

Exam # \_\_\_\_\_

TORTS  
FALL 2013

PROFESSOR DEWOLF  
December 10, 2013

FINAL EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL THE EXAM ACTUALLY BEGINS. THIS IS A CLOSED BOOK EXAM! Follow all of the directions of the proctor.

IMPORTANT: This exam will last THREE HOURS. You should plan on spending AT LEAST 20 minutes reading the questions carefully and outlining your answers on a separate sheet of paper. Before writing your answers, REREAD each question to be sure you haven't missed anything.

POINTS are assigned to each section of the exam based on the rough number of minutes it is expected you will need to complete each portion.

(1) *Multiple Choice* (20 points). Please select the best answer. Some answers may give a wrong reason for an otherwise correct result. Make sure that you read all the answers thoroughly and select the one that comes closest to a correct statement of the law. Circle the correct answer on the exam. Write your answers to the multiple choice questions at the beginning of your answer to Essay #1.

(2) *Essays*: You will have two essay questions. The division is as follows:

Question 1: **55** points

Question 2: **60** points

PLEASE IGNORE issues relating to legal causation; assume that any but-for cause of an injury is also a proximate cause of that injury. DO NOT cross-refer from one essay answer to the other; make sure that each essay answer stands on its own.

Plan on spending at least 15 minutes at the end PROOFREADING your answers. You may not write ANOTHER WORD after time is called.

A STATUTORY APPENDIX is provided that gives the law of this jurisdiction, the State of Linden, on some issues. If no law is specified on the point you are interested in, please comment on the possible alternatives.

REMEMBER THE HONOR CODE! Don't identify yourself.

MERRY CHRISTMAS! / HAPPY HOLIDAYS!

## MULTIPLE CHOICE QUESTIONS

1. Marcus Welby, M.D. was a plastic surgeon. Paula Pound came to his office to have a facelift. One of the nurses interviewed Paula to find out what she wanted by way of treatment. In the course of the interview Paula showed the nurse a tattoo that was from a failed romance. One of the other doctors in the office reviewed Paula's chart and interviewed her, and scheduled the facelift for May 15. Paula signed an "informed consent" form that specified the facelift as the procedure she had chosen. On the day of the surgery, Welby had Paula anesthetized, and proceeded to perform the facelift. Once it was completed, Welby asked if anything further was needed, and the assistant mistakenly read the chart as showing that Paula also wanted the tattoo removed. Welby did so.

If Paula sued Welby for battery as a result of Welby removing the tattoo, would she prevail?

- (a) Yes, because Welby did not get consent.
- (b) Yes, because Welby exceeded the scope of the consent he was given.
- (c) No, because Welby was unaware of her lack of consent to the tattoo removal
- (d) No, because Paula benefitted from the procedure.

2. Otto Osprey was a security officer for the Bank of Linden. He was on duty at 11 a.m. on a Thursday morning when a customer ran hurriedly from the bank with a large bag in her hand. Otto thought that a robbery had just occurred, so he yelled at the fleeing customer, "Stop or I'll shoot!" Betty Brown was just entering the bank when she heard Otto yell his warning. She froze in terror. If Betty sued Otto for assault, would she prevail?

- (a) Yes, because Otto's conduct was unjustified;
- (b) Yes, because deadly force is not permitted merely to prevent property theft
- (c) No, because Otto didn't intend to assault Betty
- (d) No, if a person of reasonable sensibility would not have experienced fear.

3. Linda Locker was a manager at Jason's Jewelry. The store had several million dollars worth of precious stones. Ron Reston walked into the store one day and asked to look at a diamond ring with a 2-carat stone. Linda observed him from behind a one-way mirror located near the counter where Ron was looking at the diamond. Linda looked away for thirty seconds to check a text message on her phone. When she looked back, she saw the clerk putting away something in the jewelry case, and Ron putting something in his pocket. Ron hurriedly walked toward the exit. Linda called the security guard, who detained him to see whether he had stolen the diamond. If Ron sues Jason's Jewelry for false imprisonment, will he prevail?

- (a) Yes, if Ron in fact did not have the diamond;
- (b) Yes, if Ron didn't have the diamond and Linda's failure to observe him for the entire time was unreasonable;
- (c) No, because a shopkeeper is entitled to detain suspected shoplifters;
- (d) No, because the high dollar value of the diamond justifies heightened protections against shoplifting

4. Terry Thomas was a construction worker who worked for a local asphalt company. Andy Archer was driving on Elm Street while a portion of it was being repaved. Normally four lanes, Elm Street had been reduced to two lanes, one in each direction. Terry was using a shovel to scrape the loose asphalt that fell from the truck that was delivering hot asphalt for the repaving operation. Some of the loose asphalt fell into the lane where Andy was driving, and Terry walked over to scrape it back. Andy honked his horn at Terry but Terry didn't pay attention to him. Andy slammed on his

brakes and rolled down his window. “You \$%&!\$ why don’t you get out of the %@(\$@ way!” shouted Andy. If Terry sued Andy for the intentional infliction of emotional distress, what result?

- (a) Terry prevails, because Andy’s conduct was outrageous;
- (b) Terry prevails, because Andy intended to inflict emotional distress;
- (c) Andy prevails, if Terry didn’t suffer severe emotional distress;
- (d) Andy prevails, because the conduct did not rise to the level of conduct that is utterly intolerable in a civilized community.

