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**PURPOSE OF TORTS**
- Compensation
- Deterrence
- Punishment
- Fairness

### Negligence . . .
1. What is the alleged negligence?
2. Was there a duty?
3. Did the negligence cause the injury?
4. What are the damages?
5. What defenses are available?

### Intentional Torts . . .
1. What did the actor attempt to achieve or what did he know or should have known would occur?
2. What were the damages?
3. Were the damages caused, directly or indirectly as a result of the alleged tort?
4. Was there lack of consent?
5. What defenses are available?

### A. Outline of a Negligence Case
- **Duty** - Did the defendant have a legal obligation to exercise reasonable care to avoid the risk of harming persons or property? Is there an obligation?
- **Breach** – Was defendant’s conduct, in light of the foreseeable risks created by the conduct, unreasonable under the circumstances?
- **Causation** - Does a causal connection exist between Defendant’s unreasonable conduct and the Plaintiff’s harm?
- **Scope of Liability** - Does the defendant’s duty extend to the plaintiff, the general type of incident that occurred, and the harm plaintiff suffered? Did the negligence cause the type of harm that reasonable conduct would have prevented from occurring?
- **Damages** - What legally recognized losses has plaintiff incurred to date, and what losses will be incurred in the future?

### B. Determining Duty & Breach of Duty
- Foreseeable Risks
- Custom – was there a custom? Was it reasonable?
- Statutory Law
  a. Was plaintiff a member of the class of persons the legislature sough to protect?
  b. Was the harm suffered by the plaintiff the type of harm the legislature sought to protect against?
  c. statutory standard of care approaches
    i. strict negligence per se – violation of the statute is proof of negligence
    ii. presumption of negligence – burden is shifted to the defendant to rebut the impact of the statutory violation.
    iii. evidence of negligence
• **Reasonable Person Standard**

1. Objective standard of reasonable person under similar circumstances.
2. Physically disabled persons are held to the standard of a reasonable person with the same disabilities.
3. Mentally disabled persons have no such standard
   - General rule: reasonable person standard
   - Minority rule: care consonant with diminished mental capacities (with burden of proof of incapacity on party asserting incapacity.)
   - Sudden onset situations
     - Sudden onset usually only applies to physical illness, except in some jurisdictions where it’s treated like a heart attack (WI).
     - Application of reasonable person standard.
4. Children
   - General rule: reasonable child of like age, intelligence, maturity, and experience.
   - Minimum age for negligence
   - Exception for certain activities
     - inherently dangerous activities, or
     - Adult activities.
5. Hand’s Formula for determining reasonableness
   - Probability of risk happening (P) x Nature and seriousness of harm (L) v. Cost and effort of feasible, safer alternative conduct that does not unduly impair utility or activity (B).
6. Possible Excuse Doctrines
   - Incapacity
   - No knowledge of occasion for compliance
   - Inability after reasonable diligence to comply
   - Emergency
   - Compliance Involves Greater Risks
   - Otherwise Reasonable under the Circumstances

• **Res Ipsa Loquitur**
  a. Inference that someone was negligent.
     o Accident is the kind that doesn’t happen outside of negligence. (proof includes: facts of accident, common knowledge, common sense, experts)
  b. Inference that Defendant was negligent
     - Jury must find that more likely than not the defendant’s negligent conduct or omission caused the accident. (proof includes: Δ’s exclusive control, negligence occurred while instrumentality was under Δ’s control, disprove possible negligence of third parties, remove Π as possible contributor of negligence) **YBARRA V. SPANGARD**

• **Limited Duty**

No duty to assist, act or rescue (nonfeasance)

Exceptions:
• Special relationship *FARWELL V. KEATON*
  o Voluntary assumption of duty – rescue attempt
  o Innocent prior conduct
  o Reliance on gratuitous promise
  o Intentional prevention of aid by others
  o Statute
  o Other

Duty to rescue by public agency if: *Kircher v. Jamestown*
  o An assumption by the municipality, through promises or action
  o Knowledge on the part of the municipality’s agents that inaction could lead to harm
  o Some form of direct contact between the municipality’s agents and the injured party and
  o The party’s justifiable reliance on the municipality’s affirmative undertaking.

Duty to Warn *Tarasoff* and *Dunkle v. Food Service East*
  o There must be an identifiable victim.
  o Belief that the perpetrator has the will and the means.
  o A warning can be a type of rescue.
  o A psychiatrist who is in the business of listening has greater responsibility than a bartender who overhears something and is not soliciting himself as someone to listen and respond.
  o We want to limit burden on doctors and encourage them to give therapy.

