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Iowa Law of Torts
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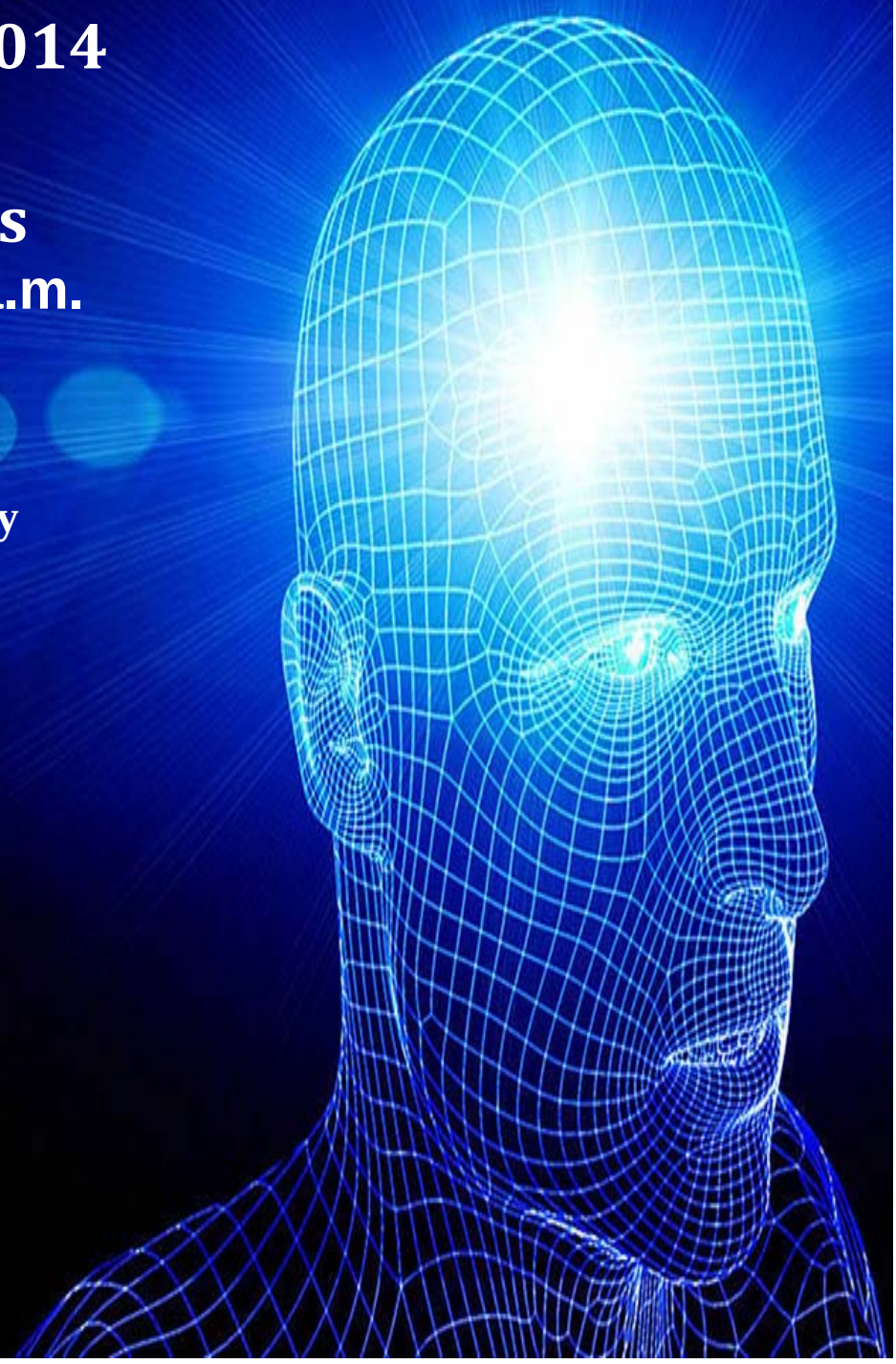

Iowa Law of Torts
(Revised 2014)

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[*] Prof. Miller created the original outline on which these materials are based and organized. In addition, certain substantive provisions from his outline were incorporated herein with his permission.

I. Intentional Torts

a. Battery

i. Battery is defined as an intentional harmful or offensive contact. Nelson v. Winnebago Industries, Inc., 619 N.W.2d 385, 388 (Iowa 2000).

b. Assault

i. To be liable for assault, an actor must have intended to inflict a harmful or offensive contact upon the other or to have put the other in apprehension of such contact. Restatement (Second) of Torts § 32 (1965).

c. False Imprisonment

i. The elements of false imprisonment are detention or restraint against a person's will, and unlawfulness of the detention or restraint. Nelson v. Winnebago Industries, Inc., 619 N.W.2d 385 (Iowa 2000).

ii. Shopkeeper's Privilege

1. The "shopkeeper's privilege is codified in I.C.A. § 808.12:
    a. "(1) Persons concealing property as set forth in section 714.3A or 714.5, may be detained and searched by a peace officer, person employed in a facility containing library materials, merchant, or merchant's employee, provided that the detention is for a reasonable length of time and that the search is conducted in a reasonable manner by a person of the same sex and according to subsection 2 of this section.
    b. (2) No search of the person under this section shall be conducted by any person other than someone acting under the direction of a peace officer except where permission of the one to be searched has first been obtained.
    c. (3) The detention or search under this section by a peace officer, person employed in a facility containing library materials, merchant, or merchant's employee does not render the person liable, in a criminal or civil action, for false arrest or false imprisonment provided the person conducting the search or detention had reasonable grounds to believe the person detained or searched had concealed or was attempting to conceal property as set forth in section 714.3A or 714.5."

iii. Physical force or threat of physical force is not required for finding of detention against plaintiff's will. Kiray v. Hy-Vee, Inc., 716 N.W.2d 193 (Iowa App., 2006).

d. Intentional Infliction of Emotional Distress

i. The elements of this tort are: (1) Outrageous conduct by the defendant; (2) the defendant's intentional causing, or reckless disregard of the probability of causing emotional distress; (3) plaintiff suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." Amsden v. Grinnell Mut. Reinsurance Co., 203 N.W.2d 252 (Iowa 1972).

ii. The level of conduct necessary to support a claim of intentional infliction of emotional distress is extreme, it must go "beyond all possible bounds of decency and be regarded as atrocious and utterly intolerable in a civilized community." Mills v. Guthrie County Rural Electric Coop. Ass'n, 454 N.W.2d 846, 850 (Iowa 1990).

1. Plaintiff could not prove the elements of intentional infliction of emotional distress, even though he could show that he was "bothered by creditors at night, made enemies out of friends by trying to collect on accounts before they were due, was degraded by having to go into bankruptcy, and was 'down-hearted more or less' and 'depressed.'" Harsha v. State Sav. Bank, 346 N.W.2d 791, 801 (Iowa 1984).
2. Evidence was not sufficient enough to constitute extreme and outrageous conduct when a doctor angrily told a dying patient's husband that wanted to keep his wife on life support, he was "'a fool' who in three months would be broke" and his wife would die anyway. Tappe v. Iowa Methodist Medical Center, 477 N.W.2d 396, 403-404 (Iowa 1991).
3. It is a question of law for the court to determine in the first instance whether the relevant conduct may be reasonably regarded as outrageous. Roalson v. Chaney, 334 N.W.2d 754 (Iowa 1983).

e. Fraud

i. Fraud is: "A material misrepresentation made knowingly (scienter) with intent to induce the plaintiff to act or refrain from acting, upon which the plaintiff justifiably relies, with damages." Beeck v. Kapalis, 302 N.W.2d 90, 94 (Iowa 1981).

ii. "The plaintiff must establish the elements of fraud by a clear and convincing preponderance of the evidence." Lackard v. Carson, 287 N.W.2d 871, 874 (Iowa 1980).

f. Wrongful Discharge from Employment

i. "To prevail on an intentional tort claim of wrongful discharge from employment in violation of public policy, an at-will employee must establish the following elements: (1) the existence of a clearly defined and well-recognized public policy that protects the employee's activity; (2) this public policy would be undermined by

the employee's discharge from employment; (3) the employee engaged in the protected activity, and this conduct was the reason the employer discharged the employee; and (4) the employer had no overriding business justification for the discharge." Berry v. Liberty Holdings, Inc., 803 N.W.2d 106, 109–110 (Iowa 2011).

1. If the employee succeeds in establishing the claim, he is entitled to recover both personal injury and property damage. Berry, at 110.
2. Defining "protected activity" has become an increasing source of dispute. As evidenced by the recent questions certified by the Federal Court, upon which the Justices of Supreme Court of Iowa were equally divided, this may be an evolving area of law to keep an eye on. See, Hagen v. Siouxland Obstetrics & Gynecology, P.C., 2014 Iowa Sup. LEXIS 48 (Iowa May 9, 2014). There, the United States District Court for the Northern District of Iowa certified three questions. The Court was unable to resolve the initial question concerning recognition of conduct as "protected," as the vote was split 3-3, with one Justice taking no part.

g. Trespass to Land

i. I.C.A. § 716.7 defines trespass to land.

1. Subsection 2a. permits the "unarmed pursuit of game or fur-bearing animals by a person who lawfully injured or killed the game or fur-bearing animal which comes to rest on or escapes to the property of another."
2. Subsection 3 allows one to enter upon the "property of another for the sole purpose of retrieving personal property which has accidentally or inadvertently been thrown, fallen, strayed, or blown onto the property of another, provided that the person retrieving the property takes the most direct and accessible route to and from the property to be retrieved, quits the property as quickly as is possible, and does not unduly interfere with the lawful use of the property."

h. Conversion

i. "'Conversion' is any distinct act of dominion or control wrongfully exerted over the chattels of another, in denial of his right thereto." Leonard v. Sehman, 220 N.W. 77, 78 (Iowa 1928).

ii. The elements of conversion are:

1. Ownership by the plaintiff or other possessory right in the plaintiff greater than that of the defendant;
2. Exercise of dominion or control over chattels by defendant inconsistent with, and in derogation of, plaintiff's possessory rights thereto; and
3. Damage to plaintiff.

