

INTENTIONAL TORTS

Actor desires/ is substantially certain consequences will result from actions.

Defenses: Infancy: children not excused, young child may lack capacity to form intent.

Insanity: No defense. Williams v. Kearbey. Cannot be held for punitive damages.

Mistake: No defense. Ranson v. Kimer: D liable for shooting dog he thought was a wolf.

Transferred Intent: Battery, assault, false imprisonment, trespass to land/chattel. Intent to commit any 5 → other of the 5, intent → A transfers to intent → any other. R2d: only battery & assault.

BATTERY: Acts intending to cause harmful/offensive contact, contact in/directly results.

Offensive: To rsbl sense of dignity. No min harm required.

ASSAULT: Majority: D's acts intentionally cause P's rsbl apprehension of immediate harmful/offensive contact. **R2d does not require apprhns to be rsbl.** No assault if unconscious. **Apparent ability:** A points unloaded gun at B, B doesn't know unloaded. A liable.

FALSE IMPRNSM'T: D intends to confine other/ 3d person w/in D's boundaries, confinement directly/indirectly results, other is conscious of it or harmed. Physical barriers, force/threat of immed. force, omissions w/ duty to act. **Bounded Area:** Not confined if P can proceed in any dxn though not preferred dxn. Could be a state. **Infant/ incompetent:** if against will of legal custody.

Coercion: Immediate and physical. Not nonphysical threats, economic retaliation. **FALSE ARREST:** improper assertions of legal authority. Ends: P enters lawful custody. **MALICIOUS PROSECUTION:** civ/crim (R2d: only crim) prcdgs w/o probable cause & primarily for ulterior purpose, prcdgs terminated in favor of accused. Prosecutors/judges immune, police not immune. **Recover:** Legal \$, consequential \$ loss, mental d.

ABUSE OF PROCESS R2d: legal process, crim/civ, against other for purpose not designed for. No req. termin'n in favor → P, can file immed. Focus: misuse of subpoenas/ processes w/in litigation.

IIED: R2d: Intent'l / recklessly causing severe ED. **Int'l/ Reckless:** "desire or subs. certainty." "delib. disregard of hi degree of prob." **Relaxed standard inc. recklessness. Extreme/ Outrages:** past all poss. bounds of decency, utterly intolerable in society. **3d parties:** R2d: immed. family of P present at the time, bystanders w/ distress → bodily harm. **Maj:** Relatives D knows are close rltvs & are present. **CA:** **Precluded** by worker's comp. Protects firing at-will employees.

Hypersensitive P: If D is prewarned, may be sufficient for IIED. **Sex/race harassment:** Usually must show ongoing pattern. **Proof:** Severe ED, generally no physical manifestation required.

Common carriers, public utilities, innkeepers: Liable for gross insults which reasonably offend P. No requirement that infliction of distress be intended or suffered. Jones v. Clinton: w/o physical harm, need extreme outrage. Hustler v. E. Public figs must show false statement & "actual malice." Hustler ad clearly not actual facts.

DEFENSES TO INTENTIONAL TORTS SELF DEFENSE: Rest.: Actor must sincerely believe immediate threat, act rsblly. **Maj:** No retreat required. **Min/R2d:** Must retreat before deadly/SBI force except in dwelling (unless D also lives in dwelling), or if retreat would not be safe.

Against police force: Must show police used excessive force in carrying out duties. **DEADLY FORCE:** Only rsbl in response to immed. threat of SBI/ death. **DEFENSE OF 3D PERSON- Imminent.** R2d: CA defend 3d person using same means the other would be privileged to use if actor rsblly believes other has priv. **Other courts:** Actor only privileged if the person he is defending is in fact privileged. **DEFENSE OF PROPERTY:** NO deadly force/ sbi force. **R2d:** D can use rsbl force to defend ppty if 1) intrusion not privileged, person intnly/negltly causes D to believe it is not privileged, 2) D rsblly believes intrusion can be terminated only w/force, 3) D asked other to stop, the other has not/ actor rsblly believes request will be useless/ subst. harm will be done. **Exception:** Merchants → rsbl force → shoplifting, even if D innocent.

ARREST: CL: Pvt ctzn may use rsbl force to arrest → felony, misd breach peace. Subj. to statutes. **PRIVATE NECESSITY:** Incomp. priv P recovers. **Rslbl perceptn of immed. need to avoid greater dmge to ppty/ life. PUBLIC:** Complete def. Approp. of ppty, avoid greater harm to pub. Civ disob: No in most JX. Unresolved: If you can intnly kill one to save many.

