

FINAL EXAM

Instructions

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

THIS IS A CLOSED BOOK EXAM! Follow all of the directions of the proctor.

IMPORTANT: This exam will last THREE HOURS. You should 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.

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* (20 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. Circle the correct answer on the exam.

(2) **ESSAYS:** You will have two essay questions. The division is as follows:

Question 1: 55 points

Question 2: 60 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.

DO NOT cross-refer from one essay answer to the other; make sure that each essay answer stands on its own.

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.

REMEMBER THE HONOR CODE! Don't identify yourself.

GOOD LUCK!!!

MULTIPLE CHOICE

Use the following fact pattern as the basis for the multiple choice questions.

Sam and Mike had been friends since high school. They had always been competitive with one another, and when they went away to different colleges they returned to their hometown with accounts of their accomplishments that were designed to impress one another, as well as other people. In fact, although neither had been particularly close to Susan, a year behind them in high school, they both began corresponding with her when they went away to college. When both of them returned to Smalltown, Linden, during Christmas break of their first year in college, they were all at the same coffee shop. Initially Sam began to tease Mike, and Mike began to tease Sam, and pretty soon things escalated to the point where Sam and Mike were shouting at each other. "You're just jealous because you couldn't get into State U.," Sam shouted at Mike. "Wrong, pal," responded Mike. "Only losers go to colleges with lousy basketball teams." "Well," responded Sam, "at least I didn't have to cheat on my chemistry exam in order to get into college." "Oh, sure," responded Mike, "and I suppose you would have made the football team even without steroids."

Sam responded by throwing what was left of his coffee at Mike. Mike ducked and the coffee splashed on Susan. Fortunately, it wasn't hot, and after it dried it wasn't visible on Susan's clothing.

Joe, the owner of the coffee shop, said "Okay, that's enough," and dragged both Mike and Sam out of the coffee shop by their collars.

1. Could Susan recover damages from Sam for battery?
 - (A) No, because Sam didn't intend to cause her any harm;
 - (B) No, because she didn't suffer any actual damages;
 - (C) Yes, but only if Sam was at least aware of the risk that he might cause harm to Susan
 - (D) Yes.

2. Could Joe be liable for damages resulting from false imprisonment?
 - (A) Yes, if he intended to confine Sam and Mike and they suffered damage.
 - (B) Yes, provided that the physical restraint resulted in physical harm.
 - (C) No, because he enjoys a shopkeeper's privilege;
 - (D) No, because he didn't act under the color of law.

3. Could Mike recover damages from Sam for defamation?
 - (A) No, because Mike is not a public figure
 - (B) No, because Sam is not a public figure
 - (C) Yes, but only if Mike didn't cheat on his chemistry exam
 - (D) Yes, but only if Sam displayed actual malice.

4. Could Sam recover damages for public disclosure of private facts?
 - (A) No, because steroid use is a matter of legitimate public concern
 - (B) No, if Sam actually used steroids
 - (C) Yes, if Sam obtained the information in an illegitimate way
 - (D) Yes, but only if Mike displayed actual malice.

ESSAY QUESTIONS

QUESTION 1 (55 points)

Malynda Devila became pregnant with Laramie Taylor (Laramie) in 2007, and consulted Dr. Paul Mackel (Dr. Mackel) for pre-natal care. She was admitted to St. Vincent Hospital on February 27, 2008, after her labor had begun. Dr. Mackel administered the drug Pitocin intravenously to her upon admittance, in order to prevent any hemorrhaging after the delivery. Pitocin is a synthetic drug, manufactured by Parke, Davis, which interacts with the uterine muscles to produce contractions of those muscles. Pitocin is most commonly used to induce or reinforce labor. Dr. Mackel used Pitocin as a standby measure, and not to produce a therapeutic effect. About one and a half hours after the administration of Pitocin, Dr. Mackel examined Malynda and found that Laramie's head was turned sideways, and might be too wide to pass through the pelvis. He felt that forceps could rotate the head but, because he did not use them, he called Dr. Bodelson, an obstetric specialist, for assistance.

Dr. Bodelson examined Malynda and determined there was room in the birth canal to allow the use of forceps. He felt no tetanic contractions, wherein the muscles are perpetually contracting. He initially determined that there was not an "absolute cephalopelvic disproportion" (CPD), which is a condition where the head is too large to fit through the pelvis. He proceeded to use forceps to rotate the head, but found that the baby could not be delivered with forceps. He then decided to do a Cesarean-section (C-section) delivery, which was performed. The decision to do a C-section was made three to five minutes after he had first tried to use the forceps, and about ten minutes after he had entered the delivery room. He stopped the Pitocin in order to replace it with a glucose-saline solution necessary for the C-section surgery. There were no surgical complications during the C-section. The Pitocin had run for about thirty to forty-five minutes.

At birth, however, Laramie showed signs of severe respiratory distress, which was not stabilized until about ten minutes after the birth. Approximately twenty-four hours after delivery, Laramie developed a seizure disorder, which continued intermittently for almost two years. In addition to the seizure disorder, Laramie developed cerebral palsy, manifesting motor and mental retardation.

