FE1 TORT
NIGHT BEFORE NOTES

*Code: Def = Defendant Pl = Plaintiff ER = Employer EE = employee Defam= Defematory

Vicarious Liability:
Principle makes a 3rd party responsible for actions of a separate wrongdoer. Control over tortfeaser is central.
Salmond Test: Master is responsible if the wrongful act is authorised by Master OR if an unauthorised mode of doing something authorised by the Master is used. So, Master is liable for acts he has not authorised, provided they are connected with acts he has authorised.

Moynihan v Moynihan: Sct Grandmother held vicariously liable for actions of daughter in leaving teapot within reach of granddaughter who spilled tea on herself while in Grandmother’s house. Delegated duty of head of household was the basis of liability and it was not dependant on familial relationship.

Two issues:
(1) Is there a relationship of control
(2) Was the tortious conduct within the relationship of control

Is there a Master and Servant Relationship?
Phelan v Coilte Teoranta: Tortfeaser paid hourly rate, told where to go and what to do BUT managed his own tax affairs, used his own tools and was not entitled to holiday pay. Ct held relationship of Master and Servant, vicariously liable. Control not always determinative but most important factor.

Carroll v Post National Lottery: Lotto winner’s numbers incorrectly entered by lotto agent in shop. Lotto agent sold ticket on commission & no contract of employment. Had some training in use of computer terminal. Ct held: No control so lotto not vicariously liable.

Is the Action Within Scope of Control of Employer/Defendant?
If not, then there is no vicarious liability.
Smith v Stages: 2 EE’s sent to do job far away & paid travel expenses on top of wages. Left work early, car accident. Ct held ER vicariously liable, on ER’s time and paid travelling expenses. Test is whether EE is “doing what employed to do...or anything reasonably incidental to his employment”
Boyle v Ferguson: Car salesman with 2 women in car accident on a Saturday night. Petrol paid for by employer, flexible hours. Creating right image to sell cars (in 1910). Acting within scope of employment, employer vicariously liable.

Frolics:
Conduct completely unconnected with and different to employment will not result in vicarious liability.
Daniels v Whetstone: Bouncer assaulted Plaintiff once on premises while removing him & later assaulted him again subsequent to removal. Ct held first assault was w/in scope of employment BUT second assault was a frolic, no connection with employment.

Sexual Abuse Cases:
Bazley v Curry: Canada: 1999: Ct held vicarious liability is appropriate where there is a significant connection b/w creation or enhancement of a risk and the wrongs that accrue therefrom, even if unrelated to the employer’s desire”
Delahunty v 5th Eastern Health Board: 2003: Visitor to an orphanage sexually assaulted by house master of orphanage. Ct held no strong connection b/w actions of house master and his employment, b/c he had abused a visitor and not an inmate. Ct said if the victim had been an inmate then the result may have been different.
Lister v Hesley Hall Ltd: HofLords: (prior to this sexual assault could not be in scope of employment) Ct held relative closeness of tort committed and nature of individual’s employment established liability. Must be a connection between the duties of the EE and the tort committed.
O’Keefe v Hickey sexually abused by teacher. Ct approved close connection test no principle in excluding sexual assault automatically from vicarious liability. ECHR 2014 decision has no effect on the law of vicarious liability.

MOST RECENT IRISH CASE-LAW:
Lynch v Binnacle Ltd t/a Cavan Co Op Mart: 2011: System of work required Plaintiff to pass by bullocks in a pen. 2 other EEs were absent at the time of the Plaintiff’s injury and he sought to hold the ER vicariously liable for their absence. Sct held that the 2 other EEs had used an improper mode of doing their job in absenting themselves & fell within the Salmon test, outlined above. ER was vicariously liable.

Trespass to the Person:
Trespass is committed where a person, through his voluntary actions directly (whether intentionally or negligently), interferes with another person’s rights. Associated with intention and actionable per se. As with all intention torts, there must be direct impact, the Def must have intended or have been negligent as to the impact of the conduct and the conduct must be voluntary.
Scott v Shephard: A Defendant who threw a firework was liable even though it hit two others in the meantime who threw it away from themselves. The two other pele were not liable as they only threw the firework away from themselves to avoid it and their actions were not voluntary.

Battery:
Intentional application of direct force to a person w/out consent. Touching must be intentional, harm does not need to be intentional.
Cole v Turner: Least touching of another in anger is a battery. Brushing past stranger on the street is not.
R v Cotesworth: Spitting on someone’s face is battery.
Dodwell v Burford: Striking a horse so that it bucks is battery.
Hegarty v Shine: Knowingly transmitting a concealed venereal disease to another in consensual sex is not battery.
Fagan v Commissioner of Metro Police: Intention can be formed during battery and need not be present from the beginning.
Assault:
Occurs when a person indicates to another by words or actions that he is about to inflict unlawful force on that person and the subject of the threat reasonably believes that he will do so.

Stephens v Myers: Clenched fist and threat that the Defendant would rather pull the Plaintiff from his chair then leave was an assault. A reasonable person would believe an immediate battery was to be committed.

Tubervell v Savage: Statement “were it not assize time (peace time) I would…” not assault because it was peacetime.

Rv St George: Doesn’t matter if the threatened assault is not actually possible. (Unloaded gun)

R v Ireland: Silent phone calls to a woman were assault.

Intentional Infliction of Emotional Suffering:
Little case-law in this area and underdeveloped in this jurisdiction.

Wilkinson v Downton: Defendant told Plaintiff here husband was injured as a practical joke. She suffered shock resulting in severe injuries. Def liable for act calculated to cause physical harm to the Plaintiff, despite absence of malicious intention to cause harm and absence of motive of spite.

Wong v Parkside NHS Trust: No remedy for harm less than physical or psychiatric injury. Does not cover mere distress.

