I. Introduction to Torts
   a. Overview
      i. What is tort law?
         1. Torts are wrongs recognized by law as grounds for a lawsuit. These wrongs always require that some form of damage was done by the Δ to another person. This harm gives the other person a “cause of action” against the Δ.
      ii. The aims and approaches in tort law—justice and policy, compensation and deterrence
         1. Some broad and conflicting aims
            a. Dobbs, the Law of Torts §8-11, 13
               i. Justice, Policy, and Process Aims of Tort Law
                  1. Tort law is usually based on one of two large systems of thought. The first bases torts on moral responsibility/corrective justice. The second bases it on a good-for-all social policy. These opposing bases lead to conflict in how the law is shaped
               ii. Ideas of Corrective Justice
                  1. Tort law imposes liability upon Δ for wrongful conduct (usually morally faulty conduct, but always legally wrong) that causes harm
                  2. When tort law imposes liability without fault, does it go beyond corrective justice?
                     a. Strict liability is usually considered a moral doctrine
               iii. Compensation, Risk Distribution, Fault
                  1. There is a view that tort liability should be broad enough to secure compensation for all injured persons. This idea utilizes tortfeasors as risk distributors.
                     a. This idea does not mesh well with that of justice
               iv. Fostering Freedom, Deterring Unsafe Conduct; Economic Analysis
                  1. A secondary aim of tort law is to deter people from committing tortious acts in the first place.
   b. Applying some approaches
      i. In many cases, the theory of tort law a particular judge adheres to can influence the decision
   iii. Implementing Tort Law Purposes with Damages Awards
         a. A preexisting injury that is exacerbated by injury due to Δ’s negligence may limit the total damage award.
   iv. Procedures at Trial
      1. Complaint → Answer → Selection of jury → Opening Statement → Π’s case → Δ’s case → Closing arguments → Instructions to jury
   v. Procedures Raising Legal Issues
      1. Dismiss/Demurrer
a. “Take all the facts stated in the complain as if they were proved; even so, they do not show a valid legal claim.”

2. Summary Judgment
   a. A showing of new facts in addition to those shown in the complaint, a showing that there is no dispute as to these new facts, and a showing that on these new facts, the law compels judgment for the moving party

3. Objections to Evidence and Offers of Evidence
   a. Evidence that has no bearing on the case’s elements should be objected to by one of the attorneys, especially if that evidence could prejudice or confuse the jury

4. Motion for Directed Verdict
   a. Evidence presented by Π is insufficient to warrant a jury’s verdict for Π

5. Proposed Instructions and Objections to Them

6. Motion N.O.V.
   a. Renewal of the motion for directed verdict. States that there is still not enough evidence to warrant a verdict for the Π.

7. Motion for a new trial
   a. Either because there was an error made in the original case OR because the award granted was unconscionably high or low.

b. Fault Required
   i. When the Π has produced evidence of all required elements of his torts case, he has created a “prima facie” case and the judge will not issue a directed verdict for the Δ. One of the essential elements is that there must be fault shown to be attributable to the Δ.
   ii. Van Camp v. McAfoos
      1. children may not be held strictly liable for childish acts. Fault must be alleged in a complaint for battery.
         a. Fault requires a wrongdoing on the part of the defendant
         b. Types of fault:
            malice—greatest form of tort (acted with evil)
            intent—knowing it will happen
            recklessness—disregard risks
            negligence—lowest form of tort

c. Strict Liability Exception
   i. In strict liability cases, fault need not be shown
   ii. Restatement, Second §§519-20
      1. One who carries on an abnormally dangerous activity is subject to liability for harm to the person, land or chattels of another resulting from the activity, although he has exercised the utmost care to prevent the harm
      2. This strict liability is limited to the kind of harm, the possibility of which makes the activity abnormally dangerous.
         a. for example, a person driving a truck full of nitroglycerine would not be strictly liable if he ran over someone

II. Negligence
   a. To establish a case of negligence, there are five elements:
      i. Duty + Breach of that Duty = Negligence
      ii. Negligence + Cause in Fact + Proximate Cause + Injury = Fault
   b. The Duty: Exercise Reasonable Care—The duty owed by all people generally is to exercise the care that a reasonable person would exercise in the exact same situation in order to avoid or minimize risk of harm to others. The reasonable person exercises care only about the kinds of harm that are foreseeable to reasonable people and risks that are sufficiently great to require precaution.
i. *Stewart v. Motts (PA)*
   1. Reasonable care is contextual, but the standard is always reasonable care. There exists no “higher standard” for certain activities.
      a. Reasonable care in handling gasoline is by its very nature greater care than would be exerted when handling water, but the Δ still only needs to act as a reasonable person would in that situation

ii. *Posecai v. Wal-Mart Stores, Inc. (LA)*
   1. Balancing test should be used in determining whether store has a duty to protect customers from criminal acts of third parties
   2. Store did not owe duty to patron to implement greater security measures, since the attack was not foreseeable