Your law firm represents Laramie and her parents. In the course of your investigation you have learned the following:

- (1) Dr. Nygel, an obstetrician, has looked at the file. His conclusion is that Pitocin caused severe contractions of the uterus which pinched off the blood supply to Laramie, resulting in a condition known as hypoxia, or a deprivation of oxygen in the brain. Dr. Nygel believes that Parke, Davis failed to adequately warn of the danger of Pitocin, and failed to instruct on the proper administration of the drug, all of which proximately caused Laramie's brain damage. Dr. Nygel does not claim that Pitocin itself was unsafe or defective when accompanied by proper warnings and instructions.
- (2) Dr. Nygel also believes that Dr. Bodelson was negligent in attempting a forceps delivery because he should have known from available information that a CPD existed, rendering a forceps delivery unworkable. Dr. Bodelson's delay in performing the C-section, he believes, caused Laramie to undergo an even longer period of oxygen deprivation brought about by the Pitocin. Dr. Nygel believes that this delay contributed to Laramie's brain damage.
- (3) Dr. Bodelson has stated that Dr. Mackel informed him that Laramie was in no distress when he (Bodelson) arrived. Moreover, Dr. Bodelson maintained that it was

safe to make an attempt with the forceps when he did, and that a forceps delivery was quicker, easier and safer than a C-section procedure.

Assume that, if liability were established, a jury would assess the damages to Malynda and Laramie at \$5 million. Please provide your assessment of the prospects for a recovery.

QUESTION 2 (60 points)

Moose Valley Hospital (MVH), a psychiatric hospital in Washington County, employs mental health technicians for a variety of patient-care functions, such as restraining patients, taking patients on walks, and providing staff coverage at night. MVH hired Joseph “Tinie” Herrera (Herrera) as a mental health technician on January 20, 2006. Mariah Davis, a young woman undergoing psychiatric therapy, was admitted to MVH as a patient on February 26 of that same year, and Herrera was assigned to work with her. Davis asserts that Herrera initially managed to ingratiate himself into her confidence, and then, over a period of about two weeks, Herrera subjected Davis to escalating incidents of sexual harassment, sexual assault, and other physical abuse committed under the guise of psychiatric therapy.

Herrera had Davis's sleeping quarters moved from her assigned room to a semi-isolation room where access was easier for him. Herrera also directed Davis to go to an isolation room that shielded Herrera from detection and allowed Herrera, through a small window, to monitor other employees. While Herrera had Davis isolated and under his control, Davis alleges that he sexually assaulted her and committed repeated acts of sexual harassment and battery upon her.

Prior to working at MVH, Herrera was employed for some time as a detention sergeant and classification officer at the Linden State Detention Center (LSDC). Davis believes that MVH's decision to hire Herrera was based in part on unqualified, favorable recommendations from Herrera's supervisors at the Detention Center, Frank Steele and Al Mochen. Steele was the director and Mochen was the captain and assistant director of the Detention Center, both of whom had supervisory authority over Herrera.

Of particular importance is a report authored by Steele after Herrera was investigated for allegedly sexually harassing female inmates under his authority at the Detention Center. The Detention Center first became aware of sexual complaints against Herrera in 2004, when a female inmate alleged that Herrera had sexually harassed her. Steele gave Herrera a written reprimand based on the 2004 allegation which also indicated that an additional complaint of this nature may result in Herrera's termination. Thereafter, on February 4, 2005, another female inmate filed a sexual harassment grievance against Herrera for incidents that had occurred between 2001 and 2003. She alleged that Herrera had helped her in exchange for demanding and receiving sexual favors. Although Herrera denied the allegations, he was placed on administrative leave on February 8, 2005. Steele then had the Department conduct an investigation of Herrera, and on April 5, 2005, Steele authored a report of the results of that investigation.

According to Steele's report, Herrera was accused of inappropriate sexual behavior with female inmates that took various forms. The accusations included making statements with sexual overtones, and stating his desire for sex. Reportedly, Herrera received sexual favors from inmates in return for helping them. On more than one occasion, he was observed taking female inmates to his office and closing the door, allegedly for the purpose of conducting interviews. Steele's report also made specific reference to a pornographic video and condoms which were found in Herrera's desk, and he was observed with underwear belonging to a juvenile.

While not all the allegations against Herrera could be confirmed, the report concluded that Herrera's conduct and performance of duty had been “questionable” and “suspect.” Accordingly,

Steele recommended disciplinary action against Herrera seeking to have him suspended without pay as well as demoted and reassigned. On April 5, 2005, Steele informed Herrera that he intended to seek disciplinary action at a hearing scheduled for April 12, 2005.

On April 8, 2005, Herrera resigned rather than proceed with the scheduled hearing. Upon his resignation, Herrera asked Steele for a letter of recommendation for prospective employment. On April 11, 2005, only six days after recommending discipline, Steele wrote a positive endorsement of Herrera that omitted any reference to either the reprimand, the subsequent allegations of sexual harassment, the results of the investigation, or the recommended discipline. The letter was written on county letterhead, which Steele signed as the Detention Center administrator, and stated:

To Whom It May Concern:

This letter will introduce to you, Joseph V. Herrera. I have had the distinct pleasure of working with Tinie Herrera for the past two years. In my opinion he is an excellent employee and supervisor for the Dona Ana County Detention Center. In developing social programs for the inmate population, he displayed considerable initiative and imagination. Tinie was instrumental in the Department's maintenance program and was involved in remodeling projects.

