

EXAM # _____

TORTS II
SPRING 2007

PROFESSOR DEWOLF
May 5, 2007

FINAL EXAM

Instructions

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

THIS IS A CLOSED BOOK EXAM!

IMPORTANT: This exam will last THREE HOURS. Plan on spending at least 20 MINUTES reading the questions and outlining your answers. REREAD each question to be sure you haven't missed anything.

POINTS are assigned to each section of the exam based on the rough number of minutes it is expected you will need to complete each portion.

(1) *Multiple Choice* (45 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. There are 45 total points for the multiple choice,

(2) ESSAYS: You will have two essay questions. The division is as follows:
Question 1: 55 points
Question 2: 40 points

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

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

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

REMEMBER THE HONOR CODE! Don't identify yourself.

GOOD LUCK!!!

MULTIPLE CHOICE

FACTS for Questions 1 to 9

In 1998, Alec and Bonnie, husband and wife, had purchased the Elbe Fitness Club. The club was struggling financially, but continuing operations. Heeding his 2007 New Year's resolution, Mayor Mike completed his weight training at 9 p.m. and decided to use the club's sauna. The club closed at 10 p.m. Mike set the automatic timer for 45 minutes and entered the sauna, wearing his towel.

Believing his boss Alec was inside the sauna, disgruntled club employee Karl locked the door, preventing Mike from exiting. Exhausted after a long day politicking, Mike removed his watch and fell fast asleep. The next morning Karl returned, unlocked the sauna and discovered a seething Mayor Mike. Once Mike left, Karl cleaned the sauna, kicking Mike's watch under a bench and removing the videotape from the hidden camera he had placed in the sauna. When Mike discovered his watch was missing, he told Alec.

Alec found Mike's watch and took it to a local jeweler who informed him that the watch was nickel cubic zirconium, worth approximately \$30. Alec approached his cousin, Chris, telling him, "This is a diamond platinum watch, in great condition." Alec showed Chris an E-bay auction item in which a diamond platinum watch in great condition sold for \$5,000. Chris paid Alec \$2,000 for the watch.

That same day Karl posted photos of semi-nude Mike on the city's website.

Next, Karl distributed leaflets outside the club, which stated:

"MAYOR MIKE CAUGHT NAKED IN SAUNA"

"FITNESS CLUB IS BANKRUPT."

When Bonnie saw Karl, she asked him to leave the club property. Karl refused. Bonnie lunged at Karl screaming, "I am going to get you." Then Bonnie kicked Karl, breaking his knee. Karl had surgery and missed two months of work. Much to his wife's chagrin, Karl refused to help around the house.

Two hundred club members cancelled their membership and Fitness Club was forced to file bankruptcy. Mayor Mike was treated for depression and lost his March reelection.

Question 1

Could Mayor Mike recover damages from Karl for false imprisonment?

- (A) Yes, if Karl was at least reckless in failing to determine who was in the sauna
- (B) Yes, regardless of who Karl thought was in the sauna
- (C) No, if Mayor Mike suffered no pecuniary loss
- (D) No, if Mayor Mike woke up after closing time

Question 2

Could Mayor Mike recover damages from Karl for invasion of privacy?

- (A) Yes, based on his installation of the camera, even if he didn't show the pictures to anyone;
- (B) Yes, based on his posting the photos on the website, even if he had obtained them legally;
- (C) Both (A) and (B) are correct;
- (D) Neither (A) nor (B) is correct.

Question 3

Could Mayor Mike recover damages from Karl for trespass to chattels?

- (A) Yes, if Karl was at least negligent in kicking the watch;
- (B) Yes, but only if Karl intended to move the watch;
- (C) No, because Mayor Mike didn't suffer any damage until the watch was stolen;
- (D) No, because Mayor Mike was negligent in leaving the watch in the sauna.

Question 4

Could Chris recover damages from Alec for fraud?

- (A) Yes, because Alec did not have title to the watch;
- (B) Yes, unless Chris did not reasonably rely upon Alec's representation;
- (C) No, because the jeweler's appraisal might have been erroneous;
- (D) No, because what Chris paid showed he didn't really believe Alec.

Question 5

Assuming (for purposes of this question only) that Chris was entitled to recover for fraud, Chris would be entitled to

- (A) \$1,700;
- (B) \$2,000;
- (C) \$4,700;
- (D) None of the above.

Question 6

Could Bonnie recover damages from Karl for trespass?

- (A) No, because Karl had permission to be on her property;
- (B) No, because Bonnie didn't suffer any monetary loss;
- (C) Yes, if Bonnie experienced apprehension from his presence;
- (D) Yes.

Question 7

Could Mayor Mike recover damages from Karl for defamation?

- (A) No, because Mayor Mike is a public official;
- (B) No, because Mayor Mike actually was naked in the sauna;
- (C) Yes, if a reasonable person would infer that Mayor Mike behaved inappropriately;
- (D) Yes, but only if Mayor Mike can prove severe emotional distress

Question 8

Could Karl recover damages from Bonnie for assault?

- (A) Yes, if Bonnie's reaction was unreasonable;
- (B) Yes, unless Karl was actually trespassing;
- (C) No, if Karl had no actual fear of Bonnie hurting him;
- (D) No, if a reasonable person would not be afraid of Bonnie

Question 9

Could Karl recover damages from Bonnie for battery?

- (A) Yes, but he could not simultaneously recover damages for assault;
- (B) Yes, but only for the economic damages that Karl sustained;
- (C) No, if Bonnie was genuinely afraid of Karl;
- (D) No, if Karl failed to mitigate his damages.

ESSAY QUESTION 1 (55 points)

Brent Buckley, then 8 years old, was a third grader enrolled in the Evergreen State Music Academy, a state-run school for boys and girls with exceptional musical talent. On May 13, 2006, Earl Palmer, a physical education teacher at the school, took the third grade class into the school gymnasium to conduct a volleyball game and to begin instructions in the game of badminton. There were nineteen students in the class; all of them participated in the activities, save one student who had a prior injury. It was standard procedure for the school to have one gym teacher for a single class of nineteen students. The gym was approximately 64 feet long and 40 to 45 feet wide, with a stage at one end. A volleyball net was set up in the area nearest the stage and perpendicular to it. Beyond the volleyball court area was set up a badminton court area with a badminton net parallel to the stage. Palmer initially assigned twelve students to play volleyball, with six on each side. He placed six badminton rackets on the floor with three birdies, and asked the remaining six students each to take a racket and pair off. Thus there were to be three pupils on each side of the badminton net. However, because the net was not long enough to accommodate three people on each side, two were positioned on each side of the net, and one stood on each side of, in effect, an invisible extension of the net between them. Buckley's back was to the stage.

