1. Duty of Care
2. Standard of Care
3. Causation
4. Remoteness
5. Actual Loss
6. Defences?

**Neighbour Principle (Donoghue)**  
-“must not injure your neighbour”  
-neighbours are persons so closely and directly affected by my act that I will reasonably have them in contemplation when I do the actions that could lead to the loss.

**Anns Test**  
1. Proximity based on foreseeability?  
2. Policy considerations negating duty?  
-courts changed this to three steps, separating foreseeability and proximity

**Cooper Test**  
-risk of injury to plaintiff was reasonably foreseeable and that plaintiff was sufficiently proximate.  
-reasonable person standard, but in that area of expertise. It’s contextual  
-Proximity: close and direct relationship, within the range of people you’d think of as foreseeable, not so causally removed from me that I can’t foresee them

**Cooper policy concerns**  
-is there already a remedy, like in a statute or contract law? Don’t want negligence making parallel actions  
-spectre of unlimited liability owed to an unlimited class. Possible to impose restrictions on this duty?  
-Policy vs. Operability decisions (Just vs. BC)  
-any other broad policy considerations?

**Moule**  
-sequence of events is so fortuitous that couldn’t be foreseen by reasonable person, no DoC  
-duty of care is allocation of risk  
-Nova Mink: liability is n ot about compensation but responsibility/foreseeability for the harm. Court rejects here on foreseeability

**Duty to Rescue/Voluntary Assumption of Responsibility**-MacLaren: no duty to rescue barring a statutory or pre-existing duty.  
-duty to rescue is in place if person starts a rescue – voluntary assumption of responsibility  
-Stevenson: professionals are held to the same standard as others in duty to rescue, only has a duty of care if they start rescuing – voluntary assumption of responsibility

**Duty to Control Actions of Others (Intoxication)**  
-Jordan House: general principle is not liable. May be liable if you allowed it to take place or induced the situation and could foresee the harm that may arise.  
-Crocker: where provision of alcohol is part of profit-making activity, more likely to find DoC  
-Crocker; may be a voluntary assumption of responsibility where you become aware they are intoxicated but let them continue in the event anyway.  
-Crocker: did you create the situation?  
-Prior fault is the defence: you’re the author of your own harm, your fault that you were drunk.  
-Crocker: not same DoC for getting someone intoxicated in social context

**Duty to Warn (Police)**  
-Jane Doe: the more general the plaintiff, the risk, the less likely there will be duty to warn. Case-by case basis.   
-how you conduct an investigation is an operational decision.

**Duty to Unborn Children**  
-there are no pre-conception wrongs (Paxton)  
-Winnipeg Child and Family Services: unborn child cannot sue mother for pre-natal injuries. Unborn child has no legal personality and child and mother are one entity. Child can’t sue mother. Duty of care can never be owed to future children of female patients by doctors or mothers.  
-While children are in utero, no duty of care owed.  
-Wrongful Pregnancy: traditional rule is that child, if born healthy, is a blessing.  
-Joshi: if the decision not to have children is predominantly driven by economic factors, may be able to sue for economic harm. Will be more willing to ward damages when child is disabled due to greater expenses (Suite)  
-Wrongful Life (Krangle): gives birth to Downes syndrome child where would’ve aborted had she known. Gets non-pecuniary damages for pain and suffering of raising a disabled child as well as additional costs of raising disabled child. Costs are assessed up to age 18.

**Negligent Misrepresentation**  
-Cardoza floodgates argument  
-Hedley/Byrne 3-stage test for Duty of Care  
1. Defendant must possess a special skill related to what they’re giving advice about  
2. Show that plaintiff relied on that advice/exercise of that skill  
3. Show that defendant knew, when giving the advice, that person would rely on the advice.  
-objective tests imbued with person’s circumstances.  
-Hercules: rolls the Hedley/Byrne test into the first stage of Anns/Cooper, but still must consider the overarching questions of reasonable foreseeability and proximity  
-Hercules policy concern: people using reports for purpose they weren’t intended (investment advice)  
-BC Checo: unless contract says otherwise, youc an sue in both tort and contract, but can’t get recovery from both.

