

## INTENTIONAL TORTS

### Assault

- E: • **Volitional act** by D (words alone NOT sufficient; unconsc. under influence, pure reflex actions = NOT sufficient).
- **Reasonable apprehension** (requires actual awareness / expectation of act but NOT necessarily identity of D)
  - Apprehension of **immediate** harmful offensive contact
  - **Intent** - D intends to bring about P's apprehension of contact
  - Caused by - D actions or something set in motion thereby
- Notes - D must pose imminent threat, have **apparent ability**
- Reasonable = of reasonable person unless D know of P's fear
  - Transferred intent applies; damages NOT required
  - **Allen v. Hannoford** - unloaded gun caused apprehension

### Battery

- E: • **Volitional act** by D (**same as Assault**)
- **Contact** - harmful / offensive **and** direct / indirect
  - **Intent** - to cause contact (w/ substantial certainty)
  - Causation - D act → direct / indirect contact
- Notes - Transferred intent applies; no apprehension necessary; damages NOT required
- **Alcorn v. Mitchell** - spitting; **Madden v. DC** - environmental

### Trespass (exclusive possession of R/E or Chattels)

- E: • **Physical invasion**
- **Intent** to bring about invasion - Transferred intent applies
  - Causation - see Assault
  - P = either actual or constructive owner (lessee)
  - Damages - Land = NOT required; Chattels = REQUIRED
- Note - mistake NOT defense; accident (act of God) = defense

### Conversion (personal prop or intangible prop in phys form)

- E: • **D's act** = wrongful act/disposition of PL property rights
- **Intent** merely to interfere (not necessarily resulting damage) mistake NOT defense
  - Causation - same as Assault (legally caused by Def)
  - **Ownership** - possession/immediate right @ conversion time
  - **Damages** - damages (FMV) or replevin
- Note - **Moore v. CA Regents** - tort NOT extended bc policy reasons

### Nuisance (use and enjoyment of land.)

- E: • **Substantial / unreasonable interference** w/ u & e in property
- **Infringement** of lawful right.
- Notes - ownership is not required, just right to use & enjoy
- per se - nuisance at all times regardless of location
  - in fact - nuisance b/c location, way operated/constructed
  - COA = Intent, negligence, or s.l. due to high risk activity.
  - intentional (**Moore**) - purposely acts; knows act/result occur
  - light and air - **Fountainbleu** = no; **Moretti** = yes
  - sensitive P (**Rogers**) - no action

### False Imprisonment

- E: • **Confinement** to **bounded** area (no reasonable means escape)
- **Intent** - negligence may suffice if severe (locked meat locker)
- Notes - confinement methods - physical barriers; force; threat of force; indirect threat; failure to provide means of escape
- P must have knowledge (unless injured); P need not test; time = immaterial; transferred intent applies; no damages requ.
  - shopkeeper privileged - if reasonable **belief, method, time**
  - **Bird** - exclusion from something <> confinement

### Invasion of Privacy

- Approp. name/likeness** - protects economic value-name/likeness
- **Pavesich** - created relief to protect "natural right"
- Defamation - Unreasonable disclosure of facts** - disclosure of private info to 3<sup>rd</sup> person which P finds offensive
- **Situs** - public has right to know re: public figures
  - **Briscoe** - facts newsworthy; actor's identity = NOT
  - **Hayes** - disclosing homosex - OK; public policy over injury
- Intrusion upon seclusion** - entering private sphere
- **Nader** - no COA for publicly available info (bugging = yes)
- False Light** - if done w/ **malice** and **highly offensive** (defamation)
- Note: L. → info. in court docs. less public than info. newspaper, and action might hold for moving info. from crt. to newspaper

### Intentional Infliction of Emotional Distress

- E: • **Conduct** = **extreme / outrageous / known sensitivity/reckless**
- **Intent** - cause severe mental distress/reckless as to effect of act
- **Damages** - physical / severe mental distress required
- Note - physical damages - limits false claims
- **Wilkinson** (1897) - wife told husband dead (intent enough)
  - **Bouillon** (gas meter) - emot damages = parasitic to trespass

### Defamation (reputation)

- E: • D **publishes info** to 3<sup>rd</sup> party **who understood**
- info = **false** (**public official** → must show **malice** (knowledge of falsity or recklessness))
  - info - **defames** P (calculated to bring into hatred, ridicule or contempt, or is false statement to his / her discredit)
  - **Damages** P's reputation - **libel** = general/special; **slander** = i) **per se** (bus / prof, crime, loathsme disease, unchaste) or **special**
- Notes - Slander is oral, libel is written.