   1. A “sudden emergency doctrine” instruction to a jury is redundant, since the reasonable care that must be exercised is always specific to the context.

iv. Some Modifications
   1. *Shepherd v. Gardner Wholesale, Inc. (AL)*
      a. A person with impaired vision is not required to see what a person with normal vision would see. Reasonable care for such a person would be what a reasonable person *with the same disability* would exercise
   2. *Roberts v. State of Louisiana (LA)*
      a. A physical impairment such as blindness must be factored into what a reasonable person would do, but the person must still act as a reasonable actor with that disability would.
         i. A blind person driving a car, even if driving as well as a blind person could, would not be reasonable
   3. *Creasy v. Rusk (IN)*
      a. Person with mental disabilities is generally held to the same standard of care as that of a reasonable person under the same circumstances without regard to the tortfeasor’s capacity to control or understand the consequences of his actions
         i. Mental handicap does not lower the bar for reasonable care
   4. *Hill v. Sparks (MO)*
      a. If the actor has more than the minimum knowledge of what would constitute reasonable care in a situation, he is held to that higher standard.
   5. *Robinson v. Lindsey (WA)*
      a. Children engaged in dangerous activities like operating motor vehicle are held to adult standard of care

v. Recap
   A reasonable person:
   1. has average intelligence, height, abilities, reflexes, memory
      a. exception: can take on physical disabilities
         i. duty to act as reasonable person with that condition would act
      b. exception: can take on special abilities—above average intelligence
      c. no exception for voluntarily intoxicated person—same duty of care as reasonable person
      d. prescription drug: did person act as reasonable person taking drug would have (following directions etc)
      e. mental challenges: insanity is no defense, duty to act as reasonable person
i. exception: sudden onset of mental disability treated like a stroke or heart attack would be

   1. public policy reasons for holding him to reasonable person not present when mentally disabled injures paid caretaker

f. children: held to standard of reasonable child in same or similar circumstances
   i. reasonable child is of same intelligence, age, mental ability, experience
      1. exception: *Robinson v. Lindsay*, supra

vi. Effect of Violation of Statute (reasonable person is common law standard of duty, statutes can affect standard of duty—negligence per se doctrine)
   1. statute that wipes out tort liability wipes out any common law claim
   2. statute could impose strict liability
   3. criminal statutes—judge has discretion whether or not to let in as evidence
      a. options of judge:
         i. don’t use statute
         ii. let statute in but rule not applicable to this case
            1. *Rudes v. Gottschalk* (TX)
               a. Conduct of a child is not to be judged by adult standards simple because statutory negligence is involved (instead of common law negligence)
      iii. negligence per se—statute supplies standard of care and replaces reasonable person standard of care
         1. *Martin v. Herzog* (NY)
            a. violation of statute in and of itself is negligence
      iv. Court can find common law exception to using statute as standard of care
         1. *Tedla v. Ellman* (NY)
            a. When observing the statute would cause the exact harm that the statute seeks to avoid, it is not negligence per se to ignore the statute.
   2. *Impson v. Structural Metals*
      a. There was no justifiable excuse for failing to observe the statute, no Δ was negligent per se. Justifiable excuses:
         i. Incapable of complying
         ii. Doesn’t know and should not know of occasion for complying
         iii. Unable even after reasonable diligence or care to comply
         iv. Emergency not due to own misconduct prevents complying
v. Compliance would involve a greater risk of harm to self or others.

v. Even if negligence per se—not always liable

1. Wright v. Brown (CT)
   a. Π must show that they are a member of the class the statute is designed to protect and that the resulting injury was what the statute was designed to prevent.

2. still usually have option of bringing common law negligence claim.

4. compliance with statutes does not constitute due care per se—still held to reasonable person standard. Situation may require greater than statutory standard of care.
   a. Exception: some federal statutes set standard of care and “preempt” any state common law negligence claims.
   b. Miller v. Warren (WV)

i. Circumstances can require greater care, if the Δ should know of risks not contemplated by the statute.

