

FINAL EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL THE EXAM ACTUALLY BEGINS.

THIS IS A CLOSED BOOK EXAM! While you are waiting for the exam to begin, be sure that you have entered your EXAM NUMBER, that you have read these instructions, and that you are otherwise ready to begin.

IMPORTANT: This exam will last THREE HOURS, and has two parts:

(1) MULTIPLE CHOICE (15 points). Please select the best answer. Some answers may give a wrong reason for an otherwise correct result. Make sure that you read all the answers thoroughly and select the one that comes closest to a correct statement of the law. USE QUESTION 1 for your MULTIPLE CHOICE ANSWERS.

(2) ESSAYS (120 points) Plan on spending AT LEAST 20 minutes reading the questions carefully and outlining your answers on a separate sheet of paper. Before writing your answers, REREAD each question to be sure you haven't missed anything. Each question has been assigned a point total; spend the amount of time on each question reflecting its relative worth.

If you use a bluebook, DOUBLE-SPACE your answers.

You are welcome to use abbreviations, but indicate what they are, e.g., 'Andropov ("A") would be sued by Brezhnev ("B"), alleging that A would be liable to B ... !'

PLEASE IGNORE issues relating to legal causation; assume that any but-for cause of an injury is also a proximate cause of that injury.

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

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

You may KEEP your copy of the exam questions if you wish.

REMEMBER THE HONOR CODE! Don't identify yourself.

GOOD LUCK!!!

MULTIPLE CHOICE

1. Donny Defendant needs to get Polly Plaintiff's attention. He gently taps her on the shoulder. Polly falls to the ground screaming in pain. It turns out that she had a latent infection at the very spot Donny touched her. As a result, bone exfoliation began causing more pain and a renewed infection. In order for Polly to succeed in a suit for an intentional tort, what at a minimum must she prove?
 - (a) That Donny intended to touch her.
 - (b) That Donny knew of the infection
 - (c) That Donny intended to inflict pain.
 - (d) That Donny intended to inflict pain due to a prior grudge against Polly.

2. Polly Plaintiff is standing in the doorway of her ex-husband's house. From the living room the ex-husband shouts, "If you leave, you will regret it." What tort has the ex-husband committed?
 - (a) Battery.
 - (b) Assault.
 - (c) False Imprisonment.
 - (d) None of the above.

3. Donny points a pistol at Polly. What fact would exonerate Donny?
 - (a) Polly thought the pistol was unloaded.
 - (b) Donny intended it as a joke.
 - (c) The pistol was actually unloaded.
 - (d) Donny knew the pistol was unloaded.

ESSAYS

QUESTION 2 (75 points)

Every December, the City of Riverview holds a "Holidazzle Parade" in downtown Riverview. One of the participants in the parade is the Linden State Police. Officer Thomas Sawina was driving a police van in the Holidazzle Parade on December 4, 2004. The police van was manufactured by General Motors Corporation, and was equipped with a "brake-shift interlock" that requires that the driver depress the brake pedal in order to shift the vehicle from "park" to "drive." In addition, the police van was equipped with an "after-market flasher device" manufactured by Federal Signal Corporation and installed by a State Police employee. The purpose of the device is to increase visibility of the vehicle. When the driver depresses the brake, the device causes the brake and back-up lights to flash rapidly. Studies show that increasing the visibility of the brake light decreases the likelihood of rear-end collisions. However, automotive engineers have also discovered the use of the flasher device has an additional, and undesirable, side effect: latent electrical currents disable the van's brake-shift interlock. On the evening of December 4, 2004, while Officer Sawina was operating the police van, he accidentally pressed the accelerator instead of the brake pedal while shifting from "park" to "drive." As a result, the van accelerated into the Holidazzle crowd, resulting in two deaths and many injuries. Erin Lanz, then aged seven, was among the injured. Erin's injuries required the amputation of her right arm above the elbow.

Mitchell Lanz, father and guardian of Erin, has come to you for advice on potential tort compensation to be obtained based on this incident. Assume for purposes of your analysis that Erin's damages would be assessed by the jury at \$4 million. Please provide your assessment of the case.

QUESTION 3 (45 points)

Christopher Anderson, born in 1990, enjoyed playing basketball with his friends. Two blocks from his house was the Friends' Day School, a private school whose student body was comprised mostly of children who lived within a five-mile radius of the school. Although Christopher attended public school, he frequently walked past the Friends' Day School and through the open door of the gymnasium he could observe children (and sometimes adults) playing basketball inside the

gymnasium. On Sunday afternoon, April 25, 2004, Christopher was playing basketball on his driveway with two friends. One of the friends mentioned that he had seen people playing basketball at the Friends' Day School gymnasium, and thought the three of them might be able to join a "pick-up" basketball game there. At his suggestion the three boys then walked over to the gym, noticed that the door was open, and saw a group of five boys, mostly a year or two older than they were, playing half-court basketball. After watching for about 10 minutes one of Christopher's friends asked if they could join the game. The other boys agreed.