## ESSAY QUESTIONS

### QUESTION 1 ( 55 points)

Performance Industries, Inc. operated an auto parts business at fourteen retail stores in Springfield, the largest city in Linden. To service those stores, Performance maintained a warehouse located at 309 Oak Street, Springfield. In July 2008 Performance Industries, Inc. contracted with High Security, a manufacturer and supplier of burglar alarms, to install a burglar alarm system at the warehouse on 309 Oak Street. The alarm system was completed in October 2008. It was designed so that when the warehouse was closed, and the alarm system was activated, if a person entered the warehouse the alarm would sound unless a special code was entered within 60 seconds. If the code was not entered, two things should happen: first, a loud alarm would sound. Second, a message would be sent to the Springfield Police Department alerting them to suspicious activity at the warehouse.

On May 14, 2011, at 1:35 a.m. a burglar entered the warehouse and after stealing some of the contents set a fire that eventually consumed the entire warehouse.

After a lengthy review by the fire marshal, several facts were determined:

- (1) The burglar alarm did not activate at any time after the burglar’s entry. No one reported hearing the piercing sound that the local alarm would have generated. (However, the warehouse was located in a commercial district where relatively few people would be around at 1:35 a.m.) Nor was there any message sent to the Springfield Police Department. The first knowledge of a problem was when someone reported the fire to the Springfield Fire Department.
- (2) Why the burglar alarm did not activate is a matter of speculation. The burglar may have disabled it; perhaps the burglar had access to the code such that it was entered within 60 seconds. A review of footage from a surveillance camera located at a nearby building shows an unidentified person entering at 1:35 a.m. and exiting at approximately 1:45 a.m. Attempts to locate the burglar have been unsuccessful.
- (3) The fire marshal has determined that the fire spread quickly because of the ignition of a large quantity of windshield washer fluid that had recently been delivered to the warehouse. The fluid is 99.8% methanol, which is highly flammable. Local building and fire codes permitted no more than 120 gallons to be stored in the warehouse, but at the time of the fire 3000 gallons were on the premises. On previous occasions drivers were instructed to load the windshield washer fluid directly into a delivery truck for delivery to the retail stores. However, two day before the fire, Standard Trucking simply used a

forklift to unload several pallets full of windshield washer fluid amounting to 3000 gallons and placed them in an empty bay in the warehouse.

- (4) Standard Trucking is now in bankruptcy and any action against them has been stayed by the bankruptcy court.

Your law firm has been hired by Performance Industries to report on the prospects for recovering damages from High Security. You have hired an expert who is familiar with other cases in which a High Security burglar alarm has failed. According to her, High Security has settled several of these cases, however, the losses from a typical burglary are relatively small. Here the loss from the fire is \$2,000,000.

Please prepare a report on the prospects for your client recovering tort damages from High Security.

#### QUESTION 2 ( 60 points)

On August 23, 2012, Leslie Curtis, then sixteen years old, went with several of her friends to Water World, a water-themed park operated by the State of Linden. One of the attractions is "Thunder River." Visitors ride a raft down a flume (a long tube, open at the top, that leads to a shallow swimming pool at the bottom). At the top of the flume visitors wait in line to take their turn riding a raft to the bottom. Once at the bottom the visitor enters a shallow pool and an attendant will help the visitor get out of the raft and the water. From time to time the staff at Water World would station an attendant at the top of the flume to regulate the intervals at which the visitors may place their rafts onto the flume and begin their way down. However, on August 23 there was no attendant at the top of the flume. Leslie Curtis was riding her raft when it was slowed by friction between the raft and the side of the flume. Shortly after she began her descent, John Brody, a sumo wrestler, put his raft at the top of the flume and launched himself down. Before Leslie reached the bottom John Brody collided with the raft that Leslie was on, causing her to fall out of the raft and hit her head, resulting in serious injury.

You are an attorney in the Office of the Attorney General for the State of Linden. Your office has received a complaint for damages from a lawyer representing Leslie Curtis alleging that the State negligently caused the injuries that Leslie received on August 23, 2012. A claims management specialist in your office has opined that if a jury assessed the damages Leslie suffered the amount would probably be \$500,000. Please prepare an analysis of the State's defense to the claim.

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**LINDEN REVISED STATUTES**  
**Title 13. Courts and Court Procedure**  
**Article 21. Damages**  
**Part 1. General Provisions**

**§ 13-21-111. Negligence cases--comparative negligence as measure of damages**

(1) Contributory negligence or other contributory fault shall not bar recovery in any action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence or fault of the person against

whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence or fault attributable to the person for whose injury, damage, or death recovery is made.

(2) In any action to which subsection (1) of this section applies, the court, in a nonjury trial, shall make findings of fact or, in a jury trial, the jury shall return a special verdict which shall state:

(a) The amount of the damages which would have been recoverable if there had been no contributory negligence or contributory fault; and

(b) The degree of negligence or fault of each party, expressed as a percentage.

(3) Upon the making of the finding of fact or the return of a special verdict, as is required by subsection (2) of this section, the court shall reduce the amount of the verdict in proportion to the amount of negligence or fault attributable to the person for whose injury, damage, or death recovery is made; but, if the said proportion is equal to or greater than the negligence or fault of the person against whom recovery is sought, then, in such event, the court shall enter a judgment for the defendant.