• **Medical Malpractice** professional standards
  • medical malpractice
    o professional rule – what do other doctors say
    o patient rule – what would a reasonable patient need to know
      • subjective piece – what did this particular patient need to know

* A. Informed Consent
* B. Disclosure would have led a reasonable patient to make a different choice.

• Defenses for Doctors
  o Child patient – consent transfers to parents
  o Emergency
  o Obvious risk
  o Simple procedure with remote risk
  o Freak risk
  o Situations in which complete and candid disclosure might have a detrimental effect on the patient (burden is on the dr. to prove).

  Consent can be exceeded – was the result a battery?

• **Landowner Liability**
  1) Trespassers: no duty of reasonable care to trespassers. Duty merely not to cause intentional injury, set a trap, or to cause wanton injury.
2) Licensees: duty is the same or substantially the same as to trespassers. Landowner is under a duty to at least warn when she knows, or has reason to know both a) the existence of a danger and b) the plaintiff’s presence in a place where she might encounter it (same for trespassers).

3) Invitees: landowner owes to the invitee a duty of care to make conditions on the land reasonably safe and to conduct his or her active operations with reasonable care for the invitee whose presence is known or reasonably foreseeable.

*Rowland v. Christian* moved the court more towards a general rule of foreseeability in which we can also use contributory negligence.

- **Bystander Emotional Distress**
  1) Impact/Physical Contact
  2) Zone of Danger – closely related to victim and serious emotional injury.
  3) Bystander Emotional Harm Rule
     Closely related to physical harm victim
     Contemporaneous Perception of Injury
     Serious Emotional Injury
     Physical Consequences May be Required

- **Independent Duty (Direct Victims)**
  Special Relationship – e.g. Doctor/Patient
  Assumption of Duty
  Duty imposed as matter of law

- **General Negligence** when the above two do not apply.

- **Fear of Future Disease**
  Needs to be likely.
  Can get costs of monitoring and then sue if the disease manifests itself.

- **Economic Harm**
  Usually no, but depends on foreseeability, nature of economic loss, and degree of loss.

C. Causation

1. Types of Causation
   **But For Causation**
   a. Analyze the injury that occurred before the wrongful conduct.
   b. Plaintiff has burden to show that there was enough cause-in-fact.
      *Sowles v. Moore* (horse in the snow on the frozen pond)
   **Substantial Factor**
   a. If the defendant was a substantial factor in causing the accident they are liable.
   b. Acting in concert/parallel activities (drag racing)
      *Corey v. Havner* (motor tricycles on either side of horse)

2. Proving Causation
   a. **Cumulating Proof** - Must prove each step of the causation
      *Ingersoll v. Liberty Bank* (man with box on stairs and heart attack)
• There can’t be too many possible scenarios that don’t involve the ∆. The Π has to narrow down the other possible scenarios so that the jury could possibly infer the Π’s story.

b. **Untaken Precautions** - Failure to act caused an injury.
*Phillips v. Perils of Pauline Food* (attack in parking lot)
• Had to prove that ∆’s untaken precautions caused the accident.

c. **Appointment of Damages or Joint Liability**
• When there are 2 negligent defendants and no way to tell who did what, they’re jointly liable for the whole thing – they go after each to figure out who owes what after the plaintiff is paid.
• Proving who caused the harm? Multiple parties but only one can be liable.
  o **Alternative Liability** (when only one of the parties is liable) – *Summers v. Tice*

  *Joint liability* – a common law when defendants act in concert there is a joint enterprise; vicarious liability, either one is responsible and can be responsible for whole amount and go after the other defendants. Independent negligent activities with joint harm (2 fires that both destroy house). Two motorcycles come up on the sides of the cars (substantial factor – independent acts, but come together.)

  *Several liability* – plaintiff can go after anyone who is jointly liable for the full amount.

