The Architecture of Torts: Liability, Harm, and the Allocation of Risk

A structural framework for diagnosing civil wrongs, defenses, and compensation.

Gemini Notebook

The Three Pillars of Civil Liability

Civil Liability

Intentional Torts

Intent + Act + Result

Focus on state of mind and direct invasion of protected interests.

Negligence

Duty + Standard + Breach + Cause + Harm

The default framework for accidental risk and societal standard of care.

Strict Liability

Absolute Duty + Cause + Harm

Liability without fault, reserved for abnormally dangerous activities and animals.

Remedies & Allocation

The universal end-state of all three pillars, calculating who pays, how much, and under what fault regime.

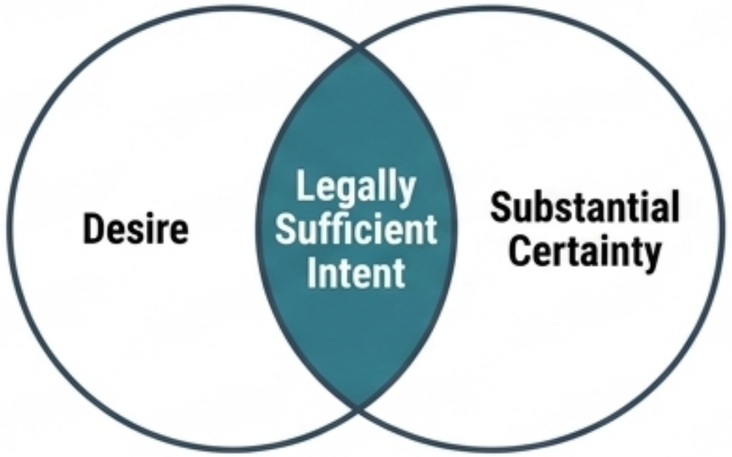
Gemini Notebook

The Intentional Torts Matrix

Tort	Protected Interest	Type of Intent	Physical Contact Required?	Key Elements
Battery	Physical Autonomy	Single or Dual	✓ Yes	Intent to cause harmful/offensive contact + actual contact. (Hypersensitivity only counts if Defendant knows).
Assault	Mental Peace	Dual	✗ No	Intent to cause apprehension + actual & reasonable apprehension of imminent contact.
False Imprisonment	Freedom of Movement	Single	✗ No	Intent to confine + complete confinement + consciousness of (or harm from) confinement.
Trespass to Land	Exclusive Possession	Single (Intent to enter only)	✓ Yes (Invasion)	Ownership/Possessory interest + intentional, tangible entry by Defendant.
Trespass to Chattels / Conversion	Personal Property	Single	✗ No (Interference)	Dispossession or impaired condition. Conversion requires full value payment based on extent of dominion.

Gemini Notebook

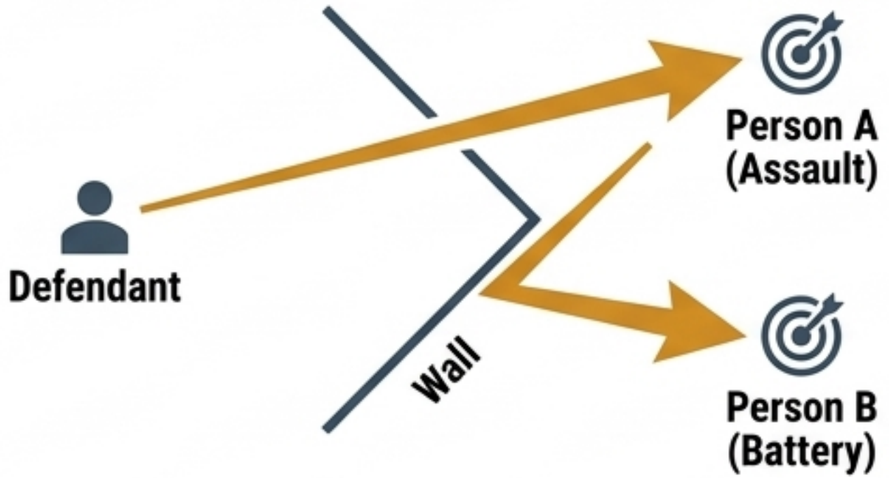
The Mechanics of Intent



Desire vs. Substantial Certainty:

Desire vs. Substantial Certainty: Intent is satisfied if Defendant (A) desires the outcome OR (B) knows with substantial certainty it will occur.