### **§ 13-21-111.5. Civil liability cases--pro rata liability of defendants**

(1) In an action brought as a result of a death or an injury to person or property, no defendant shall be liable for an amount greater than that represented by the degree or percentage of the negligence or fault attributable to such defendant that produced the claimed injury, death, damage, or loss, except as provided in subsection (4) of this section.

(2) The jury shall return a special verdict, or, in the absence of a jury, the court shall make special findings determining the percentage of negligence or fault attributable to each of the parties and any persons not parties to the action of whom notice has been given pursuant to paragraph (b) of subsection (3) of this section to whom some negligence or fault is found and determining the total amount of damages sustained by each claimant. The entry of judgment shall be made by the court based on the special findings, and no general verdict shall be returned by the jury.

(3)(a) Any provision of the law to the contrary notwithstanding, the finder of fact in a civil action may consider the degree or percentage of negligence or fault of a person not a party to the action, based upon evidence thereof, which shall be admissible, in determining the degree or percentage of negligence or fault of those persons who are parties to such action. Any finding of a degree or percentage of fault or negligence of a nonparty shall not constitute a presumptive or conclusive finding as to such nonparty for the purposes of a prior or subsequent action involving that nonparty.

(b) Negligence or fault of a nonparty may be considered if the claimant entered into a settlement agreement with the nonparty or if the defending party gives notice that a nonparty was wholly or partially at fault within ninety days following commencement of the action unless the court determines that a longer period is necessary. The notice shall be given by filing a pleading in the action designating such nonparty and setting forth such nonparty's name and last-known address, or the best identification of such nonparty which is possible under the circumstances, together with a brief statement of the basis for believing such nonparty to be at fault.

(4) Joint liability shall be imposed on two or more persons who consciously conspire and deliberately

pursue a common plan or design to commit a tortious act. Any person held jointly liable under this subsection (4) shall have a right of contribution from his fellow defendants acting in concert. A defendant shall be held responsible under this subsection (4) only for the degree or percentage of fault assessed to those persons who are held jointly liable pursuant to this subsection (4).

(5) In a jury trial in any civil action in which contributory negligence or comparative fault is an issue for determination by the jury, the trial court shall instruct the jury on the effect of its finding as to the degree or percentage of negligence or fault as between the plaintiff or plaintiffs and the defendant or defendants. However, the jury shall not be informed as to the effect of its finding as to the allocation of fault among two or more defendants. The attorneys for each party shall be allowed to argue the effect of the instruction on the facts which are before the jury.

**Title 24. Government  
State Administration  
Article 10. Governmental Immunity**

**§ 24-10-101. Short title**

This article shall be known and may be cited as the "Linden Governmental Immunity Act."

**§ 24-10-102. Declaration of policy**

It is recognized by the general assembly that the doctrine of sovereign immunity, whereunder the state and its political subdivisions are often immune from suit for injury suffered by private persons, is, in some instances, an inequitable doctrine. The general assembly also recognizes that the supreme court has abrogated the doctrine of sovereign immunity effective July 1, 1972, and that thereafter the doctrine shall be recognized only to such extent as may be provided by statute. The general assembly also recognizes that the state and its political subdivisions provide essential public services and functions and that unlimited liability could disrupt or make prohibitively expensive the provision of such essential public services and functions. The general assembly further recognizes that the taxpayers would ultimately bear the fiscal burdens of unlimited liability and that limitations on the liability of public entities and public employees are necessary in order to protect the taxpayers against excessive fiscal burdens. It is also recognized that public employees, whether elected or appointed, should be provided with protection from unlimited liability so that such public employees are not discouraged from providing the services or functions required by the citizens or from exercising the powers authorized or required by law. It is further recognized that the state, its political subdivisions, and the public employees of such public entities, by virtue of the services and functions provided, the powers exercised, and the consequences of unlimited liability to the governmental process, should be liable for their actions and those of their agents only to such an extent and subject to such conditions as are provided by this article. The general assembly also recognizes the desirability of including within one article all the circumstances under which the state, any of its political subdivisions, or the public employees of such public entities may be liable in actions which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant and that the distinction for liability purposes between governmental and proprietary functions should be abolished.

**§ 24-10-103. Definitions**

As used in this article, unless the context otherwise requires:

(1) "Controlled agricultural burn" means a technique used in farming to clear the land of any existing crop residue, kill weeds and weed seeds, or to reduce fuel buildup and decrease the likelihood of a future fire.

(1.3) "Dangerous condition" means either a physical condition of a facility or the use thereof that constitutes an unreasonable risk to the health or safety of the public, which is known to exist or which in the exercise of reasonable care should have been known to exist and which condition is proximately caused by the negligent act or omission of the public entity or public employee in constructing or maintaining such facility. For the purposes of this subsection (1.3), a dangerous condition should have been known to exist if it is established that the condition had existed for such a period and was of such a nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered. A dangerous condition shall not exist solely because the design of any facility is inadequate. The mere existence of wind, water, snow, ice, or temperature shall not, by itself, constitute a dangerous condition.

(1.5) "Health care practitioner" means a physician, dentist, clinical psychologist, or any other person acting at the direction or under the supervision or control of any such persons.

(2) "Injury" means death, injury to a person, damage to or loss of property, of whatsoever kind, which, if inflicted by a private person, would lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant.

(2.5) "Maintenance" means the act or omission of a public entity or public employee in keeping a facility in the same general state of repair or efficiency as initially constructed or in preserving a facility from decline or failure. "Maintenance" does not include any duty to upgrade, modernize, modify, or improve the design or construction of a facility.