False Imprisonment:
Unlawful restraint of liberty to move where the restraint on liberty is total. Can be committed w/out force and does not require detention within a building.

Brid v Jones: Pl told to use other route to spectator area. No false imprisonment as was able to use other route so restraint was not total.

Hearing v Boyle: Mother tried to remove child from school but principal wouldn’t allow it as fee unpaid. Ct held no false imprisonment because child was unaware of detention.

Meering v Grahame White Aviation Ltd: EE suspected of theft detained in room for questioning. 2 security guards outside preventing departure though Pl unaware of this. Ct held once security guards involved impression created that the Pl was not allowed to leave so was FI.

Defences:
Self Defence:
Cregan v O’Sullivan: Pl bit Def in scuffle, Def responded by repeatedly stabbing Pl with pitchfork. Ct held disproportionate so no Defence.

Consent:
Simms v Leigh Rugby Football Club: Pl tackled & hit concrete wall beside pitch. Ct held club could use consent as Defence as Pl accepted risk of Playing alongside the wall.

Necessity:
Leigh v Gladstone: Force - feeding of hunger striker was not trespass as the Defence of necessity applied.

Re A Conjoined Twins Case: Imminent death of one justified battery of other

Lawful Authority:
Humphries v O’Connor: removal of lily by police officer is battery but Defence of lawful authority applied as officer was attempting to keep the peace.

Trespass to Goods:
Wrongful direct interference with possession of goods.
**Farrell v Minister for Agri & Food:** Minister slaughtered Pl’s herd. Ct held no mala fides required, negligence sufficed. Because Def acted *ultra vires* there was no Defence of lawful authority.

Examples:

**Brewer v Dew:** Taking goods from Pl’s possession.
**Kirk v Gregory:** Moving goods.
**Hutchins v Maughan:** Adding poison to foodstuff.

**Detinue:**
Wrongful failure/refusal to return goods when demand has been made for same. Pl must be in possession or have an immediate claim for possession. Reasonable period of time for return is allowed.

1. Possession
2. Demand made
3. Demand receive
4. Refusal or failure to return
5. No excuse of necessity, authority

**Poole v Burns:** 5 weeks unreasonable delay absent attempts to find owner.

**Conversion:**
Wrongful dealing in the goods of the Pl in a manner adverse to the Pl’s possession. Def need not have knowledge that they are doing so.

**Hollins v Fowler:** Proof of intention to deprive not necessary.
**Tear v Freebody:** Joyriding is conversion.
**Johnson & Johnson Ire Ltd V CP Security:** Damages assessed at time of tort not trial.

**Trespass to Land:**
A person, through his voluntary actions directly, without lawful justification, (intentionally or negligently) enters or remains on, or directly causes anything to come into contact with the land in the possession of another.

1. Pl must have possession of land.
2. Def’s conduct must cause “Direct Effect” (contact).
3. Must be voluntary.
4. Def must intend or be negligent as to the impact of the conduct
5. Actionable per se.

**O’Brien v McNamee:** Examples given. If you are pushed off a wall onto another’s land this is involuntary so is not trespass. If you walk on land you think you have a right to walk on when you have no such right, this is voluntary and is trespass even though you have no intention to trespass.

**Hegan v Carolan:** Pl had possession of a field by breaking a lock and grazing cattle. Ct held sufficient to give him an action in trespass.

**Whelan v Madigan:** Any contact with boundary is enough. Here, landlord knocking on Tenant’s door.

**Burnstein v Skyviews:** Ownership of airspace is limited to that which is necessary for reasonable enjoyment of land.

**Kelson Imperial Tobacco:** Sign encroached on Pl’s building by an inch. Ct held didn’t impede rights in a significant way but still constituted a trespass.

**Wandsworth v United Telephone:** Phone wires = trespass.

**Ward:** Damage must be direct not consequential so that encroaching roots, branches noises and smells are not direct damage and cannot ground an action in Trespass to Land.
DPP v McMahon: Not Trespass if have permission. If exceed permission it is trespass. Police had no permission to enter a pub to investigate a crime so were trespassers.

Webb v Ireland: Once you exceed permission you are deemed a trespasser ab initio. Permission to view monument, began digging. Deemed trespassers from time of entry.

Remedies:
- Re-entry
- Ejectment
- Mesne Profits and Damages
- Injunctions in relation to a continuing trespass

Defences:
- Consent
- Lawful Authority

Necessity:
- Cope v Sharpe: Valid Defence where entered land to extinguish a fire.

The Rule in Rylands v Fletcher
- PI’s mine connected to disused mineshaft on Def’s land. Def had reservoir built by independent contractors above the disused mine shaft which burst and flooded the mine.
- Def’s liable. Strict Liability.

1. Accumulation
- Cosgrove v Ryan: electricity in overhead wires = accumulation
- AG v Corke: Gypsy caravans = accumulation
- Matheson v Northcote College: students ≠ accumulation

2. Escape
- Read v Lyons: explosion on the grounds of munitions factory ≠ escape
- Rigby: can be escape from a public highway
- Commentators argue escape should be interpreted as escape from control of the Def.

3. Non-natural use
- Most restrictive element of the tort.
- Rickards v Lothian: some special use bringing with it increased danger to others and not ordinary use of land or such use as is proper for the general benefit of the community
- Ross v Fedden: domestic water for Plumbing ≠ non natural use
- Mason v Levy Auto: Flammable material in residential area ≠ non natural use
- Read v Lyons: munitions factory in time of war ≠ non natural use
- Circumstances pertaining at the time are important – previously storage of a car = non natural use Perry v Kendricks

4. Damage
- Jones v Fesinog Railway: spark escaped from railway & set fire to hay – damage to chattels recoverable.
- Range of recoverable damage in Ireland unclear. In England & NZ damage must be reasonably foreseeable.
- Cambridge Water Co V East Counties Leather: Defs used solvents in tannery business. Due to spillages over time, solvent entered into and contaminated the water supply. No recovery for PI as the damage was not RF.
- Transo PLC v Stockport: Personal injuries and Pure Economic Loss not recoverable in UK.
- Healy v Bray UCD: indicates Personal Injuries are recoverable in Ireland.
- Weller v Foot & Mouth Disease Institute: PEC not recoverable.