C. Breach of Duty

i. Requires affirmative act and direct proof of negligence.

ii. Indiana Consolidated Insurance Co. v. Mathew (IN)

1. The fact that a fire started even though Δ did not breach any legal duty is not enough to prove negligence.

iii. Bernier v. Boston Edison Co. (MA)

1. Δ breached a duty and was negligent because injury to Π was foreseeable and there were safe, cheap alternatives which could have prevented the injury.

iv. Giant Food, Inc. v. Mitchell (MD)

1. The fact that an injury was foreseeable does not by itself show negligence.

v. Parsons v. Crown Disposal Co. (CA)

1. A Δ is not negligent merely because he uses a machine that produces noise necessary to its operation, even though fright of horses because of the noise might be foreseeable.

vi. US v. Carroll Towing Co.

1. for there to be recovery the probability of an event happening and the gravity of the resulting injury must be weighed against the burden of of taking adequate precautions: B<PL (Learned Hand’s formula).

vii. Effect of Custom—custom/industry standard is not a defense to the reasonable person standard.

1. The TJ Hooper (US)
   a. custom is not evidence of due care when the custom needs to change to comply with reasonable prudence.

viii. Exception: Res Ipsa Loquitur—“The thing speaks for itself”

1. can be used to prove negligence with only circumstantial evidence.

2. Byrne v. Boadle (England)
   a. in some cases, the very fact that there was an accident means that someone was negligent.

3. Two different sets of elements for res ipsa loquitur.
   a. Valley Properties... (MT)

i. Thing does not usually happen without negligence.

ii. Other causes of injury eliminated.

iii. Negligence was in scope of duty owed to Π.
   i. Thing does not happen unless someone was negligent
   ii. Thing or person which caused accident was under the exclusive control of Δ
   iii. Injured person did not cause or contribute to accident
   iv. Not many jurisdictions require exclusive control of Δ anymore:
      1. *Giles v. City of New Haven* (CT)
         a. Need only be shown that Δ was in control at time of negligence, not necessarily at time of accident

4. Res ipsa in Medical Cases
   a. *Ybarra v. Spangard*
      i. without the use of res ipsa loquitur, a patient who received serious injuries which were obviously the result of someone’s negligence would be unable to recover unless the doctors and nurses chose to voluntarily disclose the identity of the negligent person and the facts of the negligence

d. Actual Harm!!!
e. Cause in Fact!!!
f. Proximate Cause!!!
g. Back to the Duty Inquiry: Examples of Limited Duties
   i. Landowners!!!
   ii. Duty to Act
      1. Generally, there is no duty to act: no cause of action for nonfeasance (non-action) only for malfeasance (wrong action)
      2. *Yania v. Bigan*
         a. Mere words are not enough to establish a duty to act
            i. Exception: Aiding and abetting—encouraging another to commit a tort
            ii. Exception: encouraging a child/mentally incompetent adult to do something
      3. Exception: duty to act if you are legally responsible for harm defendant is in
            i. If the actor does an act, and subsequently realizes or should realize that it has created an unreasonable risk of causing physical harm to another, he is under a duty to exercise reasonable care to prevent the risk from taking effect
            ii. The rule stated in Subsection (1) applies even though at the time of the act the actor has no reason to believe that it will invoke such a risk
      4. Exception: state statutes—duty to assist if you can do so w/o endangering self—duty to assist as reasonable person would
      5. Exception: Restatement, Second, § 322. Duty to Aid Another harmed by Actor’s Conduct.
         a. If the actor knows or has reason to know that by his conduct, whether tortious or innocent, he has caused such bodily harm to another as to make him helpless and in danger of further harm, the actor is under a duty to exercise reasonable care to prevent such further harm
One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other’s person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

i. his failure to exercise such care increases the risk of such harm, or

ii. the harm is suffered because of the other’s reliance upon the undertaking

7. Exception: *Farwell v. Keaton*

a. There is a duty to exercise reasonable care when taking charge of friend who was in fight, duty extended to at least notifying someone where he was and not leaving in car.


i. One who, being under no duty to do so, takes charge of another who is helpless adequately to aid or protect himself is subject to liability to the other for any bodily harm caused to him by

   1. the failure of the actor to exercise reasonable care to secure the safety of the other while within the actor’s charge, or
   2. the actor’s discontinuing his aid or protection, if by so doing he leaves the other in a worse position than when the actor took charge of him

8. Exception: special relationship exists between plaintiff and defendant

a. Friends/Companions on a social venture: there is an implicit agreement to render assistance if one can do so without endangering own self

b. Business invitor and invitee—have duty to customers and business invitees to assist if they are injured

c. Other pre-existing relationships can be argued to carry a duty to assist

d. Employee/employer

iii. Duty to Protect Plaintiff from Others

1. Is there a duty to act to stop a 3rd party from injuring the plaintiff?

a. General rule: *Restatement, Second § 314.  Duty to Act for Protection of Others*

   i. The fact that the actor realizes or should realize that action on his part is necessary for another’s aid or protection does not of itself impose upon him a duty to take such action

b. Exception: special relationship

   i. Common carriers/passengers
   ii. Innkeepers/guests
   iii. Business invitor/business invitee
   iv. Custodian/ward
   v. Can argue for additional ones

c. Exception: *Restatement, Second § 344. (summary) duty of owners of premises open to the public for business purposes liable for acts of third parties which injure people on the premises for business purposes if did not use reasonable care to discover such acts were or were likely to have been*
occurring or if did not warn of harm. Duty to act reasonably to protect.