**Pure Economic Loss:** availbe in negligent misrep, independent liability to public authorities, negligent performance of service, negligent providing of shoddy goods, relational economic loss

**Pure Economic Loss in Negotiations**-Martel Building: court won’t do it. Don’t want to influence business transactions and affect the market.  
-Nature of negotiations: will always be a winner and a loser  
-Chilling effect  
-puts tort law in role of insurance  
-floodgates argument  
-contract law is better suited to these situations

**Negligent Performance of a Service**  
-BDC Ltd: use normal rules of negligence, Anns/Cooper test  
-look at proximity with reliance as an indication of that  
-must argue that they’re a reasonably foreseeable plaintiff and proximate  
-BDC: courier didn’t know what the document was – couldn’t foresee the plaintiff or its loss  
-James: in absence of detrimental reliance, can still show voluntary assumption of risk

**Winnipeg (shoddy goods)**  
-arises in cases that lack privity  
-foreseeable plaintiff and foreseeable loss  
-concerns of indeterminacy in second stage  
-caveat emptor: buyer beware – but doesn’t’ apply if plaintiff wasn’t in position to do indepth inspection or know about the defects.

**Relational Economic Loss (Norsk)**-A damages something belonging to B, which causes pure economic loss to C. C sues A.  
-generally can’t recover for this due to indeterminacy effect. Too many potential plaintiffs/ripple effect  
-Court points to insurance in these situations.  
-Norsk is not a blanket prohibition, goes on case by case basis, take each through Anns, but indeterminacy will be a big issue that pretty much always rules it out, must avoid expanding liability in policy stage (Bow Riber)

**Negligent Infliction of Nervous Shock**  
-Alcock: issues of proximity  
-relational proximity: plaintiff has close tie of love and affection to the victim  
-temporal proximity: shock has to occur in immediate aftermath of the event.  
-locational proximity: had to be there and see it with your own eyes, not mediated through TV  
-Mustapha: test is rolled into Anns

**Standard of Care**  
-Arland: standard of care is based on what’s expected of the reasonable person.  
-standard does not take personal characteristics into account (Nettleship)  
-objective must consider circumstances.  
-modified by three factors: probability and severity of the harm, cost of risk avoidance, social utility of the conduct.  
-Bolton: as probability of harm goes up, standard goes up. As severity goes up, so does the standard. Court will try to balance where probability and severity go in different directions.  
-Bolton: standard of care – only guard against reasonable, not fantastic, possibilities. Test is whether risk is so small that it doesn’t make sense to take precautions and reasonable person wouldn’t.  
-Paris and Stepney: where cost of precaution is low, you’re almost obliged to take it. Where costs is low and severity or probability is high, you’re obliged to take it.

**Special Standard of Care: Children**-Joyal: standard is the ordinary child in those circumstances, not reasonable person. Lower standard of care. Children have less capacity, less foresight, less impulse control, less intelligence.  
-standard is determined according to what a child of that age, intelligence, experience, understanding, and capacity would have done in same circumstances. Many courts have taken out intelligence.

**Special Standard of Care: Disabled**  
-Carroll: meet standard of care of someone in a similar situation with similar disability. Can’t hold people to a standard that, by virtue of their disability, they can’t meet  
-must take account of their own limitations and must work within their capacities, otherwise contributory negligence

**Special Standard of Care: Mentally Ill**   
-no understanding: thought set of events were different than they are  
-Fiala: absolved of liability if you can show you either didn’t have capacity to understand duty of care or had no meaningful control over your actions  
-Carroll’s issue of prior warning: if you knew you were going to lose control, held responsible.  
-Hutchings: not liable if it’s a continuous illness, if that’s their living condition. Falls under not understanding duty of care. No prior warning because they’re continuously crazy.

**Special Standard of Care: Profession**  
-the standard that is expected of people of that profession in similar circumstances  
-White v. Turner: based on industry specific standards of practice with testimony of experts.  
-Killips Television: volunteers are not held to the same standards of those working in the field

**Causation:**  
-Cause in fact: did A’s act cause harm to B? But-for test.  
-Cause in law: should A be held responsible for causing harm to B? Whether there are policy reasons or reasons in fairness that we should restrict the liability.  
-Reeses: things we ordinarily expect to be true, like that there’s oxygen, are not but-for causes but background conditions.  
-Barnett v. Chelsea: but-for test for factual causation

**Evidentiary Insufficiency (Material Contribution/Materially Increased Risk Tests)**-Walker: Material Contribution Test: if negligence of the defendant materially contributed to causation, they are liable. Material contribution beyond de minimis.  
-Fairchild: material contribution often arises with multiple defendants with none of them being but-for causes, all of whom contributed materially. Avoids the illogical outcome of saying two people aren’t liable (not but-for) when it had to be one of them. Both held jointly liable.  
-McGee: Materially Increased Risk: can’t scientifically prove causal link, but that the company materially increased the risk of getting that condition. It’s where but-for test is impossible.  
-Snell: materially increased risk is where you can’t prove definitely more than 50%.  
-Snell: after plaintiff shows increased risk from common sense perspective, low standard. Burden then shifts to defendant to show that that conclusion is unreasonable.

