Torts Outline

What is a *tort?*

A ***tort*** is a civil wrong (that is NOT a contract breach) that the law has a legal remedy for
In a tort, someone is injured and they are suing the party(ies) that injured them.

What governs tort law?

Torts are governed both by statutes and case law. Yet, statues will always overrule case law if there is conflict.

What are the policy goals of tort law?

There are three policy goals of tort law include:

1. To compensate the injured parties
2. To allocate the cost of the injury fairly among the parties that had caused the injury
3. To minimize costs of accidents, accident prevention, and tort law administration.

What is *Intent*?

Intent is a required element (something that has to be proven) for intentional torts.
In an intentional tort, the plaintiff must show the defendant acted to cause a particular consequence.

The defendant **intends** the consequences of their actions if:

1. It is their purpose to bring forth said consequences OR
2. They must know with substantial certainty that the consequences will result from their actions (The defendant must know that the consequence WILL happen, not just that it COULD happen).

What if there is a MISTAKE?

Mistakes do NOT impair the legal valid of intent
If the elements of intent can be established, a mistake does not remove liability
(Example: You intentionally kill my dog because you think he's a wolf, you are held liable)

What if the person is INSANE, are they still liable?

Insanity does not the impair the legal validity of intent
If the elements of intent can be established, insanity does not remove liability.
NOTE: This is not to say in all cases that all insane persons have intent

Can intent be *transferred* to another party?

Yes it can!
If a defendant INTENDS to commit a tort against A but actually ends up committing said tort against person B, defendant is liable to B. The intent was *transferred* from A to B.

What are the elements of **BATTERY**?

1. Defendant acted with an intent to cause a harmful or offensive touching to plaintiff's person
2. That intentional act caused a **harmful or offensive touching to plaintiff's person**
    a. NOTE: Touching does not have to come in direct contact with a person's body; touching an item they are holding may count as well.
    b. Liable for all damages caused by battery

c. Time and circumstances may be relevant to determining if the act was an act of battery (Think Teacher evacuating a school, brushing against someone in a crowded place)
d. Ordinary person standard

What are the elements of **ASSAULT**?

1. Defendant acted with an intent to cause a reasonable apprehension in plaintiff of an imminent battery; AND
2. That intentional act caused the plaintiff to suffer a **reasonable apprehension of an imminent battery**.
    a. Imminent means imminent
        i. P must be in range and D must be acting
        ii. Can't say I'm kicking your ass at five! And be considered assault
    b. Apprehension = Expecting battery, not necessarily fearing it.
    c. Reasonable in eyes of P not in D

False Imprisonment Elements

1. Defendant acted with an intent to confine or restrain plaintiff in a bounded area;
2. That act caused plaintiff to knowingly be confined or restrained in a bounded area;
3. And the defendant lacked legal authority to do this.

Means of confinement or restraint might include:

- physical barriers
- force or threat of force
- (invalid) use of legal authority,
- maybe even threat of damage or loss to reputation or property

NOTE: In some states, as well as the Restatement, injury can be substituted for the element of knowingly being constrained.

NOTE: Plaintiff is NOT confined if plaintiff should reasonably know of means of escape.

NOTE: False imprisonment will not be found if the plaintiff stayed in space due to her/his own volition

False Arrest

- Subset of False Imprisonment
- Defendant can win if they show:
    - They had lawful authority and plaintiff was later convicted for said crime
    - They had a warrant
    - They had probable cause

Intentional Infliction of Emotional Distress (IIED) Elements

1. extreme and outrageous conduct by the defendant;
2. with intent to cause plaintiff to suffer severe emotional distress;
3. causing plaintiff severe emotional distress.

Courts set the bar for this tort high by requiring *extreme and outrageous* conduct and *severe* emotional distress.

IIED NOT A CLASSIC TORT

so it differs from them in several ways:

1. IIED requires damages, unlike the classic intentional torts.
2. Judges are much more likely to take IIED cases away from juries (a third way that the bar is set high, in addition to the two in Item 7 above).
3. Transferred intent does not apply to IIED. Defendant must have intent to commit *this* tort against *this* plaintiff

NOTE: In some jurisdictions, RECKLESSNESS, suffices for the element of intent for IIED

Trespass to Land Elements

1. intent by defendant to invade real property
2. invading the real property;
3. the property is plaintiff's (plaintiff must be the possessor or, if there is no other possessor, the owner of the property)
4. There is no authorization by the plaintiff.

The "invasion" can be by defendant's person or by any other person or object that defendant causes to go onto the property

NOTE: This includes invasion of small zones of **air above the land and ground below,**

Trespass to Chattels Elements

1. intent by defendant to use or intermeddle with a chattel
2. chattel was in plaintiff's possession;
3. this results in either:
    a. impairing the chattel's condition, quality, or value;
    b. depriving plaintiff of the use of the chattel for a substantial period of time or completely dispossessing plaintiff of the chattel; or
    c. harm to plaintiff or a legally protected interest of plaintiff's.

Conversion is an **intentional exercise of dominion** over a chattel that so seriously interferes with the right of the owner to control it that the defendant may justly be required to pay the plaintiff the full (prior) value of the chattel. This will generally entail completely dispossessing the plaintiff of the chattel, or completely or nearly completely destroying the chattel.

- Conversion does not involve intermeddling with chattel; the defendant does not have to touch the chattel.

Conversion is distinct from trespass to chattels because of the remedy: forced sale instead of just recovering the amount of the diminution in value and/or other damages.

Conversion is also not a classic intentional tort, so transferred intent does not apply.

Good faith purchase of a chattel may defeat P's conversion claim if D can show chattel was not lost from theft or that D brought chattel from someone in the business of selling chattels like the chattel in ?.

- P can still sue the person who initially got the chattel away from P
- Buys from informal places like craigslist extinguish its ability to claim a good faith purchase of the chattel was made.

Privileges

- Affirmative defense for an action that would otherwise be an intentional tort.
- Consent: If a plaintiff consents to the defendant's intentional act, the defendant is not held liable
- Consent does not need to be verbalized

