

Torts - Spring 2015

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Office Hours:
 Thursday 3:00 – 4:30
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GRADING POLICY

		% of Grade
Final Exam	Essay and/or Multiple Choice -- Closed Book Students with more than five absences may not be permitted to take the exam. NOTE: There are no excused absences without the express approval of Dean Sloan.	60 – 70%
Mid Term Test	One or two tests - Open or Closed Book – Essay or Multiple Choice Covers all material assigned prior to test	15 - 25%
Unannounced Quizzes or Daily Quiz	Open or Closed Book - Covers Assignment for that class -Essay or Multiple Choice	15-25%
Unexcused Lateness	Each occurrence (above two) arriving after class begins	2 % off
Cell phone or pager going off during class	Each occurrence	2% off
Class Preparation	Please give me a note before class if you are not prepared and/or do not want to be called on during that class.	0 - 10%
Use of electronic devices during class	The research is in: there is no such thing as multitasking. To avoid degrading your performance in class and distracting other students, please do not use electronic devices for any reason other than taking or reading notes or accessing class materials. Turn off cell phones or pagers (i.e., placing a cell phone on vibrate does not constitute turning it off). Be sure that any computer is set so that you cannot receive messages. Violators will not be allowed to bring electronic devices to class.	

READING ASSIGNMENTS

(Subject to changes which will be announced in class)

Date	Topic	Pages in 3 rd Edition	Pages in 4 th Edition	Supplementary
1/13	Battery	15-36	15-36	Restatement Battery
1/15				
1/20	Assault	39-49	39-49	
1/22	Consent	49-59	49-59	Restatement: Consent
1/27	Defenses I	59-72	59-72	Restatement: Defenses
1/29	Trespass & Conversion	739-745 745-752	755-762;	Restatement: Trespass & Conversion Problem Set A
2/3	Negligence: Reasonable Care	91-129	91-130	Problem Set B
2/5				
2/10	Defenses II: Plaintiff's Contributory Fault	293-298	297-302	Restatement : Last Clear Chance Problem Set C
2/12		302-305 314 -317	306-310 318-321	
2/17	Proving Breach I: Violation of Statute	137-154	137-154	
2/19	Proving Breach II: Custom & Res Ipsa	154-173	154-173	
2/24	Cause-in-Fact I	175-186 SUPP A	175-186 186-192	
2/26	Cause In Fact II	191-202	192-204	
3/3	MID-TERM TEST			
3/5	Limits on Liability: Palsgraf and Duty	223-230	225-232	
3/10		230-238 SUPP B	230-241 241-246	
3/12	Proximate Cause I: Directness Test, Substantial Factor Test	243-247 SUPP C 248-255	246-250 250-252 257-259	
3/24	Proximate Cause II: Foreseeability, Restatement (Third)	255-264 268-278	259-268 273-282	
3/26	Proximate Cause III: Superseding Cause	278-292	282-296	
3/31	Defenses III: Assumption of Risk	326-335	331-340	
4/2	Professional Standard of Care	417-434	421-438	
4/7	Owners and Occupiers of Land	465-470 SUPP D 475-483	469-474 474-479 479-487	
4/9	Duty to Rescue	513-521	521-530	Md C & J P §5-603
4/14	Negligent Infliction of Emotional Distress	536-552	544-561	
4/16	Damages II	581-598	591-608	MD C & J P §§11-108 -9
4/16	Traditional Strict Liability	641-662	651-673	
4/21	Products Liability I: Manufacturing Defects	667-679; 679-686	675-691 691-698	
4/23	Products Liability II: Design & Warning	686-698	698-710	

RESTATEMENT OF TORTS

PART ONE: BATTERY

§ 1 Intent [REST 3RD]

A person acts with the intent to produce a consequence if: (a) the person acts with the purpose of producing that consequence; or (b) the person acts knowing that the consequence is substantially certain to result.

Comment: Illustration: 1. In a forest area, Ken deliberately pulls the trigger of a rifle. He hopes to hit a wild deer, and he is unaware that any person is in the vicinity. The gun discharges. In fact, Nancy is nearby and is struck by the bullet. Ken has intentionally shot his gun. Yet he has not intentionally caused the harm to Nancy; he did not act with the purpose to produce that harm nor did he know that the harm was substantially certain to occur.

§13. Battery: harmful contact

An actor is subject to liability to another for battery if

- (a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and
- (b) a harmful contact with the person of the other directly or indirectly results.