5. Absence of a Defence:
- Victor Weston Ltd v Kenny: Consent of PI means no liability under R v F. Here implied consent as water (which had escaped) was stored for the whole block in the upper floor.
- Dunn v Birmingham Council: Special Sensitivity of PI who built mine under Def’s canal with knowledge of risk meant no recovery when canal collapsed.
- Nichols v Marshland: Act of God is a Defence. Here, heaviest storm in living memory = an act of god.
**Perry v Kendricks:** *Act of a Stranger*. The PI took care of his car and chased delinquents away from it but they eventually caused it to explode and injure the PI. Defence will not apply if the specific act could have been foreseen. Will not absolve Def of liability for EE’s actions or those of an independent contractor. **Statutory Authority** might also be a Defence in certain circs.

Reform: No Personal Injury recovery in UK where it is considered a single instance action for nuisance confining the tort to adjacent landowners. **Burnie Port Authority:** In Australia the rule has been subsumed into the law of negligence.

**Nuisance:**
*Connolly v South of Ireland Asphalt Co:* act/omission amounting to an unreasonable interference with, disturbance of or annoyance to another person in the exercise of his rights.

1. **Act/Omission by Def**
   *Southport v Esso:* ship ran aground & oil discharged into sea. Constituted nuisance even though the Def was not a landowner.
   *Tetley v Chitty:* Landlord liable for giving lease to go-cart club creating dust etc.
   *Vitalograph v Ennis UCD:* council liable for failing to abate nuisance caused by trespassers.

2. **Damage/interference with rights in land:**
   *Hanrahan v Merck Sharpe v Dohme:* Need not be landowner to maintain a claim. Occupation of the land was sufficient. Personal Injuries are recoverable.
   *Halpin v Tara Mines Ltd:* Vibrations causing cracks in the PI’s property can suffice, though causation would have to be proved.
   *Halsey v Esso Petroleum:* Damage to chattels may also qualify – here damage to laundry by fumes sufficed.
   *O’Kane v Campbell:* Can have claim where no material damage. Here injunction to refrain corner shop from operating through the night on a residential street with elderly neighbours.
   *Bone v Seal:* smells from a pig farm = nuisance.
   Can be interference with a servitude e.g. a right of way/ access to a water source / infringement of an easement.

3. **Unreasonableness**
   Question is whether reasonable person would tolerate the interference.
   *Nature of the locality* is relevant – city vs country:
   *O’Kane v Campbell:* above.
   *Molumby v Kearns:* Injunction to prevent rubbish trucks from going to a depot in a residential area at all hours of the day.
   *Def’s motivation:*  
   *Christie v Davie:* Def banged pots in response to PI’s giving of music lessons. Def motivated by malice and actions = nuisance.
   *Duration of Nuisance:*  
   *Bolton v Stone:* 6 cricket balls in 30 years ≠ nuisance, particularly given the social utility of the cricket club.
   *Hyper-Sensitive PI:*  
   *McKinnion v Walker:* fumes damaging orchids – PI is overly sensitive ≠ nuisance.
   *Activities for the Common Good less likely to be found to be a nuisance:*  
   *Clifford v Drug Treatment Centre:* ct restricted expansion of drug treatment centre but would not restrict numbers attending same due to the public importance of the treatment centre.
4. Causation
Hanrahan v Merck Sharpe & Dohme

5. Defences
Statutory Authority may authorise a nuisance:
Kelly v Dublin Co. Co: Def’s caused nuisance through use of storage depot near Pl’s home. Ct held use of depot was ancillary to statutory authority and statutory authority was not a Defence to nuisance caused by this.

Prescription and Acquiescence is not a Defence to public nuisance but may be a Defence to private nuisance.
Sturges v Bredeman: Def moved noisy machinery to new building. Can’t claim prescription from previous use elsewhere.

Consent:
Thomas v Lewis: Def opened quarry & granted Pl grazing rights. Acceptance of grazing rights = acquiescence to the nuisance.

6. Special Remedies
Damages, injunctions but also abatement (where there is no time for a court application) and distress damage feasant (e.g. for stray animals)

Public Nuisance:
Criminal offence & a tort. AG takes cases. Individuals may take cases but must show “special or particular” damage. Covers noisy concerts, something causing traffic congestion etc.
Mullar v Foster: Wall fell onto a public highway, injuring the Plaintiff.
Cunningham v McGrath Brothers: Ladder left in street fell and hurt passer-by. Any obstruction of a public highway is a nuisance.

Passing Off:
Protection of business reputation. Common law pre-cursor to trademark protection.
Polycell Products Ltd v O’Carroll & Ors: establish merchandise in such a manner as to mislead the public into believing it is the product of another. The party passing off acquires some of the benefit of the goodwill and business reputation and the advantage of advertising of the possessor of the goodwill.
McCcambridge ltd v Joseph Brennan Bakeries: 2012: SCt: 3 stage test:
1. existence of goodwill in claimants product including brand name or get up
2. misrepresentation leading to confusion b/w the products
3. whether damage to goodwill has been established.
Not stand alone elements of test, just viewpoints from which to ask whether passing off has occurred. Goowill = ‘attractive force that brings in custom’

Goodwill?
An Post v Irish Permanent: Def’s new savings certificate launched when Pl had promoted and sold savings certificates for 65 years. Ct held there was a case to be answered and granted injunction.
Box TV v Box Magazine: Ct held use of the word box did not have any goodwill; it was a colloquialism.
DSG Retail v PC World: common words or phrases will not be protected but unique spins on them will “PC” could not be protected but “PC World” could be.
Is goodwill geographically specific?
Budweiser Case: Budvar vs Bud in the Uk. US co. claimed goodwill due to presence on US bases during WW2. Ct held no passing off w/o product for sale. BUT
C & A Modes v C&A (Waterford) Ltd: Pl no sales in republic but ads on UK tv channels and shops in NI which got cross border business. Ct held test is whether Pl’s business is known to the public in the area in which the Def seeks to carry on business.

