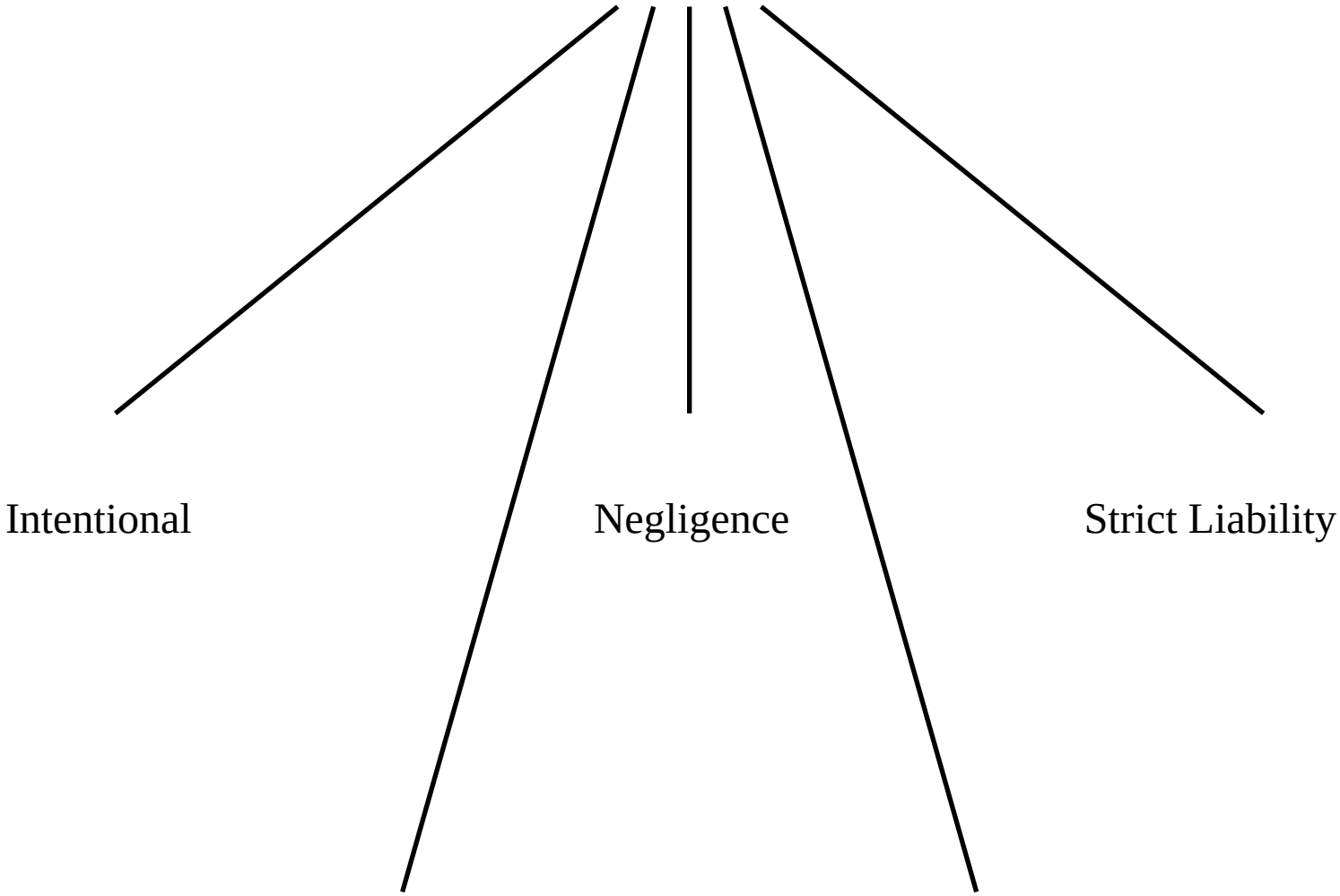
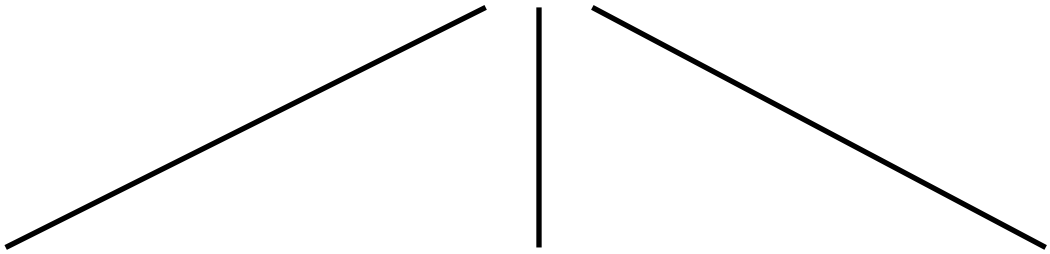
Torts


Intentional
Negligence
Strict Liability
Defamation
Damages

Intentional



Intent

Substantial certainty

Transfer

Injury

Person
- Body
- Emotions
- Reputation / privacy
  - Defamation (libel / slander)
  - Invasion of privacy
    - Intrusion
    - Public disclosure
    - False light
    - Commercial Approp
  - Malicious prosecuion / wrongful inst of civil proc / abuse of process

Property
- Real
  - Trespass
  - Nuisance
    - Public
    - Private
- Personal
  - Conversion
  - Trespass
- Business
  - Deceit, inducing breach of K
  - Interference with prosp business advantage

