A. Overview of Negligence
   1. Key elements
      a. Duty (Did the defendant have a legal obligation to exercise some level of care to avoid the risk of harming persons or property?)
      b. Breach of duty (Did the defendant’s conduct fall below the level of care owed to the plaintiff?)
      c. Causation (Did a causal connection exist between the defendant’s unreasonable conduct and the plaintiff’s harm?)
      d. Scope of liability (Did the defendant’s obligation include the general type of harm the plaintiff suffered?)

I. Duty

A. General Duty of Reasonable Care
   a. Legal duty to act as an ordinary, prudent, reasonable person
   b. Take precautions against creating unreasonable risks of injury to persons

   Rudolph v. Arizona BASS Federation—Fishing tournament wrongful death case. Court held that tournament organizers owed a duty to nonparticipants to run a safe event on the lake.

   MacPherson v. Buick—Defective wheel case. Court held that if the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made, the manufacturer of such a thing is under a duty to make it carefully.

B. Limited Duty Rules
   1. Situations where a “limited duty” might exist
      e. Duty to act, assist, or rescue
      f. Owners and Occupiers of land
      g. Recreational sports
      h. Guest statutes
      i. Emotional harm without physical injury
      j. Pre-natal torts
      k. Responsibility for conduct of others
   1. Exceptions to Limited Duty rules based on nonfeasance
      a. Parent/child relationships
      b. Teacher/student relationships
      c. Contractual obligations to provide aid
      d. A party has voluntarily begun to assist
      e. A statute imposes a duty to assist
      f. A party doesn’t provide assistance to police and fire officials on request
      g. A party involved in an accident doesn’t remain at the scene
      h. A specific category of person doesn’t report child abuse
   2. Duty to act, assist, or rescue

   Yania v. Bigan—Jumping off cliff into water case. Court held that bystander and business partner had no legal obligation to rescue jumper from drowning.
Farwell v. Keaton—Kid beat up and left to die in car. Court held that friend had duty to help the victim because he voluntarily came to his aid and had a special relationship with him (co-adventurer).

3. Owners and Occupiers of Land
   a. Status Trichotomy
      1. Duty to Trespasser- Not to willfully injure the person or set ‘traps’ to do so
      2. Duty to Licensee (on premises with owner’s consent)- Exercise reasonable care to disclose dangerous defects that are known for sure
      3. Duty to Invitee (on premises for mutual benefit of both)- Provide care to prevent invitees from coming in contact with dangerous circumstances, both known for sure and suspected

American Industries Life Insurance Co. v. Ruvalcaba—Son of employee falls through open banister at work. Court held that son was not an invitee and thus no duty was owed to warn him about the faulty staircase.

Rowland v. Christian—Defective bathroom faucet case. Court held that defendant owed a duty because she was failed to warn the plaintiff when she was aware of the dangerous condition, it amounted to a concealed trap, and he was unaware of the trap.

b. Child Visitors
   1. A possessor of land is subject to liability for physical harm to children trespassing thereon caused by an artificial condition upon the land if
      a. the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass
      b. the condition is one of which the possessor knows or has reason to know and which he realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children
      c. the children because of their youth do not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it
      d. the utility to the possessor of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children involved

c. Landlord/Tenant
   1. Generally, landlords are not liable for injuries to tenants on premises
   2. Exceptions to the general rule
a. concealed dangerous conditions were known to the landlord
b. dangerous conditions create risks to those outside the premises
c. the premises are leased for public admission
d. conditions are in the common areas that the landlord retains control over
e. the landlord breaches an agreement to repair the premises

4. Emotional Harm without Physical Injury
   a. Laws and general rules vary greatly from state to state
   b. Zone of Physical Danger Rule I
      1. Involves fear for one’s own physical well-being
      2. Must be within immediate zone of danger
      3. Proof of serious emotional harm is required
      4. Still followed in some states
   c. Zone of Physical Danger Rule II
      1. Involves fear for the physical well-being of another
      2. Almost always has to be a family member
      3. Followed in a majority of states