§18. Battery: offensive contact

- (1) An actor is subject to liability to another for battery if

(a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and

(b) an offensive contact with the person of the other directly or indirectly results.

(2) An act which is not done with the intention stated in Subsection (1, a) does not make the actor liable to the other for a mere offensive contact with the other's person although the act involves an unreasonable risk of inflicting it and, therefore, would be negligent or reckless if the risk threatened bodily harm.

§21. Assault

(1) An actor is subject to liability to another for assault if

(a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and

(b) the other is thereby put in such imminent apprehension.

(2) An action which is not done with the intention stated in Subsection (1, a) does not make the actor liable to the other for an apprehension caused thereby although the act involves an unreasonable risk of causing it and, therefore, would be negligent or reckless if the risk threatened bodily harm.

PART TWO: CONSENT

§892. Meaning of consent

(1) Consent is willingness in fact for conduct to occur. It may be manifested by action or inaction and need not be communicated to the actor.

(2) If words or conduct are reasonably understood by another to be intended as consent, they constitute apparent consent and are as effective as consent in fact.

§892a. Effect of consent

(1) One who effectively consents to conduct of another intended to invade his interests cannot recover in an action of tort for the conduct or for harm resulting from it.

(2) To be effective, consent must be

- (a) by one who has the capacity to consent or by a person empowered to consent for him, and
- (b) to the particular conduct, or to substantially the same conduct.

(3) Conditional consent or consent restricted as to time, area or in other respects is effective only within the limits of the condition or restriction.

(4) If the actor exceeds the consent, it is not effective for the excess.

(5) Upon termination of consent its effectiveness is terminated, except as it may have become irrevocable by contract or otherwise, or except as its terms may include, expressly or by implication, a privilege to continue to act

§892c. Consent to crime

(1) Except as stated in Subsection (2), consent is effective to bar recovery in a tort action although the conduct consented to is a crime.

(2) If conduct is made criminal in order to protect a certain class of persons irrespective of their consent, the consent of members of that class to the conduct is not effective to bar a tort action.

PART THREE: DEFENSES

§63. Self-Defense By Force Not Threatening Death Or Serious Bodily Harm

(1) An actor is privileged to use reasonable force, not intended or likely to cause death or serious bodily harm, to defend himself against unprivileged harmful or offensive contact or other bodily harm which he reasonably believes that another is about to inflict intentionally upon him.

(2) Self-defense is privileged under the conditions stated in Subsection (1), although the actor correctly or reasonably believes that he can avoid the necessity of so defending himself,

(a) by retreating or otherwise giving up a right or privilege, or (b) by complying with a command with which the actor is under no duty to comply or which the other is not privileged to enforce by the means threatened.

§65. Self-Defense By Force Threatening Death Or Serious Bodily Harm

(1) Subject to the statement in Subsection (3), an actor is privileged to defend himself against another by force intended or likely to cause death or serious bodily harm, when he reasonably believes that

- (a) the other is about to inflict upon him an intentional contact or other bodily harm, and that
 - (b) he is thereby put in peril of death or serious bodily harm or ravishment, which can safely be prevented only by the immediate use of such force.
- (2) The privilege stated in Subsection (1) exists although the actor correctly or reasonably believes that he can safely avoid the necessity of so defending himself by
- (a) retreating if he is attacked within his dwelling place, which is not also the dwelling place of the other, or
 - (b) permitting the other to intrude upon or dispossess him of his dwelling place, or
 - (c) abandoning an attempt to effect a lawful arrest.
- (3) The privilege stated in Subsection (1) does not exist if the actor correctly or reasonably believes that he can with complete safety avoid the necessity of so defending himself by
- (a) retreating if attacked in any place other than his dwelling place, or in a place which is also the dwelling of the other, or
 - (b) relinquishing the exercise of any right or privilege other than his privilege to prevent intrusion upon or dispossession of his dwelling place or to effect a lawful arrest.

§77. Defense Of Possession By Force Not Threatening Death Or Serious Bodily Harm

An actor is privileged to use reasonable force, not intended or

- likely to cause death or serious bodily harm, to prevent or terminate another's intrusion upon the actor's land or chattels, if
- (a) the intrusion is not privileged or the other intentionally or negligently causes the actor to believe that it is not privileged, and
 - (b) the actor reasonably believes that the intrusion can be prevented or terminated only by the force used, and
 - (c) the actor has first requested the other to desist and the other has disregarded the request, or the actor reasonably believes that a request will be useless or that substantial harm will be done before it can be made.