Palmer instructed the students that they were to serve the birdies underhand, and that the receiver should catch the birdie in his or her hand, should not attempt to return the serve, but instead was to serve it back in the same fashion. He gave a brief demonstration of this procedure and then took a position on the stage where he proceeded to referee the volleyball game. From this position on the stage, he called out-balls, assessed penalties, and with the nineteenth student in the class (with the prior injury) on the stage with him, kept score of the volleyball game. Down the gym floor, beyond the volleyball game, he could see the students in the badminton area. The first session was to last about 10 minutes, after which the children were to rotate and switch positions, with badminton players to play volleyball and vice versa.

May 13 was the first day these third grade students had been introduced to the game of badminton as part of the school curriculum. It is unknown whether Buckley, or any other of the students with badminton rackets, had ever played the game before. There was no gym teacher or school representative in the gym at the time other than Mr. Palmer.

As a birdie was approaching Buckley, having been served or hit by his counterpart across the net, Buckley backed up as he saw the birdie was going over his head, and raised his racket to hit it. At the same time, the boy next to him raised his racket to hit another birdie coming across the net and over his head, and as that boy tried to return his birdie, he struck Buckley in the face with his racket, causing injuries to Buckley's teeth and mouth. Palmer saw the incident as it occurred. He stated that this was the first time he saw any of the badminton players attempting to return serve.

Brent Buckley's parents have come to your office to ask your law firm's advice. Brent, a promising oboe player, is still recovering from facial and dental injuries suffered when he was struck. A damages expert in your firm has calculated that, if assessed by a jury, Brent's economic damages would be \$200,000 and his noneconomic damages \$300,000 for a total of \$500,000. Please analyze his prospects for recovering tort compensation.

QUESTION 2 (40 points)

Neil Barry was employed as a carpenter by DeLuca Construction Company. On February 26, 1998, Barry and his fellow carpenter Bernard Cohade were putting shingles on the roof of the New Bedford Nature Center when the platform staging on which they were working collapsed, causing Barry and Cohade to fall to the ground and sustain severe injuries. Immediately prior to the collapse, Barry and Cohade were working on a wooden plank attached to the roof by roof brackets designed and manufactured by Quality Steel Products, Inc. and purchased from Ring's End, Inc.

The roof brackets were used as part of a structure that created a platform on which Barry and Cohade could work. To install the brackets, Barry and Cohade nailed them to the roof

through three slots on the bracket. After the brackets were attached to the roof, a plank was placed on top of the brackets, which then provided a surface on which Barry and Cohade could stand in order to shingle the roof. Although there had been additional pipe scaffolding located around the perimeter of the roof prior to the time Barry and Cohade fell, it was taken down before the accident.

After working on the planks for several hours in the morning, Barry and Cohade returned to the planking after lunch and began shingling the roof on the right side of the building. Shortly after Barry and Cohade returned to work on the roof, the planking suddenly fell out from under them and they fell to the ground. Almost immediately after the fall, Gene Marini, the general superintendent at DeLuca, discovered one of the roof brackets used by Barry and Cohade in a distorted condition on the ground near where they fell.

Quality Steel's instruction label on the roof brackets suggests that the user attach the brackets to the roof using sixteenpenny nails.¹ There is evidence that some of the brackets were installed by another DeLuca employee, Nate Manizza, using eightpenny nails. Barry and Cohade have both stated that when they installed roof brackets they used larger, twelvepenny nails. Neither Barry nor Cohade, nor Manizza, could remember if they had installed the specific brackets that had collapsed causing the fall. Cohade testified, however, that he saw Manizza installing the brackets in the general area where they fell. There is also information provided by experts that the use of a twelvepenny nail would be sufficient to hold the bracket to the roof and would not be causative of the collapse of the planking that occurred in this case.

An expert has opined that DeLuca violated the federal Occupational Safety and Health Administration (OSHA) regulations by failing to provide additional fall protection for Barry and Cohade while they were working on the New Bedford Nature Center roof. On the other hand, Barry and Cohade point out that OSHA, in its investigation of the accident, did not find any violations of roofing standards at the project site and that the roof brackets were an acceptable method of providing fall protection.

Another expert believes that the roof bracket designed and manufactured by Quality Steel and used by Barry and Cohade before the platform collapsed was undersized (thinner) in comparison to the manufacturing specifications.

You represent Neil Barry. A damages expert in your firm has estimated that Barry's economic damages would be assessed by a jury as \$200,000 and his non-economic damages \$300,000, for a total of \$500,000. Please evaluate his prospects for tort compensation.

SELECTED STATUTES OF THE STATE OF EVERGREEN

EVERGREEN GENERAL STATUTES ANNOTATED TITLE 4. MANAGEMENT OF STATE AGENCIES CHAPTER 53. CLAIMS AGAINST THE STATE

§ 4-141. Definitions

As used in this chapter: "Claim" means a petition for the payment or refund of money by the state or for permission to sue the state; "just claim" means a claim which in equity and justice the state should pay, provided the state has caused damage or injury or has received a benefit; "person" means any individual, firm, partnership, corporation, limited liability company, association or other group, including political subdivisions of the state; "state agency" includes every department, division, board, office, commission, arm, agency and institution of the state government, whatever its title or function; and "state officers and employees" includes every person elected or appointed to or employed in any office, position or post in the state government, whatever such person's title, classification or function and whether such person serves with or

1. The penny reference indicates the size of a nail. As a metallurgist explains, "As you increase in penny size, the dimensions [of the shaft and the nail itself] increase incrementally...."