**Multiple Insufficient Causes (Athey)**-the law doesn’t exclude defendant from liability simply because other causal factors he isn’t responsible for helped cause the harm. Doesn’t escape responsibility for some of it.  
-only liable for additional harm they caused and what comes afterwards  
-in cases where there are multiple insufficient causes, you can ignore those that are non-toortious and give all liability to the tortious causes.

**Multiple Sufficient Causes**-all will be held liable

**Remoteness**-excludes liability where the loss is beyond what would be expected of a particular breach of duty  
-is there a relationship between the negligent act and the harm? Was the harm foreseeable?  
-Wagon Mound #1 test: whether the harm caused was reasonably foreseeable.  
-Hughes: it’s the type of harm that has to be foreseeable, not the manner. It’s foreseeable that unattended lamps cause burns – don’t have to foresee the explosion  
-Assiniboine: breaks up a sequence of events and finds each event singly foreseeable, constructs a foreseeable outcome by splitting the sequence up into events.   
-Osborne: rare for courts to strike out claims at this late stage

**Intervening Causes**-Bradford: whether the actions of a third person are intervening or not turns on whether or not they were foreseeable by the original tortfeasor. If yes, it’s not an intervening cause.  
-Bradford: the more culpable the third party, the more egregious the conduct, more likely the court will find it to have been unforeseeable.  
-naturally occurring acts (not a third party) never break the chain.  
-Price: doctors duty of care

**Defences (voluntary assumption of risk and illegality are rarely accepted)**

**Contributory Negligence**-Bow Valley test:  
1. Plaintiff did not take reasonable care of himself  
2. This lack of care contributed to the harm.  
-if both these stages are in effect, the court can apportion liability on the basis of fault.  
-basically, if the plaintiff had a chance to prevent the harm but didn’t, they are contributory  
-Walls: “agony of the moment.” Look at the context in which the conduct took place, don’t expect a reasoned, considered response in a crisis/emergency context  
-Gagnon: it’s not whether the plaintiff believes they’d taken reasonable care of themselves, but whether they did or did not.

**Thin Skull Rule**-Leech Brain: if the injury suffered by the plaintiff was foreseeable, the plaintiff can recover in full even if they suffered greater damage than an ordinary plaintiff due to pre-existing condition/vulnerability, as long as the type of loss that courts recognize.  
-if it’s a reasonably foreseeable plaintiff and the injury is reasonably foreseeable, you are liable for all harm that results even if due to an extra sensitivity.

**Rules of Apportionment (BC Negligence Act)**-apportionment is on the basis of fault  
-if fault cannot be determined, it is split evenly  
-liability for legal costs are determined in the same way

**Violenti**-where a person engages in an activity and knowingly accepts the accepts the accompanying risks, you can’t sue for negligence based on the materialization of those risks.  
-Implied: by virtue of the conduct or the situation it’s implied that you know of and consent to the risk  
-Express: like contracting out of tort liability, signing a waiver of voluntarily assuming the risk even if they’re negligent.  
-Courts are increasingly hesistant to use this complete defence in favour of contributory negligence.  
-Dube: have to show something tantamount to an agreement not to sue and that they knew full well what they’re getting into. An express or implied bargain between the parties where the plaintiff gave up his right of action for negligence.  
-Dube: only where it is clear that the plaintiff, knowing of the virtually certain risk of harm, in essence bargained away his right to sue for his injuries incurred as result of defendant’s negligence.