- P = **living** person/corp/org; members of defamed **small** group
- **Privileges** = Truth; Consent; Absolute (court; legis); Public record (**Cox**); D=duty/interest (usually business/family) in communicating if reasonably believe true (**Watt v. Long**)
- **Yussouf** - movie portrayed as factual = actionable

### Alienation of Affection

- E: • D exercised improper, willful, and malicious influence.
- Spouse <> voluntarily accept D's advances
  - Spouse <> seek out D
  - P was not at fault for causing alienation
  - D on spouse was cause of loss of love.
- Note - **Theories** (for no more) can't compensate/deter; divorce more accepted; resulting litigation = intrusive to privacy

### Loss of Consortium - still valid - e.g., spouse in accident

### Inducement of Breach of Contract

- E: • D **maliciously** (w/ knowledge) **pursues** breach of **legal K**
- **Intent** - only to cause breach - NOT to harm P
  - **Damages** - must be shown by P
- Note: Defense - can show that action = necessary
- **Lumley v. Gye** - (Wagner) ignore that party went willingly

### Interference w/ Prospective Economic Advantage

- E: • **Pure malice** = sole motive for D competing w/ P (not useful)
- **Damages** - P must show economic harm
- Tuttle v. Buck** - societal well being requires duty to abstain from injuring others; focus on remedies/not limited by existing COA

### Misrepresentation

- E: • **False representation** of material fact (w/ D's knowledge)
- **Reasonable reliance** by P
  - **Damages** -
- Pasley v. Freeman** - deceit = more than lie b/c calculated; more diabolical b/c no gain to D; court driven by societal interests

### Prima Facie Tort

- E: • **Act** - by D w/ **no social justification**
- **Intent** - to harm P
  - **Damages** - result to P

### Morrison v. NBC

- E: • **Act** - by D w/ **no social justification**
- **Intent** - = corrupt → to cause publicly unjustifiable result thru lawful act (but no intent to injure P)
  - **Damages** - result to P
- Note - tort allowed b/c of overwhelming public policy interests

## DEFENSES TO INTENTIONAL TORTS

### Insanity - not allowed if D **capable of / did** form intent to act

### Consent

- Q1) did PL have capacity? (no if statute protects group - stat rape)
- 2) what type of consent? (Express or Implied (**apparent** = implied by reasonable person / custom; **by law** = emergency))
- 3) did D exceed scope of consent?
- **Mohr v. Williams** - operating on other ear
  - **Mink v. UC** - battery b/c no consent for Dr to not act in patient's best interest
- Notes - **exceptions**: incapacity, duress, misrepresentation, illegality
- criminal acts - most courts = consent NOT possible (**Hudson**)
  - **Theories** 1) individual freedom 2) cost of medicine would increase b/c battery; 3) encourages info flow (DR willing to disclose → patient = better decision); 4) negatives intent 5) creates equal footing → no incentive to shift loss;

### Defense of Person/Prop.

- **Self** - Privilege to use force allowed to prevent **pending** attack
    - when? → reasonable belief in situation (**Courviesier**)
    - 3<sup>rd</sup> party injury - no liability if accidental (**Morris v. Platt**)
  - **Others** - **mai** - step into victims shoes; **modern** - reasonable belief
  - **Prop** - force = reasonable; NEVER deadly (**Bird v. Holbrook**)
    - when? → prevent tort against prop
    - machine (\$85) - same force as if in person
- Theory** - **act util** - allows injury where prop/person value differ
- **rule util** - no deadly force for prop b/c 2 many gray areas

### Privilege / Necessity

- **Private** - for any person/property = qualified (pay damages)
  - privilege supersedes owner right to resist (**Plouf v. Putnam**)
  - qualified = must pay damages (**Vincent v. Lake Erie**)
  - commercial - **Boomer** trashes property rights
- **Public** - absolute privilege = no liability
  - qualified immunity for executive officer - reasonable grounds; good faith belief that taking/action necessary

### Recapture Chattels - force allowed only if in **hot pursuit**

## LIST A CONCERNS

- Character of damages difficult to determine / Open the floodgates of litigation / Slippery slope / Lack of notice regarding liability-producing conduct / Don't want to interf. w/ legit. conduct (rel. to free sp. & action) / Better left to legislature. (counter-point: pol. reality).

