INTENTIONAL TORTS – Discuss whether the intent is specific (goal to bring about specific consequences) or general (actor knows with substantial certainty these consequences will result)
  o Assault – 1) affirmative act by defendant; 2) done w/intent to place plaintiff in apprehension; 3) of an imminent harmful or offensive contact to his person; AND 4) that actually causes the plaintiff apprehension
    ▪ Under the doctrine of “transferred intent”, the intent to inflict battery satisfies the intent requirement of assault.
  o Battery – 1) an act by defendant that brings about harmful or offensive contact to the plaintiff’s person; 2) intent on the part of the plaintiff to bring about the harmful or offensive contact; AND 3) causation.
    ▪ Defendant also liable when he sets in motion a force that brings about harmful or offensive contact.
  o False Imprisonment – 1) an act or omission by defendant that confines or restrains plaintiff to a bounded area; 2) intent to confine or restrain; 3) Causation
  o Intentional Infliction of Emotional Distress – FL requires 1) act by defendant amounting to “extreme and outrageous conduct;” 2) intent to cause severe emotional distress or recklessness as to effect of defendant’s conduct; 3) causation; AND 4) damages (ie. Severe emotional distress).

DEFENSES
  ▪ Self-Defense – In FL, a person is justified in the use of force against another when and to the extent he reasonably believes necessary to defend himself or a 3rd party against the other’s imminent use of unlawful force.
    • Any person who isn’t engaged in an unlawful activity and who is in any place she has a right to be has NO DUTY TO RETREAT and has the right to use force, including deadly force if she reasonably believes it is necessary to prevent death or great bodily harm to herself or another or to prevent the commission of a forcible felony.
  ▪ Consent – express or implied. It can be inferred as a matter of usage or custom or implied by law (ie. In emergency situations where there is no opportunity to obtain plaintiff’s consent.)
    • Defendant may be liable if he exceeds scope of consent.

DEFAMATION – Requirements in FL are:
  o Statement of Fact
  o A defamatory effect from the statement
  o Identifies plaintiff as the subject
  o Publication to a 3rd person
  o Compensable damages to the plaintiff
  o Falsity of the statement
  o Requisite fault by defendant
  o DEFENSE – Truth, consent, privileges (absolute and qualified)

MISREPRESENTATION – There are 2 types: intentional and negligent misrepresentation.
  o Intentional Misrepresentation - requires plaintiff establish 1) a misrepresentation of a material fact; 2) scienter; 3) an intent to induce the plaintiff’s reliance on the misrepresentation; 4) Causation; 5) Justifiable reliance; and 6) Damages
TORTIOUS INTERFERENCE W/BUSINESS RELATIONSHIP – Requires 1) a valid contractual relationship or business expectancy between plaintiff and 3rd party; 2) defendant had knowledge of relationship; 3) interference induced breach or termination of relationship or expectancy; AND 4) breach resulted in loss to the plaintiff. (NOTE: Damages cannot be recovered where the “relationship” is based on speculation regarding future sales to past customers.)

NEGLIGENCE

DUTY – A duty is owed to ALL FORESEEABLE Plaintiffs. Determine in plaintiff was foreseeable and what standard of care if owed. Duties Established by Statute – was statute intended to protect type of harm plaintiff suffered. If, so it is “negligence per se”

- Business Invitees – FL statute enacted July 1, 2010 provides that if a plaintiff slips and falls on a transitory foreign substance at a business, the plaintiff must prove the business had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it. Constructive knowledge can be shown by evidence that 1) the dangerous condition existed for a such a period of time that the business should have known; OR 2) the condition occurred with regularity and was therefore foreseeable.

- Undiscovered Trespasser – someone who enters property w/o invitation whose presence is not detected w/n 24 hours proceeding accident. NO DUTY TO WARN but landowner must refrain from intentional misconduct that proximately causes injury.

- Discovered Trespasser - person who enters property w/o invitation but whose presence was detected w/n 24 hours of accident. DUTY TO WARN of KNOWN NON-OBVIOUS dangerous conditions.

