tort - a wrongful act or an omission, other than a breach of contract, that invades a legally protected right (some torts can be both). tortfeasor is sued by the victim.

Intentional examples: fraud, defamation, invasion of privacy. Unintentional: Negligence. -- Strict liability does not take intention into account

\* Physical vs. Nonphysical: Physical examples: assault, battery, false imprisonment, false arrest. Nonphysical examples: libel, slander, malicious prosecution, fraud. \* Negligence: A plaintiff must establish each of these four elements to win against the defendant 1) the defendant owed a legal duty of care to the plaintiff 2) The defendant breached the duty of care owed to the plaintiff. 3) The defendant's negligent act was the proximate cause of the plaintiff's injury or damage 4) The plaintiff suffered actual injury or damage \* Legal Duty: can be established by statutes, contracts, and the common law. Examples: A surgeon has a legal duty to perform surgery properly -- A bus driver has a duty to drive in a way that minimizes probability of harm to the passengers -- A contractor has a duty to build structurally sound buildings \* Moral obligation is not the same as legal duty \* A person who voluntarily undertakes a moral obligation then has a legal duty to exercise reasonable care.

**Breach of Duty**: \* in professional negligence, the standard is the skill and knowledge of reasonably competent members of the same professiona in the local community. Professionals are not liable for errors in judgement if the judgement was reached with reasonable care. "Good Samaritan" does not apply to their area of expertise. \* A "high" degree of care is necessary for common carriers (who transport people) and for workers handling or storing dangerous materials. **Proximate Cause** \* "But for" rule -- if defendant had not acted as he did, injury would not have occurred \* Substantial factor rule/concurrent causation: if multiple actors are negligent, "but for" rule fails \* Proof of defendant's responsibility \* Foreseeability rule -- includes foreseeable harm coming by unforeseen means \* Intervening force -- Intervening force can also be foreseeable or not, affecting case differently **Negligence Per Se** \* An act that is considered inherently negligent because of a violation of a law or an ordinance. 1. The plaintiff must fit the class of people intended to be protected by the law in question 2. The harm suffered must be the type of harm the law was intended to prevent **Res Ipsa Loquitor** \* In some circumstances, the mere fact of an accident occurring is proof of negligence: The defendant had exclusive control of the "Instrument of harm". -- The harm that occurred would not normally occur in the absence of negligence. -- The plaintiff was in no way responsible for his injury **Defenses Against Negligence Claims** \* Comparative negligence, Releases and exculpatory clauses, Immunity, statutes of limitations and repose, Tortfeasor's capacity \* Comparative Negligence: originally contributory negligence, in which if the plaintiff was negligent as well as the defendant, he could not recover damages. Softened to comparative, which allows reduction of the recovery commensurate with the plaintiff's share of blame for the injury -- Pure, 50%, 49%, slight vs. gross. \* Last clear chance, assumption of risk \* Releases and Exculpatory Clauses: Release - legally binding contract between parties to a dispute that releases both parties from further obligation to one another relating to the dispute (can be voided by mutual mistake) \* Exculpatory clause - contractual provision excusing one party from liability resulting from negligence or otherwise wrongful act. - Courts tend to not love these

\* Liquidated damages: Estimation of damages, included in the contract, to be paid in the event of a breach or negligence. \* Immunity: Sovereign, or governmental Immunity - when the government is functioning in a governmental capacity -- Public Official Immunity: Restricted to performance of their official duties -- Charitable Immunity (largely abolished) -- Intrafamilial Immunity: There are good reasons why familiy members should or should not be permitted to sue each other. \* Statutes of limitation and repose: Repose refers to the time lapsed since construction or sale of the instrument of harm -- Limitation: the time lapsed since the injury occurred. -- Determining time of injury is not always that simple. -- Injuryed minors have a separate limitation period beginning when they reach legal maturity. **Landowners' Liability** \* Depends on two facotrs: -- source of hazard: 1) natural (falling trees, rocks) - generally no duty to correct 2) Artificial (redirected water, fences, holes) - Warnings must be posted. \* Permission granted to plaintiff: Invitee (Customers in stores, visitors to national parks) -- Duty to keep reasonably safe and warn of dangers -- Licensee (party guests, firefighters & police): takes property as is – Trespasser **Intentinal Torts** \* Intention != Motive

