

Exam # _____

TORTS
SUMMER 2014

PROFESSOR DEWOLF
August 18, 2014

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. Enter your answers in Examsoft.

(2) *Essays* (115 points): You will have two essay questions. The division is as follows:

Question 1: **65** points

Question 2: **50** 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 Evergreen, 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.

ENJOY YOUR (SHORT) BREAK!

MULTIPLE CHOICE QUESTIONS

1. Adam Armitage was riding the subway. He had previously been in a serious bicycle accident that left him subject to extreme sensitivity in his right shoulder, although from outward appearances he looked perfectly normal. Although the subway car was relatively empty, Dusty Dempsey took up a position standing right next to Armitage. When the subway lurched to a stop, Dempsey was thrown forward, bumping into Armitage, causing him considerable pain. Could Armitage recover damages from Dempsey based on a claim of battery?

- (a) Yes, because the injury was substantially certain to occur.
- (b) Yes, because Dempsey should have taken his seat rather than stand.
- (c) No, because Dempsey didn't intend the contact.
- (d) No, so long as Dempsey didn't intend either harmful or offensive contact.

2. Marjorie Meadow was directing a movie that included a scene featuring an off-duty police officer who is in a convenience store when an armed robbery takes place. Meadow had arranged with a local convenience store to close the store at 11:00 p.m. so that the filming could take place, and had a large film crew and actors assembled to shoot the scene. At midnight Barbara Baxter had been driving on the highway on which the convenience store was located when she ran out of gas. Seeing the lights of the convenience store in the distance she decided to walk toward it with a gas container she found in the trunk in the hope of getting a gallon of gas. As she got closer Baxter thought the convenience store was unusually busy, but she was relieved to see it was still open. Before she recognized that it was a movie scene, an actor came running out of the convenience store waving a pistol. Baxter was extremely frightened. If Baxter sued Meadow for assault, would she prevail?

- (a) Yes, if Meadow was reckless in causing her to be frightened;
- (b) Yes, but only if it were substantially certain that Baxter would experience apprehension of an imminent harmful or offensive contact;
- (c) No, if Baxter was unreasonable in failing to recognize that it was a movie set;
- (d) No, if Meadow thought that Baxter was just part of the movie set.

3. Cary Chessman worked as a security guard for a large department store. He was looking forward to a party his friends were hosting, and so he was anxious to finish his shift and take off. Mona and Lisa were trying on clothes in the women's department when Chessman turned out all the lights and prepared to lock up. Mona and Lisa shouted when the lights went out, but Chessman didn't hear them because he was listening to music on his .mp3 player. Chessman locked the place up and took off. Mona and Lisa used the "flashlight" feature of their cell phones to find their way to the front door of the department store, but everything was locked up. They weren't able to get out of the store until the following morning. If they sued the store for false imprisonment, what result?

- (a) Mona and Lisa prevail, because they were confined within fixed boundaries and were aware of their confinement;
- (b) Mona and Lisa prevail if they can show that Chessman was at least reckless in failing to recognize their presence;
- (c) Chessman and the store prevail, because the confinement wasn't intentional;
- (d) Chessman and the store prevail, unless Mona and Lisa suffered severe emotional distress.

4. George Gilmore was a famous actor. He was sitting on an airplane that was supposed to take off at 2:00 p.m. but had been sitting on the airport runway past 3:30 p.m. Prior to boarding the

plane George had purchased several drinks from an airport bar and was quite tipsy when he got on. Rowena Reston, a flight attendant, was walking down the aisle when Gilmore spotted her and shouted, "When's this *&!\$ plane going to take off?" Reston told him to be quiet and stay in his seat. Gilmore responded, "If you can't get this #&@% plane in the air, at least give me a \$@^@% drink!" Reston told him that unless he shut up and stayed in his seat she would have him thrown off the plane. Gilmore responded, "You do that and I'll get you fired!" If Reston sued Gilmore, the most likely outcome would be:

- (a) Reston prevails on a claim alleging the intentional infliction of emotional distress;
- (b) Reston prevails on an assault claim;
- (c) Gilmore prevails if he was too drunk to realize what he was doing;
- (d) Gilmore prevails unless Reston suffered severe emotional distress.

