Chapter 8: Negligence and Strict Liability

**Negligence**

**BREACH OF DUTY OF CARE**

**Definition of Negligence** conduct that falls below the standard established by law for the protection of others against unreasonable risk of harm

**Reasonable Person Standard** degree of care that a reasonable person would exercise under all the circumstances

- **Children** must conform to conduct of a reasonable person of the same age, intelligence, and experience under all the circumstances
- **Physical Disability** a disabled person’s conduct must conform to that of a reasonable person under the same disability
- **Mental Disability** a mentally disabled person is held to the reasonable person standard of a reasonable person who is not mentally deficient
- **Superior Skill or Knowledge** if a person has skills or knowledge beyond those possessed by most others, these skills or knowledge are circumstances to be taken into account in determining whether the person has acted with reasonable care
- **Emergencies** the reasonable person standard applies, but an unexpected emergency is considered part of the circumstances
- **Violation of Statute** if the statute applies, the violation is negligence per se in most states

**Duty to Act** a person is under a duty to all others at all times to exercise reasonable care for the safety of the others' person and property; however, except in special circumstances, no one is required to aid another in peril

**Duties of Possessors of Land**

- **Duty to Trespassers** not to injure intentionally
- **Licensees** to warn of known dangerous conditions licensees are unlikely to discover for themselves
- **Duty to Invitees** to exercise reasonable care to protect invitees against dangerous conditions possessor should know of but invitees are unlikely to discover

**Res Ipsa Loquitur** permits the jury to infer both negligent conduct and causation

**FACTUAL CAUSE AND SCOPE OF LIABILITY**

**Factual Cause** the defendant’s conduct is a factual cause of the harm when the harm would not have occurred absent the conduct

**Scope of Liability (Proximate Cause)** Liability is limited to those harms that result from the risks that made the defendant’s conduct tortious

- **Foreseeability** excludes liability for harms that were sufficiently unforeseeable at the time of the defendant’s tortious conduct that they were not among the risks that made the defendant negligent
- **Superseding Cause** an intervening act that relieves the defendant of liability

**HARM**

**Burden of Proof** plaintiff must prove that defendant’s negligent conduct caused harm to a legally protected interest

**Harm to Legally Protected Interest** courts determine which interests are protected from negligent interference

**Defenses to Negligence**

- **Contributory Negligence** failure of a plaintiff to exercise reasonable care for his own protection, which in a few states prevents the plaintiff from recovering anything
- **Comparative Negligence** damages are divided between the parties in proportion to their degree of negligence; applies in almost all states
- **Assumption of Risk** plaintiff’s express consent to encounter a known danger; some states still apply implied assumption of the risk

**Strict Liability**

**ACTIVITIES GIVING RISE TO STRICT LIABILITY**

**Definition of Strict Liability** liability for nonintentional and nonnegligent conduct
Abnormally Dangerous Activity strict liability is imposed for any activity that (1) creates a foreseeable and highly significant risk of harm and (2) is not one of common usage
Keeping of Animals strict liability is imposed for wild animals and usually for trespassing domestic animals

DEFENSES TO STRICT LIABILITY
Contributory Negligence is not a defense to strict liability
Comparative Negligence some states apply this doctrine to some strict liability cases
Assumption of Risk express assumption of risk is a defense to an action based upon strict liability; some states apply implied assumption of risk to strict liability cases