Single vs. Dual Intent:
- **Single** = Intends contact only.
- **Dual** = Intends contact AND intends it to be harmful/offensive.



The Ricochet Effect (Transferred Intent)

Rule: Stems from the original writ of trespass. Intent transfers from Tort to Tort (e.g., Assault to Battery) and from Person to Person.

Scope: Applies to Battery, Assault, False Imprisonment, Trespass to Land, and Trespass to Chattels.

Gemini Notebook

Affirmative Defenses and Privileges

Consent

Actual or Apparent?

↓

Valid unless Negated.

↓

Negating Factors:

- Incapacity (Minors/Adults)
- Duress
- Special Power Relationships (e.g., Jailer-detainee)
- Exceeded Scope (Medical Battery)
- Revoked

↓

Privilege Granted

Self-Defense & Defense of Others

Trigger: Actual/reasonable belief of imminent harmful contact/confinement.

↓

Force Limit: Reasonably necessary to prevent/repel.

↓

Retreat Rule:

Non-deadly threats: No retreat needed.	**Deadly threats:** Retreat required (if safe), unless in your home (majority) or a frontier jurisdiction.

↓

Privilege Granted

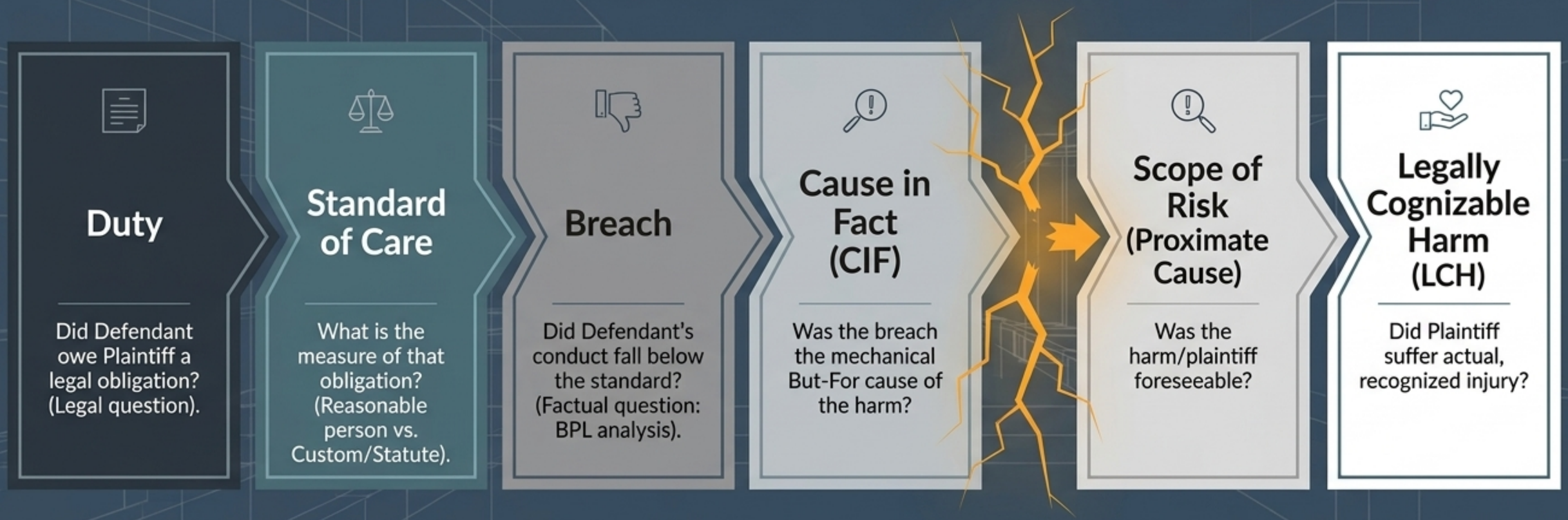
Necessity (Property Torts)