ESSAY QUESTIONS

QUESTION 1 (65 points)

Charles Cole was a regular customer of Mandell's, a supermarket owned and operated by Mandell Food Stores, Inc. The entrance to the store had automatic doors that opened whenever someone walked on the rubber mats that extended eight feet in either direction. In addition, the entryway was protected by a roll-up metal security gate, designed and manufactured by United Steel Products, which was lowered after the store was closed at night and opened in the morning before the supermarket opened. On January 2, 2013, following unusually cold weather, a Mandell employee reported that he had had difficulty getting the gate to descend; after tugging on it for some time he was finally able to get it down. On January 7, 2013 Cole was entering the store during regular business hours when the metal security gate unexpectedly descended, striking Cole on the head. As a result, Cole sustained serious head injuries.

Cole has come to the law firm where you are a new associate and would like advice on the prospects for obtaining tort compensation for his injuries. After reviewing his medical file and information about Cole's employment history, a damage specialist in your firm estimates that if liability could be established for Cole's injuries, a jury would assess his damages for medical expense and lost earnings at \$250,000; and \$750,000 would be the amount of his pain and suffering damages.

On the liability side, you have an expert looking into the history of the security gate. It was installed at Mandell's in 1958. Until 2005, Mandell had had a contract with an overhead door service company to perform annual inspection and maintenance on the security gate, but after that year a new management team had been hired and the contract with the company was canceled. No problems had been reported with the security gate until the employee's report on January 2, 2013.

QUESTION 2 (50 points)

On February 8, 2013, Evergreen State Police officers Vincent Lavio and John Bonomo

responded to a call reporting a dispute at a gas station located on Victory Blvd. and Willowbrook Rd. The officers drove to the gas station and spoke with the attendant on duty. The attendant appeared frightened and told the officers that a man had knocked on the station window demanding money. After the attendant threatened to call the police, the man fled, stripping his clothes off as he ran. The man was later identified as Michael Weeks.

About that time, another call came over the radio reporting a naked male in the street on Victory Blvd. The officers responded immediately. Before leaving the gas station, Lavio picked up the clothing that Weeks had shed before fleeing. When they arrived at the call location, Weeks was standing naked near his car. Lavio states that when they pulled up, Weeks was waving his arms and jumping about; but when he observed the patrol car he immediately calmed down. Bonomo's recollection was only that Weeks was staring at them. Lavio, who was driving, parked the car behind Weeks' car and got out to confront him.

The officers grabbed Weeks and walked him to the driver's seat of his Monte Carlo and gave him back his pants. As they walked back to their own vehicle, Weeks again jumped out of the Monte Carlo and began removing his pants. The officers again put him back in the Monte Carlo, watched as Weeks started the car, revved the engine for 10 seconds, and drove away. Weeks then drove erratically and collided with a car driven by Julia Allan. Weeks was killed in the collision and Allan was seriously injured.

You represent the State of Evergreen. Allan has filed a lawsuit against the State, alleging that the negligence of the officers in their treatment of Weeks resulted in her injuries. Your office estimates that the damages, if the case went to trial, would be \$200,000 in medical expense and wage loss and \$500,000 in pain and suffering. Please evaluate the exposure that your client, the State, faces in this case.

EVERGREEN REVISED STATUTES

Article 14-A. Damage Actions: Effect of Contributory Negligence and Assumption of Risk

§ 1411. Damages recoverable when contributory negligence or assumption of risk is established

In any action to recover damages for personal injury, injury to property, or wrongful death, the culpable conduct attributable to the claimant or to the decedent, including contributory negligence or assumption of risk, shall not bar recovery, but the amount of damages otherwise recoverable shall be diminished in the proportion which the culpable conduct attributable to the claimant or decedent bears to the culpable conduct which caused the damages.

§ 1412. Burden of pleading; burden of proof

Culpable conduct claimed in diminution of damages, in accordance with section fourteen hundred eleven, shall be an affirmative defense to be pleaded and proved by the party asserting the defense.

Article 16. Damage Actions: Comparative Fault

§ 1600. Definitions

As used in this article the term “non-economic loss” includes but is not limited to pain and suffering, mental anguish, loss of consortium or other damages for non-economic loss.