§81. Amount Of Force Permissible

- (1) The actor is not privileged to use any means of defending his land or chattels from intrusion which are intended or likely to cause bodily harm or confinement in excess of that which the actor correctly or reasonably believes to be necessary to prevent or terminate the other's intrusion.
- (2) The actor is privileged in defense of his land or chattels against intrusion to do an act which is intended to put another in immediate apprehension of a harmful or offensive contact or other bodily harm or confinement which is in excess of that which the actor is privileged to inflict, if his act is intended and reasonably believed by him to be likely to do no more than to create such an apprehension.

PART FOUR: TRESPAS & CONVERSION

§158. Liability For Intentional Intrusions On Land

One is subject to liability to another for trespass, irrespective of whether he thereby causes harm to any legally protected interest of the other, if he intentionally

- (a) enters land in the possession of the other, or causes a thing or a third person to do so, or
- (b) remains on the land, or
- (c) fails to remove from the land a thing which he is under a duty to remove.

§159. Intrusions Upon, Beneath, And Above Surface Of Earth

- (1) Except as stated in Subsection (2), a trespass may be committed on, beneath, or above the surface of the earth.
- (2) Flight by aircraft in the air space above the land of another is a trespass if, but only if,
 - (a) it enters into the immediate reaches of the air space next to the land, and
 - (b) it interferes substantially with the other's use and enjoyment of his land.

§ 164. Intrusions Under Mistake

One who intentionally enters land in the possession of another is subject to liability to the possessor of the land as a trespasser, although he acts under a mistaken belief of law or fact, however

- reasonable, not induced by the conduct of the possessor, that he
- (a) is in possession of the land or entitled to it, or
 - (b) has the consent of the possessor or of a third person who has the power to give consent on the possessor's behalf, or
 - (c) has some other privilege to enter or remain on the land.

§ 222A. What Constitutes Conversion

- (1) Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.
- (2) In determining the seriousness of the interference and the justice of requiring the actor to pay the full value, the following factors are important:
 - (a) the extent and duration of the actor's exercise of dominion or control;
 - (b) the actor's intent to assert a right in fact inconsistent with the other's right of control;
 - (c) the actor's good faith;
 - (d) the extent and duration of the resulting interference with the other's right of control;
 - (e) the harm done to the chattel;
 - (f) the inconvenience and expense caused to the other.

PART FOUR: LAST CLEAR CHANCE

§479. Last Clear Chance: Helpless Plaintiff

A plaintiff who has negligently subjected himself to a risk of harm from the defendant's subsequent negligence may recover for harm caused thereby if, immediately preceding the harm,

- (a) **the** plaintiff is unable to avoid it by the exercise of reasonable vigilance and care, and
- (b) **the** defendant is negligent in failing to utilize with reasonable

- care and competence his then existing opportunity to avoid the harm, when he
- (i) **knows** of the plaintiff's situation and realizes or has reason to realize the peril involved in it or
 - (ii) **would** discover the situation and thus have reason to realize the peril, if he were to exercise the vigilance which it is then his duty to the plaintiff to exercise.

§480. Last Clear Chance: Inattentive Plaintiff

A plaintiff who, by the exercise of reasonable vigilance, could discover the danger created by the defendant's negligence in time to avoid the harm to him, can recover if, but only if, the defendant (a) knows of the plaintiff's situation, and (b) realizes or has reason to realize that the plaintiff is inattentive

and therefore unlikely to discover his peril in time to avoid the harm, and (c) thereafter is negligent in failing to utilize with reasonable care and competence his then existing opportunity to avoid the harm

MARYLAND CODE

Courts and Judicial Proceedings

§ 5-603. Emergency medical care

(a) A person described in subsection (b) of this section is not civilly liable for any act or omission in giving any assistance or medical care, if:

- (1) The act or omission is not one of gross negligence;
- (2) The assistance or medical care is provided without fee or other compensation; and
- (3) The assistance or medical care is provided:
 - (i) At the scene of an emergency;
 - (ii) In transit to a medical facility; or
 - (iii) Through communications with personnel providing emergency assistance.

