

- (1) Is there an Eggshell P?
- (2) Is there a Shabby Billionaire?

(IA) Intentional Torts

- (1) Is there an Intentional Tort?
 - (a) Was D's act voluntary?
 - (i) Not a product of *pure reflex*?
 - (ii) Not *unconscious*?
 - (b) Did D have intent?
 - (i) Did D have transferred intent?
 - *Doesn't apply to IIED.*
 - (c) Did D's act cause the harm?
 - (d) Was there actual harm?
- (2) Is there a battery?
 - (a) Did D intend
 - (b) a harmful or offensive contact? - OR -
 - (i) know contact was substantially certain?
 - (ii) would ORP regard as offensive?
 - (c) To P's body? - OR -
 - (i) something connected thereto?
- (3) Is there an Assault?
 - (a) Did D intend
 - (b) to cause a reasonable apprehension?
 - (c) of immediate harmful/offensive contact?
 - (d) Is there causation?
 - *There need not be actual harm.*
- (4) Is there False Imprisonment?
 - (a) Did D intend
 - (b) to confine or restrain?
 - (i) or know virtually certain to occur?
 - (c) W/ actual/apparent Barriers?
 - (i) No means of escape?
 - (d) Is there causation?
 - (e) Is P aware of/injured by it?
- (5) Is there trespass to land?
 - (a) Did D intend
 - (b) to cause a physical invasion?
 - (c) Is it a particular piece of land?
 - (d) Is P in actual possession of the land?
- (6) Is there trespass to chattels or conversion?
 - (a) Is there a trespass to chattel?
 - (i) Did D intend
 - (ii) to interfere w/ chattel?
 - (A) Dispossession
 - (B) Intermeddling
 - (iii) Is there damage?
 - (b) Is there Conversion?
 - (i) Are (a) (i)-(iii) satisfied, and
 - (ii) Serious Interference w/ owner's rights?
- *Can get FMV of chattel @ time of conversion*
- (7) Is there IIED?
 - (a) Did D intend

- (i) or Recklessly Act in creating risk
- (b) to Cause Severe ED?
- (c) Extreme/Outrageous Conduct?
 - (i) Conduct civilized wouldn't tolerate?
- (d) Did P experience Severe ED?

(IB) Defenses to Intentional Torts

- (1) Is there a defense?
 - (a) Is there Consent?
 - (i) Express Consent
 - (ii) Implied Consent
 - (iii) Consent as Matter of Law
 - (iv) Is the consent Invalid?
 - (A) Incapacity
 - (B) Fraud/Mistake
 - (C) Duress/Coercion
 - (D) Illegality
 - (E) Exceeding the Scope of Consent
 - (b) Was D acting in Self-Defense?
 - (i) Did D act w/ Reasonable Force?
 - (ii) Was the attack Imminent?
 - (A) Was it about to happen?
 - (iii) Was there a mistake of identity?
 - (c) Was D acting in defense of others?
 - (i) Force w/in extent of self-defense?
 - (d) Was D acting to defend property?
 - (i) Was Force reasonable?
 - (A) No greater than necessary?
 - (B) Not deadly? dogs/mech devices?
 - (e) Did D have the privilege of necessity?
 - (i) Public Necessity? - *prop damages*
 - (ii) Private Necessity? - *no prop damages*
- (2) Did D have Shopkeeper's Privilege?
 - (a) Reasonable suspicion P has stolen?
 - (b) Reasonable force to detain?
 - (c) Reasonable period?
 - (d) Reasonable manner?