without remuneration or compensation, including judges of probate courts, employees of such courts and special limited conservators appointed by such courts pursuant to § 17a-543a. In addition to the foregoing, "state officers and employees" includes attorneys appointed as victim compensation commissioners, attorneys appointed by the Public Defender Services Commission as public defenders, assistant public defenders or deputy assistant public defenders and attorneys appointed by the court as special assistant public defenders, the Attorney General, the Deputy Attorney General and any associate attorney general or assistant attorney general, any other attorneys employed by any state agency, any commissioner of the Superior Court hearing small claims matters or acting as a fact-finder, arbitrator or magistrate or acting in any other quasi-judicial position, any person appointed to a committee established by law for the purpose of rendering services to the Judicial Department, including, but not limited to, the Legal Specialization Screening Committee, the State-Wide Grievance Committee, the Client Security Fund Committee, the advisory committee appointed pursuant to § 51-81d and the State Bar Examining Committee, any member of a multidisciplinary team established by the Commissioner of Children and Families pursuant to § 17a-106a, and any physicians or psychologists employed by any state agency. "State officers and employees" shall not include any medical or dental intern, resident or fellow of The University of Evergreen when (1) the intern, resident or fellow is assigned to a hospital affiliated with the university through an integrated residency program, and (2) such hospital provides protection against professional liability claims in an amount and manner equivalent to that provided by the hospital to its full-time physician employees.

§ 4-142. Claims Commissioner. Excepted claims

There shall be a Claims Commissioner who shall hear and determine all claims against the state except: (1) Claims for the periodic payment of disability, pension, retirement or other employment benefits; (2) claims upon which suit otherwise is authorized by law including suits to recover similar relief arising from the same set of facts; (3) claims for which an administrative hearing procedure otherwise is established by law; (4) requests by political subdivisions of the state for the payment of grants in lieu of taxes; and (5) claims for the refund of taxes.

§ 4-146. Notice of injury by claimant

Any person who suffers damage or injury because of the defective condition of a building, park or ground owned or leased by the state shall, within a reasonable time after such damage or injury, notify the official having control of or the agency using such building, park or ground, stating the date, time, place and circumstances of such damage or injury. No claim shall be defeated because of a lack or failure of such notice except upon a showing by the state that it was substantially prejudiced thereby.

§ 4-147. Notice of claim. Filing fees

Any person wishing to present a claim against the state shall file with the clerk of the Office of the Claims Commissioner a notice of claim, in duplicate, containing the following information: (1) The name and address of the claimant; the name and address of his principal, if the claimant is acting in a representative capacity, and the name and address of his attorney, if the claimant is so represented; (2) a concise statement of the basis of the claim, including the date, time, place and circumstances of the act or event complained of; (3) a statement of the amount requested, and (4) a request for permission to sue the state, if such permission is sought. A notice of claim, if sent by mail, shall be deemed to have been filed with the Office of the Claims Commissioner on the date such notice of claim is postmarked. Claims in excess of five thousand dollars shall be accompanied by a check or money order in the sum of fifty dollars payable to the treasurer, state of Evergreen

Claims for five thousand dollars or less shall be accompanied by a check or money order in the sum of twenty-five dollars payable to the Treasurer, state of Evergreen. Fees may be waived by the commissioner for good cause but such action by the commissioner shall not relieve the claimant from the obligation of filing his notice of claim in timely fashion within the statute

of limitations under § 4-148. The clerk of the Office of the Claims Commissioner shall promptly deliver a copy of the notice of claim to the Attorney General. Such notice shall be for informational purposes only and shall not be subject to any formal or technical requirements, except as may be necessary for clarity of presentation and facility of understanding.

§ 4-148. Limitation on presentation of claim. Exception

(a) Except as provided in subsection (b) of this section, no claim shall be presented under this chapter but within one year after it accrues. Claims for injury to person or damage to property shall be deemed to accrue on the date when the damage or injury is sustained or discovered or in the exercise of reasonable care should have been discovered, provided no claim shall be presented more than three years from the date of the act or event complained of.

(b) The General Assembly may, by special act, authorize a person to present a claim to the Claims Commissioner after the time limitations set forth in subsection (a) of this section have expired if it deems such authorization to be just and equitable and makes an express finding that such authorization is supported by compelling equitable circumstances and would serve a public purpose. Such finding shall not be subject to review by the Superior Court.

(c) No claim cognizable by the Claims Commissioner shall be presented against the state except under the provisions of this chapter. Except as provided in § 4-156, no claim once considered by the Claims Commissioner, by the General Assembly or in a judicial proceeding shall again be presented against the state in any manner.

§ 4-160. Authorization of actions against the state

(a) When the Claims Commissioner deems it just and equitable, the Claims Commissioner may authorize suit against the state on any claim which, in the opinion of the Claims Commissioner, presents an issue of law or fact under which the state, were it a private person, could be liable.

(b) In any claim alleging malpractice against the state, a state hospital or a sanatorium or against a physician, surgeon, dentist, podiatrist, chiropractor or other licensed health care provider employed by the state, the attorney or party filing the claim may submit a certificate of good faith to the Claims Commissioner in accordance with § 52-190a. If such a certificate is submitted, the Claims Commissioner shall authorize suit against the state on such claim.

(c) In each action authorized by the Claims Commissioner pursuant to subsection (a) or (b) of this section or by the General Assembly pursuant to § 4-159 or § 4-159a, the claimant shall allege such authorization and the date on which it was granted, except that evidence of such authorization shall not be admissible in such action as evidence of the state's liability. The state waives its immunity from liability and from suit in each such action and waives all defenses which might arise from the eleemosynary or governmental nature of the activity complained of. The rights and liability of the state in each such action shall be coextensive with and shall equal the rights and liability of private persons in like circumstances.

(d) No such action shall be brought but within one year from the date such authorization to sue is granted. With respect to any claim pending before the Claims Commissioner on October 1, 1992, or presented to the Claims Commissioner on or after said date for which authorization to sue is granted, any statute of limitation applicable to such action shall be tolled until the date such authorization to sue is granted. Action shall be brought against the state as party defendant in the judicial district in which the claimant resides or, if the claimant is not a resident of this state, in the judicial district of Evergreen City or in the judicial district in which the claim arose.

(e) Civil process directed against the state shall be served as provided by § 52-64.

(f) Issues arising in such actions shall be tried to the court without a jury.