II. Defenses to Intentional Torts

a. Consent

i. Consent may be expressed by statements, actions, silence, or implied in law. However, only where the scope of the consent is not exceeded can the defendant avoid liability. The scope of the plaintiff's consent measures the defendant's privilege.

b. Self-Defense

i. The self-defense privilege permits reasonable acts of self-help when it is impractical for the victim to seek the law's protection.

ii. The rules relating to the reasonableness of the use of self-defense, the reasonableness of the force used, and the issue of retreat is codified in I.C.A. § 704.1:

1. "'Reasonable force' is that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat. Reasonable force, including deadly force, may be used even if an alternative course of action is available if the alternative entails a risk to life or safety, or the life or safety of a third party, or requires one to abandon or retreat from one's dwelling or place of business or employment."

c. Defense of Others

i. "A person is justified in the use of reasonable force when the person reasonably believes that such force is necessary to defend oneself or another from any imminent use of unlawful force." I.C.A. § 704.3.

d. Defense of Property

i. I.C.A. § 704.4 states, "A person is justified in the use of reasonable force to prevent or terminate criminal interference with the person's possession or other right in property. Nothing in this section authorizes the use of any spring gun or trap which is left unattended and unsupervised and which is placed for the purpose of preventing or terminating criminal interference with the possession of or other right in property."

ii. In a case where a trespassing plaintiff was injured when he triggered a spring gun in an uninhabited house, the Court ruled, "one may use reasonable force for protection of property but that such a right is subject to qualification that one may not use such means of force as will take human life or inflict great bodily injury… An owner of property may not willfully or intentionally injure a trespasser by means of force that either takes his life or inflicts great bodily injury. The only time a spring shotgun would be justified is when the trespasser was committing a felony of

violence or a felony punishable by death, or where the trespasser was endangering human life by this act." Katko v. Briney, 183 N.W.2d 657, 659 (Iowa 1971).

e. Authority of Law

i. I.C.A. § 704.12 codifies a police officer's use of force when making and arrest. "A police officer or other person making an arrest or securing an arrested person may use such force as is permitted by sections 804.8, 804.10, 804.13 and 804.15."

III. Negligence

a. Duty of Care

i. Before a plaintiff may recover damages allegedly caused by another's negligence, "the plaintiff must establish a legal duty owed to the plaintiff by the wrongdoer." Ries v. Steffensmeier, 570 N.W.2d 111, 114 (Iowa 1997).

ii. Whether a duty arises out of a given relationship between the defendant and the plaintiff is a question of law for the court's determination. Shaw v. Soo Line R.R., 463 N.W.2d 51, 53 (Iowa 1990).

iii. Prior to 2009, three factors were considered by Iowa courts in determining whether a duty to exercise reasonable care existed: "(1) the relationship between the parties, (2) reasonable foreseeability of harm to the person who is injured, and (3) public policy considerations." Stotts v. Eveleth, 688 N.W.2d 803, 810 (Iowa 2004).

iv. In 2009, the Iowa Supreme Court adopted the Restatement (Third) of Torts' position regarding determination of whether a duty is owed: "An actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of physical harm." Thompson v. Kaczinski, 774 N.W.2d 829, 834 (Iowa 2009) (quoting Restatement (Third) of Torts: Liab. For Physical Harm § 7(a), at 90 (Proposed Final Draft No.1, 2005)).

1. However, the general duty to exercise reasonable care can be displaced or modified when there is "an articulated countervailing principle or policy [that] warrants denying or limiting liability in a particular class of cases." Thompson, 744 N.W.2d at 835.
2. Foreseeability is no longer a factor in determining whether a duty of care exists. Instead, foreseeability of a risk is a consideration for the fact finder in determining whether there was a breach of a duty owed (second element of negligence). Thompson, 744 N.W.2d at 835.
3. Special relationships between the parties may well give rise to a duty (i.e. landowner-visitor, business-patron). Hoyt v. Gutterz Bowl & Lounge L.L.C., 829 N.W.2d 772 (Iowa

2013)(Court recognized a duty as a result of the special relationship in the tavern owner-patron context).

v. Standard of Care Owed by Owners and/or Occupiers of Land
    1. Iowa has abrogated the common law distinction between "invitees" and "licensees."
    2. Landowners and occupiers have a "duty to exercise reasonable care in the maintenance of their premises for the protection of lawful visitors. Among the factors to be considered in evaluating whether a landowner or occupier has exercised reasonable care for the protection of lawful visitors will be: (1) the foreseeability or possibility of harm; (2) the purpose for which the entrant entered the premises; (3) the time, manner, and circumstances under which the entrant entered the premises; (4) the use to which the premises are put or are expected to be put; (5) the reasonableness of the inspection, repair, or warning; (6) the opportunity and ease of repair or correction or giving of the warning; and (7) the burden on the land occupier and/or community in terms of inconvenience or cost in providing adequate protection." Koenig v. Koenig, 766 N.W.2d 635, 645–646 (Iowa 2009)
        a. Koenig was decided before Thompson, discussed above. In light of the Thompson court's removal of foreseeability from the analysis of whether a duty exists, it is likely that courts will no longer consider foreseeability as a part of duty analysis in premises liability cases.
    3. It is unclear whether the seven-factor set forth in Koenig is also applicable to trespassers, because the continued validity of the common-law approach to trespassers was not raised on appeal in Koenig. 766 N.W.2d at 645 n.2.
    4. A duty to warn or interfere may be owed even to a known trespasser. Appling v. Stuck, 164 N.W.2d 810, 814 (Iowa 1969).

b. Breach of Duty

i. Generally, Iowa follows a "reasonable person" standard.

ii. The assessment of the forseeability of a risk is to be considered when the fact finder decides if the defendant breached a duty to exercise reasonable care. Thompson, 774 N.W.2d at 835 (citing Restatement (Third) of Torts: Liab. for Physical Harm § 7 cmt. J, at 97–98 (Proposed Final Draft No. 1, 2005)).

iii. In situations where an actor has certain physical or mental qualities or characteristics (blindness) the actor is held to a reasonable person with that condition standard (a reasonable blind person standard).

iv. When children are the actors the question of a particular child's capacity is an issue of fact to be determined "on the basis of evidence of the child's age, intelligence and experience to perceive and avoid the particular risk involved in the case." Peterson v. Taylor, 316 N.W.2d 869, 873 (Iowa 1982).

c. Causation

i. The third element of a negligence cause of action is causation: a causal connection between breach of duty of care and the harm suffered.

ii. Causation is ordinarily a fact question for a jury, "save in very exceptional cases where the facts are so clear and undisputed, and the relation of cause and effect so apparent to every candid mind, that but one conclusion may be fairly drawn therefrom." Lindquist v. Des Moines Union Ry., 30 N.W.2d 120, 123 (Iowa 1947).

iii. Formerly, causation under Iowa law had two components: cause in fact and proximate (legal) cause. See, e.g., Faber v. Herman, 731 N.W.2d 1, 7 (Iowa 2007).

1. Proximate (legal) cause was formerly determined under the Restatement (Second) of Torts test, which states "[t]he actor's negligent conduct is a legal cause of harm to another if (a) his conduct is a substantial factor in bringing about the harm, and (b) there is no rule of law relieving the actor from liability." Restatement (Second) of Torts § 431, at 428 (1965); accord Kelly v. Sinclair Oil Corp., 476 N.W.2d 341, 349 (Iowa 1991).
2. In deciding whether conduct was a substantial factor in brining about the harm, Iowa courts formerly considered the "proximity between the breach and the injury based largely on the concept of foreseeability." Estate of Long ex rel. Smith v. Broadlawns Med. Ctr., 656 N.W.2d 71, 83 (Iowa 2002).

iv. In 2009, the Iowa Supreme Court adopted the Restatement (Third) of Torts formula for determining causation. See Thompson v. Kaczinski, 774 N.W.2d 829, 836–839 (Iowa 2009). The Restatement (Third) retains the concept of factual cause but does away with the doctrine of proximate cause in favor of a "scope of liability" doctrine.

1. Factual cause: "Conduct is a factual cause of harm when the harm would not have occurred absent the conduct." Restatement (Third) of Torts: Liab. for Physical Harm § 26 (Proposed Final Draft No. 1, 2005); accord Iowa Uniform Civil Jury Instruction 700.3.
2. Scope of liability: "An actor's liability is limited to those physical harms that result from the risks that made the actor's conduct tortious. . . . An actor is not liable for physical harm when the tortious aspect of the actor's

conduct was of a type that does not generally increase the risk of that harm." Royal Indem. Co. v. Factory Mut. Ins. Co., 786 N.W.2d 839, 850 (Iowa 2010) (quoting Restatement (Third) of Torts: Liab. for Physical Harm §§ 29–30 (Proposed Final Draft No. 1, 2005)).

a. In order to show that the harm was within the scope of liability, the harm must arise from "the same general types of danger that the defendant should have taklen reasonable steps…to avoid. In making this determination, the fact finder should consider whether "repetition of [the] defendant's conduct makes it more likely harm of the type plaintiff claims to have suffered would happen to another." Asher v. Ob-Gyn Specialists, P.C., 2014 Iowa Sup. LEXIS 49 (Iowa May 9, 2014)(citing, Iowa Civil Jury Instruction 700.3A).
b. In special relationship cases, an actor's scope of liability may include harms that are different from the harms risked by the actor's failure to exercise reasonable care to ameliorate to eliminate risks that the special relationship requires the actor to attend to. Hoyt v. Gutterz Bowl & Lounge L.L.C., 829 N.W.2d 772 (Iowa 2013)("In the bar-patron relationship, a range of risks may arise for which the bar has a duty of reasonable care, and in addition, a separate range of risks may arise to the extent the bar's conduct foreseeably combines with or permits the improper conduct of a third party")
c. The scope of liability standard is flexible enough to accommodate fairness concerns raised by the specific facts of a case-an issue better left to fact finders. Id.

v. Example of how to analyze factual cause and scope of liability: "Gordie is driving 35 miles per hour on a city street with a speed limit of 25 miles per hour with Nathan as his passenger. Without warning, a tree crashes on Gordie's car, injuring Nathan. Gordie's speeding is a factual cause of Nathan's harm because, if Gordie had not been traveling at 35 miles per hour, he would not have arrived at the location where the tree fell at the precise time that it fell. Gordie is not liable to Nathan because Gordie's speeding did not increase the risk of the type of harm suffered by Nathan. The speeding merely put Gordie at the place and time at which the tree fell. This is true even if the type of harm suffered by Nathan might be found to be one of the risks arising from speeding in an automobile." Royal Indem. Co. v. Factory Mut. Ins. Co., 786 N.W.2d 839, 850 (Iowa 2010).