Sides were chosen by each boy shooting a free throw until four boys had made a free throw. Those four boys then were teamed up against the remaining four boys. Someone suggested that they play full-court basketball, which they did. After about twenty minutes of playing, Christopher had the ball and tried to dribble toward the basket to make a lay-up. He lost his balance and fell, crashing into an unpadded block wall located just beyond the end line of the basketball court. He sustained a head injury that caused permanent brain damage.

Your law firm represents the Friends' Day School. Your client has forwarded to you a letter written by Tom Germond, a lawyer representing Christopher Anderson. The letter claims that Friends' Day School is liable for Christopher's injury and offers to settle his claim for \$125,000. Germond's letter further asserts that one of the boys with whom they played basketball was wearing a Friends' Day School T-shirt, and Christopher assumed he was a student at the school. You have conducted some interviews with school personnel, and you have learned the following:

- (1) Padded mats were normally hung from the wall when basketball games were being played, but on Friday, April 23 they had been removed for cleaning.
- (2) None of the boys playing on the day of the accident was a student at the school.
- (3) Michael Jeffers, the school custodian, had locked the building following a church service Sunday morning. He doesn't know how the boys got in.

Please analyze the potential for tort liability in preparation for responding to the Germond letter.

SELECTED STATUTES OF THE STATE OF LINDEN
LINDEN STATUTES ANNOTATED
LEGISLATURE (CH. 3-3C)
CHAPTER 3. LEGISLATURE
SETTLEMENT OF CLAIMS

§ 3.736. Tort claims

Subdivision 1. General rule. The state will pay compensation for injury to or loss of property or personal injury or death caused by an act or omission of an employee of the state while acting within the scope of office or employment or a peace officer who is not acting on behalf of a private employer and who is acting in good faith under § 629.40, subdivision 4, under circumstances where the state, if a private person, would be liable to the claimant, whether arising out of a governmental or proprietary function. Nothing in this section waives the defense of judicial or legislative immunity except to the extent provided in subdivision 8.

Subd. 2. Procedure. Claims of various kinds shall be considered and paid only in accordance with the statutory procedures provided. If there is no other applicable statute, a claim shall be brought under this section as a civil action in the courts of the state.

Subd. 3. Exclusions. Without intent to preclude the courts from finding additional cases where the state and its employees should not, in equity and good conscience, pay compensation for personal injuries or property losses, the legislature declares that the state and its employees are not liable for the following losses:

- (a) a loss caused by an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule;
- (b) a loss caused by the performance or failure to perform a discretionary duty, whether or not the discretion is abused;
- (c) a loss in connection with the assessment and collection of taxes;
- (d) a loss caused by snow or ice conditions on a highway or public sidewalk that does not abut a publicly owned building or a publicly owned parking lot, except when the condition is affirmatively caused by the negligent acts of a state employee;
- (e) a loss caused by wild animals in their natural state, except as provided in § 3.7371;
- (f) a loss other than injury to or loss of property or personal injury or death;
- (g) a loss caused by the condition of unimproved real property owned by the state, which means land that the state has not improved, state land that contains idled or abandoned mine pits or shafts, and appurtenances, fixtures, and attachments to land that the state has neither affixed nor improved;
- (h) a loss involving or arising out of the use or operation of a recreational motor vehicle, as defined in § 84.90, subdivision 1, within the right-of-way of a trunk highway, as defined in § 160.02, except that the state is liable for conduct that would entitle a trespasser to damages against a private person;
- (i) a loss incurred by a user arising from the construction, operation, or maintenance of the outdoor recreation system, as defined in § 86A.04, or for a loss arising from the construction, operation, maintenance, or administration of grants-in-aid trails as defined in § 85.018, or for a loss arising from the construction, operation, or maintenance of a water access site created by the iron range resources and rehabilitation board, except that the state is liable for conduct that would entitle a trespasser to damages against a private person. For the purposes of this clause, a water access site, as defined in § 86A.04 or created by the iron range resources and rehabilitation board, that provides access to an idled, water filled mine pit, also includes the entire water filled area of the pit and, further, includes losses caused by the caving or slumping of the mine pit walls;
- (j) a loss of benefits or compensation due under a program of public assistance or public welfare, except if state compensation for loss is expressly required by federal law in order for the state to receive federal grants-in-aid;
- (k) a loss based on the failure of a person to meet the standards needed for a license, permit, or other authorization issued by the state or its agents;
- (l) a loss based on the usual care and treatment, or lack of care and treatment, of a person at a state hospital or state corrections facility where reasonable use of available appropriations has been made to provide care;
- (m) loss, damage, or destruction of property of a patient or inmate of a state institution;
- (n) a loss for which recovery is prohibited by § 169A.48, subdivision 2;
- (o) a loss caused by an aeration, bubbler, water circulation, or similar system used to increase dissolved oxygen or maintain open water on the ice of public waters, that is operated under a permit issued by the commissioner of natural resources;
- (p) a loss incurred by a visitor to the Linden zoological garden, except that the state is liable for conduct that would entitle a trespasser to damages against a private person;
- (q) a loss arising out of a person's use of a logging road on public land that is maintained exclusively to provide access to timber on that land by harvesters of the timber, and is not signed or otherwise held out to the public as a public highway; and
- (r) a loss incurred by a user of property owned, leased, or otherwise controlled by the Linden National Guard or the department of military affairs, except that the state is liable for conduct that would entitle a trespasser to damages against a private person.