Necessity

Public Necessity	**Private Necessity**
Preventing imminent disaster to community	Preventing imminent harm to self/property
↓	↓
Complete Defense	**Incomplete defense** (overcomes defense of property, but must pay actual damages)

Gemini Notebook

The Negligence Pipeline

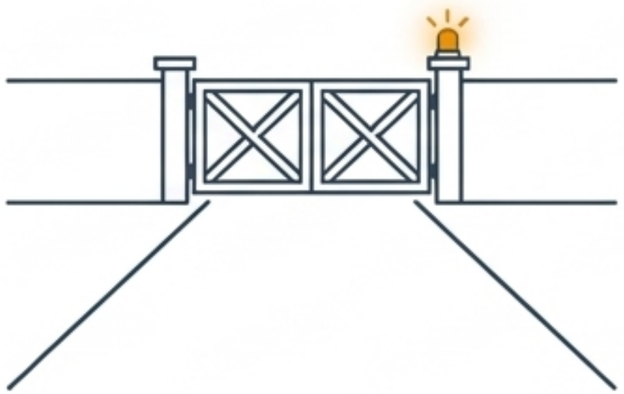


Takeaway: The plaintiff bears the burden of proof (preponderance of the evidence).
A failure at any single node breaks the pipeline—resulting in no liability.

Gemini Notebook

Establishing Duty and the Standard of Care

Duty (The Binary Gate)



Default: A duty always exists, unless a No-Duty rule applies.

No-Duty Rules:
- Nonfeasance (No duty to act/rescue)
- No duty to protect from 3rd persons

The Exceptions (Duty Re-Established):
- Assuming the duty
- Creating the peril
- Special Relationships (Common carrier, Innkeeper, Landlord-tenant, Custodian)
- Statutory requirement

Standard of Care

Default Dial: The Ordinary, Reasonable and Prudent Person under same/similar circumstances.

Alternate Settings (Modifiers):
- Negligence Per Se: Standard set by statute (Judge decides applicability).
- Medical Malpractice: Standard set by medical custom (Strict/Modified Locality or National Standard), established by expert witnesses.
- Landowners: Status approach (Trespasser vs. Licensee vs. Invitee) vs. Modern Reasonable Standard.

