NEGLIGENCE
Introduction

- Negligence is the largest of the 3 major torts (the other two being the intentional torts and the various kinds of strict liability)
- Has been called a “catchall” tort in that it encompasses a wide variety of unreasonable actions and inactions that cause injury or other loss.
Negligence and Breach of Duty

- What is negligence?
- The tort that exists when all four elements are present:
  - Duty;
  - breach of duty;
  - proximate cause; and
  - damages.
Negligence and Insurance

- Is a driver automatically liable if he hits a pedestrian on the street?
- NO
- You must be careful to distinguish insurance law from negligence law
- Although an injured party may be automatically compensated if the terms of an insurance policy so provide....that is not always true for negligence.
Negligence and Insurance

- Much more is needed to trigger the law of negligence...
- You are NOT considered negligent simply because you cause an injury.

Why
- The hallmark of negligence is fault—sometimes referred to as culpability or wrongfulness.
- We are liable under the law of negligence for those injuries we wrongfully cause in the sense that our conduct fell below a minimum standard of conduct when we caused the injury.
Shorthand Definition

- Negligence = *injury or other loss caused by unreasonable conduct*
- Ask yourself.....
- Was the defendant’s conduct unreasonable?
- Did this unreasonableness cause the plaintiff’s injury or other loss?
- Always remember the general definition of negligence → *injury or other loss caused by unreasonable conduct.*
Negligence Checklist

- **Category** = negligence is a category unto itself. It covers harm that is neither intentional nor the basis of strict liability
- **Interest protected by this tort** = the right to be free from injury or other loss to person or property caused by unreasonable conduct
Negligence Checklist cont.

- What are the elements of this tort?
  - i. Duty
    - Obligation to use reasonable care to avoid risks of injuring person or property of others
  - ii. Breach of duty
    - Unreasonable conduct
  - iii. Proximate cause
    - The defendant is the cause in fact of the plaintiff’s injury, the injury was the foreseeable consequence of the original risk.
  - iv. Damages
    - Actual harm or loss
Negligence Checklist cont.

- Major defenses and counterarguments
- Damages
- Relationship to criminal law
- Relationship to other torts
- Federal law
- Employer-employee law
- Paralegal roles in negligence litigation
- Research references for negligence
THE END