The state will not pay punitive damages.

Subd. 4. Limits. The total liability of the state and its employees acting within the scope of their employment on any tort claim shall not exceed:

- (a) \$300,000 when the claim is one for death by wrongful act or omission and \$300,000 to any claimant in any other case;
- (b) \$750,000 for any number of claims arising out of a single occurrence, for claims arising on or after January 1, 1998, and before January 1, 2000; or
- (c) \$1,000,000 for any number of claims arising out of a single occurrence, for claims arising on or after January 1, 2000.

If the amount awarded to or settled upon multiple claimants exceeds the applicable limit under clause (b) or (c), any party may apply to the district court to apportion to each claimant a proper share of the amount available under the applicable limit under clause (b) or (c). The share apportioned to each claimant shall be in the proportion that the ratio of the award or settlement bears to the aggregate awards and settlements for all claims arising out of the occurrence.

The limitation imposed by this subdivision on individual claimants includes damages claimed for loss of services or loss of support arising out of the same tort.

Subd. 4a. Securities claims limits. The total liability of the state and its employees acting within the scope of their employment on any claim of whatever matter arising from the issuance and sale of securities by the state shall not exceed:

- (a) \$100,000 to any one person or
- (b) \$500,000 to all claimants in respect of the securities of the same series.

The limitations in clauses (a) and (b) shall not affect the obligation of the issuing state entity to pay the indebtedness under the securities in accordance with their terms and from the sources pledged to their payment.

Subd. 5. Notice required. Except as provided in subdivision 6, every person, whether plaintiff, defendant or third party plaintiff or defendant, who claims compensation from the state or a state employee acting within the scope of employment for or on account of any loss or injury shall present to the attorney general or, in the case of a claim against the University of Linden, to the person designated by the regents of the university as the university attorney, and any state employee from whom the claimant will seek compensation, within 180 days after the alleged loss or injury is discovered, a notice stating its time, place and circumstances, the names of any state employees known to be involved, and the amount of compensation or other relief demanded. Actual notice of sufficient facts to reasonably put the state or its insurer on notice of a possible claim complies with the notice requirements of this section. Failure to state the amount of compensation or other relief demanded does not invalidate the notice, but the claimant shall furnish full information available regarding the nature and extent of the injuries and damages within 15 days after demand by the state. The time for giving the notice does not include the time during which the person injured is incapacitated by the injury from giving the notice.

Subd. 6. Claims for wrongful death; notice. When the claim is one for death by wrongful act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin, or the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in the death. If the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without additional notice.

Subd. 7. Payment. A state agency, including an entity defined as part of the state in section 3.732, subdivision 1, clause (1), incurring a tort claim judgment or settlement obligation or whose employees acting within the scope of their employment incur the obligation shall seek approval to make payment by submitting a written request to the commissioner of finance. The request shall contain a description of the tort claim that causes the request, specify the amount of the obligation and be accompanied by copies of judgments, settlement agreements or other documentation relevant to the obligation for which the agency seeks payment. Upon receipt of the request and review of the claim, the commissioner of finance shall determine the proper appropriation from which to make payment. If there is enough money in an appropriation or combination of appropriations to the agency for its general operations and management to pay the claim without unduly hindering the operation of the agency, the commissioner shall direct that payment be made from that source. Claims relating to activities paid for by appropriations of dedicated receipts shall be paid from those

appropriations if practicable. On determining that an agency has sufficient money in these appropriations to pay only part of a claim, the commissioner shall pay the remainder of the claim from the money appropriated to the commissioner for the purpose. On determining that the agency does not have enough money to pay any part of the claim, the commissioner shall pay all of the claim from money appropriated to the commissioner for the purpose. Payment shall be made only upon receipt of a written release by the claimant in a form approved by the attorney general, or the person designated as the university attorney, as the case may be.

No attachment or execution shall issue against the state.

Subd. 8. Liability insurance. A state agency, including an entity defined as a part of the state in section 3.732, subdivision 1, clause (1), may procure insurance against liability of the agency and its employees for damages resulting from the torts of the agency and its employees. Procurement of the insurance is a waiver of the limits of governmental liability under subdivisions 4 and 4a only to the extent that valid and collectible insurance, including where applicable, proceeds from the Linden Guarantee Fund, exceeds those limits and covers the claim. Purchase of insurance has no other effect on the liability of the agency and its employees. Procurement of commercial insurance, participation in the risk management fund under section 16B.85, or provisions of an individual self-insurance plan with or without a reserve fund or reinsurance does not constitute a waiver of any governmental immunities or exclusions.