Misrepresentation/Confusion?
O’Neills v O’Neills Footwear Dryer Co Ltd.: by similarity of name, get up. appearance or purpose. Must be calculated to deceive persons dealing in the goods. Deliberate intention is not necessary.
A trader cannot use his own name where it is clear he is using it to take advantage of the goodwill or reputation of another.
Jameson v Irish Distillers: Def was guilty of passing off despite using his own name.
Jiff lemon case: Lemon juice in similar container = passing off.
Adidas: O’Neills sufficiently distinguished their brand, despite using the three stripe design used by adidas. Not guilty of passing off as there was no confusion just a fashion trend.
Allergen Inc v Ocean Healthcare Ltd: anti wrinkle cream styled on botox = passing off due to aural and visual similarities of Botox and Botoina.
Harrods v Harrodian School: school vs department store ≠ passing off.

Damage:
Falcon Travel v Owners Abroad Group: Pl received calls meant for the Def & vice versa. No evidence of actual damage to trade just confusion. No injunction but damages as Pl goodwill was submerged & would have to advertise.
McCambridges: Remedy of account for profit was given.

Negligence:
1. Def owes a Duty of care to the Pl.
2. Def’s actions must fall below the standard of care.
3. There must be a causal link either legally or factually between the Def’s actions and the injury.
4. Damage must not be too far removed/remote from the Def’s initial actions.

Duty of Care:
Pre Donoghue v Stephenson the law was piecemeal – solicitor/client, doctor/patient etc.
Donoghue Stephenson: Snail, bottle- manufacturer owes a duty of care to final consumer.
Neighbour principle. Requirement of forseeability of consequence as a possible result of the conduct and proximity between the parties.
Kirby v Burke & Holloway: endorsed in Ireland. As above but with jam.
Hedley Byrne v Heller: duty of care in economic loss situations.
Dorset Yacht Club v Home Office: liability for damage to yachts after escape of borstal boys.

Anns v Merton London Borough Council: Council didn’t carry out inspection of foundations and subsidence in flats. Test reformed: 1) is there a relationship of proximity so that damage is reasonably foreseeable? 2) are there any other considerations to not make Def liable.
Conflated foreseeability and proximity – controversial.
McLoughlin v O’Brien (recovery for nervous shock) Junior Books v Veitchi (recovery for Pure Economic Loss) caused concern in England. (both 1983)
Junior Books v Veitchi: Floor was repaired by sub-contractors but Defects (that would not damage property or people) meant building had to close while floor replaced causing a loss of profits. Recovered under Anns.
Yuen Kun-Yu v AG for Hong Kong: Privy Council: Forseeability cannot be the only necessary ingredient for a relationship of proximity. This would make one liable for seeing a person walk off a cliff w/out shouting a warning.
Caparo Industries v Dickman: Accounts presented at AGM of Co Pl bought shares on foot of the accounts. Error in accounts. Q was whether Dickman owed duty of care to potential shareholders at the time of the AGM? Ct held it is better to develop categories
incrementally. Test is 1) foreseeability 2) proximity 3) no compelling exemption based on public policy 4) it must be fair just and reasonable to impose liability.

**Murphy v Brentwood:** Anns overturned.

**Ireland:**
Ireland interpreted Anns as a re-iteration of the Neighbour principle. **W v Ireland**

**Ward v McMaster:** Local authority liable where they sent a valuer to a house and said it was in a state of good repair but was not. Test: 1) foreseeability of damage 2) proximity of parties 3) absence of compelling exemption based on public policy. Local authority was found liable.

**LEADING IRISH CASE:**
**Glencar v Mayo Co Co:** Pl co granted licence to mine. Pl invested money because of this but a mining ban was made by the Def. Added to the test the question of whether it was fair just and reasonable to impose liability.

**Current Test in Ireland to establish a duty of care:**
1. Injury or damage that is reasonably foreseeable
2. Proximity or neighbourhood
3. No public policy considerations dictate otherwise
4. It is fair, just and reasonable to impose liability.

**Beatty v Rent Tribunal:** Did the rent tribunal owe a duty of care to a landlord? Sct held body had immunity from liability for negligence once it acted in good faith within its jurisdiction. Policy considerations usually arise in local authority cases or cases involving economic loss.

**Standard of care:**
Objective test. Consideration of:
1. Degree of risk and probability of the harm
2. Seriousness of the harm/gravity of the threatened injury
3. Practicability of taking precautions and the cost of preventing harm
4. Social importance of the risky activity

**Examples:**
**Haley v London Electricity Board:** Blind man fell down open man hole – likely to be blind men walking in the area and prevention of the risk was easy.