Defenses

Consent
- Scope
- Fraud
- Illegal

Authority
- Discipline
- Arrest
  - Felony
  - Misdemeanor
  - Prevention
- Shopkeeper’s Privilege

Defense of ...
- Self
- Others
- Property

Necessity
- Public
- Private

Negligence

Duty

Act
- Reasonable care to foreseeable plaintiffs
- Exceptions
  - Land occupiers
    - Traditional rule = status of P
    - Modern rule = reasonable
  - Emotional distress
  - Wrongful life
- Omission to Act
  - Bystander
    - General rule: no duty
    - Creates the peril
  - Good Samaritan
    - Reliance on conduct
    - Reliance on promise
  - Special relationship
    - Duty to care
    - Duty to warn
    - Duty to control

Standard of Care

Reasonable care under the circumstances
- Statute
  - Is P in class to be protected
  - Type of harm
  - Excuse
- Professional
- Carrier
- Child (Adult activity?)
- Emergency
- Custom
- Mental illness

Breach

Unexcused violation of statute

Reasonable person

Res ipsa loquitur
- Probably negligence
- Probably D's fault
- No negligence

Balance gravity and likelihood with the burden and utility

Causation

Actual (factual)
- But-for
- Substantial factor
- Summers v Tice
- Market share

Legal
- Direct
  - Foreseeable result?
    - Extent
    - Type
      - Polemis
      - Wagon Mound
- Indirect
  - Foreseeable result?
    - Extent
    - Type
  - Effect of intervening force

Damages

See the remedies page

Defenses

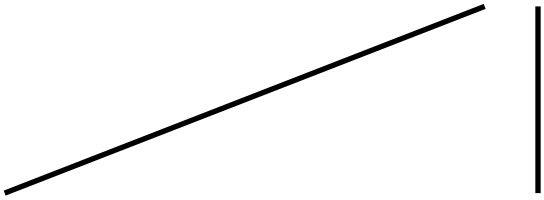
P's Conduct

Contributory negligence
- Last clear chance
- Reckless defendant

Comparative negligence
- Pure
- Modified

Assumption of risk
- Express
- Implied

Strict Liability



Defendant's activities

Animals
- Domestic
- Wild

Abnormally dangerous
- High risk
- Cannot eliminate risk
- Uncommon in area

Defective products
- Intention (battery)
- Negligence
- Strict liability
- Implied warranties
  - Merchantibility
  - Fitness for particular purpose
- Express warranty

Strict products liability

Parties
- P - buyer / user / bystander
- D - manufacturer / retailer / assembler / franchisor

Defect
- Manufacturing flaw
- Design
  - Consumer contemplation
  - Feasible alternative (danger vs utility)
- Lack of warning

Damages
- Personal injury
- Property damage
- Economic loss

Defenses
- Product misuse
  - Contributory negligence / comparative fault
  - Assumption of risk
- P's fault

Defamation

Common Law

Defamatory statement is false
- Harm to reputation
- Fact vs opinion

Concerning P
- Individual / Group
- Use of extrinsic facts
  - Innuendo
  - Inducement
  - Colloquium

Published to a third party (communicated)
- D's fault
  - Intentional - ok
  - Negligent - ok
  - Strict liability - no
- Responsible defendants
  - Initial publishers
  - Repeaters
  - Disseminators

Damages P
- Ordinary slander
- Slander per se
  - Business / profession
  - Unchaste woman
  - Disease
  - Crime
- Libel / libel per quod

Constitutional Law

P = public figure or private person

Subject matter is public or private concern
- What is the standard
- What are the damages

Was the standard violated
- Public figure P vs media D:
  NYT malice
- Public figure P vs non-media D:
  NYT malice
- Private figure P vs media D (public concern):
  negl / actual damages
- Private figure P vs non-media D (public concern):
  malice / presumed damages
- Private figure P vs non-media D (private concern):
  negl / presumed damages / strict liability?

Defenses

Truth

Retraction

Consent

Privileges

Absolute
- Spousal
- Governmental

Conditional
- Reporting
- Interest
- Fair comment

Tort Remedies and Damages

Types of Damages

Nominal

Compensatory
- Personal injury
  = general and special
- Property - where D
  destroys, damages, or takes

foreseeable
certain
unavoidable

Punitive

Specific Torts

Assault = nominal

Battery = compensatory

False imprisonment = punitive if D acts with malice

Mental distress (NIED, IIED)

Trespass to real property
- Ouster
  - Rental value
  - Benefit to D
- Severance
  - Diminution in value
  - Cost of repair
- Injury
  - Diminution of value
  - Cost of repair

Nuisance
- Public
  - OK if special type of injury
- Private
  - Permanent nuisance = dimunition in vaule
  - Non-perm nuisance = loss of use or enjoyment

Trespass to chattel - depend on
nature and extent of damages
= dim of value, cost of repair

Conversion - fair market value

Negligence (no punitives)
- All losses proximately
  caused (caveat: economic loss)
- Mental distress alone

Strict liability (no punitives)
- All losses proximately caused
  (caveat: economic loss)
- Limit: damages flowing from
  dangerous propensity

Products liablity: depends on
theory (see above for damages)

Footnote 1: defendant's act

Bodily injury
- Emotional distress

Emotional distress and fright
- Intentional (serious and outrageous)
- Negligent
  - Zone of danger
  - Physical injury
  - Bystander?

Footnote 2: effect of mistake