CONSENT: Cannot exceed consent, kids/mental. incap. may not be able to form consent. **INT'L INTERFERENCE OF K/ PROSPECTIVE CONTRACTUAL RELATIONS**

1) valid K/ valid \$ expectancy, 2) knowledge by D, 3) intent to interfere, 4) Interference caused, 5) Damage to P. **Justifications:** at-will K/ prosp. K rltngs. **Fair Compettn:** No wrngfl means, no unwlfl rstrnt of trade. **Proper Protect'n of Financial Int:** D has financial interest in business of 3d person, no wrongful means, acts to protect interest from being prejudiced by rit'n. Just. D has \$ Interest: D advances legit bus interest. Just. w/ any K/ prosp K: D responsible for welfare of 3d.

Bona fide claim: Providing truthful info/ honest (if inaccurate) advice w/in scope of a request. **Bona fide ppty right,** Interfering w/ illegal agreement/ agreement against public policy. **Sex Harass:** If D kept P from performing K/ increased P's burden & prompted resignation.

GOOD FAITH & FAIR DEALING: Mostly insurance Ks. Implied in every K. Mental D, punit. **INTENTIONAL MISREPRESENTATION** Material misrep, made w/knowlgt that stum't is false/ reckless disreg for truth/ intent to induce reliance, V justifiably relies. → pecuniary dmges. R2d: protects frof. Opinions act nble if expert → non-expert. **Future facts:** R2d/ Maj: misreps of current intent = present fact. **Fail to disclose:** Act nble → actor has fiduc. duty (atty - client).

NEGLIGENCE: 1) Duty/standard of care, 2) Breach 3) Cause in fact, 4) Prox. cause, 5) damages. **Duty/standard:** rsbl person. **Breach of duty: Hand formula:** D is liable if B-PL (L=injury, P=prob). **Custom** can be evidence of rsbl conduct, but could find the custom unrsbl and negligent. United States Fidelity & Guaranty Co. v. Plovidba

STANDARD OF CONDUCT Emergency charge: JX SPLIT: Only liable where D acted unrsb under circs. Cordas v. Peerless: In emergencies, people don't act as rsbl people in other circs. **Mental disability: Maj:** Still held to rsbl person standard. No dispensation to D or P Breunig v. American Family Ins. (WI): Min: Schiz. D not liable if halluc. not frsbl/ no warning. **Phys. disab:** "circs" considered. D acting rsblly (ht. attack, seizure, blindness, hearing impairment) **Children:** →17 Rslbl person of like age, intelligence, experience under like circs. Kids →17. **Exception:** Adult activity (driving, etc.) Firearms: not an adult activity.

Neumann v. Shlansky: Child in adult activity (golf) held to adult stndrd: skill, know, competence. **Historically no negligence for children under 7.** 7-14: **Maj:** No catego, difficult for young kids. **Inherently dangerous:** alt. to "adult act." Adult standard when activity is inherently dangerous.

Prof's ls: R2d: Skill/ knowledge possessed by mmbrs of prfss'n in good stndng, sim. **communit's.** Need **Expert testmny.** No expert if med. obvious. **Min:** Jury decides if med. practice is negligent.

Informed consent: Failure to provide informed consent of material risks can → liability. **Physician Rule:** Medical cmnty detrms when to inform. **Patient Rule:** Jurors determine when "rsbl physician" should inform, regardless of accepted practice.

RULES OF LAW: Rsbl standard may be determined by judge. Not widely practiced. **NEGLIGENCE PER SE Stndrd** from crime statute, admin. reg. or other legis., used to determine proper conduct D should've followed. **Some JX:** Rebuttable. **R2d:** Statute's purpose: a) protect class of people whose intrsts invaded, b) protect particular interest invaded, c) protect interest agnst the prtcl result, and 4) protect that intrst agnst kind of hazard from which harm resulted. **Unattended auto statutes:** JX split protect public from thief's driving or auto owners and police.

Licensing statutes: Unlicensed drivers not nec. neg. **Excuse:** If compliance + dangerous. **CAUSATION: But-for test.** Also liable where neg. greatly multiplies chances of accident to P. **Multiple causes:** Each cause can be considered but-for if harm wouldn't have happened without it.

