I. Intentional Torts
   A. Liability Standards/Fault
      A. Intended Harm
         a. Recklessness
            1. When you add on conscious disregard or acting maliciously, you move from negligence to recklessness.
            2. Punitive damages can be rewarded
         b. Negligence
            1. Engage in unreasonable conduct that creates a foreseeable risk that is not evaded
            2. Evaluated against reasonable person standard and social norms
      B. Strict Liability §519 & §520
         a. Generally only applied when the activity is abnormally dangerous (high degree of risk, not common usage, carried on in inappropriate place)
         b. No need to prove negligence; even if the actor takes every foreseeable precaution to minimize the danger, they are still held liable
         c. Can only be held liable for foreseeable damages; not freak accidents
            1. Example of mink farm: not foreseeable that the minks would run off b/c of the noise.
         d. Government is normally not held liable; weighed against public good (applies specifically to nuclear power plants)
         e. Van Camp v. McAfoos
            1. Courts are very hesitant to apply the standard to anything but extraordinarily dangerous activities
            2. Will not apply to children or in cases where fault/intent is a necessary component.
               i. Impounds Noxious gases that escape
                  ▪ Impound ox liquids that contaminate
                  ▪ Toxic waste
                  ▪ Superfund: owners of land AND the people who contaminated it
               ii. Lateral support of land
               iii. Blasting/Storage of explosives
               iv. Nuclear Energy
                  ▪ If in compliance, private plants are not liable
v. Fire – Generally not; sometimes
   - statutory regulations regarding burning
vi. No to utilities

C. Vicarious Liability
   a. Hold someone else responsible: employer/employees
      1. Tort must be committed within scope and course of employment
         i. Employer is responsible when the action was committed while carrying out the business of the employer
            a. Employee must be performing an act to further the employer’s business; exercise within which he was employed

D. Children & Liability
   a. Certain states allow recovery on this, but only to a certain extent
   b. Normally can get parents on negligence instead
      1. Garrat v. Dailey
      2. McAfoos
   c. Child normally has to be fully aware of the consequences and understand their actions

E. Wrongful Death
   a. Damages as a monetary replacement for that which the decedent would likely have provided: future earnings, rent, care
      1. Only the calculable economic loss, NO PUNITIVES
   b. Goes to dependents or those who would inherit
   c. Various ways to measure damages
      1. Loss to survivors
      2. Loss to Estate (sums earned or saved)
      3. Combined: support & inheritance
      4. Non-Earning Decedents
         i. Those without an income, therefore move to non-pecuniary damages
            a. Loss of consortium is recoverable under this tort

F. Survival Statutes
a. Proceed as though the plaintiff were alive → property that passes to ESTATE
b. Damages
   1. Compensatory; Those that accrue up until death → Medical, wages lost, pain & suffering
   2. Possible Punitives only if they would have been awarded if the plaintiff were alive
   3. Some states award damages for value of loss of life; funeral expenses

II. Battery
   A. Definition
      a. Voluntary act/ Act must be intentional
      b. Act must cause a contact
      c. Intended contact must be either harmful or offensive, or that such contact is **substantially certain** to result
      d. **IN some STATES YOUR CONTACT DOES NOT HAVE TO HAVE THE INTENT TO BE H/O, BUT H/O MUST RESULT. DUAL INTENT IS THE MAJORITY RULE!!**

B. Extended Personality Rule
   a. Person need not be present to commit battery; can leave something on the ground or setup a trip wire
   b. Plaintiff need not be conscious
   c. When you touch something so close to the plaintiff, for practical purposes you touch the plaintiff
      1. Hat, cane, bullet, The case with the plate

C. Reasonable Person/Offensive
   a. *Snyder v. Turk* (Doctor, Nurse, Operation)
   b. Offend a reasonable sense of personal dignity
   c. What would a reasonable person within the circumstances feel?
   d. Prior conduct between parties may negate the reasonable person standard as well

D. Special Knowledge
   a. Cohen v. Smith
      1. When a special request or knowledge of special circumstances are available, the reasonable standard of “offensive” is negated and it becomes replaced what is offensive to the plaintiff.
2. See cases about refusal for medical treatment

