INTENTIONAL MISCONDUCT:

Prima Facie case:
Torts to (person/property) in which:
- D’s act with intent (desire or purpose to cause/knowledge of substantial certainty that results will occur) – garratt v. dailey
- Contact
  - Harmful - (vosburg v. Putney)
  - Offensive – fisher, lichtman
- P’s injury was caused (directly/indirectly) by D’s action – Garratt v. Dailey

Affirmative defenses:
(P’s conduct)
Privileges:
- Consent
  - Express
  - Implied (Kennedy, Bang)
  - Apparent (O’Brien vs. Cunard Steamship)
  - General/Specific consent – medical procedures (Kennedy, Bang)
    - General consent should be obtained beforehand for foreseeable circumstances. If it isn’t an emergency, consent is not implied.
  - Consent of minors (Barton v. Beeline)
- Non-consensual privileges:
  - Self-defense §63, §65
  - Defense of others (allowable force is only that equal to attacking force)
  - Defense of property §77, 79 – must give warning, notice and reasonable belief. (Katko v. Briney – human life is more valuable than property)
  - Discipline (S150) – Sindle v. NYTA
Recovery of Property/Shopkeeper’s Privilege (S120A) – Coblyn v. Kennedy’s (allows for mistake, but reasonable detainment)

Arrest/Prevention of crime (S118-145)

Immunities

- Government (sovereign)
- Official
  - Judicial
  - Legislative
  - Executive
- Family
  - Interspousal
  - Parent-Child
- Charitable – mostly unsupported.

NEGLIGENCE

Prima Facie case:

- Fault of defendant (‘n’egligence):
  - Duty (policy) to WHOM
    - Of care
      - General standard under the circumstances (US v Carroll towing)
        - Ordinary – Balancing formula (§291-293) B>PL
        - Reasonable
      - Exceptions:
        - Children (incr)
        - Land occupant re:
          - Invitee
          - Licensees
          - Trespassers (decr)
- Attractive nuisance rule (increased for children) – majority rule
  - Children are likely/known trespassers
  - Common carriers re. passengers (extraordinary care)
  - Motorists re. Guest passengers (no legal duty, but reasonable), with exception of intoxication or willful misconduct.
  - Medical professionals re. patients (compliance w/ medical custom)

- To aid:
  - No general standard – Restatement 2d 314.
  - Exceptions:
    - Preexisting relationship
      - Innkeeper
      - Possessor of land open to public
      - Rescuer with voluntary custody of rescuee (care to protect against harm involved, or control one’s behavior) – Restatement 2d 315. Tarasoff.
    - Reliance upon service of safety (Erie R. Co.v Stewart)
    - If full knowledge of injuries exists, and fails to notify others to bring help.
      - If aid can be rendered w/o danger to rescuer
    - STATUTE: Minn. & R.I. Duty to aid in emergency situation.
    - Duty to warn – In professionally predicted danger to individual.

- Breach (Proof) B<PL
  - General rule - Magnitude of risk = (probability x gravity)
  - Special rules:
    - Criminal statutes - Brown v. Shyne (NY stat)
Violation:
- Relevance
- Evidentiary Effect
- Presumption
  - Refutable (with excuse)
    - Class protected
    - Harm to be prevented
  - Irrefutable
- Inference
  - Turns factual question into legal question
  - Basis for MSJ
- Custom (relevance and evidentiary effect)
  - Departure
  - Compliance
    - Relevance
    - Evidentiary effect
- Expert testimony
  - Relevance
  - Evidentiary effect
- Res ipsa loquitur – Louisville v. Humphrey
  - Applicability
  - Evidentiary effect

Causal connection
- Factual (proof)
  - Legal tests
  - General rules
    - But/For
    - Substantial factor
  - Special rules
    - Loss of chance
    - Alternative liability
- Market share liability
  - Proof
    - Proximate (responsible for) (Policy)
      - Foreseeability
        - Foreseeable plaintiff
        - Foreseeable consequences (type of harm incurred)
          - Manner
          - Extent
        - Proximity/directness
          - Concurrent/succeeding causes
          - Superseding causes
        - Other policy considerations.
          - Rescuers
          - insurance
      - Other policy considerations.
- Plaintiff’s injury
  - Cognizable injuries
    - Physical
      - PERSON (surviving)
        - Medical expenses
        - Lost earning capacity
        - Pain and Suffering
      - Property
        - Economic (can be wrongful death)
        - Emotional (and other intangible) (poss. Wrongful death)
  - Damages
    - Elements
    - Measures
    - Apportionment
      - Causal
      - Joint and several liability
      - Alternative liability
• Market share liability
  o Surviving Plaintiff’s injury claims
    ▪ Wrongful death

All of these present imply ‘N’egligence

Affirmative Defenses:
- Contributory fault – See Martin v. Herzog (p.176)
  o Contributory negligence (complete defense) (Butterfield)/Last clear chance to avoid injury by D limitation (Davies)
    ▪ Unconscious (helpless P)
    ▪ Conscious (inattentive P)
  o Comparative negligence/Comparative fault
- Assumption of risk
  o Express
  o Implied
    ▪ Primary (reasonable assumptions)
    ▪ Secondary (unreasonable assumptions)
      • Knowing
      • Voluntary
- Immunities

STRICT (NO-FAULT) LIABILITY OUTLINE
Prima Facie Case:
- D’s strict liability producing-activity
  - Animals
    - Trespassing livestock §504
    - Dangerous animals
      - Wild animals §507
      - Abnormally dangerous domestic animals §509
  - Activities
    - Ultrahazardous activity Restat. 1st §519-520 (Foster v. Preston Mills)
    - Abnormally dangerous activity Restat. 2nd §519-520 (Siegler v. Kuhlman)
  - Product defects
- Causal connection
  - Factual
    - Proximate §519(2), 522, 524A
- P’s injury

Affirmative defenses:
- [contributory fault]
- Assumption of risk
- Immunities

Procedure with [motions]

Pretrial
- Pleadings
  - Complaint [MD]
  - Answer
- Discovery [MSJ]

Trial
- Opening statements
Proof
  - Burden and sufficiency [MDV]
- Closing arguments
- Instructions
- Verdict/Judgment [MJNOV] [MJMOL] [MNT]

Appeal