Subd. 9. Indemnification. The state shall defend, save harmless, and indemnify any employee of the state against expenses, attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the employee in connection with any tort, civil, or equitable claim or demand, or expenses, attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the employee in connection with any claim or demand arising from the issuance and sale of securities by the state, whether groundless or otherwise, arising out of an alleged act or omission occurring during the period of employment if the employee provides complete disclosure and cooperation in the defense of the claim or demand and if the employee was acting within the scope of employment. Except for elected employees, an employee is conclusively presumed to have been acting within the scope of employment if the employee's appointing authority issues a certificate to that effect. This determination may be overruled by the attorney general. The determination of whether an employee was acting within the scope of employment is a question of fact to be determined by the trier of fact based upon the circumstances of each case:

- (i) in the absence of a certification,
- (ii) if a certification is overruled by the attorney general,
- (iii) if an unfavorable certification is made, or
- (iv) with respect to an elected official.

The absence of the certification or an unfavorable certification is not evidence relevant to a determination by the trier of fact. It is the express intent of this provision to defend, save harmless, and indemnify any employee of the state against the full amount of any final judgment rendered by a court of competent jurisdiction arising from a claim or demand described herein, regardless of whether the limitations on liability specified in subdivision 4 or 4a are, for any reason, found to be inapplicable. This subdivision does not apply in case of malfeasance in office or willful or wanton actions or neglect of duty, nor does it apply to expenses, attorneys' fees, judgments, fines, and amounts paid in settlement of claims for proceedings brought by or before responsibility or ethics boards or committees.

Subd. 9a. Peace officer indemnification. The state shall defend, save harmless, and indemnify a peace officer who is not acting on behalf of a private employer and who is acting in good faith under section 629.40, subdivision 4, the same as if the officer were an employee of the state.

Subd. 10. Judgment as bar. The judgment in an action under this section is a complete bar to any action by the claimant, by reason of the same subject matter, against the state employee whose act or omission gave rise to the claim.

Subd. 11. Statute of limitation. The statute of limitations for all tort claims brought against the state is as provided in chapter 541 and other laws.

LINDEN STATUTES ANNOTATED
JUDICIAL PROOF (CH. 595-605)
CHAPTER 604. CIVIL LIABILITY
ACTIONS INVOLVING FAULT GENERALLY

§ 604.01. Comparative fault; effect

Subdivision 1. Scope of application. Contributory fault does not bar recovery in an action by any person or the person's legal representative to recover damages for fault resulting in death, in injury to person or property, or in economic loss, if the contributory fault was not greater than the fault of the person against whom recovery is sought, but any damages allowed must be diminished in proportion to the amount of fault attributable to the person recovering. The court may, and when requested by any party shall, direct the jury to find separate special verdicts determining the amount of damages and the percentage of fault attributable to each party and the court shall then reduce the amount of damages in proportion to the amount of fault attributable to the person recovering.

Subd. 1a. Fault. "Fault" includes acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an express consent or primary assumption of risk, misuse of a product and unreasonable failure to avoid an injury or to mitigate damages, and the defense of complicity under § 340A.801. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault. The doctrine of last clear chance is abolished.

Evidence of unreasonable failure to avoid aggravating an injury or to mitigate damages may be considered only in determining the damages to which the claimant is entitled. It may not be considered in determining the cause of an accident.

Subd. 2. Personal injury or death; settlement or payment. Settlement with or any payment made to an injured person or to others on behalf of such injured person with the permission of such injured person or to anyone entitled to recover damages on account of injury or death of such person shall not constitute an admission of liability by the person making the payment or on whose behalf payment was made.

Subd. 3. Property damage or economic loss; settlement or payment. Settlement with or any payment made to a person or on the person's behalf to others for damage to or destruction of property or for economic loss does not constitute an admission of liability by the person making the payment or on whose behalf the payment was made.

Subd. 4. Settlement or payment; admissibility of evidence. Except in an action in which settlement and release has been pleaded as a defense, any settlement or payment referred to in subdivisions 2 and 3 shall be inadmissible in evidence on the trial of any legal action.

Subd. 5. Credit for settlements and payments; refund. All settlements and payments made under subdivisions 2 and 3 shall be credited against any final settlement or judgment; provided however that in the event that judgment is entered against the person seeking recovery or if a verdict is rendered for an amount less than the total of any such advance payments in favor of the recipient thereof, such person shall not be required to refund any portion of such advance payments voluntarily made. Upon motion to the court in the absence of a jury and upon proper proof thereof, prior to entry of judgment on a verdict, the court shall first apply the provisions of subdivision 1 and then shall reduce the amount of the damages so determined by the amount of the payments previously made to or on behalf of the person entitled to such damages.

§ 604.02. Apportionment of damages

Subdivision 1. Joint liability. When two or more persons are severally liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that the following persons are jointly and severally liable for the whole award:

- (1) a person whose fault is greater than 50 percent;
- (2) two or more persons who act in a common scheme or plan that results in injury;
- (3) a person who commits an intentional tort; or

(4) a person whose liability arises under chapters 18B (pesticide control), 115 (water pollution control), 115A (waste management), 115B (environmental response and liability), 115C (leaking underground storage tanks), and 299J (pipeline safety), public nuisance law for damage to the environment or the public health, any other environmental or public health law, or any environmental or public health ordinance or program of a municipality as defined in § 466.01.