E. Things You Cannot See (smoke, gas, etc)
   a. Particulate matters

F. Intent
   a. Transferred Intent
      1. If you intend to cause a tort upon one person, or it is
         substantially certain you will by your actions, you are liable for
         that tort or any others committed upon third parties. (*Hall v. McBryde*) Trespass to chattel ➔ battery can result.
      2. assault, battery, false imprisonment, trespass land, trespass chattel
   b. Mental Incapacitation
      1. *Polmatier v. Russ* (Crazy guy, father in law)
         i. Intent does not have to be reasonable, as long as it is there. It is voluntary and just as offensive/intentional even if the person is doing so for outlandish reasons.
      2. Dementia (*White v. Muniz*)
   c. Dual Intent
      1. Some states require that there must be 1)an intent to contact and 2)an intent to cause a certain kind of contact
   d. Children (*Garrat v. Dailey*)
      1. Knowledge of what might occur if he did this because he is so young

G. Liability
   a. Contacts and Consequences
      1. Liable for all consequences of your contact, whether or not you intended that consequence

III. Assault
    A. Definition
       a. Act with the intent to cause an H/O contact (or substantial certainty of causing) or an imminent apprehension of such a contact
       b. Imminent apprehension results
          1. Indicates that the other party must be aware of the act: Conscious, watching the act take place
       c. Intent to batter is also an assault via transferred intent
    B. Apprehension
a. Perception or anticipation of a blow; expectation. Could cause fear, but just means that it is expected to occur

C. Mere Words
   a. Some courts hold that words do not show the defendant’s purpose to immediately batter the victim
   b. An act is usually required, even if it is just rolling up sleeves or making a fist
   c. Threats can at times be assault if the condition forces a person to give up their rights or act in a manner incongruous with their desires (sleep with me or I will kill you) circumstances

D. Imminence
   a. No significant delay, so close to striking that they can reach almost at once or make the weapon discharge in a short interval of time
   b. “apparent present ability”
   c. Up to a jury to decide

E. Conscious!

IV. False Imprisonment
   A. Intentionally confines another w/o lawful privilege and against his consent within a limited area for any appreciable time.
   B. Plaintiff must be aware or suffer physical damage
   C. Bad motive not necessary
   D. Confinement: physical barrier or force; explicit, implicit facts can suffice
   E. Duress of Goods: page 67, bottom

V. Torts to Property
   A. Trespass to Chattels
      a. Intemmeddling with a chattel of another person, at times dispossession
      b. Legal harm must occur (lost use for an appreciable period of time, damage)
      c. Damages are actual damages, monetary
   B. Trespass to Land
      a. Act, Intend, Enter
         1. No ill will to trespass, you simply must intend to enter and enter
         2. Object or a person will enter; a stone or bullet
      b. Rights of landowner extend below land and to a reasonable height above
c. When you refuse to leave after an unintentional entry, it becomes trespass

d. Do not escape liability if you think it was your own land

e. Invasion of one’s right to possession, not to ownership (so someone with a lease can sue for trespass)

f. Damages
   1. Even if no physical/economic harm resulted; when damage results liability is the cost to repair or the diminution in value
   2. Punitives if it is deliberate or malicious (The guy who dragged the mobile home across the field after the owner said no)
   3. Can be liable for things that were not intended or foreseeable (throw cigarette, start fire)

C. Conversion
   a. Intend to exercise substantial dominion over chattel; no malicious intent necessary
      1. Dominion is also present when damage occurs; more serious than trespass to chattel. IF YOU DESTROY SOMETHING IT IS CONVERSION
      2. Serious enough to impose the liability of TROVER, or the full value of the chattel
         i. Extent & duration of control
         ii. Intent to assert right to property
         iii. Good faith
         iv. Harm done
         v. Expense of inconvenience caused
   3. Personal property, including intangibles like stocks and bonds
   4. If you sell a watch to A, who sells it to B, both are converters and only one can be sued
   5. 