**Healy v Bray UDC:** Rock became loose in high winds and rolled through gap in wall. Ct wouldn’t impose liability: low risk, unlikely event very difficult to prevent.
**Causation:**
Must be a link b/w Def falling below the standard of care & the injury to the Pl. Must factually cause or materially contribute to damage that is not too remote.
BUT FOR TEST: damage would not have been suffered BUT FOR the Def’s actions.
**Kenny v O’Rourke:** Man fell from ladder, but not because of Defect in ladder but due to his leaning over in a certain way. No causation.
**Skinner v Hartnett:** Cyclist could not blame sequencing of traffic lights for accident because he had broken the lights anyway. No causation.
**McGhee v National Coal Board:** No washing facilities at brick kiln Plant. Ct held Def liable as lack of facilities increased the changes of contracting dermatitis.
**Quinn v Midwestern Health Board:** Cause of Pl birth Defect not fully understood by science.
Ct held it would be inappropriate to use the McGhee test.
Quill argues this means that once Pl shows increased risk as a result of Def’s actions, it falls to the Def to disprove the inference that they caused the damage.
Legal causation can be contested with arguments of Novus Actus Interveniens, the Egg Shell Skull rule and remoteness of damage.
**Breslin & Corcoran & MIBI:** car left unlocked with key in ignition was stolen and crashed into the Pl causing injuries. Ct held that while it was reasonably foreseeable that the car would be stolen it was not reasonably foreseeable that it would be driven negligently. Cannot rely on Novus Actus Interveniens if the intervening act is the very thing that you are trying to guard against.
**O’Brien v Dunnes Stores:** As above – Not a novus actus interveniens if it might be anticipated to arise from the negligence complained of.
**Crowley v AIB & O’Flynn:** child fell from roof because no railings on it (design Defect) but fault with AIB who was aware that children played on the roof. Ct held an omission cannot amount to a Novus Actus Interveniens where the parties are aware of an act but fail to deal with it.

**Remoteness of Damage:**
**Re Polemis:** direct consequences test: spark ignited destroying entire ship – where foresee some damage, liable for all damage caused whether of a kind you would foresee or not.
**The Wagon Mound:** reasonably foreseeability approach: can only recover for damage that is reasonably foreseeable.
**Condon v CIS:** reasonable foreseeability test adopted here. Reasonably foreseeable that people would want legal representation for enquiry into disaster.

**Egg Shell Skull Rule:**
If a Def can foresee some type of physical or psychological injury to the Pl then they are liable for all the damage that results. It is an exception to the rule on remoteness of damage.
**Smith v Leech Brain & Co Ltd:** Pl hit on lip by piece of molten metal at factory & due to pre-existing condition developed cancer from the burn and died. Def liable even though the cancer not foreseeable b/c initial burn was.
BUT excludes damage suffered b/c of financial difficulties:
**Liesbosch Dredger v SS Edison:** dredger damaged and couldn’t afford a new one and had to rent one at a greater expense. Ct held additional cost of rental was not foreseeable.
**Doran & Doran v Delaney & Ors:** Ct noted Eddison eroded in Ireland & duty to mitigate loss.

**Res Ipsa Loquitur:** This allows the ct to draw an inference of negligence on the basis of circumstantial evidence of a highly suggestive nature.
Scott v London St Katherine Docks Co: bag of sugar fell from bay. Ct held Res Ipsa applied and it fell to the Def to prove they had not been negligent.

Lyndsay v Mid Western Health Board: will rarely apply to med neg cases and it didn’t apply here. Will only apply where evidence of extraordinary event which would not normally occur if due care was taken.

Hanrahan v Merck Sharpe & Dohme: Ct refused to apply here.

Nervous Shock:
Early case-law limited to zone of danger.

Byrne v Sthn Rway Co: train crashed through walls of waiting room, no physical injuries but traumatised. Ct held reasonably foreseeable that Pl would suffer physical injury, present at scene then can be compensated for psych injury.

Extended to those who came upon the immediate aftermath of the accident and had relationship of proximity with the victim.

McLoughlin v O’Brien: English case set out strict requirements for “secondary victims” including proximity of relationship, time Place and communication.

Alcock v Chief Inspector: Hillsborough disaster. No recovery for TV witnesses or morgue identification.

McFarlane v EE Caledonia: bystander/witness can’t recover unless proximity to victim/ in danger themself.

Mulally v Bus Eireann: Mother witnesses family in hospital post accident, suffered PTSD, proximity requirements set out in McLoughlin merely go to foreseeability.

Kelly v Hennessy: Leading Irish Case:
1. Recognisable psychiatric illness
2. Must be shock induced
3. Shock must be due to Def’s act/omission
4. Shock by reason of apprehended or actual physical injury to Plaintiff or person other then the Plaintiff
5. Def owed him/her duty not to cause reasonably foreseeable injury in the form of nervous shock.

Fletcher v Commissioner of Public Works: EE thought he would contract illness due to exposure to asbestos but was told this was very rare. Worried excessively leading to psychiatric illness. Ct denied liability on the basis that there was no shock.

Devlin & Anor v National Maternity Hospital: organs of stillborn baby removed w/out consent. Not by reason of actual/apprehended injury ≠ nervous shock.

Pure Economic Loss:
Relates to loss unconnected to physical injury or property harm. Courts have been reluctant to allow recovery due to floodgates argument.


Hedley Byrne v Heller: Pl went into business with co and prior to this asked the Def bank for its credit reference. Disclaimer given with reference, which was incorrect and losses suffered by Pl. Ct held but for disclaimer the bank would be liable for misrepresentation. Must be special relationship so there is an assumption of responsibility akin to contract but for absence of consideration. Advice reasonably relied upon & advice giver knows or ought to have known other party would rely on the advise.

Bank of Ireland v Smith: auctioneer incorrectly described land which was purchased on foot of description. Ct held no duty to purchaser, primary duty to vendor.

McCullagh v PB Gunne: auctioneer actively assisted purchase of property that was not sound. Ct held Def owed duty of care to Pl b/c liaised specifically with the Pl in this case and it was foreseeable that they would rely on his advice.