(2.7) "Motor vehicle" means a motor vehicle as defined in section 42-1-102, and a light rail car or engine owned or leased by a public entity.

(3)(a) "Operation" means the act or omission of a public entity or public employee in the exercise and performance of the powers, duties, and functions vested in them by law with respect to the purposes of any public hospital, jail, or public water, gas, sanitation, power, or swimming facility. "Operation" does not include any duty to upgrade, modernize, modify, or improve the design or construction of a facility.

(b) The term "operation" shall not be construed to include:

(I) A failure to exercise or perform any powers, duties, or functions not vested by law in a public entity or employee with respect to the purposes of any public facility set forth in paragraph (a) of this subsection (3);

(II) A negligent or inadequate inspection or a failure to make an inspection of any property, except

property owned or leased by the public entity, to determine whether such property constitutes a hazard to the health or safety of the public.

(3.5) "Prescribed fire" means the application of fire in accordance with a written prescription for vegetative fuels and excludes a controlled agricultural burn.

(4)(a) "Public employee" means an officer, employee, servant, or authorized volunteer of the public entity, whether or not compensated, elected, or appointed, but does not include an independent contractor or any person who is sentenced to participate in any type of useful public service. For the purposes of this subsection (4), "authorized volunteer" means a person who performs an act for the benefit of a public entity at the request of and subject to the control of such public entity and includes a qualified volunteer as defined in section 24-33.5-802(9).

(b) "Public employee" includes any of the following:

(I) Any health care practitioner employed by a public entity, except for any health care practitioner who is employed on less than a full-time basis by a public entity and who additionally has an independent or other health care practice. Any such person employed on less than a full-time basis by a county or a district public health agency and who additionally has an independent or other health care practice shall maintain the status of a public employee only when such person engages in activities at or for the county or the district public health agency that are within the course and scope of such person's responsibilities as an employee of the county or the district public health agency. For purposes of this subparagraph (I), work performed as an employee of another public entity or of an entity of the United States government shall not be considered to be an independent or other health care practice.

(II) Any health care practitioner employed part-time by and holding a clinical faculty appointment at a public entity as to any injury caused by a health care practitioner-in-training under such health care practitioner's supervision. Any such person shall maintain the status of a public employee when such person engages in supervisory and educational activities over a health care practitioner-in-training at a nonpublic entity if said activities are within the course and scope of such person's responsibilities as an employee of a public entity.

(III) Any health care practitioner-in-training who is duly enrolled and matriculated in an educational program of a public entity and who is working at either a public entity or a nonpublic entity. Any such person shall maintain the status of a public employee when such person engages in professional or educational activities at a nonpublic entity if said activities are within the course and scope of such person's responsibilities as a student or employee of a public entity.

(IV) Any health care practitioner who is a nurse licensed under article 38 of title 12, employed by a public entity. Any such person shall maintain the status of a public employee only when such person engages in activities at or for the public entity which are within the course and scope of such person's responsibilities as an employee of the public entity.

(V) Any health care practitioner who volunteers services at or on behalf of a public entity, or who volunteers services as a participant in the community maternity services program;

(VI) Any release hearing officer utilized by the department of corrections and the state board of parole



pursuant to section 17-2-217(1). A release hearing officer shall maintain the status of a public employee only when the release hearing officer engages in activities that are within the course and scope of his or her responsibilities as a release hearing officer.

(VII) Any administrative hearing officer utilized by the department of corrections and the state board of parole pursuant to section 17-2- 201(3) (c)(I). An administrative hearing officer shall maintain the status of a public employee only when the administrative hearing officer engages in activities that are within the course and scope of his or her responsibilities as an administrative hearing officer.

(5) "Public entity" means the state, the judicial department of the state, any county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof organized pursuant to law and any separate entity created by intergovernmental contract or cooperation only between or among the state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof.

(5.5) "Public sanitation facility" means structures and related apparatus used in the collection, treatment, or disposition of sewage or industrial wastes of a liquid nature that is operated and maintained by a public entity. "Public sanitation facility" does not include: A public water facility; a natural watercourse even if dammed, channelized, or containing storm water runoff, discharge from a storm sewer, or discharge from a sewage treatment plant outfall; a drainage, borrow, or irrigation ditch even if the ditch contains storm water runoff or discharge from storm sewers; a curb and gutter system; or other drainage, flood control, and storm water facilities.

(5.7) "Public water facility" means structures and related apparatus used in the collection, treatment, or distribution of water for domestic and other legal uses that is operated and maintained by a public entity. "Public water facility" does not include: A public sanitation facility; a natural watercourse even if dammed, channelized, or used for transporting domestic water supplies; a drainage, borrow, or irrigation ditch even if dammed, channelized, or containing storm water runoff or discharge; or a curb and gutter system.

(6) "Sidewalk" means that portion of a public roadway between the curb lines or the lateral lines of the traveled portion and the adjacent property lines which is constructed, designed, maintained, and intended for the use of pedestrians.

(7) "State" means the government of the state; every executive department, board, commission, committee, bureau, and office; and every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof. "State" does not include the judicial department, a county, municipality, city and county, school district, special district, or any other kind of district, instrumentality, political subdivision, or public corporation organized pursuant to law.