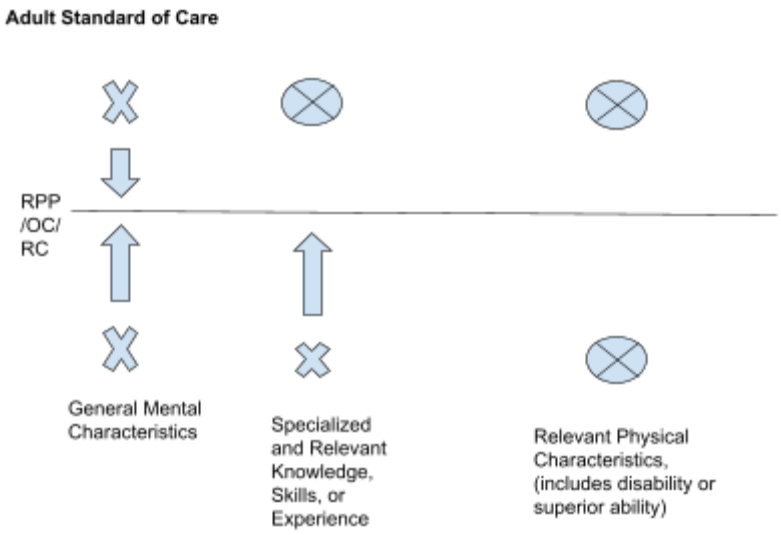
    - Elements of Implied Consent
        - Must be unable to give consent/Incapable of Consent
        - Reasonable person must would have consented in situation
        - Life threatening situation/Serious threat of significant harm
    - NOTE:Consent given by mistake is valid UNLESS the mistaken consent was induced by the Defendant
        - Examples: Consent induced by fraud or duress
        - Example: A consents to sexual intercourse with B. A is unaware that B has a STD. B also did not know. Because both did not know, the mistake is valid.
    - NOTE: Consent to a criminal act is NOT valid
- Self Defense: defendant is not liable for an otherwise tortious act--usually battery--if
    - (1) it was performed under a reasonable belief by defendant that he or she is being attacked or is about to be attacked; and
    - (2) it constituted reasonable force. Reasonable force means two things: that it was reasonable to use force, and that the amount of force used was reasonable.
    - NOTE: Retaliation is not allowed. Insults and provocation are irrelevant. This is about a reasonable response to an imminent physical danger. Finally, a reasonable mistake does not vitiate the privilege.
- Defense of others: If a third party would have been privileged to use self-defense, the defendant is privileged to use reasonable force on the third party's behalf.
- Defense of property: Defendant is privileged to use reasonable force to prevent the commission of a tort against his or her property
    - NOTE: once the tort is complete, the rules for *recovery* of property apply instead). The amount of force that is reasonable will be less than that for self-defense, and deadly force will pretty much never be reasonable for property.
- Recovery of property: Defendant may be privileged to use reasonable force to recover a chattel, as opposed to relying on legal process. Defendant must be in an uninterrupted "fresh pursuit" of plaintiff.
    - NOTE: For recovery of property, a mistake--even a reasonable one--vitiates the privilege, except for shopkeepers who reasonably suspect shoplifting
- Necessity: Defendant may commit an intentional tort against plaintiff if reasonably necessary to avoid injury or damage.
    - The threatened damage must be (1) natural/external; (2) substantially more serious than the interference with the plaintiff's interests; and (3) sudden, unexpected, and temporary. (If it weren't all of these things, the parties would be able to just negotiate, which would be preferable.)

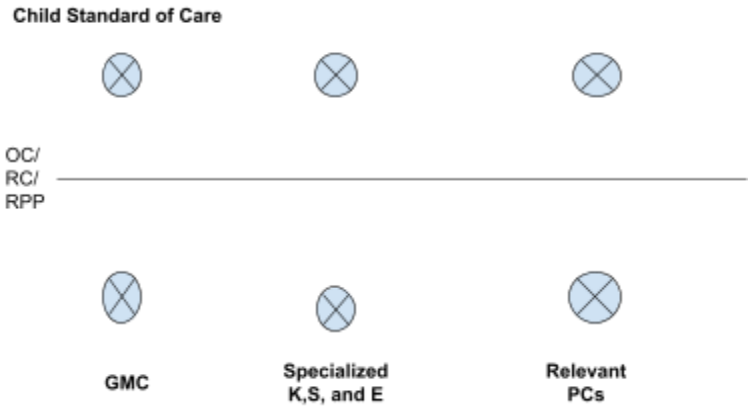
- If the defendant is acting to prevent **threatened damage to the public at large** (public necessity), the privilege is an absolute one and the fqw need not pay for damages caused to the plaintiff's property.
- If the defendant is acting to protect a **personal interest** (private necessity), he or she must compensate the plaintiff for actual damage to the plaintiff's property, but under the law they are still "privileged" to act as they did. That last part is the key; any privilege that
- Legal Authority: Otherwise tortious acts may be rendered non-tortious if performed pursuant to legal authority (such as by police or wardens) and within the bounds of that authority (i.e., they are privileged to use force, but not excessive force).
    - Similarly, the common law permits parents, teachers, etc., to use reasonable force to discipline their children, students, etc., without being liable for intentional torts.

Negligence

1. **Elements of Negligence, to establish liability for negligence a plaintiff must prove:**
    a. defendant had a duty to plaintiff to exercise some level of care but
    b. breached that duty by exercising less care than was required
    c. thereby causing damage to the plaintiff.
    d. In other words, the elements of liability for negligence are *duty*, *breach*, *causation*, and *damages*.
2. The most common duty is the duty to exercise the level of care that a **reasonably prudent person** would use (also called the duty of ordinary care or the duty of reasonable care), but we will see other alternative duties apply as well.
3. **Learned Hand Test:**

    a. States that conduct falls below reasonable care when B < PL
    b. Burden (B) equals both the cost of taking steps to avoid the risk and the benefits sacrificed as a result
        i. Adequate substitutes may reduce burden
    c. "Risk of harm" equals the magnitude of harm if it occurs (L) times the probability of it occurring (P)—in calculating risk you have to consider both the stakes (L) and the odds (P).
    d. The test compares costs to benefits and determine which is larger
    e. Learned Hand Test is NOT the only test to determine reasonable care
4. **Reasonable Prudent Person Standard**
    a. The reasonable prudent person standard is *objective*, with some subjective components.
        i. The reasonable person is a person of *ordinary intelligence, perception, and memory*, with the physical characteristics, abilities, and disabilities of the actor, and any relevant additional specialized knowledge, skills, or experience that the actor has.
        ii. In other words, the actor's general mental characteristics are not taken into account, and neither are any deficiencies in the actor's specific knowledge and experience.
    b. A **customary practice** would be considered evidence that can be used as evidence of the care (or its lack) exercised by a reasonable person in that context. It does not form the standard itself
    c. A child is held mostly to a SUBJECTIVE standard: the level of care of a reasonable child of similar age, intelligence, maturity, and experience. Furthermore, similar to what we saw for intentional torts, in many states children under a certain age cannot be considered negligent at all.
        i. If a child is engaging in an adult activity (i.e driving a motorized vehicle), the child is held to be an ADULT STANDARD OF CARE.
    d. In most states, **insanity** is not a defense to negligence--as with other cases involving general mental conditions, the insane are held to the standard of a person of ordinary intelligence, perception, and memory.