(g) The laws and rules of practice governing disclosures in civil actions shall apply against state agencies and state officers and employees possessing books, papers, records, documents or information pertinent to the issues involved in any such action.

(h) The Attorney General, with the consent of the court, may compromise or settle any such action. The terms of every such compromise or settlement shall be expressed in a judgment of the court.

(i) Costs may be allowed against the state as the court deems just, consistent with the provisions of chapter 901.

(j) The clerk of the court in which judgment is entered against the state shall forward a certified copy of such judgment to the Comptroller. The Attorney General shall certify to the Comptroller when the time allowed by law for proceeding subsequent to final judgment has expired and the Attorney General shall designate the state agency involved in the action. Upon receipt of such judgment and certification the Comptroller shall make payment as follows: Amounts directed by law to be paid from a special fund shall be paid from such special fund; amounts awarded upon contractual claims for goods or services furnished or for property leased shall be paid from the appropriation of the agency which received such goods or services or occupied such property; all other amounts shall be paid from such appropriation as the General Assembly may have made for the payment of claims.

(k) Not later than five days after the convening of each regular session, the Attorney General shall report to the joint standing committee of the General Assembly on the judiciary on the status and disposition of all actions authorized pursuant to this section or § 4-159, or brought against the state under any other provision of law and in which the interests of the state are represented by the Attorney General. The report shall include: (1) The number of such actions pending in state and federal court, categorized by the alleged ground for the action, (2) the number of new actions brought in the preceding year in state and federal court, categorized by the alleged ground for the action, (3) the number of actions disposed of in the preceding year, categorized by the ground for the action that was disposed of and whether the action was disposed of by settlement or litigation to final judgment, and the amount paid for actions within the respective categories, and (4) such other information as may be requested, from time to time, by the joint standing committee of the General Assembly on the judiciary. The report shall identify each action disposed of by payment of an amount exceeding one hundred thousand dollars.

TITLE 52. CIVIL ACTIONS CHAPTER 925. STATUTORY RIGHTS OF ACTION AND DEFENSES

§ 52-572i. Strict tort liability, contributory negligence and comparative negligence not bar to recovery

In causes of action based on strict tort liability, contributory negligence or comparative negligence shall not be a bar to recovery. The provisions of this section shall apply to all actions pending on or brought after June 7, 1977, claiming strict tort liability notwithstanding the date on which the cause of action accrued. Nothing in this section shall be construed as barring the defense of misuse of the product or the defense of knowingly using the product in a defective condition in an action based on strict tort liability.

§ 52-572h. Negligence actions. Doctrines applicable. Liability of multiple tortfeasors for damages

(a) For the purposes of this section: (1) "Economic damages" means compensation determined by the trier of fact for pecuniary losses including, but not limited to, the cost of reasonable and necessary medical care, rehabilitative services, custodial care and loss of earnings or earning capacity excluding any noneconomic damages; (2) "noneconomic damages" means compensation determined by the trier of fact for all nonpecuniary losses including, but not limited to, physical pain and suffering and mental and emotional suffering; (3) "recoverable economic damages" means the economic damages reduced by any applicable findings including but not limited to set-offs, credits, comparative negligence, additur and remittitur, and any reduction provided by § 52-225a; (4) "recoverable noneconomic damages"

means the noneconomic damages reduced by any applicable findings including but not limited to set-offs, credits, comparative negligence, additur and remittitur.

(b) In causes of action based on negligence, contributory negligence shall not bar recovery in an action by any person or the person's legal representative to recover damages resulting from personal injury, wrongful death or damage to property if the negligence was not greater than the combined negligence of the person or persons against whom recovery is sought including settled or released persons under subsection (n) of this section. The economic or noneconomic damages allowed shall be diminished in the proportion of the percentage of negligence attributable to the person recovering which percentage shall be determined pursuant to subsection (f) of this section.

(c) In a negligence action to recover damages resulting from personal injury, wrongful death or damage to property occurring on or after October 1, 1987, if the damages are determined to be proximately caused by the negligence of more than one party, each party against whom recovery is allowed shall be liable to the claimant only for such party's proportionate share of the recoverable economic damages and the recoverable noneconomic damages except as provided in subsection (g) of this section.

(d) The proportionate share of damages for which each party is liable is calculated by multiplying the recoverable economic damages and the recoverable noneconomic damages by a fraction in which the numerator is the party's percentage of negligence, which percentage shall be determined pursuant to subsection (f) of this section, and the denominator is the total of the percentages of negligence, which percentages shall be determined pursuant to subsection (f) of this section, to be attributable to all parties whose negligent actions were a proximate cause of the injury, death or damage to property including settled or released persons under subsection (n) of this section. Any percentage of negligence attributable to the claimant shall not be included in the denominator of the fraction.

(e) In any action to which this section is applicable, the instructions to the jury given by the court shall include an explanation of the effect on awards and liabilities of the percentage of negligence found by the jury to be attributable to each party.

(f) The jury or, if there is no jury, the court shall specify: (1) The amount of economic damages; (2) the amount of noneconomic damages; (3) any findings of fact necessary for the court to specify recoverable economic damages and recoverable noneconomic damages; (4) the percentage of negligence that proximately caused the injury, death or damage to property in relation to one hundred per cent, that is attributable to each party whose negligent actions were a proximate cause of the injury, death or damage to property including settled or released persons under subsection (n) of this section; and (5) the percentage of such negligence attributable to the claimant.

(g) (1) Upon motion by the claimant to open the judgment filed, after good faith efforts by the claimant to collect from a liable defendant, not later than one year after judgment becomes final through lapse of time or through exhaustion of appeal, whichever occurs later, the court shall determine whether all or part of a defendant's proportionate share of the recoverable economic damages and recoverable noneconomic damages is uncollectible from that party, and shall reallocate such uncollectible amount among the other defendants in accordance with the provisions of this subsection. (2) The court shall order that the portion of such uncollectible amount which represents recoverable noneconomic damages be reallocated among the other defendants according to their percentages of negligence, provided that the court shall not reallocate to any such defendant an amount greater than that defendant's percentage of negligence multiplied by such uncollectible amount. (3) The court shall order that the portion of such uncollectible amount which represents recoverable economic damages be reallocated among the other defendants. The court shall reallocate to any such other defendant an amount equal to such uncollectible amount of recoverable economic damages multiplied by a fraction in which the numerator is such defendant's percentage of negligence and the denominator is the total of the percentages of negligence of all defendants, excluding any defendant whose liability is being reallocated. (4) The defendant whose liability is

reallocated is nonetheless subject to contribution pursuant to subsection (h) of this section and to any continuing liability to the claimant on the judgment.