#### **§ 24-10-104. Waiver of sovereign immunity**

Notwithstanding any provision of law to the contrary, the governing body of a public entity, by resolution, may waive the immunity granted in section 24- 10-106 for the types of injuries described in the resolution. Any such waiver may be withdrawn by the governing body by resolution. A resolution

adopted pursuant to this section shall apply only to injuries occurring subsequent to the adoption of such resolution.

**§ 24-10-105. Prior waiver of immunity--effect--indirect claims not separate**

(1) It is the intent of this article to cover all actions which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant. No public entity shall be liable for such actions except as provided in this article, and no public employee shall be liable for injuries arising out of an act or omission occurring during the performance of his or her duties and within the scope of his or her employment, unless such act or omission was willful and wanton, except as provided in this article. Nothing in this section shall be construed to allow any action which lies in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant to be brought against a public employee except in compliance with the requirements of this article.

(2)(a) A reference in this article to an injury, claim, or action that "lies in tort or could lie in tort" shall be construed in all cases to include, in addition to a direct claim or action, a claim or action asserted by way of assignment or subrogation to recover from a public entity or public employee the amount paid on a damages claim or the amount that may become payable on a damages claim because of the occurrence of an injury, as defined in section 24-10-103(2).

(b) In any case in which an assignee or subrogee asserts an injury governed by this article:

(I) The injury shall not be deemed to be separate from the injury suffered by the assignor or subrogor; and

(II) Pursuant to section 24-10-114(1.5), the assignment or subrogation concerning the injury shall not be deemed to be a separate occurrence with regard to limitations on judgments.

**§ 24-10-106. Immunity and partial waiver**

(1) A public entity shall be immune from liability in all claims for injury which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant except as provided otherwise in this section. Sovereign immunity is waived by a public entity in an action for injuries resulting from:

(a) The operation of a motor vehicle, owned or leased by such public entity, by a public employee while in the course of employment, except emergency vehicles operating within the provisions of section 42-4-108(2) and (3);

(b) The operation of any public hospital, correctional facility, as defined in section 17-1-102, or jail by such public entity;

(c) A dangerous condition of any public building;

(d)(I) A dangerous condition of a public highway, road, or street which physically interferes with the movement of traffic on the paved portion, if paved, or on the portion customarily used for travel by

motor vehicles, if unpaved, of any public highway, road, street, or sidewalk within the corporate limits of any municipality, or of any highway which is a part of the federal interstate highway system or the federal primary highway system, or of any highway which is a part of the federal secondary highway system, or of any highway which is a part of the state highway system on that portion of such highway, road, street, or sidewalk which was designed and intended for public travel or parking thereon. As used in this section, the phrase "physically interferes with the movement of traffic" shall not include traffic signs, signals, or markings, or the lack thereof. Nothing in this subparagraph (I) shall preclude a particular dangerous accumulation of snow, ice, sand, or gravel from being found to constitute a dangerous condition in the surface of a public roadway when the entity fails to use existing means available to it for removal or mitigation of such accumulation and when the public entity had actual notice through the proper public official responsible for the roadway and had a reasonable time to act.

(II) A dangerous condition caused by the failure to realign a stop sign or yield sign which was turned, without authorization of the public entity, in a manner which reassigned the right-of-way upon intersecting public highways, roads, or streets, or the failure to repair a traffic control signal on which conflicting directions are displayed;

(III) A dangerous condition caused by an accumulation of snow and ice which physically interferes with public access on walks leading to a public building open for public business when a public entity fails to use existing means available to it for removal or mitigation of such accumulation and when the public entity had actual notice of such condition and a reasonable time to act.

(e) A dangerous condition of any public hospital, jail, public facility located in any park or recreation area maintained by a public entity, or public water, gas, sanitation, electrical, power, or swimming facility. Nothing in this paragraph (e) or in paragraph (d) of this subsection (1) shall be construed to prevent a public entity from asserting sovereign immunity for an injury caused by the natural condition of any unimproved property, whether or not such property is located in a park or recreation area or on a highway, road, or street right-of-way.

(f) The operation and maintenance of any public water facility, gas facility, sanitation facility, electrical facility, power facility, or swimming facility by such public entity;

(g) The operation and maintenance of a qualified state capital asset that is the subject of a leveraged leasing agreement pursuant to the provisions of part 10 of article 82 of this title;

(h) Failure to perform an education employment required background check as described in section 13-80-103.9.

(1.5)(a) The waiver of sovereign immunity created in paragraphs (b) and (e) of subsection (1) of this section does not apply to claimants who have been convicted of a crime and incarcerated in a correctional facility or jail pursuant to such conviction, and such correctional facility or jail shall be immune from liability as set forth in subsection (1) of this section.

(b) The waiver of sovereign immunity created in paragraphs (b) and (e) of subsection (1) of this section does apply to claimants who are incarcerated but not yet convicted of the crime for which such claimants are being incarcerated if such claimants can show injury due to negligence.