I know that this Department will suffer for his leaving. Employees of his caliber are difficult to find. I am confident that you would find Tinie to be an excellent employee. Should you need verbal confirmation of his ability, I would deem it a pleasure to respond to any inquiries that you may have.

Sincerely,

/s/ Frank A. Steele
Detention Administrator, LSDC

On December 5, 2005, Herrera applied for employment with MVH and included Steele's letter of recommendation. According to Plaintiff, MVH called the Detention Center seeking further information about Herrera, and Mochen told MVH that Herrera was a good person and a hard worker whom he would definitely rehire. Mochen was aware of Herrera's past when he allegedly gave this verbal recommendation. Mochen denies talking to MVH.

Davis has now sued the State of Linden for negligently providing inaccurate information about Herrera, and that this misinformation proximately caused Herrera to be hired at MVH and Davis to be assaulted. You work in the office of the Attorney General for the State of Linden. Assume for purposes of analysis that Davis suffered damages that would be assessed at \$1 million. Please provide an analysis of the State's potential tort exposure.

SELECTED STATUTES OF THE STATE OF LINDEN
LINDEN STATUTES ANNOTATED
Chapter 41. Torts
Article 3. Contribution Among Tortfeasors

§ 41-3-1. Joint tortfeasors defined

For the purposes of this act the term "joint tortfeasors" means two or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them.

§ 41-3-2. Right of contribution; accrual; pro rata share

A. The right of contribution exists among joint tortfeasors.

B. A joint tortfeasor is not entitled to a money judgment for contribution until he has by payment discharged the common liability or has paid more than his pro rata share thereof.

C. A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.

D. A pro rata share shall be the portion of the total dollar amount awarded as damages to the plaintiff that is equal to the ratio of each joint tortfeasor's percentage of fault to the total percentage of fault attributed to all joint tortfeasors.

§ 41-3-3. Judgment against one tortfeasor

The recovery of a judgment by the injured person against one joint tortfeasor does not discharge the other joint tortfeasors.

§ 41-3-4. Release; effect on injured person's claim

A release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides; but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid.

§ 41-3-5. Release; effect on right of contribution

A release by the injured person of one joint tortfeasor does not relieve him from liability to make contribution to another joint tortfeasor unless the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person's damages recoverable against all the other tortfeasors.

§ 41-3-6. Indemnity

This act does not impair any right of indemnity under existing law.

Article 3A. Several Liability

§ 41-3A-1. Several liability

A. In any cause of action to which the doctrine of comparative fault applies, the doctrine imposing joint and several liability upon two or more wrongdoers whose conduct proximately caused an injury to any plaintiff is abolished except as otherwise provided hereafter. The liability of any such defendants shall be several.

B. In causes of action to which several liability applies, any defendant who establishes that the fault of another is a proximate cause of a plaintiff's injury shall be liable only for that portion of the total dollar amount awarded as damages to the plaintiff that is equal to the ratio of such defendant's fault to the total fault attributed to all persons, including plaintiffs, defendants and persons not party to the action.

C. The doctrine imposing joint and several liability shall apply:

- (1) to any person or persons who acted with the intention of inflicting injury or damage;
- (2) to any persons whose relationship to each other would make one person vicariously liable for the acts of the other, but only to that portion of the total liability attributed to those persons;
- (3) to any persons strictly liable for the manufacture and sale of a defective product, but only to that portion of the total liability attributed to those persons; or
- (4) to situations not covered by any of the foregoing and having a sound basis in public policy.

D. Where a plaintiff sustains damage as the result of fault of more than one person which can be causally apportioned on the basis that distinct harms were caused to the plaintiff, the fault of each of the persons proximately causing one harm shall not be compared to the fault of persons proximately causing other distinct harms. Each person is severally liable only for the distinct harm which that person proximately caused.

E. No defendant who is severally liable shall be entitled to contribution from any other person, nor shall such defendant be entitled to reduce the dollar damages determined by the factfinder to be owed by the defendant to the plaintiff in accordance with Subsection B of this section by any amount that the plaintiff has recovered from any other person whose fault may have also proximately caused injury to the plaintiff.

F. Nothing in this section shall be construed to affect or impair any right of indemnity or contribution arising out of any contract of agreement or any right of indemnity otherwise provided by law.

G. Nothing in this section creates or recognizes, either explicitly or impliedly, any new or different cause of action not otherwise recognized by law. Nothing in this section alters the doctrine of proximate cause.

§ 41-3A-2. Definition

As used in this act, "person" means any individual or entity of any kind whatsoever.

Article 3B. Comparative Negligence

§41-3B-1 Effect of Contributory Negligence

Contributory negligence on the part of the plaintiff or claimant shall not bar recovery but shall reduce the right of recovery by the percentage of fault assigned to the claimant or plaintiff.

Article 4. Tort Claims

§ 41-4-1. Short title

Sections 41-4-1 through 41-4-27 LSA 1978 may be cited as the "Tort Claims Act".

§ 41-4-2. Legislative declaration

A. The legislature recognizes the inherently unfair and inequitable results which occur in the strict application of the doctrine of sovereign immunity. On the other hand, the legislature recognizes that while a private party may readily be held liable for his torts within the chosen ambit of his activity, the area within which the government has the power to act for the public good is almost without limit, and therefore government should not have the duty to do everything that might be done. Consequently, it is declared to be the public policy of Linden that governmental entities and public employees shall only be liable within the limitations of the Tort Claims Act and in accordance with the principles established in that act.