(h) (1) A right of contribution exists in parties who, pursuant to subsection (g) of this section are required to pay more than their proportionate share of such judgment. The total recovery by a party seeking contribution shall be limited to the amount paid by such party in excess of such party's proportionate share of such judgment.

(2) An action for contribution shall be brought within two years after the party seeking contribution has made the final payment in excess of such party's proportionate share of the claim.

(i) This section shall not limit or impair any right of subrogation arising from any other relationship.

(j) This section shall not impair any right to indemnity under existing law. Where one tortfeasor is entitled to indemnity from another, the right of the indemnitee is for indemnity and not contribution, and the indemnitor is not entitled to contribution from the indemnitee for any portion of such indemnity obligation.

(k) This section shall not apply to breaches of trust or of other fiduciary obligation.

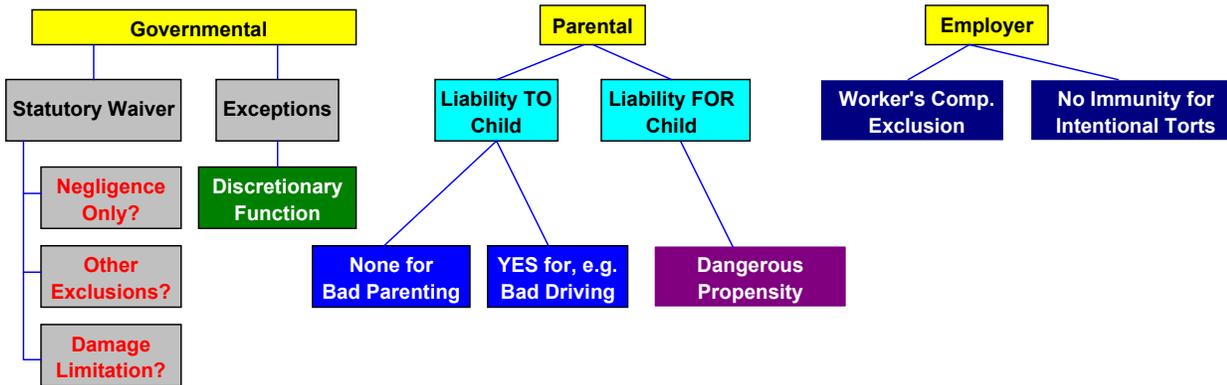
(l) The legal doctrines of last clear chance and assumption of risk in actions to which this section is applicable are abolished.

(m) The family car doctrine shall not be applied to impute contributory or comparative negligence pursuant to this section to the owner of any motor vehicle or motor boat.

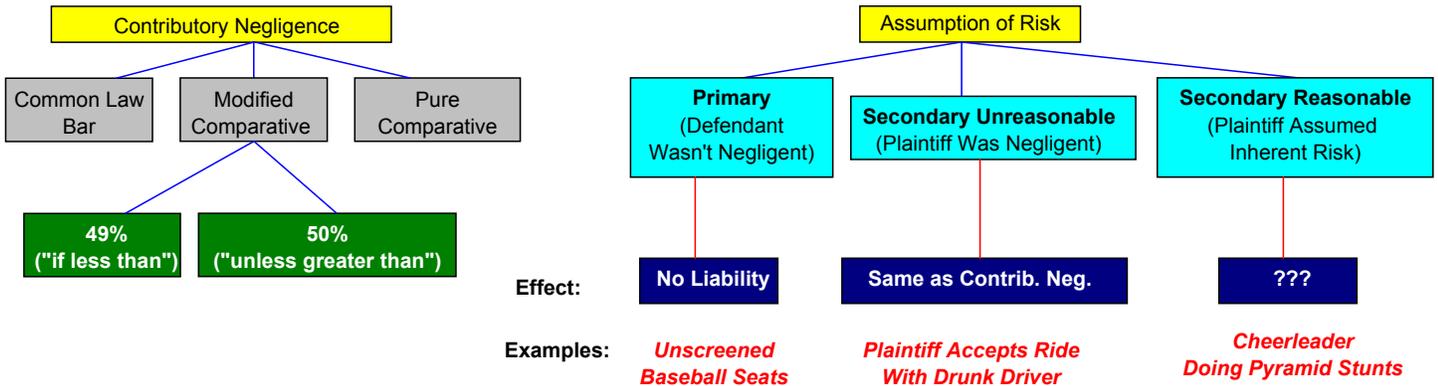
(n) A release, settlement or similar agreement entered into by a claimant and a person discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. However, the total award of damages is reduced by the amount of the released person's percentage of negligence determined in accordance with subsection (f) of this section.

(o) Except as provided in subsection (b) of this section, there shall be no apportionment of liability or damages between parties liable for negligence and parties liable on any basis other than negligence including, but not limited to, intentional, wanton or reckless misconduct, strict liability or liability pursuant to any cause of action created by statute, except that liability may be apportioned among parties liable for negligence in any cause of action created by statute based on negligence including, but not limited to, an action for wrongful death or an action for injuries caused by a motor vehicle owned by the state.