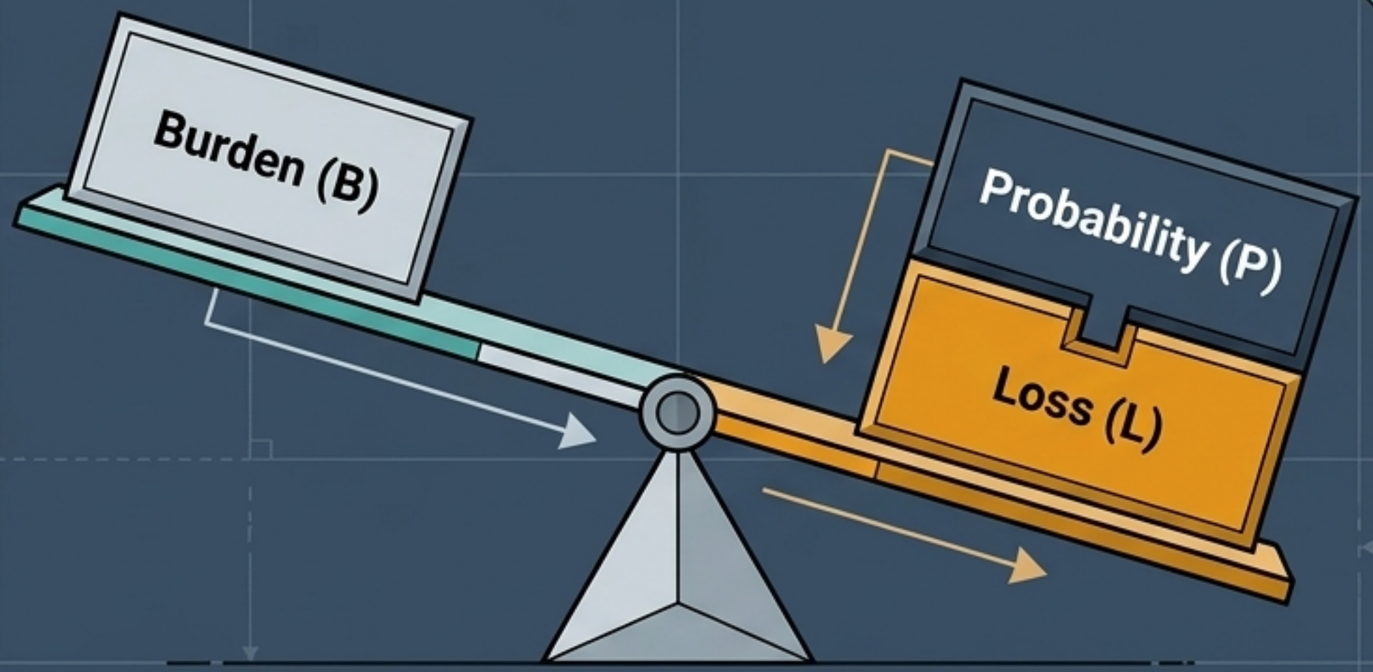
Gemini Notebook

The Calculus of Breach:
Evaluating Unreasonable Risk

Formula: $B < P + L$

The BPL Scale (Hand Formula):

- **Burden (B):** The cost, effort, or social utility sacrificed by taking precautions to avoid the risk.
- **Probability (P):** The likelihood that the harm will actually occur.
- **Loss (L):** The gravity or severity of the potential harm.
- **Mechanism:** If the Burden is less than the Probability multiplied by the Loss, the risk is unreasonable, and failing to take the precaution is a Breach.



Bypassing the Scale

- **Negligence Per Se:** Breach determined without BPL; violation of a valid statute = breach (unless excused by physical disability, confusing statute, or if compliance is more dangerous).
- **Medical Malpractice:** Breach determined without BPL; failure to follow established medical custom = breach.

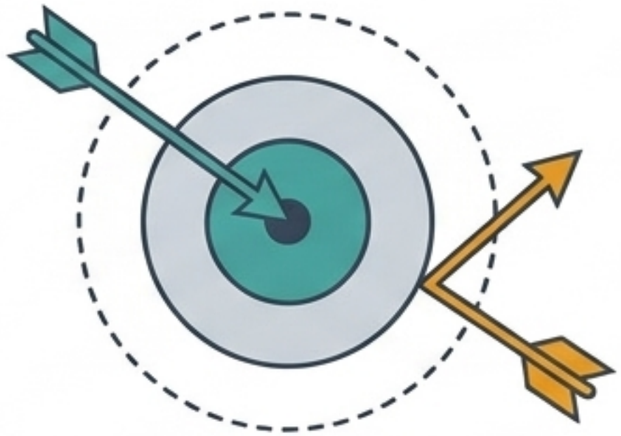
Gemini Notebook

Causation: Mechanical Facts vs. The Scope of Risk

Factual Cause (The Mechanics)

- **The But-For Test:** Would the harm have occurred but for the defendant's breach? (Applies to the vast majority of cases).
- **The Substantial Factor Test:** Used strictly for multiple independently sufficient causes. (Restatement 3d: If conduct fails but-for only because another set of conduct is also sufficient, it remains a factual cause).
- **Alternative Liability:** Shifts burden to defendants to apportion fault if both acted independently and it's impossible to prove whose specific act caused the harm.

Proximate Cause (The Boundaries)



- **Target Graphic:** Center bullseye is Liability (Foreseeable plaintiff, foreseeable general type of harm). Outer rings are No Liability (Unforeseeable harms).
- **The Rule:** Liability is limited to the unreasonable risks the defendant created.
- **Superseding Causes:** An unforeseeable intervening act or force that breaks the causal chain.

Gemini Notebook

Specialized Scenarios: Res Ipsa & Emotional Distress

Res Ipsa Loquitur (The Thing Speaks For Itself)

Function: Infers negligence when direct evidence is missing.

Checklist:

1. Accident ordinarily does not happen without negligence.
2. Other causes sufficiently (not completely) eliminated by evidence.

Medical Res Ipsa:

Applied widely where unconscious patients receive unusual injuries; shifts burden to all defendants with control over the body/instruments.

Emotional Distress (LCH without physical injury)

IIED (Intentional):
Requires extreme/outrageous conduct intentionally/recklessly causing severe distress.