(b) Subsection (a) of this section applies to the following:

- (1) An individual who is licensed by this State to provide medical care;
- (2) A member of any State, county, municipal, or volunteer fire department, ambulance and rescue squad, or law enforcement agency, the National Ski Patrol System, or a corporate fire department responding to a call outside of its corporate premises, if the member:
 - (i) Has completed an American Red Cross course in advanced first aid and has a current card showing that status;
 - (ii) Has completed an equivalent of an American Red Cross course in advanced first aid, as determined by the Secretary of Health and Mental Hygiene; or
 - (iii) Is certified or licensed by this State as an emergency medical services provider;
- (3) A volunteer fire department or ambulance and rescue squad whose members have immunity; and
- (4) A corporation when its fire department personnel are immune under paragraph (2) of this subsection.

(c) An individual who is not covered otherwise by this section is not civilly liable for any act or omission in providing assistance or medical aid to a victim at the scene of an emergency, if:

- (1) The assistance or aid is provided in a reasonably prudent manner;
- (2) The assistance or aid is provided without fee or other compensation; and
- (3) The individual relinquishes care of the victim when someone who is licensed or certified by this State to provide medical care or services becomes available to take responsibility.

§ 11-108. Noneconomic damages related to personal injury or wrongful death

(a)(1) In this section the following words have the meanings

indicated.

(2)(i) "Noneconomic damages" means:

- 1. In an action for personal injury, pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury; and
- 2. In an action for wrongful death, mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, care, marital care, parental care, filial care, attention, advice, counsel, training, guidance, or education, or other noneconomic damages authorized under Title 3, Subtitle 9 of this article.

(ii) "Noneconomic damages" does not include punitive damages.

(3) "Primary claimant" means a claimant in an action for the death of a person described under [§ 3-904\(d\)](#) of this article.

(3) "Primary claimant" means a claimant in an action for the death of a person described under [§ 3-904\(d\)](#) of this article.

(4) "Secondary claimant" means a claimant in an action for the death of a person described under [§ 3-904\(e\)](#) of this article.

(4) "Secondary claimant" means a claimant in an action for the death of a person described under [§ 3-904\(e\)](#) of this article.

(b)(1) In any action for damages for personal injury in which the cause of action arises on or after July 1, 1986, an award for noneconomic damages may not exceed \$350,000.

(2)(i) Except as provided in paragraph (3)(ii) of this subsection, in any action for damages for personal injury or wrongful death in which the cause of action arises on or after October 1, 1994, an award for noneconomic damages may not exceed \$500,000.

(ii) The limitation on noneconomic damages provided under subparagraph (i) of this paragraph shall increase by \$15,000 on October 1 of each year beginning on October 1, 1995. The increased amount shall apply to causes of action arising between October 1 of that year and September 30 of the following year, inclusive.

(3)(i) The limitation established under paragraph (2) of this subsection shall apply in a personal injury action to each direct victim of tortious conduct and all persons who claim injury by or through that victim.

(ii) In a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the limitation established under paragraph (2) of this subsection, regardless of the number of claimants or beneficiaries who share in the award.

(c) An award by the health claims arbitration panel in accordance with [§ 3-2A-05](#) of this article for damages in which the cause of action arose before January 1, 2005, shall be considered an award for purposes of this section.

(c) An award by the health claims arbitration panel in accordance with [§ 3-2A-05](#) of this article for damages in which the cause of action arose before January 1, 2005, shall be considered an award for purposes of this section.

(d)(1) In a jury trial, the jury may not be informed of the limitation established under subsection (b) of this section.

(2)(i) If the jury awards an amount for noneconomic damages that exceeds the limitation established under subsection (b) of this section, the court shall reduce the amount to conform to the limitation.

(ii) In a wrongful death action in which there are two or more claimants or beneficiaries, if the jury awards an amount for noneconomic damages that exceeds the limitation established under subsection (b)(3)(ii) of this section, the court shall:

1. If the amount of noneconomic damages for the primary claimants equals or exceeds the limitation under subsection (b)(3)(ii) of this section:

A. Reduce each individual award of a primary claimant proportionately to the total award of all of the primary claimants so that the total award to all claimants or beneficiaries conforms to the limitation; and

B. Reduce each award, if any, to a secondary claimant to zero dollars; or

2. If the amount of noneconomic damages for the primary claimants does not exceed the limitation under subsection (b)(3)(ii) of this section or if there is no award to a primary claimant:

A. Enter an award to the primary claimant, if any, as directed by the verdict; and

B. Reduce each individual award of a secondary claimant proportionately to the total award of all of the secondary claimants so that the total award to all claimants or beneficiaries conforms to the limitation.