1. It is not necessary that an act of negligence be the last link in the causal chain leading to injury to establish factual causation. Asher v. Ob-Gyn Specialists, P.C., 2014 Iowa Sup. LEXIS 49 (Iowa May 9, 2014)(Noting there can be multiple causes of injury in a chain of events).

vi. In most cases, scope of liability will not be in dispute or will be adjudicated by the court as a question of law on a dispositive motion. The Supreme Court of Iowa recently reiterated this position in the Asher case identified above. Therein, the Supreme Court of Iowa cited to the following comment on Restatement (Third): "Ordinarily, the plaintioff's harm is self-evidently within the defendant's scope of liability and requires no further attention. Thus, scope of liability functions as a limitation on liability in a select group of cases, operating more like an affirmative defense, although formally it is not one." Restatement (Third) § 29 cmt. A, at 493-94.

vii. There are still questions concerning how juries will interact with the new definition of "cause" set forth in Thompson. This is rather new territory: the Uniform Civil Jury Instructions have only recently been revised to include the new definition, and judges and lawyers themselves are still getting used to it.

1. In practice, many parties were willing to simply adopt the (outdated) substantial factor jury instruction. The Court confirmed that giving of such an instruction is error, but substantively concluded that submitting any instruction on causation beyond the one pertaining only to factual causation (i.e. the outdated substantial-factor instruction) increases the plaintiff's burden by making it more difficult to obtain favorable verdict. Asher v. Ob-Gyn Specialists, P.C., 2014 Iowa Sup. LEXIS 49 (Iowa May 9, 2014)(Court found that giving of outdated substantial-factor instruction was error, but harmless as jury found in favor of plaintiff notwithstanding her increased burden).

viii. Res Ipsa Loquitur

1. Res ipsa loquitur is a type of circumstantial evidence which allows the jury to infer the cause of the injury from the naked fact of injury, and then to add the further inference that this inferred cause proceeded from negligence. Conner v. Menard, Inc., 705 N.W.2d 318, 320 (Iowa 2005).
2. Plaintiff must introduce substantial evidence that: (1) the injury was caused by an instrumentality under the exclusive control and management of the defendant, and (2) that the occurrence causing the injury is of such a type that in the ordinary course of things would not have happened if reasonable care had been used. Banks v. Beckwith, 762 N.W.2d 149, 152 (Iowa 2009).

a. If there is substantial evidence to support both elements, the happening of the injury permits—but does not compel—an inference that the defendant was negligent. Banks, 762 N.W.2d at 152.
b. "When the doctrine of res ipsa loquitur is used in a medical malpractice case, the plaintiff is relieved of the burden of showing that specific acts of defendant were below accepted medical standards. The plaintiff still must prove negligence, but he or she does so by convincing the jury the injury would not have occurred absent some unspecified but impliedly negligent act." Banks, 762 N.W.2d at 152.

d. Damages

i. In a negligence claim the plaintiff must prove actual damage, unlike intentional torts where nominal damages may be recovered even absent actual loss.
ii. In personal injury cases, compensatory damages are recoverable for loss of wages past and future, injuries to mind and body, medical, and other expenses.
iii. Loss of earning capacity is actually an element of damages for permanent disability. "It is to be measured by the present value of the loss or impairment of general earning capacity, rather than loss of wages or earnings in a specific occupation." Grant v. Thomas, 118 N.W.2d 545, 548 (Iowa 1962).
iv. "A tortfeasor takes the person he injures as he finds him. A duty of care inures to the benefit of the sick and infirm the same as to the healthy and strong. Such an injured person is entitled to such increased damages as are the natural and proximate result of the wrongful act." McBroom v. State, 226 N.W.2d 41, 45-46 (Iowa 1975).
v. I.C.A. § 619.18 states:
    1. "In an action for personal injury or wrongful death, the amount of money damages demanded shall not be stated in the petition, original notice, or any counterclaim or cross-petition. However, a party filing the petition, original notice, counterclaim, or cross-petition shall certify to the court that the action meets applicable jurisdictional requirements for amount in controversy."
vi. I.C.A. § 668.3(7) states:
    1. "(7) When a final judgment or award is entered, any party may petition the court for a determination of the appropriate payment method of such judgment or award. If so petitioned the court may order that the payment method for all or part of the judgment or award be by structured, periodic, or other non lump-sum payments. However, the

court shall not order a structured, periodic, or other non lump-sum payment method if it finds that any of the following are true:

a. The payment method would be inequitable.
b. The payment method provides insufficient guarantees of future collectability of the judgment or award.
c. Payments made under the payment method could be subject to other claims, past or future, against the defendant or the defendant's insurer."

vii. I.C.A. § 668.3.8 states:
1. "(8) In an action brought pursuant to this chapter the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings on each specific item of requested or awarded damages indicating that portion of the judgment or decree awarded for past damages and that portion of the judgment or decree awarded for future damages. All awards of future damages shall be calculated according to the method set forth in section 624.18."

viii. Economic Loss Rule
1. The economic loss rule bars recovery in negligence when the plaintiff has suffered only economic loss unrelated to injury to the person or the property of the plaintiff. Annett Holdings, Inc. v. Kum & Go, L.C., 801 N.W.2d 499 (Iowa 2011).
2. Exceptions
   a. Purely economic losses are recoverable in actions asserting claims of professional negligence against attorneys and accountants. Van Sickle Constr. Co. v. Wachovia Commercial Mortg., 783 N.W.2d 684, 692 n.5 (Iowa 2010).
   b. Negligent misrepresentation claims also fall outside the scope of the economic loss rule. Van Sickle Constr. Co., 783 N.W.2d at 694.
   c. When the duty of care arises out of a principal-agent relationship, economic losses may be recoverable. Langwith v. Am. Natl. Gen. Ins. Co., 793 N.W.2d 215, 222 (Iowa 2010).
3. Purely economic losses are recoverable in contract claims. Consider bringing a case under contract, rather than tort, law. See, e.g., Determan v. Johnson, 613 N.W.2d 259 (Iowa 2000).

IV. Special Forms of Negligence

a. Negligent Misrepresentation

i. The elements of negligent misrepresentation are stated in the Restatement (Second) of Torts § 552 (cited in Sain v. Cedar Rapids Community School Dist., 626 N.W.2d 115, 127 (Iowa 2001)).
    1. "One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest;
    2. Supplies false information for the guidance of others in their business transactions;
    3. Is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information;
    4. If he fails to exercise reasonable care or competence in obtaining or communicating the information."

ii. The defendant's liability is limited to a loss suffered "by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction." Pahre v. Auditor of State, 422 N.W.2d 178, 179-180 (Iowa 1988).

iii. Only "a person in the business or profession of supplying information" such as a high school guidance counselor may be found guilty of negligent misrepresentation. This rule applies to an "accountant and other purveyors of information." Sain v. Cedar Rapids Community School Dist., 626 N.W.2d 115, 126 (Iowa 2001).

b. Negligent Entrustment

i. An owner of a motor vehicle may be held liable to an injured person on grounds of negligent entrustment of its operation to an inexperienced or incompetent driver. Campbell v. Van Roekel, 347 N.W.2d406, 412 (Iowa 1984).

ii. An operator who is statutorily too young to legally drive is conclusively presumed incompetent. Hardwick v. Bublitz, 119 N.W.2d 886, 893 (Iowa 1963).

iii. Negligent entrustment is an independent basis of liability, separate from respondeat superior or owner statutory liability found at I.C.A. § 321.493. Krausnick v. Haegg Roofing Co., 20 N.W.2d 432, 433–434 (Iowa 1945).
    1. As with all negligence-based cases, legal causation of the damages sought must still be proven.

c. Negligent Infliction of Emotional Distress to a Bystander

i. A bystander to an accident is allowed to recover damages for emotional distress caused by the negligence of another. There are five elements to this tort: (1) bystander was located near the scene of the accident; (2) emotional distress resulted from a direct emotional impact from the observance of the accident; (3)

bystander must have been closely related to the victim; (4) a reasonable person would believe, and the bystander did believe, that the victim would be seriously injured; and (5) the emotional distress must be serious (i.e., physical manifestations of distress). Barnhill v. Davis, 300 N.W. 2d 104 (Iowa 1981).

ii. In Fineran v. Pickett, 465 N.W.2d 662 (Iowa 1991), the Iowa Supreme Court refused to depart from the requirements set forth in Barnhill. Bystander recovery for emotional distress is strictly limited to situations involving "witnessing peril to a victim" and producing emotional distress from "sensory and contemporaneous observance of the accident as contrasted with learning of the accident . . . after its occurrence." The court rejected the plaintiff's claim that the Barnhill standards should be applied flexibly on a case-by-case determination of genuineness, severity, and reasonable foreseeability. Accord Moore v. Eckman, 762 N.W.2d 459 (Iowa 2009).

iii. The Iowa Supreme Court has recognized that "every emotional disturbance has a physical aspect and every physical disturbance has an emotional aspect." Accordingly, the court held that the injury underlying a bystander claim is a "bodily injury" for purposes of underinsured motorist coverage. Pekin Insurance Co. v. Hugh, 501 N.W.2d 508, 512 (Iowa 1993).

d. Negligent Hiring, Supervision, and Retention

i. A person conducting an activity through servants or other agents is subject to liability for harm resulting from his conduct if he is negligent or reckless: (1) in the employment of improper persons or instrumentalities in work involving risk of harm to others; (2) in the supervision of the activity; or (3) in permitting, or failing to prevent, negligent or other tortious conduct by persons, whether or not his servants or agents, upon premises or with instrumentalities under his control. Kiesau v. Bantz, 686 N.W.2d 164, 171–172 (Iowa 2004).