NIED (Negligent):
Duty/Breach placing plaintiff at risk of immediate bodily harm (or special relationship/dead bodies), causing serious distress + physical manifestation (jurisdiction dependent).

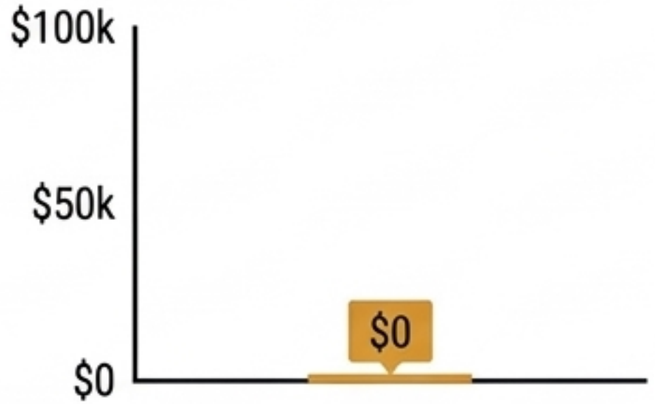
Third-Person Rule (Sudden & Serious Injury):
Plaintiff must be closely related to victim, perceive the event contemporaneously, and suffer serious distress.

Gemini Notebook

Defending Negligence: Fault Regimes & Allocation

Scenario: Hypothetical $100k damage award. Plaintiff is 51% at fault. Defendant is 49% at fault.

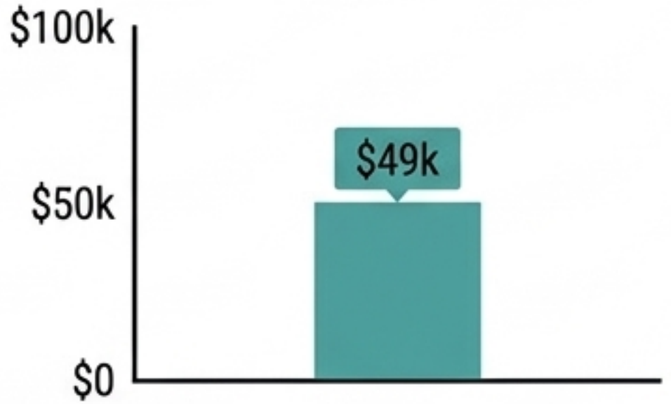
Traditional Contributory Negligence



Rule: Any plaintiff negligence (even 1%) completely bars recovery.

Exceptions: Last Clear Chance doctrine, Reckless Defendant.

Pure Comparative Negligence



Rule: Plaintiff recovers strictly proportionate to the Defendant's share of fault, even if Plaintiff is 99% at fault.

Modified Comparative (Greater Than Bar)

Rule: Plaintiff recovers proportionally, unless their fault is > 50% (or >= 50% depending on jurisdiction), at which point recovery is barred entirely.

Assumption of Risk: Express (Contractual/Tunkle factors) vs. **Implied** (merged into comparative fault).

Gemini Notebook

Strict Liability: The Triggers of Absolute Duty

Action + Cause + Harm = Liability [Standard of Care bypassed]

Core Principle: Liability for physical harm caused regardless of the precautions taken. Traditional contributory negligence is not a defense (though comparative responsibility may reduce damages under Restatement §25).

Trespassing Animals

Strict liability for intrusion of livestock/animals (excluding dogs and cats) onto another's land.

Dangerous Animals

- **Wild Animals:** Category not generally domesticated; likely to cause injury.
- **Abnormally Dangerous Domestic Animals:** The One Free Bite Rule. First attack = notice of dangerous tendencies. Second attack = strict liability.