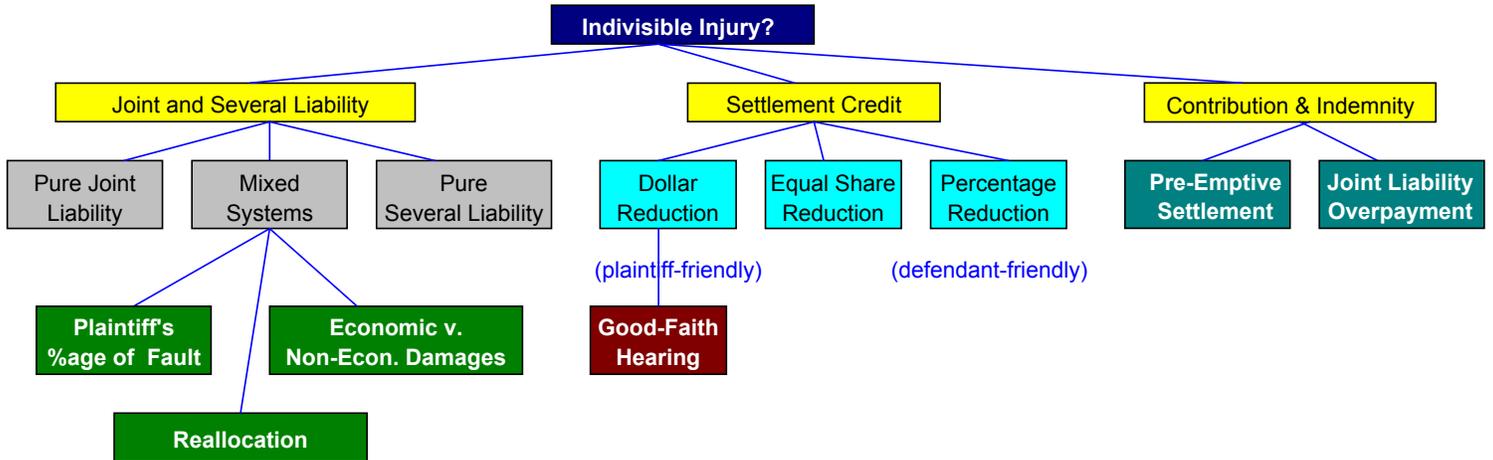
**Chapter 4
Immunity**



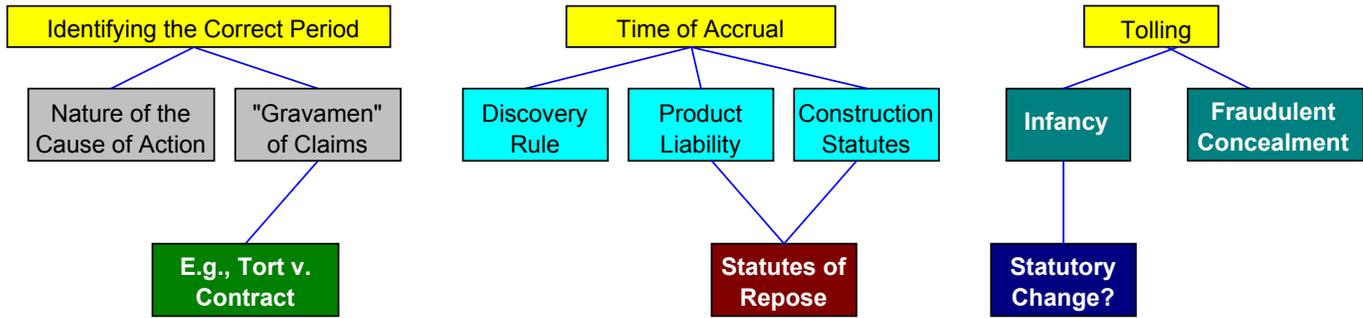
**Chapter 5
Contributory Fault**



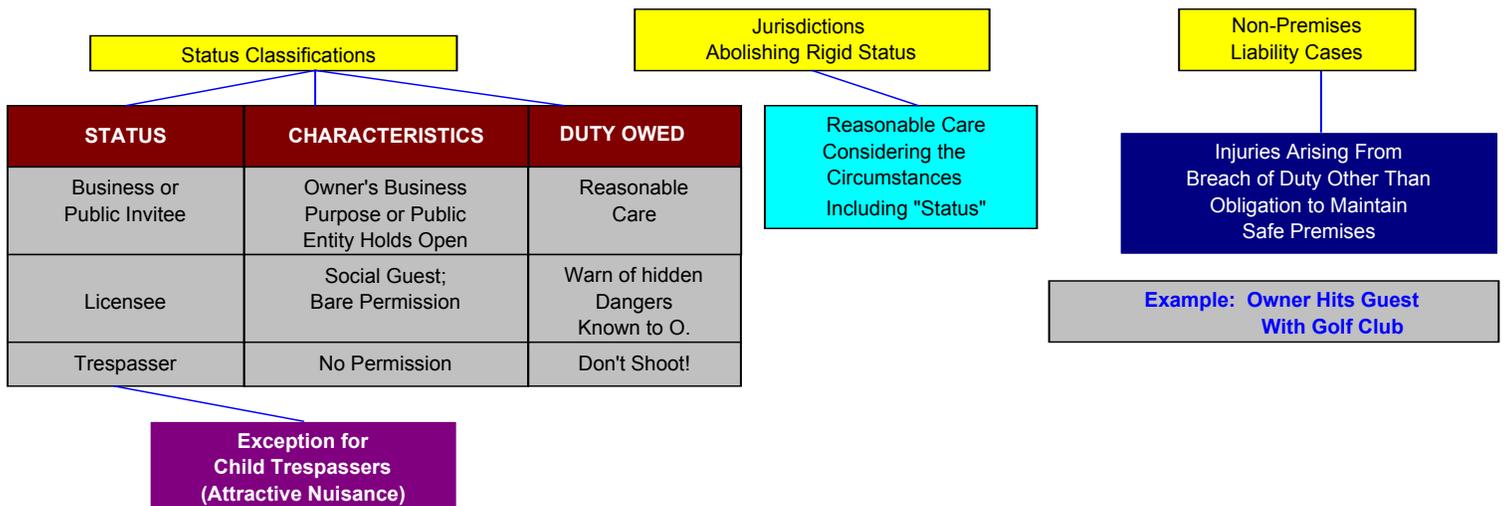
**Chapter 6
Multiple Tortfeasors**



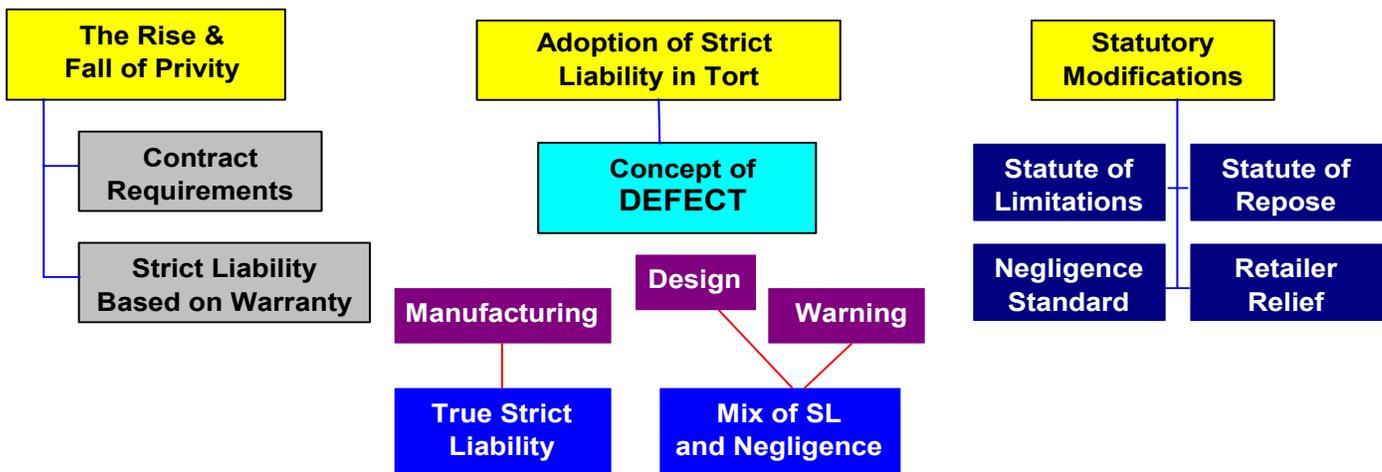
Chapter 7
Statutes of Limitation



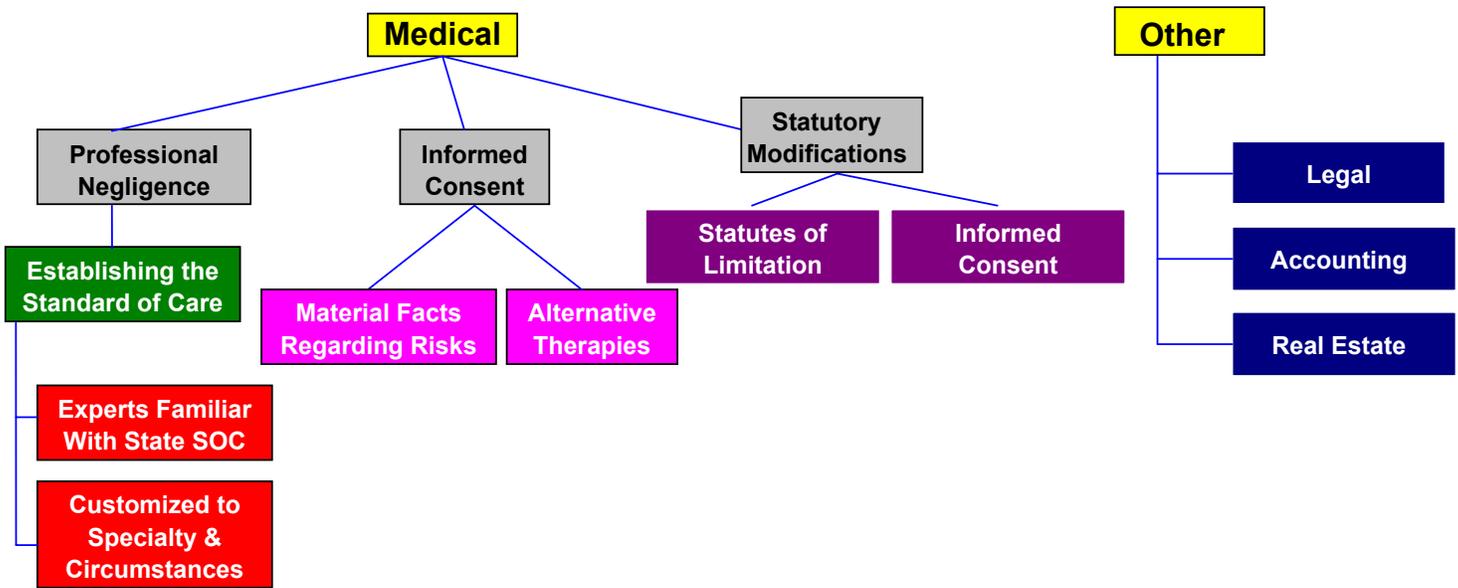
Chapter 8
Premises Liability



Chapter 9