§ 1601. Limited liability of persons jointly liable

1. Notwithstanding any other provision of law, when a verdict or decision in an action or claim for personal injury is determined in favor of a claimant in an action involving two or more tortfeasors jointly liable or in a claim against the state and the liability of a defendant is found to be fifty percent or less of the total liability assigned to all persons liable, the liability of such defendant to the claimant for non-economic loss shall not exceed that defendant's equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss; provided, however that the culpable conduct of any person not a party to the action shall not be considered in determining any equitable share herein if the claimant proves that with due diligence he or she was unable to obtain jurisdiction over such person in said action (or in a claim against the state, in a court of this state); and further provided that the culpable conduct of any person shall not be considered in determining any equitable share herein to the extent that action against such person is barred because the claimant has not sustained a “grave injury” as defined in section eleven of the workers' compensation law.

§ 1603. Burdens of proof

In any action or claim for damages for personal injury a party asserting that the limitations on liability set forth in this article do not apply shall allege and prove by a preponderance of the evidence that one or more of the exemptions set forth in subdivision one of section sixteen hundred one or section sixteen hundred two applies. A party asserting limited liability pursuant to this article shall have the burden of proving by a preponderance of the evidence its equitable share of the total liability.

Evergreen Tort Claims Act Article II. Scope of Waiver

§ 8. Waiver of immunity from liability

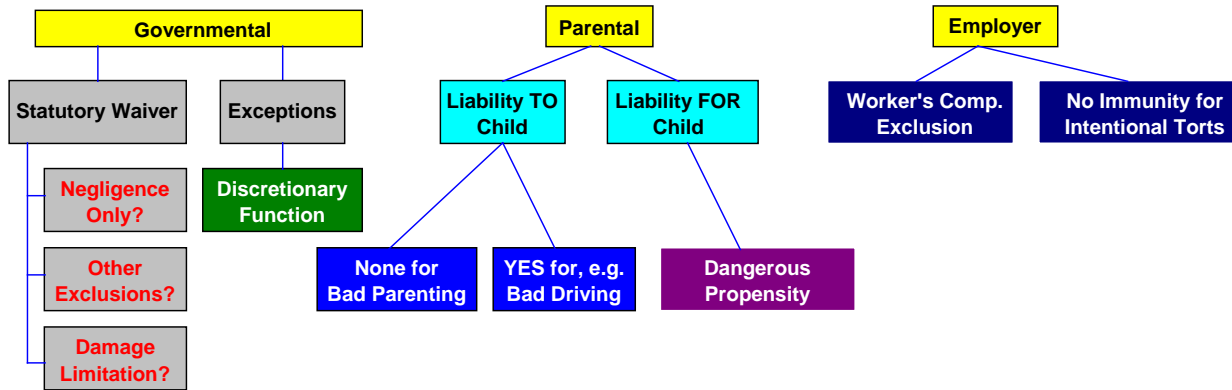
The state hereby waives its immunity from liability and action and hereby assumes liability and consents to have the same determined in accordance with the same rules of law as applied to actions in the supreme court against individuals or corporations, provided the claimant complies with the limitations of this article. Nothing herein contained shall be construed to affect, alter or repeal any provision of the workmen's [FN1] compensation law.

[FN1] Now Workers' Compensation Law.