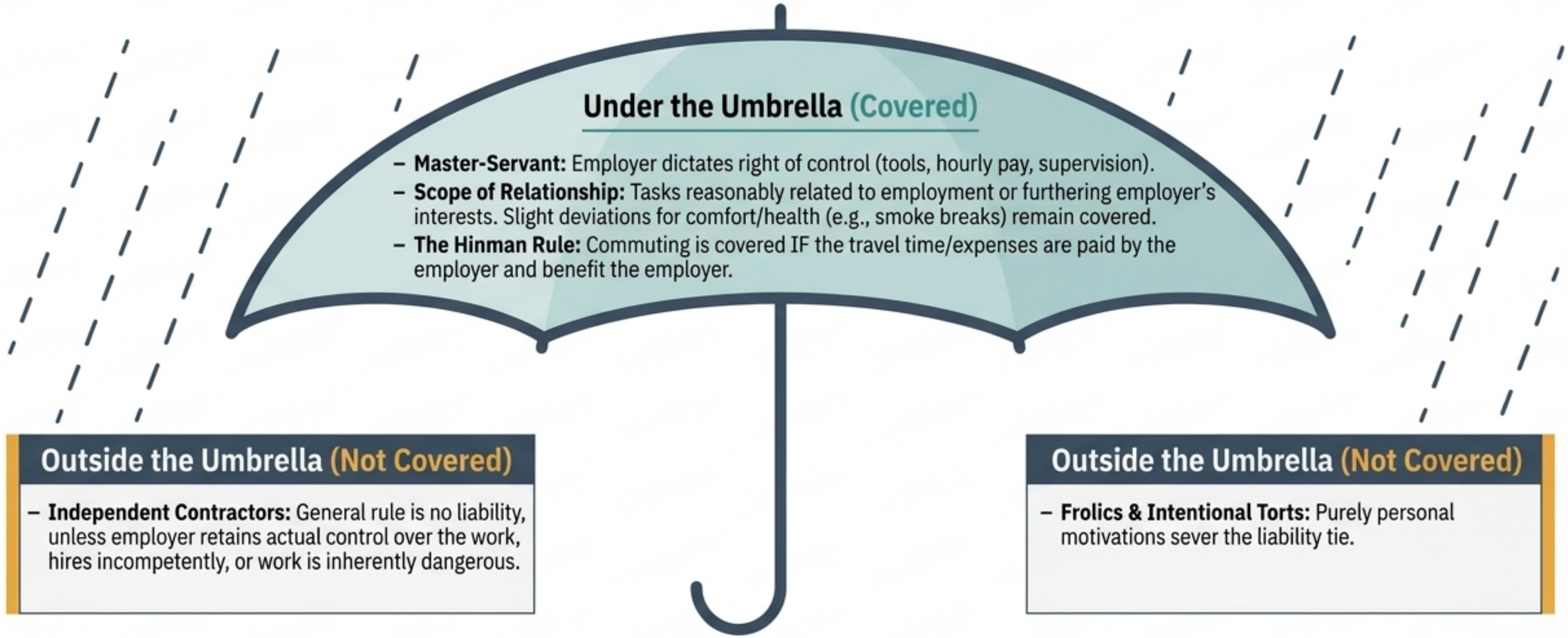
Abnormally Dangerous Activities

Restatement § 20 Test:
(1) Foreseeable and highly significant risk of physical harm even when reasonable care is exercised by all, AND
(2) Not a matter of common usage.

Gemini Notebook

The Umbrella of Vicarious Liability (Respondeat Superior)

The Basic Principle: Defendant is liable for harm if (A) an actionable relationship exists, and (B) the tort occurs within the scope of that relationship.



Under the Umbrella (Covered)

- **Master-Servant:** Employer dictates right of control (tools, hourly pay, supervision).
- **Scope of Relationship:** Tasks reasonably related to employment or furthering employer's interests. Slight deviations for comfort/health (e.g., smoke breaks) remain covered.
- **The Hinman Rule:** Commuting is covered IF the travel time/expenses are paid by the employer and benefit the employer.

Outside the Umbrella (Not Covered)

- **Independent Contractors:** General rule is no liability, unless employer retains actual control over the work, hires incompetently, or work is inherently dangerous.

Outside the Umbrella (Not Covered)

- **Frolics & Intentional Torts:** Purely personal motivations sever the liability tie.

Gemini Notebook

The Anatomy of Damages and Remedies

Nominal

Symbolic damages awarded to vindicate a right when no actual harm resulted.

Compensatory (Making the Plaintiff Whole)

Pecuniary / Economic

Lost wages, Loss of Earning Capacity (multiplied by expected work years, adjusted for inflation), Incurred/Future Medical Expenses, Medical Monitoring, Property diminution.

