

A. Intentional Torts

a. In General

i. Voluntary Act

- D must have state of mind that directed the physical movement

ii. Intent

- D acts w/the **purpose** of causing the consequence; OR
- D acts knowing the consequence is **substantially certain** to result.
- **Children** and mentally incompetent persons can be held liable for intentional torts if they act w/the requisite intent.
- Transferred intent:
 - ◆ Person intends to commit an intentional tort against one person but instead commits:
 - ◇ A **different intentional tort** against the same person;
 - ◇ The same intended tort against a **different person**; OR
 - ◇ A **different intentional tort** against a **different person**.
 - ◆ Applies to: Battery, Assault, Trespass to Chattels, Trespass to Land
 - ◆ DOES NOT apply to IIED

iii. Causation

- D's conduct was a **substantial factor** in creating the harm.

b. Battery

i. Definition

- D causes a **harmful** or **offensive** contact w/the person of another; AND
- Acts w/the intent to cause that contact OR the **apprehension** of that contact

ii. Consent

- No battery if there is **express** or **implied** consent.

iii. Harmful or Offensive Contact

- *Harmful*
 - ◆ Causes an **injury**, physical impairment, pain, or illness
- *Offensive*
 - ◆ A person of **ordinary sensibilities** (reasonable person) would find the contact offensive.
 - ◆ D might be liable if **aware** that victim is **hypersensitive**, but acts nonetheless.
- *P's Awareness*
 - ◆ Does NOT need to be aware of contact when it occurs

iv. **Conduct Directed toward 3rd Party**

- Conduct directed at 3rd-party victim, not the person who suffers the distress
- D is liable if he intentionally or recklessly causes severe emotional distress to:
 - ◆ A member of the **victim's family** who is **present** at the time of the D's conduct; OR
 - ◆ Any other bystander who is present IE:
 - ◇ The D is **aware** of the other bystander; AND
 - ◇ The distress results in **bodily injury**

v. **Severe Emotional Distress**

- P must prove severe emotional distress beyond what a **reasonable person** could endure.
- **Hypersensitive P**: no liability UNLESS the D **knew about** and intended to take advantage of that heightened sensitivity

e. Trespass to Chattels

i. **Definition**

- An intentional interference w/the P's right to tangible personal property either by:
 - ◆ **Dispossessing** the P; OR
 - ◆ **Using** OR
 - ◆ **Intermeddling** w/the P's use of the chattel.

ii. **Intent**

- Only the intent to do the interfering act is necessary
- D need not have intended to interfere another's possession of tangible property
- Mistake about the legality of the action NOT a defense.

f. Trespass to Land

i. **Definition**

- D intentionally cause a **physical invasion** of someone's land.

ii. **Intent**

- D need only have the intent to enter the land or cause the physical invasion
- **NOT** the intent to commit a wrongful trespass
- Mistake of fact is **NOT** a defense

iii. **Physical Invasion**

- Failure to leave the P's property after a lawful right of entry has expired constitutes a physical invasion
- D need not personally enter onto the land - flooding the land, throwing rocks on the land, etc. would count as trespass

iv. Necessity

- *Defense to Trespass*
 - ◆ Available to a person who enters the land of another or interferes w/their personal property to prevent an injury that is **substantially more serious** than the invasion or interference.
 - ◆ Applies only to intentional torts to property
- *Private Necessity*
 - ◆ Right to use the property of another to save their own lives or more valuable property
- *Public Necessity*
 - ◆ Private property is intruded upon or destroyed when necessary to protect a large number of people from public calamities

B. Privileges

a. Consent

i. Express

- P, by **words** or **actions**, manifests a willingness to submit to the conduct.
- Consent by *mistake* - **valid** unless D caused the mistake or knew of it and took advantage.
- Consent by *fraud* - **invalid** if it goes to an **essential** matter.
- Consent obtained under **duress** (threats of physical force) - **invalid**
 - ◆ Threats of economic duress will not make consent invalid.

ii. Implied

- P is **silent** in a situation where a reasonable person would object; OR
- P participates in an environment where the contact is an **expected and ordinary part** of the operation
- Emergencies - when immediate action is required to save the life or health of a P who is **incapable** of consenting to treatment, consent is unnecessary (it is implied).
- Injuries arising out of athletic competitions - consent is implied by custom, usage, or participation.
 - ◆ Can only recover if the injured player is a victim of the D's **reckless disregard** for safety.
- Boxing or prizefighting - P consents to torts of battery and assault

iii. Capacity

- Lack of capacity (due to youth, intoxication, incompetency, etc.) may undermine the validity of consent

b. Self-Defense

i. Use of Reasonable Force

- A person may use reasonable force to defend against an offensive contact or bodily harm.

serious harm.