**Clohessy v. Bachelor**—Car hits child in crosswalk with sibling and mother. Court held that both may recover for emotional harm

d. Requirements for Recovery (according to Clohessy)
   1. Plaintiff is closely related to inured victim (parent or sibling)
   2. Plaintiff’s emotional injury is caused by a contemporaneous sensory perception of the event/conduct that caused the injury
   3. Injury of the victim is substantial (serious physical injury or death)
   4. Plaintiff’s emotional injury is serious (more so than a noninterested party witnessing the event)

5. Independent Duty for Emotional Well-Being
   a. Bodily Remains and Death Notification Cases
      1. negligent mishandling of a decedent's body by a funeral home
      2. loss of a body, switching bodies, mixing up cremated remains
      3. erroneous notification of a loved one's death
      4. limited to persons contracted for the disposition of the body and their immediate relatives

**Molien v. Kaiser Foundation Hospitals**—Plaintiff husband sued doctor for misdiagnosing wife’s syphilis. Court held that he was a direct victim because (1) the risk of harm was reasonably foreseeable, (2) the alleged tortuous conduct was aimed at him as well as his wife, and (3) there was a preexisting duty based on a doctor/patient relationship.
**Burgess v. Superior Court**—Pregnant mother sued for emotional damage following injury to her fetus causing brain damage. Court held that defendant doctor owed a duty because she was a “direct victim” and had a preexisting physician-patient relationship.

**Huggins v. Longs Drug Stores California, Inc.**—Plaintiff sued pharmacy for causing emotional harm by putting wrong dosage on infant’s prescription bottle. Court held that mother could not recover because she was not a “direct victim.”

6. Duty to protect against fear of future disease

**Macja v. Beekil**—Possible HIV exposure from doctor and dentist case. Court held that actual evidence of exposure must exist, and that an individual need not demonstrate a likelihood of developing AIDS in the future to state a claim for fear of contracting it.

7. Mental Health Professional’s Duty to 3rd Parties based on Special Relationship with person posing risk

**Tarasoff v. Regents of University of California**—Psychologist patient murder case. Court held that the university (doctor’s employee) owed a duty to warn of the threat because of the special relationship that existed between the doctor and the person whose conduct needs to be controlled (murderer).

8. Duty to Protect against Criminal Activity
   a. In certain types of relationships, common law imposes a duty to one party to take reasonable affirmative measures to protect the other party from foreseeable criminal activity
      1. Landlord/tenant
      2. Business owner/patron
      3. Property owner/invitee
      4. Hotel/guest
      5. Employer/employee
      6. School/student (k-12)
   b. Four basic approaches that courts use to determine foreseeability in this context
      1. Specific harm test - no duty unless the owner knew or should have known that the specific harm was occurring or was about to occur
      2. Prior similar incidents (PSI) test - landowner may owe a duty of reasonable care if evidence or prior similar incidents of crime on or near the landowner's property shows that the crime in question was foreseeable
      3. Totality of circumstances - all circumstances surrounding an events, including the nature, condition, and location of the land, as well as prior similar incidents, to determine whether a criminal act was foreseeable
      4. Balancing test - court balances the degree of foreseeability of harm against the burden of the duty to be imposed
Delta Tau Delta v. Johnson—Frat party sexual assault case. Court utilized a “totality of circumstances” approach to hold that the landowner owed plaintiff a duty to take reasonable care to protect her from a foreseeable sexual assault.

