Key Concept 2: Understanding the Differences Between 1) Intentional Tort Liability (2) Negligence Liability, and 3) Strict Liability.  

I. Torts in General:
   A. Definition: A tort is a civil wrong that is not a breach (breaking) of a contract. Tort cases and books on tort law identify different kinds of wrongfulness, culpability, or fault and define them differently. We use the following four kinds of wrongfulness.
   
   B. Intent. We define intent as the desire to cause certain consequences or substantial certainty that those consequences will result from one’s behavior.
   
   A. Recklessness. Recklessness arises when one’s behavior demonstrates conscious indifference to a known high risk of harm created by one’s behavior.
   
   B. Negligence. We define negligence as conduct that falls below the level necessary to protect others against unreasonable risks of harm.
   
   C. Strict liability. Strict liability is liability without fault, or liability irrespective of fault. In a strict liability case, the plaintiff need not prove intent, recklessness, negligence, or any other kind of wrongfulness on the defendant’s part. However, strict liability is not automatic liability. A plaintiff must prove certain things in any strict liability case, but fault is not one of them.

II. Battery:
   Battery is the intentional, harmful or offensive, touching of another without his consent. A contact is harmful if it produces bodily injury. However, battery also includes non-harmful contacts that are offensive-calculated to offend a reasonable sense of personal dignity. The intent required for battery is either: (1) the intent to cause a harmful or offensive contact, or (2) the intent to cause apprehension that such a contact is imminent. If, in order to scare Pine, Delano threatens to shoot Pine with a gun he mistakenly believes is unloaded, and ends up shooting Pine, Delano would be liable for battery.

   For battery to occur, moreover, the person who suffers the harmful or offensive contact does not have to be the person whom the wrongdoer intended to injure. Under a general intentional tort concept called transferred intent, a defendant who intends to injure one person but actually injures another is liable to the person injured, despite the absence of any specific desire to injure him. So, if Delano throws a rock at Thomas and hits Pike instead, Delano would be liable to Pike for battery.

   As the previous examples suggest, the touching necessary for the battery does not require direct contract between the defendant’s body and the plaintiff’s body. Thus, Delano would also be liable if he successfully laid a trap for Pike or poisoned him. Furthermore, there is a touching if the defendant causes contact with anything that is attached to the plaintiff’s body. Finally, the plaintiff need not be conscious of the battery at the time it occurs. However, there is no liability for battery if the plaintiff consented to the touching. As a general rule, consent must be freely and intelligently given to be a defense to battery. Consent also may be inferred from a person’s voluntary participation.

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in an activity, but it is ordinarily limited to contacts that are a normal consequence of the activity. Thus, Joe Frazier would not win a battery suit against Muhammad Ali for injuries he suffered during one of their title fights, but a quarter back who is knifed by a blitzing linebacker has a valid battery claim. Finally, the law infers consent to many touching that are customary in normal social life or are reasonably necessary to it.

III. Assault

Assault [is] defined as an intentional attempt or offer to cause a harmful or offensive contact with another, where the attempt or offer causes a reasonable apprehension of imminent battery in the other person’s mind. The necessary intent is the same as the intent required for battery. In an assault case, however, it is irrelevant whether the threatened contact, actually occurs. Instead, the key thing is the plaintiff’s apprehension of a harmful or offensive contact. Apprehension is not the same thing as fear; it might be described as a mental state like: “Uh, oh, here comes a battery!” Thus, even the bravest people can be apprehensive and can recover for assault.

This apprehension must concern an imminent or immediate battery. Thus, threats of a future battery do not create liability for assault. In addition, the plaintiff must experience apprehension at the time the threatened battery occurs.

Finally, the plaintiff’s apprehension must be reasonable. As a result, threatening words normally are not an assault unless they are accompanied by acts or circumstances indicating the defendant’s intent to carry out the threat.

IV. False Imprisonment

False imprisonment is the intentional confinement of another person for an appreciable time (a few minutes is enough) without his consent. The confinement element essentially involves the defendant’s keeping the plaintiff within a circle that the defendant has created.

It may result from physical barriers to the plaintiff’s freedom of movement, such as locking a person in a room with no other doors or windows, or from physical force or the threat of physical force against the plaintiff. Confinement also may result from the assertion of legal authority to detain the plaintiff, or from the detention of the plaintiff’s property. Likewise, a threat to harm another, such as the plaintiff’s spouse or child, can also be confinement if it prevents the plaintiff from moving.

The confinement must be complete. Partial confinement of another by blocking her path or by depriving her of one means of escape where several exist, such as locking one door of a building having several unlocked doors, is not false imprisonment. The fact that a means of escape exists, however, does not relieve the defendant of liability where the plaintiff cannot reasonably be expected to know of its existence. The same is true if the escape route involves some unreasonable risk of harm to the plaintiff, such as walking a tightrope or climbing out of a second story window. The confinement also may be complete where using the escape route would involve some affront to the plaintiff’s sense of personal dignity; for example, imagine that D steals P’s cloths while P is swimming in the nude.
Although there is some disagreement on the subject, courts usually hold that the plaintiff must have knowledge of his confinement before liability for false imprisonment arises. In addition, there is no liability where the plaintiff has consented to his confinement. Such consent, however, must be freely given; consent in the face of an implied or actual threat of force or an assertion of legal authority by the confiner is not freely given.

Today, many false imprisonment cases involve a store’s detention of people suspected of shoplifting. In an attempt to accommodate the legitimate interests of storeowners, most states have passed statutes giving them a conditional privilege to stop suspected shoplifters. To obtain this defense, the owner usually must act with reasonable cause, act in a reasonable manner, and detain the suspect for only a reasonable length of time.