Verdicts under Title 3, Subtitle 2A

(e) The provisions of this section do not apply to a verdict under Title 3, Subtitle 2A of this article for damages in which the cause of action arises on or after January 1, 2005.

§ 11-109. Economic damages for personal injury or wrongful death

(a)(1) In this section, “economic damages” means loss of earnings and medical expenses.

(2) “Economic damages” does not include punitive damages.

(b) As part of the verdict in any action for damages for personal injury in which the cause of action arises on or after July 1, 1986 or for wrongful death in which the cause of action arises on or after October 1, 1994, the trier of fact shall itemize the award to reflect the monetary amount intended for:

(1) Past medical expenses;

(2) Future medical expenses;

§ 5-1101. Definitions

(a) In this subtitle the following words have the meanings indicated.

(b)(1) “Charge” means price or fee asked for services, entertainment, recreation performed, or products offered for sale on land or in return for invitation or permission to enter or go upon land.

(2) “Charge” does not include:

(3) Past loss of earnings;

(4) Future loss of earnings;

(5) Noneconomic damages; and

(6) Other damages.

(c)(1) The court or the health claims arbitration panel may order that all or part of the future economic damages portion of the award be paid in the form of annuities or other appropriate financial instruments, or that it be paid in periodic or other payments consistent with the needs of the plaintiff, funded in full by the defendant or the defendant's insurer and equal when paid to the amount of the future economic damages award.

(2) In the event that the court or panel shall order that the award for future economic damages be paid in a form other than a lump sum, the court or panel shall order that the defendant or the defendant's insurer provide adequate security for the payment of all future economic damages.

(3) The court or panel may appoint a conservator under this subsection for the plaintiff, upon such terms as the court or panel may impose, who shall have the full and final authority to resolve any dispute between the plaintiff and the defendant or the defendant's insurer regarding the need or cost of expenses for the plaintiff's medical, surgical, custodial, or other care or treatment.

Death of plaintiff prior to final payment of award

(d) If the plaintiff under this section dies before the final periodic payment of an award is made, the unpaid balance of the award for future loss of earnings shall revert to the estate of the plaintiff and the unpaid balance of the award for future medical expenses shall revert to the defendant or to the defendant's insurer if the insurer provided the funds for the future damages award.

§ 11-110. Damages for injuries or death caused to pets

(a)(1) In this section the following words have the meanings indicated.

(2) “Compensatory damages” means:

(i) In the case of the death of a pet, the fair market value of the pet before death and the reasonable and necessary cost of veterinary care; and

(ii) In the case of an injury to a pet, the reasonable and necessary cost of veterinary care.

(3)(i) “Pet” means a domesticated animal.

(ii) “Pet” does not include livestock.

(b)(1) A person who tortiously causes an injury to or death of a pet while acting individually or through an animal under the person's direction or control is liable to the owner of the pet for compensatory damages.

(2) The damages awarded under paragraph (1) of this subsection may not exceed \$7,500

Natural Resources

(i) The sharing of game, fish, or other products of recreational use;

(ii) Benefits to the land arising from the recreational use; or

(iii) Contributions in kind or services to promote the management or conservation of resources on the land.

(c) “Educational purpose” includes:

(1) Nature study;

(2) Farm visitations for purposes of learning about the farming

operation;

(3) Practice judging of livestock, dairy cattle, poultry, other animals, agronomy crops, horticultural crops, or other farm products;

(4) Organized visits to farms by school children, 4-H clubs, FFA clubs, and others as part of their educational programs;

(5) Organized visits for purposes of participating in or observing historical reenactments as part of an educational or cultural program; and

(6) Observation of historical, archaeological, or scientific sites.

(d)(1) "Land" means land, roads, paths, trails, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to realty.

(2) "Land" does not include any structure or equipment provided by a unit of local government for the purpose of public recreation.

(e) "Owner" means the owner of any estate or other interest in real property, whether possessory or nonpossessory, including the grantee of an easement.

(f) "Recreational purpose" means any recreational pursuit.

§ 5-1102. Purpose and construction of Subtitle

(a) The purpose of this subtitle is to encourage any owner of land to make land, water, and airspace above the land and water areas available to the public for any recreational and educational purpose by limiting the owner's liability toward any person who enters on land, water, and airspace above the land and water areas for these purposes.