Cuffy v. City of New York—Family feud case. Court held that the police owed no duty of care because although there was direct contact with some family members, there was no direct contact with the actual victim.

c. Exception to police force “no duty” rule (outlined in Cuffy)
   1. Assumption by the police through promises or actions of an affirmative duty to act on behalf of the party who was injured
   2. Knowledge on the part of the police officers that inaction could lead to harm
   3. Some form of direct contract between the police and the injured party
   4. Injured party justifiably relied on the police’s affirmative undertaking

C. Summary
   1. Duty Analysis Considerations
      a. Precedents
      b. Analysis of cases
      c. Statutory support or negotiation
      d. Public policy goals
   1. Steps in Duty Analysis
      a. Start with a presumption that the general duty principle of reasonable care applies
      b. Determine if any limited duty rules apply
      c. If one or more limited duty rules apply, determine whether there are any exceptions to the rules that are relevant
      d. If no exceptions apply, and the plaintiff would fail under the limited duty rule, then consider arguing for a new or expanded exception, or an overruling of the limited duty rule itself
      e. If no limited duty rule applies, the defendant may consider trying to persuade the court to create such a rule if the subject area poses a novel situation not previously dealt with by the court
      f. If the court determines that no limited duty rule or exception is applicable, the general duty principle of reasonable care applies
   2. See great flow chart on p. 433

II. Breach of Duty

B. Reasonable Care Standard
   1. The Reasonable Person
a. The guideline for determining what is reasonable conduct under the circumstances in most negligence cases
b. Defendant’s conduct is measured against that of a reasonably prudent person acting under the same or similar circumstances
c. Someone ‘doing their best’ does not satisfy the standard

2. Exceptions to Reasonable Person Standard of Care
   a. Child not engaged in adult activity—Like child of same age, intelligence, maturity
   b. Sudden emergency—What a reasonable person would do in that situation
   c. Physical handicap—What a reasonable person with the same handicap would do in that situation
d. Mental illness/disability/stupidity is not an exception

**Lussan v. Grain Dealers Mutual Insurance Co.**—Driver injures pedestrian while swatting at a bee. Court found for driver stating that he was doing what any reasonable person would do.

**Edwards v. Johnson**—Woman accidentally shot husband’s friend, thinking he was an intruder. Court found her liable, but a dissenting opinion thought she was doing what any reasonable woman would do under the circumstances.

**Foster v. Strutz**—Driver injured pedestrian, thinking vehicle was in drive (it was in reverse). Court held that sudden emergency doctrine was not applicable because emergency and injury must be nearly simultaneous.

**Bashi v. Wodarz**—Driver hit other driver because of temporary mental illness. Court held that the onset of a sudden mental illness does not excuse defendant from liability.

**Robinson v. Lindsay**—Minor injures another minor snowmobiling case. Court held that 13-year-old should be held to adult standard of care because of the dangerous, adult-like nature of the activity.

**United States v. Carrol Towing**—Barge attendee case. Court utilizes now famous Learned hand formula which states that if the probability of an injury occurring multiplied by the magnitude of the injury is greater than the burden placed on the defendant to avoid the injury, the defendant breached a duty.

**McCarty v. Pheasant Run, inc.**—Intruder assaulted hotel guest. Court found for the hotel, stating that the plaintiff failed to show that the injury could have been prevented by precautions of reasonable cost and efficacy.

C. The Role of Custom
   1. Custom Evidence can be used in two ways in negligence cases
      a. Plaintiff would show Deviation from custom as evidence of unreasonable conduct
b. Defendant would show Compliance with custom as evidence of reasonableness

_Hagerman Construction, inc. v. Copeland_—Construction worker fell to his death while working on new basketball arena. Court allowed testimony based on custom because it was relevant to establish the standard of care which accompanied the plaintiff’s contractual duty of safety.

_TRIMARCO v. KLEIN_—Case involving tempered safety glass door in bathtub. Court held that statute requirement of having safety glass installed should not have been admitted because it did not apply to the defendant.

_The T.J. Hooper_—Case involving lost tugs and no radio receiving sets on board. Court held defendant liable because having an adequate receiving set would have prevented the damage, and it would not have unreasonably burdened the defendant to carry one.