d. Exception: employer/employee when in imminent danger

e. Is there an exception for colleges and students?
   i. No—no duty to warn of dangerous students and no duty to protect against acts of third parties or of own bad judgment

f. Exception: Landlord/tenant if knew or should have known of crime in area
   i. If landlord knows of/has control over tenant’s dangerous behavior then a duty to protect others from tenant

g. Exception: Tarasoff v. Board of Regents of U of Ca
   i. If therapist/doctor reasonably determines that patient is a risk to self or others, there is duty to warn/protect

h. Affirmative Defenses to Negligence!!!
   i. Contributory Negligence/Comparative Fault!!!
   ii. Implied Assumption of the Risk!!!

III. Intentional Torts

a. Battery
   i. Elements of Battery
      1. Snyder v. Turk
      2. Cohen v. Smith
      3. Leichtman v. WLW Jacor Communications
   ii. Refocusing on Intent
      1. Garratt v. Dailey
      2. Davis v. White
      3. Polmatier v. Russ
      4. White v. Muniz

b. Assault
   i. Dickens v. Puryear
   ii. Cullison v. Medley
   iii. Alteiri v. Colasso

c. False Imprisonment
   i. McCann v. Wal-Mart Stores, Inc.

d. Some Torts to Property
   i. Trespass to Land
      1. Act with intent to enter someone’s land and entry results
         a. Intent—either purpose to enter or substantial certainty that entry will take place. Do not have to intend to “trespass”, only to enter.
            i. Can still be trespass if you don’t intend to enter but, once entered, refuse to leave
            ii. Ownership extends below the surface and for a reasonable distance upward.
               1. Congress owns some airspace, but low flying items are trespass
         b. Damages without harm—Defendant is liable for damages even if no physical or economic harm is done. The injury is the entry onto the land.
         c. Punitive Damages without harm—Punitive damages may be awarded if the trespass is deliberate or “malicious”.
            i. Courts have generally held that punitives cannot be awarded unless plaintiff first shows actual loss/damage
d. Extended Liability—Trespasser is liable for damages inflicted even if he didn’t intend damage and could not have foreseen it.
   i. Might not apply to people who reasonably believe that they are rightly on the land
e. Possession v. Ownership—Trespass is invasion of possession, not ownership. This claim cannot be made for the protection of non-possessory interests such as those in easements or right-of-ways.

ii. Nuisance
   1. Substantial interference with plaintiff’s use and enjoyment of his property.
      a. Per se or de facto nuisance
         i. If per se, then nuisance by law. Helps substantially in seeking remedy—crackhouses, etc. Something that rises to the level of illegality.
      b. Two kinds of nuisance—public and private
      c. Can extend to things like loud noise, blocking of sunlight, etc.
   2. Does not have to be a tangible invasion like trespass
   3. What would the reasonable person think?
   4. Are defendant’s actions unreasonable
      a. Interest in protecting home from nuisance greater than protecting business
      b. Is there a social utility to the nuisance? Did Plaintiff come to the nuisance?
   5. Remedies for nuisance:
      a. Money
      b. Injunction (more common)
         i. Mandatory make defendant do something
         ii. Prohibitive stop of defendant from doing something—plaintiff may have to pay to help shut defendant down (compensative injunction)

iii. Conversion of Chattels—Trover
   1. Theft or the exercise of “substantial dominion” over property. What determines substantial dominion?
      a. extent and duration of control
      b. intent to assert a right over the property
      c. defendant’s good faith
      d. harm done
      e. expense or inconvenience
   2. Intent—Defendant must have intended to exercise substantial dominion over the property, but did not need to be conscious of wrongdoing
      a. i.e. taking a watch that you honestly believe is yours
   3. Property that may be converted
      a. traditionally, only tangible personal property… no land or paper money
      b. ...

iv. Trespass to Chattels
e. IIED (aka Outrage)
f. Affirmative Defenses to the Intentional Torts
   i. Self-Defense/Defense of Others
   ii. Arrest & Detention
   iii. Defense of Property
   iv. Consent
   v. Necessity

IV. Products Liability
a. One Day Crash Course in Products Liability