(IIA) Duty

- (1) Is there a duty?
 - *To foreseeable Ps to prevent foreseeable harm.*
 - *Account for dangerous situations if aware*
 - *Reasonable care of non-natural danger on property*
 - *No Duty Generally to 3rd-Parties*
 - (a) Is there Affirmative Duty to Aid?
 - *There is no Affirmative Duty to Take Action*
 - (i) Is D engaged in an activity w/ P?
 - *Duty to help.*
 - (ii) Did D start to help?
 - *Either a duty to not leave worse, or duty to reasonably effectuate rescue*
 - (A) Does Good Samaritan § Apply?
 - (iii) Did D create the danger? - *Duty to help.*

- (iv) Did D cause the harm? - *Duty to harmed.*
- (b) Is there a special relationship?
 - *Then, Duty of Affirmative Action*
 - (i) Innkeepers - Guests
 - (ii) Common Carriers - Guests
 - (iii) Employers - Employees
 - (iv) Custodians - Wards
 - (v) Teacher - Student
 - (vi) Business - Patron
 - (vii) Jailer - Prisoner
 - (viii) Parent - Child
 - (ix) Pub Premise Owner - People on Property
- (c) Is there a duty to control 3rd-party?
 - (i) Protective Right?
 - (ii) Parent-Child special relationship?
- (d) Does the Firefighter Rule Apply?
 - Police Officer or Firefighter?
 - Acting in the scope of their job?
- (2) What is the Standard of Care?
 - (i) Is there a Premises Liability Relationship?
 - (A) Is P an Invitee?
 - *Duty Inspect, Warn, Aware Of Harm*
 - (B) Is P a Licensee?
 - (i) Prior Similar Incidents?
 - (ii) Totality of the Circumstances?
 - (iii) Is there Actual/Constructive Notice?
 - *Duty to Warn about Hidden Danger.*
 - (C) Is P a Trespasser?
 - (I) A criminal Trespasser?
 - *Duty to Not Intentionally Injure*
 - (II) A mere Trespasser?
 - *Duty to not act Recklessly/Wantonly*
 - (III) Known or Child Trespasser?
 - (ii) Is D a Professional? - *Custom Standard*
 - (A) Is there a Lack of Informed Consent?
 - (I) D failed to inform of material risk?
 - (II) If P informed of, w/n/h consented?
 - (III) Injury caused by LOIC?
 - (iii) Is there a relevant §?
 - *§ can set standard of care*

(IIAi) Special Duty Rules

- (1) Is D a therapist?
 - (a) Patient made specific threat of bodily harm?
 - *Reasonable Duty to Warn P*
- (2) Is there NIED?
 - (a) Direct Claim?
 - (i) P in Zone of Danger?
 - (ii) P suffers Severe ED and
 - (iii) Accompanying phys manifestation?
 - (b) Bystander Action?
 - (i) P present @ scene, witnesses event?

- (ii) P is Close Relative?
- (iii) P suffers Severe ED?

- (3) Wrongful Conception?
- (4) Wrongful Birth?
- (5) Wrongful Life?

(IIB) Breach

- (1) Did D breach their Duty to P?
 - (a) Did D violate a relevant §?
 - *Bc D vio'd a rele §, P can estab a rebuttable presump*
 - (i) § is Specific, Not Vague?
 - (ii) § intended to prevent type of harm?
 - (iii) P in group meant to be protected by §?
 - (iv) Ds violation of § is unexcused?
 - (A) Compliance w/ § Impossible?
 - (B) Compliance w/ § more dangerous?
 - (C) Was D incapacitated?
 - (D) Was there a Sudden Emergency?
 - (E) Was § Impossible for D to Know?
 - *(iv) Is § a licensing §?
 - *(v) Is D a child?
 - ** (A) Adult Activity?
 - (b) Did D violate the Learned Hand formula?
 - *Did D act unreasonably under the Learned Hand test?*
 - (i) Burden of precaution low?
 - (ii) Probability and/or Severity of harm high?
 - (c) Did D fail to act like an ORP?
 - (i) ORP in same/similar Circumstance?
 - (A) Dangerous situation present?
 - (B) Danger caused by stuff on property?
 - (ii) Does D have a Mental Disability?
 - No Change to ORP Standard
 - (iii) Does D have a Physical Disability?
 - *ORP w/ same physical disability.*
 - (iv) Does D have Exceptional Skill?
 - *ORP can be raised, but not lowered.*
 - (v) Is D a Child?
 - *OR-Child w/ age, maturity, intel, and exp.*
 - (d) Did D fail to follow a custom?
 - (i) Was it an Industry Custom?
 - *Custom may evidence ORP vio, but not conclusory*
 - (ii) Was it a Personal Custom?
 - (e) Was there breach by *Res Ipsa*?
 - (i) accident unordinary w/o negligence.
 - (ii) D in exclusive control of instrumentality?
 - (iii) P not responsible for the accident?