- Uninvited Licensee – one who comes onto premises solely for their own convenience w/o invitation. SAME DUTY AS DISCOVERED TRESPASSERS.

- Licensees by Invitation – social guests and other persons who are on the property through express or implied invitation of the owner. They are treated like INVITEES. They are owed a DUTY OF REASONABLE CARE UNDER THE CIRCUMSTANCES. Duty to make reasonable inspections to discover non-obvious dangerous conditions and make them safe.

(NOTE: Police and firefighters are treated as Invites in FL)

Professional Standards of Care

- BREACH – Where a defendant’s conduct falls short of the duty required by the applicable standard of care

- CAUSATION – “In order for plaintiff to prove causation, the plaintiff must prove that defendant’s conduct was the cause in fact (actual cause) and the proximate (legal) cause of the plaintiff’s injuries.”

  - Actual Cause – “But for” test

  - Proximate Cause – Foreseeability Test

    - Intervening Forces - comes into motion after the time of defendant’s negligent act and comes with it to cause the injury to the plaintiff. If the defendant’s negligence created a foreseeable risk that an intervening force would contribute to plaintiff’s harm, the defendant is liable for the harm caused.

- DAMAGES – Look at personal injury, economic damages, non-economic damages, property damages, punitive damages.

  - Economic Damages – Past, present, and future medical expenses and lost wages

  - Non-Economic Damages – pain and suffering, negligent infliction of emotional distress, loss of consortium
- **Punitive Damages** – In FL, a defendant may be held liable for punitive damages only if the trier of fact based on CLEAR AND CONVINCING evidence, finds that the defendant was personally guilty of “intentional misconduct or gross negligence”.
  - In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent if that conduct constituted intentional misconduct or gross negligence and the employer or principal:
    - Actively or knowingly participated in such conduct.
    - Knowingly condoned, ratified, or consented to such conduct;
    - Engaged in conduct that constituted gross negligence and contributed to the loss, damages, or injuries suffered by the plaintiff.
  - A plaintiff may not plead punitive damages unless evidence in the record demonstrates a reasonable basis for recovery.
  - Punitive damages cannot exceed the GREATER of 1) 3 times the amount of compensatory damages or 2) $500K
  - There is NO CAP on punitive damages for any defendant who, at the time of the act or omission, was under the influence of alcohol or drug that impaired his normal faculties.
  - **DEFENSES**
    - **Contributory Negligence** – negligence on the part of the plaintiff that contributes to her injuries.
    - **Assumption of Risk** – Plaintiff may be denied recovery is she EXPRESSLY assumed the risk of any damage caused by the defendants act. Plaintiff must have 1) known of the risk AND 2) voluntarily proceeded in the face of the risk. (NOTE: FL has abolished implied assumption of risk)
    - **Pure Comparative Negligence** – Florida has adopted the doctrine of pure comparative negligence. Any party may have a claim for damages unless he was 100% at fault. Assuming that all defendant’s are liable, the extent of their liability will depend upon the amount of the damage award and their respective degree of fault. The damages award will be reduced by the plaintiff’s share of fault. FL HAS ABOLISHED JOINT AND SEVERAL LIABILITY AMONG TORTFEASORS.
      - **Exception** – In FL, a plaintiff MAY NOT recover any damages if at the time of injury plaintiff was 1) legally drunk (ie. Blood alcohol level of 0.08 or higher); AND 2) as a result of such impairment, the plaintiff was more than 50% at fault for his own harm.
  - **STRICT LIABILITY** – 1) Defendant owes and ABSOLUTE DUTY to plaintiff to make the activity or condition safe; 2) Breach of Duty; 3) Actual and Proximate Cause; 4) Damages.
    - **Dangerous Animals** – In FL, owners of wild animals are strictly liable for the damages caused by the trespass of such animals and for the injuries inflicted upon other people by wild animals. In contrast, owners of domestic animals are generally not strictly liable for the damages caused by trespass or for injuries cause by such animals. **Exception**: The owner of any dog that bites any person while such person is in a public place or lawfully in a private place, is liable for damages suffered by persons bitten, regardless of the former viciousness of the dog or the owner’s knowledge of such viciousness. Owner is strictly liable for injuries caused by dog even if dog never bit anyone before.
o **Defenses** - contributory negligence of plaintiff, “Bad Dog” sign

o **Inherently Dangerous / Ultrahazardous Activities** – Elements:
  - Involves substantial risk of serious harm to person or property
  - Cannot be performed w/o risk of serious harm no matter how much care is taken
  - Activity is not commonly engaged in by persons in the community.
  - Examples: blasting, manufacturing explosives, impounding water, mining.