B. The Tort Claims Act shall be read as abolishing all judicially-created categories such as "governmental" or "proprietary" functions and "discretionary" or "ministerial" acts previously used to determine immunity or liability. Liability for acts or omissions under the Tort Claims Act shall be based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty. The Tort Claims Act in no way imposes a strict liability for injuries upon governmental entities or public employees. Determination of the standard of care required in any particular instance should be made with the knowledge that each governmental entity has financial limitations within which it must exercise authorized power and discretion in determining the extent and nature of its activities.

§ 41-4-3. Definitions

As used in the Tort Claims Act:

A. "board" means the risk management advisory board;

B. "governmental entity" means the state or any local public body as defined in Subsections C and H of this section;

C. "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions and all water and natural gas associations organized pursuant to Chapter 3, Article 28 LSA 1978;

D. "law enforcement officer" means a full-time salaried public employee of a governmental entity whose principal duties under law are to hold in custody any person accused of a criminal offense, to maintain public order or to make arrests for crimes, or members of the national guard when called to active duty by the governor;

E. "maintenance" does not include:

(1) conduct involved in the issuance of a permit, driver's license or other official authorization to use the roads or highways of the state in a particular manner; or

(2) an activity or event relating to a public building or public housing project that was not foreseeable;

F. "public employee" means an officer, employee or servant of a governmental entity, excluding independent contractors except for individuals defined in Paragraphs (7), (8), (10) and (14) of this subsection, or of a corporation organized pursuant to the Educational Assistance Act, the Small Business Investment Act or the Mortgage Finance Authority Act or a licensed health care

provider, who has no medical liability insurance, providing voluntary services as defined in Paragraph (16) of this subsection and including:

- (1) elected or appointed officials;
- (2) law enforcement officers;
- (3) persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation;
- (4) licensed foster parents providing care for children in the custody of the human services department, corrections department or department of health, but not including foster parents certified by a licensed child placement agency;
- (5) members of state or local selection panels established pursuant to the Adult Community Corrections Act;
- (6) members of state or local selection panels established pursuant to the Juvenile Community Corrections Act;
- (7) licensed medical, psychological or dental arts practitioners providing services to the corrections department pursuant to contract;
- (8) members of the board of directors of the Linden medical insurance pool;
- (9) individuals who are members of medical review boards, committees or panels established by the educational retirement board or the retirement board of the public employees retirement association;
- (10) licensed medical, psychological or dental arts practitioners providing services to the children, youth and families department pursuant to contract;
- (11) members of the board of directors of the Linden educational assistance foundation;
- (12) members of the board of directors of the Linden student loan guarantee corporation;
- (13) members of the Linden mortgage finance authority;
- (14) volunteers, employees and board members of court-appointed special advocate programs;
- (15) members of the board of directors of the small business investment corporation; and
- (16) health care providers licensed in Linden who render voluntary health care services without compensation in accordance with rules promulgated by the secretary of health. The rules shall include requirements for the types of locations at which the services are rendered, the allowed scope of practice and measures to ensure quality of care.

G. "scope of duty" means performing any duties that a public employee is requested, required or authorized to perform by the governmental entity, regardless of the time and place of performance; and

H. "state" or "state agency" means the state of Linden or any of its branches, agencies, departments, boards, instrumentalities or institutions.

§ 41-4-4. Granting immunity from tort liability; authorizing exceptions

A. A governmental entity and any public employee while acting within the scope of duty are granted immunity from liability for any tort except as waived by the Linden Religious Freedom Restoration Act and by Sections 41-4-5 through 41-4-12 LSA 1978. Waiver of this immunity shall be limited to and governed by the provisions of Sections 41-4-13 through 41-4-25 LSA 1978, but the waiver of immunity provided in those sections does not waive immunity granted pursuant to the Governmental Immunity Act.

B. Unless an insurance carrier provides a defense, a governmental entity shall provide a defense, including costs and attorney fees, for any public employee when liability is sought for:

- (1) any tort alleged to have been committed by the public employee while acting within the scope of his duty; or
- (2) any violation of property rights or any rights, privileges or immunities secured by the constitution and laws of the United States or the constitution and laws of Linden when alleged to have been committed by the public employee while acting within the scope of his duty.

C. A governmental entity shall pay any award for punitive or exemplary damages awarded against a public employee under the substantive law of a jurisdiction other than Linden, including other states, territories and possessions and the United States of America, if the public employee was acting within the scope of his duty.

D. A governmental entity shall pay any settlement or any final judgment entered against a public employee for:

- (1) any tort that was committed by the public employee while acting within the scope of his duty; or
- (2) a violation of property rights or any rights, privileges or immunities secured by the constitution and laws of the United States or the constitution and laws of Linden that occurred while the public employee was acting within the scope of his duty.

E. A governmental entity shall have the right to recover from a public employee the amount expended by the public entity to provide a defense and pay a settlement agreed to by the public employee or to pay a final judgment if it is shown that, while acting within the scope of his duty, the public employee acted fraudulently or with actual intentional malice causing the bodily injury, wrongful death or property damage resulting in the settlement or final judgment.

