## Contents

1 | Acknowledgments  
--- | ---  
1 | Introduction  
--- | ---  
3 | Assault and Battery I  
--- | ---  
3.1 Righting (or Punishing) the Wrong  
--- | ---  
3.1.1 Vosburg v. Putney: “The Schoolboy Kicker”  
--- | ---  
3.1.2 Alcorn v. Mitchell: “The Angry Spitter”  
--- | ---  
3.2 The Boundaries of Battery and Assault  
--- | ---  
3.2.1 Picard v. Barry Pontiac-Buick, Inc.: “The Camera Toucher”  
--- | ---  
3.2.2 Garratt v. Dailey: “The Chair-Pulling Five-Year-Old”  
--- | ---  
3.3 The Restatement Approach to Assault and Battery  
--- | ---  
3.3.1 The Restatement Approach to Assault  
--- | ---  
3.3.2 The Restatement Approach to Battery  
--- | ---  
4 | Assault and Battery II: Intent and Autonomy  
--- | ---  
4.1 Latent Sensitivities and Reservations  
--- | ---  
4.1.1 Wishnatsky v. Huey: “The Overly-Sensitive Intruder”  
--- | ---  
4.1.2 Supplemental Materials for Wishnatsky v. Huey  
--- | ---  
4.1.2.1 Crary’s Affidavit  
--- | ---  
4.1.2.2 Wishnatsky’s (Plaintiff’s) Amended Complaint  
--- | ---  
4.1.2.3 Wishnatsky’s (Plaintiff’s) Affidavits  
--- | ---  
4.1.2.4 Letters between Litigants
4.1.3 O’Brien v. Cunard: “The Silent Vaccine Objector” 36

4.2 The Spectrum between Subjective and Objective 39

4.2.1 Leichtman v. WLW Jacor Communications, Inc.: “The Smoke in the Face Case” 39

4.2.2 Werth v. Taylor: “The Jehovah’s Witness Wrongful Life Case” 41

4.3 Beyond Physical Contact or the Threat Thereof: Intentional Infliction of Emotional Distress 45

4.3.1 Womack v. Eldridge: “The Distressing Accusation of Molestation” 45

5 | False Imprisonment: Taking Care of Others 49

5.1 The Clashing of Wills 51

5.1.1 Lopez v. Winchell’s Donut House: “The Accused Employee Who Freely Left” 51

5.1.2 Parvi v. City of Kingston: “The Dropped Off Drunk” 54

5.2 Defining “Confinement” 60

5.2.1 Shen v. Leo A. Daly Co.: “The Confined-to-Taiwan Case” 60

5.2.2 Peterson v. Sorlien: “The Unsuccessfully Deprogrammed Daughter” 62

5.3 “Good” Imprisonments—Exceptions to False Imprisonment Liability 68

5.3.1 Eilers v. Coy: “The Falsely Consenting Cultist” 68

6 | Defenses: Overriding the Choices of Others 73

6.1 Consent 75

6.1.1 Hart v. Geysel: “The Fatal Prize Fight” 75

6.1.2 Hackbart v. Cincinnati Bengals: “The No-Foul-but-Severe-Harm Case” 77

6.2 Preservation of Bodily Integrity 81

6.2.1 Courvoisier v. Raymond: “The Mistaken Self-Defender” 81
6.3 Preservation of Property  
6.3.2 Vincent v. Lake Erie Transportation Company: “The Boat-Slamming-Against-the-Dock-Case”  

6.4 Beyond the Common Law—Statutory Exceptions and Constitutional Protections  

7 | Trespass to Chattels: The Limits of Self-Help  
7.1 Glidden v. Szybiak: “The Dog Ear Puller”  
7.2 Katko v. Briney: “The Spring-Gun Case”  
7.3 CompuServe v. Cyber Promotions: “The Damaging Spam Case”  
7.4 Intel Corp. v. Hamidi (Court of Appeal): “The Critical Emails Case”  
7.5 Intel Corp. v. Hamidi (Supreme Court): “The Critical Emails Case”  

8 | Negligence: The Standard of Reasonable Care  
8.1 The Murky Line between Intentional Torts and Negligence  
8.1.1 Topps v. Ferraro: “The Unintentional Punch in the Face”  
8.2 Understanding the Standard  
8.2.2 United States v. Carroll Towing Co., Inc.: “The Learned Hand Formula Case”  
8.2.3 Adams v. Bullock: “The Swinging Wire Case”  
8.3 Judge or Jury: Who Should Decide?  
8.3.1 Pokora v. Wabash Railway Co.: “The Driver Who Failed to Step Out and Look Around”  
8.3.2 Akins v. Glen Falls: “The Blinding Foul Ball”
8.4 The Restatement Approach to the Standard of Reasonable Care

8.4.1 Restatement (Third) of Torts

9 | Negligence: Adjusting the Standard?