Approaches taken:
• Substantial share (CA) – go for 100% by bringing in big shareholders and it’s up to them to inculpate themselves – several, but not joint.
• Risk shareholding (WI) – the amount of risk a particular company posed, which is composed by its share of the market, geographic location, etc.
• Market Share Alternative Liability (WA) – All ∆’s brought forward and they can exculpate themselves completely, 100% is divided up amongst those left equally and it’s up to them to argue for a different share. Joint and several. Π gets 100%.
• NY alternative – Several, not joint. Does not guarantee 100% because does not make current market share holders cover absent ∆’s, based on national market share.
  *Brenner v. American Cyanamid* (lead paint)
  • No market share for lead paint because they didn’t show which part of the market was responsible so can’t narrow it down and apportion shares like you can in DES case.

d. **Scientific and Technical Evidence**
  *Daubert Trilogy*
  First there was *Frye* – anything generally accepted in the medical/scientific community is considered to be sound science for purposes of the court.
  a. *Daubert v. Merrell* – soundness of the method is what is examined
1) have conclusions been tested to see if the results can be replicated or disproven
2) has the expert’s scientific conclusions been subject to the scrutiny of the scientific community through peer review or publication
3) what are the known or potential error rates of the scientific technique or method
4) general acceptance of the conclusions within the relevant scientific community is a permissible, but not determinative factor.

General v. Specific Causation
  • Must first prove the drug can cause the harm and then that it did cause the harm in this particular case.

**D. Vicarious Liability and Employer Responsibility**

**1. Vicarious Liability Contexts**

Rationales for vicarious liability:
  • Accidents are reduced if employers are liable.
  • It is desirable to spread the costs of accidents to the community.
  • Employers can control the conduct of employees.
  • Since the employer’s work is being performed for the employer’s benefit, it is only just and fair that the employer be liable.
  • The inevitable accident losses of a business should properly be considered expenses of the business.
  • Compensation to the injured victims is more assured because employers are more likely to be able to pay for accidents or purchase insurance than employees.

a. **Employment**
  • Control or general right to control
  • The extent to which the employer may determine the details of the work
  • The kind of occupation
  • Whether it is customary that such work is or is not supervised by an employer
  • Whether the actor is engaged in a distinct business or profession
  • The skill required to do the work
  • Who supplies the place and materials and equipment for the work
  • The length of time of the work
  • Method of payment.

b. **Partnerships and joint ventures**
  • A common purpose
  • A mutual right of control of operations
  • Community of interest.

c. **Independent contractors**
  • Hiring party is generally not vicariously responsible except:
  • Activities that are “inherently dangerous” (construction of large buildings, maintaining utility wires, crop dusting, demolition of buildings)
• “non-delegable duties” (statutory or by contract, a city to keep its streets in repair, a commercial business to keep premises reasonable safe for visitors, and a landlord to maintain common areas).

d. Fictional Vicarious Liability
• “owner-consent” for automobiles.
• “family business”
e. Franchise Relationships
• Some control, but not total.
• Depends on the franchise and the court’s ruling if there is vicarious liability.
f. Vicarious liability in contributory negligence contexts (employee negligently hits another car, employer is defendant).
• Negligence of an employee harms employer’s business or assets.
• Employer can seek contributory negligence of employee when going up against other defendant.

2. Scope of Employment

a. Commuting to work rule – if work creates a necessity to travel then you’re covered, but not generally by a commute?
b. The Frolic and Detour Rule
When you don’t know what a person was doing or their intent when the accident occurred it’s up to a jury to decide, but otherwise frolic is not on work time and person re-enters scope of employment when they finish their work.
c. Dual Purpose Rule – blending of the personal and professional
Wilson v. Joma – (gas station lunch) you can serve yours and your employer’s purpose at the same time and still be covered by employer unless it clearly appears that the employee could not have been directly or indirectly serving his employer.
d. Emergency Employee Rule
Just by offering help to a co-worker on the job when you’re off does not put you in the scope, unless it’s an emergency. Marter v. Scott (Pepsi driver on highway).

Within scope of employment if:
1) it is the kind of work he is employed to do
2) it occurs substantially within the authorized time and space limits.
3) It is actuated by a purpose to serve the master,
4) If force is intentionally used, it is foreseeable by the master.

Conduct of a servant is not within the scope of employment if it is different in kind from the authorized, far beyond the authorized time or space limits, or too little actuated by a purpose to serve the master.
E. Scope of Liability

1. Are there arguably unforeseeable consequences?
   Are there arguably unforeseeable plaintiffs?
   Are there arguably intervening forces?