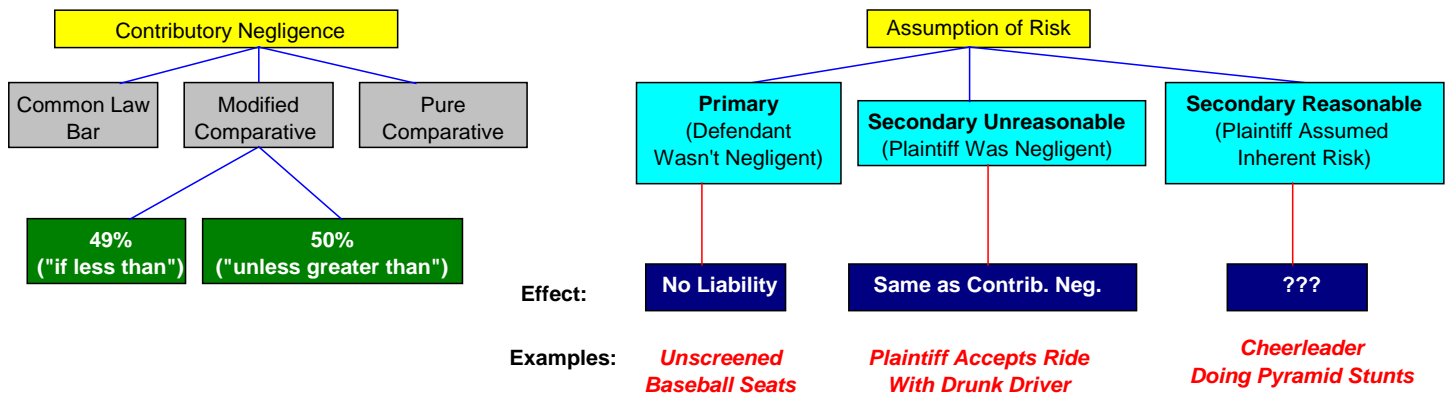
§ 12. Conditions of judgment

1. In no case shall any liability be implied against the state. No judgment shall be granted on any claim against the state except upon such legal evidence as would establish liability against an individual or corporation in a court of law or equity.
2. No judgment shall be awarded to any claimant on any claim which, as between citizens of the state, would be barred by lapse of time.
3. Claims shall be heard and judgments thereon rendered by one judge, provided, however, that the presiding judge may order any claim or claims to be heard or determined by more than one judge, but not more than three judges, in which event the judgments thereon shall be rendered upon the concurrence of two judges. All intermediate applications and motions may be heard and determined by one judge.
4. No liability shall be founded upon the exercise of a discretionary function by an employee of the state, or by any commission, agency or subdivision thereof.
5. Before any judgment shall be rendered for appropriation of land, the value of which exceeds five thousand dollars the judge rendering or one of the judges concurring in the judgment shall view the premises affected thereby.