(IIC) Causation

- (1) Is there Actual Cause?
 - (a) Was it the But-For Cause?
 - (b) Was it one of MSIC?
 - (c) Is there alternative liability?
 - (d) Is there a Loss of Chance?

- (2) Is there Proximate Cause?
 - (a) P Foreseeable?
 - (b) Harm Foreseeable?
 - (c) Intervening cause?
 - (i) Superseding cause?
 - (A) 3rd-party Criminal Act?
 - (B) 3rd-party Intentional Tort?
 - (C) Naturally Occurring Phenomenon?
 - (D) Extraordinarily Negligent Conduct?
 - (ii) Was there another intervening cause?
 - *Go back to 2 (c)*

(IIE) Affirmative Defenses

- (1) Is Recovery Barred?
 - (a) Is there Contributory Negligence by the P?
 - (b) Is the claim barred by the SOL?
 - (c) Is there Express Assumption of the Risk?
 - (d) Is there Primary Implied AoR?
 - (e) Does Sovereign Immunity apply?
- (2) Is there Comparative Fault?
 - (i) Does Pure Comparative Fault apply?
 - (ii) Does 50% Comparative Fault apply?
 - (iii) Does 49% Comparative Fault apply?
 - (iv) Does Contributory Negligence Apply?
- (3) Is there Assumption of the Risk?
 - (a) Is there Express AoR?
 - (b) Is there Secondary Implied AoR?

(III) Damages

- (1) Are there General Damages?
 - (a) Is there Pain and Suffering?
 - (b) Is there Emotional Distress?
 - (c) Is there Loss of Consortium?
 - (d) Is there *Hedonic Loss* - Loss of Enjoyment?
- (2) Are there Special Damages
 - (a) Are there Medical Expenses?
 - (b) Are there Property Damages?
 - (c) Are there Lost Wages?
 - (d) Is there Lost Earning Capacity?
- (3) Are Experts Required to Prove Damages?

(IV) Apportionment

- (1) Are there 2 Ds?
- (2) Is the injury Indivisible?
- (3) Is there vicarious liability?
 - (a) D employed by D-employer?
 - (b) D acting w/in the scope of employment?
 - (i) Detour and Not Frolic?
 - (ii) Furthering the Purpose?

(V) Strict Liability

- (1) Is there a Dangerous Activity?
 - (a) Does activity create a risk of serious injury?
 - (b) Risk can't be eliminated by due care?
 - (c) The activity not usually conducted in area?

- (d) Dynamiting, Core-dusting, or Exterminating?
 - *Then D is held strictly liable.*
- (2) Is there an Animal?
 - (a) Is it a domestic animal?
 - *Then D liable if knew/should have of danger.*
 - (b) Is it a wild animal? - *Then D is strictly liable*
 - (c) Is the animal trespassing?
 - *Then D strictly liable whether domestic/wild.*

(VI) Products Liability

- (1) Is there a Defective Product?
 - (a) Is there a proper P (used, near using)?
 - (b) Is there a proper D (in chain of commerce)?
 - (c) Product defective @ the time of sale?
 - (i) Form other than intended?- Manufacturing
 - (ii) Unreasonable Danger?-Design
 - (iii) Warning Defect?
 - (d) Factual Cause of the harm?
 - (e) Proximate Cause of the harm?
 - (f) Did P suffer actual harm?

(VIII) Policy