Non-Pecuniary / Non-Economic

Pain & Suffering (requires consciousness of pain; backward and forward-looking), Lost Enjoyment of Life, Loss of Consortium (spousal/relational damage).

Punitive

Requires a willful, wanton, reckless, or malicious state of mind. Not awarded for simple negligence.

The Duty to Mitigate: Plaintiff cannot recover for exacerbated injuries caused by their own failure to take reasonable action to lessen the damages post-injury.

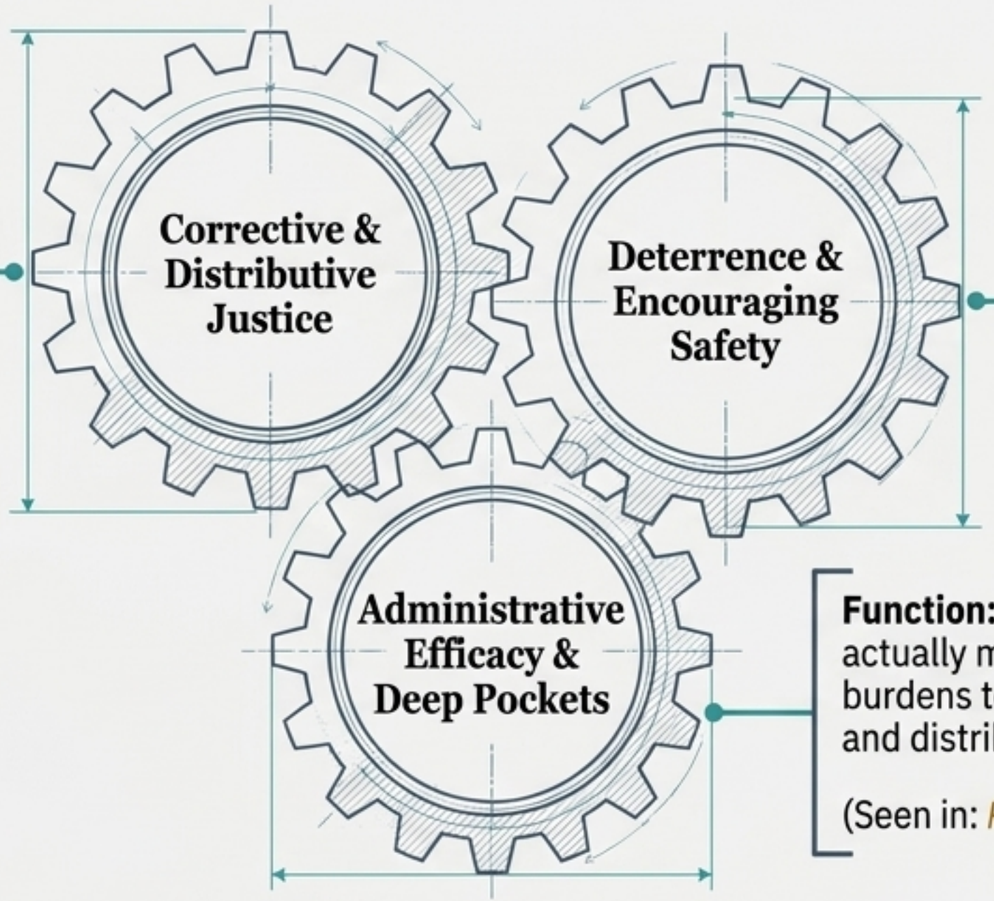
Gemini Notebook

Synthesis: The Policy Engine of Torts

The Underlying Question: Why does this algorithmic system exist?
Tort law is a society's mechanism for allocating risk and balancing economic forces.

Function: Righting a wrong between parties; allocating losses to those who created the risk rather than the innocent victims.

(Seen in: The BPL Scale, Strict Liability)



Function: Using the threat of financial liability to force industries and individuals to adopt safer practices.

(Seen in: Punitive Damages, Med Mal Standards)

Function: Creating rules that courts can actually manage efficiently, and shifting burdens to entities best equipped to absorb and distribute the loss (e.g., insurance).

(Seen in: *Respondeat Superior, Enterprise Liability*)

Gemini Notebook