2. Analysis
   a) exception to the foresight rule: suicide, eggshell, med. Complications, and rescuer.
   b) shifting responsibility McLaughlin heat block case
      factors:
      - Culpability of the intervenor-intentional, criminal, reckless, negligent, innocent.
      - Competence and reliability of the person upon whom reliance is placed
      - Intervenor’s understanding of the facts and situation
      - Seriousness of the danger
      - Number of persons likely to be at risk of danger
      - Length of time elapsed between the conduct of the parties
      - Likelihood that proper care will or will not be used
      - Ease with which each of the parties can take precautions.
   c) policy
   d) foresight analysis
      only the class of persons to be harmed needs to be foreseeable and only that harm will occur, not the exact type of harm.

E) Tests

1. Direct Consequence Test
   - In a negligence case you are responsible for the foreseeable consequences of your actions – attempt at deterrence and fairness, but there is very little guidance on the issue of cutting off liability.
   Polemis – plank dropped by chartered group and caused major damage because there was a benzene leak.
   Palsgraf – woman injured as a result of man being shoved with fireworks in his briefcase. Denied recovery because there was only a duty to the man and his briefcase – her damage was not foreseeable.

2. Eggshell skull rule
   - Doesn’t matter if Π was negligent afterwards either, ∆ still liable if they were negligent in creating the proximate cause. Pace v. Ohio Dept. of Transp. Diabetic with sprained finger.

3. Medical Complications Rule
   - When there are more than one negligent acts that lead to an injury damages flow from the original negligent act. Assoc. for Retarded Citizens v. Fletcher. Can’t require the Π to file medical malpractice claim.

4. Rescuer Rule
   - Rescuer is not liable for damages to self in a rescue unless the rescue was recklessly or rashly made. Sears v. Morrison (cooler incident)

5. Suicide Rule
   - If suicide was prompted by some negligent act then possibly foreseeable. Stafford v. Neurological.
6. Criminal Conduct of a Third Person/Superceding Causes

- In general a third party criminal act cuts off liability. An intentional, foreseeable act (criminal or not) is usually considered a superceding cause. In *Price v. Blaine*, however it was enough that the costume manufacturer invited risk so they were then liable even though there was another actor. *Creating risk that invited criminal conduct.*

*McClenahan v. Cooley* – keys in ignition problem – the statute was meant to protect people from the harm that occurred, so he’s liable even though there was a third, criminal party.  

*McLaughlin v. Mine Safety Appliances Co.*  
Look at superceding causes. Even though the harm occurred that was meant to be prevented, the superceding cause of the fireman’s presence outweighed it.

If intervening cause is foreseeable (broken locks in an apt building) or cause is not foreseeable but the consequences were (floodgates – liable) then the intervening cause does not cut off liability.

Restatement: Actor’s conduct is substantial factor in causation of harm whether or not he foresaw or could have foreseen the manner in which it occurred – liability is not cut off.  
Look back from the harm to actor’s conduct – If “highly extraordinary” that actor caused harm, liability is cut off.

**Foresight Exceptions:** eggshell rule, medical complications rule, rescuer rule and suicide rule.

F. Damages  

1. Special Damages  
   a. Lost Income  
      - Past earning losses and future earning power losses  
      - Lost earning capacity for those outside the traditional earning market – homemakers, artists, etc.
   b. Medical Expenses  
      - medical surveillance – you don’t have the disease now, but you’re at risk as a result of the incident so we’ll pay to watch for it.  
      - Past and future medical expenses.

2. General Damages  
   c. Pain, suffering, and emotional distress  
      If there is no sensation of pain, probably can’t get pain damages, but can go after loss of enjoyment or something else. *Williams v. City of New York*
   d. Loss of Enjoyment of life damages – hedonic damages – loss of inability to see sunsets, play favorite sport, hear music, sexual activity, find a life partner. Independent of pain.
   e. Property Loss  
      diminished value rule – court will award Π with difference of property before and after incident; cost or repair or replacement; consequential damages (have to rent another car, etc.)
f. Loss of chance of recovery – could have sought a cure if they had known, etc., but not covered is loss of longer life span.

Questions to ask:

- What was person’s occupation?
- How was their performance? Likely to be promoted?
- What kinds of equipment will person need after the accident to maintain lifestyle?
- What surgeries are needed? How likely are they to succeed?
- What kind of psychotherapy may be needed?
- What fears or emotional distress was there?

3. Collateral Source Rule: Defense may not claim fewer damages because the plaintiff can afford them or has other sources to take care of them.
   a) a substantive rule of damages law
   b) a rule of evidence that precludes proof of collateral payments unless made an issue by the plaintiff in some cases.