5. **Professional Standards of Care**
    a. **Professionals** (doctors, nurses, lawyers, pharmacists, accountants, pilots) and others in **jobs that require lots of training and education and are governed by detailed and coherent internal standards** are subject to an objective standard that dispenses with the usual language of reasonableness.
        i. These professionals are held to the standard of an ordinary member of their profession, not the “average” member (too subjective)
        ii. Specialists are subject to the standards of other ordinary members of their specialty, if the specialty is relevant to the case.
    b. Unlike in RPP cases, the **custom of the profession is generally dispositive** of the issue of the duty of a professional, regardless of its reasonableness.
        i. If a professional fails to comply with professional custom, they ARE negligent
        ii. This standard is objective and requires an expert witness to establish the custom
    c. Liability for malpractice cannot be premised on a mere disagreement over, or a failure of, technique or tactics.

        i. I.E you can not sure for malpractice simply because you do not get the results you want
        ii. If a doctor guarantees a result yet does not receive it, this will be a contracts matter not a malpractice matter
    d. Most medical malpractice cases define the professional standard as that which doctors in the same or a similar locality do (Majority)
        i. This allows for diversity in practices, and allows for appropriately lower standards in areas with fewer medical resources.
        ii. Some states use a national standard instead (Minority)
    e. A subset of medical malpractice is **informed consent** (IC): a patient may sue if he or she is not told of a risk of injury from a medical procedure, he or she has the procedure, and he or she then suffers that injury.
        i. In some states, doctors in IC cases are held to the ***baseline professional duty of care***: we require the plaintiff to show that the ordinary level of professional care (i.e., the customary practice) mandates disclosure, and thus that the failure to disclose the risk is a breach of that duty.
        ii. But other states subscribe instead to a ***"reasonable patient" rule*** (invented in the *Canterbury* case), under which a doctor must disclose material risks (i.e., those that a reasonable patient would want to know and would carefully consider).
        iii. There is no majority rule as to which of these two duties is used.
    f. For informed consent, we must also examine **causation**--after duty and breach have been found--to see whether disclosure would have changed a patient's decision.
        i. Almost all states require another rule invented in the *Canterbury* case: plaintiff must make an objective showing (that a reasonable patient in plaintiff's position, upon learning of the risk, would have changed her mind and not had the procedure done) in addition to the usual baseline subjective showing (that the patient herself would have changed her mind had the disclosure occurred).
    g. NOTE: Doctors also have a duty to disclose any profit or research interests of theirs underlying their treatment.
6. Negligence Per Se
    a. **Proving a violation of a criminal or regulatory statute or an administrative regulation** (we'll just oversimplify and say "statute" for short to cover all of these) may be sufficient to establish the duty and breach elements of negligence
    b. Remember that NPS is an *alternative* method of establishing negligence, not an exclusive one.
        i. That is, a plaintiff might be able to show a breach of an NPS duty and also show a breach of another duty (like ordinary care or a professional duty). The two inquiries are separate.
    c. Before the statute can be used for NPS, the court must find that the injury at issue is of the sort that the statute meant to prevent, and that the victim is of the sort that the statute meant to protect.

i. I.E. If the statue is meant to prohibit patrons at the bar from violence committed by an intoxicated person, the court must find that the injury suffered by the plaintiff matches the sort as described by the statue (being harmed by an intoxicated person) and they must match the class (being a bar patron)

d. **BAD FIT FACTORS: Before the statute can be used for NPS, the court also must conclude that the statute is appropriate for translation into a civil duty. Some factors that might make a statute inappropriate to use for NPS include:**
   i. whether it creates inherent difficulty in proving causation;
   ii. whether it creates a new duty [this is the most important and oft-confused factor];
   iii. whether it provides liability that is too strict (i.e., too detached from defendant's level of care);
   iv. whether it provides for disproportionate liability (want to prevent a minor crime from opening a door to large civil liability);
   v. whether it represents too vague of a duty.

e. Once established, the **effect of NPS** varies from state to state.
   i. In the majority of states, duty and breach are established automatically for "unexcused" violations of a usable statute.
      1. Excuses, which the defendant would then have the burden of proving, include: incapacity or reasonable inability to comply, reasonable lack of knowledge of violation (ignorance of facts, not law), emergency, and greater harm from compliance than violation.
   ii. In a minority of states, rather than require the defendant to draw from a list of excuses, the burden just shifts to the defendant to show more generally that he or she did exercise reasonable care (which does not, in practice, lead to results that are all that different from the majority rule).
   iii. Finally, in a small minority of states, NPS is only ever evidence of unreasonableness.

f. **Compliance** with a statute may be evidence of reasonable care, but it will not establish any sort of "non-negligence *per se*."

7. Proof of Negligence

a. Direct evidence is not required to prove the elements of a tort (though if it is available it will generally make things much easier to prove).
b. **Circumstantial evidence** is OK; it is just evidence that proves a point through inference. If a reasonable jury could draw the inferences (or chain of inferences) that a party is trying to establish, then it is permissible for the jury to rest its decision on the evidence that produced those inferences, however circumstantial that evidence may be.

8. Res ipsa loquitur

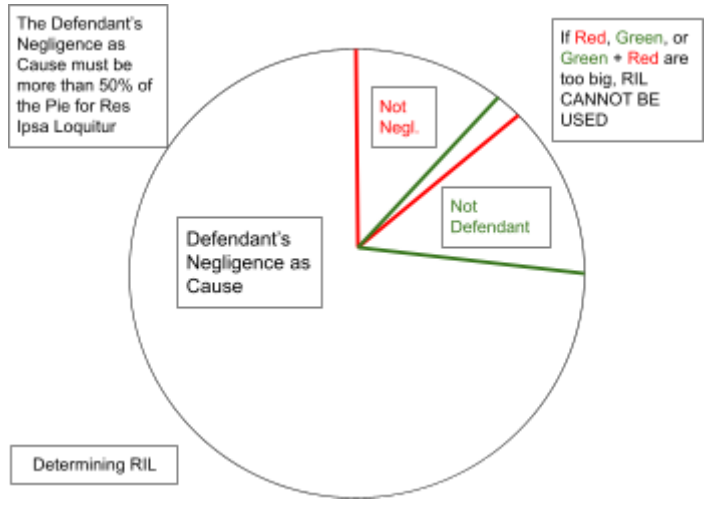
a. If plaintiff cannot allege what exactly defendant has done, it may suffice to allege defendant's negligence through negative inference, namely that

i. (1) the accident is of a type that normally would not occur unless someone was negligent; and
ii. (2) defendant exercised substantial control over whatever caused the injury, so it probably wasn't someone else's negligence here; so therefore
iii. (3) the accident more likely than not was caused by defendant's negligence. This will help plaintiff survive a motion to dismiss or motion for summary judgment, which ordinarily would be granted when plaintiff has so little evidence.

b. Plaintiff's RIL argument may provide enough to allow plaintiff to win the case, but not necessarily; especially once the evidence is no longer viewed in the light most favorable to plaintiff, the jury may decide that defendant should win.

c. The typical thing that RIL does is give plaintiff enough to get the case to a jury rather than having the case dismissed earlier.

d.