o **Failure to Warn of Known Dangerous Condition** – Elements:
  - Defendant created the dangerous condition
  - Condition wasn’t readily apparent
  - Defendant had knowledge of the dangerous condition
  - Defendant failed to take steps to warn public of danger or avert the danger.

o **Product Liability** – There are 5 theories of recovery for product liability 1) INTENT, 2) NEGLIGENCE, 3) STRICT LIABILITY, 4) IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, 5) REPRESENTATION THEORIES (i.e. Express warranties and misrepresentation)
  - Strict liability requires proof of duty, breach, causation (actual and proximate), and damages. The duty is owed by ANY commercial supplier.
  - Breach requires that product was sold in a defective condition unreasonably dangerous to users.
  - In a case of design defect, the prevailing “feasible alternative” test provides that the product is defective if the defendant could have removed the danger without serious adverse impact on the product’s UTILITY or PRICE.

• **ATTRACTIVE NUISANCE** – 1) Dangerous condition 2) Landowner knows that children frequent the area, 3) Child is unable to appreciate the risk or danger, 4) Expense of remedy is slight as compared to the risk. 5) FL requires that the plaintiff be lured onto the premises by the dangerous condition.

• **RES IPSA LOQUITUR** – 1) The accident would not have occurred w/o negligence of Defendant 2) Defendant has complete control of the instrumentality causing negligence and 3) Injury was not plaintiff’s fault.

• **GOOD SAMARITAN LAW** – There is no duty to render aid unless a special relationship exists. However, if you do render aid, in FL you are not liable if you act as an ORDINARY REASONABLY PURDENT PERSON.

• **GRATUOUS AID BY HEALTH CARE PROVIDER (IN FACILITY)** – Need willful misconduct or extreme recklessness, not mere negligence.

• **WRONGFUL DEATH** – May be brought by personal representative of decedent.
  - Recoverable damages include the traditional damages in a tort action: past and future loss of support and services, loss of decedent’s companionship and protection, mental pain and suffering, and medical and funeral expenses.
  - Surviving spouse, minor children and parents of the decedent may recover for loss of decedent’s companionship and protection and mental pain and suffering from the date of the injury.

• **VICARIOUS LIABILITY** – Under the doctrine of “respondeat superior” an employer is liable for an employee’s torts committed w/n the scope of employment. An employer can be liable for employer’s own negligence or under respondeat superior.
  - Employer’s Negligence – to find liability for negligent hiring, supervision or retention, plaintiff must show 1) employer owed duty to plaintiff, 2) breach of duty, 3) actual and proximate cause, 4) damages.
- **Presumptions**— An employer is presumed NOT to have been negligent in hiring if the employer conducted a background investigation before hiring and it didn’t reveal anything questionable. However, a decision by an employer not to conduct a background investigation DOES NOT raise a presumption that the employer did not use reasonable care in hiring.

- **PERMISSIVE USE RULE**— FL has adopted the “permissive use rule” which provides that an auto owner who consents to the use of his car is vicariously liable for driver’s negligence.

- **GOVERNMENTAL/SOVERIEGN IMMUNITY**— FL has waived immunity for governmental activities, but not for discretionary activities. The gov will be liable for its employees under respondeat superior. However, damages are CAPPED at 200K.
  - **Planning v. Operational Test**— Gov immune from suit for PLANNING decision. It is subject to suit for OPERATIONAL.

- **PARENT-CHILD IMMUNITY**— Florida has eliminated parent-child immunity in the following cases: 1) Negligence of parent but only to the extent of insurance coverage, 2) Intentional sexual abuse perpetrated by a parent against a minor child.