4. Attorney Contingent Fees: usually come out of pain and suffering

5. Wrongful Death
   Based on jurisdictional statutes
   a) survival action – tort that the person could have brought had they been alive. Executor of the estate is the administrator.
   b) Wrongful death action – point of view of the person left behind.
      Modern trend says pecuniary damages is only scratching the surface of what is lost (counsel, guidance, support, love). So more intangible losses tend to be addressed as well. Damage of grief won’t be compensated.
      If they died on impact there is no lost income (because they weren’t employed?)
      Future damages included.
      Only relatives may bring this suit.
      In some states you can bring both. Traditionally limited to pecuniary damages (loss of economic support).

6. Punitive Damages
   - Serious misconduct with malintent or callous disregard (could happen in some negligence cases)
   - Must be some compensatory to go after punitive (even just $1).
   - Purpose is to punish or deter.
   - Awarded when tortfeasor creates harm from an extreme departure from reasonable conduct, some kind of antisocial mental state – something shocking.
   - Can’t bring punitives against public entities.

Factors to consider when determining amount

- Responsibility of the defendant’s conduct
- Defendant’s wealth.
- Profitability of the misconduct
- Litigation costs
- Aggregate of all civil and criminal sanctions against the defendant – have we punished them enough already? Or did they pay out punitives in a prior case for the same tort.
• Ratio between harm and losses to the plaintiff
• Were Δ's engaged in economic activity or personal gratification (driving drunk)
II. INTENTIONAL TORTS

1. Assault & Battery

Elements of a battery:
- Intent
  - Δ’s purpose or desire was to cause the harmful or offensive contact of the apprehension of such contact (subjective state of mind) or Δ knew that such contact was substantially certain to occur or transferred intent (meant to hit someone else and hit other party by accident)
- Causation/Volition
  - But for Δ’s affirmative voluntary act Π would not have been harmed
- Harmful or Offensive contact
  - Harmful or offensive to a reasonable person. Leichtman (smoking case)
- To a person
  - With a person’s body or something attached or closely associated.

Elements of an assault:
- Affirmative Voluntary Act
  - Words alone insufficient
- Intent
  - Δ’s purpose or desire to cause the apprehension, or Δ attempts a battery or false imprisonment and fails; substantial certainty rule; transferred intent.
- Causation
  - But for causation
- Reasonable apprehension of harmful or offensive contact (battery or false imprisonment)
  - Imminence of threat no significant delay
  - Apparent ability to carry out threat
  - Π must be aware of threat
  - Fear not necessary
  - Exception: Δ knows of Π’s timidity
- To a person

2. Offensive Battery and Assault – where no physical harm (cigarette smoke case)

3. Intentional Infliction of Emotional Distress

Elements of IIED
- Outrageous Conduct
  - Exceeds the bounds of decency/socially tolerable
  - Words alone may be sufficient
  - Special relationship
- Intent
  - Purpose or desire to cause such harm
  - Substantial certainty
  - Recklessness: a high degree of emotional harm and Δ acts in conscious disregard of risk.
- Causation/Volition
  - But for causation
  - Affirmative voluntary conduct
• Serious Emotional Harm
  o Reasonable person of ordinary sensibilities
    ▪ Exception if Δ targets Π’s sensibilities
  o Severe
  o Intensity and duration factors
  o Objective evidence not required but helpful
  o Directed at P
    ▪ Secondary parties exceptions
    ▪ Family members present and known to Δ, others-extreme violence
      and strong likelihood of shock
  o Damages: emotional, physical manifestations, punitive

4. False Imprisonment and Malicious Prosecution

Elements of False Imprisonment:
• Restraint of one’s liberty without any sufficient cause.
• It is not necessary to show malice, ill will or the slightest wrongful intention, and
  neither the good faith of a Δ nor that of his employee will defeat Π’s right to
  recover.
• Must show were holding until proper authorities could take over.
• Person only need to reasonably believe that they were detained. Can be purely
  psychological.

Elements to Malicious Prosecution
• Set on foot by Δ and it terminated in a manner not unfavorable to Π
• Prosecution was instituted or procured by the cooperation of Δ
• The prosecution was without probable cause and
• The prosecution was malicious.

5. Trespass to Land, Trespass to Chattels and Conversion

Trespass to Land:
• Enters land or causes a thing or third person to do so.
• Remains on the land after his privilege to be there has expired, or
• Fails to remove from the land a thing which he is under a duty to remove.