## STRICT LIABILITY

- **type of use on land** - non-natural=S/L; natural=negligence (**FvR**)
- **ultrahazardous** - strict liability even where careful (652)
  - **Factors** - probability of risk; degree of harm risked; **unavailable alternatives**; **extent of common usage**; **inappropriate place**; **value to community vs. dangerous attributes** (520)
  - **Madsen v. E. Jordan** - S/L limited to activity's inherent risk
  - **Indiana Harborbelt RR** - no S/L if possible to control risk
  - **Siegler** - shipping gasoline = S/L b/c explosion destroys evid.

## THE HAND FORMULA (B ≥ P, L.)

- **Burden** - cost; benefits foregone of stopping activity; added risks of precaution (**Cooley** - bskt under wires)
- **Posner** - reasonable person - acts where benefits outweigh costs.
- **Cooley Hand Formula** could be: Cost of bskts. + Δ prob. of inj. to passersby \* value of life ≥ Δ prob. of injury to customers \* value of such injury.
- **2 purposes**: what amount of **care**?; what amount of **activity**?

## THE HAND FORMULA: CRITICISMS

- either 1) efficiency is wrong standard OR 2) efficiency OK but Hand doesn't yield most efficient results
- **Terry** - Hand <> account for reasonableness (1-degree of risk; 2-value/importance of principal object exposed to risk; 3-value/importance of actor's goal (collateral object); 4 - utility of risk (prob of success); necessity of risk (prob of success w/o risk))
  - **Calibresi** - cheapest cost avoider s/b liable; best able to change
  - **Coase** - people bargain around legal liability rules - if no transaction costs → efficient outcomes result anyway
  - **Other** • Distributive justice - values contingent on market and current distribution of resources • assumes actor has adequate info, acts reasonably w/ split second decision (**Eckert** - save child from RR; **Grimstad** - P could swim); P <> always risk averse; ignores emotions • Level of activity -Hand <> encourage correct level (**Oppen** - strict liability better • no perfect adjudicators - Def w/ more resources → wins more → changes activity less • difficulty to quantify variables • true loss often unclear (**Oppen** - was killing fish = harm to P?) • no account for losses beyond PL/Def (society, 3<sup>rd</sup> party) • inefficiency ≠ wrongfulness • It allows intent. exposure to harm (**Vincent** critique of **Cooley**) • Ignores ID of P. Might want different duties for different P's.
  - **Leebron** - Do we want system that lets existing wealth distribution control resource allocation for torts?

## NEGLIGENCE

### Duty

- **owed to whom** (3 views)
  - **Palsgraf (mai)** - foreseeable PL under circumstances
  - **Palsgraf (min)** - all PL proximately affected by circumstances
  - **Palsgraf (dictum)** - foreseeable PL but only if avg reasonable person would foresee risk of harm to actual interest invaded

### Breach (negligence)

- 1) **a) what duty owed (standard of care)** -
- **generally** = obj. reasonable person under the circumstances
    - apply **Hand formula** - discuss negatives and alternatives
    - **physical characteristics** (disability)=objective person w/ same
    - **children** - child of same age, intellect, exp (unless adult actv)
    - **professional** - of similar professionals (specialist = higher)
    - **custom** - indicative; trumped by reas. person (**TJ Hooper**)
    - **statutory** - must be owed to **class** for **target of statute**
    - **common carriers/inn keeper** - higher standard
    - **owners/occupiers land** - **none** if <> owner/occupier or **to trespass**
    - **affirm duty** = safety of tenants in common areas (**Kline**)
  - b) any affirmative duty** - generally no (exceptions = relationship to D (**Tarasoff**); gratuitous aid; innocent creat. of risk; public policy; good samaritan laws; induce other party to rely; once start to act → can't stop)
    - **act utilitarianism** - D s/b free to act
    - **rule utilitarianism** - society works better w/ affirm. duties
- 2) **Did D breach applicable standard?**
- **statute violation** - Did viol. cause injury? (Maj = per se; Min = presumpt. (stronger) or evidence (weaker) of negligence)
  - **Borwn v. Shyne** - no liab if w/h happened anyway (chiro)
  - **Res Ipsa Loquitur** (Maj = inference; Min = presumpt of negl)
    - 1) accident of type that doesn't normally happen w/o neg.
    - 2) instrumentality causing accident w/ excl control of D
    - 3) P = no contribution to accident. Shifts burden of proof (effectively, burden of proof.)
- Theory** - Def = all info (**Ybarra**)
- 3) **Any Contributory Negligence / AOR**
- general rule - any contrib negligence bars recovery
  - **Last clear chance** - limits harsh results of contrib. negligence
  - N/A in use of own property when neighbor = negligent (**LeRoy**) - **L criticism** → affirm duty = incent. both parties
- 4) **Any policy limitations** - burden; PL could mitigate risk; alternatives; admin problems; problems of proof