- Must be **reasonably proportionate** to the anticipated harm
- A **reasonable** mistake does not invalidate the defense.

ii. **Use of Deadly Force**

- Can only be used if D has a reasonable belief that she has been threatened w/deadly force or force sufficient to cause serious bodily injury

iii. **Duty to Retreat**

- Until recently, most courts required retreat before using deadly force unless the D was **in her own home**
- Today, many states have adopted "**stand your ground**" statutes.

iv. **Initial Aggressor**

- **NOT** entitled to claim self-defense unless the other party has escalated the conflict by responding to non-deadly force w/deadly force

v. **Injuries to Bystanders**

- The actor is **not liable** for such injuries as long as the injuries were accidental and the actor was behaving reasonably (not negligent).

c. Defense of Others

- Force must be reasonable
- Must have reasonable belief that the other party (party being defended) would be able to use self-defense
- Must be proportionate to harm anticipated
- Not liable for mistaken belief so long as the belief is **reasonable**

C. Negligence

a. In General

i. **Definition**

- The failure to exercise the care that a **reasonable person** in that situation would exercise and acting in a way that breaches the **duty** to prevent foreseeable risks of harm to others.
 - ◆ The unreasonable breach of the duty must be **the cause** of P's harm.
- Conduct that falls below the minimum degree of ordinary care imposed by law to protect others against unreasonable risk of harm
- **Traditional approach**: what would a **reasonably prudent person** have done under those circumstances?

ii. **Elements**

- Duty
- Breach
- Causation
- Damages

- Damages

b. Duty

i. General Rule

- A duty of care is owed to all **foreseeable** persons who may be injured by the D's failure to follow a reasonable standard of care.
- Actor has a duty to exercise reasonable care whenever the conduct creates a risk of physical harm.

ii. Failure to Act

- General rule - NO duty to act **affirmatively**
- Even if it appears unreasonable

iii. Foreseeability of Harm

- If acting affirmatively, the foreseeability of the harm to another by failing to use reasonable care is sufficient to create a **general duty** to act w/reasonable care.

iv. Foreseeability of Harm to P

- *Cardozo View*
 - ◆ Palsgraf case
 - ◆ Duty of care owed to P only if P is a member of the class of persons who might be foreseeably harmed by the conduct
 - ◆ Only liable to Ps w/in the **zone of foreseeable harm**
- *Andrews View*
 - ◆ Dissent in Palsgraf
 - ◆ Proximate cause terms - if D can foresee harm to **anyone**, a duty is owed to everyone harmed as long as proximately caused.

v. Rescuers

- A person who comes to the aid of another is a foreseeable P
- If the rescuer's efforts are unreasonable, comparative fault principles apply.
- "Firefighter's rule" - emergency professionals are **barred** from recovering damages from the party whose negligence caused the professional's injury if the injury resulted from a risk **inherent in the job**

vi. Affirmative Duty to Act

- In general, no affirmative duty to help others. The following are exceptions to that rule:
 - ◆ *Assumption of Duty*
 - ◇ A person who voluntarily aids or rescues another **is** liable for any injury caused by the failure to act w/reasonable care in performing the aid or rescue.
 - ◇ **"Good Samaritan statutes"** - protect **doctors** and **medical professionals** from liability for ordinary negligence when they voluntarily aid or rescue another.

- ◆ *Placing Another in Peril*
 - ◇ Duty to exercise reasonable care to prevent further harm
- ◆ *By Authority*
 - ◇ Person w/the ability and actual authority to control another (e.g., parent-child, employer-employee) has a duty to exercise reasonable control
- ◆ *By Relationship*
 - ◇ D has special relationship w/P
 - ▶ Such as business-patron, common carrier-passenger
 - ◇ Duty to aid or assist those persons and prevent reasonably foreseeable injuries