Caparo Industries: England: 1) advise sought and advisor aware of purpose for which it is sought 2) aware will be communicated to other party 3) aware recipients will act on the
advice 4) recipient so acts to their detriment. Ct held no liability as accounts prepared for shareholders to make decision not as potential investors.

**Ward v McMaster:** ct held Pl entitled to recover money. Nature of loss irrelevant provided parties sufficiently proximate and loss foreseeable.

**McShane Wholesale Fruit & Veg v Johnson Haulage:** ct held PEL falls w/in general negligence principles, but proximity and reasonable foreseeability will be difficult to prove.

**LEADING IRISH CASE: Glencar v Mayo Co Co:** PEL recoverable for negligent misstatement but unclear whether recoverable in other circumstances and not Definitely decided.

**Liability for Animals:**
Trespass to land, the person, nuisance and rylands v fletcher are of relevance.

**O’Reilly v Lavelle:** Res Ipsa Loquitur applies to cattle trespass. Cattle properly managed shouldn’t end up on the roadway.

**Noonan v Harnett:** can use Rylands v Fletcher to recover

**Scienter Rule:** owners of wild animals keep them at their peril and if damage is caused by the animal, the owner is strictly liable. Owners of tame animals are liable if it can be shown they were aware of the animal’s mischievous propensity.

**Quinn v Quinn:** 2 pigs attacked a cow that died. Pigs known to have propensity. Owner liable.

**Wyatt v Rosherville Gardens:** a bear is a wild animal.

**Duggan v Armstrong:** growling dog was accepted as evidence of mischievous propensity.

**Control of Dogs Act 1986** - absolute liability re a dog bite. No need to show mischievous propensity. **Secion 2** Defines owner as occupier of premises where it lives or remains until contrary proved **Quinlisk v Kearney.** Only liable to trespassers in accordance with negligence.

**Liability for Fire:**

**Accidental Fires Act:** exempts occupiers of buildings and land from liability for damage caused by fires deemed to have occurred accidentally. Does not include negligent fire.

**Woods v O’Connor:** hotel owner locked all doors and windows trapping Pl, but ct held no liability as fire was accidental.

**McKensie v O’Neill:** liable for negligently starting and failing to contain a fire.

**Ramblers Way Ltd v Mr Middleton Garden Shop Ltd:** fire caused by heater left Plugged in. fight about whether the heater malfunctioned or was never turned off. Ct held failure to turn off the heater was negligent.

**Professional Negligence:**
Standard of behaviour required is “customary practice”

**Dunne v The National Maternity Hospital:**
Question is whether Def has done something no Doctor of equal standing and skill would have done. If the customary practice has inherent Defects then adherence to customary practice will not be a Defence. The test allows for honest differences of opinions b/w doctors as to the appropriate action.

**Quinn v Sth Eastern Health Board:** Pl should have been advised of less drastic treatment options which she would have opted for if given the chance.

**Geoghegan v Harris:** dental surgery & PI developed severe pain in jaw. Never warned of possibility of pain. Ct held in elective procedure the Dr must disclose all known risks of grave consequence or severe pain no matter how remote.

**Cotsttaine v Maguire:** Failure to have someone trained in replacement of breathing tube was an inherent Defect which ought to have been obvious. Even though Def not in charge of ICU, was legally responsible for care and liable

**Hegarty v Mercy University Hospital:** duty on hospitals to furnish up to date info on condition and significant developments. No obligation to provide results of all tests.
Byrne v Ryan: test is whether consultant was part of the organisation of the hospital.

Solicitors' Negligence:
Roche v Pellow: principles of customary practice in the profession and inherent Defects outlined above applies.
Wall v Hegarty: Owes duty to beneficiaries under a will.
Ross v Caunters: failed to prevent beneficiary attesting a will & therefore was negligent.
Rojack v Taylor: administered estate as engaged to do – no duty to advise of potential s117 claim
Doran v Delany: requisitions on title to purchaser third party created a libaility in negligence.
Hall v Simons: English: BL’s no longer immune
McMullan v McGinley: Sct expressed surprise that barrister not sued for negligent drafting of settlement agreement.

Defamation:
- Defamation Act 2009 abolished distinction b/w libel and slander
- Publication by any means of a Defamatory statement to a person other than the person concerned
- A statement which tends to injure a person’s reputation in the eyes of reasonable member of society (was right thinking member of society) that is untrue
- Distributors exclusion replaced by the Defence of innocent publication (printers etc can use this but not broadcasters)

Monson v Tussauds: wax work can be Defamatory [Publication by any means]
Paul v Holt: liable for accidental publication as knew 2 pauls living at address
Sinclair v Gogarty: “2 Jews on Sackville Street” capable of identifying
Hulton & Co v Jones: fictional character with same name as person unintentionally= still Defamation
Youssoff v MGM Pictures: in 1934 saying PI was a rape victim = Defamatory
Berry v Irish Times: saying PI helps fight against IRA cannot be Defamatory
Reynolds v Malocco: “gay bachelor” in its natural & ordinary meaning meant homosexual, which is not Defam but implies PI is dishonest, which is Defam
McGarth v Indep Newspapers: clarification re PI published with picture + headline re terrorist funding. Ct held not capable of being Defamatory if read whole article + look at pictures. Must look at totality of content.

Section 16 – Truth Defence: can prove statement true in all material respects
Cooper Flynn v RTE: allegiations of one Def not proven but general tenor was ok

Section 17- Absolute Privilege: Houses of Oirechtas, Courts, Tribunal, Europe etc and reports on public hearings
Section 18- Qualified Privilege: statement to a person with or that Def believes has a duty/interest in receiving the info and Def had duty or interest in communicating info

Section 19: Malice Defeats QP.
Reynolds v Times Newspapers: Public Interest = QP? Could invoke dependant on seriousness of allegation, nature of info, source, steps to verify, urgency of info etc
Talbot v Hermitage Golf club: PI accused of “handicap building” stated to co that provided handicap software = QP

Section 26: Reynolds Defence on statutory footing: published in good faith, subject of public interest, manner did not exceed what’s reasonable, fair & reasonable to publish. List of criteria mirror Reynolds.