D. Trover/Replevin
   a. Trover normally results in the payment of the value at time of conversion, but some courts allow recovery of highest market value within a reasonable time of the conversion (this is helpful for fluctuating prices)
   b. Replevin: actual return of the chattel
   c. Both can be sued for with Conversion
E. Nuisance
   a. Ability to enjoy land; substantial and unreasonable interferences with right to enjoy property; nop intention
   b. Private, Public or Both
   c. When you cannot see the trespass to land (like gas), then it is a nuisance, and not trespass to land

VI. Intentional Infliction of Emotional Distress
   A. Definition
      a. Extreme/outrageous conduct with the intention of causing or the reckless disregard of the probability of causing emotional distress. The conduct must actually or proximately cause the plaintiff’s sever or extreme ED.
      b. Physical evidence of ED: sleeplessness, diet, depression, etc.
      c. Outrageous: intolerable in decent society
      d. Objectively reasonable
   B. Special Circumstances
      a. Relationship
         1. Abuse of power, vulnerability: patient/doctor cases, the case with the woman placed in the church and the priest had knowledge of her issues and used his power to IIED (Winkler)
         2. GTE Southwest v. Bruce
            i. Supervisor consistently doing crazy things; regular pattern; out of the scope of normal relationship; captive victim
         3. Taylor v. Metzger
            i. Supervisor using racial slurs, especially when that supervisor is an agent of the government; power dynamics matter
         4. Particularly awful public humiliation can fit here
         5. Some places, common carriers such as public utilities, innkeepers and railroads are liable for mere insults to patrons. Under attack.
      b. Bystanders
         1. If you sue for IED as a bystander, you must prove presence & that you are immediate family or suffered bodily harm b/c of the distress
i. Really don’t want to be in this category b/c it is harder to sue and make a case
ii. If you can prove the act was targeted at the bystander, then it is intentional and a better case.

2. What is presence? Consciousness? Separation? Knowing what is occurring?
   i. Courts have relaxed provision for things like molestation and kidnapping
   ii. *Bettis v. Islamic Republic of Iran*
       ▪ When you kidnap someone you do it partially to illicit an emotional reaction from their family that will in turn give you what you want.
       ▪ Presence is not necessary

c. Alienation of Affection
d. Damages
   1. Punitives, medical care, etc.

VII. Affirmative Defenses

A. Consent
   a. General Rule
      1. Willingness for conduct to occur
      2. Can consent to one touching but not another; as well as just that specific conduct in those circumstances
      3. Don’t have to utter a word—gestures and conduct that reasonably manifest consent regardless if consent was meant counts
      4. If you misrepresent the facts, then consent to that action cannot be given
         i. AIDS, STD cases
         ii. Not giving full medical disclosure
      5. Incapacitation
         i. consent is not effective if a person lacks capacity. This incapacity of an adult renders consent ineffective only if her condition substantially impairs her ability to understand and weigh the harms and risks against the benefits of a decision
         ii. Defendant must know about incapacity
iii. Incapacity of adult shown by inability to manage own affairs, or did not understand the nature/character of act.

b. Medical
   1. Kennedy
      i. Generally when you consent to medical treatment in one area, it gives the doctor license to work in that whole area if they find something else
         ▪ What the reasonable patient would consent to if she could be consulted
   2. Adults that are competent may refuse treatment
   3. Minors
      i. Miller case.
         ▪ A parent has the right to refuse treatment for their child, although in an emergency treatment will be given sans consent
         ▪ Some states say that saving a child does not require consent
         ▪ Court injunction sometimes overrules (substituted consent)

c. Minors in other cases
   1. May consent to touchings appropriate to age
   2. Statutes & sex: no effective consent

d. Illegal Acts
   1. Some courts say you cannot consent to an illegal act
   2. Restatement: consent is generally effective for these acts; sometimes statutes make people criminally liable regardless of a lack of tort liability

e. Consent procured by fraud is generally not consent. Misrepresentation must be about the nature of transaction. Collateral matters don’t count.