(b) This subtitle does not: (1) create a duty of care or ground of liability for injury to persons or property, (2) relieve any person using the land of another for any recreational or educational purpose from any obligation which he might have in the absence of this subtitle to exercise care in using the land and in his activities on the land, or from the legal consequences of his failure to employ care.

§ 5-1103. Landowner's duty of care

Except as specifically recognized by or provided in [§ 5-1106](#) of this subtitle, an owner of land owes no duty of care to keep the premises safe for entry or use by others for any recreational or educational purpose, or to give any warning of a dangerous condition, use, structure, or activity on the premises to any person who enters on the land for these purposes.

Except as specifically recognized by or provided in [§ 5-1106](#) of this subtitle, an owner of land owes no duty of care to keep the premises safe for entry or use by others for any recreational or educational purpose, or to give any warning of a dangerous condition, use, structure, or activity on the premises to any person who enters on the land for these purposes.

§ 5-1104. Landowner allowing use of property for recreational or educational purposes

Except as specifically recognized by or provided in [§ 5-1106](#) of this subtitle, an owner of land who either directly or indirectly invites or permits without charge persons to use the property for any recreational or educational purpose or to cut firewood for personal use does not by this action:

Except as specifically recognized by or provided in [§ 5-1106](#) of this subtitle, an owner of land who either directly or indirectly invites or permits without charge persons to use the property for any recreational or educational purpose or to cut firewood for personal use does not by this action:

(1) Extend any assurance that the premises are safe for any purpose;

(2) Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed; or

(3) Assume responsibility for or incur liability as a result of any injury to the person or property caused by an act of omission of the person.

§ 5-1105. Application of §§ 5-1103 and 5-1104

Unless otherwise agreed in writing, the provisions of [§§ 5-1103](#) and [5-1104](#) are applicable to any duty and liability of an owner of land leased to the State or any of its political subdivisions for any recreational or educational purpose.

Unless otherwise agreed in writing, the provisions of [§§ 5-1103](#) and [5-1104](#) are applicable to any duty and liability of an owner of land leased to the State or any of its political subdivisions for any recreational or educational purpose.

§ 5-1106. Willful or malicious conduct

The provisions of this subtitle do not limit in any way any liability which otherwise exists for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity; or for injury suffered where the owner of the land charges the person who enters or goes on the land for recreational or educational use. However, if land is leased to the State or any of its political subdivisions, any consideration the owner receives for the lease is not a charge within the meaning of this section.

§ 5-1107. Notices posted on land

Whenever the owner desires, he may post in conspicuous places notices informing the public that the land is private. The landowner, by written consent, may grant permission to enter on the land.

§ 5-1108. Permission cards

(a) To facilitate a method of providing written consent, the Secretary shall distribute permission cards, to be available to the public and to landowners.

(b) One side of the card shall read:

PERMISSION TO ENTER

I hereby grant the person named on the reverse side permission to enter my property, subject to the terms of the agreement, on the following dates:

(c) The reverse side shall read:

AGREEMENT

In return for the privilege of entering on the private property for any recreational or educational purpose as defined in the [Natural Resources Article § 5-1101](#), I agree to adhere to every law, observe every safety precaution and practice, take every precaution against fire, and assume all responsibility and liability for my person and my property, while on the landowner's property.

In return for the privilege of entering on the private property for any recreational or educational purpose as defined in the [Natural Resources Article § 5-1101](#), I agree to adhere to every law, observe every safety precaution and practice, take every precaution against fire, and assume all responsibility and liability for my person and my property, while on the landowner's property.

§ 5-1109. Cross country skiing and snowmobiling in Garrett County

Persons using land for cross-country skiing, snowmobiles

(a) If a landowner in Garrett County agrees to the use of a defined

part of the landowner's real property for the use of cross-country skiing or for the use of snowmobiles, any person who uses the part of the real property impliedly consents to adhere to every law, to observe every safety precaution and practice, to take every precaution against fire, and to assume all responsibility and liability for the person's safety and property while cross-country skiing or snowmobiling on the landowner's real property.

(b) The provisions of [§ 5-1108\(b\)](#) and [\(c\)](#) of this subtitle apply when a landowner leases any defined part of the landowner's real property for the use of cross-country skiing or for the use of

snowmobiles.