### Causation

- **Cause in Fact** = but for causation - but for D neglig P <> injured
  - concurrent causes - **Kingston** fires - both D = j&s liab
  - **Summers v. Tice** - equally/concurrent negligent tortfeasors
  - **market share theory** (**Sindell**) - liab w/o identifying D

- loss of chance (**Herskovitz**)
- **concert of action** - Def assisted/encouraged each other
- **Proximate causation**
  - direct/remote result** (**Polemis**) - plank falls)
  - natural/necessary/probable consequences** (**Wagon**)
    - Mound** - reasonable man s/h foreseen harm (no hindsight);
    - injury must relate to negligence (**Berry v. Sugar Notch**)
  - foreseeable PL** (**Palzgraf Maj**) - more re: duty
  - rough sense of justice** (**Palzgraf Min**) more re: fault
    - proximate cause developed to limit causal liab - consider = intervening causes; direct connection b/w cause/effect; remoteness in time/place
- **intervening causes** -
  - **intentional torts** = irrelevant if negligence increased risk
  - **other** - irrelevant if **rsnbl & expctd** OR **neglig & forsable**

## Damages

- extent of damage = irrelevant (forsability relevant only to injury)
- **Leebron** says when ? about cognizability of P's interest / damages, issue gets pursued in Duty

### THE BIG FIVE (+ 2) THEORISTS

- 2 main camps: 1) corrective justice and 2) efficiency

### Corrective Justice: Epstein

- It's all about causation. Causation = responsibility = prima facie case of liability.
- But there can be substantive defenses, such as inevitability or P misconduct.
- 2nd 1/2 of **Vincent** is good example of this. It's unfair if D doesn't have to pay.

### Corrective Justice: Fletcher

- P has s.l. right to recover for injuries from non-reciprocal risks.
- Thus, Restatement says s.l. for wild animals, but not for domesticated pets. Most people have pets or friends who create risk. Also, s.l. for ground damage from planes, but not mid-air.

### Efficiency: Coase Theorem

- Assume no transaction costs.
- Then, efficient outcome will occur regardless of l.i. rule chosen.
- 2 implications for Hand Formula:
  - If no trans. costs, you don't need Hand to get efficiency.
  - If trans. costs, Hand won't necessarily get you efficiency.
- If you don't need Hand, then why not take a rule more focused on justice, like, say, s.l.?
- Since there are trans. costs, might Calab. be better solution?

### Efficiency: Calabresi

- Find cheapest cost avoider.
- Who's in best position to figure out what should be done
- Also, who's in best position to *act* to avoid harm.
- Once you find this c.c.a., put on her burden of strict liability.
- Goal = minimize effort and costs of: accidents, accident prevention, admin. & trans. costs. and maximize social product

### Negligence Regime Through Corrective Justice: Posner

- It is unjust for P to expect D to conform to higher standard of behavior than P could demand of himself.
- Only annual departure from pre-existing distrib. of resources when there is injustice, ie, when D'd conduct somehow *wrongful*.

### Efficiency Possible Through All 3 Systems: Brown

1. Neg. w/ Contrib. Neg.: Both parties'll take care to avoid liab.
2. Neg. w/o Contrib. Neg.: Potent. D will take care to avoid liab., potent. P will take just in case D is not taking care.
3. Strict Liab. w Contrib. Neg.: P will take just because it's efficient, and D will take care to preserve right to recover.

