Moving on...

A. Intentional Torts
   1. Types of Intentional Torts
   2. Defenses to Intentional Torts

Affirmative Defenses (Privileges)
   1. Consent
Consent

• plaintiff in fact willing for conduct to occur or
• words/conduct reasonably understood to mean that plaintiff was willing for conduct to occur
• often question of fact

Implied Consent to Medical Battery

• plaintiff unconscious or otherwise unable to consent
• life-preserving medical attention necessary
• no reason to believe this plaintiff would not consent and
• a reasonable person would consent
DeMay v. Roberts

• consent procured by fraud
• unless collateral

Affirmative Defenses (Privileges)

1. Consent
2. Defense of Self
**Poliak v. Adcock**

- **self-defense** –
  - force to protect self from imminent serious bodily injury as long as
    - reasonable belief force is necessary
    - threat of injury continues
    - proportionate force

**Affirmative Defenses (Privileges)**

1. Consent
2. Self-Defense
3. Defense of Others
4. Defense of Real Property
Defense of Real Property

- *Poliak* – force to protect real property?
  a) Plaintiff trespassing
  b) Reasonable belief force necessary
  c) Request to leave (or futility of request)

Katko v. Briney

- Deadly force to protect real property?
- Policy – “considerations of humanity”
Affirmative Defenses (Privileges)

1. Consent
2. Self-Defense
3. Defense of Others
4. Defense of Real Property
5. Defense and Recovery of Personal Property

Defense/Recovery of Chattel

• One dispossessed of chattel is privileged to use reasonable force to recover the chattel immediately after its dispossession
• Limited to
  – Fresh pursuit
  – Demand (unless useless or dangerous) and
  – Reasonable force under the circumstances
Affirmative Defenses (Privileges)

1. Consent
2. Self-Defense
3. Defense of Others
4. Defense of Real Property
5. Defense and Recovery of Chattel
6. Necessity

Surocco v. Geary

• Necessity –
  – defendant acting to prevent threatened injury from some force of nature or other independent cause not connected with plaintiff
**Surocco v. Geary**

- public necessity
- so-called “champion of the public”
  - privileged to destroy, damage, or use real or personal property
  - if defendant reasonably believes
  - it is necessary to do so to avert
  - imminent
  - public disaster

**Vincent v. Lake Erie Transp. Co.**

- private necessity –
  - to protect interest private to defendant
  - limited (or partial) privilege
    - no liability for technical tort
    - must pay for actual damages caused
Justification

• Catch-all privilege
• Privileged to commit intentional tort if
  – reasonable under the circumstances
  – to prevent plaintiff from inflicting personal or property injury
  – and done for lawful purpose

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- unless concerns a matter collateral
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Defense of Real Property

- *Poliak* – force to protect real property?
  a) Plaintiff trespassing
  b) Reasonable belief force necessary
  c) After request to leave (or futility of request)
Katko v. Briney

- Deadly force to protect real property?
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Torts

1. Intentional
2. Negligence Actions
3. Strict Liability

Krayenbuhl

- Negligence law is about striking the appropriate balance
- Business of life cannot be rendered absolutely safe
- Weigh public benefit against possible dangers
Carroll Towing

• Duty exists when $B < P \times L$
  — $B =$ burden of taking precaution
  — $P =$ probability possibility of risk
  — $L =$ gravity of the potential harm

Elements of **Negligence** Action

1. **Duty**
   • “Standard of Care” (SOC)
   • To act as the reasonable prudent person in the same or similar circumstances

2. **Breach**
   • Non-conformity to the SOC
   • Along with Duty, sometimes referred to as “negligence”

3. **Causation**
   • Causation in fact and
   • Proximate/Legal Cause

4. **Harm**
   • Actual Loss
Establishing a Standard of Care

Duty/SOC
- RPP
- Rule of Law
- Statute Enacted for Other Purpose
- Statute Enacted for Negligence

Establishing a Standard of Care

Duty/SOC
- RPP
- Rule of Law
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Vaughan v. Menlove

- objective standard
- mental deficiencies