\* Common types: Battery, assault, false imprisonment/false arrest, Intentional infliction of emotional distress - Defamation (Libel & Slander) - Invasion of the right of privacy \* Battery: Involves bodily contact, victim need not be in fear of harm, victim need not be aware of the contact, can be a crime as well as a tort (to be a tort, must be intentional and hostile or offensive). -- Defenses: Plaintiff consented (e.g. touch football) -- self-defense or defense of others (reasonable force), physical discipline (e.g. spanking) -- Assault: does not involve physical contact -- victim must anticipate or expect contact -- victim must fear harm. \* False Imprisonment/Arrest: False Imprisonment - restraint or confinement without consent or legal authority \* False Arrest - Seizure or forcible restraint without legal authority \* It’s not false arrest just because you happen to be innocent. \* Police have stricter guidelines for misdemeanor vs. felony \* Stores can usually detain shoplifting suspects for a "reasonable" time while investigating \* Intentional Infliction of Emotional Distress: Resulting emotional distress used to have to be so severe that it caused physical harm (no longer universally the case). -- Defense is that the act was unintentional -- THere's also negligent infliction of emotional damage, the defense for which is showing that the act was not negligent \* Slander and Libel: Slander is spoken, libel is printed. Both require "publication" to a third party -- Libel, being more permanent and more widely circulated, has greater potential for damage -- News outlets must knowingly make a false statement -- Public figures need tougher skin: must prove malice to recover damages \* Slander & Libel Defenses: Statement was true | defendant printed a retraction (not a complete defense) | Statement made in jjudicial or legislative proceedings or spousal comms | statement made w/o malice as matter of public interest or by credit-reporting agencies \* Invasion of the right of privacy: Intrusion on solitude/seclusion \* physical invasion: searching a shopping bag, unauthorized taking of a blood sample \* Torts involving use or disclosure of information: Public disclosure of private facts - depends on fame | Defenses: Plaintiff previously published the information – The plaintiff consented to publication – plaintiff is public figure or the info is public knowledge – the info was part of a news event – the publication would not offend an individual of ordinary sensitivity – matters were disclosed in judicial hearings – the information is of public interest, such as the public’s right to know \* More intentional torts: fraud, bad faith, interference with relationships between others, misuse of legal process, trespass, nuisance, conversion. **Fraud**: requires proof of : A false representation has been made, the misrepresentation is material and concerns a past or an existing fact | the misrepresentation was knowingly made | the misrepresentation was made with intent to influence or deceive | the party to which the statement was made placed reasonable reliance on its truth. This reliance must be justified | the complaining party must suffer a detriment, or actual damage. **Trespass:** The act of unauthorized entry itself is enough to qualify as damage. Accidental entry is not an excuse. Magnitude of entry is not important. **Strict Liability:** liability imposed by statute or court in the absence of fault when harm results from ultrahazardous activities or conditions (e.g. mining, blasting, wild animals). Ultrahazardous: it has a high