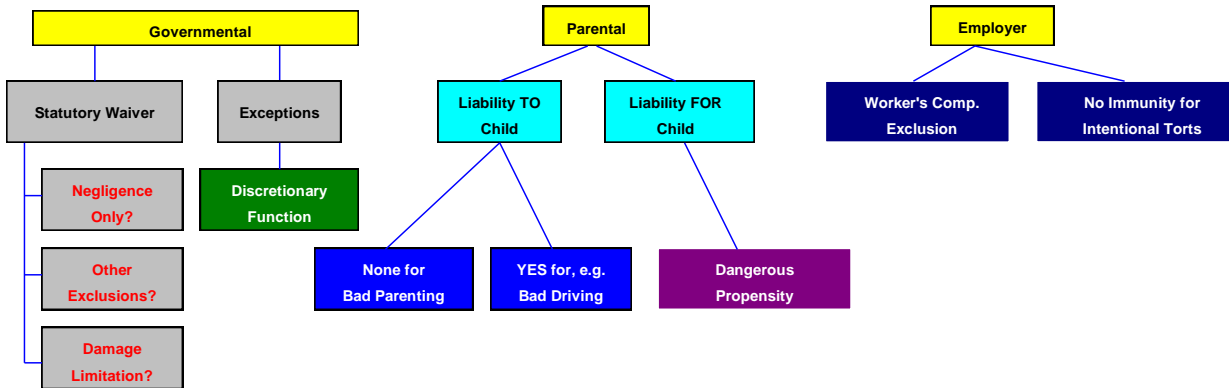
(c) The waiver of sovereign immunity created in paragraph (e) of subsection (1) of this section does not apply to any backcountry landing facility located in whole or in part within any park or recreation area maintained by a public entity. For purposes of this paragraph (c), "backcountry landing facility" means any area of land or water that is unpaved, unlighted, and in a primitive condition and is used or intended for the landing and takeoff of aircraft, and includes any land or water appurtenant to such area.

(2) Nothing in this section or in section 24-10-104 shall be construed to constitute a waiver of sovereign immunity where the injury arises from the act, or failure to act, of a public employee where the act is the type of act for which the public employee would be or heretofore has been personally immune from liability.

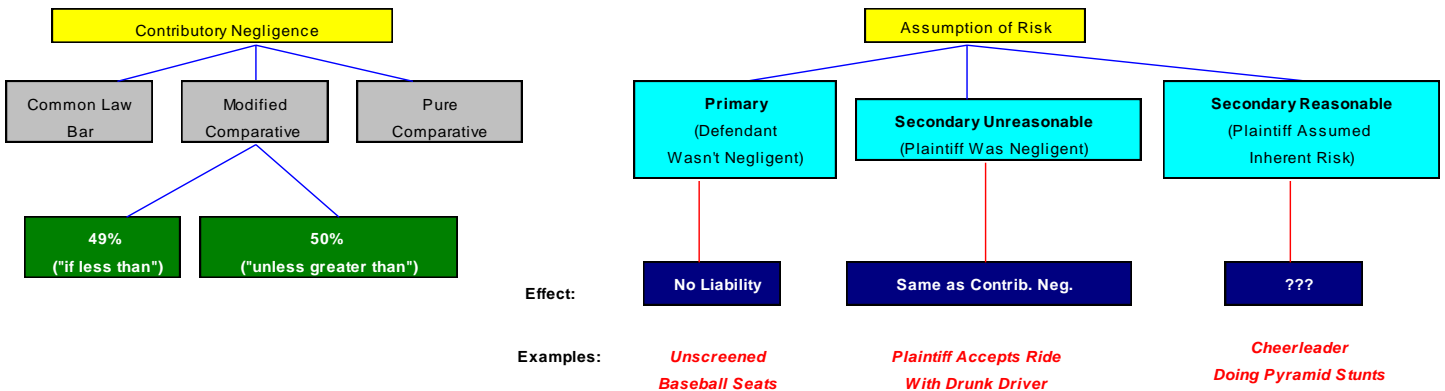
(3) In addition to the immunity provided in subsection (1) of this section, a public entity shall also have the same immunity as a public employee for any act or failure to act for which a public employee would be or heretofore has been personally immune from liability.

(4) No rule of law imposing absolute or strict liability shall be applied in any action against a public entity or a public employee for an injury resulting from a dangerous condition of, or the operation and maintenance of, a public water facility or public sanitation facility. No liability shall be imposed in any such action unless negligence is proven.