Product Liability

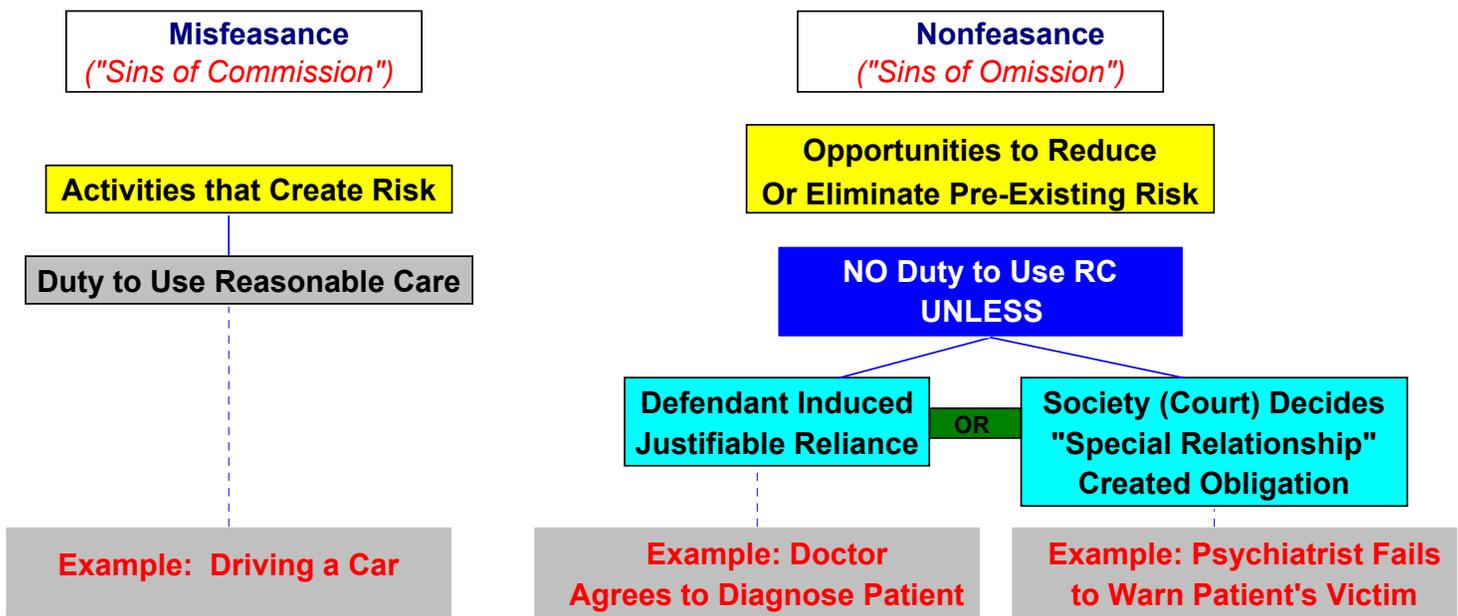


**Chapter 10
Professional Malpractice**



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

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



Chapter 12
Intentional Torts:
The Prima Facie Case

Battery & Assault

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

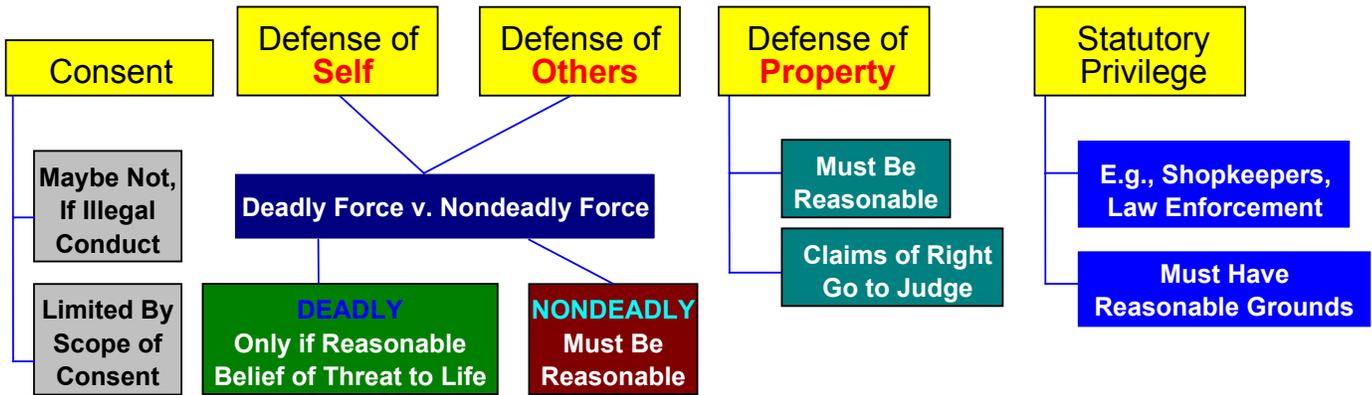