D. Safety Statutes and Regulations as Standards
   1. Determining statutory relevance
      a. Was the plaintiff a member of the class of persons the legislature sought to protect?
      b. Was the harm suffered by the plaintiff the type of harm the legislature sought to protect against?
   2. In most states the unexcused violation of a safety statute is considered sufficient to satisfy the breach element

_Ferrel v. Baxter_—Accident case involving a truck and passenger car on a slippery curve. Court held that a statute can be introduced in a case if the wording is found to be applicable to the parties in the given situation (must involve the class of people it is trying to protect).

_Wright v. Brown_—Dog warden released dog early from custody and it bit the plaintiff. Court held that the relevant statute was intended to protect the general public, so it could be introduced in court.

E. Relationship of statutory standards to the reasonable care standard
   1. Negligence Per Se
      a. The statute becomes the standard of care and violation of the statute constitutes a breach of the standard unless a judicially recognized excuse is proven
      b. Typically not applied to children, because it conflicts with the special reasonable child standard of care
   2. Excuses
      a. Situations in which per se liability exists with no possible excuses
         1. Employment of a minor who is subsequently injured
         2. Labor safety regulation violations
         3. Non-compliance with pure food and drug laws
         4. Hazardous materials safety rules
      b. General guidelines for acceptable excuses
1. Violation is reasonable because of the actor’s incapacity
2. Actor neither knows nor should know of the occasion for compliance
3. Actor is unable after reasonable diligence or care to comply
4. Actor is confronted by an emergency not due to his/her own misconduct
5. Compliance would involve a greater risk of harm to the actor or to others

3. Statutory standard of care approaches
   a. Strict Negligence Per Se (no excuse permitted—rare)
   b. Negligence Per Se (statutory violation creates presumption of breach but defendant may try to prove application of a specific acceptable excuse—majority)
   c. Negligence per se (statutory violation creates presumption of breach but defendant may try to show reasonable care notwithstanding statutory violation)
   d. Evidence of Negligence (standard of care remains the reasonable person but defendant’s violation of a relevant statute goes to jury as part of the breach determination)

F. Proof of Negligence
   1. The plaintiff has the burden to prove breach of duty by a preponderance of the evidence
   2. Circumstantial Evidence
      a. If A is shown, then the fact finder may infer B from A if, and only if, the inference is a rational one (more likely than not)
      b. Fact finder must draw an inference from such evidence as to the existence of fact
      c. Needed to enable the plaintiff to survive a motion for a directed verdict

Clark v. Kmart Corp.—Slip and fall on a grape case. The court held that enough time had gone by where the defendant should have noticed the dangerous situation (the grape on the floor of the checkout aisle).

3. Res Ipsa Loquitur
   a. Elements
      1. Inference that someone was negligent (facts of accident, common knowledge, common sense, expert testimony)
      2. Inference that Defendant was more likely than not negligent (evidence of exclusive control, disproving of negligence of 3rd parties, removing the plaintiff as possible contributor)
   b. Requirements to get a res ipsa jury instruction (according to Eaton v. Eaton)
      1. The accident which produced a persons’ injury was one which ordinarily does not happen unless someone was negligent
2. The instrumentality or agent which caused the accident was under the exclusive control of the defendant (this requirement has been lessened somewhat)

3. The circumstances indicated that the untoward event was not caused or contributed to by any act or neglect on the part of the injured person

*Byrne v. Boadle*—Barrel of flour falling from defendant’s warehouse. Court held that warehouse owed a duty to secure its barrels, and needed to show that they were not responsible for the injury.

*Harder v. Clinton*—Injured party’s sister brought suit against nursing home for giving patient diabetic medication when she was not diabetic. Court found that a res ipsa loquitur instruction should have been given to the jury.

*Ybarra v. Spangard*—Injured patient suing multiple hospital employees because of pain and paralysis in arm following surgery. Court held that res ipsa loquitur might apply in situations where multiple people contribute to harm.