R2d: Cause must be a substantial factor in bringing about the harm. **Subst. factor test:** 1 of 2 or more redundant causes. D can be liable for the whole harm. **Simult & sim causes:** brdn of proof shifts to D to show non-neg. Small # of Ds. Summers v. Tice **Med Mal: Maj: But-for. Min:** relaxed "but-for. don't test but-for cause. Ltd damages. **Min: Lost opp:** But-for cause, P rcvrs val of ↓ of P's chance of rcvry. **JX SPLIT,** trend → lost opportunity. **Mkt share liability: JX split: Min:** Industry members liable for harm in proportion to mkt share. Shifts burden to D to show non-neg. Not OK in NY ok in CA, NY, WA. Sindell v. Abbott Labs: Must have subst. share of the mkt as Ds. Missing mkt share ↓Ps comp. Mostly DES litigation.

Toxic torts: P must show exposed by D, substance caused injury. **Expert testimony required.** Ayers v. Twp of Jackson: OKd cost of med testing where P shows ↑ risk of disease. **PROXIMATE:** Limits D's lbly. Palsgraf: D liable for harm to frsbl Vs in zone of danger. **Foreseeability Test:** Limits D's liability to rsbl frsbl kinds of harm. **Precise manner and extent of harm** need not be frsbl. Wagon Mound I: Consequences must be frsbl, manner/ scenario does not. Kinsman I: Where consequences "direct," need not be frsbl. (ppty damage) **S-I force:** New, extraordinarily unexpected forces join w/ D's conduct. → harm. **Crim acts:** Need not be S-I force, often are. **Nature:** Need not. **Independent/ Dependent:** Indep.: not stimulated by D's neg. Dep.: stimulated by D. **Frslbl Intervening:** Even if unlikely, not S-I. Car theft may/ may not → car owner liable. Bigbee: Drunk driving not unrsbl. **Rescuers:** danger invites rescue. **Egg Shell P Rule:** Take the victim as s/he is. Type of personal injury need not be fsbl. Even highly unusual med. complications. **Damages 1:** to reflect pre-existing condition. **Emotional harm: Min:** Steinhaus: Car accident led to schiz. break.

RES IPSA LOQUITUR: 1) Nature of accident: does not usually occur w/o neg. 2) D → exclusive control of instrumentality (modern: neg. can be attributed to D.) 3) P not at fault. - Allows jury to infer negligence from circumstantial evidence. **JX SPLIT:** Some allow R.I.L. argued in the alt, some hold if specific acts alleged/ direct evidence of precise cause, no R.I.L. Krebs v. Corrigan: D fell on sculpture. **Multiple Ds:** Gen. med. cases. Ds have joint exclsve control. Ybarra: **Min:** Ltd. to facts of the case. Ds better knowledge, "smoke out" the truth. **LIMITATIONS ON DUTY: FAILURE TO ACT: No duty to act except: Special Relationships:** Common carriers: against unbrl risk of phys harm, first aid & V injured until help arrives. **Possessor of land:** if open to public, duty to pple who are invited & enter. **Person req'd by law** to take custody/ voluntarily takes cstdy, deprives person of normal opps for protection. Possibly bus. rltm./ employer. L.S. Ayres & Co. v. Hicks: D's conduct/ instrument in D's control creates peril.

May be liable for not correcting/ warning of danger created by D's conduct. **Criminal Liability:** Only VT MN. **Voluntary Undertaking:** liable if undertakes help, V harmed/ detrimentally relied on alt. **JX SPLIT: Promises giving rise to act:** Miller v. Arnal Corp Good Samaritan laws. Rescuers acting outside their jobs: some states, only professional rescuers. **Parental Liability:** Cmn law: Parents not automatically liable for kids. **Neg. Entrustment:** must supervise charges exercising ordinary care on behalf of child. Wells v. Hickman: Only if parents knew kid was dangerous. **Tarasoff: JX split.** Some: therapists must act to protect patients' potential victims. **CA:** must warn when patient makes serious threat of physical violence against readily identifiable Vs. No duty to warn of suicide. **No Police Duty to Protect. Maj: Davidson v. City of Westminster: Exceptions:** Must act rsblly when undertake to give assistance/ protection. Holding out 9-11 as an emergency # induces reliance. **Supervisory responsibility** cops may be liable if supervising officers fail to rsblly intervene (Allen v. L.A.). **Min:** ltd duty. Burdette v. Marks: D was uniformed on duty cop, P inferred cop was armed, capable of subduing attacker.