False Imprisonment

- Intent to Confine
- Fixed Boundaries
- Awareness OR Damage

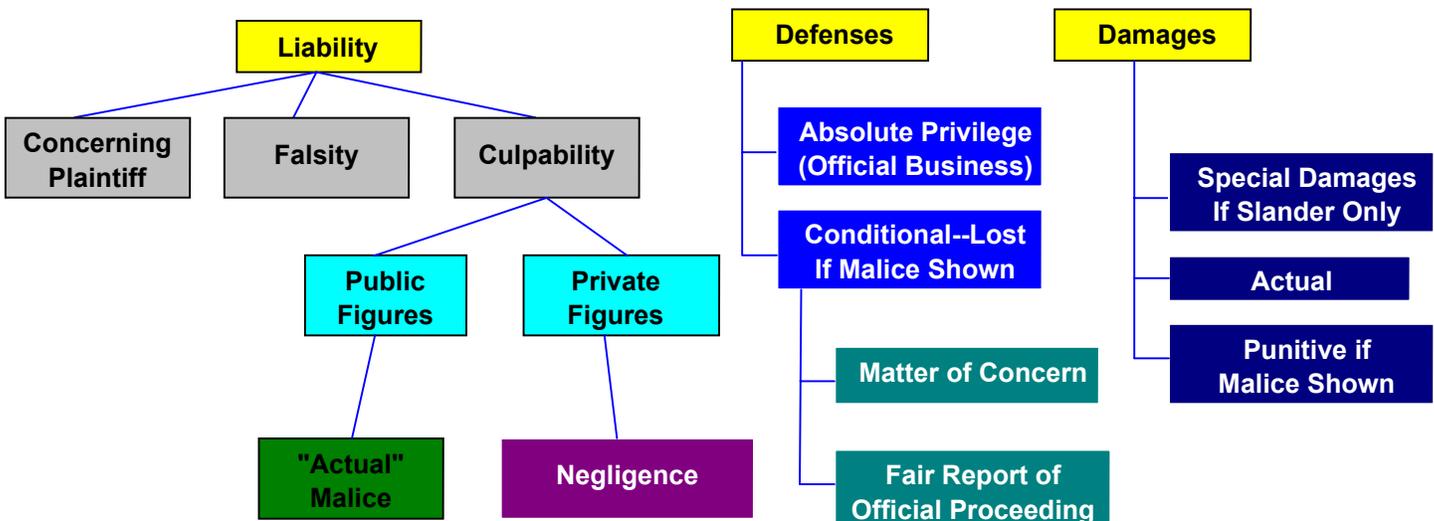
Tort of Outrage

- Intent or Recklessness
- Outrageous Conduct
- Severe Emotional Distress

Chapter 13
Defenses to Intentional Torts



Chapter 14
Defamation



MULTIPLE CHOICE ANSWER SHEET

EXAM # _____

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____