Part 1
Liability: The Prima Facie Case

- Breach of Duty
- Causation
- Damages
Chapter 1
Establishing a Breach of Duty

Negligence
- Defining Reasonable Care
- Use of Evidence of Negligence
  - Reasonable Person
  - Learned Hand (Efficiency)
  - Juror Experience
  - Custom of the Industry
  - Safety Policies
  - Statutory Violations

---OR--

Strict Liability
- Abnormally Dangerous Activities
- Animals
- Nuisance
- Statutory Strict Liability

Vicarious Liability
(To get a deeper Pocket)

Breach of Duty
Chapter 2
Proximate Cause

But-For Cause
(Cause in Fact)

AND

Legal Cause

More probable than not standard

Exceptions

Increased Risk
No superseding Cause
Victim was foreseeable

Unknown Identity
< 50% probability
Cumulative Causes

Alternative Liability
Enterprise Liability
Concerted Action
Market Share

Loss of a Chance
Substantial Factor Test
Chapter 3

Damages

Recoverable Damages

Who Can Recover Damages

Amount of Damages

Property Damage

Wage Loss

Pain & Suffering

Punitive Damages

Litigation Costs

Compensatory Damages

Additional Parties

Wrongful Death

Wrongful Birth/Life

Bystander/Consortium

Calculating the

Amount of Damages

"Excessive" Awards

Collateral Sources

Permissible Jury Arguments

Requires Malice/Reckless Disregard

Attorney Fees NOT Included
Part 2
Defenses to a Personal Injury Case

- Immunity
- Contributory Fault
- Multiple Tortfeasors
- Statutes of Limitation
Chapter 4

Immunity

Governmental

Statutory Waiver

Exceptions

Negligence

Only?

Discretionary

Function

Other

Exclusions?

Damage

Limitation?

Parental

Liability TO

Child

None for

Bad Parenting

Liability FOR

Child

YES for, e.g.

Bad Driving

Employer

Worker’s Comp.

Exclusion

No Immunity for

Intentional Torts

Dangerous

Propensity

Negligence

Only?

Discretionary

Function

Other

Exclusions?

Damage

Limitation?
Chapter 5
Contributory Fault

Contributory Negligence
- Common Law Bar
- Modified Comparative
- Pure Comparative

Assumption of Risk
- Primary
  (Defendant Wasn't Negligent)
  - No Liability
- Secondary Unreasonable
  (Plaintiff Was Negligent)
  - Same as Contrib. Neg.
- Secondary Reasonable
  (Plaintiff Assumed Inherent Risk)
  - ???

Effect:

Examples:
- Unscreened Baseball Seats
- Plaintiff Accepts Ride With Drunk Driver
- Cheerleader Doing Pyramid Stunts
Chapter 7
Statutes of Limitation

Identifying the Correct Period

- Nature of the Cause of Action
- "Gravamen" of Claims
- E.g., Tort v. Contract

Time of Accrual

- Discovery Rule
- Product Liability
- Construction Statutes
- Statutes of Repose

Tolling

- Infancy
- Fraudulent Concealment
- Statutory Change?
Part 3
Modification of Duty
By Contract

Premises Liability
Product Liability
Professional Malpractice
Rescuers, Justifiable Reliance and Special Relationships
Chapter 8
Premises Liability

Status Classifications

<table>
<thead>
<tr>
<th>STATUS</th>
<th>CHARACTERISTICS</th>
<th>DUTY OWED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business or Public Invitee</td>
<td>Owner’s Business Purpose or Public Entity Holds Open</td>
<td>Reasonable Care</td>
</tr>
<tr>
<td>Licensee</td>
<td>Social Guest; Bare Permission</td>
<td>Warn of hidden Dangers Known to O.</td>
</tr>
<tr>
<td>Trespasser</td>
<td>NoPermission</td>
<td>Don’t Shoot!</td>
</tr>
</tbody>
</table>