c. Standard of Care

i. Reasonably Prudent Person under the Circumstances

- Objective standard
- *Mental & Emotional Characteristics*
 - ◆ D is presumed to have average mental abilities and knowledge
 - ◆ Special knowledge or skills - D is held to a higher standard
- *Physical Characteristics*
 - ◆ Particular physical characteristics **ARE** taken into account. (i.e., blindness)
- *Intoxication*
 - ◆ Intoxicated people are held to the same standard as sober people unless the intoxication was **involuntary**
- *Children*
 - ◆ Standard of care is that of a reasonable child of similar **age**, intelligence, and **experience**.
 - ◆ More subjective
 - ◆ Children engaged in adult activities - held to same standard as adults.
 - ◆ Many courts hold that very young children, such as under age 5, are incapable of negligence

ii. Cost-Benefit Analysis

- Courts balance the foreseeable likelihood of harm and the severity of the harm against any precautions that should have been taken.

iii. Custom

- Admissible as evidence to establish the standard of care
- **NOT** conclusive evidence

iv. Professionals

- Expected to exhibit the same skill and knowledge as another practitioner in the **same community**
- Specialist may be held to a higher standard

v. **Physicians**

- **Standard**: reasonably competent physician
- **Traditional rule** - physician in the "same or similar" locality
- Modern trend - **national** standard
- Must provide **informed consent**
 - ◆ Must explain risks of medical procedures
 - ◆ Not required if risks are commonly known, patient is unconscious, patient waives the information, patient is incompetent, or the patient would be harmed by disclosure (e.g., it would cause a heart attack)

vi. **Negligence Per Se**

- *Basic Rule*
 - ◆ A statute imposes a particular duty for the protection or benefit of others.
 - ◆ Statute will establish the standard of care.
 - ◆ P must be in the ***class of people intended to be protected***, the accident must be the ***type of harm*** that the statute was intended to protect against, and the harm was caused by a ***violation of that statute***.
- *Compliance Not Dispositive*
 - ◆ Does not necessarily prove the absence of negligence
 - ◆ Compliance w/certain federal regulations might be dispositive.
- *Defenses*
 - ◆ Compliance was **impossible** or an **emergency** justified violation of the statute
 - ◆ Violation was reasonable under the circumstances
 - ◇ D exercised reasonable care in attempting to comply w/the statute.
- *Violation by P*
 - ◆ Counts as comparative or contributory negligence

d. Specific Classes of Defendants

i. **Common Carriers & Innkeepers**

- **Traditional rule**: **highest** duty of care consistent w/the practical operation of the business
 - ◆ Could be held liable for slight negligence
- Majority of courts today:
 - ◆ Common carriers - held to higher standard
 - ◆ Innkeepers - liable only for ordinary negligence (not higher standard).
- Common carriers and innkeepers have a duty to act affirmatively based on the special relationship w/passengers and guests

ii. **Bailors and Bailees**

- **Bailment** - bailee temporarily takes possession of the bailor's property.
 - ◆ E.g., driver leaves car w/a valet
- Duty of care depends on the circumstances
- **Gratuitous bailee** - bailor must inform bailee of **known** dangers or defects in the property

property

- **Bailee for hire** - bailor must inform bailee of defects that are **known** or **should have been known** by the bailor.
- Bailee's duty:
 - ◆ When a bailor receives the sole benefit from a bailment, bailee is only liable if **grossly negligent**.
 - ◆ When the bailee receives the sole benefit from a bailment, bailee must exercise **extraordinary care**.
 - ◆ Bailment for mutual benefit - bailee must exercise **reasonable care**.

iii. Emergency Situations

- Standard of care is that of a reasonable person in the same situation

e. Possessors of Land

i. Two Approaches

- Traditional rule (1/2) - standard of care owed to people who come onto the land depends on whether the person is an **invitee**, a **licensee**, or a **trespasser**.
- Other 1/2 - reasonable standard of care is owed to ALL invitees and licensees.
 - ◆ Abolished distinction btwn invitees and licensees.

