

ISSUES

- I. Intent
 - A. Purpose (act plus goal: Katko) or Knowledge (Garratt)
 - 1. Need only foresee an injury, not necessarily extent. Vosburg.
 - 2. Setting in motion the harmful contact is enough. Garratt.
 - B. Transferred Intent
 - 1. Vosburg suggests if the intended act is wrongful, D should be liable for all consequences - thus suggesting tort to tort. See §435B. (Public policy)
 - 2. Talmage says from person to person
 - a. Suggests tort to tort: “not removed from responsibility” just because result different than intent
 - 3. §18 says doesn’t have to be particular harm contemplated.
 - C. Standard of Care doesn’t matter here.
 - D. Automatism/Insanity; loss of volition. If no volition, advance warning doesn’t matter for intent.
 - E. Was it against law or against certain rules? Vosburg.
 - F. Is it far removed from the injury? Scott v. Shepherd.
- II. Battery, §§13, 18
 - A. Harmful?
 - 1. Wrongful intent makes liable for all subsequent damages. Vosburg.
 - 2. Not dependent on social context.
 - 3. Don’t exceed scope. Mohr.
 - B. Offensive
 - 1. From society’s standpoint, even if not personally. E.g. Rogers.
 - 2. Object closely connected? Respublica
 - C. Consider weird contacts - sound waves, radiation particles, etc. Rogers.
- III. Assault
 - A. Contrary to fact? Tuberville, Brooker. Or status quo?
 - B. Demonstrated intention on carrying through with threat? Not in Brooker.
 - C. Words alone vs. additional action; consider tone (Fisher) and facial expressions
 - D. Size of person as imposing an additional element.
 - E. Becoming aware later doesn’t count.
 - F. How did they show apprehension? Did behavior negate there was fear?
 - G. Authority to say these things? Thus maybe no intent since expect compliance.
- IV. Trespass
 - A. “Intent controlling is the intent to complete the physical act.” Don’t exceed scope. Cleveland
 - B. Fright and anguish resulting can allow damages. Bouillon.
- V. Trespass to Chattels
 - A. Exceeded scope of consent?
- VI. False Imprisonment
 - A. Reasonable belief? Excessive force? Boundaries and confinement of exterior power? Was there a crime (theft or trespass)?
 - B. Knowledge before or after the fact? Herring and Meering.
 - C. Force not required. Whittaker.
 - D. Withholding of property suffices. Griffin.
 - E. Specific defenses: Herd and Sindle.
- VII. IIED, §46(1)
 - A. Intent or RECKLESSNESS. Consider reasonable person behavior and social context.
 - B. Was it *outrageous*, causing *severe* emotional distress?
 - 1. What was the person like afterward? Doctor bills? Nightmares?

- C. Pranks exceeding social bounds (Wilkinson)
- VIII. Damages
 - A. Recovering for “humiliation and indignity” (Fisher)
 - B. Punitives need malice and outrageousness
 - C. Nominal for all intentional torts
- IX. Defense to Intentional Torts
 - A. Insanity
 - B. Self-Defense
 - 1. Only can use against the wrongdoer. (Consider necessity).
 - 2. Exceeding reasonable force? Scope of privilege?
 - 3. Not a privilege if other person has necessity.
 - 4. Not allowed for REVENGE or RETALIATION!
 - 5. Requires reasonable belief - does the person remember what happened?
 - C. Defense of Others, §76
 - 1. Majority says you step into their shoes
 - 2. Rest. says just needs to be reasonable. Consider public policy for breaking up fights.
 - D. Defense of Property
 - 1. Reasonable level of force?
 - 2. *Moliter Manus*, M’Ilvoy.
 - E. Consent
 - 1. Exceeding bounds?
 - 2. Withdrawn? Not O’Brien.
 - 3. Knowledgeable consent?
 - 4. Implied / Express. O’Brien. Manifestations.
 - 5. Defense if reasonably believes there’s consent. O’Brien. Adjust for age.
 - 6. Consent sometimes can’t be withdrawn, Herd.
 - 7. Athletics? Courts don’t want to interfere too much.
 - a. Violating safety rules vs. deliberate disregard for safety
 - 8. Would consent be ignored because you can’t consent to illegality? Hudson.
 - F. Recapture of Chattels, Kirby.
 - 1. Hot pursuit
 - 2. Honest claim of right
 - 3. Reasonable force.
 - G. Necessity
 - 1. If they resist, they’re a wrongdoer, Plouf
 - 2. Incomplete privilege, Vincent. Public is complete. US v. Caltex.
 - 3. No extortion: Post says a reason for privilege is no holdouts; in the interests of commerce.
 - H. Privilege of justification - consider public welfare, thus public necessity. Sindle.
- X. Strict Liability
 - A. Historically, case required negligence.
 - B. Likely to do mischief if escapes? Blackburn and Cranworth in Rylands.
 - 1. Who brought it onto land?
 - 2. Damage more or less than Bolton’s cricket ball?
 - C. Don’t question fault, just who should pay. Spano.
 - D. Substantial risk of harm without compensation?
 - E. Ultrahazardous or abnormally dangerous? Other factors of §520
 - 1. §520(1)(c); ability to prevent damage by more care? Posner said important in IN Harbor.
 - F. Was it a contemplated harm? §519 and Madsen.
 - G. Reciprocal risks limits SL. Losee. (Argument to shift from SL to neg.)

