

Contents

1 | Acknowledgments 1

2 | Introduction 3

3 | Assault and Battery I 7

3.1 Righting (or Punishing) the Wrong 9

3.1.1 Vosburg v. Putney: “The Schoolboy Kicker” 9

3.1.2 Alcorn v. Mitchell: “The Angry Spitter” 11

3.2 The Boundaries of Battery and Assault 13

3.2.1 Picard v. Barry Pontiac-Buick, Inc.: “The Camera Toucher” 13

3.2.2 Garratt v. Dailey: “The Chair-Pulling Five-Year-Old” 16

3.3 The Restatement Approach to Assault and Battery 21

3.3.1 The Restatement Approach to Assault 21

3.3.2 The Restatement Approach to Battery 21

4 | Assault and Battery II: Intent and Autonomy 23

4.1 Latent Sensitivities and Reservations 25

4.1.1 Wishnatsky v. Huey: “The Overly-Sensitive Intruder” 25

4.1.2 Supplemental Materials for Wishnatsky v. Huey 29

4.1.2.1 Crary’s Affidavit 29

4.1.2.2 Wishnatsky’s (Plaintiff’s) Amended Complaint 31

4.1.2.3 Wishnatsky’s (Plaintiff’s) Affidavits 33

4.1.2.4 Letters between Litigants 35

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	84
6.3.1 Ploof v. Putnam: “The Private Island in a Storm”	84
6.3.2 Vincent v. Lake Erie Transportation Company: “The Boat-Slamming-Against-the-Dock-Case”	86
6.4 Beyond the Common Law—Statutory Exceptions and Constitutional Protections	89
6.4.1 Barbara A. v. John G.: “The Reprehensible Attorney”	89

7 | Trespass to Chattels: The Limits of Self-Help 97

7.1 Glidden v. Szybiak: “The Dog Ear Puller”	99
7.2 Katko v. Briney: “The Spring-Gun Case”	101
7.3 CompuServe v. Cyber Promotions: “The Damaging Spam Case”	107
7.4 Intel Corp. v. Hamidi (Court of Appeal): “The Critical Emails Case”	113
7.5 Intel Corp. v. Hamidi (Supreme Court): “The Critical Emails Case”	118

8 | Negligence: The Standard of Reasonable Care 123

8.1 The Murky Line between Intentional Torts and Negligence	125
8.1.1 Topps v. Ferraro: “The Unintentional Punch in the Face”	125
8.2 Understanding the Standard	131
8.2.1 Chicago, B. & Q. R. Co. v. Krayenbuhl: “The Foot-Severing Turntable”	131
8.2.2 United States v. Carroll Towing Co., Inc.: “The Learned Hand Formula Case”	135
8.2.3 Adams v. Bullock: “The Swinging Wire Case”	137
8.3 Judge or Jury: Who Should Decide?	139
8.3.1 Pokora v. Wabash Railway Co.: “The Driver Who Failed to Step Out and Look Around”	139
8.3.2 Akins v. Glen Falls: “The Blinding Foul Ball”	143

8.4 The Restatement Approach to the Standard of Reasonable Care	147
8.4.1 Restatement (Third) of Torts	147

9 | Negligence: Adjusting the Standard? 149

9.1 Challenges in Conveying the Standard	151
9.1.1 Vaughan v. Menlove: “The Unreasonable Hay Stacker”	151
9.1.2 Wood v. Groh: “The Gun from the Cabinet”	153
9.1.3 Ellis v. D’Angelo: “The 4-Year-Old Bone Breaker”	156
9.2 The Effect of Defendant’s Infirmities and Limitations on the Standard	160
9.2.1 McCarty v. Pheasant Run: “The Chained, but Unlocked, Sliding Door”	160
9.2.2 Bashi v. Wodraz: “The Driver Who Wiggled Out”	164
9.2.3 Miller v. Reilly: “The Defective Brakes Case”	167

10 | Res Ipsa Loquitur 171

10.1 “The Thing Speaks for Itself”—The Basic Rule of Res Ipsa Loquitur	173
10.1.1 Byrne v. Boadle: “The Falling Flour Barrel”	173
10.2 Questions About Control: The “Exclusive Control” Requirement	175
10.2.1 Larson v. St. Francis Hotel: “The Falling Armchair”	175
10.2.2 Connolly v. Nicollet Hotel: “The Chaotic Convention”	177
10.3 The Problem of Multiple Defendants	185
10.3.1 Ybarra v. Spangard: “The Unconscious, but Injured Patient”	185
10.3.2 Fireman’s Fund American Insurance Cos. v. Knobbe: “The One-of-Four Smokers Case”	189