LANDOWNERS AND OCCUPIERS: Never a duty to warn of open/obvious dangers. Unknown Ts - no duty to warn of dngrs cndtns. Known/ Anticipated T - must warn of/make safe known artificial concealed dngrs. Anticipated Ts - Ts expected (i.e. people on a trail). Infant Ts/Attractive Nuisance - LO has enticing cndtn (pool), must exercise ordinary care to avoid fsbl risk → harm. Enticemnt must lure child. United Zinc and Chemical Co. v. Britt Licensees - enter w/ permission (social guests, cops). Must warn licensees of known concealed dngrs cndtns. No duty to inspect/ repair known defective dngrs conditions. Younce v. Ferguson Invites - Business purpose or land is open to the public (customers, museums, mail men). **Rslbl person standard. Must insure cndtns on land - safe. Must warn of known concealed dngrs, intend to discover dngrs, repair chnrs cndtns. Invitee may change if they exceed scope of invite. **MIN:** (CA) No status. Rowland v. Christian CA: Felon Ts: Only recover willful/wanton injuries. **LO's LIABILITY TO PS OFF LAND Natural Conditions -** unchanged by humans. No duty to protect off land from natural cndtns on land (except trees in urban areas). Spears v. Blackwell**

CA: Duty of rsbl care to protect against all natural conditions. May be duty but no breach. **Artificial Conditions -** human made (roof tiles). LO is fully liable for injuries off land. **NEG MISREP: R2d** In bus/prfns or trmtn w/pecuniary interest, supplies false info for the guidance of others. Subject to pecuniary loss → justifiable reliance on info. Often expanded to ltd group D intends to give info/knows recipient intends for a subst. similar trmtn. Bily v. Arthur Yng. **ECONOMIC LOSS: Min:** 1) extent txn intended to affect P, 2) frsblty of harm, certainty that P suffered inj, 4) closeness cnxn b/w conduct/injury, 5) moral blame of D, 6) policy of future prev. L'Aire Corp v. Gregory: Where risk of harm is frsbl, injury to P's \$\$ interests compensated. **Attorney Liability to Third Parties:** Limited circumstances.

DEFENSES TO NEGLIGENCE CONTRIBUTORY NEGLIGENCE: Now only partial bar in most JX: R2d: P falls below the standard of conduct to which he should conform for own protect'n and which is a legally contributing cause to the harm. **Mental disability/ insanity:** No dispensat'n. **Failure to Mitigate:** May lower recovery (not wearing a seatbelt or helmet). **Negligence per se: Mark v. Pacific Gas and Electric Co.:** Whether danger of electric shock from high voltage lines is negligence per se because such danger is presumed to be familiar to men of avg. intelligence.

COMPARATIVE NEGLIGENCE Liv. Yellow Cab. Co. Pure comp. neg: P recovers some % from liable D regardless of Ps negl. **Modified Maj:** P partially recovers until P reaches a certain level of culpability. Greater than 50%, 50% or greater. **Slight:** SD only. **ASSUMPTION OF RISK: Subjective:** P must have actual and conscious knowledge of risk. **Voluntary:** If encounter involuntary, no liability. **Assump't n. Express:** By K, or P explicitly accepts R. May be invalidated if against pub. policy. Woodall v. Wayne Steffner Productions, Inc. **Implied:** Assent from P's behavior. Knight v. Jewett, Murphy v. Steeplechase Amusement Co. **Maj:** Rslbl and unrsbl implied assump't n may be absorbed into comparative neg. as partial defense. **Firefighter's:** Firefighters/ ppl hired to encounter danger can't sue for on the job injuries.

JOINT AND SEVERAL LIABILITY: Each D fully liable for 100% of harm. Acting in concert, indep. acts → single indivis. harm, vicarious liability (resp. superior, employer resp. for act's of employee in scope of job). **Trad: Pro-Rata - If 2 Ds, each owes ½. If 3, ⅓. Maj:** Compar. Rspnsblty - divided by proprt of rspnsblty each D owes P. (EX: A is 60% liable, B is 40% liable. Total damage is \$100. A pays \$60, and B pays \$40.) **Problem - If P** unable to collect co-D's portion, solvent Ds rspnsbl for the others' share. Deep pocket D, may pay dispropor. share. **Solution -** A is 10% liable, B is 70% liable, C is 20% liable. Dmge is \$100. C no \$. A owes \$10 + 1/8 of C's share, and B owes \$70 + 7/8 of C's share. **Settlement: Maj:** deduct settling D's % as jury later determines it. P may receive less than full rec. **Contribution:** D may get contrib. from other Ds: only Ds who would have been liable to P. **Indemnificatn:** Total shift of lbly. Ex: vicarious lbly: passive D → reimbursmt from active D.