Section 20: Honest Opinion replaces Fair Comment: believed truth of opinion, opinion based on facts & can prove truth of facts & on a matter of public interest.

Section 22: Offer of Amends (apology correction compensation)
Apology no longer goes to liability only quantum
**Occupiers Liability:**

**Occupiers’ Liability Act 1995:** governs state of the premises, activity on premises governed by common law. Higher duty to trespasser/recreational user on activity as higher duty.

**Hackett v Calla & Associates:** Pl assaulted by bouncer following disturbance in nightclub – didn’t come w/in the Act

**Common Law Regime:**
1. **Contractual Entrants** – terms of contract or reasonable care
2. **Invitees** – (customer in shop) – reasonable care from unusual dangers knows/ought to
3. **Licensee** – (social guest) – must warn of concealed dangers actually aware of
4. **Trespasser** – not intentionally injure/reckless disregard BUT POST 1975 A DUTY TO TAKE REASONABLE CARE  
   **McNamara v ESB** electricity sub station, fence allowed child PI entrance.

**Foley v Musgrave Cash & Carry:** invitee but ct held duty to act with reasonable care  
   ✓ **Reasonably foreseeable trespassers, invitee & licensees all owed same duty now**

Occupier is anyone exercising control of a premises and there can be more than 1. Premises includes vessels, vehicles etc, Damage includes animals, property and PI.

1. **Visitor** – permission/invite/as of right – duty = reasonable care
2. **Recreational user** – w/out charge (except parking) for recreation + **Trespasser** – no express/implied permission = no intentional injury or reckless disregard

Reasonable care decided w/ regard to: level of care expected of visitors for own safety, whether in company of others & level of supervision & control expected.

**Power v Governor of Cork Prison:** slip on wet tiles – could have put mat down  
**Newman v Cogan:** glass replacement DIY not expected to have expertise of glazier

**Reckless disregard:** Factors to consider: Whether Def knew of danger? Knew person would be on premises? Knew likely to be in vicinity of danger? Burden of eliminating the danger? Character of premises? Nature of warning given? Whether Pl was supervised?

**McGowan v Dun Laoghaire Co Co:** paralysed after landing on rock in 40 foot. Reckless disregard – aware of swimmers and could have erected sign re rocks.  
No duty to trespasser who enters to commit a crime.

**Product Liability:**

**Donoghue v Stephenson:** Manufacturer liable for negligence  
**Stennett v Hancock:** Lorry repair man = manufacturer under negligence principles  
**O’Byrne v Gloucester & Ors:** duty to warn of foreseeable danger of use of product

**Liability for Defective Products Act 1991:** includes damage to property ordinarily used by private person, other then the product itself, includes personal injury physical & mental.  
Creates strict liability. Damage above £350

**Producer** = manufacturer of finished product, component part, processor of agri products, markets product as theirs, imported AND any supplier who fails to identify a producer w/in reasonable time after request.

**Defective:** if fails to provide safety entitled to expect taking into account: presentation, use to which it could reasonably be put and the time it went into circulation.

**A v National Blood Authority:** blood defect – can expect blood to be free from infection – “consumer expectation test” - what is person entitled to expect?  
Pl must prove damage, Defect and causal relationship between the two

**Riboux v SA Schweppes:** Pl’s drink bottle exploded. Couldn’t point to a particular Defect that caused this BUT ct inferred from facts there was one

**Defences:** Didn’t put into circulation, Defect came into existence after circulation, non-commercial producer, complied with statutory requirements, state of the art Defence.

3 year limitation period & 10 year long stop Defence
Public Authorities & State Liability:

**Byrne v Ireland:** state has no automatic immunity from suit

**Ryan v Ireland:** soldier injured in unprotected cabin. Defence of volenti non fit injuria rejected because soldier was not on duty at the time

**Dorset Yacht Club v Home Office, Ann’s v Merton London Borough Council**

**Siney v Dublin Corp:** Pl given unsafe housing under housing act. ct held Def liable

**Ward v McMaster:** ct held special relationship created here & held Def liable

**Sunderland v Louth County Council:** no action against coco for granting Planning permission for uninhabitable house

**Glencar v Mayo Co Co:** ct held no liability. No proximity. Pl were relying on a general expectation.

**Beatty v Rent Tribunal:** tribunal = statutory body exercising statutory powers so it is immune once acting in good faith & within its powers

Misfeasance:

Occurs when public authority acts erroneously or without power. Must prove actual malice or knowledge of lack of necessary powers to act.

Employer’s Liability:

**Non Delegable Duties**

**Connolly v Dundalk UDC & Mahon & Philips:** employer can’t blame second Def for gas leak from badly fitted pipe. Its duty to its EE’s was non-delegable. ER required to keep abreast of developments in safety.

**Standard of Care:**

**Harris v Bright Asphalt:** duty not to expose EE to foreseeable risk that can be guarded against by a measure the convenience and expense of which are not entirely disproportionate to the risks involved.

**Duty of Care:**

Must provide competent staff, safe place of work, suitable work equipment and safe system of work.

**Hough v Irish Base Metals:** ER not liable where co-EEs committed a prank as no lack of supervision or knowledge on the part of the ER that they would commit prank.

**Latimer v AEC Ltd:** some of floor left uncovered by sawdust after spill & Pl slipped. Ct held only duty to do what is reasonable and had done so here.