### Negligence Induces Higher Level of Care: Grady

- Under s.l., too much care = minimal extra cost, too little care = minimal extra damages.
- But under neg., too much care = minimal extra cost, too little care = suddenly, enormous damages.
- Thus, neg. → greater incentives for higher level of care.
- This is challenged by saying that benefits of too little care accrue w/ absol. certainty, whereas costs may or may not materialize.

### OTHER ALTERNATIVES TO HAND

- **Absolute liability:** Like s.l., but does not allow substantive defenses, such as P misconduct or inevitability.
- **"Ethical compensation"** proposed by Williams in face of *Bolton v. Stone*. Relates to divergence b/w legal and moral duty.
- System that'd take into account diff. values of \$ for D and P.
- **Corrective justice**, but compensation made by some social fund.

### OTHER NEGLIGENCE ISSUES

- **Enterprise Liability:** *Hall*. 6 makers of blasting caps. All Ds
- **Joint and Several Liability:**
  - applies w/ comparative negligence applies (**Am Motorcycle**) - **L criticism** → P + solvent D s/ split cost of insolvent D
- **Negligent Infliction of Emotional Distress**
  - **Impact Rule** - emot damages = parasitic to physical injury
  - **Dillon** - related, zone of danger, contempor. view
  - **Mollien** - Dr. liable to P through relationship (hus/syphillid)
- **STRICT PRODUCTS LIABILITY**
  - applies to unreasonably unsafe products

- no S/L for unavoidably unsafe prod (blood/HIV) (**402(A)(k)**)
- privity not required (**MacPherson**)

### 1. Manufacturing defects.

- P = burden of showing that product = defective
- can rely on circumstantial evidence (res ipsa)

### 2. Design defects. 2-prong test (**Barker**) applied diff by diff courts

- i. defective if more dangerous than rsnbl consumer expected.
- ii. defective if benefits <-> outweigh risks posed (~tort) (consider available alternatives)
  - **Cause** - Def must show **but for** and **proximate cause**
  - **State-of-art issue:** unclear whether based on time prod. entered stream of commerce, or time of trial.
  - **Duty to design** → any foreseeable uses; not just intended uses

### 3. Failure to warn. 2 branches:

1. defect if w/h/b safer w/ warning
2. P had right to know risks to make own decision (**McDonald**)
  - **Cause** (show P w/h changed action) - presume limit risk
  - Warning must be adequate. • **No duty for obvious dangers.**
  - Learned intermediary - negates duty (but see **McDonald**)

**Theory** (Calabresi) - mfr = cheapest cost avoider/best loss distributor; inefficient for P to sue retailer to sue mfr; (Traynor) mfr = best position to distribute or avoid loss thru R&D

**D = mfr** (named)/retailers = always; "middlemen" = sometimes  
**Dfns** - AOR; cont/comp negl; unforbl misuse; materially altered

### WARRANTY

- 1) Is there an express warranty
- 2) Is there an implied warranty?
  - implied warr merchant. = all foreseeable users (**Henningsen**)

- 3) was there a breach?
  - express limitation of warr. = contrary to pub. policy (**Henning**)

### QUESTION - LAW & ECONOMICS

- economic efficiency - both for / against neg. regime in terms of admin. costs: **for** = less litigation than s.l., so less admin. costs, **against** = lit. that does happen is more difficult, so more costly.

### QUESTION - CREATION OF NEW TORT

- Will this tort actually be good at deterring? See alien. of affect. torts, where it probably wasn't.
- Are there costs inherent in creating this tort? Are they worth it (asking about sex in alien. of affect.)
- Can it be handled by existing torts?
- Address all List A concerns.
- Possible use of *Pasley* (lying)—do moral norms=laws?
- *Morrison v. NBC* could argue both ways—1) rejects rigid tort formalism so new sep. tort maybe not necessary for cause of action, but 2) basis for taking elems. of old torts to create new.