G. Standard of Care in Professional Malpractice

1. Negligent Medical Performance
   a. “Custom” evidence is conclusive in establishing standard of care

   *Velazquez v. Portadin*—Cerebral palsy of newborn case involving improper fetal heart monitoring. Court held that improper “judgment” jury instruction was given because there were no judgments in the case—just lapses in reasonable care.

2. Informed Consent Doctrine

   *Phillips v. Hull*—Cerebral palsy case involving no informed consent to tubal ligation contraceptive procedure. Court held there was issue of material fact if consent ever took place, so it reversed.
   
   a. Professional Standard- Physician is required to disclose the risks which a reasonable doctor would disclose under the same or similar circumstances
   
   b. Lay Standard- Physician’s disclosure duty is measured by the patient’s need for information (whether a reasonable patient would have considered the risk significant in making his/her decision)

3. Legal malpractice and liability of other professionals

   *Smith v. Lewis*—Divorce Lawyer failed to assert wife’s community interest in husband’s retirement benefits. Court held lawyer liable because he failed to perform adequate research that would have given him the proper answer.

H. Summary
1. Standard of Care followed by Breach of Duty Analysis (see p. 234 for great chart)
   a. Reasonably Prudent Person under Same or Similar Circumstances—
      Custom, Burden < Probability X Magnitude
   b. Child unless engaged in adult activity—Failure to act like other children
      of same age, experience, and intelligence (under 7 no negligence)
   c. Professional where custom is the standard of care—Deviation from
      custom (expert witness usually required)
   d. Statutes where terms of statutes may become the standard of care—
      Violation of statute (negligence per se)
2. How to analyze a negligence claim
   a. Identify proper standard(s) of care
   b. Analyze foreseeability of risk and possible prevention of injury (P x L > B)

III. Causation

A. But For Causation
   1. Suggests to the jury that the cause mentioned is the cause, and not just a cause
   2. Used slightly more often than substantial factor test

*Sowles v. Moore*—Horse drowning after falling in ice hole. Court held that ice company was
responsible for protecting the ice, but that did not ensure the horses would not have drowned
anyway (judgment for defendant ice company).

*New York Central R.R. Co. v. Grimstad*—Wife sued railroad company after husband drowned
after being thrown off the barge. Court held that even if life preservers were on board, defendant
still could have drowned (judgment for railroad company).

B. Substantial Factor Test
   1. Cause must be a substantial factor, not the substantial factor
   2. Utilized most often when the but-for test fails to produce equitable results
   3. Has been widely adopted because the language communicates to the jury more
      clearly their function in weighing and evaluating the evidence in difficult
      causation cases
   4. Most causation cases require the adequacy of the proof to establish causation by a
      preponderance of the evidence

*Corey v. Havener*—Motor tricycles frightened plaintiff’s horse. Court held that both should be
liable because they both contributed to the injury (impossible to tell which one provided what
percentage of fault).

*Mitchell v. Gonzales*—Boy drowned while on outing with friend’s parents. Court found that the
boy’s inability to swim most likely was a substantial factor contributing to his death, and
probably not the parents’ negligence in supervision.

C. Proof of Causation
1. Generally requires at least one of three things
   a. Eyewitnesses testimony
   b. Expert testimony
   c. Circumstantial evidence

_Ingersoll v. Liberty Bank of Buffalo_—Possible heart attack falling down stairs case. Court utilized a “natural and reasonable inference” to find that a substantial factor contributing to the injury was the broken step.

_Saelzler v. Advanced Group 400_—FedEx employee assaulted case. Court held that plaintiff failed to prove that the breach of duty resulted in her injury.

_Zuchowicz v. United States_—Husband suing military hospital for wrongful death resulting from prescribing wrong dosage. Court found that the excessive dosage was a substantial factor in producing the injury.

_Fugere v. Pierce_—2 simultaneous car accidents case. Court held that plaintiff can obtain judgment against both parties if the harm cannot be apportioned out properly.

