

# **LECTURE NOTES: Torts**

## **Proof of Negligence**

### **I. LEGAL PROOF**

**A Defined: drawing valid inferences from available facts**

**B Evidence: something that makes a fact more or less likely,**

**1. testimony, exhibits, documents**

**2. opinions**

**3. Standard: preponderance of evidence**

**II. UNAVOIDABLE ACCIDENT: not proximately caused**

**III. ACT OF GOD: sudden, unavoidable accident, force of nature.**

**A Unforeseen act of God, no liability**

**B Act of God plus defendant's negligence creates liability**

**IV. DEGREES OF NEGLIGENCE: Old fashioned law**

**A Modern view, no degrees of negligence**

**1. ordinary negligence**

**2. willful, wanton, reckless. Aggravated. Gross.**

**B Negligence per se**

**c Guest passenger statutes**

**v. BURDEN OF PROOF**

**A Function of Court and Jury**

**B Presumptions:**

**1. mental capacity, care,**

**2. effect of rebuttal**

**c Prima facie case**

**vi. RES IPSA LOQUITUR**

**vii. JOINT TORTFEASORS**

**A Joint liability, 2 defendants each causing injury**

**B Concerted action: 2 defendants together causing injury**

**c Joint and several: liability for entire harm if negligence**

**contributed combined with another's negligence.**

**d Contribution and indemnity**

## **VIII. SURVIVAL AND WRONGFUL DEATH**