Causation

1. **Causation** is really two separate elements: causation-in-fact and proximate cause (a.k.a. legal cause). Both are required. Chapter 5 is just about causation-in-fact.
2. In order to show **causation-in-fact**, a common test is to require a showing that **but for** the party's tort (my examples here will all involve negligence), the damages at issue would not have occurred.
    a. The converse argument in opposition would be that there is no causation-in-fact because even if the party had not committed the tort, the damages still would have occurred.
3. There can be more than one cause-in-fact of an injury. Indeed, there usually is. The fact that one thing is a cause-in-fact does not mean that a second thing isn't as well.
    a. Put another way, it doesn't matter whether a cause is **sufficient** or not; what matters is that it was **necessary**.

4. There must also be a **causal link**: the negligence at issue must be something that, more abstractly, makes the result more likely. Put another way, a "but for" cause will not be enough to establish causation-in-fact if it is a mere coincidence. (Cases of coincidence are rare, so don't bother discussing causal link unless it is relevant to the case.)
5. To prove but-for causation, plaintiff must produce evidence to argue that defendant more likely than not caused the injury.
    a. While it may be relevant, evidence that defendant's tort could possibly have caused the injury will not suffice by itself to get the case to a jury.
    b. Plaintiff needs at least some evidence that defendant's tort did cause the injury. (To fight plaintiff's causation argument, however, defendant can try to use any evidence of possibility, probability, or what have you, that casts doubt on plaintiff's explanations.)
6. Usually the but-for test works fine. Sometimes, though, there are two causes (concurrent causes), both of which are sufficient causes of the injury. Because of that, they cancel each other out as but-for causes--that is, neither is a but-for cause and under the but-for test both defendants would avoid liability. In this situation--and only in this very rare situation of mutual cancellation--causation can be based instead on whether an individual cause was a **substantial factor** in causing the harm.
    a. This is an alternative to the but-for test, and it avoids allowing a defendant who otherwise would be liable from getting out of it just because another defendant did something negligent too (and vice versa).
7. In the ***Summers v. Tice* situation**--where there are multiple possible tortious causes and no possible way for plaintiff to pinpoint which it was (e.g., two negligent shooters with no way of knowing which shot did the damage)--the inability to sort out which it was will not necessarily deprive plaintiff of the ability to recover. Instead, a court may simply shift the burden of proof on causation to the multiple negligent defendants.
8. *Sindell* and other cases use **market share** to apportion liability, though this is not common and is limited to *Sindell*-like contexts (and even there many courts don't do it). Do not treat this as a majority rule
9. **Proximate cause** is less a matter of fact and logic than it is a matter of how broadly the court wishes to allow a defendant to be held **responsible** for damages that he or she causes-in-fact: scope of liability.
10. A major part of the proximate cause analysis looks at whether the injury was a foreseeable result of the defendant's negligence.
    a. In other words, was it within the scope of the risk that the defendant created? This will often be a jury question.
    b. In most states, the type of accident (e.g., negligently leaked gasoline bursting into flames and burning immediate bystanders) is what must be foreseeable, rather than the precise method of its occurrence (e.g., a stray match) or the magnitude of the injury (e.g., minor burns versus fatal burns).
    c. The more foreseeable it is, the more likely the defendant was the proximate cause.
11. Following *Palsgraf*, we may also ask whether the scope of the risk extends to the plaintiff in a positional sense.

    a. If defendant negligently crashes his car into another car, a pedestrian who gets mangled on the sidewalk next to the accident is within the scope of the risk but a pedestrian three blocks away who gets injured by, say, shattering glass is less likely to be within the scope of risk.
12. Many of these complicated proximate-cause cases will fall in to an intermediate category in which the jury could decide either way,
    a. Though courts do not give juries the chance to do so as often as they should.
13. **Intervening causes**--causes-in-fact of an injury that arise subsequent in time to defendant's negligence--may or may not supersede defendant's negligence.
    a. A "**superseding cause**" is an intervening cause that cuts off defendant's responsibility or, more precisely, forces a conclusion that defendant's negligence was not a proximate cause of plaintiff's injury.
14. An intervening cause is **more likely** to be superseding if it is **unforeseeable**. As usual, foreseeable does not mean foreseeable in the lay sense of the word, but rather deals with the scope of the risk. Applying this to intervening causes, we ask whether the occurrence of the intervening cause is within the scope of risk of defendant's tort.
15. Be sure to define foreseeability with enough **generality**
    a. the specific way that something occurred (gasoline-soaked rat catching on fire) may not be foreseeable, but the category of harm (something igniting gasoline fumes in a room with an open flame) is; it is only the latter that matters for foreseeability.
16. An intervening cause is **more likely** to be superseding if it is **independent** of defendant's negligence as opposed to flowing from it (though this is the least weighty of the factors for intervening causes).
    a. Assuming that causation-in-fact was already established, Defendant's negligence will always "cause" the intervening act in the sense of allowing it to result in damages; what we mean by "dependence" here is something more.
    b. An independent intervening cause is something like an act of God or the epileptic seizure in the 400˚ enamel case, which would have happened regardless of defendant's negligence (even if it wouldn't have led to the same result).
    c. A dependent intervening cause is one for which the defendant's tort was the cause in fact. An easy example: a battery in which the intended target ducked and plaintiff was hit instead; because the ducking was caused by defendant's initial tortious act, the ducking is a *dependent* intervening cause.
17. A **criminal act or an intentional tortious act** by a third party are not necessarily superseding causes, but they are **very likely** to be.
    a. There is plenty of interplay between these categories, though.
    b. In some cases, the criminal act is somewhat dependent (e.g., crimes of opportunity), and thus unlikely to be held to be superseding.
    c. In some other cases there is so much foreseeability that the act is not superseding; this is generally when the crime is squarely within the scope of the risk (e.g., defendant negligently abandons passenger in a known high-crime area; passenger is mugged by third party; mugging does not supersede defendant's negligence as proximate cause).

    d. . Keep in mind that in all of these cases, “more likely” does not mean “certain.” In some extreme cases, foreseeable and dependent intervening causes may turn out to be superseding; extraordinary and independent ones may not.

18. As a matter of law, **it is never a superseding cause that a reasonable rescuer will attempt to save defendant’s victim, or that the victim will attempt a reasonable escape.**
    a. It is not usually a superseding cause that the victim will seek medical treatment and suffer malpractice, or that a plaintiff will suffer a subsequent injury as a result of his defendant-caused weakened state.
    b. All of these points only cut off the one argument, though—plaintiff still must establish duty, breach, causation in fact, damages, and the rest of proximate cause (i.e., there may be other intervening causes as well, or the damages might have been unforeseeable from defendant’s tort, and these rules don’t affect those things).
19. There are **public policy exceptions** in which there might otherwise be proximate cause but the courts declare that there is not, as a matter of policy.
    a. The first such exception is that social hosts cannot be a proximate cause of harm to the victims of their drunk-driving guests.
    b. The second public policy exception to proximate cause is that defendants cannot proximately cause harm to plaintiffs who had not been conceived when the operative injury was inflicted.
        i. Both this exception and the other one (social hosts) can also be understood alternatively as restricting not proximate cause but duty. In this class, though, you should treat these as matters of proximate cause.