ii. Trespassers

- On the land w/out consent or privilege
- *Traditional Approach*
 - ◆ Possessor is obligated to refrain from **willful, wanton**, reckless, or **intentional** misconduct toward trespassers.
 - ◆ Use spring gun or another trap will result in liability
 - ◆ **Discovered** or **anticipated** trespassers:
 - ◇ Must warn these trespassers of **concealed, dangerous, artificial** conditions.
 - ◇ Must exercise reasonable care when conducting activity on their land.
 - ◆ Undiscovered trespassers - no duty owed.
 - ◆ "Attractive Nuisance Doctrine"
 - ◇ Possessor of land may be liable to injuries to **children** trespassing on the land if:
 - ▶ An artificial condition exists in a place where the owner **knows** or has **reason to know** children are likely to trespass;
 - ▶ The land possessor knows or has reason to know the artificial condition poses an unreasonable risk of **death** or **serious bodily harm**.
 - ▶ The children, b/c of their youth, **do not discover** or **cannot appreciate** the danger;
 - ▶ The utility to the land possessor of maintaining the condition is slight compared to the risk of injury; AND
 - ▶ The land possessor fails to exercise reasonable care.

- *Modern Approach*
 - ◆ A few states
 - ◆ Land possessor owes a duty of reasonable care under the circumstances to anyone on their land.
 - ◆ Courts will consider whether the person was a trespasser in deciding whether the land possessor took reasonable care.

iii. Licensees

- Enters the land w/express or implied permission
- Traditional rule: land possessor has a duty to either **correct** or **warn** the licensee of **concealed dangers** that are known or should be known to the land possessor.
 - ◆ No duty to **inspect** for dangers
 - ◆ Must exercise reasonable care in conducting activities on the land

iv. Invitees

- Owed the highest level of care
- Public invitee: someone invited to enter and remain on the land for the purposes for which the land is open to the public.
- Business invitee: someone invited to enter and remain on the land for the purpose of conducting a business transaction.
- Possessor owes a duty of **reasonable care**
- Duty does not extend beyond the scope of the invitation - invitee becomes trespasser if exceeds the scope
- **Non-delegable duty**
- Recreational land use - landowner who opens his land up to the public is not liable for injuries to a recreational user unless the landowner charges a fee or acts willfully, maliciously, or w/gross negligence

v. Off-premises Victims

- Land possessor generally not liable for injuries resulting from natural conditions.
 - ◆ Exception: trees in urban areas
- Artificial conditions - must prevent unreasonable risk of harm to persons not on the premises
- Must exercise reasonable care in conducting activities on the land

vi. Sellers of Real Property

- Duty to disclose to buyers concealed and unreasonably dangerous conditions known to the seller

f. Res Ipsa Loquitur

i. General Principle

- Under some circumstances, **circumstantial** evidence of negligence is sufficient.

ii. Elements

- The accident was of a kind that usually does not occur in the absence of negligence;
- Caused by an agent or instrumentality w/in the **exclusive control** of the D; AND
- Was not due to the **P's** fault.

D. Causation

a. In General

i. P must show that the breach was the cause of his or her harm

ii. Causation has two components:

- Cause in fact
- Proximate Cause

b. Cause in Fact

i. "But For" Test

- P must show that the injury would not have occurred "but for" the D's negligence
- If the injury would have occurred despite the D's conduct, then there is not factual causation.

ii. Multiple Tortfeasors

- The "but for" test can be problematic in the following circumstances:
 - ◆ There are several tortfeasors and it cannot be said that one particular D's tortious conduct was necessary to cause the harm;
 - ◆ There are multiple potential **causes** of the harm and the P cannot prove which D caused the harm; OR
 - ◆ There is a negligent misdiagnosis in a case where it is likely that the P would have died anyway.
- Many courts use the "**substantial factor**" test.
 - ◆ Was the D's conduct a substantial factor in the causing the P's harm?

iii. Specific Situations

- *Concurrent Tortfeasors Contributing to an Individual Injury*
 - ◆ When the tortious acts of two or more Ds are each a factual cause of a **single indivisible** injury to the P, **joint** and **several** liability applies.
 - ◆ Each D is potentially liable for the whole harm.
- *Alternate Causation*
 - ◆ P's harm was caused by only one of a few Ds (usually two) and it cannot be determined which one of them cause the harm.
 - ◆ Courts will **shift the burden to the Ds** - will impose liability on both unless they can show which one of them caused the harm.
- *Concert of Action*
 - ◆ If two or more tortfeasors were acting together pursuant to a **common goal** and that cause the P's harm, all Ds will be **joint** and **severally** liable.