B. Self Defense
   a. General Rules
      1. Use to stop an impending battery or one that is in progress; cannot retaliate
      2. Reasonable force necessary to avert harm
      3. Reasonable belief that force is necessary even if it is not
      4. Duty to retreat
i. Do not need to if using nondeadly force
   ii. Some courts contend you must for deadly

5. Deadly Force: intended or likely to cause death or serious bodily harm; not privilege unless it is the only way. Most courts hold you can use nondeadly force to stop deadly force.

b. Bystanders
   1. Hurt someone else when you act in SD, most jurisdictions use transfer of intent → no tort
   2. Sometimes can be sued for negligence

C. Defense of Others
   a. Right to use the same force as the person you are defending would use
   b. Some states say that you have a right to act under reasonable perceptions even if you are wrong
   c. Others use “shoe-stepping”: only have the right if that person has the right

D. Defense of Property
   a. Deadly force normally is not reasonable with property unless you are in the house protecting that property. You must feel threatened.
   b. A growing number of states says you can; NY Times Article
   c. Repossession
      1. Can run after someone to regain possession IMMEDIATELY or in HOT PURSUIT (like, a store security guard)
      2. Once lost, you cannot forcibly recover it; must sue/invoke criminal processes
      3. Consumer good (like car): can only repossess from defaulting buyer peacefully. Buyer may also defend car with reasonable force.
      4. Land: Varies by state; usually courts because it’s hard to repossess land without extreme force

E. Necessity (Private v. Public)
   a.

F. Discipline
   a. Enjoy privilege to discipline child regardless of whether state allows child to sue parent for torts
   b. Very ill-defined because it is reasonable force reasonably necessary

G. Arrest & Detention
a. Reasonably believe that chattel upon your premises has been tortiously taken (or failed to make payment)
   1. Can detain for time necessary for reasonable investigation of facts
   2. Can only be used to recapture property; not for punishment
   3. If the person does not have property/has not paid, then arrester is liable for false imprisonment
1. **Duty**

   A. Firstly, you have a duty to exercise reasonable standard of care with respect to yourself, or you will be contributory negligent.

   B. Standard: care exercise by a reason & prudent person in the same situation to minimize *foreseeable* risk and harm to others.

   C. Alternative standards
   
   1. Superior knowledge requires superior care.
   2. Children are held to child standard UNLESS adult/dangerous activity.
   3. Physical handicap = person w/handicap.
   4. NO MENTAL INCAPACITATION.

   D. Sudden Emergency
   
   1. Would someone act this way in this emergency situation? If yes, then no breach.
   2. If you know of potential of medical condition, then you are liable and must not engage in activity!

   E. Generally, you have no duty to act affirmatively UNLESS
   
   1. Put person in the position knowingly or negligently → prevent harm or rescue from harm.
      a. Words won’t lead to this duty unless child/incapacitated person.
   2. If there is a reasonable duty of care to begin with (embers).
   3. Statute or ordinance.
   4. Voluntarily undertake care.
      a. Take charge, you are liable for injuries for failure to exercise due care UNLESS emergency professional statute.
      b. Cannot increase risk, but may leave in same position.
   5. There is a special relationship, like school/student, landlord/tenant.

   F. Landowner
   
   1. Invitees → discover, make safe, and rescue.
   2. Licensees → make safe known dangers.
   3. Trespassers → warn if you know if them and there is an artificial danger.

   G. Protect from third persons
   
   1. Landowner → not unless knows of specific, imminent harm.
      a. Prior incidents?
b. Balancing test

H. Special relationship → schools
I. Landlords → only if notified, did not fix, and common area
J. Parents
   1. SPECIFIC DANGEROUS HABIT that is known OR should be known
   2. Reason to know of present opportunity → foreseeable and imminent harm
K. If you are a professional and a person is named---DUTY TO WARN
L. Doctor → Duty to CONSENT and duty to act by medical standards
   1. Diff standard for specialization
   2. Consent requires you tell of possible dangers b/c without informed consent it means that you are negligence
      a. Patient will have to show a reasonable person would have refused to demonstrate proximate cause
M. Cancer: regular negligence case, but have to show you are more likely than not to contract cancer
N. AIDS: window of anxiety and actual exposure through medically sufficient channels

II. NIED
   A. Direct Victim of Negligence/Tort (injury)
      a. Duty if special relationship previously existing
      b. Duty if you are directly impacted by negligent conduct → either negligently causing some sort of pain or suffering (telling cops thing)
      c. Throw consortium into this for 3rd party
   B. Bystander
      a. Zone of Danger → fear of physical injury to self
      b. Thing: not zone of danger, but close relationship, presence and understanding of what is going on
   C. Death & dead bodies ALWAYS a duty
   D. Thin skin → you take as they are, so if the fear was reasonable and they happened to already be psycho, oh well.