### QUESTION - LAW AND HISTORY

- **Initially** - about clans, and camping families for lost member ("bot"). But it was just causal—fault not an issue.
- **19<sup>th</sup> century** - case, trespass. on c. emerge. S/L applies (no fault)
  - Case - vi et armis (w/ force) req., but this bsidly. dropped.
  - T. on c.—similar to neg., but still not really flt., just negl. of custom, or an already wrongful act like ignoring crt's instrs.
  - No-ft. nature due to fct. that tradit., harm done intentionally.
- **19<sup>th</sup> century**-U.S. rejects distinct. (**Brown v. Kendall** - dog fight)
- Concept of neg. not emerge until diverse econ. and soc. needs compete. Most sign.: transport. Also, **E. v. R.**
- Note Horwitz view. that neg. regime = sneaky method of subsidizing nascent industries in 19<sup>th</sup> century. But, objections.

### CASES WE HAVE TO KNOW

- **Moore v. CA Regents**
  - F: Dr. used patient's cells to develop pharmaceuticals
  - H: Conversion not extended to cells b/c policy (risk of S/L to innocent researchers; legis solution = better; tort <-> necessary to protect P rights)
- **Morgan v. High Penn Oil Co.**
  - F: Morgan (P) owned restaurant and trailer park abutting H. P.'s (D's) refin. Nauseating gases often caused illness.
  - H: Even w/o negligence, intentional invasion of another's u&e of land is nuisance.
- **Fountainbleu Hotel Corp. v. Forty-Five Twenty-Five, Inc.**
  - F: Fountainbleu (D) built tower blocking sun from P's tanners
  - H: D may not use prop to injure another - H/E not precluded from using prop. usefully even if partly out of spite.
- **Morrison v. National Broadcasting Co.**
  - F: D lied to P about fraud quiz show, saying it was real. P went on the show, and his rep. as academic was damaged.
  - H: Tort liability applies if lie to another for D's gain if consequence of lie exposes P and reputation to likely injury.
  - Note:** Rejected "slavish formalism" by creating quasi-tort.
- **Courvoisier v. Raymond**
  - F: Courvoisier's (D's) jewelry store was broken in to. He went outside, and (P), cop was approaching him. D shot P.
  - H: Force = justified based on reasonable belief even if mistaken
- **Morris v. Platt**
  - H: Accidental harming of innoc. byst. by force reasonably intended in s-d to repel attack by 3<sup>rd</sup> party not actionable.
- **Ploof v. Putnam**
  - F:: In storm, P tied his boat to D's dock to protect his boat and family. D untied boat. P suffered inj. to prop. & person.

- H: Property rights suspended when public necessity arises; property owner liable if acts against public policy

### Vincent v. Lake Erie

- F: Lake Erie (D) tied to P's wharf. D damaged P during storm.
- H: D liable for damages imposed through private necessity
- Note:** Separates ?? i) was behavior proper; and ii) is Def liable?

### Boomer v. Atlantic Cement

- F: Boomer's (P) residence suffered from dirt and vibrations from Atlantic's (D's) cement plant. Nuisance found.
- H: Injunction - would require closing whole industry; but proper if nuisance dmg = substantial; if dmg = low and value diff = substantial → **future injunction** or **permanent damages** for servitude on land (Dissent = **private** inverse condemnation)

### Rylands v. Fletcher

- F: Rylands (D) built reservoir. Burst & sent H2O into mines on Fletcher's (P's) prop. Unknown to D, old coal mine shafts under his prop. that weakened & permitted burst.
- H: D who **introduces** into his land **non-natural use** of thing that'll cause harm to other if it escapes = strictly liable if escapes

### Madsen v. East Jordan Irrigation Co.

- F: D blasted. P mink mothers got excited, killed their young.
  - H: S/L = only for **direct damages** from **inherently risky activity**
- Ybarra v. Spangard**
- F: Ybarra (P) treated by drs/nurses → named Ds in negligent malpractice action when P suffered paralysis.
  - H: **Burden shifted** - injury not normal w/o negligence + no contrib from P → inference of neglig which D must explain

### Summers v. Tice

- F: Multiple D committed same negligent resulting in one injury
- H: **Burden shifted** - **torfeasor identified** as one of **negligent group** each D is j&s liable for harm.