degree of risk of serious harm, cannot be performed wo the high degree of risk, does not normally occur in the area in which it wis conducted. Adjacent property occupiers need not adjust behavior. **Insurance Law Part II Products Liability**: A manufacturer’s or seller’s liability for harm suffered by a buyer, user, or bystander as a result of a product. Suits are based on one or more of: misrepresentation, breach of warranty, strict liability and negligence. **Misrepresentation:** manufacturers tell the public abt their product, which is an express warranty **Breach of warranty:** express or implied (product fit for ordinary purpose), no contract required **Strict Liability and Negligence:** With a service or process, the suit must be based on negligence. If a product is involved, then the suit can be based on either negligence or strict liability Requirements for **Strict Liability:** The seller was in the business of selling products – the product had a defect that made it unreasonably dangerous – was dangerously defective prior to leaving seller/manufacturer’s control – defect proximate cause of injury – product was expected to and did reach buyer wo change in condition. **Types of Product Defects:** Defect in manufacture/assemply (inferior materials or workmanship) – Defect in design: safety balanced with cost efficiency, weight, and style – Failure to warn: product not defective, but poses some inherent danger abt which manufacturer has provided insufficient warning. **Parties: Potentially Liable:** Manufacturers, distributors, wholesalers, retailers, bailors, lessors, builders, contractors **Protected:** ultimate buyer, ultimate user/consumer, nonuser (bystander) **Defenses:** State of the art (not complete), compliance w/ statutes & regulations (not conclusive), Compliance w/ product specifications, open & obvious danger, plaintiff’s knowledge, comparative negligence, assumption of risk, misuse of product, alteration of product **Professional liability:** aka Malpractice, errors & Omissions, Traditionally only physicians, lawyers, and clergy; has expanded to a wide variety of occupations. May contain **consent-to-settle** clause. Not every professional error results in liability. Reasonable errors in judgement are defensible. Higher standard for specialists. Directors and Officers Liability also in this category. Damages in Tort Suits: **Compensatory** Damages: Special Damages – money awarded for specific, identifiable expenses (e.g. Medical expenses, lost wages) – General Damages – Compensation for losses without measurable expenses (e.g. pain & suffering, lost limbs or senses, emotional distress) **Punitive Damages:** punish and make an example of the defendant – Not awarded in negligence suits – Defendant must have actually intended to do harm or have acted oppressively, maliciously, or fraudulently **Wrongful Death Action –** unlike under common law, now survivors of deceased victims can recover damages **Determining Damages:** Restitio in Integrum – damages should place the plaintiff in the position they would be had the tort not occurred. Mitigation of damages – plaintiff needs to prevent damages from getting worse. Structured settlements: damages awarded as an annuity (interest tax-free, structure prevents plaintiffs from squandering funds needed for long-term care. **Equitable (non-monetary) remedies:** specific performance: the court orders a party to perform an action. **Injunction:** order not to act **Classification**: ownership type, place of incorporation, licensing status, insurance distribution systems & channels