Subd. 2. Reallocation of uncollectible amounts generally. Upon motion made not later than one year after judgment is entered, the court shall determine whether all or part of a party's equitable share of the obligation is uncollectible from that party and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault. A party whose liability is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment.

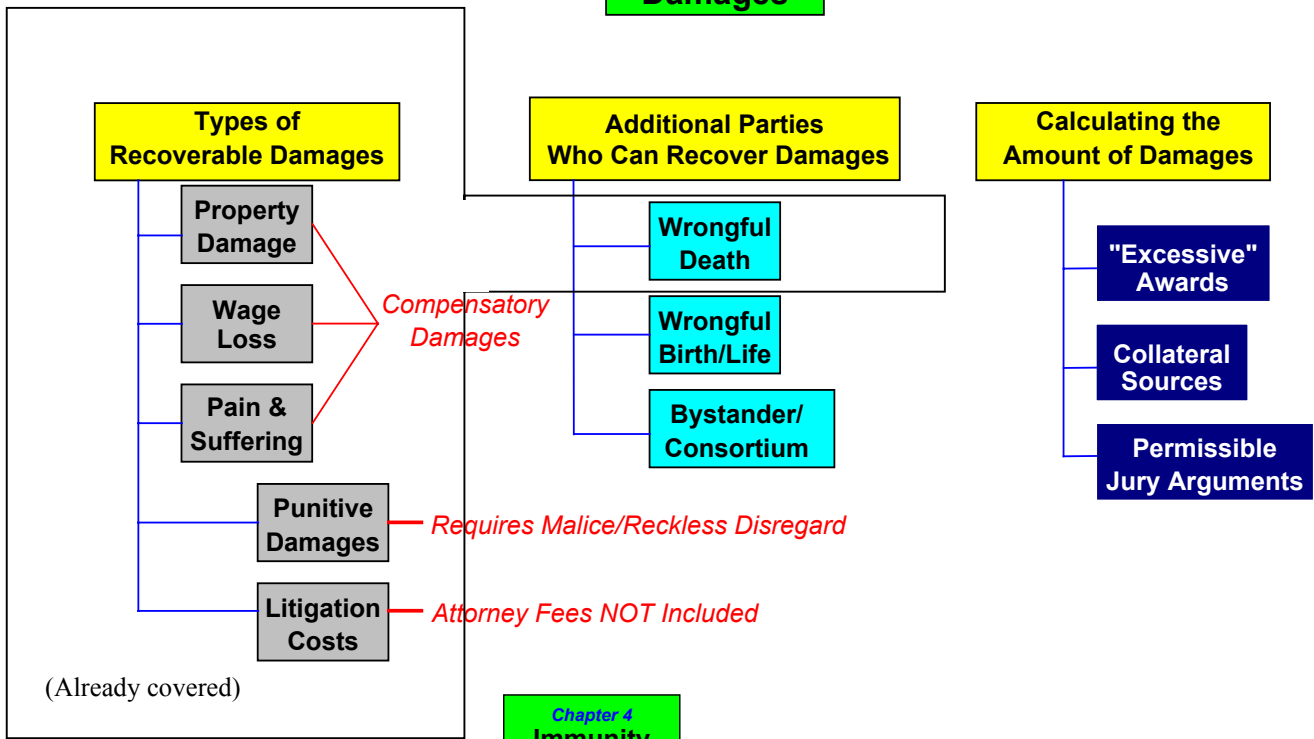
Subd. 3. Product liability; reallocation of uncollectible amounts. In the case of a claim arising from the manufacture, sale, use or consumption of a product, an amount uncollectible from any person in the chain of manufacture and distribution shall be reallocated among all other persons in the chain of manufacture and distribution but not among the claimant or others at fault who are not in the chain of manufacture or distribution of the product. Provided, however, that a person whose fault is less than that of a claimant is liable to the claimant only for that portion of the judgment which represents the percentage of fault attributable to the person whose fault is less.

§ 604.03. Useful life of product

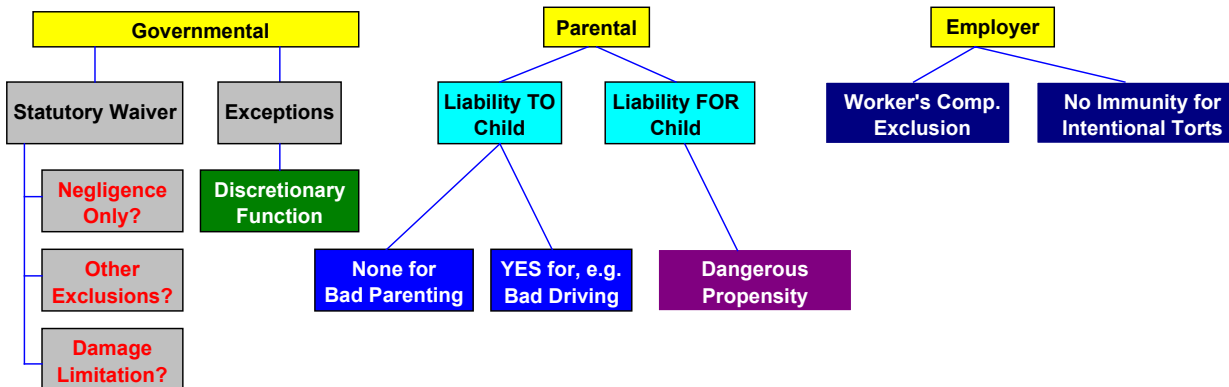
Subdivision 1. Expiration as defense. In any action for the recovery of damages for personal injury, death or property damage arising out of the manufacture, sale, use or consumption of a product, it is a defense to a claim against a designer, manufacturer, distributor or seller of the product or a part thereof, that the injury was sustained following the expiration of the ordinary useful life of the product.