**Ex Turpi**-Hall: only show this defence where the plaintiff stands to profit from the criminal ehaviour and compensation would amount to avoidance of criminal sanction

**Tort Liability for Public Authorities**-first cover whether it is a public authority or not: govn’t departments, elected officials, delegated authorities.   
-Wellbridge: legislative and judicial actions are not subject to tort liability. Only the consequences of administrative decisions.  
-Wellbridge: public authorities are only held liable in tort for losses resulting from negligent exercise of administrative powers and only liable for operational, not policy decisions.  
-Margin of legitimate error, but not where they’re not acting in good faith or their actions are demonstrably irrational

**Operational Decisions**-statutory: provided they do what the statute requires and are not careless doing it, generally aren’t held liable  
-Discretionary: where statute gives discretion to public authority in execution of statutory obligation  
-Just: broad allocations of funding are policy decisions. By the time you get to manner in which they’re doing their job, it’s operational.   
-Just: Resource Allocation is policy, as are basic parameters.  
-Just: operation is subject to tort, policy is not. Whether something is policy or operational is dealt with in policy portion of Anns/Cooper  
-Brown: policy decisions can be devolved down.

**Statutory Torts**-direct statutory tort: creates a tort in its entirety, like Marine Liability Act in MacLaren, where statute details the tort, it’s duty of care, and standard of care.  
-statutes can also provide the basis for a tort to be inferred in common law, usually a statute with a prohibition in it.  
-Indirect method: statute is used to provide basis of a common law duty of care, leading to a common law cause of action (a tort)  
-after duty of care has been established once, don’t need to go back to the statute in future cases, just start from there

**Occupier’s Liability (Occupier’s Liability Act)**-occupier: someone who is either in physical possession of the premises or has responsibility for, control over, the conditions of the premises.  
-occupier does not have to be the owner  
-premises: land and buildings and movable places when they’re not moving.  
-General standard for all visitors: general standard of reasonable care for all people coming on your premises. See that visitor and any accompany property is reasonably safe  
-Standard of care is adjusted (raised or lowered) depending on foreseeability of damage, the degree of risk of injury (how likely), the gravity of the threatened injury, the kind of premises, the burden of preventative measures, the practice of other like occupiers, and the purpose of the visitor  
-exception to general duty: trespassers with criminal intent or trespassers on rural or agricultural ground. Only duty is to avoid injuring them intentionally or recklessly  
-general standard can be altered where there is reasonable notice of the changes; only effects those privy to an express agreement  
-cannot modify standard for those who empowered to enter without the consent of the occupier  
- Where occupier bound by K to allow entry to persons who are not parties to K (3rd parties), those entrants are owed usual SoC – aren’t subject to exclusionary words in the K  
-occupiers are not liable for the actions of independent contractors on their property provided that reasonable care is taken in selection of the contractor and in carrying out the work

**Strict Liability (Rylands)**-held liable for full extent of damges once its established that you did the act, even if the damages were massive and you may never have foreseen it.  
-must establish a non-natural use of the land: use that is dangerous, extraordinary, and of no general benefit to the community  
-next establish the escape of something likely to cause mischief, show that something escaped and is likely to cause mischief  
-only applies it escapes and injures outside of the owner’s property  
-finally, establish whether there should be a limit on the responsibility of the damage caused. Traditionally, you’re fully liable, but Cambridge water suggests there’s a remoteness element: if the damage was truly unforeseeable, then may not be held fully liable.

**Defences**-Consent: plaintiff expressly or impliedly consented to the defendant’s non-natural use of land.  
-Mutual Benefit (Tock): activity is of benefit to the plaintiff (less likely for court to find non-natural)  
-Default: plaintiff is at all responsible for the escape, no recovery  
-Act of a Stranger/Act of God: intervening events causing the loss were so unforeseeable that defendant could not have guarded against them. (seems to go against Rylands’ idea of strict liability)

**Vicarious Liability**-shifts negligence liability from an employee to employer, who becomes strictly liable  
-Montreal Locomotive Works gives three tests-  
Control Test: does the employer have control over the actions of the employee? Can he tell the employee where/when/how to work? (determining if it’s an employee)  
Entrepeneur test: if it looks like the employee is carrying out a business on his own, he’s less likely to be an employee, if it’s work where employee can make a profit or a loss.  
Organization Test: extent to which employee is integrated into employer’s business/organization  
-671122 Ontario: whether a person is performing a service for someone else or as a business on their own account. Acting as an employee or on their own behalf? Determine this by looking at all three Montreal tests.  
-TG Bright: Next establish that the harm was caused during the course of their employment, that it was done in their role as an employee. Employer is only liable if there’s a connection between the wrongdoing and employment.  
-Canadian Pacific Railway: prohibitions have to be very specific and express to take someone out of the course of employment. Also, may be that even in doing the prohibited act, I’m still acting on behalf of the employer (they’re still deriving a benefit from what I’m doing)