(b) The provisions of [§ 5-1108\(b\)](#) and [\(c\)](#) of this subtitle apply when a landowner leases any defined part of the landowner's real property for the use of cross-country skiing or for the use of snowmobiles.

(c) The Department shall adopt regulations to permit cross-country skiing or snowmobile use on those defined parts of a landowner's real property on which cross-country skiing or snowmobile use is allowed under this section.

PROBLEM SETS

A: INTENTIONAL TORTS

1. T is a taxi driver. A got into T's cab and asked him to take him to 214 Elm Street. Upon arriving A asked T to drive up on the grass so that he (A) could get a large box from his house. T did so. A then told T that he(A) would not need to get anything after all. T drove away. Unbeknownst to T, A did not live at 214 Elm. Actually O was the owner of the house. What are the rights and liabilities of the parties?
2. When A got into the cab he pointed a small caliber gun at T and asked T to drive him (A) onto the grass at 214 Elm Street. Does that change your analysis?
3. On leaving a restaurant, A by mistake takes B's MP3 player from the counter, believing it to be his own. When he reaches the sidewalk A listens to the MP3 player and hears a Duke Ellington rendition of Ain't Misbehaving. He realizes his mistake, and immediately re-enters the restaurant and returns the device to the counter.
4. The same facts as above, except that A keeps the player for three months before discovering his mistake and returning it.
5. The same facts as above, except that as A reaches the sidewalk and turns on the MP3 player a sudden gust of wind blows it from his hand, and it goes down an open manhole and is lost.
6. Leaving a restaurant, A takes B's hat from the rack, intending to steal it. As he approaches the door he sees a policeman outside, and immediately returns the hat to the rack.

B: The Learned Hand Test & Economic Analysis

Assume that you own a tug company that transports the barges and cargoes owned by others to different ports along the seacoast. Among other risks, your operation is chronically threatened by coastal storms that can sink the cargo barges. When that happens, the owners of the barges and cargoes may sue, claiming that their properties would not have been lost if your company had taken additional precautions against bad weather.

There are a variety of such precautions that you might take. For starters, you might try to make sure that each of your regular crews includes one of those legendary sailors who claims to predict storms by the twitches in his bum knee. But because this precaution might not always be effective, you might wish to take additional precautions. You could, for example, equip your fleet with radios capable of receiving the weather broadcasts available on the public airways. These radios might be useful in alerting you to general weather patterns and the potential risks posed by still distant storms. For an even more precise picture of the weather conditions directly affecting your fleet, you could begin equipping your tugs with individual weather radar systems. Tugs detecting bad weather could then warn your other tugs of the danger. The more of your tugs you equip with such equipment, the more precise picture you would have of overall weather risks.

Each of these additional precautions will help eliminate some weather-related sinkings. And each supplements, rather than replaces, precautions adopted earlier. Yet, as these precautions become increasingly exotic, they also become increasingly expensive. You are aware that even with the best combination of precautions, some weather-related losses may occur. Therefore, rather than seeking perfect safety, your goal is reasonable safety. In other words, you want to determine how many precautions you should purchase in order to maximize your profits and to help ensure that your operation will be judged to be reasonable in the event that you are sued in negligence by those whose barges and cargoes were lost in a storm.

Assume that the courts in your jurisdiction make such negligence assessments based on Judge Hand's "B < PL" test. Assume further that you have unusually good data about both precautions and potential losses. These data will tell you several things. First, without any precautions, you will on average lose \$10,000 of barges and cargoes every 100 trips due to bad weather. As you begin to invest in precautions, you will reduce these losses. Specifically, for every additional precaution you take, you will on average drive down losses by an additional \$1,000 per 100 trips (as shown in column 1 in the table below). However, each additional precaution is more expensive than the previous one (see column 2). Given this information, how many precautions would you take in order to escape potential liability for negligence? Although you may reach your answer using only columns 1 and 2, fill in columns 5 and 6 to help you confirm its validity. To aid in completing column 6, note that column 3 represents "Liability Costs Under Negligence" except that, once you have taken the optimal number of precautions, liability for negligence goes to zero.