Subd. 2. Determination. The useful life of a product is not necessarily the life inherent in the product, but is the period during which with reasonable safety the product should be useful to the user. This period shall be determined by reference to the experience of users of similar products, taking into account present conditions and past developments, including but not limited to (1) wear and tear or deterioration from natural causes, (2) the progress of the art, economic changes, inventions and developments within the industry, (3) the climatic and other local conditions peculiar to the user, (4) the policy of the user and similar users as to repairs, renewals and replacements, (5) the useful life as stated by the designer, manufacturer, distributor, or seller of the product in brochures or pamphlets furnished with the product or in a notice attached to the product, and (6) any modification of the product by the user.

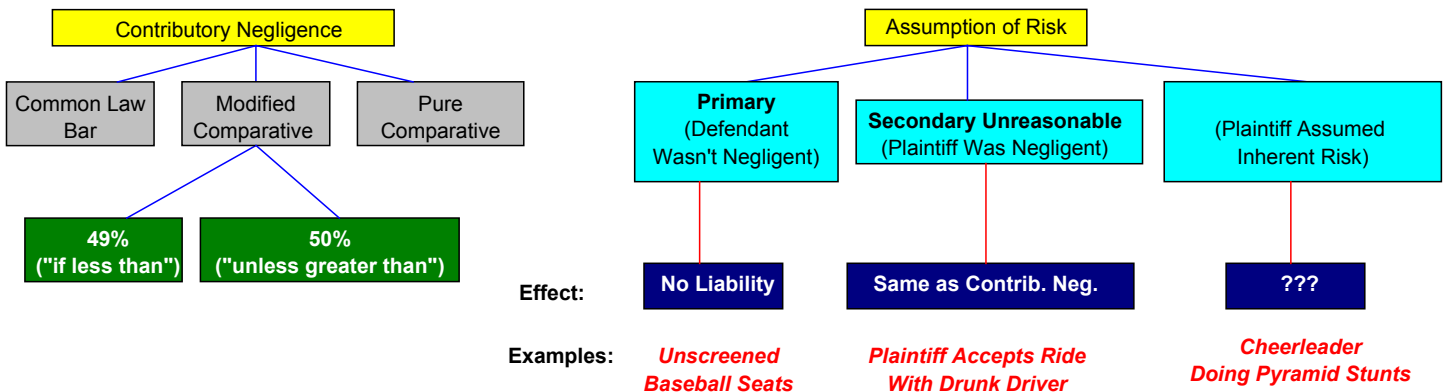
**Chapter 3
Damages**



**Chapter 4
Immunity**

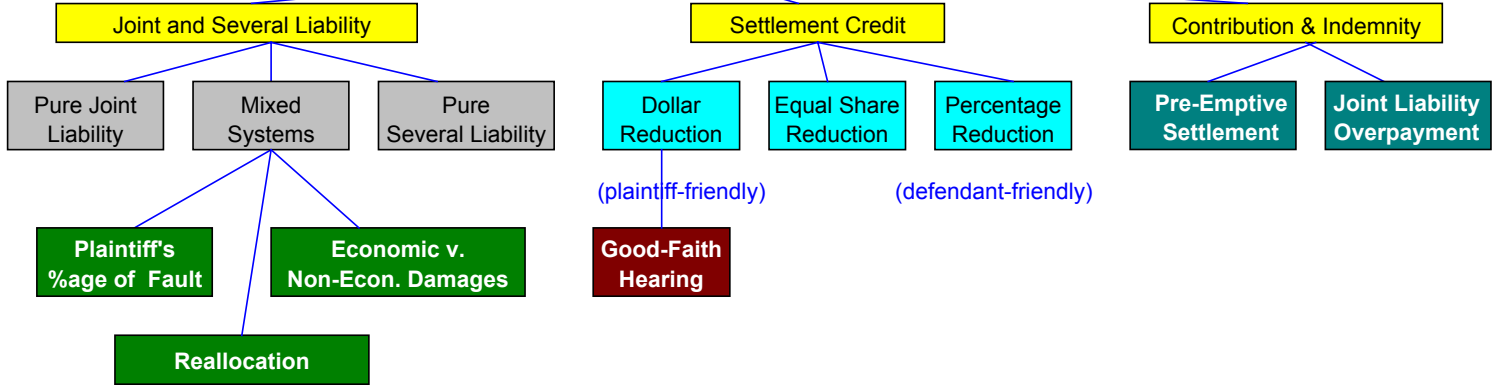


**Chapter 5
Contributory Fault**

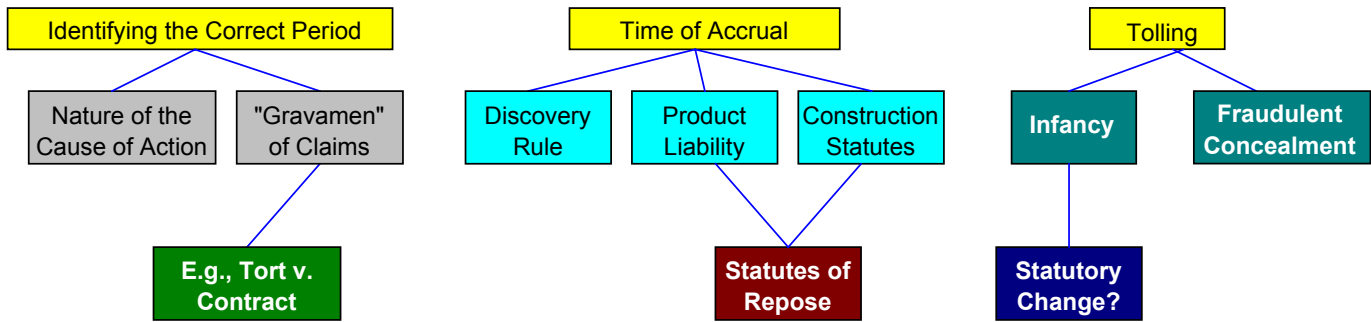


**Chapter 6
Multiple Tortfeasors**

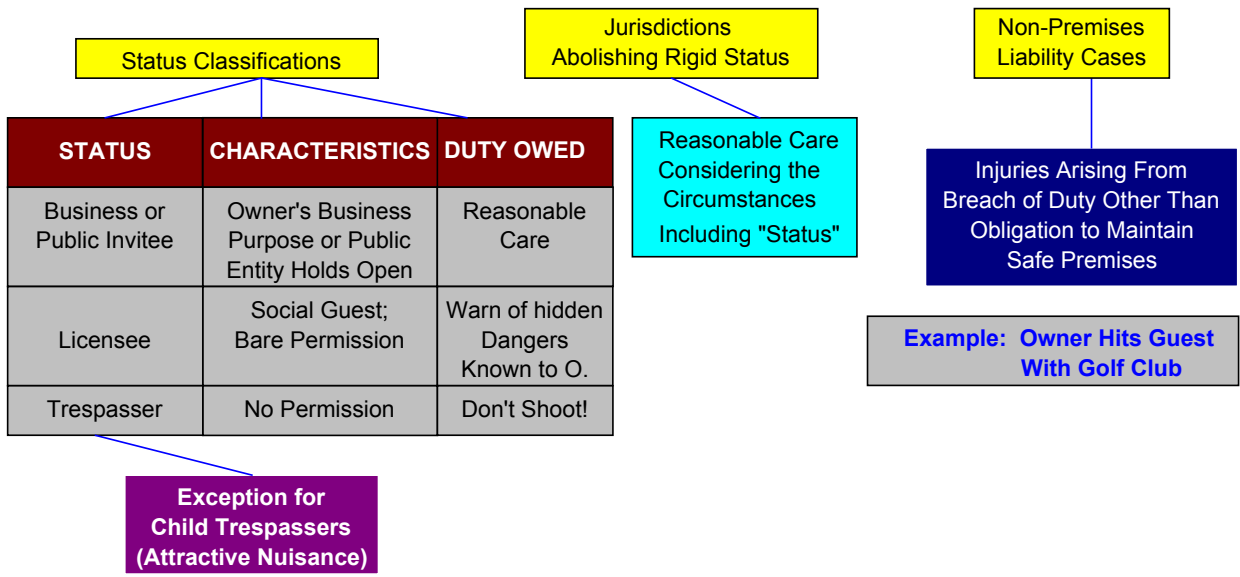
Indivisible Injury?