### Herskovits v. Group Health Coop.

- F: D failed to diagnose P's cancer → reduced chance of survival from 39% to 25% (14%)
- H: **Lost opportunity** for surv. can be considered cause of death

### Sindell v. Abbott Laboratories

- F: P sued several Ds (DES mfrs). P couldn't prove which made her mother's DES but all used **exact same formula**
- H: **Market share theory** - P may recov. from drug mfr w/o identifying torfeasor if **majority of mfrs = before court** (no j&s)

### Palzgraf v. Long Island RR (maj.)

- F: D employee tried to help pssngr, caused package to fall & expl. Knocked down scales, which injured. P.
- H: **Maj.** - No breach of duty if P not foreseeable; **Min.** - Fores. not determinative → Liab. for all proximate results.

### Tarasoff v. Regents Univ. of Cal.

- F: Patient told psych. at U. (D) hospital he would kill P.
- H: Due to special rship → affirm duty to warn all foreseeable PL

### Leroy Fibre Co. v. Chicago etc. Ry.

- F: LeRoy (P) had straw w/in 100 ft. of RR's (D's) way.
- H: Violation of duty to warn P's prop. so it can't be injured by wrongs of other ≠ contrib. neg.; No affirmative duty limiting u&e of land b/c of neighbor's negligence

### MacPherson v. Buick Motor Co.

- F: MacPherson (P) bought Buick from dealer. Defective wooden wheel made by sub broke and P was injured.
- H: If prod. reasonably. certainly dangerous if neg. made, then privity not necessary if man. can foresee other user.

### American Motorcycle Ass'n v. Sup. Ct.

- F: P injured in motorcycle race sued (D). D sought to bring in parents as negligent torfeasors.
- H: Adoption of comp. neg. does NOT abolish j & s liab. Tortfeasor who pays jdgmt. may recover portion from other torfeasors under theory of **equitable indemnity**.

### Daly v. General Motors Corp.

- F: P sued D for defective locks after P driving drunk w/o seatbelt and had not locked doors.
- H: Comparative negligence applies to S/L. Also, assumption of risk abolished & merged w/ comparative negligence

### SOME OF LEEBRON'S "EXTRA" CASES

- **The Wagon Mound** - just b/c some damage foreseeable <-> mean liability for additional unforeseeable damage
- **Dillion v. Legg** - Abandoned zone of danger for neglig inflict emot
- **Moch Co. v. Rensselaer Water Co.**
  - F: D supplied city--H2O. When P's w/hse. burned, D didn't provide H2O at sufficient pressure
  - H: If contractual parties didn't intend 3<sup>rd</sup> party liability, and D conduct not such that inaction would normally result in injury, → no duty to act toward 3<sup>rd</sup> parties.
- **Colmenares** - Res Ipsa Loquitor - maintaining escalator in public place = non-delegable duty → gets around control issue
- **Escola v. Coca-Cola Bottling Co.** - Traynor = absolute liability where mfr knows use w/o inspection; mfr = best to reduce hazards to public health
- **Hymowitz** - national market share theory; **no exculpatory evidence**

### MISCELLANEOUS

- S/L = ultrahazardous act., defect products, and some nuisance.

Questions:

- List A concerns are cool and all, but how would we ever use them on exam?
- Same questions re: "interest being protected."
- Defamation: "defamatory meaning, ie, calculated to bring a person into hatred, ridicule or contempt, or is a false statement about a person to his or her credit." So does the first part *not* require that it be false? If I say someone is a Nazi, that could well bring them into hatred, but if I can show it's true, am I still liable?
- Are there differences in elements of slander and libel?
- What is deal w/ general damages v. special damages in defamation?
- Was there class Friday 10/8/99? Can I get notes?
- What is deal with  $P_1L_1 + P_2L_2$  . . . in Hand formula?
- I have in my notes somewhere that Greenawalt asked Could we use Calabresi? and L. said, no, because it's a negligence regime. Huh?
- Calabresi: So, we find this cheapest cost avoider. Do we then impose on him a duty to take reasonable care, or a strict liability duty? I think a strict liability burden.
- Is Coase a critique of the Hand Formula? In the end, do you assume no trans. costs or not?
- Why does L. say that r.i.l. shifts burden of proof (effectively, burden of production)?
- Check—Do you really need damages for a conversion tort?
- *How* is it that consent reduces the cost of beneficial transactions?

THINGS TO DO:

- Read those history of law assignments L. said might be on exam.