- H. Extrasensitive? §524 and Madsen.
 - I. What does history say about monitoring this activity? Is it new? Powell. Does it greatly benefit society, like railroads?
 - J. Would evidence disappear, like transferring gasoline?
 - K. Benefit to society? Consider zoos and nuclear reactors.
- XI. Nuisance - “use and enjoyment”
- A. Public v. Private: Public pays no damages. Private needs special damages.
 - B. Negligence, intentional or strict liability. Did they know about it? Vogel.
 - C. Consider reasonable person
 - D. Permitted by zoning? Bove.
 - E. Locality Rule
 - F. Malice involved?
 - G. Progress argument. Fontainebleau and Prah
 - 1. Utility outweighing injury?
 - H. Reciprocity? Tenn 889; live and let live; Bamford
 - I. Extrasensitive? Rogers; Belmar
 - J. Coming to the nuisance? Bove says check out area before moving.
 - 1. Just cuz you’re there first doesn’t mean you’re safe. Ensign
 - K. Remedies:
 - 1. Permanent damages. Boomer.
 - a. Shows you if it’s worth staying. Market forces sophisticated.
 - 2. Purchased injunction. Spur.
- XII. Res Ipsa Loquitur
- A. Ever happen without negligence? Byrne
 - B. Falling items, cars in houses, BIZARRENESS.
 - C. Just defeats summary judgment, then goes to jury.
 - D. Exclusive control?
- XIII. Negligence
- A. Theory of negligence
 - B. Suggested precautions
 - 1. BPL: all social costs, probability and loss. Value of human life. Carroll Towing.
 - a. “worthwhile based on probability of the event they seek to prevent”
 - b. Efficiency
 - c. Cost of knowledge (Blyth) - has it happened before?
 - (1) Extreme? Aberdeen.
 - (2) High in emergency. Eckert.
 - d. Advance warning? Blyth, Hammontree, Breunig
 - 2. Custom
 - a. Can be wrong: Mayhew, TJ Hooper. Is what parties perceive Hand formula as.s
 - b. Need not use best technology. Titus. But that inhibits innovation.
 - c. Firmly rooted custom may provide notice. Mayhew.
 - 3. Would they be safe?
 - C. Duty and Breach
 - 1. Evidence of job description?
 - 2. Higher standards of care?
 - a. Experts, professionals, common carriers
 - (1) Jury may be OK to decide duty and reasonableness. Andrews.
 - b. Overruled by Bethel (reasonable acts defined by circumstances).
 - 3. Duty to supervise? Lancaster.
 - 4. Internal regulations? Lucy v. Perotti.
 - 5. No duty to rescue.

