Intentional Torts….

Intent requires an actor’s (1) purposeful desire of a given outcome or the actor to know with substantial certainty the outcome will occur.

**Battery** is an act with an intent to touch and intent to harm or offend that results in a touching and harms or offends.

Offensive contact is that contact that offends a reasonable sense of personal dignity.

**Assault** is an act with intent of a harmful or offensive touching that results in the apprehension of an immediate battery.

**False imprisonment** is an act with intent that results in confinement to a bounded area where the victim is harmed or aware.

For **transferred inten**t it is enough that the actor intends to produce some effect upon some other person whether or not that person is the plaintiff.

The defendant intends a tort on one person, but commits it on another person.

The defendant intends one tort, but commits another tort.

Property….

**Trespass to land** is intent to enter land and results in entering land of another. Intent to enter land can be with purpose or substantial certainty.

**Conversion of chattels** is intent to exercise substantial dominion over chattel and results in an act seriously interfering with plaintiff’s right of possession.

**Trespass to chattel** is intent to act on chattel that causes interference with chattel and results in dispossession, lost use, or harm to chattel or plaintiff.

Defenses….

**Self-defense** is a privilege to use reasonable force to defend against unprivileged acts reasonably believed about to be inflicted.

**Defense of property** is a common law privilege to defend property by reasonable force.

To satisfy the **shopkeeper’s privilege** there must be a reasonable belief the plaintiff took goods, a proper purpose for detention, and a reasonable manner of detention.

Necessity defenses only apply to property torts…

To satisfy the defense of **public necessity** where an act is for the public good the defense is absolute.

To satisfy the defense of **private necessity** where an act is of private benefit, the defense is qualified and the defendant must pay damages.

Negligence….

**Negligence** is overt conduct that creates an unreasonable risk of harm that a reasonable person would avoid. CUHRA (Conduct/Unreasonable Harm/Reasonable Avoid)

**Risk of harm is unreasonable** when (1) a reasonable and prudent person would foresee the harm and (2) would avoid conduct that creates the risk. FH-AC-CR (Foresee Harm/Avoid conduct/Creates risk)

**Reasonable person** has the same physical traits as the defendant, average mental ability, and the same knowledge as an average member of the community. (PT/IQ/Knowledge)

To establish the **prima facia case for negligence** the plaintiff must prove that (1) the defendant owed plaintiff a legal duty; (2) the defendant by behaving negligently, breached the duty; (3) plaintiff suffered damages; (4) Defendants negligence was an actual cause of this damage; and (5) the defendant’s negligence was a proximate cause of this damage.

**Duty** is the general duty of care a reasonable person under the same circumstances would meet.

B**reach** of duty occurs when defendant’s conduct falls below the standard of care and thus puts foreseeable plaintiffs at risk. (DC/B-SOC/FPR)

**Actual damages** are the injuries suffered by the plaintiff.

**Actual cause** can be shown by the “but-for” test of causation, “But for Defendant’s Negligence Plaintiff would have avoided injury.”

**Proximate cause** is established by showing the defendant is responsible for the type of harms within the risk and that the plaintiff was within the class of persons at risk.

If an intervening cause is within the scope of the original risk, it is not a superseding cause and original tortfeasor is still liable. A superseding cause will cut off the original tortfeasor’s liability.

Doctrines…..

**Negligence per se** is the violation of a criminal statue where the statute protects the plaintiff's class of persons and statute is meant to protect against the type of injury the plaintiff suffered. Negligence per se is to conclusively establish the first two elements of a cause of action: the defendant owed the plaintiff a legal duty and defendant breached that duty.

**Res Ipsa Loquitor** means the fact of an accident raises an inference of negligence to establish a prima facia case. The plaintiff will prove the (1) injury was probably the result of negligence and (2) it was probably the defendant who was negligent.

Under the **Rescue Doctrine** the rescuer can recover from the defendant whose negligence prompted the rescue attempt if the rescuer had a reasonable belief the victim was in peril.

Under the **Last Clear Chance Doctrine** courts allow the negligent plaintiff a full recovery when the plaintiff was left in a helpless position by his own negligence and the defendant, who had the last clear chance to avoid injury, negligently inflicted it anyway.

Negligence Defenses….

In some cases the defendant may share the liability of negligence with others, either other defendants or the plaintiff.

When the plaintiff may be partially liable plaintiff’s negligence is considered contributory or comparative. **Contributory negligence** was the traditional common law defense and would bar a plaintiff from recovery. Under the modern theory of **comparative negligence** the plaintiff’s comparative negligence is a defense to willful, wanton and reckless conduct.

When the defendant shares liability with other defendants it is either **severally liable** or **joint and severally liable**. **Several liability** means no tortfeasor is liable for more than his fair share whereas under **joint and several liability** a plaintiff can enforce against any tortfeasor and other tortfeasors would contribute to the first.

There are four types of **assumption of risk**: Express or with consent, Traditional implied, and sports risks; primary and secondary.

If proven by the defendant **Express** assumption of risk is a complete bar to recovery for the plaintiff. Express assumption of risk is generally contractual and is a viable defense.

**Traditional assumption** of risk recognized when the plaintiff, knowing of the risk, chose to confront it. Traditional assumption of risk is a common law doctrine generally discarded in favor of comparative negligence.

In sports there are two doctrines of assumption of risk. The **primary** assumption of risk states there is no duty where inherent risk exists. The **secondary** assumption of risk is limited to avoid reckless acts.

Negligence of Landowners…

An **invitee** is any person on the land for a pecuniary benefit of the landowner or is a public invitee.

A **trespasser** has no legal right to be on the land and enters the land without the owner’s consent.

A **licensee** is on the land with permission, but with a limited license to be there.

Under common law a landowner owes to an **invitee** a duty of care; to a **trespasser and licensee** a duty to avoid willful, wanton and reckless misconduct; and to **a discovered trespasser** a duty to warn.

Landowner Doctrines….

By the **attractive nuisance doctrine** a possessor of land is subject to liability for physical harm to children trespassing thereon and caused by the attractive nuisance and raises the duty to a duty of care.

Under the **open and obvious doctrine** landowners are not liable for harm caused by any activity or condition whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.

Short Definitions to Memorize…

Negligence – CUHRA

Conduct Unreasonable Harms Reasonable Avoids

Risk of harm – FHACCR

Foreseeable Harms Avoid Conduct Creates Risk

Breach – DC/B-SOC/FPR

Defendants Conduct Below Standard of Care Foreseeable Plaintiffs Risk

Actual Cause – But for

Proximate cause – DR (1) THWR (2) PWCPR

Defendant Responsible Type Harm Within Risk Plaintiffs Within Class Persons Risk