1. Thus, an injured party must show the employee's underlying tort or wrongful act caused a compensable injury, in addition to proving the negligent hiring, supervision, or retention by the employer was a cause of those injuries. Kiesau, 686 N.W.2d at 172.
2. Negligent hiring, supervision, and retention are separate and distinct torts from respondeat superior liability, which imposes strict liability on employers for the acts of their employees committed within the scope of their employment. Kiesau, 686 N.W.2d at 172.

V. Respondeat Superior

a. Under the doctrine of respondeat superior, an employer is liable for the negligence of an employee acting within the scope of employment. Ash v.

Century Lumber Co., 133 N.W. 888 (1911); Kraft v. U.S., 666 F. Supp. 1302, 1305 (S.D. Iowa 1987).

b. To hold an employer liable, the employer must have the right to control or direct the employee's work. Volkswagen Iowa City, Inc. v. Scott's, Inc., 165 N.W.2d 789 (Iowa 1969).

c. There is no single standard for determining when an employee is acting within the scope of employment. Often, the court's determination depends on the particular facts and circumstances of each case. Acts are within the scope of employment if authorized and are incidental to an employee's duties even if contrary to express orders. LaFleur v. LaFleur, 452 N.W.2d 406, 408–409 (Iowa 1990).

i. Acts are further within the scope of employment if necessary and intended to accomplish the purpose of employment, even if in excess of the authority normally granted. Sanford v. Goodridge, 13 N.W.2d 40, 43 (Iowa 1944).

VI. Strict Liability

a. Wild Animals

i. The law of Iowa imposes strict liability upon owners and harborers of wild animals. "A possessor of a wild animal is subject to liability to another for harm done by the animal to the other, his person, land or chattels, although the possessor has exercised the utmost care to confine the animal, or otherwise prevent it from doing harm." Franken v. City of Sioux Center, 272 N.W.2d 422, 424 (Iowa 1978).

ii. Dogs – I.A.C. § 351.28 states: "The owner of a dog shall be liable to an injured party for all damages done by the dog, when the dog is caught in the action of worrying, maiming, or killing a domestic animal, or the dog is attacking or attempting to bite a person, except when the party damaged is doing an unlawful act, directly contributing to the injury. This section does not apply to damage done by a dog affected with hydrophobia unless the owner of the dog had reasonable grounds to know that the dog was afflicted with hydrophobia and by reasonable effort might have prevented the injury."

iii. Ownership. One may prove "the defendant is the owner of the dog by showing that (1) the dog was in the defendant's possession, and (2) the defendant was harboring the dog on the defendant's premises as owners usually do with their dogs." Fouts v. Mason, 592 N.W.2d 33, 37 (Iowa 1999).

b. Ultra-Hazardous Activities

i. An ultra-hazardous activity is an activity that necessarily threatens a grave risk of harm or death that cannot be eliminated by the exercise of reasonable care, and is not a matter of common usage. Grabill v. Adams County Fair and Racing Ass'n, 666 N.W.2d 592 (Iowa 2003).

ii. Escaping Water – The liability without fault rule as to escaping water has been applied in Iowa. "The employment of force of any kind which, when so put in operation, extends its energy into the premises of another to their material injury, and renders them uninhabitable, is as much a physical invasion as if the wrongdoer had entered thereon in person and by overpowering strength had cast the owner into the street." Lubin v. Iowa City, 131 N.W.2d 765, 769 (Iowa 1965).

iii. Blasting Explosives – "The user of explosives acts at his own peril and is liable if damage proximately results to another, either from direct impact of debris thrown by the blasting, or from consequential concussions or vibrations." Davis v. L & W Construction Co., 176 N.W.2d 223, 225 (Iowa 1970).

VII. Products Liability

a. Generally

i. There are three possible defect types in products. The product must have a defect that renders it unreasonably dangerous and defective in a normal or expected use.

1. Manufacturing or construction defects – the materials used in the product are flawed. (Metal fatigue, Salmonella in food)
2. Warning Defects – the product does not have sufficient consumer warnings about possible dangers when using the product.
3. Design flaws – the product lacks safety features, the design is not safe enough.

ii. The rules for manufacturing and warning defects are contained in sections 1 and 2 of the Restatement (Third) of Torts for Products Liability. In a design defect products liability case, Iowa applies the test set forth in Products Restatement, which essentially dropped the consumer expectation test traditionally used in the strict liability analysis and adopted a risk-utility analysis traditionally found in the negligence standard. Wright v. Brooke Group Ltd., 652 N.W.2d 159 (Iowa 2002).

b. Tests

i. Manufacturing Defects - A product flawed in manufacture frustrates the manufacturer's own design objectives. Liability is imposed on manufacturers in these cases even if the manufacturer shows it acted reasonably in making the product. Wright, at 168.

ii. Warning Defects – A product is defective because of inadequate instructions or warnings when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the instructions or warnings

renders the product not reasonably safe. Parish v. Jumpking, Inc. 719 N.W.2d 540, 546 (Iowa 2006).

iii. Design Defects – A product is defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the alternative design renders the product not reasonably safe. Parish, at 543.

c. Defenses

i. Products liability cases are subject to the Comparative Fault Act which makes contributory negligence a partial defense. I.C.A. § 668.1. This includes other defenses such as misuse of a product and unreasonable assumption of the risk. State of the Art – I.C.A. § 668.12.

ii. State of the Art Defense - I.C.A. § 668.12.

1. "(1) In any action brought pursuant to this chapter against an assembler, designer, supplier of specifications, distributor, manufacturer, or seller for damages arising from an alleged defect in the design, testing, manufacturing, formulation, packaging, warning, or labeling of a product, a percentage of fault shall not be assigned to such persons if they plead and prove that the product conformed to the state of the art in existence at the time the product was designed, tested, manufactured, formulated, packaged, provided with a warning, or labeled."
2. "(2) Nothing contained in subsection 1 shall diminish the duty of an assembler, designer, and supplier of specifications, distributor, manufacturer, or seller to warn concerning subsequently acquired knowledge of a defect or dangerous condition that would render the product unreasonably dangerous for its foreseeable use or diminish the liability for failure to so warn."

iii. The Court defined "state of the art" as what "practically and technologically" could have been done. Hughes v. Massey-Ferguson, Inc., 522 N.W.2d 294, (Iowa 1994).

iv. Failure to Warn of Obvious Risk – I.C.A. § 668.12(3).

1. "(3) An assembler, designer, supplier of specifications, distributor, manufacturer, or seller shall not be subject to liability for failure to warn regarding risks and risk-avoidance measures that should be obvious to, or generally known by, foreseeable product users. When reasonable minds may differ as to whether the risk or risk-avoidance measure was obvious or generally known, the issues shall be decided by the trier of fact."

v. Failure to Read a Provided Warning – I.C.A. § 668.12(4)
    1. "(4) In any action brought pursuant to this chapter against an assembler, designer, supplier of specifications, distributor, manufacturer, or seller for damages arising from an alleged defect in packaging, warning, or labeling of a product, a product bearing or accompanied by a reasonable and visible warning or instruction that is reasonably safe for use if the warning or instruction is followed shall not be deemed defective or unreasonably dangerous on the basis of failure to warn or instruct. When reasonable minds may differ as to whether the warning or instruction is reasonable and visible, the issues shall be decided by the trier of fact."

d. Parties and Products

i. I.C.A. § 613.18.
    1. "(1) A person who is not the assembler, designer, or manufacturer, and who wholesales, retails, distributes, or otherwise sells a product is:
        a. "(a) Immune from any suit based upon strict liability in tort or breach of implied warranty of merchantability which arises solely from an alleged defect in the original design or manufacture of the product."
        b. "(b)" Not liable for damages based upon strict liability in tort or breach of implied warranty of merchantability for the product upon proof that the manufacturer is subject to the jurisdiction of the courts of this state and has not been judicially declared insolvent."
    2. "(2) A person who is a retailer of a product and who assembles a product, such assembly having no causal relationship to the injury from which the claim arises, is not liable for damages based upon strict liability in tort or breach of implied warranty of merchantability which arises from an alleged defect in the original design or manufacture of the product upon proof that the manufacturer is subject to the jurisdiction of the courts of this state and has not been judicially declared insolvent."
    3. "(3) An action brought pursuant to this section, where the claimant certifies that the manufacturer of the product is not yet identifiable, tolls the statute of limitations against such manufacturer until such time as discovery in the case has identified the manufacturer."

ii. Used product sellers are not subject to strict liability. Grimes v. Axtell Ford Lincoln-Mercury, 403 N.W.2d 781 (Iowa 1987).

iii. Successor Corporation Liability

1. "The general rule is that where one company sells or otherwise transfers all its assets to another company, the purchasing company is not liable for the debts and liabilities of the transferor." Arthur Elevator Co. v. Grove, 236 N.W. 2d 383, 391 (Iowa 1975).
2. There are four exceptions to this general rule. "By virtue of those exceptions, a purchasing company may be liable for the debts and liabilities of the selling corporation if any of four circumstances exist: (a) there is an agreement to assume such debts or liabilities; (b) there is a consolidation of the two corporations; (c) the purchasing corporation is a mere continuation of the selling corporation; or (d) the transaction was fraudulent in fact." Delapp v. Xtraman, Inc., 417 N.W.2d 219, 220 (Iowa 1987).

iv. Enterprise Liability
1. The Iowa Supreme Court rejected enterprise, alternative, and market share liability where plaintiff sued 25 drug companies that allegedly produced a drug (DES) ingested by the plaintiff's mother during pregnancy that caused cancer in the daughter. Mulcahy v. Eli Lilly & Co., 386 N.W.2d 67 (Iowa 1986).

e. Damages

i. The court adopted the Restatement (Second) of Torts § 402A that states the injured party may recover damages for property damage and personal injury under strict liability theory. Hawkeye-Security Ins. Co. v. Ford Motor Co., 174 N.W. 2d 672, 684 (Iowa 1970).

ii. A "purely economic loss" by a merchant-plaintiff is not recoverable under strict liability principles. Van Wyk v. Norden Laboratories, Inc., 345 N.W.2d 81, 88 (Iowa 1984).

f. Crashworthiness/Enhanced Injury

i. "Another theory of design defect which has been accepted by various jurisdictions is the doctrine of crashworthiness, or liability imposed on manufacturers for defects which only enhance injuries rather than cause them. Crashworthy or second collision cases, impugning product design, require, in addition to proof of product defect, three additional elements. These are: (1) proof of an alternative safer design, practicable under the circumstances; (2) what injuries would have resulted had the alternative safer design been used; and (3) the extent of enhanced injuries attributable to the defective design." Wernimont v. International Harvester Corp., 309 N.W.2d 137, 140 (Iowa App. 1981).