Defenses to Negligence (Chapter 12)

1. Now rejected in the vast majority of states, **contributory negligence** precludes plaintiff from prevailing if he or she was at all a negligent cause of the injury, regardless of the extent of defendant’s negligence.
    a. Several **exceptions** are carved out, such as allowing plaintiff to recover if defendant had the last clear chance to prevent the injury, and treating plaintiff more forgivingly when determining if he or she was a proximate cause of his or her injury (a.k.a. remote contributory negligence).
2. Most states now have some form of **comparative negligence**, whereby plaintiff can still recover if she is negligent, but has her award reduced by the percentage of her fault.
    a. Some states use **pure comparative negligence**, in which plaintiff can recover something even if she is 99% responsible.
    b. Most states, however, **use “modified” comparative negligence**, where plaintiff’s recovery is reduced according to her percentage of fault to a point—he or she cannot recover anything if he or she is mostly at fault (more than 50% of the responsibility in some states, 50% or more of the responsibility in others).
    c. Modified comparative negligence does not function precisely like contributory negligence at that point, though, because it does not use exceptions like last clear chance.
3. Plaintiff’s negligence is generally not a defense to intentional torts.

4. If the plaintiff unreasonably fails to **mitigate damages**, he or she cannot recover for the resulting incremental increase in damages.
    a. IE: Failing to get a surgery that a reasonable person would get to reduce their injury from becoming permanent
5. **Express assumption of the risk:** If plaintiff is injured but had contracted not to hold defendant responsible for such injuries, the contract will be enforced to bar suit, unless:
    a. (1) the contract contravenes public policy--this mainly includes contracts for essential services where plaintiff had no real bargaining power; or defendant's tort was an intentional or wanton-and-willful one;
    b. (2) the injury was medical malpractice; or
    c. (3) waive a risk clause
6. **Implied assumption of risk:** For implied assumption of the risk to apply, the jurisdiction must still use it (most don't; see #3), and the plaintiff must have **actual** knowledge of the risk, have an appreciation of its magnitude, and must voluntarily encounter the risk.
    a. Encountering a risk while acting pursuant to a reasonable necessity means that the encounter was not voluntary and assumption of the risk does not apply.
    b. Assumption of the risk is all or nothing; if it applies, the plaintiff's claim is completely barred.(3) the contract waived application of a safety statute.
7. While contributory negligence states still use implied assumption of the risk, almost all comparative negligence states--and thus almost all states--have **rejected the doctrine of implied assumption of the risk**.
    a. Instead, they either say that the defendant has breached no duty, or they subsume the question into the general comparative negligence analysis.
    b. <u>Remember: in almost every jurisdiction, IAR is not used anymore, so don't talk about it unless you have some reason to believe that you are in one of the few jurisdictions where it still applies.</u>
8. **Statutes of limitations** are procedural rules limiting the time a plaintiff has to file a lawsuit.
    a. The SOL is subject to waiver (i.e., it is a "use it or lose it" argument for the defendant), and equitable tolling.
    b. An example of tolling is for latent injuries--most states begin the SOL clock only upon plaintiff's constructive knowledge of the injury and enough facts that would start a reasonable plaintiff toward discovering defendant's apparent tortious causation of it. (Some states require more, others less.)
    c. Other uses of tolling are where the victim is a minor child; and where the defendant has fraudulently concealed the injury or his own conduct.
    d. The **continuing tort doctrine** allows suit for an entire continuous tort, starting the SOL count only when the tort ends.
9. **Statutes of repose** give a firm outer bound for the timing of suits.
    a. They are not subject to the discovery rule or to waiver.
    b. They are substantive, where SOL is procedural.
    c. The clock for them starts when the defendant performs the tortious action in question, regardless of when the injury occurs or is discovered.

Immunities

1. Defendant admits that they may have committed the tort but that they are not liable.
2. Most states have completely abrogated **spousal immunity**.
    a. Of the minority that keep it, most eliminate it at least partially--for things like intentional torts, car accidents, or obvious exceptions where the beneficial relationship that immunity purports to protect is absent
3. Most states have partially abrogated **parent/child immunity**.
    a. Most keep the immunity (or alternatively limit any duty) for actions that are core parental activities.
    b. Others eliminate immunity only for things like intentional torts, car accidents, and obvious exceptions where the beneficial relationship that immunity purports to protect is absent
    c. Again, even in those situations where immunity has been abrogated, spouses and parents may face a lighter burden on duty/breach in negligence cases.
4. In most states, **governmental immunity** has been voluntarily waived, at least partially, by the government. (Like many states, the federal government has a general waiver of immunity but with numerous exceptions.)
    a. Where waiver applies, it allows suits against the government for torts by public officials--under these waivers the suit is against the government, and the official becomes immune.
5. One common context in which most states waive immunity is for **proprietary actions**.
    a. Proprietary Action: An action that can be performed by a private entity and this is not unique to the government
6. Even when they are retained, governmental immunity and governmental-employee immunity are generally limited to **discretionary duties**.
    a. Discretionary Duties: Those which the government is acting to establish policy
7. Immunity as to ministerial duties is rare.
    a. Ministerial Duties: Acts that implement of effectuate the policies
8. Even without immunity, a government may not owe a duty to a particular citizen (e.g., there is no duty for the police to protect every single person who feels unsafe).
    a. When it **undertakes a duty**, however, it must perform it non-negligently.
9. Legislators, judges, and prosecutors typically get absolute immunity for torts committed in the scope of their positions.
10. Other **officials** typically only get qualified "good faith" immunity, though a minority of states give total immunity to these officials.
    a. In either case, the immunity for these other officials only extends to discretionary actions; there generally is no immunity at all for them for ministerial actions.
    b. Keep in mind, though, that as mentioned in #3 one's ability to sue the government usually comes attached to an inability to sue the employee.