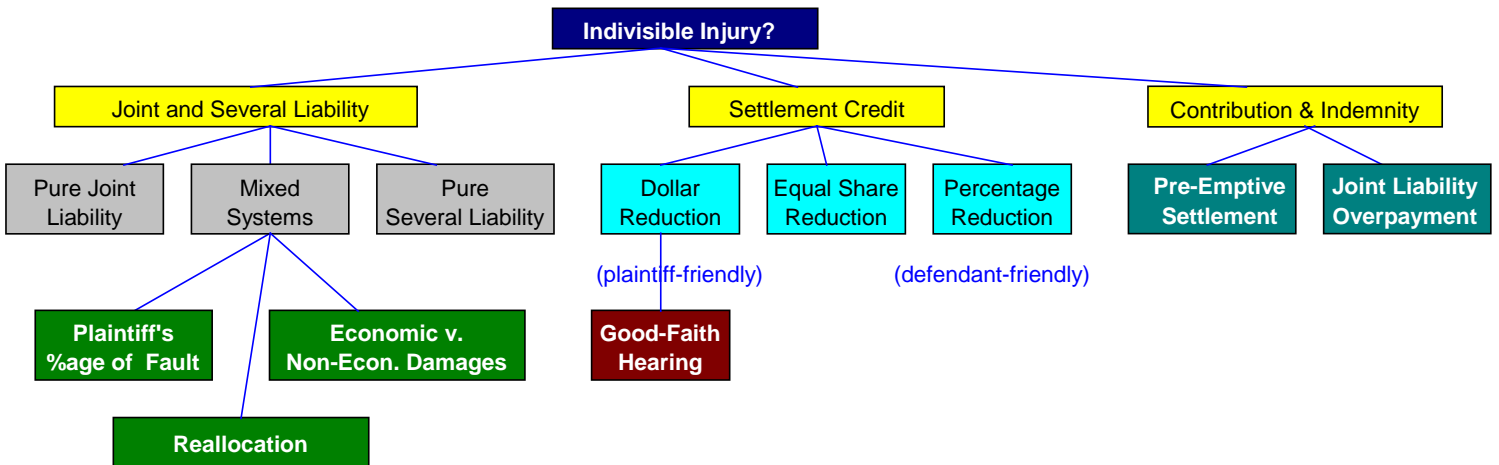
**Chapter 4
Immunity**



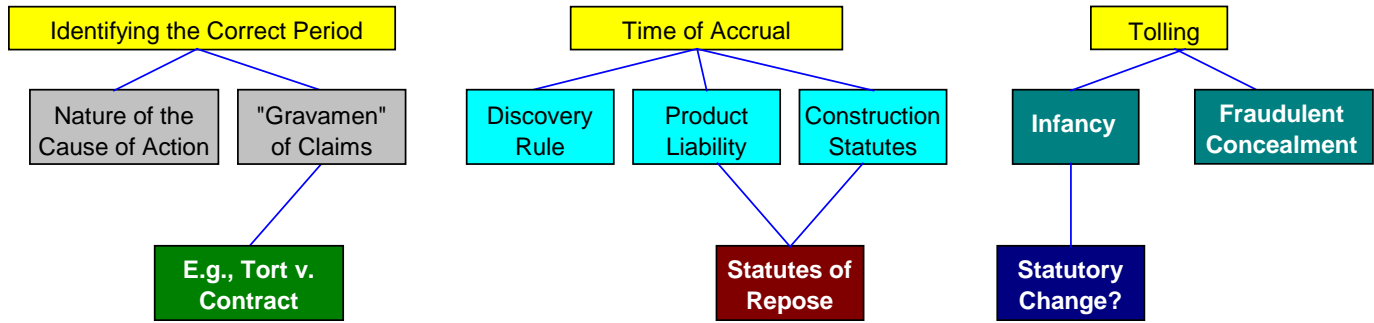
**Chapter 5
Contributory Fault**



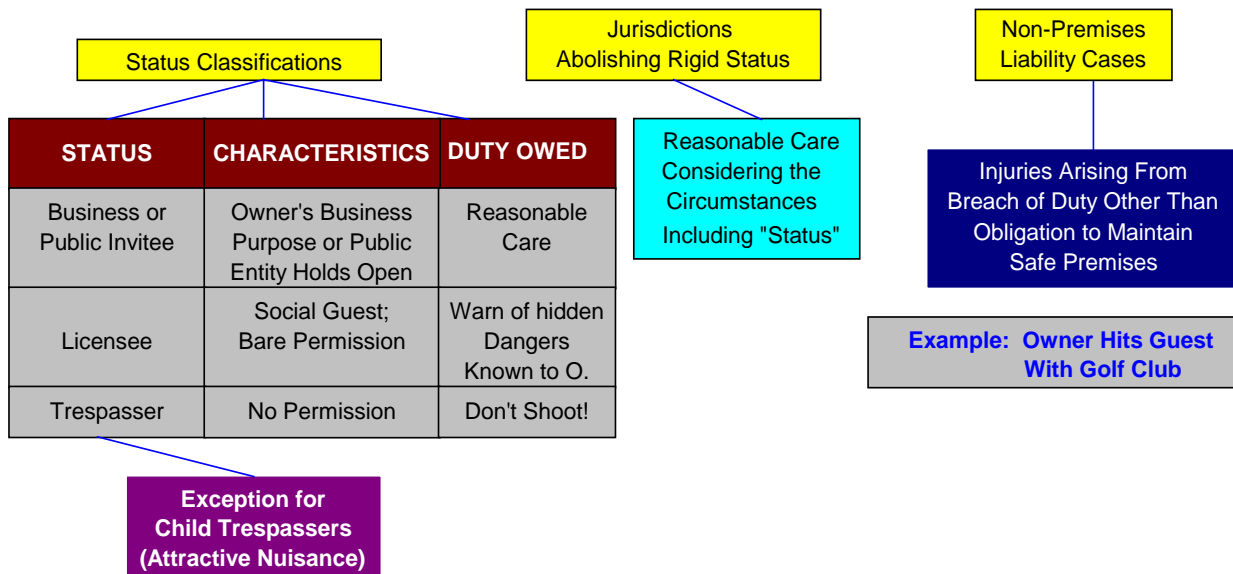
**Chapter 6
Multiple Tortfeasors**



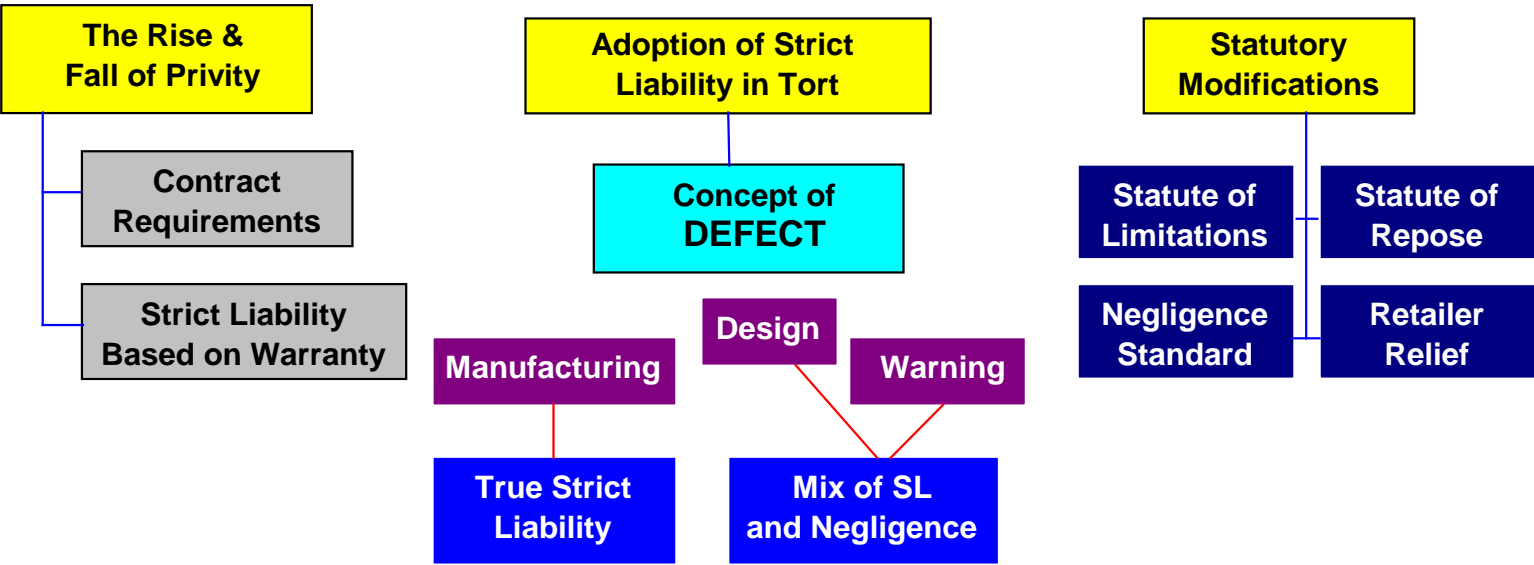