F. Nothing in Subsections B, C and D of this section shall be construed as a waiver of the immunity from liability granted by Subsection A of this section or as a waiver of the state's immunity from suit in federal court under the eleventh amendment to the United States constitution.

G. The duty to defend as provided in Subsection B of this section shall continue after employment with the governmental entity has been terminated if the occurrence for which damages are sought happened while the public employee was acting within the scope of duty while the public employee was in the employ of the governmental entity.

H. The duty to pay any settlement or any final judgment entered against a public employee as provided in this section shall continue after employment with the governmental entity has terminated if the occurrence for which liability has been imposed happened while the public employee was acting within the scope of his duty while in the employ of the governmental entity.

I. A jointly operated public school, community center or athletic facility that is used or maintained pursuant to a joint powers agreement shall be deemed to be used or maintained by a single governmental entity for the purposes of and subject to the maximum liability provisions of Section 41-4-19 LSA 1978.

J. For purposes of this section, a "jointly operated public school, community center or athletic facility" includes a school, school yard, school ground, school building, gymnasium, athletic field, building, community center or sports complex that is owned or leased by a governmental entity and operated or used jointly or in conjunction with another governmental entity for operations, events or programs that include sports or athletic events or activities, child-care or youth programs, after-school or before-school activities or summer or vacation programs at the facility.

K. A fire station that is used for community activities pursuant to a joint powers agreement between the fire department or volunteer fire department and another governmental entity shall be deemed to be operated or maintained by a single governmental entity for the purposes of and

subject to the maximum liability provisions of Section 41-4-19 LSA 1978. As used in this subsection, "community activities" means operations, events or programs that include sports or athletic events or activities, child care or youth programs, after-school or before-school activities, summer or vacation programs, health or education programs and activities or community events.

§ 41-4-5. Liability; operation or maintenance of motor vehicles, aircraft and watercraft

The immunity granted pursuant to Subsection A of Section 41-4-4 LSA 1978 does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any motor vehicle, aircraft or watercraft.

§ 41-4-6. Liability; buildings, public parks, machinery, equipment and furnishings

A. The immunity granted pursuant to Subsection A of Section 41-4-4 LSA 1978 does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any building, public park, machinery, equipment or furnishings.

B. Nothing in this section shall be construed as granting waiver of immunity for any damages arising out of the operation or maintenance of works used for diversion or storage of water.

C. All irrigation and conservancy districts and their public employees acting lawfully and within the scope of their duties that authorize any part of their property to be used as part of trails within a state park, the state trails system or a trail established and managed by a local public body are excluded from the waiver of immunity under Subsection A of this section for damages arising out of the operation or maintenance of such trails if the irrigation or conservancy district has entered into a written agreement with the state agency or local public body operating or maintaining the trail and that state agency or local public body has agreed to assume the operation and maintenance of that portion of the district's property used for the trail; the state agency or local public body operating or maintaining the trail shall be subject to liability as provided in the Tort Claims Act.

§ 41-4-7. Liability; airports

A. The immunity granted pursuant to Subsection A of Section 4 of the Tort Claims Act does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of airports.

B. The liability imposed pursuant to Subsection A of this section shall not include liability for damages due to the existence of any condition arising out of compliance with any federal or state law or regulation governing the use and operation of airports.

§ 41-4-8. Liability; public utilities

A. The immunity granted pursuant to Subsection A of Section 4 of the Tort Claims Act does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of the following public utilities and services: gas; electricity; water; solid or liquid waste collection or disposal; heating; and ground transportation.

B. The liability imposed pursuant to Subsection A of this section shall not include liability for damages resulting from bodily injury, wrongful death or property damage:

- (1) caused by a failure to provide an adequate supply of gas, water, electricity or services as described in Subsection A of this section; or
- (2) arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water.

§ 41-4-9. Liability; medical facilities

The immunity granted pursuant to Subsection A of Section 41-4-4 LSA 1978 does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of any hospital, infirmary, mental institution, clinic, dispensary, medical care home or like facilities.

§ 41-4-10. Liability; health care providers

The immunity granted pursuant to Subsection A of Section 41-4-4 LSA 1978 does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees licensed by the state or permitted by law to provide health care services while acting within the scope of their duties of providing health care services.

§ 41-4-11. Liability; highways and streets

A. The immunity granted pursuant to Subsection A of Section 41-4-4 LSA 1978 does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties during the construction, and in subsequent maintenance of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area.

B. The liability for which immunity has been waived pursuant to Subsection A of this section shall not include liability for damages caused by:

- (1) a defect in plan or design of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area;
- (2) the failure to construct or reconstruct any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area; or
- (3) a deviation from standard geometric design practices for any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area allowed on a case-by-case basis for appropriate cultural, ecological, economic, environmental, right-of-way through Indian lands, historical or technical reasons, provided the deviation:
 - (a) is required by extraordinary circumstances;
 - (b) has been approved by the governing authority; and
 - (c) is reasonable and necessary as determined by the application of sound engineering principles taking into consideration the appropriate cultural, ecological, economic, environmental, right-of-way through Indian lands, historical or technical circumstances.