III. Negligence Per Se (Duty & Breach)
   A. Violate a statute
      a. Must be proximate cause of injury
b. Scope of injury & class sought to protect

B. Statute must have a specific standard of conduct $\rightarrow$ usually more than reasonable care
   a. Does it also force you to have a duty to act?
   b. Defines conduct that breaches duty

C. Excuses
   a. Incapacity
   b. No reason to know of statute
   c. Can’t comply b/c of emergency NOT of own making or
   d. Greater risk of harm to others/self if comply

D. Compliance with a statute is NOT due care $\rightarrow$ sometimes custom and reasonableness
   force us to act with a higher standard of care $\rightarrow$ are reasonable measures to prevent

IV. Res Ipsa (Breach)
   A. Breach may be inferred if…
      a. Event is something that more probable than not can only be explained by negligence
      b. Prove that it is more likely than not THIS defendant
         i. Control over the event

V. Breach
   A. Was the care required exercised to avoid harm?
   B. If the burden of taking precautions OUTWEIGHTS the probability and gravity of risk
      $\rightarrow$ no breach
      a. Weighing of costs b/c sometimes a reasonable person would not have exercised extreme care b/c of the cost
   C. So foreseeable that people should catch it, no duty to fix it.
   D. HANDBOOKS DO NOT INCREASE ORDINARY CARE
      a. Just because policy is to exercise more care, does not mean you will be in breach if you do not.
   E. Custom evidence demonstrates a standard by which care may be judged even if you complied with a statute! $\rightarrow$ breach of duty if you don’t comply!

VI. Cause in Fact
   A. But for…. Test. Divisible or one person.
   B. Indivisible $\rightarrow$ substantial factor test
   C. Joint & Several liability
a. Concerted action OR indivisible injury
b. May sue one, and that person can get a contribution from the other

D. Several
   a. Tortfeasor only liable for their part and their part only. Must sue both.

E. Must show that this defendant is more likely than not the tortfeasor!
   a. Alternative Liability Theory
      i. Shift the burden of proof to the defendants to demonstrate they were not the one who did indeed cause the injury, but the other one is
      ii. All must be possibly negligent

VII. Proximate Cause
   A. Scope of Risk \( \rightarrow \) liable for foreseeable and unreasonable risks and injuries
      INCLUDING RESCUERS
      a. Also includes when you negligently endanger self
   B. Extended liability applies!
   C. Minority says Direct Cause \( \rightarrow \) whatever you cause, you lose
   D. Intervening cause \( \rightarrow \) if the ultimate injury is foreseeable and of the same kind, then it does not supercede
   E. Supersedes when the 2nd defendant intentionally does something, or it is way out of the scope of foreseeable injuries \( \rightarrow \) shares liability/may end liability
   F. Acts of god don’t matter as long as injury still in scope of risk
   G. No to suicide unless duty to prevent!
   H. 2nd injuries \( \rightarrow \) def still liable if foreseeable
      a. re-injure self as consequence, still liable

VIII. Defenses
   A. Contributory Negligence
      a. Failure to exercise care \( \rightarrow \) total bar from recovery UNLESS
         i. Wanton, willful, reckless conduct
         ii. Statutory duty to protect from injury
         iii. Illegal
         iv. Last Clear chance \( \rightarrow \) D, PL, D knows and has chance to avoid injury or should have discovered info to avoid injury
   B. Comparative Fault
      a. Pure—Can recover up to 100%
b. Mod—can recover as long as pl does not exceed def; some say it can’t even equal

C. Assumption of Risk
   a. Implied: TOTAL BAR
      i. Waive all risk, like baseball games
   b. Secondary: reduced like comparative fault
      i. Proceed voluntarily and know/appreciate the risk