Joint and Several Liability

1. **Joint and several liability** means that each defendant is liable for all the damages. In other words, it means that liability overlaps; that defendants are liable for more than just their particular individual "fair share" of the liability.
2. Three typical contexts in which **joint and several liability** are applied are:

    a. (1) defendants acting in concert;
    b. (2) vicarious liability; or
    c. (3) if the jurisdiction has not decreed otherwise, an indivisible harm.
3. Joint and several liability makes much more sense when defendants have a right to contribution; the two are typically found together.
    a. That said, the most important policy issue in J&S liability is who bears the risk of an insolvent defendant.
4. Comparative negligence has led to the **scaling back of J&S liability for indivisible harm** in many states.
5. Many states still have J&S for indivisible injuries, some others restrict it there only for non-economic damages; for defendants with less than a certain amount of fault; for certain torts.
    a. While states have kept J&S liability for acting in concert and for vicarious liability, there is no majority rule as to whether J&S is kept for indivisible harms.
6. If plaintiff has already collected full payment from one joint tortfeasor through judgment or settlement, there is "**full satisfaction**" and plaintiff cannot proceed against any other of the joint tortfeasors. The settler may proceed against them, though, to obtain contribution.
7. **Partial satisfaction**" does not preclude plaintiff's suit or collection against remaining joint tortfeasors, but the partial satisfaction is subtracted from any judgment against them. This reduction may be dollar for dollar (a.k.a. **pro tanto**) or by percentage (a.k.a. **pro rata**). Some states use one reduction method, some the other.
    a. Pro rata puts the risk of the initial settlement being good or bad on the plaintiff's shoulders.
    b. Pro tanto puts it on the other defendants' shoulders.
    c. Pro Rata Example: Damages were $100k, D1 was 60% Responsible and D2 was 40% Responsible. D2 Settles for 30K. D1 will have to pay 100k-30k = 70K
    d. Pro Tanto Example: Damages were 100K. D1 was 60% Responsible and D2 was 40% Responsible. D2 Settles for 30 K. D1 has to pay 100l - 40% = $60K
8. If a plaintiff has received money from a "**collateral source**" because of the injury (e.g., life insurance or a benefactor not involved in the injury), in most states this is not subtracted from a judgment as a partial satisfaction would be.
9. A defendant who is J&S liable and who paid more than his fair share can seek **contribution** against other joint tortfeasors who paid less than their fair share. It is not required that plaintiff have sued these other joint tortfeasors, but it is required that plaintiff **could** have done so at some point (e.g., if a party is immune from plaintiff's suit, the defendant cannot seek contribution from that party). If the defendant's share is 0% and the contributor's is 100%, contribution is for the full amount the defendant paid and we call that indemnity.
10. Intentional tortfeasors cannot seek contribution from each other.
11. In most states, a **good faith settlement** renders the settler immune from contribution actions brought by other joint tortfeasors.

Duty To Rescue/Protect

1. In almost every state, there is **no general duty to rescue**.
    a. There are several significant exceptions, including:
        i. (A) businesses toward their customers;
        ii. (B) bosses and their helpless employees;
        iii. (C) person creating the harm (even if not negligent);
        iv. (D) person controlling the instrumentality of harm; and
        v. (E) person who has undertaken a rescue. Once a duty applies, though, remember that the defendant only needs to be reasonable (assuming that RPP is the duty that applies).
2. Similarly, in almost every state there is **no general duty to protect people from others**.
    a. Once again, there are exceptions:
        i. (A) a special relationship between defendant and plaintiff (e.g., defendant is a common carrier, custodian, parent, employer); or
        ii. (B) a special relationship of control or responsibility between defendant and the third party (e.g., psychiatrist and patient who kills plaintiff, boss and worker who hurts customers).

Negligent Infliction of Emotional Distress

1. . To recover for **negligent infliction of emotional distress** (a negligence case in which defendant caused emotional harm but no physical injury), plaintiffs no longer need to have a contemporaneous physical impact from the thing that upset them.
    a. However, if there are not contemporaneous physical injuries, the emotional reaction must manifest itself with definite and objective physical effects before plaintiff can recover.
    b. Additionally, it must be shown that a normal person would suffer an emotional reaction passing the DOPE threshold (though once that is shown, plaintiff can recover for the entirety of his emotional reaction to defendant's tort).
    c. But don't forget that if there is contemporaneous physical *harm*, it's not an NIED case and plaintiff can recover for the concomitant emotional harm without these extra showings.
    d. Also don't forget that this is about NIED, not IIED, which has a much higher bar and so doesn't concern itself with these things.
2. To recover for NIED from witnessing an injury to another caused by defendant's negligence, many states require that plaintiff herself have been in the **zone of danger** of physical injury.
3. A strong trend, however, is for states to require instead that plaintiff contemporaneously witness the actual impact on the victim, be a **close family member** of the victim, and suffer more distress than a typical bystander would (the last factor is pretty much automatically covered by the second one). There is no majority rule.

Protecting the Unborn

1. A viable fetus typically can recover for **injuries suffered in utero** if it is born alive.
    a. In most states, it can also recover even if it is not born alive, at least for post-viability injuries, and maybe even for pre-viability injuries if there is sufficient evidence of causation.
    b. Parents can recover for the damages that they themselves suffer in either case.

2. If a child is born, and but for defendant's negligence the parents would have aborted him or her because of a defect, most states allow the parents to sue for "**wrongful birth**."
    a. Damages may include emotional injury, extra cost of child-rearing caused by the defect, or in some places the entire cost of child-rearing.
    b. Note, however, that the "plusses of parenting" should be subtracted from any of these damages.
3. Only a small minority of states allow the child to sue for **wrongful life**, the argument that but for defendant's negligence plaintiff's parents would have aborted him or her.
    a. Even those states that allow it generally limit damages to the medical expenses presented by the defect; they do not allow recovery for the existential torment of a traumatic life, because the alternative of non-existence is considered to be even worse (or at least incommensurable) as a matter of law.
4. Most states allow negligence claims for **wrongful pregnancy**, usually from informed consent violations or botched sterilization.
    a. The damages typically include the costs (including pain and suffering) from pregnancy and labor. Some states allow damages for child rearing costs, but only when the parents' reason for not wanting a child was economic.

Duty of Care and Land

1. Defendant landowner has no duty to protect a **plaintiff off of the premises** from natural occurrences on/from defendant's land.
    a. For things involving human agency, though, defendant owes a duty of reasonable care.
    b. Trees are treated like the latter, not the former--defendant owes a duty of ordinary care if he has knowledge or constructive knowledge that a tree may cause damage.
2. In most jurisdictions, defendant owes a duty of care to known or anticipated **trespassers**. Jurisdictions vary as to what duty is owed--they range from a duty not to wantonly injure up to a duty of reasonable care, with many jurisdictions in between.
    a. A majority also require a duty of ordinary care for active operations to actually-known trespassers.
3. A **licensee** is someone on defendant's property for his own purpose, though it is too easy to dispute whose purpose is being served (business customers, for instance, are not considered licensees), so it is probably best just to be categorical here:
    a. licensees include social guests, solicitors, and basically anyone who is not an invitee.
4. Two parts of defendant's **duty to a licensee** are:
    a. (1) to not be willful or wanton, and
    b. (2) to warn of hidden dangers that are unknown to the licensee but actually known to defendant. A higher duty--**reasonableness**--**is owed to an invitee**.
5. A third part of the duty owed to licensees is that when defendant is conducting "**active operations**" on his property, he owes a duty of reasonable care not only to invitees but to licensees (and also to actually-known trespassers).