§ 41-4-19. Maximum liability

A. Unless limited by Subsection B of this section, in any action for damages against a governmental entity or a public employee while acting within the scope of the employee's duties as provided in the Tort Claims Act, the liability shall not exceed:

(1) the sum of two hundred thousand dollars (\$200,000) for each legally described real property for damage to or destruction of that legally described real property arising out of a single occurrence;

(2) the sum of three hundred thousand dollars (\$300,000) for all past and future medical and medically related expenses arising out of a single occurrence; and

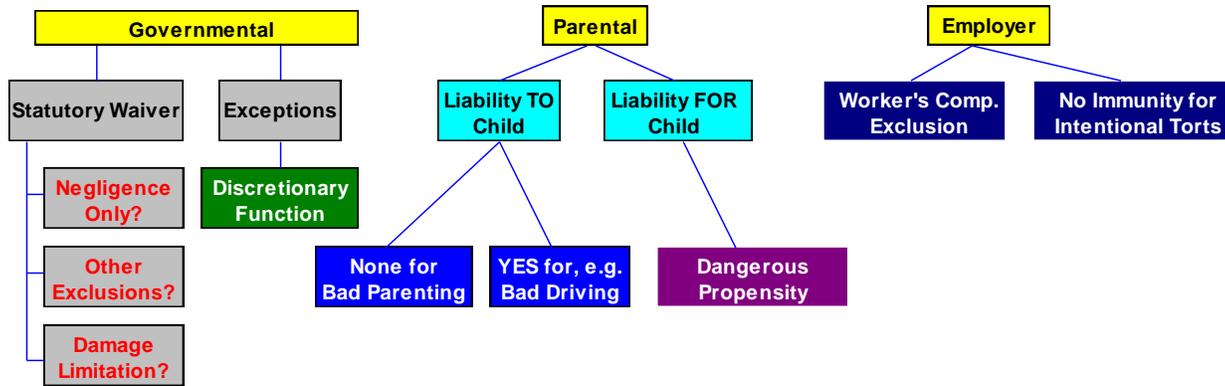
(3) the sum of four hundred thousand dollars (\$400,000) to any person for any number of claims arising out of a single occurrence for all damages other than real property damage and medical and medically related expenses as permitted under the Tort Claims Act.

B. The total liability for all claims pursuant to Paragraphs (1) and (3) of Subsection A of this section that arise out of a single occurrence shall not exceed seven hundred fifty thousand dollars (\$750,000).

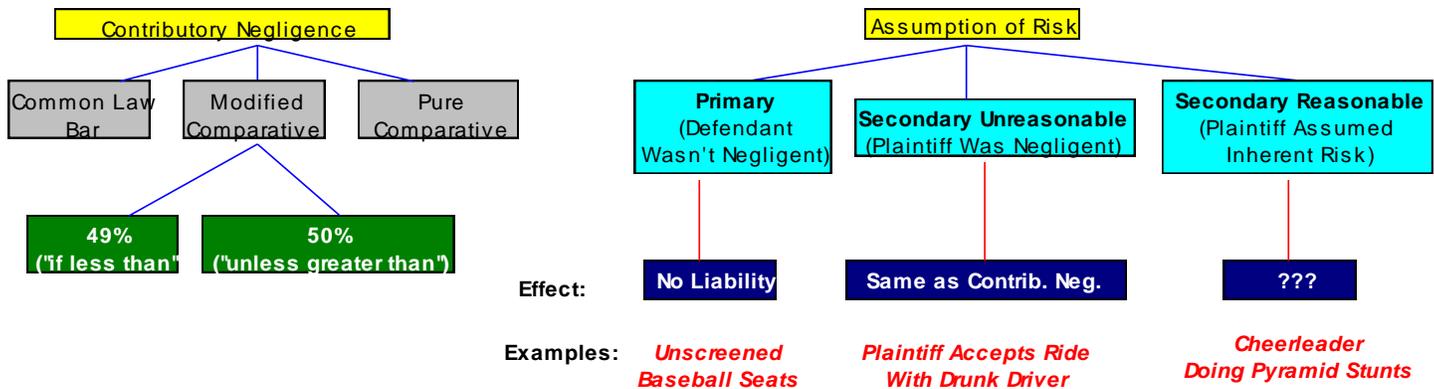
C. Interest shall be allowed on judgments against a governmental entity or public employee for a tort for which immunity has been waived under the Tort Claims Act at a rate equal to two percentage points above the prime rate as published in the Wall Street Journal on the date of the entry of the judgment. Interest shall be computed daily from the date of the entry of the judgment until the date of payment.

D. No judgment against a governmental entity or public employee for any tort for which immunity has been waived under the Tort Claims Act shall include an award for exemplary or punitive damages or for interest prior to judgment.