D. Joint and Several Liability
   1. Each defendant can be held responsible for paying entire judgment damage award instead of just a proportion
   2. Plaintiff can only recover once
   3. 3 different types
      a. True joint liability
      b. Vicarious liability (principal agent)
      c. Concurring independent actions
   4. Application
      a. Act of single individual alone was sufficient to cause the entire harm—joint and several
      b. Act of single individual was insufficient to cause the entire harm, but together results in harm—joint and several
      c. Act of single individual was sufficient to cause some but not all, and another individual contributed—courts require divisibility if possible

E. Alternative Liability
   1. When defendant’s actions make it impossible to determine causation, some courts shift the burden of proof on causation to the defendant

_Summers v. Tice_—Plaintiff shot in eye while bird hunting. Court held that both defendants should be held wholly liable because the one who shot but didn’t shoot the plaintiff still deprived the plaintiff of knowing who shot him.

_Barron v. Martin-Marietta Corp._—Leaking fumes weapons manufacturer case. Court held that for the “shifting burden” argument to be applied, plaintiffs had to show that the defendant’s canisters caused the harm, which they could not do so unquestionably.
2. Market Share Liability
   a. On some occasions, a plaintiff cannot identify which manufacturer among several produced the product that caused the injury

*Hymowitz v. Eli Lily Co.*—DES pregnancy drug case. Court adopted a market share liability theory, measured by the amount of risk of injury each defendant created to the public at large.

IV. Scope of Liability

A. Examines whether the careless conduct of the defendant is sufficiently related to the harm suffered by plaintiff (how removed was defendant from plaintiff’s injury?)

B. Key Questions to ask in scope of liability issues (if yes then there is a problem)
   3. Is there an arguably unforeseeable plaintiff?
   4. Are there arguably unforeseeable consequences?
   5. Is there arguably intervening conduct?

C. Unforseeable Plaintiffs

*Palsgraf v. Long Island R.R. Co.*—Exploding package railroad case. Court held that defendant guard was not negligent because there was no reason to believe that the package he knocked out of the man’s hand contained explosives.

D. Unforeseeable Consequences
   a. Forseeability Standard
      i. Plaintiff must be within the general class of persons one reasonably would anticipate might be threatened by defendant’s conduct
      ii. The harm suffered must be within the general class of harms that one reasonably would anticipate might result from defendant’s conduct
      iii. Intervening act itself does not automatically cut off liability of the original party nor is the nature of the intervening act determinative (what matters most is whether the intervening act is a foreseeable risk stemming from original injury)

E. Criminal Conduct of 3rd person

*McClenahan v. Cooley*—Stolen car wrongful death case. Court held that a jury could find that leaving a key in the ignition of an unattended automobile where the public has access to it is negligent.

   a. Superseding Cause-Sometimes 3rd party intervening conduct is so egregious that the court is motivated to find the 3rd party alone responsible for the damages and that his conduct supersedes the negligent conduct of the original actor (like the fireman in the heating blocks case)

*Bigbee v. Pacific Telephone and Telegraph Co.*—Man hit by car while stuck in phone booth. Court held that defendants could have reasonably forseen the accident coming.
F. Exceptions to the foresight rule
   a. Medical Malpractice Complications Rule

   *Association for Retarded Citizens-Volusia v. Fletcher*—Disabled boy injured while swimming at summer camp, and died 9 days later at hospital. Court held that an initial tortfeasor can’t defend a claim of negligence by pleading that the plaintiff’s initial injury was aggravated by subsequent negligent treatment.

   b. Eggshell Skull Rule

   *Pace v. Ohio Department of Transportation*—Diabetic man’s finger amputated as a result of injuries sustained from snowplow crashing into him. Court held that negligent actor is subject to liability for harm to another although a physical condition of the other which is neither known nor should be known to the actor makes the injury greater than that which could be foreseeable.

   c. Rescuer Rule

   *Sears v. Morrison*—Swamp cooler falls on man. Court held that he was liable for injuries sustained by a person who is trying to rescue the actor from his own negligence.