6. Adjustment for age, conditions, etc. Daniels, Roberts
 - a. Holmes says when can't bring up to standard of care, otherwise Ct of Heaven
 - b. Insane: can't appreciate & understand; no forewarning. Breunig.
- D. Cause in Fact
 1. But For and Reasonable certainty. Exclusion test.
 - a. Enough that CIF be probable. Stimpson.
 - b. Was it more likely than not?
 - c. *Post Hoc ergo Propter Hoc*
 2. Substantial factor (§431, adopting Andrews dissent from Palsgraf).
 3. Alternative Causes. Fire, Sindel.
 4. Concurrent
 5. Lost Chance Doctrine Herskovitz.
- E. Proximate Cause
 1. Directness (Polemis)
 - a. Wrongful conduct leads to liability for all; Polemis.
 - b. Too far removed in time and space? Polemis; Zone of danger? Palsgraf.
 - c. Coincidence? Berry
 - d. There at that point in time irrelevant. Lyons.
 - e. Too many other factors, Grimstad.
 - f. Was there intervening period of safety? Marshall
 - g. Did it actually increase the danger? Bigbee and Hines.
 2. Foreseeable P (Palsgraf) or class (Kinsman).
 - a. Outside orbit of duty where we expect injuries? Zone of danger? Palsgraf; Dillon
 - b. Superseding cause?
 - c. Intervening party or action? §§448 (Brower), 449 (Bigbee).
 - d. Rescuer? Wagner
 3. Foreseeable damage. Wagon Mound; not directness.
 - a. Injury is just too remote. Rinaldo.
 - b. Were they warned? Vaughan.
 - c. Once foreseeable P, is it whether foreseeable damage (WM), or liberal Rest substantial factor test?
 - d. If foreseeable, may not matter that it's indirect in time and space, Bigbee; Graves
- F. Damages
 1. Monitoring, Metro-North.
 2. Increased risk, Herskovitz; Mauro says not for lost chance but ok monitoring.
 3. Fear, Jackson
 4. Avoidable consequences regarding damages? Derheim; Spier.
- G. MedMal
 1. Cost benefit generally doesn't apply. Statute overruling Helling.
 2. Two schools of thought?
 - a. Published?
 - b. Quantity and quality?
 3. National standard of care, Cavallaro, McBride
- XIV. Negligence Per Se - evidence but not dispositive.
 - A. Statutes
 1. Selling liquor? Vesely (overruled by many statutes); Keys? Ross v. Hartman. Owner consent? 421. Third parties?
 2. Driving w/o license? Mattero says has to be the cause; Klanseck says inference of

- neg.
 - B. Even if a violation, was it actually a cause? Martin v. Herzog. Brown v. Shyne.
 1. Argue it would have negligence had there not even been a statute; this just proves D&B
 - C. That class of Ps? Stimpson
 - D. That type of harm? Gorris. Statutory Purpose Doctrine.
 1. Maybe causal connection between failure and harm but wrong harm.
 - E. Contemplated by the statute?
 - F. Is there a cause of action included or arises from common law? Osborne.
 - G. Reasons for failing to comply? Greater harm, did try but failed, etc.
 - H. Importing a statute into tort law? Maybe impose fine but not liability? Tedla.
- XV. Contributory Negligence and Assumption of the Risk
- A. Same standard as negligence - DBCD.
 1. What precautions?
 - B. Possession of faculties? Yania.
 - C. Assumption of the Risk
 1. Did they know and assume it voluntarily? Did they assume THAT risk? Murphy.
 2. Choice of Evils. Marshall v. Ranne.
 3. At some point we'll cut off consent. Like Hudson (PP override)
 - D. Imputed? Relationship between parties.
 - E. Did it worsen damages?
 1. Seat belt doctrine. Derheim says CN before. Spier says lessen damages, not liability.
 - F. Who had Last Clear Chance?
 - G. Who had knowledge about what precautions should be taken? Grimstad: he knew he can't swim
- XVI. Vicarious Liability
- A. In scope of duties? The two tests: serve master, characteristic.
 1. Frolic and detour. Riley.
 2. Opportunity because of employment? Bushey.
 3. Furthering employer's business. Charles.
 - B. Indemnification suits - long history allowing them/universal.
 - C. Intentional torts - possibly included. Lancaster.
 - D. Non-delegable duties. Colmenares. Contracted employees in general.
 1. Still liable for contracted employees - provides right incentives.
 - E. Deeper pockets.
- XVII. Joint and Several Liability