- *Loss of Chance of Recovery*
 - ◆ Physician negligently fails to diagnose a disease and thereby reduces the P's chance of survival, but the P's chance of survival was less than **50%** to start with.
 - ◆ Courts allow a ***partial recovery*** for the lost chance of survival.

iv. Causal Linkage

- Typically, once P proves cause in fact, he also implicitly proves that the conduct increased the chance of harm.
- However, sometimes this is just coincidental.
- Thus, proximate cause must also be shown.

c. Proximate Cause

i. In General

- In addition to cause in fact, P must prove proximate cause.
- Some courts use the phrase "scope of liability."
- Modern Rule: Liability is limited to those harms that result from the risk that made the D's conduct tortious.
- Other courts follow Andrews' dissent in Palsgraf. They look to a set of factors:
 - ◆ Is there a natural and foreseeable **continuous sequence**?
 - ◆ Was one a substantial factor?
 - ◆ Was there a direct connection w/out too many intervening causes?
 - ◆ Was the cause likely to produce the effect?
 - ◆ Could the D have **foreseen** the harm?
 - ◆ Was the cause *too remote* in time and space?

ii. Extent of Damages

- Need not be **foreseeable**
- "Eggshell P" rule
- Liable for full extent of damages even if more severe than expected.

iii. Intervening and Superseding Causes

- *Intervening Cause*
 - ◆ Factual cause that contributes to the harm **AFTER** the D's negligence.
- *Superseding Cause*
 - ◆ A particular intervening cause that **breaks** the chain of causation, preventing the D from being liable.
 - ◆ **Unforeseeable** intervening cause is a superseding cause.
 - ◆ **Foreseeable** intervening cause is NOT a superseding cause.

E. Special Rules of Liability

a. NIED

i. Rule

- P can recover from a D whose negligence creates a foreseeable risk of **physical injury** to the P if the D's action causes a threat of **physical impact** that in turn

injury to the P if the D's action causes a threat of **physical impact** that in turn cause emotional distress.

- Generally, the emotional distress must result in **bodily harm**.
- Misdiagnosing a patient w/a terminal illness is another way NIED can occur.

ii. Zone of Danger

- Generally, the P must fear for their own safety.

iii. Recovery for Witnessing Someone Else Get Hurt

- Only allowed to recover if the P is:
 - ◆ **Closely related** to the person injured by the D;
 - ◆ Present at the scene; AND
 - ◆ **Personally observed** the accident.

F. Defenses

a. Contributory Negligence

i. In General

- P fails to exercise due care for her own safety.

ii. Traditional Rule

- Still applies in 4 or 5 states
- Contributory negligence is a **complete bar** to recovery.

iii. Last Clear Chance Doctrine

- In a contributory-negligence jurisdiction, P could still recover if the D had and did not take the **last-clear chance**.
- Designed to mitigate the harshness of the contributory negligence rule
- D had the last opportunity to avoid the harm and did not take it.
- A P who due to his own contributory negligence was in peril from which he cannot escape is called a **helpless P**.
 - ◆ D is liable if she **knew** or **should have known** of the P's peril and could have avoided harming the P but for her own negligence.
- Inattentive P - P, due to his or her own negligence, is in peril from which he or she could escape if he or she was paying attention.
 - ◆ D is liable only if he had **knowledge** of the danger.

b. Comparative Negligence

i. In General

- Followed in most jurisdictions
- P's own negligence will **reduce** but not necessarily eliminate the D's liability

ii. Pure Comparative Negligence

- P's negligence is not a complete bar.
- P's damages are reduced by the **proportion** of the P's fault.

iii. Modified Comparative Negligence

- Majority of comparative fault jurisdictions
- Rule:
 - ◆ P is LESS at fault than D: P's recovery is **diminished** by his percentage of fault.
 - ◆ P is MORE at fault than D: P **cannot** recover.
 - ◆ Most jurisdictions: P and D are **EQUALLY at fault** - P recovers **half** of his total damages.
 - ◆ A few jurisdictions: P and D are **EQUALLY at fault** - P recovers **nothing**.

iv. Multiple Ds

- P's degree of negligence is compared to the **total** degree of negligence of ALL of the Ds combined.

v. Comparative Fault

- Always involves comparing the fault of the **P** against the fault of the **Ds**

vi. Contribution

- Involves comparing the degree of fault of **several Ds**
- Does **NOT** affect the liability of any of the Ds to the P

vii. Severall Liability

- Involves comparing the level of fault of the Ds
- **DOES** affect how much the P will receive from each of the Ds

c. Assumption of Risk

i. In General

- P has knowingly and willingly accepted a risk of harm and as a result, cannot recover.