9.1 Challenges in Conveying the Standard

9.1.1 Vaughan v. Menlove: “The Unreasonable Hay Stacker”


9.1.3 Ellis v. D’Angelo: “The 4-Year-Old Bone Breaker”

9.2 The Effect of Defendant’s Infirmities and Limitations on the Standard

9.2.1 McCarty v. Pheasant Run: “The Chained, but Unlocked, Sliding Door”


9.2.3 Miller v. Reilly: “The Defective Brakes Case”

10 | Res Ipsa Loquitur

10.1 “The Thing Speaks for Itself”—The Basic Rule of Res Ipsa Loquitur

10.1.1 Byrne v. Boadle: “The Falling Flour Barrel”

10.2 Questions About Control: The “Exclusive Control” Requirement

10.2.1 Larson v. St. Francis Hotel: “The Falling Armchair”

10.2.2 Connolly v. Nicollet Hotel: “The Chaotic Convention”

10.3 The Problem of Multiple Defendants

10.3.1 Ybarra v. Spangard: “The Unconscious, but Injured Patient”

10.3.2 Fireman’s Fund American Insurance Cos. v. Knobbe: “The One-of-Four Smokers Case”
## 11 | Negligence Per Se

### 11.1 The Basic Doctrine
11.1.1 Martin v. Herzog: “The Buggy without Lights”

### 11.2 The Objective of the Statute
11.2.1 Platz v. The City of Cohoes: “The Sunday Carriage Accident”
11.2.2 Brown v. Shyne: “The Unlicensed, Paralyzing Chiropractor”
11.2.3 Rushink v. Gerstheimer: “The Key in the Ignition Case”
11.2.4 Robinson v. District of Columbia: “The Jaywalking Custom Case”
11.2.5 Tedla v. Ellman: “Walking on the Other Side of the Highway”

## 12 | Duty I: Introduction; Action vs. Inaction

### 12.1 Action versus Inaction
12.1.1 Moch Co. v. Rensselaer Water Co.: “The Failure to Supply Water During a Fire”
12.1.2 Strauss v. Belle Realty Co.: “The Man Who Tripped Down the Stairs”
12.1.3 Union Pacific Railway v. Cappier: “The Railroad That Ran Over a Man and Let Him Bleed to Death”

### 12.2 Special Relationships and Other Exceptions
12.2.1 Harper v. Herman: “The Boat Owner Who Failed to Warn”
12.2.2 Farwell v. Keaton: “The Fatal Pickup Attempt”

## 13 | Duty II: Duty to Control Others

### 13.1 Duty Arising from and Limited by Special Relationships
13.1.1 Tarasoff v. Regents of University of California: “The Psychiatrist’s Failure to Warn the Murder Victim” 241
13.1.3 Hawkins v. Pizzaro: “The Failure to Correctly Report Hepatitis C Test Results” 256
13.1.4 Einhorn v. Seeley: “The Locksmith’s Failure to Properly Install a Lock” 258

13.2 Controlling the Intoxicated 264
13.2.1 Kelly v. Gwinnell: “The Don’t Let Friends Drinks and Drive Case” 264
13.2.2 Charles v. Seigfried: “The Tragic Fate of the Minor Guest” 267

14 | Duty III: Governmental Liability 271
14.1 Riss v. City of New York: “The Lye in the Face Case” 273
14.2 Schuster v. City of New York: “The Death of the Police Informant” 277
14.3 Weiner v. Metropolitan Transit Authority: “The Unmanned Train Station” 280
14.4 Garcia v. Superior Court of Santa Clara County: “The Fatally Wrong Parole Officer” 282
14.6 Howse v. Hodous: “The Undue Arrest and Qualified Immunity Case” 291

15 | Duty IV: Emotional and Economic Harm 299
15.1 Emotional Harm 302
15.1.1 Falzone v. Busch: “The Almost Automobile Accident” 302
15.1.3 Pizarro v. 421 Port Associates: “The Decapitating Elevator” 310
15.1.4 Gammon v. Osteopathic Hospital of Maine: “The Severed Leg in the Bodybag” 311

15.2 Economic Harm 315

15.2.1 People Express Airlines, Inc. v. Consolidated Rail Corp.: “The Evacuated Airport” 315

15.2.2 Koch v. Consolidated Edison Co.: “The New York Blackout Case” 320

16 | Causation 325

16.1 Theories of Causation 327


16.1.2 Stubbs v. City of Rochester: “The Sewage in the Drinking Water Case” 330


16.2 Joint and Several Liability 343

16.2.1 Summers v. Tice: “The Simultaneously Negligent Shooters” 343

16.2.2 Garcia v. Joseph Vince Co.: “Two Manufacturers, One Sabre” 346

16.2.3 Ravo v. Rogatnick: “The Indivisible Brain Damage” 349

17 | Proximate Cause 353

17.1 In re Polemis: “The Plank That Exploded a Ship” 355

17.2 Wagner v. International Railway Co.: “The Injured, Would-Be-Rescuer” 357

17.3 Palsgraf v. Long Island Railway Co.: “The Fireworks on the Train Platform” 360

17.4 Benn v. Thomas: “The Time-Delayed Heart Attack” 369

17.5 Steinhauser v. Hertz Corp.: “The Sudden Schizophrenia Case” 373
17.6 Gibson v. Garcia: “The Rotten Telephone Pole and the Car” 376
17.7 Darby v. National Trust: “The Rat Urine Case” 380