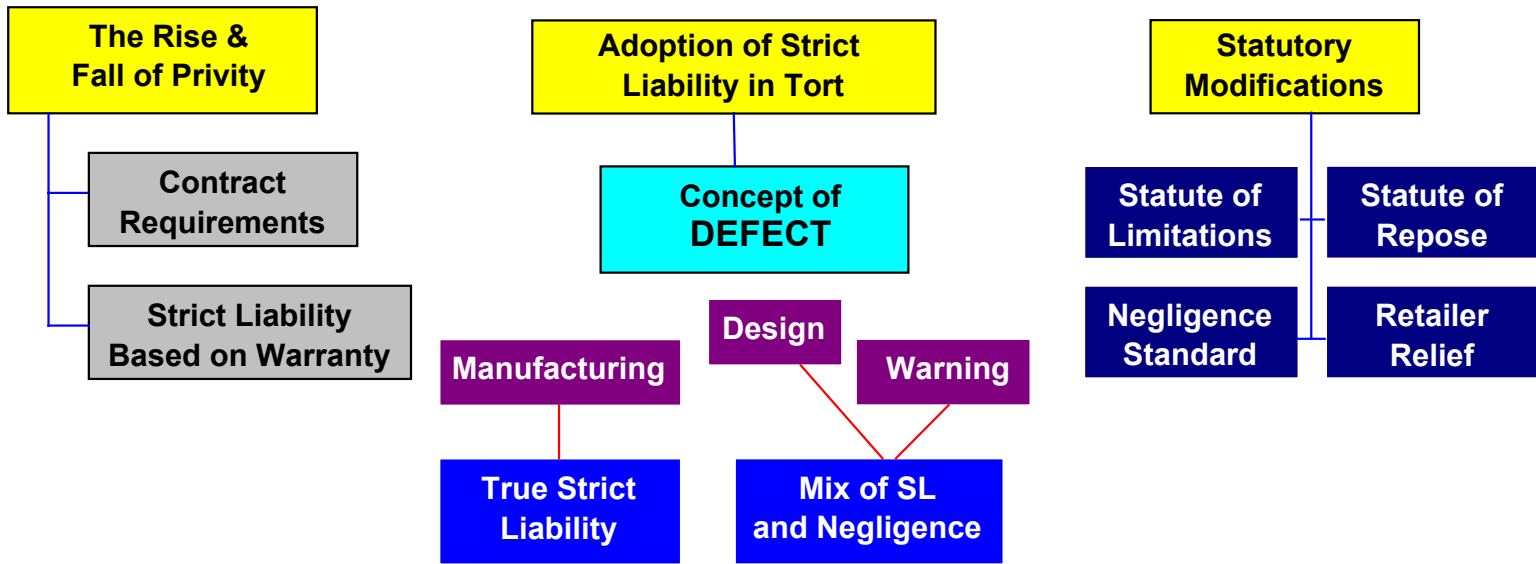
**Chapter 7
Statutes of Limitation**



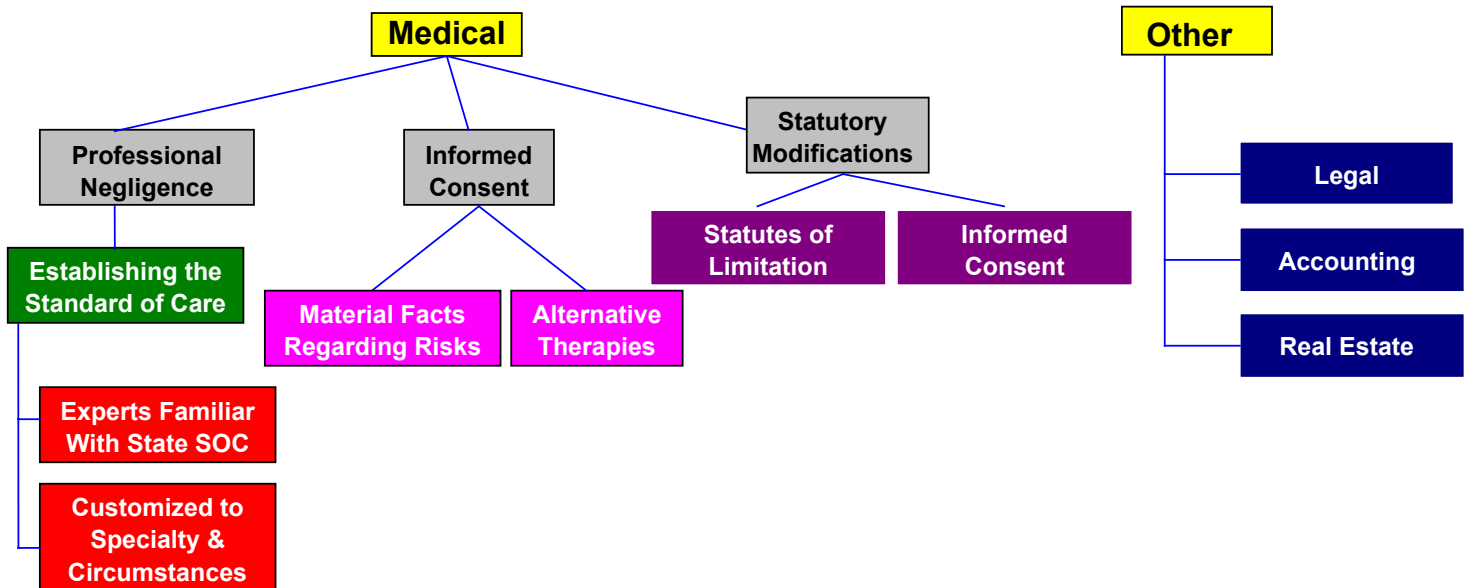
**Chapter 8
Premises Liability**



**Chapter 9
Product Liability**



**Chapter 10
Professional Malpractice**



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

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