IMMUNITIES Charitable: diminished. **Spousal Immunity:** No for ppty/ \$\$ torts **Parent-child:** Does not bar \$ or ppty torts, NO intent'l torts/ liability for personal injury → neg. Gibson v. Gibson Gov't: For ministerial, not discretionary decisions. Tarasoff: Fault was disc. **MENTAL DISTRESS Physical Impact:** Old rule: P recovered for NIED only if phys. impact. **Zone of Danger: Slight maj.** Only Ps → physically impacted/ in the zone of physical impact. **Thing v. La Chusa/ Dillon factors:** Subst. Min. Zone of danger, some bystanders: 1) was P present 2) was distress caused by contemp. sensory observance, 3) P have close relationship w/V. Generally limited to children, siblings, and married spouses.

SPLIT: Recovery for witnessing immed. aftermath (MA). **Phys. manifestations:** Majority rule. CA does not require physical evidence. **Special exceptions:** Mishandling relative's corpse, mistakenly telling P relative died. **Fear of future harm: Potter v. Firestone** Generally toxic/ fear of HIV. No recovery where P never actually at risk of physical peril. **WRONGFUL DEATH** No tort under cmn law. **Family members may recover:** spouse, parents, children. Depends on state statute. **JX SPLIT:** Unborn children. **Damages Maj:** Pecuniary loss actually suffered by P. Includes value of decedent's svcs for family (chores) **Min:** Pec. loss + loss of companionship. (b/c loss of kids may be \$ benefit. **Min:** Pec. loss + loss of cmprnshp + grief. **CA:** No punitive damages unless D convicted of felonious homicide.

SURVIVAL ACTIONS: Allow heirs to inherit potential tort claims and pursue them. **Ppty torts generally survive.** Some JXs: no recovery for intangibles (grief). Personal injury often survives. **CA:** Only allows economic consequences of the personal injury, not the pain and suffering. **Viability:** Must be viable at the time of decedent's death. **LOSS OF CONSORTIUM & SOCIETY Maj:** married spouses. **Min:** Parents, kids based on serious injury to V. Intnt'l torts & neg. D's must be tortious. **Dmgs:** During the period of injury. **WRONGFUL LIFE, W. BIRTH: W. life:** Child claims D's caused birth. **Maj: Rejected.** Not nec. health defect. Turpin: limits child's recover to extra expenses incurred by child's disability (CA). **W. conception:** Birth of unwanted healthy child. Recovery often ltd to med care, preg \$. **OR:** Recovery includes rearing, college \$. **W. birth:** unwanted birth w/health dsblty. Resp. for disability, not birth. Ltd recovery: preg, extra cost of rearing disabled child.

TRAD'L STRICT LIABILITY: Ultrahazardous: nec. involves risk of serious harm that cannot be eliminated & is not dangerous. **Abnormally dangerous:** Ltd to kind of harm the poss. of which makes activity cmmon. a) ↑ deg. of risk of harm, b) likelihood harm would be great, c) inability to eliminate risk thru rsbl care, d) common usage, e) inappropriateness to place, f) value to community vs. dngrs. **Exception: Common carriers for the public good. Animals:** wild: s. liable for any harm from dangerous propensities. Domestic; if owner knew of danger. **Dangerous products:** usually no s. liability. **Duty & prox cause: Preston Mill: kind of harm. STRICT PRODUCTS LIABILITY: Express/Implied Warranty: K theory.** Need not prove neg. can compensate pure \$ loss. **Misrep:** of material fact about product. Liable for phys. harm. **Strict products:** Against mfrctr, wlsler, retrfr. May use r.i.l. Mfrctr d, design d, warning d. **Consumer expert test:** con. consumer would not discover unsafe charact. **Mod. trend: Risk utility test:** evaluates pdct design v cost/gravity of danger. **Unavoidably unsafe:** def. for meds. **Blood shield statutes. State of the art defense. R3d:** Only recover if risks frsbl, not avoidable by alt. design. No recovery for econ'c loss w/o personal/ ppty injury.