11 | Negligence Per Se

193

11.1 The Basic Doctrine

195

11.1.1 Martin v. Herzog: “The Buggy without Lights”

195

11.2 The Objective of the Statute

199

11.2.1 Platz v. The City of Cohoes: “The Sunday Carriage Accident”

199

11.2.2 Brown v. Shyne: “The Unlicensed, Paralyzing Chiropractor”

201

11.2.3 Rushink v. Gerstheimer: “The Key in the Ignition Case”

204

11.2.4 Robinson v. District of Columbia: “The Jaywalking Custom Case”

206

11.2.5 Tedla v. Ellman: “Walking on the Other Side of the Highway”

208

12 | Duty I: Introduction; Action vs. Inaction

213

12.1 Action versus Inaction

215

12.1.1 Moch Co. v. Rensselaer Water Co.:
“The Failure to Supply Water During a Fire”

215

12.1.2 Strauss v. Belle Realty Co.: “The Man Who Tripped Down the Stairs”

217

12.1.3 Union Pacific Railway v. Cappier: “The Railroad That Ran Over a Man
and Let Him Bleed to Death”

221

12.2 Special Relationships and Other Exceptions

225

12.2.1 Harper v. Herman: “The Boat Owner Who Failed to Warn”

225

12.2.2 Farwell v. Keaton: “The Fatal Pickup Attempt”

228

12.2.3 Randi W. v. Muroc Joint Unified School District:
“The Alleged Sexual Predator’s Recommenders”

232

13 | Duty II: Duty to Control Others

239

13.1 Duty Arising from and Limited by Special Relationships

241

13.1.1 Tarasoff v. Regents of University of California: “The Psychiatrist’s Failure to Warn the Murder Victim”	241
13.1.2 Broadbent v. Broadbent: “The Phone Call and the Drowned Child”	250
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
13.1.5 Boyd v. Racine Currency Exchange: “The Non-compliant Bank Teller and the Murdered Hostage”	261
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
14.5 Florence v. Goldberg: “The Police-Manned Crosswalk”	287
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
15.1.2 Portee v. Jaffee: “The Child Dying in the Elevator”	306
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
-----------------------------------	------------

16.1.1 Howard v. Wal-mart Stores, Inc.: “The ‘More-Likely-Than-Not’ Standard for Causation”	327
--	-----

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

16.1.3 Anderson v. Minneapolis, St. Paul & Sault Ste. Marie Railway Co.: “The Multiple Fires Case”	335
---	-----

16.1.4 Brown v. Wal-mart: “The Phantom Tortfeasor”	338
--	-----

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 Steinhauer 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 385

18.1 Fundamentals of Vicarious Liability 387

18.1.1 Miller v. Reiman-Wuerth Co.: “The Bank Errand Case”	387
--	-----

18.1.2 Christensen v. Swensen: “The Lunch Break Case”	392
---	-----

18.2 Possible Exceptions to Vicarious Liability 396

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 411

19.1 Guille v. Swan: “The Wandering Aeronaut”	413
---	-----

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 437

20.1 Davies v. Mann: “The Last Clear Chance and the Donkey”	439
---	-----

20.2 Derheim v. N. Fiorito, Co. Inc.: “The Non-Seat-Belt-Wearing Plaintiff”	441
---	-----

20.3 Fritts v. McKinne: “The Doctor Who Cried Drunk Driver”	449
---	-----

20.4 Veazey v. Elmwood Plantation Associates, Inc.:
“The Totally-at-Fault Apartment Complex Manager” 453

20.5 Washington Metropolitan Area Transit Authority v. Johnson:
“The Suicide in the Subway Station” 456

21 | Defenses II: Assumption of Risk 463

21.1 Knight v. Jewett: “The Not-So-Friendly Touch Football Game” 465

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

21.5 Shorter v. Drury: “The Jehovah’s Witness and the Blood Transfusion Waiver” 477

22 | Products Liability I: Manufacturing Defects 485

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

23 | Products Liability II: Design Defect and Warning 515

23.1 Design Defect and Warning 517

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 Monolingual Installation Instructions” 539

23.2 Affirmative Defenses to Products Liability 543

23.2.1 Restatement Approach to Affirmative Defenses 543

24 | Damages 545

24.1 Massachusetts General Laws—Chapter 228, Section 1 547

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

24.3 A Restatement Approach to Damages 550

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 553

24.4.1 McDougald v. Garber: “The Comatose Sufferer” 553

24.4.2 Seffert v. Los Angeles Transit Lines: “Suffering by Bus” 560

24.4.3 Greyhound Lines, Inc. v. Sutton: “The Worth of a Child Case” 567

Index of Cases 573