**Ownership forms**: Proprietary (stock, Lloyd's of London & American Lloyds, Insurance Exchanges), Cooperative (Mutuals, Fraternal Organiztions), Other Co-ops (captives, RRGs, Purchasing Groups), Other (pools, gov't) **Place of Incorporation**: Unincorporated (Insurance Exchanges, Lloyd's), Domestic (in state), Foreign (out of state), Alien (other country). **Licensing**: "Admitted" if licensed, meet minimums for surplus & compliance. Else "Unadmitted." Sellers of insurance can only work with admitted insurers, except surplus lines brokers. Reinsurance accounting depends on "admitted" status of reinsurer. **Distribution system**: Independent agency/brokerage, direct writer, exclusive agency. **Insurer goals**: earn profit, meet customer needs, comply with legal requirements, diversify risk, fulfill duty to society. **Internal constraints** (efficiency, expertise, size, financial resources, brand reputation), and External (Regulation, rating agencies, public opinion, competition, economics, insurance marketing and distribution) Coverage A: Dwelling (bldg policyholder lives in) Covg B: Other structures ( Garages, sheds, etc. 10% of Cov A for HO-3). Coverage C: Contents. Policyholer's 'stuff'. (For HO-3, 50% of Cov A) Coverage D: Loss of Use. Hotel & restaurant bills while a house is under repair. Also, lost rental income (for HO-3, 20% CovA) Cov E: Personal liability. Covers certain amts policyholder becomes legally obligated to pay because of bodily injury or property damage. Cov F: Medical Payments to others. Pays for medical treatment of people who are not residents. Does not require legal responsibility for payment. **Additional coverages:** claim expenses – legal representation, bond premiums, travel expenses, loss of earnings, post-judgement interest | first-aid expenses | Damage to property of others: up to 1k regardless of liability | Loss Assessment – up to 1k for costs passed from association to members **Coverages: Perils** - Named Exclusion or ‘special’ coverage is a blacklist of uncovered perils. ‘Ensuing losses’ are covered losses that are secondary results of an uncovered peril and are covered by the policy. Typical uncovered perils: Collapse, freezing of plumbing etc, | freezing, thawing pressure or weight of water or ice | theft of construction materials | vandalism and malicious mischief for vacant dwellings | mold, fungus, or wet rot | natural deterioration | smoke from agricultural smudging or industrial operations | pollutants | settling of the dwelling | animals **Named Peril or Broad coverage:** a whitelist of perils. Typically: Fire/lightning | windstorm or Hail | Explosion | riot or civil commotion | aircraft | vehicles | smoke | vandalism | theft | falling objects | weight of ice, snow, or sleet | accidental discharge or overflow of water/steam | sudden and accidental tearing apart, etc. | Freezing | sudden and accidental damage from artificially generated electrical current | volcanic eruption **Exclusions:** ordinance or law | earth movement | water | power failure | neglect | war | nuclear Hazard | Intentional Loss | Governmental Action **ISO Forms:** HO-2 Broad Form (named perils) HO-3 Special Form (special for structures, named perils for personal property) HO-5 Comprehensive form (special for dwellings and items) HO-8 Modified Coverage Form ( limited named perils for dwellings, damage covered on functional replacement cost basis) Forms 2,3,5, and 8 are only for owner-occupants of non-farm dwellings. ISO Forms (HO-4 Contents broad form: named perils coverage for personal property, no dwelling, designed for tennants). HO-6 Unit-owners form – coverage for personal property on named perils basis, with limited dwelling coverage. Designed for condos & co-ops. **Endorsements**: Allow policyholders to customize contract by changing limits, coverage , or definitions. **Auto** Coverages: mandatory: BI (injury to others), PIP (injury), UM (caused by uninsured auto) , PD (else’s property) | BI: covers compensatory and punitive damages, prejudgment interest, defense costs X/Y: per person, per accident|PIP / no-fault meant to reduce court cases. Coverages: Optional bodily injury to others, medical payments, collision, comprehensive (other than collision) substitute transport, towing & labor, underinsured auto bodily injury **Collision:** carries deductible, unlike liability. Car owner’s is primary, driver’s is excess. Exclusions: public or livery conveyance (uber, lyft) wear & tear, road damage to tires, gov’t confiscation, radar & laser detection equipment, racing **Totaled:** Limit on collision cvg is actual cash value of car. If repairs > ACV, car is total loss. In total loss, insurer pays acv, takes car for salvage **Comprehensive:** covered perils: falling objects, fire, theft, explosion, earthquake, windstorm, hail, flood, vandalism, riot, contact w/ bird or animal, breakage of glass **Supplemental coverages**: Various bonds – bail, appeal, attachment, post-judgment interest, loss of earnings due to trial attendance, other reasonable expenses at insurer’s request **Other stuff:** If vehicle is leased or was purchased w/ a loan, the lessor or bank must be named in the policy. A replacement auto covered for remainder of policy period. Temp auto (while auto unavailable) covered except for collision and comprehensive. Coverage >= state requirements where accident occurred. **Coverage exclusions:** Intentional injury, property owned or transported, bodily injury to an employee of an insured, public livery conveyance, vehicle used without reasonable belief of being entitled, nuclear energy liability losses, vehicles w/ fewer than four wheels or designed for off-road use, vehicles used as a residence or premises, racing **Endorsements:** limited Mexico, gap **Rating Variables:** driver: territory, age, experience, merit, public transport, good student, student away from home, vehicle: model year, symbol,. Anti-theft, passive restraint, annual mileage