Jurisdictions Abolishing Rigid Status

Reasonable Care Considering the Circumstances Including "Status"

Injuries Arising From Breach of Duty Other Than Obligation to Maintain Safe Premises

Example: Owner Hits Guest With Golf Club

Exception for Child Trespassers (Attractive Nuisance)
Chapter 9
Product Liability

The Rise & Fall of Privity

Contract Requirements

Strict Liability Based on Warranty

Adoption of Strict Liability in Tort

Concept of DEFECT

Manufacturing

Design

Warning

True Strict Liability

Mix of SL and Negligence

Statutory Modifications

Statute of Limitations

Negligence Standard

Statute of Repose

Retailer Relief

Warning

Retailer

Standard

Negligence

Statute of

Limitations

Statute of

Repose

Retailer

Relief

Relief

Negligence

Statute of
Chapter 10
Professional Malpractice

Medical
- Professional Negligence
- Informed Consent
  - Material Facts Regarding Risks
  - Alternative Therapies
- Statutory Modifications
  - Statutes of Limitation
  - Informed Consent

Other
- Legal
- Accounting
- Real Estate

Establishing the Standard of Care
- Experts Familiar With State SOC
- Customized to Specialty & Circumstances
Chapter 11
Rescuers, Justifiable Reliance
and Special Relationships

What Triggers a Defendant's
Duty to Use Reasonable Care?

**Defendant Induced**
"Special Relationship"

**Opportunities to Reduce**
Or Eliminate Pre-Existing Risk

**Misfeasance**
("Sins of Commission")

**Nonfeasance**
("Sins of Omission")

**Activities that Create Risk**

**Duty to Use Reasonable Care**

**Example: Driving a Car**

**Example: Doctor Agrees to Diagnose Patient**

**Example: Psychiatrist Fails to Warn Patient's Victim**

NO Duty to Use RC **UNLESS**

Defendant Induced Justifiable Reliance

OR

Society (Court) Decides "Special Relationship" Created Obligation

Duty to Use Reasonable Care

Example: Doctor Agrees to Diagnose Patient

Example: Psychiatrist Fails to Warn Patient's Victim

Example: Driving a Car
Part 4
Intentional Torts

The Prima Facie Case

Defenses to Intentional Torts
Chapter 12
Intentional Torts:
The Prima Facie Case

Battery & Assault

<table>
<thead>
<tr>
<th>Intent Element</th>
<th>Damage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Battery</td>
<td>Intent to Cause Harmful or Offensive Touching or Apprehension thereof</td>
</tr>
<tr>
<td>Assault</td>
<td>(same)</td>
</tr>
</tbody>
</table>

False Imprisonment

- Intent to Confine
- Fixed Boundaries
- Awareness OR Damage

Tort of Outrage

- Intent or Recklessness
- Outrageous Conduct
- Severe Emotional Distress
Chapter 13
Defenses to Intentional Torts

Consent
Maybe Not, If Illegal Conduct
Limited By Scope of Consent

Defense of Self
Deadly Force v. Nondeadly Force
DEADLY Only if Reasonable Belief of Threat to Life
NONDEADLY Must Be Reasonable

Defense of Others

Defense of Property
Must Be Reasonable
Claims of Right Go to Judge

Statutory Privilege
E.g., Shopkeepers, Law Enforcement
Must Have Reasonable Grounds
Part 5
Harms to Non-Physical Interests

- Defamation
- Invasion of Privacy
- Damage to Business Interests
- Misuse of Legal Process
Chapter 14
Defamation

Liability
- Concerning Plaintiff
- Falsity
- Culpability
  - Public Figures
  - Private Figures
    - "Actual" Malice
    - Negligence

Defenses
- Absolute Privilege (Official Business)
  - Conditional--Lost If Malice Shown

Damages
- Special Damages If Slander Only
  - Actual
  - Punitive if Malice Shown
- Matter of Concern
  - Fair Report of Official Proceeding