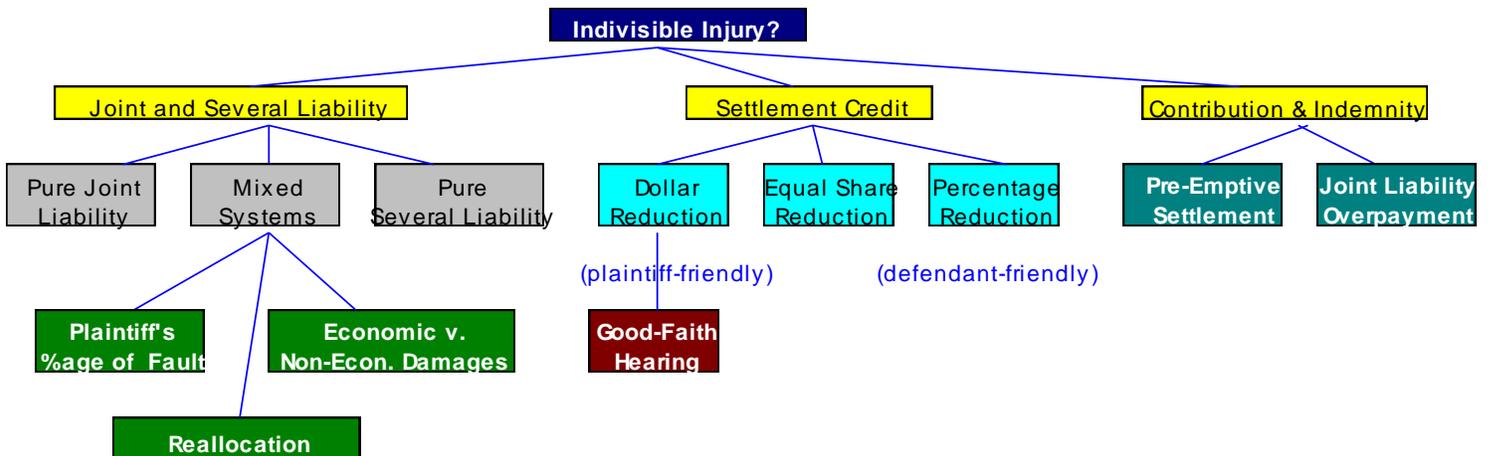
**Chapter 4
Immunity**



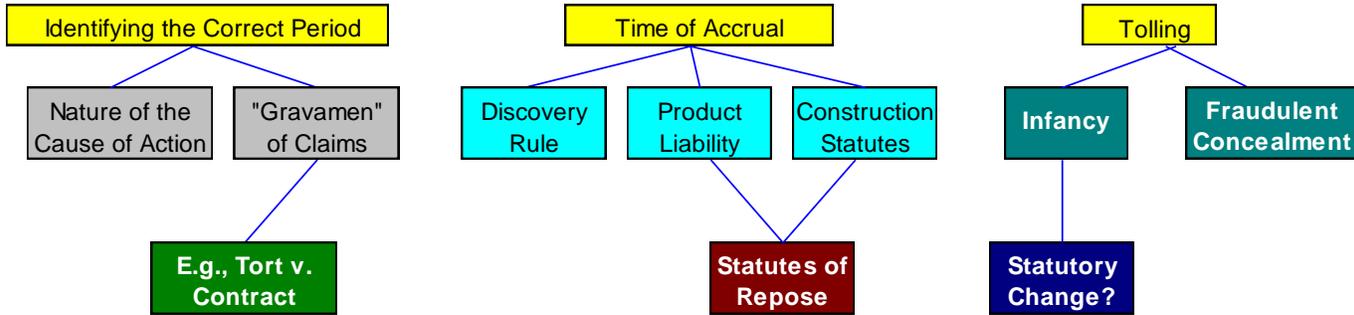
**Chapter 5
Contributory Fault**



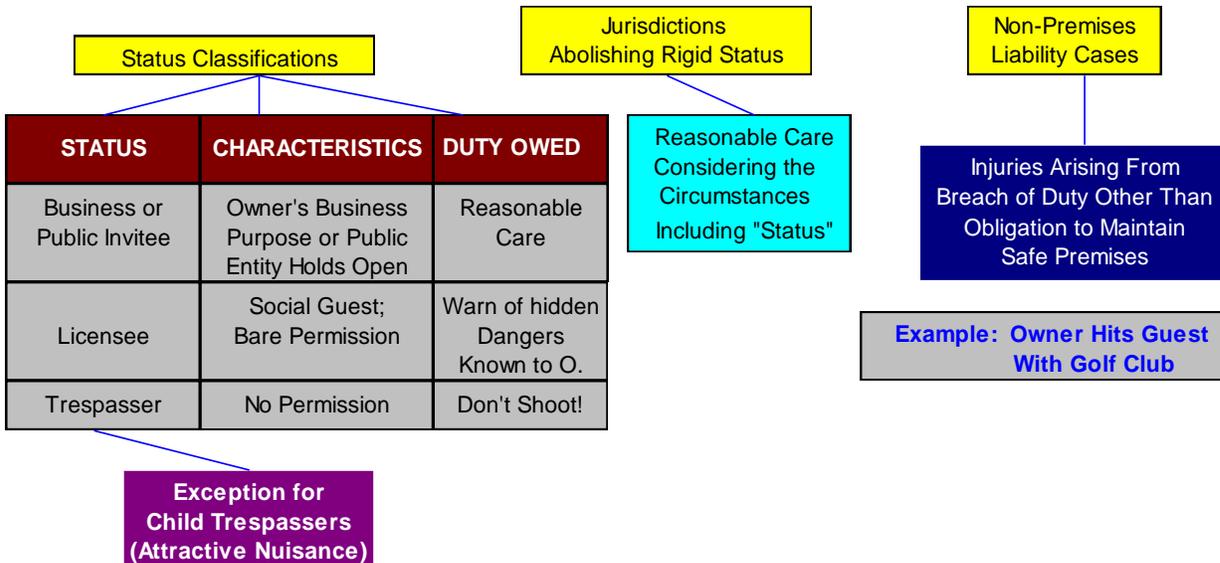
**Chapter 6
Multiple Tortfeasors**