**Mulcare v Sthn Health Board:** no liability for injury to home carer as house not in such poor condition as to require renovation or the loss of home help.

**Heeney v Dublin Corp:** Def liable for failing to provide breathing apparatus to fireman

**Health & Safety Legislation**

Duty to ensure as far as practicable the safety, health and welfare at work of EEs. Requires identification of hazards and risk assessment.

**Boyle v Marathon Petroleum:** statutory duty > common law duty

Bullying, Harassment & Workplace Stress

**Curran v Cadbury:** EE recovered for nervous shock where no kill switch on machine

**Fletcher v CPW:** No recovery for irrational fears “worried well syndrome”

**Workplace Stress:**

**Hatton v Sutherland:** Injury foreseeable? subjective test of foreseeability of a particular EE suffering from stress (favourable towards ER). This included nature of work and signs EE suffering from stress. ER entitled to take what EE says at face value. Must only do what is reasonable in response & to succeed in claim Pl must identify what the necessary steps were. Breach of duty must cause the harm, not enough to merely suffer stress.
Mahir v Jabil Global Services: worker returning to work after time out for stress was given a non-job & suffered relapse as a result of this. Ct held Hatten v Sutherland applied & not enough evidence to succeed – not enough complaints made by EE
Test: Is EE suffering from injury to health? Is it attributable to stress at work? Was the harm reasonably foreseeable?
Quigley v Complex Tooling: PI claimed bullying and harassment caused depression. Bullying = “repeated inappropriate behaviour to undermine dignity of worker” but no causation proven.
Berber v Dunnes Stores: ct acknowledged difficulties with forseeability and causation in such cases.
Volenti Non Fit Injuria ≠ blanket Defence anymore – must be a clear agreement/discussion where PI waived right of action.

Defences:
Contributory Negligence – Section 34 Civil Liability Act 1961 fault apportioned equally is cant be otherwise apportioned.
Hussey v Twomey: car with drunk driver was 40% contrib.
McGouran v Reynolds: no seat belt = 15% contrib.
Volenti non fit injuria
Coleman v Kelly & Ors: didn’t apply at agricultural show as the premises were not as safe as they could have been.
BUT
O’Hanlon v ESB – no longer a Defence unless existing agreement b/w parties
Necessity: - only applies to intentional damage not negligence
Lynch v Fitzgerald: Gardai opened fire on riot and as it was not necessary in circumstances they could not avail of the Defence.
Inevitable Accident:
Not foreseen and not intended and could not be avoided by any reasonable care
Stanley v Powell: bullet rickocheted off a tree and hit Plaintiff – Defence successful.
Ex Turpi Causa Non Acio Sua – from a dishonourable cause an action does not arise
Claimant cannot pursue an action where it arises in connection with his illegal act. BUT
Anderson v Cooke: no longer a Defence under Civil Liability Act 1961

Legal Authority:
Kelly v Dublin Co Co: Unsuccessful as a Defence to nuisance caused by workers vehicles & fumes

Limitation of Actions:
Statute of Limitations – 6 years for tort from date on which cause of action accrued
- was 3 years for personal injury
- BUT now 2 years for personal injury
Defamation - 1 year

Devlin v Roche: could institute assault & battery proceedings within 6 years rather than 2.
Hegarty v O’Loughran: per se actionable – time runs on date action committed, nuisance/trespass that is continuing – begins again each day, actionable on proof of damage – begins when damage is sustained.
Statute of Limitations Amendment Act 1991: discoverability/ date of knowledge test for PI actions. Knowledge of PI that injury, significant, attributable in whole or part to act and identity of Defendant. Knowledge includes knowledge reasonably expected to acquire from fact observable with help of appropriate expert that it is reasonable to seek.
Gough v Neary: date of knowledge for wrongful hysterectomy was date she saw media reports
**Fortune v McLoughlin:** Identity of Def is required before time runs. Here brain injury caused by midwife.

**Undiscovered property damage?**

**O’Donnell v Kilsaran Concrete Ltd:** in such cases the action will not accrue until the damage occurs

**Plaintiff with a Disability?**

Minors, unsound mind, convicts. Time does not run while Pl is under a disability.

**Statute of Limitations Amendment Act 2000** – re time in sexual abuse cases

**Fraud:**

**Section 71:** where Def fraudulently concealed cause of action time does not run until fraud discovered or could reasonably have been discovered.

**McDonald v Bain:** could have discovered fraud earlier so statute barred.

**Deceased:**

Action vested in deceased or subsisting at time of death survive against deceased’s estate. No exemplary damages or damages for pain and suffering.

**Damages:**

**Compensatory:**

**General** – not easily quantifiable eg pain and suffering, reduction in life expectancy etc

**Sinnott v Quinnsworth:** Sct introduced rough cap on general damages in serious injury cases of 150K quadriplegic

**Yun v MIBI & Tao:** above was revised upwards to 450k in 2009

**Special Damages:** typically pre-trail expenses with the exception of loss of future earnings

**Dowling v O’Flynn:** Sct says undeclared income can be taken into account and an award made as though income tax paid into the future.

**Reddy v Bates deduction:** Ct assumes you would not work forever & makes deduction accordingly.

**Aggravated damages:**

**Phillip v Ryan:** Falsification of medical records lead to aggravatated damages.

**Kennedy v Hearne:** persisted with libel until end of trial – aggravated damages awarded

**Nominal Damages** – where legal right has been infringed but no loss suffered

**Contemptuous Damages** – where technically wronged but courts consider action unmeritorious

**Punative/Exemplary** - to discourage behaviour of Def

**Conway v INTO** – punitive damages awarded where Pl got no schooling for a year

**Shortt v Commissioner of an Garda Siochana:** Pl was wrongly convicted & conviction later quashed as gardai had perjured evidence, 1m in punitive.
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