner – water reservoir on land natural use in Texas)
      a. who is going to bear costs of activity – pty doing activity or society?
   2. Ultra hazardous involves risks that can’t be guarded against even if due care exercised
      a. high probability of injury and high magnitude of injury (Siegler – weighed down gasoline truck driving on highway)
         i. Siegler dissent – no strict liability where outside forces intervene
      c. Majority opinion – no strict liability for manufacture of guns
   3. Blasting paradigm of ultra hazardous activity
      a. liability limited to kind of harm inherit in dangerous activity (§519/Foster – no recovery to minks eating each other b/c of blasting)
   4. Corporations engaged in ultra hazardous activity more able to spread costs
      a. conflict usually settled by benefits of industry
   5. Non- instrumentalist justifications (primary theory)
      a. Strict liability on grounds on nonreciprocal risks (even more so than all neg’l)
         i. plane strictly liable to harm to ppl on ground but not to other planes in air

PRODUCTS LIABILITY (NEED TO FINISH)
   1. Traynor’s concurring opinion in Escola (strict liability for manufacturers)
      1) Product placed on market
      2) Manufacturer knows product used by consumer w/out inspection
3) Defect
4) Causes injury
5) Manufacture strictly liable, P need not prove neg’l.

II. Rationale
   1) Under B<PL, manufactures will never be liable, burden high/probability low
      a. but they should be liable sometimes
   2) Manufactures more financial able to bear costs, spreads costs
   3) Difficult to otherwise prove neg’l b/c of complex manufacturing process