   *Oscar Klein Plumbing and Heating v. Boyd*—Woman developed carpal tunnel after cleaning damage to her jewelry business. Court held that she could not recover, because her property was not in imminent peril as a matter of law.

V. Defenses to Negligence

A. Comparative Fault
   a. Pure Comparative Fault—Plaintiff recovers damages directly proportional to the defendant’s fault
   b. Modified Comparative Fault—Plaintiff’s recovery is barred if his fault is greater than or equal to the defendant’s fault

B. Assumption of Risk
   a. Express—Occurs when one person gives explicit written or oral permission to release another party from an obligation of reasonable care
   b. Implied
      i. Knowledge of the risk
      ii. Appreciation of the risk
      iii. Voluntary exposure to the risk

   *Bowen v. Cochran*—Gas cooker explosion case. Court held plaintiff assumed the risk when he did not exercise ordinary care in operating the cooker.

   iv. Primary assumption of risk
      1. Those instances in which the assumption of risk doctrine embodies a legal conclusion that there is no duty on the party of the defendant to protect the plaintiff from a particular risk
2. Some courts think it is a bar to recovery

*Cheong v. Antablin*—Injured skier case. Court held that a sports participant should not be held liable to a coparticipant for ordinary careless conduct committed during the sport.

**VI. Intentional Torts**

**A. Assault**

a. Protects against threats of harmful or offensive contact and threats of false imprisonment

b. Generally requires accompanying aggressive conduct
c. Elements
   i. Affirmative Voluntary Act: Words alone are insufficient
   ii. Intent: D’s purpose or desire is to cause the apprehension or D attempts a battery or false imprisonment and fails; or substantial certainty rule; or transferred intent
   iii. Causation: But for D’s affirmative voluntary act P would not have been harmed
   iv. Reasonable apprehension of harmful or offensive contact: Imminent threat, apparent ability to carry out threat, P is aware of threat
   v. To a Person: With a person’s body or something attached or closely attached

**B. Battery**

a. Elements
   i. Intent: D’s purpose or desire was to cause the harmful or offensive contact or the apprehension of such contact; or D knew that such contact was substantially certain to occur; or transferred intent (actual, substantial certainty, transferred)
   ii. Causation: But for
   iii. Harmful of Offensive Contact: Harmful or offensive to a reasonable person
   iv. To a Person: With a person’s body or something attached or closely attached

*White v. Muniz*—Alzheimer patient struck employee at assisted care living facility. Court held that there was no assault and battery, because patient did not appreciate the offensiveness of her conduct.

*Leichtman v. WLW Jacor Communications, Inc.*—Defendant blew smoke in anti-smoking advocate’s face. Court held that a battery occurred because it constituted offensive behavior.

**C. Intentional Infliction of Emotional Distress**

a. Elements
   i. Outrageous Conduct (exceeds the bounds of decency, special relationship)
   ii. Intent (actual, substantial certainty, recklessness)
   iii. Causation/Volition (but for, affirmative voluntary conduct)
iv. Serious emotional harm (reasonable person of ordinary sensibilities, directed at plaintiff)

b. Other factors courts take into account to determine outrageous conduct
   i. Abuse of power (relationship)
   ii. Repeated offensive conduct
   iii. Susceptibility/vulnerability of victim
   iv. Tone of voice/actual words used
   v. Custom

c. Transferred intent is not available

d. Intense passion is usually required on the part of the plaintiff to bring a claim

*Logan v. Sears, Roebuck, and Co.*—Homosexual discrimination case. Court held that use of the word “queer” was not necessarily atrocious or intolerable.