	(1)	(2)	(3)	(4)	(5)	(6)
<i>Number of Precautions Taken</i>	<i>Amount Saved in Accident Costs for Each Additional Precaution Taken.</i>	<i>Cost of Each Additional Precaution Taken</i>	<i>Total Remaining Accident Costs</i>	<i>Total Costs of All Precautions Taken</i>	<i>Total Social Costs (Sum of Total Remaining Accident Costs and Total Costs of All Precautions Taken)</i>	<i>Actor's Total Costs (Sum of Total Precautions Costs and Liability Costs Under Negligence)</i>
0		—	10,000	0		
1	1,000	100	9,000	100		
2	1,000	300	8,000	400		
3	1,000	700	7,000	1,100		
4	1,000	1,200	6,000	2,300		
5	1,000	1,900	5,000	4,200		
6	1,000	2,800	4,000	7,000		
7	1,000	5,400	3,000	12,000		
8	1,000	11,000	2,000	23,400		
No further precautions available						

C. Last Clear Chance

1. A is driving his car negligently. In consequence, he collides at an intersection with the car of B. A's car is thrown onto the other side of the road, upon which C's is approaching, C sees the car, but instead of stopping, unreasonably thinks that he can cut around it. The space is too narrow, and he collides with A's car, overturning it and breaking A's leg.
2. The same facts as above except that C does everything which then could be done to stop the car but is unable to so because his brakes are negligently defective.
2. The same facts as in 1, except that when C sees the wreckage he tries to stop. C unreasonably becomes confused, and puts his foot upon the accelerator instead of upon the brake.
3. A is negligently driving his car at night without headlights. The absence of lights prevents A from discovering B's car, negligently stopped on the highway without lights, in time to avoid a collision with it. Although A is driving with proper care in all other respects, he collides with B's car injuring B
4. A & Spouse were driving down Main Street to a party when they reached the intersection of Main & Cross. A said that they should turn left; Spouse said that they turn right. In order to settle the dispute they stopped and got out a map. Unfortunately, they stopped in the middle of the intersection. A & Spouse got in a violent argument. A hit Spouse with a flashlight and Spouse hit A with a rolled up map. They knocked each other unconscious. B approached the intersection from Cross Street. B ran a stop sign and hit A & Spouse.
5. In the above problem, assume that they did not knock each other out but were sitting in the middle of the intersection arguing.

D. Damages

The guys at Mu Alpha Delta Delta fraternity were having a party at which they were playing a game called Micha-lob. The game required players to throw (lob) a Michelob beer bottle cap into a cup 10 feet away while driving around the cup. If a player missed the target he had to drink a bottle of Michelob beer. The game was promoted by the beer company. The company provided signs and cups and other accoutrements of the game to fraternities across the nation. They also provided coupons for discounts on Michelob. However, the company specifically stated that the game should be played so that players who missed the cup were to drink water. However, the guys at Mu Alpha Delta Delta changed the rules to drink beer, as did fraternities across the nation.

In January 2005, Mike Mensa was playing the game when he drove his car into a brick wall. The wall, due to poor construction, collapsed and fell on Hope Hapless, one of the students watching the game.

Hapless was a thirty year old computer programmer attending school at night to get a masters degree in computer science which she could receive in the year 2007. She earned \$50,000 a year. With a degree in computer science he could earn \$100,000 a year. As a result of Defendant's negligence Hapless was disabled. She experienced excruciating pain and will no longer be able to work or engage in her favorite activity, tennis. Her hospital bills have been \$20,000 to date. It appears she will have \$20,000 per year in medical bills. Assume the normal life expectancy of Hapless is to live to age 80 but as a result of the accident her life expectancy is 45.

Hapless sues Michelob in negligence. Discuss the rights and liabilities of the parties.

1. Assume the above facts except that after the judgment Hope dies:
 - a. One year later
 - b. At age 100.

2. Assume the facts in (1.) above except for following:

Hope dies one year after the accident, due to the injuries from the accident.

Hope has not sued Michelob.

Hope had a husband (Spencer) who was disabled and unable to work and foster son (Daniel) who had lived with the Hapless family for about 2 years.

Spencer and Daniel sue Mensa in negligence.

3. Assume the facts in (1.) above except for following:

Standing across the street was Gantry, an itinerant preacher. At the moment immediately before the car hit the wall and the wall collapsed, Gantry yelled to the crowd gathered around him: "The Lord will now give us a sign that the end is near." A number of members of the crowd, after witnessing the events described above, ran into the nearby First National Bank to withdraw their money. Witney who was on his way out of the bank was trampled by the bank and suffered serious injuries. Witney sues Mensa