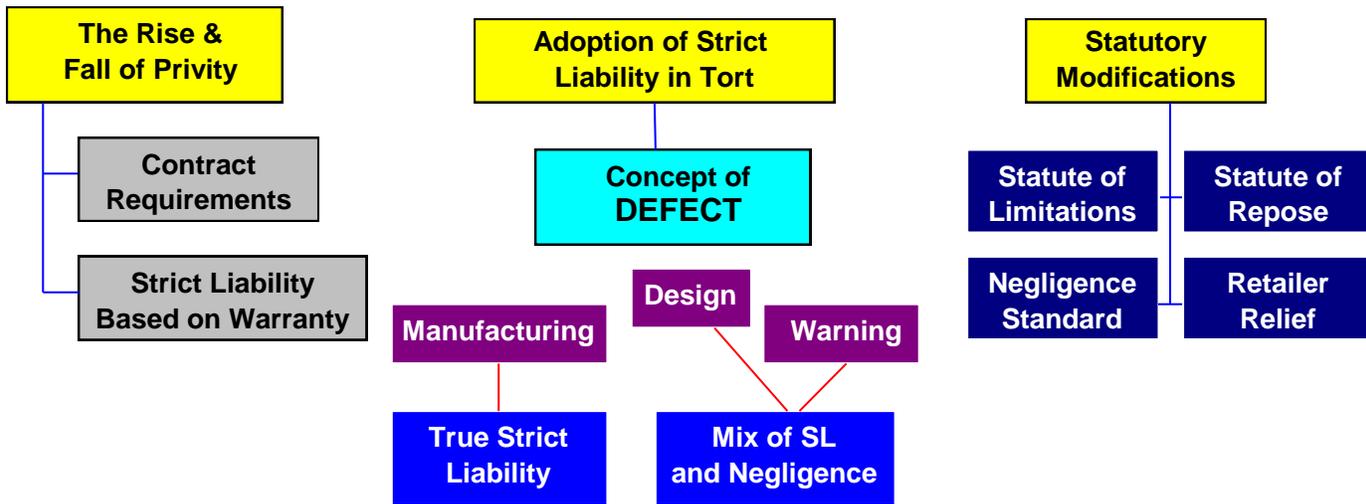
**Chapter 7
Statutes of Limitation**



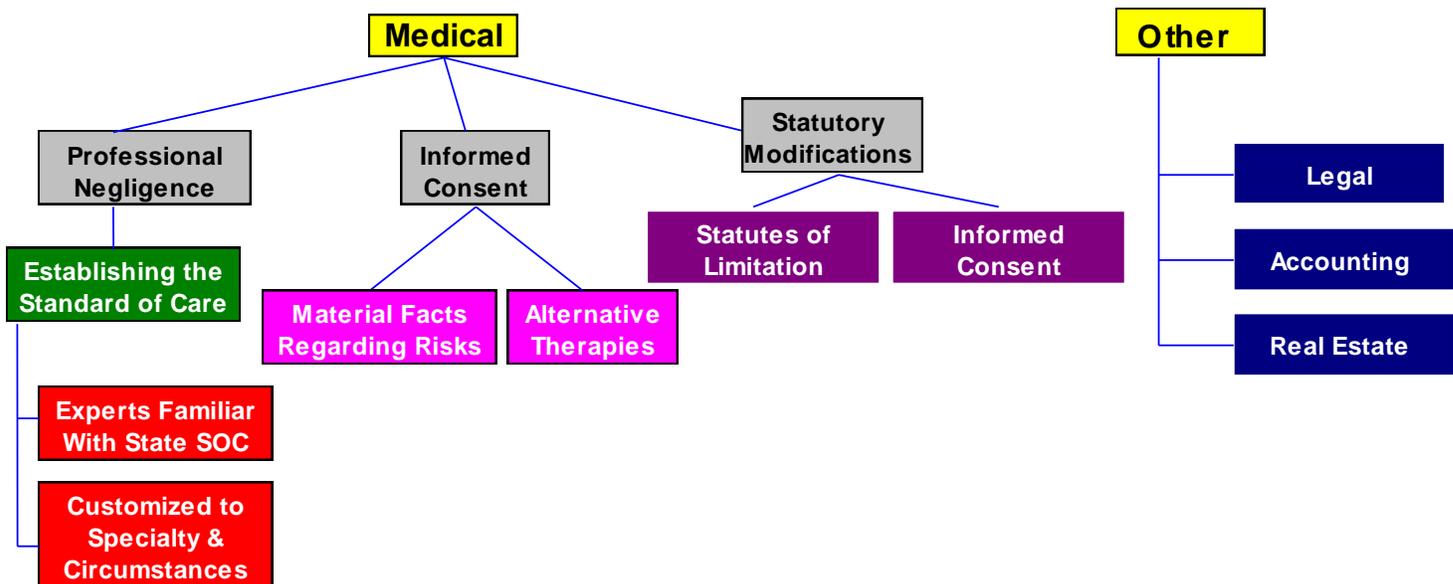
**Chapter 8
Premises Liability**



**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?**