ii. Exculpatory Clauses in Ks

- P explicitly assumes the risk by K.
- Courts will hesitate to enforce exculpatory provisions if:
 - ◆ They disclaim liability for reckless or wanton misconduct, or **gross** negligence;
 - ◆ There is a gross disparity of **bargaining power**;
 - ◆ The party seeking to enforce the provision offers services of great importance to the public; OR
 - ◆ The provision is subject to K defenses.
- Generally, **common carriers, innkeepers, and employers** cannot disclaim liability for negligence.

iii. Participants and Spectators in Athletic Events

- These persons assume the risks of certain injuries and accidents that are inherent in the game or activity.

inherent in the game or activity.

d. Vicarious Liability

i. Respondeat Superior

- Employers are liable for the torts of their employees.
- Employer is liable for employee torts that are w/in the **scope of employment**
 - ◆ Includes:
 - ◇ Things the employee is employed to perform;
 - ◇ Activities that are intended to **profit** or benefit the employer; OR
 - ◇ Intrinsic to the employment relationship.
- Careful instructions by the employer to the employee are not enough to insulate the employer from liability.
- Liability for intentional torts - if such are part of the job
- **Detour** - employer is still liable.
- **Frolic** - employer is not liable
- Employer can also be **directly negligent**
 - ◆ Negligent hiring

ii. Independent Contractors

- A person who hires an independent contractor is generally **NOT** vicariously liable for the torts of the IC.
- Independent Contractor - hired to perform a task but the employer has no right of **control**
- **MAY** be vicariously liable for the torts of independent contractors in the following situations:
 - ◆ **Inherently dangerous** activities;
 - ◆ **Non-delegable** duties;
 - ◆ Duty of an operator of premises to keep the premises safe for the public;
AND
 - ◆ Duty to comply w/**state statutes**

iii. Automobile Owners

- *Negligent Entrustment*
 - ◆ The owner of a vehicle may be liable for the negligent acts of a driver to whom the car was entrusted **IF** the owner **knew** or **should have known** of the driver's negligent propensities.
- *Family-Purpose Doctrine*
 - ◆ Many jurisdictions
 - ◆ The owner of an automobile may be liable for the tortious acts of **any family member** driving the car w/**permission**
- *Owner Liability Statutes*
 - ◆ Many jurisdictions have enacted statutes that provide that the owner of an automobile may be liable for the tortious acts of **any person** driving the car w/permission.

iv. Parents and Children

- *General Rule*
 - ◆ Parents are **NOT** vicariously liable for their minor children's torts.
- *Exceptions*
 - ◆ Child commits a tort while acting as an **agent** for the parent.
 - ◆ State statutes provide for the liability of parents for their children's specific acts.
 - ◆ Parent signing application for child to get his license - can be liable under state statute.
- *Negligence of Parents*
 - ◆ May be liable for their **OWN** negligence w/respect to their children's conduct
 - ◆ A parent is under a duty to exercise reasonable care to prevent a minor child from intentionally or negligently harming a 3rd party, provided the parent:
 - ◇ Has the ability to **control** the child; AND
 - ◇ Knows or has reason to know of the necessity and opportunity for exercising such control.

v. "Dram Shop" Liability

- Recognized by many states in statutes or by case law
- Can sue a seller of intoxicated beverages if a 3rd party is subsequently injured by the buyer's intoxication
- If the bartender or other seller acts negligently in selling intoxicated beverages, they may be liable.

vi. Sharing Liability Among Multiple Defendants

- *Joint and Several Liability*
 - ◆ Each of two or more defendants liable for a **single indivisible harm** is liable for the whole harm.
 - ◆ P can collect against any D, but cannot recover double
- *Contribution*
 - ◆ If two or more tortfeasors are subject to liability and one of the tortfeasors has paid the P more than his fair share of the damages, that tortfeasors can collect some portion of that payment from the other tortfeasors
 - ◆ Calculated differently in different jurisdictions
 - ◆ **ONLY** applies to **accidental** harms
- *Pure Several Liability*
 - ◆ Available in some jurisdictions
 - ◆ Each tortfeasor is only liable for his **proportionate share** of the damages.
- *Indemnification*
 - ◆ Shifts the **entire loss** from one party to the other
 - ◆ Generally arises under vicarious liability