

# Strict Liability

# In-Class Exercise

# Contributory Negligence

**Butterfield v. Forrester**

“Blocking a Road with a Pole”

**Davies v. Mann**

“The Donkey on the Road”

# Comparative Negligence

**Li v. Yellow Cab Company**

“Car Accident Comparative Negligence”

**Fritts v. McKanne**

“The Doctor Who Blamed the Drunk Driver”

**McCarty v. Pheasant Run, Inc.**

“Unlocked Hotel Room Door”

**Wassell v. Adams**

“Opened Hotel Room Door”

# Assumption of Risk

**Murphy v. Steeplechase**

“The Flopper”

**Knight v. Jewett**

“Touch Football Injuries”

**Hanks v. Powder Ridge Restaurant Corp.**

“Snowtubing Waiver”

# Tunkl factors

1. Business of a type generally thought suitable for public regulation.
2. Defendant performs a service of great importance to the public (often a matter of practical necessity for some members of the public)
3. Defendant willing to perform this service for any member of the public
4. Defendant has bargaining advantage
5. Standardized adhesion contract of exculpation
6. Plaintiff placed under the control of the defendant, subject to the risk of carelessness by the seller or his agents.

# Strict Liability

**Fletcher v. Rylands**

**Rylands v. Fletcher**



Liability applies for:

**PWFOPBOHL&C&KTALDMIIE**

Liability applies for:

# **PWFO PBOHL & C & K TALD MIIE**

A person who for his own purpose brings onto his land and collects and keeps there anything likely to do mischief if it escapes

# Limits on Strict Liability

Fletcher v. Rylands

--- PWFOPBOHL&C&KTALDMIIE

Rylands v. Fletcher

--- PWFOPBOHL&C&KTA “non-natural” and LDMIIE

First Restatement

--- “ultrahazardous activity”

Second and Third Restatements

--- “abnormally dangerous activity”

# Indiana Harbor Belt v. *American Cyanamid*



# Indiana Harbor Belt v. *American Cyanamid*

# Indiana Harbor Belt v. American Cyanamid

Strict liability applies for behavior that is:

- Very risky and that risk cannot be eliminated at reasonable cost

AND

- Not susceptible to due care analysis

# Activities, not Acts



# Restatement Definitions

“In determining whether an activity is abnormally dangerous, the following factors are to be considered: (a) existence of a high degree of risk of some harm to the person, land or chattels of others; (b) likelihood that the harm that results from it will be great; (c) inability to eliminate the risk by the exercise of reasonable care; (d) extent to which the activity is not a matter of common usage; (e) inappropriateness of the activity to the place where it is carried on; and (f) extent to which its value to the community is outweighed by its dangerous attributes.” Restatement (Second) of Torts § 520 (1977).

“An activity is abnormally dangerous if: (1) the activity creates a foreseeable and highly significant risk of physical harm even when reasonable care is exercised by all actors; and (2) the activity is not one of common usage.” Restatement (Third) Torts: Liability for Physical and Emotional Harm § 20 (2010).



Tort law is the law of  
**negligence.**

Strict liability is the law of tort law when negligence fails.