**Claims** Claim function goals: Comply with contractual promise & Support financial goals Contractual promise: pay, defend, or indemnify in the event of a covered loss

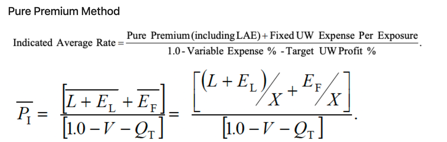
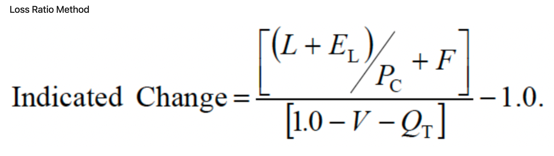
\* Provide fair, prompt, equitable service to the policyholder|For insurer, claims are routine & expected, while for insured, emotionally & financially devastating

\* Support insurer's financial goals: Achieve underwriting profit by controlling expenses and only paying legit claims (covered by policy, not fraudulent) | Reconcile goals: how do goals contradict each other? Pay too much => higher loss ratio, premiums. Pay too little => angry customers lawsuits, regulatory oversight, bad pr.

| Marketing implications: marketing uses claim info on customer satisfaction, settlement speed, and product development to fix coverage 'holes' | Underwriting claim info usage: Claims adjusters inspect the property and may notice aspects of the insured property that affect loss or severity but are not accounted for, were misrepresented or omitted on the application (dogs), point to patterns of loss that imply classification needs to be modified (adverse selection)

\* UW must make sure that Claims understands insurance coverages properly (eg. overflow) | Actuarial use of claim info: Loss ratios used in ratemaking. Judge adequacy of reserves (case, development, IBNR). Salvage & subrogation costs inputted into LR calculation. | Interation with public: claims reps must get details of the loss, act as the public face of the company, and manage expectations re: coverage. | Claim handling: acknowledge & assign the claim, identify the policy and set reserves, contact insured or their rep, investigate & document the claim, determine cause of loss, liability, and the loss amount.| The policyholder is obligated to mitigate further damage to the property. The insurer will pay up front for supplies to do so. Insurer may set up a time for an adjuster to inspect the damaged property.| Identify the policy and set reserves: Identify the policy in force on date of the loss. Can be difficult (asbestos). Peril may not be covered. Verify that the policyholder fulfilled their contractual obligations. | Send nonwaiver agreement or reservation of rights letter in case the investigation turns up facts that might lead to denial. | Determine the cause of loss, liability, & loss amount: subrogation is recovery of some of losses paid to policyholder by party responsible for the loss.

Conclude the claim: check written, possibly after negotiation, arbitration, or mediation. Litigation is worst-case (lawyers expensive, suing injured ppl is bad pr)

Insurable Interest: anyone financially harmed by destruction of the asset. Sole owner, joint owner, ownership in common, lessees, bailees / carriers, security interest (bank providing mortgage) | parties can have insurable interest in the same asset: building owner & apt lenant. \* Important because paying a claimant more than the value of their insurable interest can encourage intentional losses or insurance fraud \* Covered causes of loss: direct loss: damage to property caused by covedred cause of loss with no intervening cause. Indirect loss - losses suffered as a result or consequence of a direct loss (without a direct loss, can be no indirect loss. example: lost income) \* Excluded causes of loss: Nonphysical causes of loss such as obsolescence or reduced market value are not covered by insurance. Also: Gradual causes of loss, and ordinance or law. \* Faulty design, construction, or material: a policyholder might receive coverage, with subrogation from the liable party. Intentional acts of the insured are also excluded. \* Monetary value of loss: Replacement cost. Actual cash value typically paid up-front, with difference between that and replacement cost paid after repair complete. \* Actual cash value: ACV = RCV - depreciation. Market price usually considered fair value. home & other structures insured at replacement, contents covered at actual cost, with endorsement for replacement cost. \* Insured's duties: provide prompt notice, protect property, assist with the loss adjustment process, provide proof of loss, submit to examination under oath. \* Procedures to conclude claim: determine & document cause & amount of loss. Determine salvage & subrogation.