### 18 | Vicarious Liability

<table>
<thead>
<tr>
<th>18.1 Fundamentals of Vicarious Liability</th>
<th>387</th>
</tr>
</thead>
<tbody>
<tr>
<td>18.1.1 Miller v. Reiman-Wuerth Co.: “The Bank Errand Case”</td>
<td>387</td>
</tr>
<tr>
<td>18.1.2 Christensen v. Swensen: “The Lunch Break Case”</td>
<td>392</td>
</tr>
</tbody>
</table>

### 18.2 Possible Exceptions to Vicarious Liability

| 18.2.1 Bussard v. Minimed, Inc.: “The Bug Bomb Case” | 396 |
| 18.2.2 Kuehn v. Inter-City Freight: “The Road Rage Case” | 400 |
| 18.2.3 Sage Club v. Hunt: “The Violent Bartender” | 402 |
| 18.2.4 Roessler v. Novak: “The ‘Independent’ Radiology Department” | 405 |

### 19 | Strict Liability

| 19.2 Sullivan v. Dunham: “The Exploding Tree Case” | 416 |
| 19.3 Hammontree v. Jenner: “Strict Liability While Driving?” | 420 |
| 19.4 Crosby v. Cox Aircraft Co.: “The Airplane That Ran Out of Fuel” | 423 |
| 19.5 Torchia v. Fisher: “The Stolen Airplane Case” | 429 |
| 19.6 Franken v. City of Sioux Center: “The ‘Pet’ Tiger Case” | 432 |

### 20 | Defenses I: Contributory and Comparative Fault

| 20.1 Davies v. Mann: “The Last Clear Chance and the Donkey” | 439 |
| 20.2 Derhein v. N. Fiorito, Co. Inc.: “The Non-Seat-Belt-Wearing Plaintiff” | 441 |
| 20.3 Fritts v. McKinne: “The Doctor Who Cried Drunk Driver” | 449 |
21 | Defenses II: Assumption of Risk

21.2 Murphy v. Steeplechase Amusement Co.: “The Dangerous Carnival Ride” 469
21.3 Cohen v. McIntyre: “The Thrice Bitten Veterinarian” 471
21.4 Lowe v. California League of Professional Baseball: “The Tremor’s Tail Case” 475

22 | Products Liability I: Manufacturing Defects

22.1 Introduction to Products Liability 487
   22.1.1 MacPherson v. Buick Motor Co.: “The Broken Wooden Wheel Case” 487
   22.1.2 Ryan v. Progressive Grocery Stores, Inc.: “The Pin in the Bread Case” 490
   22.1.3 Escola v. Coca Cola Bottling Company of Fresno: “The Exploding Coke Bottle Case” 493
22.2 Manufacturing Defects 498
   22.2.1 Keen v. Dominick’s Finer Foods, Inc.: “The Defective Shopping Cart” 498
22.3 Manufacturing Defects versus Design Defects 502
   22.3.1 Rix v. General Motors Corp.: “The Truck That Couldn’t Brake” 502
22.4 Manufacturing Defects versus Failures to Warn 507
   22.4.1 Emery v. Federated Foods, Inc.: “The Toddlers Shouldn’t Eat Marshmallows Case” 507
22.5 The Restatement Approach to Products Liability 512
   22.5.1 Restatement Approach to Products Liability 512
# Products Liability II: Design Defect and Warning

## 23.1 Design Defect and Warning

- **23.1.1 Soule v. General Motors Corp.: “The Crumpling Toe Plate”** 517
- **23.1.2 Camacho v. Honda Motor Co.: “The Motorcycle without Crash Bars”** 523
- **23.1.3 Linegar v. Armour of America, Inc.: “The Incomplete Bulletproof Vest”** 530
- **23.1.4 Hood v. Ryobi America Corp.: “The Saw with Removed Bladeguards”** 534
- **23.1.5 Medina v. Louisville Ladder, Inc.: “The Monolinguial Installation Instructions”** 539

## 23.2 Affirmative Defenses to Products Liability

- **23.2.1 Restatement Approach to Affirmative Defenses** 543

# Damages

## 24.1 Massachusetts General Laws—Chapter 228, Section 1

- **24.1 Massachusetts General Laws—Part III, Title II—Chapter 229, Section 2:** Wrongful death; damages 548

## 24.3 A Restatement Approach to Damages

- **24.3.1 Restatement of the Law, Second, Torts § 925 Actions for Causing Death** 550
- **24.3.2 Restatement of the Law, Second, Torts § 926** 551

## 24.4 Calculating Damages

- **24.4.1 McDougald v. Garber: “The Comatose Sufferer”** 553
- **24.4.2 Seffert v. Los Angeles Transit Lines: “Suffering by Bus”** 560

# Index of Cases

- **Index of Cases** 573