VIII. Medical Treatment Torts

a. Failure to Obtain Informed Consent

i. The elements of an informed consent case are:
1. "The existence of a material risk unknown to the patient;

2. A failure to disclose that risk on the part of the physician;
3. Disclosure of the risk would have led a reasonable patient in plaintiff's position to reject the medical procedure or choose a different course of treatment;
4. Injury." Pauscher v. Iowa Methodist Medical Center, 408 N.W.2d 355, 360 (Iowa 1987).

ii. I.C.A. § 147.137 – "(1) A consent in writing to any medical or surgical procedure or course of procedures in patient care which meets the requirements of this section shall create a presumption that informed consent was given. A consent in writing meets the requirements of this section if it:"
    1. "(1) Sets forth in general terms the nature and purpose of the procedure or procedures, together with the known risks, if any, of death, brain damage, quadriplegia, paraplegia, the loss or loss of function of any organ or limb, or disfiguring scars associated with such procedure or procedures, with the probability of each such risk if reasonably determinable."
    2. "(2) Acknowledges that the disclosure of that information has been made and that all questions asked about the procedure or procedures have been answered in a satisfactory manner."
    3. "(3) Is signed by the patient for whom the procedure is to be performed, or if the patient for any reason lacks legal capacity to consent, is signed by a person who has legal authority to consent on behalf of that patient in those circumstances."

iii. Patient consented to surgery, fusion of one vertebra, but the doctor fused together two vertebra. Patient claims she was not informed of the risks involved with this treatment. Here, the Court rejected battery as a theory of recovery. "Where a doctor obtains consent of the patient to perform one type of treatment and subsequently performs a substantially different treatment for which consent was not obtained, there is a clear case of battery."

"However, when an undisclosed potential complication results, the occurrence of which was not an integral part of the treatment procedure but merely a known risk, the courts are divided on the issue of whether this should be deemed to be a battery or negligence… Although this is a close question, either prong of which is supportable by authority, the trend appears to be towards categorizing failure to obtain informed consent as negligence. That this result now appears with growing frequency is of more than academic interest; it reflects an appreciation of the several significant consequences of favoring negligence over a battery theory... Most jurisdictions have permitted a doctor in an informed consent action to interpose a defense that the disclosure he omitted

to make was not required within his medical community. However, expert opinion as to community standard is not required in a battery count, in which the patient must merely prove failure to give informed consent and a mere touching absent consent. Moreover a doctor could be held liable for punitive damages under a battery count… Additionally, in some jurisdictions the patient has a longer statute of limitations if he sues in negligence." Perin v. Hayne, 210 N.W.2d 609, 617-618 (Iowa 1973).

b. Medical Malpractice

i. Iowa uses a general standard rule instead of a locality rule. A physician is to act "with such reasonable care and skill as is exercised by the ordinary physician of good standing under like circumstances." The locality in question is merely one circumstance, not an absolute limit upon the skill required. Speed v. State, 240 N.W.2d 901, 908 (Iowa 1976).

ii. Expert testimony is unnecessary for common medical procedures such as inserting a needle into a vein. Welte v. Bello, 482 N.W.2d 437, 440 (Iowa 1992).

iii. I.C.A. § 668.11 Disclosure of expert witnesses in liability cases involving licensed professionals.

1. "(1) A party in a professional liability case brought against a licensed professional pursuant to this chapter who intends to call an expert witness of their own selection, shall certify to the court and all other parties the expert's name, qualifications and the purpose for calling the expert within the following time period:"
    a. "(a) The plaintiff within one hundred eighty days of the defendant's answer unless the court for good cause not ex parte extends the time of disclosure."
    b. "(b) The defendant within ninety days of plaintiff's certification."
2. "(2) If a party fails to disclose an expert pursuant to subsection 1 or does not make the expert available for discovery, the expert shall be prohibited from testifying in the action unless leave for the expert's testimony is given by the court for good cause shown."
3. "(3) This section does not apply to court appointed experts or to rebuttal experts called with the approval of the court."

iv. A loss-of-chance claim (patient died when doctor refused to attempt CPR) is actionable in a medical malpractice case. Wendland v. Sparks, 574 N.W.2d 327, 332 (Iowa 1998).

v. Although labeled "medical malpractice" actions, our Supreme Court took express time to recent reiterate that these actions, claiming a professional has failed to meet the applicable standard of care, are essentiall negligence causes of action. Asher v. Ob-Gyn Specialists, P.C., 2014 Iowa Sup. LEXIS 49 (Iowa May 9,

2014). The Court makes it clear that the negligence standards will apply across the board.

c. Damages

i. I.C.A. § 147.136 Scope of recovery

1. "In an action for damages for personal injury against a physician and surgeon, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor, or nurse licensed to practice that profession in this state, or against a hospital licensed for operation in this state, based on the alleged negligence of the practitioner in the practice of the profession or occupation, or upon the alleged negligence of the hospital in patient care, in which liability is admitted or established, the damages awarded shall not include actual economic losses incurred or to be incurred in the future by the claimant by reason of the personal injury, including but not limited to, the cost of reasonable and necessary medical care, rehabilitation services, and custodial care, and the loss of services and loss of earned income, to the extent that those losses are replaced or are indemnified by insurance, or by governmental, employment, or service benefit programs or from any other source except the assets of the claimant or of the members of the claimant's immediate family."

IX. Invasion of Privacy

a. Iowa recognizes four kinds of invasion of privacy.

i. Intentional intrusion, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, if the intrusion would be "highly offensive" to a reasonable person. upon another's seclusion or solitude, or into his private affairs. Koeppel v. Spears, 2011 Iowa Sup. LEXIS 106 (Dec. 23, 2011).

ii. Public disclosure of private matters that would be embarrassing and objectionable to a reasonable person of ordinary sensibilities. Howard v. Des Moines Register & Tribune Co., 283 N.W.2d 289 (Iowa 1979).

1. Consider the tort of outrageous conduct as a companion allegation when pleading public disclosure of embarrassing facts.

iii. Public exposure in a false light that is objectionable to a reasonable person of ordinary sensibilities. Winegard v. Larsen, 260 N.W.2d 816 (Iowa 1977).

iv. Appropriation of another's identity by the use of his likeness or name for one's own advantage. Winegard v. Larsen, 260 N.W.2d 816 (Iowa 1977).

1. Also to be considered is unreasonable and serious interference with a persons' interest in not having his affairs known to others or his likeness exhibited to the public. Stessman v. American Black Hawk Broadcasting Co., 416 N.W.2d 685 (Iowa 1987).

X. Malicious Prosecution

a. "To prevail on a claim for malicious prosecution, the plaintiff must establish each of the following six elements: (1) previous prosecution; (2) instigation of that prosecution by the defendant; (3) termination of that prosecution by acquittal or discharge of the plaintiff; (4) want of probable cause; (5) malice on the part of defendant for bringing the prosecution; and (6) damage to plaintiff." Wilson v. Hayes, 464 N.W.2d 250, 259 (Iowa 1990).

b. Iowa follows the "special injury" rule, requiring the unusual hardship arising from arrest, seizure of property or other special circumstances. Royce v. Hoening, 423 N.W.2d 198, 201 (Iowa 1988).

c. "A finding of an improper purpose must be supported by evidence independent of the evidence establishing a want of probable cause. In other words, in cases of malicious prosecution against attorneys an improper purpose may not be presumed from a want of probable cause." Wilson v. Hayes, 464 N.W. 2d 250, 262 (Iowa 1990).

XI. Abuse of Process

a. "The essence of the tort is an attempt by one litigant to 'extort' from another, by some unlawful means, a collateral advantage not properly included in the legal process itself." Royce v. Hoening, 423 N.W.2d 198, 202 (Iowa 1988).

b. Restatement (Second) of Torts § 682 (1977): "One who uses a legal process, whether criminal or civil, against another to accomplish a purpose for which it is not designed, is subject to liability to the other for harm caused by the abuse of process."

XII. Defamation

a. Elements

i. The elements of written (libel) or oral (slander) defamation are:
   1. Defamatory language;
   2. "Of or concerning" the plaintiff;
   3. Publication thereof by defendant to a third person; and
   4. Damage to plaintiff's reputation.

ii. If the defamation involves a matter of public concern the plaintiff must also prove:
   1. Falsity of the defamatory language; and
   2. Fault on the part of the defendant.

b. Libel

i. Libel is defined as "a malicious publication expressed in printing or writing . . . tending to injure the reputation of another person or to expose [the person] to public hatred, contempt, or ridicule, or to injure [the person] in the maintenance of [the person's] business." Vinson v. Linn Marr Community Sch. Dist., 360 N.W.2d 108, 115 (Iowa 1984).

ii. Certain statements are libelous per se, which means "they are actionable in and of themselves without proof of malice, falsity or damage. In actions based on language not libelous per se, all of these elements must be proved . . . before recovery can be had, but when a statement is libelous per se they are presumed from the nature of the language used." Vinson v. Linn-Mar Community School Dist., 360 N.W.2d 108, 115-116 (Iowa 1984).

1. Although statements that are libelous per se are actionable without proof damage, recovery is limited to "those damages which were a natural and probable consequence of the original defamation for its reputation or republication." Brown v. First Natl. Bank, 193 N.W.2d 547, 555 (Iowa 1972).

iii. Libelous statements which, while appearing innocent, are capable of bearing a defamatory meaning when certain facts extrinsic to the publication are known are libel per quod. When a publication is deemed libelous per quod, the plaintiff must plead and prove malice, falsity, and actual damage. Vojak v. Jensen, 161 N.W.2d 100, 104 (Iowa 1968).