For example, suppose K-Mart’s Loss Prevention Manager personally observes a customer places an item in his pocket and then hastily heads to the door. The Loss Prevention Manager then stops the customer, asks him to empty his pockets at the Loss Prevention Room, and after discovering that no items have been stolen let him go. The entire incident lasted for five minutes. K-Mart would not be held liable for false imprisonment under the conditional privilege of a merchant’s defense because it had reasonably cause to believe that a theft had taken place, it conducted the investigation in a reasonable manner and for a reasonable length of time.

V. Negligence;

A. In general:

The elements of a negligence case- the things the plaintiff must prove to recover- are: (1) a breach of duty by the defendant, (2) actual injury suffered by the plaintiff, and (3) actual and proximate causation between the breach and the injury. To win, a plaintiff must also overcome any defenses to negligence liability raised by the defendant. The two traditional negligence defenses are contributory negligence and assumption of risk.

B. Breach of Duty:

1. The Reasonable Person Standard: The basic idea behind negligence law is that each member of society has a duty to behave so as to avoid unreasonable risks of harm to others. This means that each of us must act like a reasonable person of ordinary prudence in similar circumstances. If a person’s conduct falls below this standard, he has breached a duty. This “reasonable person ” standard is objective in two senses of the term. First, the reasonable person is a hypothetical person with some ideal attributes- not a real human being. Second, the reasonable person standard focuses on behavior rather than on the defendant’s subjective mental state. Finally, the standard is flexible because it lets courts tailor their decisions to the facts of the case.

The most important such factor is the reasonable foreseeability of harm. The idea is that the reasonable person acts so as to avoid reasonably foreseeable risks of harm to others. Suppose that Donald gets into an automobile accident with Peter after Donald falls asleep at the wheel. Because falling asleep at the wheel involves a foreseeable risk
of harm to others, a reasonable person would not behave that way. And because Donald’s conduct fell short of this behavioral standard, he has breached a duty to Peter. However, this probably would not be true if Donald’s falling asleep at the wheel was due to a sudden, severe, and unforeseeable blackout. On the other hand, there probably would be a breach of duty if Donald drove the car after being warned by a doctor that he was subject to sudden blackouts.

To a limited extent, negligence law also considers the personal characteristics of the defendant. For example, children are generally required to act, as would a reasonable person of similar age, intelligence, and experience under similar circumstances. People with physical disabilities must act, as would a reasonable person with the same disability. Mental deficiencies, however, ordinarily do not relieve a person from the duty to conform to the normal reasonable person standard. The same is true of voluntary and negligent intoxication.

Finally, negligence law is sensitive to the context in which the defendant acted. For example, someone confronted with an emergency requiring rapid decisions and action need not employ the same level of caution and deliberation as someone in circumstances allowing for calm reflection and deliberate action.

2. Special Duties:

In some situations, courts have fashioned particular negligence duties rather than applying the general reasonable person standard. When performing their professional duties, for example, professionals such as doctors, lawyers, and accountants generally must exercise the knowledge, skill, and care ordinarily possessed and employed by members of the profession. Also, common carriers and (sometimes) innkeepers are held to an extremely high duty of care approaching strict liability when they are sued for damaging or losing their customer’s property. Many courts say that they also must exercise great caution to protect their passengers and lodgers against personal injury—especially against the foreseeable wrongful acts of third person.

C. Injury:

A plaintiff in a negligence case must prove not only that the defendant breached a duty owed to the plaintiff, but also that the plaintiff suffered actual injury. Ordinarily, personal injury to the plaintiff and damage to her property meet this test. Purely monetary damage such as lost profits may sometimes qualify as well.

D. Causation

Even if the defendant has breached a duty and the plaintiff has suffered actual injury, there is no liability for negligence without the required causal relationship between breach and injury. To determine the existence of actual cause, many courts employ a “but for” test. Under this test, a defendant’s conduct is the actual cause of a plaintiff’s injury if that injury would not have occurred except for (or but for) the defendant’s breach of duty.

For example, during a bad storm a person drowns after falling from a ship that the owner failed to equip with lifeboats. If the jury concludes that a life boat would not have saved the victim’s life because of the severity of the storm, the failure to provide a
lifeboat is not a cause in fact of the victim’s death. But for the negligent failure to provide a lifeboat on the ship, the person would still have drowned.

VII. Strict Liability
   A. In general: Strict liability is liability without fault or irrespective of fault. This means that in strict liability cases, the defendant is liable even though he did not intend to cause the harm and did not bring it about through his recklessness or negligence.
   B. Abnormally Dangerous Activities: Abnormally dangerous (or ultrahazardous) activities are activities that necessarily involve a risk of harm to others that cannot be eliminated by the exercise of reasonable care. Hence, the actor engaging in abnormally dangerous activities is held strictly liable for injuries sustained by third parties as a result of the actor’s activities. Among the activities treated as abnormally dangerous are blasting, crop dusting, stunt flying, and gasoline by truck.
   C. Statutory Strict Liability: Strict liability principles are also embodies in modern legislation. The most important examples are the workers’ compensation acts passed by most states early in this century. Such statutes allow employees to recover statutorily limited amounts from their employers without any fault on the employer’s part. Employers participate in a compulsory liability insurance system on to consumers, who then become the industrial production. Other examples of statutory strict liability include the dram shop statutes of some states, which impose liability on sellers of alcoholic beverage without proof of negligence when third parties are harmed due to a buyer’s intoxication. Also included is the statutory strict liability that some states impose on the operators of aircraft for ground damage resulting from aviation accidents.