6. A social guest does not become an invitee merely by providing an incidental service to defendant, but at a certain point licensees can become invitees (or even trespassers) and vice versa.
7. **Invitees** are business visitors: customers, employees, delivery, repair, etc.
    a. Note that despite the common use of the word "business" here, homeowners may have invitees too (e.g. delivery and repair), and some licensees are there for business purposes too (e.g., solicitors). The landowner owes invitees an unreduced duty—typically, ordinary care. (A reminder: when I say "landowner," I am being colloquial; it is actually the occupier of the land to whom these standards apply in most cases.)
8. **Invitee status has limits**. If you stay past the basis of your invitee status, and/or go past the physical area of your invitee status, you may become a licensee (or maybe even a trespasser).
9. Defendant's limited duty to trespassers may be heightened as to children under the **attractive nuisance** doctrine. The dangerous condition must be artificial.
    a. Defendant must have actual or constructive knowledge that (1) children are likely to be on the premises (attracted by the attractive nuisance, which is not necessarily the thing that is dangerous);
    b. and (2) the dangerous condition must present a very unreasonable risk of serious bodily harm. The child must be unaware of the hazard or the level of risk it presents because of his or her youth.
    c. This only establishes duty, though: if the doctrine applies, defendants need only exercise reasonable care.
10. Many states have **abolished the categories** of licensee versus invitee and just apply a duty of reasonable care to both.
    a. There is no majority rule [Michigan has not abolished the distinction].
    b. Some states, though a clear minority, abolish the trespasser/non-trespasser distinction too (put another way, a majority still apply a reduced duty toward trespassers).
    c. But reasonableness still varies by context, so this does not set (what would otherwise be) trespassers and licensees on exactly the same footing as invitees.
11. In most jurisdictions, landlords owe no duty to guests of their tenants other than in certain exceptional situations.
    a. In some states, this doctrine has been largely swept away and the landlord owes the general duty of reasonable care.
12. Our stripped down version of the **Coase Theorem**:
    a. (1) Assuming no transaction costs, the same final result in a system will occur regardless of the initial allocation of rights/duties/liability, because the parties will bargain around the initial situation.
    b. (2) In the real world there are transaction costs, so it makes sense to impose liability on the side that has lower transaction cost

Damages

1. Tort law attempts to redress injury only through the rough method of **lump-sum money** damages. Compensatory damages are generally divided between economic damages

(things like medical expenses, lost wages, loss of services, loss of consortium, etc.) and non-economic damages (things like pain and suffering, disfigurement, etc.)

2. **Future damages** typically require expert testimony--on likely future needs, counterfactual career paths, discount rates, etc. Experts also may testify on the reasonable value of services, for both past and future damages.
3. Future economic damages must be discounted when they are being compensated with a lump sum paid today.
    a. Most courts set a standard **discount rate**, usually between 0–3%. Others calculate it ad hoc, at least for special categories of damages where price changes vary from the rest of the economy.
4. Personal injury damages generally are not **taxable**, but other compensatory damages are, and punitive damages generally are.
5. Upon an arguably **excessive damages** award, on defendant's motion, a court can order a new trial or remittitur (giving plaintiff the option of (A) accepting a lower, reasonable award, or (B) rejecting it and opting instead for a new trial).
6. The standard for excessiveness in damages is whether a **reasonable jury** could have awarded this amount.
    a. Courts might also put this as whether the award shocks the judicial conscience, or if the award was a result of passion or prejudice on the part of the jury, but regardless the standard is reasonableness.
7. Damages for physical **harm to property** are based on fair market value--assuming an open market, voluntary sale, leisurely seller, and willing buyer--at time and place of injury. A reasonable additional amount is allowed for sentimental value for some items.
8. The purpose of **punitive damages** is to punish defendant and deter defendant and others from similar actions.
    a. In most states, punitives require plaintiff to prove wanton and willful conduct by defendant, by clear and convincing evidence.
    b. The jury generally weighs how bad the conduct was, and how effective a deterrent punitives would be. These things will make plaintiff eligible to get punitives, but never guaranteed to get them; the jury is never required to award punitives.
9. In reviewing punitive damages awards, courts use the same standard for excessiveness as for compensatory damages, but also look to proportionality between punitives and compensatories.
10. Many states do not allow **insurance coverage** for punitives.

Wrongful Death

1. Every state now allows suits for wrongful death.
2. Depending on the jurisdiction, either the personal representative of the estate or the next of kin bring the suit.
    a. Damages may be measured, respectively, from the decedent's perspective (mainly lost earnings)
    b. or from the survivors' (mainly lost support and services, and, in some states, emotional damages)

3. Wrongful death" is not a free-standing tort. It is a special case for damages—when the tort causes death, it provides special civil-procedure requirements. Any wrongful-death case will have to be based on an underlying tort (like negligence, battery, etc.).
4. Using "survival" statutes, most states no longer terminate a cause of action upon the death of one of the parties.
    a. This applies both to cases in which the death is related to the issue of the suit, and those where it is not.
    b. In the former cases, some states combine survival and wrongful death to allow decedent to recover in a single claim for losses and suffering before death as well as post-mortem damages.

Vicarious Liability

1. "**Respondeat superior**": An employer is liable for the tort of its employee committed in the scope of employment, regardless of whether the employer is free from tortious conduct itself.
    a. Don't forget that plaintiff can sue the employee too.
2. As a **separate (non-vicarious) matter**, the employer may be liable directly under a regular negligence theory (e.g., negligent hiring or supervision) in addition to or instead of vicarious liability.
3. If the employee's negligence occurred on a **frolic**—during work hours, but too far outside the scope of the enterprise—the employer is not liable. But the employer will be liable if it is a minor **detour** of a sort that the employer expects or tolerates.
4. There is only vicarious liability for an **intentional tort** by an employee when it was more directly within the scope of the employment than with negligence (e.g., battery by a bouncer at a bar). But it can be, so don't say that respondeat superior cannot apply to an intentional tort.
5. Employers are not vicariously liable for the negligence of their **independent contractors**, unless the tort was in the scope of the IC doing something "**non-delegable**."
    a. Examples of the latter are car repair, construction, inherently dangerous activities, and crimes.
6. A participant in a "**joint enterprise**" is vicariously liable for the torts of other participants, assuming the tortious act is within the scope of the enterprise.
    a. The vicariously liable person must generally have some control over the negligent party's actions, as opposed to merely being a passive investor in the enterprise. The joint enterprise must also be a commercial one.
7. In most states, the owner of a **car** is vicariously liable for the torts committed by someone to whom he or she lent it, in the scope of the lending.
8. Vicarious liability not only imputes negligence but also may **impute comparative negligence**.
    a. That is, if X would be liable for Y's negligence vicariously were X a defendant, he will also be saddled with Y's negligence when he (X) is a plaintiff, and thus will have his recovery reduced or eliminated accordingly. **X stands in Y's shoes either way**.

b. This is generally limited, however, to vicarious liability relationships involving control (i.e. respondeat superior, non-delegable duties, and joint enterprise, but not car owner/lender).

