

## Mid-Point(ish) Review



Torts I  
Professor Hensel  
10/20/09

## The Goals of Tort Law

1. To Compensate
2. To Correct Injustice
3. To Effectuate Social Policy
  - \* Deterrence
  - \* Distribution of Loss
4. To Keep the Peace

## Intentional Torts

- \* Definition of Intent
- \* Specific Causes of Action
- \* Defenses

## NEGLIGENCE

1. DUTY
2. BREACH OF DUTY
- (so far)-----
  3. CAUSATION
    - A. Factual
    - B. Proximate
  4. DAMAGES

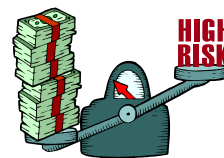


## Step 1: Identify the Standard of Care

### Relevant Factors:

- \* Physical disability
- \* Age of the Actor (Children)
- \* Existence of an Emergency
- \* D's Status as a Professional
- \* Existence of a relevant statute

## Step 2: Determine Whether D's Conduct Fell Below the Standard of Care



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Hand's Negligence Formula

**Negligence will be found where:**

**B < PL**

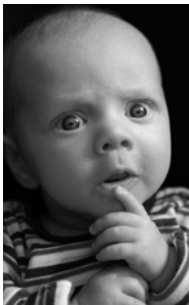
B = burden of taking precautions  
 P = probability of injury/harm  
 L = magnitude of injury

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**Substitutes to the B/PL Analysis:**

- \* Custom in professional malpractice cases
- \* When a **statute** substitutes for the standard of care
- \* When no specific act can be identified and the conditions for **res ipsa loquitur** are satisfied (when applies, also satisfies duty & causation requirements)



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**Testing Strategies**

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**General Advice:**

1. **BUDGET** your time. **DO NOT EXCEED NO MATTER WHERE YOU ARE** in your answer. 
2. Read through **ENTIRE** question at least once **BEFORE** beginning to write anything. 

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3. **CIRCLE** all “buzzwords” as you read. 
4. Briefly **OUTLINE** your answer. Include important facts to address.
5. Before starting to write, **READ the facts again** to ensure completeness.

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6. **IGNORE** everyone around you.
7. **WATCH YOUR TIME.** In the last 10 minutes, if you can't finish, **OUTLINE** your answer.
8. If you panic/freeze, **MOVE ON** to the next question or issue.

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### Structuring the Answer

Clarity & Organization are CRITICAL to Legal Writing.



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Be sure to identify and discuss each element of each cause of action.



Do not skip an element because it seems obvious – briefly explain WHY it is obvious

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Be sure to identify and discuss the opposing argument for each element, to the extent there is one.

Remember – both plaintiff and defendant will try to win the case. **They will not concede any element if even a weak argument exists to the contrary.**

**But...be sure to distinguish between weak and frivolous arguments.** Do not raise the latter, and address the former only briefly.

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OKAY, LET'S TRY IT!