1. Malice must be established by clear and convincing proof. It can be shown by proving knowledge of falsity or reckless disregard for the truth. Johnson v. Nickerson, 542 N.W.2d 506, 512 (Iowa 1996).

c. Slander

i. There are only four categories of slander that are considered actionable per se, without proof of falsity, malice, or damages: (1) charge of an indictable crime; (2) loathsome disease; (3) incompetence in occupation; and (4) unchastity. Barreca v. Nickolas, 683 N.W.2d 111, 116 (Iowa 2004).

1. Policewoman successfully sued defendant in slander per se case because defendant's doctored photo depicting policewoman in front of squad car with exposed breasts was an "attack on her integrity and moral character." Kiesau v. Bantz, 686 N.W.2d 164, 178 (Iowa 2004).

ii. All other types of slander are slander per quod, and require proof of falsity, malice, and actual damage. Vinson v. Linn Mar Comm. Sch. Dist., 360 N.W.2d 108, 116 (Iowa 1984).

d. Defamation by Implication

i. Defamation by implication arises, not from what is stated, but from what is implied when a defendant either: (1) juxtaposes a series of facts so as to imply a defamatory connection between them, or (2) creates a defamatory implication by omitting facts, such that he may be held responsible for the defamatory implication, unless it qualifies as an opinion, even though the particular facts are correct. Stevens v. Iowa Newspapers, Inc., 728 N.W.2d 823, 827 (Iowa 2007).

e. Defenses

i. Truth

1. It is not necessary to establish the literal truth of the precise statement made. "Slight inaccuracies of expression are immaterial provided the defamatory charge is true in substance." If an allegedly defamatory statement is substantially true, it provides an absolute defense to an action for defamation. Hovey v. Iowa State Daily Publication Bd., Inc., 372 N.W.2d 253, 255-256 (Iowa 1985).

ii. Privilege

1. "Privileged communications are divided into two main general classes, namely: (1) those that are absolutely privileged, and (2) those that are qualifiedly or conditionally privileged." Mills v. Denny, 63 N.W.2d 222, 224 (Iowa 1954).
2. "A qualified privilege applies to statements without regard to whether they are defamatory per se when they are made on an appropriate occasion in good faith on a subject in which the communicator and addressee have a shared interest, right or duty." "The privilege protects only statements made without actual malice. Thus a publication loses its character as privileged and is actionable on proof of actual malice." Vinson v. Linn-Mar Community School Dist., 360 N.W.2d 108, 116 (Iowa 1984).
3. When a communication has been made with actual malice, an absolute privilege affords a complete defense.

iii. Public Officials and Figures

1. A public official may not recover damages for a defamatory falsehood relating to his public conduct without first proving that the statement was made with actual malice. Johnson v. Nickerson, 542 N.W.2d 506, 510 (Iowa 1996) (citing New York Times Co. v. Sullivan, 376 U.S. 254 (1964)).
    a. This protection has been expanded to include public figures as well as public officials. See Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967).

iv. Media Defendant

1. In Jones v. Palmer Communications, Inc., 440 N.W.2d 884, 889 (Iowa 1989), the Iowa Supreme Court held that in a libel action by a private plaintiff against a media defendant, the plaintiff must establish by a preponderance of the evidence that the media defendant negligently breached a professional standard of care in order to recover actual damages.

v. Mitigation of Damages
    1. Defendant may mitigate damages by proving mitigating circumstances such as;
        a. A bad reputation of the plaintiff, where a plaintiff's reputation is related to the defamation**;**
        b. The plaintiff provoked the defendant into making the statement;
        c. The defendant relied on the opinion of others in making the statement; and
        d. A good faith belief in the veracity of the statement.

vi. Retraction
    1. I.C.A. §§ 659.2-.5 provide retraction rules for the press and broadcasters.
    2. I.C.A. § 659.2 limits plaintiffs to actual damages for statements published as the result of misinformation or mistake.
    3. I.C.A. § 659.3 states a retraction must be published within two weeks of its request.

XIII. Nuisance

a. Statutory

i. I.C.A. § 657.1 codifies what constitutes a nuisance and was amended in 2010 and now states:
    1. "(1) Whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere unreasonably with the comfortable enjoyment of life or property, is a nuisance, and a civil action by ordinary proceedings may be brought to enjoin and abate the nuisance and to recover damages sustained on account of the nuisance. A petition filed under this subsection shall include the legal description of the real property upon which the nuisance is located unless the nuisance is not situated on or confined to a parcel of real property or is portable or capable of being removed from the real property."

b. Private

i. "A private nuisance is "an actionable interference with a person's interest in the private use and enjoyment of the person's land." Parties must use their own property in such a manner that they will not unreasonably interfere with or disturb their neighbor's reasonable use and enjoyment of the neighbor's property." Perkins v. Madison County Livestock & Fair Ass'n, 613 N.W.2d 264, 271 (Iowa 2000).

c. Public

i. A public nuisance is unlawful or antisocial conduct that in some way injures a substantial number of people. The test to discover whether granting injunctive relief would be appropriate is whether the nuisance would cause physical discomfort or injury to a person of ordinary sensibilities. Helmkanp v. Clark Ready Mix Co., 214 N.W.2d 126, 130 (Iowa 1974).

ii. "The appropriateness of injunction against tort depends on a comparative appraisal of all of the factors in the case, including the following primary factors: (1) The character of the interest to be protected; (2) the relative adequacy to the plaintiff of injunction and of other remedies; (3) plaintiff's delay in bringing suit; (4) plaintiff's misconduct; (5) the relative hardship likely to result to defendant if injunction is granted and to plaintiff if it is denied; (6) the interests of third persons and of the public; and (7) the practicability of framing and enforcing the order or judgment. Helmkamp v. Clark Ready Mix Co., 214 N.W.2d 126, 130 (Iowa 1974).

iii. The appropriateness of an interlocutory injunction against a tort is determined in the light of the factors listed in Subsection (1), as presented prior to final hearing, but depends primarily upon the following special factors:

1. The extent of the threat of irreparable harm to the plaintiff if the interlocutory injunction is not granted;
2. The consequences that the interlocutory relief may have upon the defendant;
3. The probability that the plaintiff will succeed on the merits; and
4. The public interest.

d. Per Se

i. "A nuisance per se is a structure or activity which is a nuisance at all times and under any circumstances, regardless of location or surroundings. Proof of the act or the existence of the structure establishes the nuisance as a matter of law." Bader v. Iowa Metropolitan Sewer Co., 178 N.W.2d 305, 306-307 (Iowa 1970).

e. Per Accidens

i. A nuisance per accidens is that which "becomes a nuisance by reason of surrounding circumstances." Sound Storm Enterprises, Inc. v. Keefe, 209 N.W.2d 560, 567 (Iowa 1973).

XIV. Business Torts

a. Interference with Contractual Relations

i. "The elements of this tort are: (1) A prospective contractual or business relationship; (2) the defendant knew of the prospective relationship; (3) the defendant intentionally and improperly interfered with the relationship; (4) the defendant's interference caused the relationship to fail to materialize; and (5) the amount of resulting damages." Blumenthal Inv. Trusts v. City of West Des Moines, 636 N.W.2d 255, 269 (Iowa 2001).

ii. Justification is a defense to interference with contractual relations. When deciding whether a defendant's conduct was improper you should consider the following factors: (1) The nature of the actor's conduct; (2) the actor's motive; (3) The interests of the other with which the actor's conduct interferes; (4) The interests sought to be advanced by the actor; (5) The social interests in protecting the freedom of action of the actor and the contractual interests of the other; (6) The proximity or remoteness of the actor's conduct to the interference; and (7) The relation between the parties." Kern v. Palmer College of Chiropractic, 757 N.W.2d 651, 662 (Iowa 2008).

b. Interference with Prospective Business Advantage

i. The elements of this tort are adopted from the Restatement (Second) of Torts § 766A. The elements are: (1) An act by the defendant; (2) intent to injure or destroy a prospective business advantage, by the acts performed; (3) actual interference caused by defendant's act(s); and (4) resulting injury and damage." Farmers Co-op. Elevator, Inc., Duncombe v. State Bank, 235 N.W.2d 674, 681 (Iowa 1975).

XV. Dram Shop / Liquor Liability

a. Dram Shop Act

i. Iowa's dram shop law, I.C.A. § 123.92, provides the exclusive right of action for injured parties against liquor licensees. Summerhays v. Clark, 509 N.W.2d 748, 750 (Iowa 1993).

ii. Liability under the Iowa Dram Shop Act is limited to licensees and permittees. Summerhays, 509 N.W.2d at 750. A licensee or permittee is a person who has been issued written authorization by the Alcoholic Beverage Division of the Iowa Department of Commerce for the manufacture and/or sale of alcoholic liquors, wines, or beers. I.C.A. § 123.3(14) and (24).

1. The dram shop act does not preempt common law causes of action against defendants who are not classified as licensees or permittees. Bauer v. Dann, 428 N.W.2d 658, 660–661 (Iowa 1988). Additionally, other provisions of the Iowa Code address the issue of the civil liability of a nonlicensee or nonpermittee. These individuals, typically referred to as "social hosts," are exempt from civil liability for furnishing alcoholic beverages which cause or contribute to an adult's intoxication. I.C.A. § 123.49(1)(a). However, this section does not shield social hosts from liability resulting from dispensing intoxicating liquors to a minor. Nutting v. Zieser, 482 N.W.2d 424, 425 (Iowa 1992).

iii. I.C.A. § 123.92(1).
   1. "(1)(a) Any person who is injured in person or property or means of support by an intoxicated person or resulting from the intoxication of a person, has a right of action for all damages actually sustained, severally or jointly, against any licensee or permittee, whether or not the license or permit was issued by the division or by the licensing authority of any other state, who sold and served any beer, wine, or intoxicating liquor to the intoxicated person when the licensee or permittee knew or should have known the person was intoxicated, or who sold to and served the person to a point where the licensee or permittee knew or should have known the person would become intoxicated."
   2. "(b) If the injury was caused by an intoxicated person, a permittee or licensee may establish as an affirmative defense that the intoxication did not contribute to the injurious action of the person."

iv. A plaintiff must prove the defendant or the defendant's agent had "actual knowledge or that a reasonably observant person under the same or similar circumstances would have had knowledge" of the patron's intoxication. Hobbiebrunken v. G&S Enterprises, Inc., 470 N.W.2d 19, 21 (Iowa 1991).

v. A person is intoxicated when one or more of the following are true: (1) The person's reason or mental ability has been affected; (2) the person's judgment is impaired; (3) the person's emotions are visibly excited; and (4) the person has, to any extent, lost control of bodily actions or motions. Smith v. Shagnasty's Inc., 688 N.W.2d 67, 72 (Iowa 2004).

vi. Convenience stores and grocery stores which sell beer, wine, or liquor for off-premises consumption are not liable under the Dram Shop Act. Eddy v. Casey's General Store, Inc., 485 N.W.2d 633 (Iowa 1992).