Strict Liability

1. Generally, owners of **wild animals** are strictly liable for damage the animals do.
    a. There is also strict liability for **domesticated animals** of known (or constructively known) destructive tendencies.
    b. In both cases, though, the damages must not be from something collateral, like tripping over the animal. They must be from something destructively "animal" about the animal.
2. Conducting **abnormally dangerous activities** subjects the performer to strict liability for damages they cause.
    a. The determination of abnormal danger is generally based on **Restatement § 520**, which looks at the risk and magnitude of harm, location, commonness, value to the community, and—most importantly—whether there would be serious risk of harm even after the exercise of reasonable care.
    b. In other words, we perform a society-wide cost-benefit analysis for the activity in question, and **if the benefits are significant but the costs are great and hard to avoid**, we impose strict liability for the activity. This is because we want the activity to continue, but we also want it to cover the costs it inflicts on others.
3. A **theoretical explanation** of the last point: If serious damages would occur even with the exercise of reasonable care, then the negligence standard is not adequate. This gives the legislature and the courts two possible courses of action:
    a. They can ban the activity in question (leading to criminal liability and perhaps "negligence per se" civil liability);
    b. They can impose strict liability, which guarantees that all victims will be compensated (not just victims of unreasonable carelessness), but also allows the activity to continue.
        i. In other words, like negligence, strict liability allows the defendant to choose whether or not it is "worth it" to engage in an activity. Under negligence, though, if an activity is "worth it" and the defendant is careful enough, the victims of any accidents will be saddled with their own losses. Under strict liability, by contrast, the victims will be compensated regardless.
4. Remember that even if the defendant is subject to strict liability for engaging in an activity, the plaintiff still must establish causation in fact, proximate cause, and damages before the defendant will be liable.
    a. Proximate cause is harder to establish for strict liability than it is for negligence (just as it is harder to establish proximate cause for negligence than it is for intentional torts).
5. Comparative negligence and (in the rare places where it has not been abolished) implied assumption of the risk are defenses to strict liability.
    a. Contributory negligence (in the rare places where it has not been abolished) is not.

Products Liability

1. Liability for dangerously **defective products** might be under a plain negligence theory, an express warranty theory, or strict liability.
    a. Not all states allow all methods in all cases, but negligence is always available as a possibility.
2. The negligence standard for products liability is that the manufacturer owes a duty of care to foreseeable users of the product, regardless of privity of contract, if the product would be likely to cause injury if negligently made.
    a. If that duty is breached, causing damages, defendant is liable. This doesn't really vary from our existing understanding of negligence.
3. Manufacturers making material representations about their products that turn out to be false are, effectively, strictly liable for damages caused by reasonable reliance on those representations. Privity is irrelevant. This is "**express warranty**."
4. Under **implied warranty**, a seller or manufacturer impliedly warrants that an item sold is reasonably fit for the general purpose for which it is manufactured and sold.
    a. The manufacturer is strictly liable for damages caused when this warranty is
    b. broken. Privity is irrelevant.
    c. A consumer can bargain away this implied warranty (such as by buying a product with a very limited express warranty), but it must really be bargained away (that is, there must be some choice)
    d. . In **most** states, though, implied warranty is **not** available anymore.
5. The Second Restatement (§ 402A) simplified strict liability for defective products by eliminating the vestiges of contract theory.
    a. Under 402A, manufacturers were simply **strictly liable** for defective conditions in their products that were not materially altered after leaving manufacturer's control (i.e., the defect must have been present when the product left the manufacturer's hands).
6. The **Third Restatement**—the majority approach, for our purposes—distinguishes between manufacturing, design, and warning defects.
    a. It maintains **strict liability for manufacturing defects** (which are defects in which there is a material deviation from the intended design of a product), but not for design or warning defects.
    b. Negligence is available for all three types of defects, though.

Products Liability

1. **Design defects** are those that stem from the manufacturing specifications; the inherent design of the product gives it dangerous propensities. Some states purport to apply strict liability to design defects as well as negligence, but this generally becomes a negligence standard anyway.
    a. In any case, most follow the Third Restatement and only purport to apply a negligence standard.
2. **Design defect** can be proven by the "**risk/utility balancing**" test, which basically boils down to a Learned Hand Test-like analysis of the benefits and risks of a particular design. Most states use R/U.

    a. Some states use instead, or in addition, the "**consumer expectation**" test: there is a defect only if consumer has a reasonable expectation as to use or performance or safety therein of product, which the product fails to meet.
3. Most states require, before a design can be ruled defective, that there be a practically and economically **feasible alternative design** that would have avoided the injury in this case.
4. There is liability for **inadequate warnings or instructions** if there is a foreseeable risk of harm that could have been reduced or avoided by an adequate warning. Some states follow the Second Restatement (strict liability and negligence available) but most reflect the Third (negligence only).
5. Adequacy of a warning is based on the warning getting people's attention, informing them of the risk, and informing them how to avoid it.
6. Lack of constructive knowledge of the risk is generally a defense for failure to warn of it. Conversely, though, there is a continuing duty to warn of subsequently discovered dangers, subject only to a negligence standard (even in jurisdictions that allow strict liability in warning cases).
7. Risks that are obvious do not require an additional warning—the obviousness of the danger is its own warning, by definition.
8. **Hypersensitive plaintiffs** may still be entitled to warning, based on how widespread the hypersensitivity is, and how serious it is.
9. For an individual plaintiff to establish causation, he or she must be able to show that an adequate warning would have prevented his or her damages.
    a. This means that a sophisticated user may not need as much warning.
    b. It also means that someone who doesn't follow directions may not be able t establish causation, though plaintiff is entitled to a (rebuttable) presumption that he or she would have heeded an adequate warning.
10. Most states use **comparative fault** in products liability cases, including in strict liability cases (as we have already seen for strict liability), but plaintiff's negligence in not discovering the defect *is not included* in comparative negligence here.
11. **Misuse** can vitiate various aspects of a product's liability claim. It can eliminate the notion that there is a defect (if the misuse is not reasonably foreseeable), or that there is proximate cause (if the misuse constitutes a superseding cause), and it can also be used to show comparative fault (if defendant is liable but plaintiff was negligent too).
12. Commercial **wholesalers and retailers** (i.e., not mere "occasional" sellers) typically are subject to strict liability for defective products to the same extent as manufacturers. If found liable, they can generally seek indemnity from others higher up the chain.
13. In some jurisdictions, sellers of used goods are excluded from strict liability, regardless of whether the manufacturer is strictly liable.
14. There generally is no strict liability for defective products for providers of **services** (including those who sold a defective product, but only incidentally to selling the service). Remember, though, that the negligence remedy is always potentially around for all of these situations.