Chapter 7
Statutes of Limitation



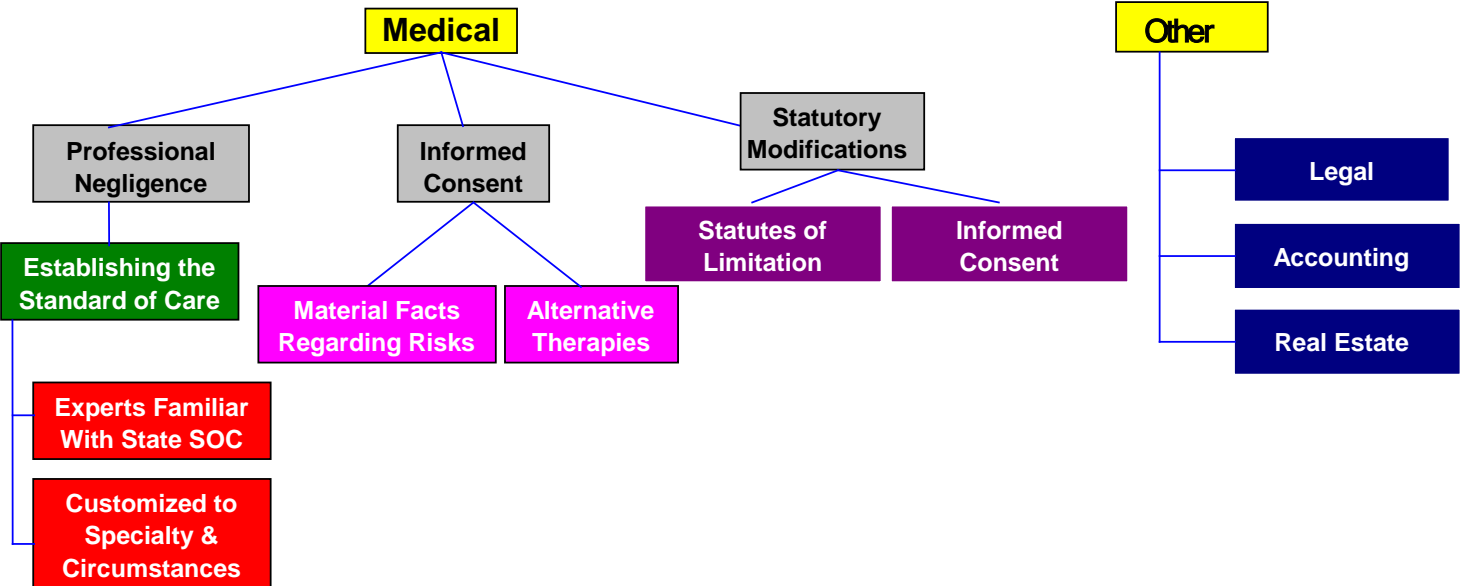
Chapter 8
Premises Liability



Chapter 9 Product Liability

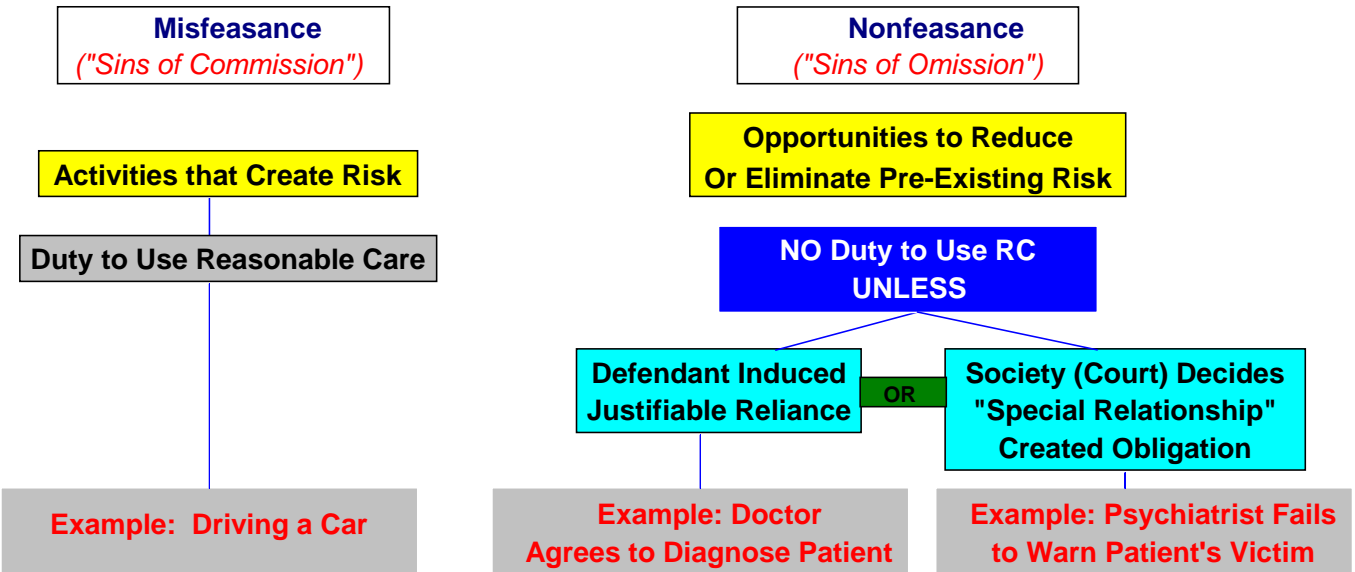


Chapter 10 Professional Malpractice



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

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



Chapter 12
**Intentional Torts:
 The Prima Facie Case**

	Intent Element	Damage
Battery	Intent to Cause Harmful or Offensive Touching or Apprehension thereof	Touching Results
Assault	(same)	Apprehension