1. "The term 'service' within the act is synonymous with immediate consumption on the seller's premises but it is not synonymous with assistance in a grocery or convenience store that sells alcohol for off-premises consumption." Paul v. Ron Moore Oil Co. 487 N.W.2d 337, 338 (Iowa 1992).

vii. Defenses
   1. Comparative fault is not a defense to dram shop actions. Jamieson v. Harrison, 532, N.W.2d 779, 781 (Iowa 1995).
   2. Assumption of risk is a complete defense. Gremmel v. Junnie's Lounge, Ltd. 397 N.W.2d 717, 720 (Iowa 1986).
   3. The fireman's rule precludes professional rescuers from recovering for injures sustained while acting as in the commission of their job if the hazard ultimately responsible for causing the injury is inherently within the field of those dangers which are unique to and generally associated with the particular rescue activity. Chapman v. Craig, 431 N.W.2d 770, 771 (Iowa 1988).
   4. Complicity on the part of an injured party, sufficient to create an absolute bar to recovery, exists when the injured party ahs encouraged or voluntarily participated to a material and substantial extent in drinking of the alcoholic beverages by the intoxicated person who causes the injuries.
      a. In order for the participation to constitute complicity, it must be more than passive. To establish complicity, it is not enough to show that the individual is a mere drinking companion of the intoxicated person. Cox v. Rolling Acres Golf Course Corp., 532 N.W.2d 761, 763–764 (Iowa 1995).

b. Other Alcohol Related

i. I.C.A. § 123.49(1)(a) returns Iowa to the position that it is the consumption, not the serving of alcohol, that is the proximate cause of the injury of a third party. It states:
   1. "(1)A person shall not sell, dispense, or give to an intoxicated person, or one simulating intoxication, any alcoholic liquor, wine, or beer."
      a. "(a) A person other than a person required to hold a license or permit under this chapter who dispenses or gives an alcoholic beverage, wine, or beer in violation of this subsection is not civilly liable to an injured person or the estate of a person for injuries inflicted on that person as a result of intoxication by the consumer of the alcoholic beverage, wine, or beer."

ii. Service of alcohol to those under the legal age is codified at I.C.A. § 123.47(1) "A person shall not sell, give, or otherwise supply alcoholic liquor, wine, or beer to any person knowing or having reasonable cause to believe that person to be under legal age."

XVI. Tort Claims Against State and Municipal Governments

a. Generally

i. Iowa Code chapter 669 (the State Torts Claim Act) and chapter 670 (the Municipal Torts Claim Act) mostly remove Iowa's common law doctrine of governmental immunity.

b. Iowa Tort Claims Act

i. I.C.A. § 669.2 defines "claim" as
   1. "(a) Any claim against the state of Iowa for money only, on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the state while acting within the scope of the employee's office or employment, under circumstances where the state, if a private person, would be liable to the claimant for such damage, loss, injury, or death."
   2. "(b) Any claim against an employee of the state for money only, on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the state while acting within the scope of the employee's office or employment."

ii. A state tort claim must be filed in writing within two years after the claim accrued. I.C.A. § 669.13.1,

iii. I.C.A. § 669.5.1 codifies when a suit may be permitted. "(1) A suit shall not be permitted for a claim under this chapter unless the attorney general has made final disposition of the claim. However, if the attorney general does not make final disposition of a claim within six months after the claim is made in writing to the director of the department of management, the claimant may, by notice in writing, withdraw the claim from consideration and begin suit under this chapter. Disposition of or offer to settle any claim made under this chapter shall not be competent evidence of liability or amount of damages in any suit under this chapter."

iv. Exceptions to Liability
   1. Can be found at I.C.A. §§ 669.14 and 668.10.
   2. Read these two sections carefully. The exceptions are specific and numerous!

c. Government Subdivisions Liability

i. Local governments are also subject to liability for their torts and those of their agents. I.C.A. § 670.2

1. "Except as otherwise provided in this chapter, every municipality is subject to liability for its torts and those of its officers and employees, acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function.

   'For the purposes of this chapter, employee includes a person who performs services for a municipality whether or not the person is compensated for the services, unless the services are performed only as an incident to the person's attendance at a municipality function.

   'A person who performs services for a municipality or an agency or subdivision of a municipality and who does not receive compensation is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit. For purposes of this section, 'compensation' does not include payments to reimburse a person for expenses."

ii. I.C.A. § 670.1(4) defines a tort as:
   1. "(4) 'Tort' means every civil wrong which results in wrongful death or injury to person or injury to property or injury to personal or property rights and includes but is not restricted to actions based upon negligence; error or omission; nuisance; breach of duty, whether statutory or other duty or denial or impairment of any right under any constitutional provision, statute or rule of law."

iii. Exceptions to governmental subdivision liability may be found at I.C.A. § 670.4.

XVII. Comparative Fault

a. Comparative Fault Act Generally

i. In 1984, the Iowa Legislature passed a Comparative Fault Act, closely modeled after the Uniform Comparative Fault Act. The statute is still capable of much judicial embellishment and questions remain.

b. 668.1 Fault Defined

i. "(1) As used in this chapter, 'fault' means one or more acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach or warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant

otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages.

ii. (2) The legal requirements of cause in fact and proximate cause apply both to fault as the basis for liability and to contributory fault."

iii. An affirmative defense must be pleaded and then proven.173 N.W.2d 549, 552 (Iowa 1970).

iv. The Act applies even in cases where the plaintiff is not negligent if the fault of more than one party is involved. Johnson v. Junkmann, 395 N.W.2d 862 (Iowa 1986).

v. The Act does not apply to claims of fraud, Tratchel v. Essex Group Inc., 452 N.W.2d 171 (Iowa 1990).

vi. "The principles of comparative fault do not apply to intentional torts." Reilly v. Anderson, 727 N.W.2d 102, 112 (Iowa 2006).

vii. "Punitive damages lie outside the sweep of the comparative fault Act." Reimers v. Honeywell, Inc. 457 N.W.2d 336, 339 (Iowa 1990).

viii. The Act does not apply to claims brought under the Dram Shop Act. Slager v. HWA Corp., 435 N.W.2d 349 (Iowa 1989).

ix. Because there is no duty under Iowa law to wear a motorcycle helmet, such a failure does not constitute fault. Meyer v. City of Des Moines, 475 N.W.2d 181 (Iowa 1991).

x. The Act does not apply to purely contractual claims involving economic loss in case where house purchasers sued sellers for breach of express warranty. Flom v. Stahly, N.W.2d 135 (Iowa 1997).

xi. In DeMoss v. Hamilton, 644 N.W.2d 302 (Iowa 2002), after decedent suffered a heart attack in 1994 he failed to follow the instructions regarding diet and activity given him by his doctor. He suffered another heart attack in 1996 and died from its effects, and due to the negligence of another doctor, it was not proper to give a comparative fault instruction relating to the decedent's conduct after the first heart attack.

c. 668.2 Party Defined

i. "As used in this chapter, unless otherwise required, "party" means any of the following:

1. A claimant.
2. A person named as defendant.
3. A person who has been released pursuant to section 668.7.
4. A third-party defendant."

d. 668.3 Contributory Fault

i. "(1)(a) Contributory fault shall not bar recovery in an action by a claimant to recover damages for fault resulting in death or in injury to person or property unless the claimant bears a greater percentage of fault than the combined percentage of fault attributed to the defendants, third-party defendants and persons who have been

released pursuant to section 668.7, but any damages allowed shall be diminished in proportion to the amount of fault attributable to the claimant."

1. "(b) Contributory fault shall not bar recovery in an action by a claimant to recover damages for loss of services, companionship, society, or consortium, unless the fault attributable to the person whose injury or death provided the basis for the damages is greater in percentage than the combined percentage of fault attributable to the defendants, third-party defendants, and persons who have been released pursuant to section 668.7, but any damages allowed shall be diminished in proportion to the amount of fault attributable to the person whose injury or death provided the basis for the damages."

ii. "(2) In the trial of a claim involving the fault of more than one party to the claim, including third-party defendants and persons who have been released pursuant to section 668.7, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating all of the following:"

1. "(a) The amount of damages each claimant will be entitled to recover if contributory fault is disregarded."
2. "(b) The percentage of the total fault allocated to each claimant, defendant, third-party defendant, person who has been released from liability under section 668.7, and injured or deceased person whose injury or death provides a basis for a claim to recover damages for loss of consortium, services, companionship, or society. For this purpose the court may determine that two or more persons are to be treated as a single party."

iii. "(3) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party and the extent of the causal relation between the conduct and the damages claimed."

iv. "(4) The court shall determine the amount of damages payable to each claimant by each other party, if any, in accordance with the findings of the court or jury."

v. "(5) If the claim is tried to a jury, the court shall give instructions and permit evidence and argument with respect to the effects of the answers to be returned to the interrogatories submitted under this section."

vi. "(6) In an action brought under this chapter and tried to a jury, the court shall not discharge the jury until the court has determined that the verdict or verdicts are consistent with the total damages and percentages of fault, and if inconsistencies exist the court shall do all of the following:"

1. "(a) Inform the jury of the inconsistencies."
2. "(b) Order the jury to resume deliberations to correct the inconsistencies."
3. "(c) Instruct the jury that it is at liberty to change any portion or portions of the verdicts to correct the inconsistencies."

vii. "(7) When a final judgment or award is entered, any party may petition the court for a determination of the appropriate payment method of such judgment or award. If so petitioned the court may order that the payment method for all or part of the judgment or award be by structured, periodic, or other nonlump-sum payments. However, the court shall not order a structured, periodic, or other nonlump-sum payment method if it finds that any of the following are true:"

1. "(a) The payment method would be inequitable."
2. "(b) The payment method provides insufficient guarantees of future collectibility of the judgment or award."
3. "(c) Payments made under the payment method could be subject to other claims, past or future, against the defendant or the defendant's insurer."

viii. "(8) In an action brought pursuant to this chapter the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings on each specific item of requested or awarded damages indicating that portion of the judgment or decree awarded for past damages and that portion of the judgment or decree awarded for future damages. All awards of future damages shall be calculated according to the method set forth in section 624.18."

ix. Discussion of §§ 668.2 and 668.3

This is a modified comparative fault provision. A party (claimant) seeking recovery receives his damages proportionately reduced by the percentage of fault attributed to him. But if the claimant's fault is 51% or greater recovery is totally barred. A finding of 50% responsibility results in a 50% reduction in recovery. Note that the plaintiff's negligence is measured against the aggregate fault of the other parties ("combined percentage").