Trespass to Chattel
• Intentional interference by direct or indirect physical contact that impairs chattel’s
  condition, value, or quality.
• Must prove actual damages
  o Dispossession is taking from Π’s possession without consent, or by fraud or
    duress, or into custody of law, barring Π’s access to the chattel or
    destroying it while it is in Π’s possession.
• No wrongful motive is necessary.
• Damages for harm done to chattel (loss of use).

Conversion
• Intentional exercise of dominion or control over a chattel which so seriously
  interferes with Π’s right to control it that Δ may be required to Π its full value.
• Important Factors:
  o Extent and duration of Δ’s exercise of control
  o Δ’s intent to assert a right which is inconsistent with Π’s right of control.
  o Δ’s good faith.
The extent and duration of the resulting interference with Π’s right.
- The harm done to the chattel and
- The inconvenience and expense caused to Π.

Conversion may occur when:
- Δ acquires possession
- moves the chattel
- makes an unauthorized transfer, delivery or disposal
- withholds possession
- destroys or alters the chattel or
- under certain circumstances merely uses the chattel.

Π is never required to accept a tender of the chattel’s return in mitigation of damages.

Damages are for the fair market value of the good.

Leaving a restaurant, A takes B’s hat intending to steal it, upon seeing a policeman at the door he immediately returns it. This is a conversion.
III. Defenses

1. Contributory Negligence/Comparable Fault

One’s duty to one’s self. Up to defendant to claim and prove.
If defendant’s actions were willful or intentional then there is no contributory negligence.

Some states base it on the percentage each was negligent; some bar recover if negligence
was equal to or greater than defendants, or only equal to.

Contributory negligence is a miscalculation of the risk, whereas assumption of the risk is
knowing the risk and assuming it.

- **Cont. neg:** unreasonable assumption of the risk/miscalculation
- **Primary implied assumption of the risk:** reasonable
  assumption – emergency, no other options, etc
- **Secondary implied assumption of the risk:** take the risk
  happily – assume greater risk (contributory negligence)

2. Assumption of the risk (negligence)

not always needed because in these situations there is oftentimes no duty (especially in
implied)

- Express – contract with another not to sue for any future injuries which may be caused by
  that person’s negligence.
  Can’t consent to:
  - Something you can’t anticipate,
  - Murder
  - When there’s unequal bargaining power
- Implied
  - Knowledge of the risk
  - Appreciation of the risk
  - Voluntary exposure to that risk
  - Presence at a baseball game is an implied consent for example
  - May be subdivided into limited duty rules and contributory negligence.

Express assumption of risk cannot be folded into comparative fault issues, but implied can
be.

Courts usually end subsuming implied assumption of risk into limited duty and contributory
negligence and then applying comparative fault rules.

3. Consent (intentional torts)

1) Is ∆’s motive or purpose justifiable?
2) What means are justified assuming the motive or purpose is legitimate?
3) Given the circumstances is the ∆ privileged to make a mistake as to facts or law in
carrying out his legitimate objectives in legitimate ways?
Cannot give consent to the following: to kill you, to minors, to the intoxicated and consent cannot be coerced. Must know what you’re consenting to. Consent can be foregone in certain emergency situations, cannot be exceeded, is invalidated if $\Delta$ knew the $\Pi$ was confused or not aware of what they were consenting to.

You can consent to an act, but not the harm that comes with it if it’s not foreseeable. *Hogan v. Tavzel*: husband gave her genital warts. *Hellriegel v. Tholl*: horsing around at lake – consent given to horseplay and he should have known that injuries can happen by accident in such cases. *Reavis v. Slominski*: dentist case; apparent v. effective consent

4. Self-Defense
   - Must fear physical bodily harm.
   - Must show that fleeing the scene was not an option.
   - Must use reasonable means given the circumstances.

5. Public Necessity
6. Private Necessity/Harm to Others *Eilers v. Coy* (deprogramming case)
   - Damage to be avoided must be less than the damage caused. Choosing to damage someone else’s property to save your own doesn’t count. *Vincent v. Lake Erie Transp. Co.*
   - Given the circumstances you couldn’t have done anything else. Just because you have a defense to the act doesn’t mean you don’t have to pay damages (just not punitive).

7. Immunity
   - Spousal immunity, parental immunity, charitable immunity – most of these aren’t recognized anymore, or based on jurisdiction what counts.