D. False Imprisonment
   a. Elements
      i. Confinement (actual or apparent barriers, no reasonable means of escape)
      ii. Of a person
      iii. Causation/Volition (but for, affirmative voluntary conduct)
      iv. Intent (actual, substantial certainty, transferred)
   b. Courts generally hold that the plaintiff must be aware of the confinement
   c. The confinement need only be a brief period of time

*Walmart v. Cockrell*—Court held defendant liable for false imprisonment because he lacked a reasonable belief that plaintiff had shoplifted and the way in which he held him was unreasonable (lifting up bandage in front of other employees).

E. Trespass to Chattels and Conversion
   a. Trespass to chattels
      i. Occurs when a person is deprived of his property for a period of time, or the property is damaged
      ii. Elements
         1. Intentionally dispossessing temporarily or using or intermeddled with the chattel of another
         2. Defendant is liable for damage or harm done to chattel (loss of use)
   b. Conversion
      i. Occurs when the deprivation of the property is for a lengthy period of time, or the property is lost or destroyed
      ii. Elements
         1. Intentionally exercising dominion or control over a chattel which seriously interferes with owner’s rights
         2. Defendant is liable for full value of the chattel (forced sale)
         3. Requires a volitional act, intent, and complete destruction
   c. Trespass to land
      i. Involves interference with the exclusive right of possession of another
      ii. Elements
1. Intent to enter the property
2. Tangible intrusion on the property in possession of another
3. Physical harm not required
d. Transferred intent is allowed (If A throws B’s Torts book into the fire, thinking it is his, a conversion still exists)
e. A person cannot buy an item from a seller who has no rightful claim to it (and may have to pay damages of the person who stole it cannot be found)

F. Defenses
   a. Consent
      i. Factors limiting the effectiveness of consent
         1. Plaintiff lacks capacity
         2. Defendant knows or has reason to know of some kind of abnormality
         3. Existence of duress
      ii. Questions to ask to determine if consent is present
          1. Was there consent? (actual, apparent—prior dealings)
          2. Is there any reason to question the consenter’s capacity to give valid consent? (drunkenness, duress)
          3. What is the scope of the consent?
          4. What did the person consent to and what actually happened—How big is the difference?

*Hogan v. Tavzel*—Husband gives wife STD. Court held that consent to sexual intercourse is not the equivalent of consent to be infected with a venereal disease.

*Hellriegel v. Tholl*—Teenager injured while “horsing around.” Court held that his words were an invitation to try to throw him into the lake, and thus he assumed the risk that he might be accidentally injured during the horseplay.

*Reavis v. Slominski*—Dental hygienist sexual assault case. Court held that consent could not be given because the defendant could have known that he could engage in sexual behavior against her will due to prior incidents.

b. Self-Defense
   i. Can be a complete defense when the defendant used reasonable force that he reasonably believed was necessary to prevent immediate harm
   ii. Factors to look for in cases
       1. Actual or apparent necessity
       2. Defendant believes necessary
       3. Reasonable force
       4. Retreat rules
       5. Verbal provocation
       6. Excessive force

c. Defense of property
   i. Person may use reasonable efforts to defend property
      1. May not seriously injure or kill others in defense
Katko v. Briney—Man shot by spring-loaded, booby-trapped gun while trying to steal fruit jars. Court held that the value of human life and limb outweighed the interest of a possessor of land.

d. Necessity
   i. Elements
      1. Defendants acted under the reasonable belief that there was a danger of imminent physical injury to the plaintiff or to others
      2. Right to confine the plaintiff in order to prevent harm lasts only as long as is necessary to get the person to the proper lawful authorities
      3. Defendant must use the least restrictive means of preventing the apprehended harm

Rossi v. DelDUCA—Girl attacked by dog in neighbor’s yard. Court held that a jury could have found that she was not a trespasser because she had to run through the yard to escape another dog.

Vincent v. Lake Erie Transp. Co.—Damaged dock case. Court held that shipowner was liable because its direct efforts held the ship in such a position that it damaged the dock, preserving it at the expense of the dock.