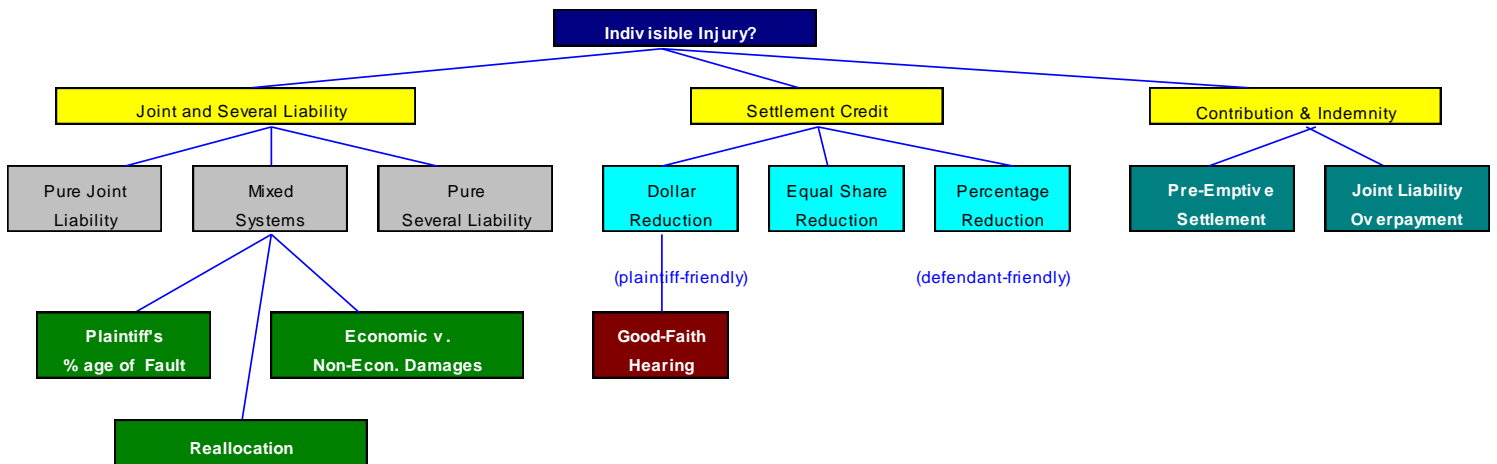
**Chapter 4  
Immunity**



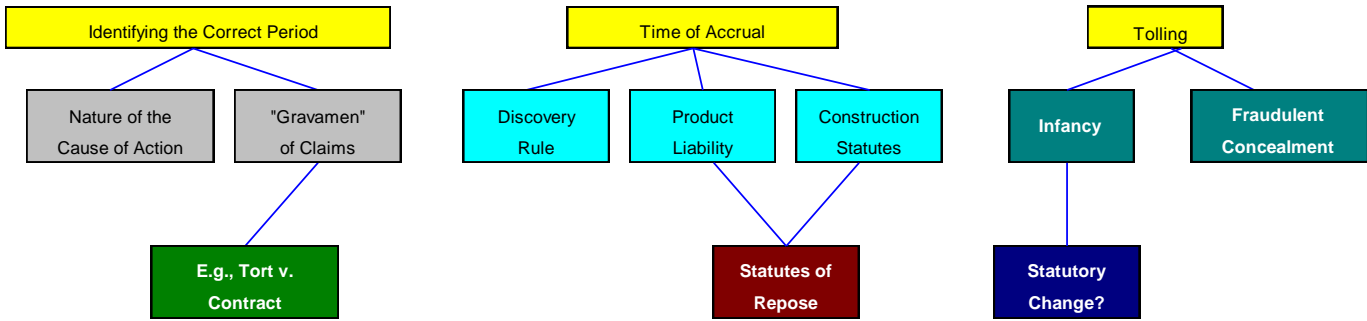
**Chapter 5  
Contributory Fault**



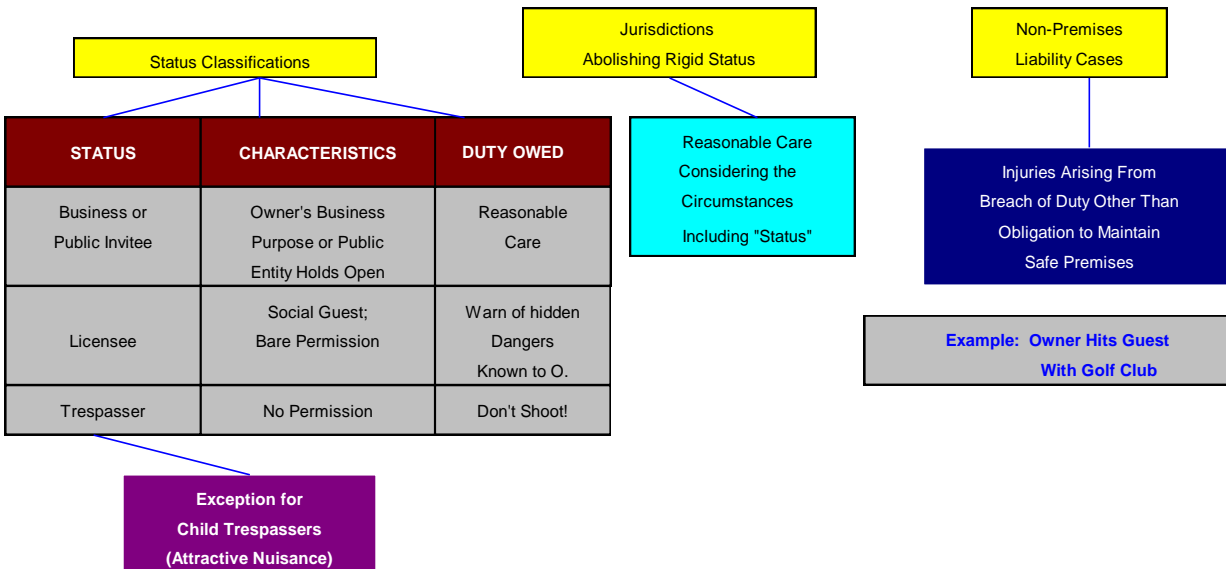
**Chapter 6  
Multiple Tortfeasors**



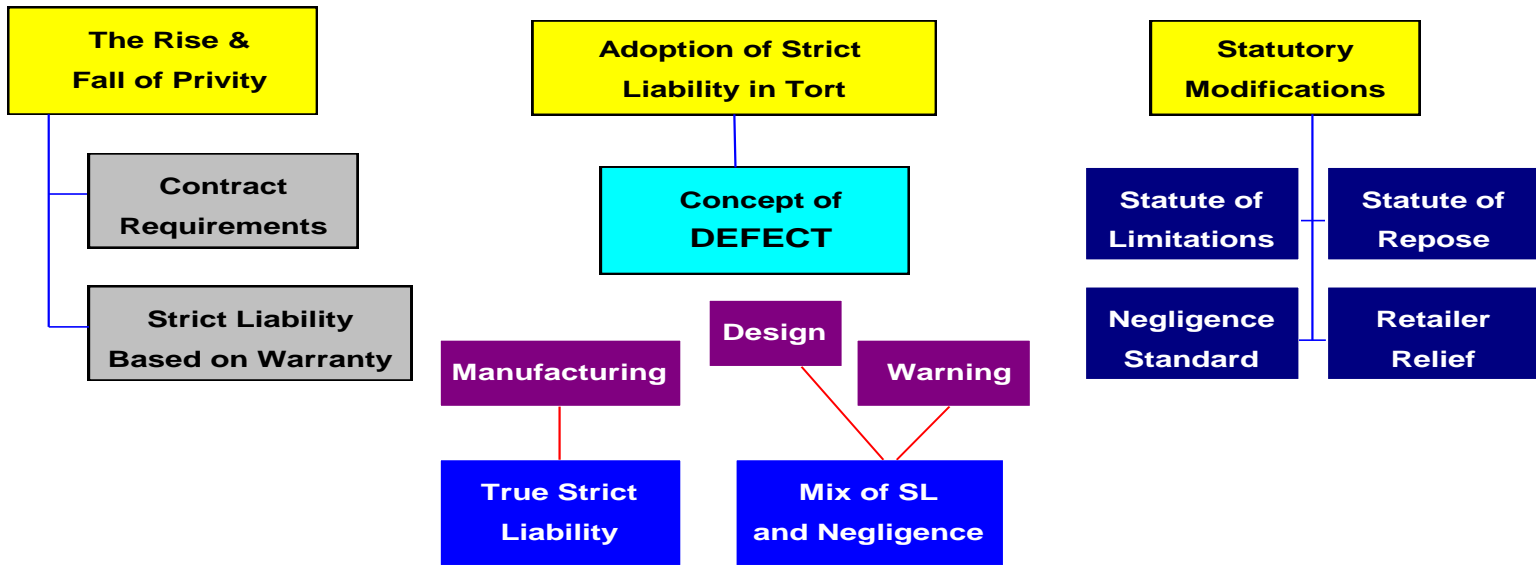
**Chapter 7**  
**Statutes of Limitation**



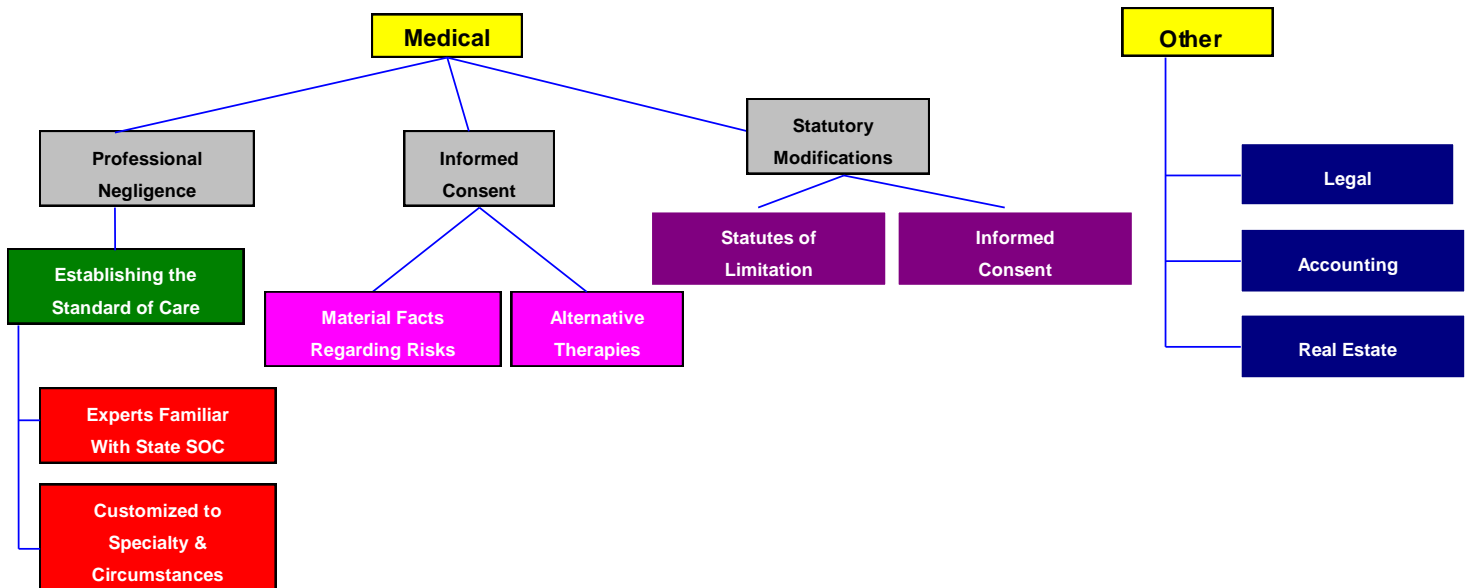
**Chapter 8**  
**Premises Liability**



**Chapter 9  
Product Liability**



**Chapter 10  
Professional Malpractice**



**Chapter 11**  
**Rescuers, Justifiable Reliance**  
**and Special Relationships**

**What triggers a defendant's duty to use reasonable care?**