Only those listed in § 668.2 as a "party" receive percentages of fault. A "phantom" defendant, one who may be partially or completely responsible for a claimant's damages but not named as a defendant, brought in as a third-party defendant, or released, is not to be given a percentage of responsibility. This could be a hit and run driver, or a party who cannot be brought into the case because it is immune. Baldwin v. City of Waterloo, 372 N.W.2d 486 (Iowa 1985).

The statute was amended in 1997 to allow for consideration of the fault of a person whose injury or death provided the basis for

a loss of consortium claim. § 668.3(1)(b). Thus, a child or spouse who sought recovery for loss of consortium or services of a parent/spouse would have any fault of the parent/spouse imputed to their claim for comparative purposes.

x. Even if named, one is not given a percentage of responsibility if no relief is sought against that party. Peterson v. Pittman, 391 N.W.2d 235 (Iowa 1986).

xi. A party sued and then dismissed without prejudice is not a "person released" within § 668.7. Dumont v. Keota Farmers Cooperative, 447 N.W.2d 402 (Iowa App. 1989).

xii. A person names as a third-party defendant by one defendant with whom the third-party defendant settles does not get a percentage unless other defendants in the case have likewise filed third-party actions against that person. Fell v. Kewanee Farm Equipment Co., 457 N.W.2d 911 (Iowa 1990).

xiii. "Acts of God" are not given percentages of fault, and are only relevant if they constitute the sole proximate cause of injury. Lanz v. Pearson, 475 N.W.2d 601 (Iowa 1991).

xiv. The Court has held that third-party defendants dismissed at the close of the evidence on the ground they owed no duty to the third-party plaintiff are not to be given percentages of responsibility because they were not parties within § 667.2. Payne Plumbing & Heating Co., v. Bob McKiness Excavating & Grading, Inc., 382 N.W.2d 156 (Iowa 1986).

xv. In Grabill v. Adams county Fair and Racing Association, 666 N.W.2d 592 (Iowa 2003), loose fireworks exploded in a pit area, which area plaintiff-husband had signed a release to enter. Discharge of fireworks was not an ultra-hazardous activity, so plaintiff-husband was barred by language of release. However, plaintiff-wife's claim for loss of consortium was not barred, as she did not sign release and § 668.3(1)(b) did not subject her claim to release terms.

e. 668.4 Joint and Several Liability

i. "In actions brought under this chapter, the rule of joint and several liability shall not apply to defendants who are found to bear less than fifty percent of the total fault assigned to all parties. However, a defendant found to bear fifty percent or more of fault shall only be jointly and severally liable for economic damages and not for any non-economic damage awards."

ii. A defendant found to have 50% responsibility can be jointly liable. Distinguish this rule from the rule that plaintiff is completely barred from recovery if plaintiff is 51% responsible. The 1997 amendment added the provision that any joint liability imposed would attach to economic damages only. If joint liability does not apply, the liability of a party is individual only.

iii. In Reilly v. Anderson, 727 N.W.2d 102 (Iowa 2006), three people were in Jeep. Front seat passenger held steering wheel while driver took a hit off "a marijuana water bong," as vehicle was traveling 50-55 mph. Control of vehicle was lost and the crash injured plaintiff, the back seat passenger. Jury allocated 60% liability to driver, 20% to the front seat passenger, and 20% to plaintiff. Plaintiff sought to have joint liability applied to front seat passenger for his damages.

The Court held that: (1) the driver and front-seat passenger were acting in concert, in that they provided assistance to each other and this was a substantial factor in producing the accident; (2) this concerted activity made them responsible for the consequences of the other's act; (3) the front seat passenger thus was jointly liable for driver's 60% fault, as well as his own 20%; (4) provision in § 668.4 that joint liability only attaches when defendant is 50% or more at fault has no application to case of joint liability for concerted actors; (5) nor does provision in § 668.4 that any joint liability imposed attaches only to economic damages have application to case of joint liability for concerted actors; (6) thus, the front-seat passenger was jointly liable for 80% of plaintiff's damages, both economic and non-economic.

f. 668.5 Right of Contribution

i. "(1) A right of contribution exists between or among two or more persons who are liable upon the same indivisible claim for the same injury, death, or harm, whether or not judgment has been recovered against all or any of them. It may be enforced either in the original action or by a separate action brought for that purpose. The basis for contribution is each person's equitable share of the obligations, including the share of fault of a claimant, as determined in accordance with section 668.3."

ii. "(2) Contribution is available to a person who enters into a settlement with the claimant only if the liability of the person against whom contribution is sought has been extinguished and only to the extent that the amount paid in settlement was reasonable."

iii. "(3) Contractual or statutory rights of persons not enumerated in section 668.2 for subrogation for losses recovered in proceedings pursuant to this chapter shall not exceed that portion of the judgment or verdict specifically related to such losses, as shown by the itemization of the judgment or verdict returned under section 668.3, subsection 8, and according to the findings made pursuant to section 668.14, subsection 3, and such contractual or statutory subrogated persons shall be responsible for a pro rata share of the legal and administrative expenses incurred in obtaining the judgment or verdict."

iv. "(4) Subrogation payment restrictions imposed pursuant to subsection 3 apply to settlement recoveries, but only to the extent that the settlement was reasonable."

v. Contribution is now on the basis of comparative fault, not equal shares. In Rees v. Dallas County, 372 N.W.2d 503 (Iowa 1985), the court held that a county defending a negligence action could not obtain contribution from a tavern which allegedly served the plaintiff to the point of intoxication because the tavern had a special defense to the plaintiff's action which precluded a finding of common liability necessary to a contribution claim. While there must be common liability in order for contribution to be awarded, the common liability need not be based on the same legal theory. Allied Mutual Ins. Co. v. State, 473 N.W.2d 24 (Iowa 1991).

vi. However, no contribution can be recovered from a husband for injury to his wife caused by him and a third-party, because there can be no independent claim for loss of consortium by one spouse against the other. McIntosh v. Barr, 397 N.W.2d 516 (Iowa 1986). No contribution can be had between a third-party tortfeasor and plaintiff's employer because the employer's sole liability is under the Workers' Compensation Act. Mermigis v. Servicemaster Industries, Inc., 437 N.W.2d 242 (Iowa 1989). Se also Bellman v. Cedar Falls v. Cedar Falls School District, 617 N.W.2d 11 (Iowa 2000). After a golf card accident at a safety event resulted in the death of a kindergartner, estate received verdict against city; city sought contribution from school district and city. Allocation of fault was upheld as school district was a negligent, proximate cause of accident and city was entitled to contribution from school district.

vii. Unless a defendant can establish that amounts it paid in a settlement were not for punitive damages, it cannot recover contribution (which would be based on comparative fault) from a co-defendant. Reimers v. Honeywell, Inc., 457 N.W.2d 336 (Iowa 1990).

g. 668.6 Enforcement of Contribution

i. "(1) If the percentages of fault of each of the parties to a claim for contribution have been established previously by the court as provided in section 668.3, a party paying more than the party's percentage share of damages may recover judgment for contribution upon motion to the court or in a separate action."

ii. "(2) If the percentages of fault of each of the parties to a claim for contribution have not been established by the court, contribution may be enforced in a separate action, whether or not a judgment has been rendered against either the person seeking contribution or the person from whom contribution is sought."

iii. "(3) If a judgment has been rendered, an action for contribution must be commenced within one year after the judgment becomes final. If a judgment has not been rendered, a claim for contribution is enforceable only upon satisfaction of one of the following sets of conditions:"
    1. "(a) The person bringing the action for contribution must have discharged the liability of the person from whom contribution is sought by payment made within the period of the statute of limitations applicable to the claimant's right of action and must have commenced the action for contribution within one year after the date of that payment."
    2. "(b) The person seeking contribution must have agreed while the action of the claimant was pending to discharge the liability of the person from whom contribution is sought and within one year after the date of the agreement must have discharged that liability and commenced the action for contribution."

h. 668.7 Effect of Release

i. "A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, as determined in section 668.3, subsection 4."

ii. This provision differs from the earlier Iowa rule that settlements are taken into account by deducting the amount of the settlement (pro tanto). The statute requires that the released-settling party be given a percentage of responsibility and the Supreme Court has specifically noted that eh statute requires this approach, called the "proportionate credit" rule in Thomas v. Solberg, 442 N.W.2d 73 (Iowa 1989), even if it results after settlement and verdict are combined, in the plaintiff recovering more than the jury's verdict reflected the claimant's damages were.

iii. A release entered into by a claimant and a person liable discharges that person from all liability but it does not discharge any other persons liable upon the same claim unless it so provides. "Unless it so provide"" means to require the release to include some specific identification of the tortfeasors to be released in order for them to be discharged. Under this rule, a general designation such as "any other person, firm or corporation" would not sufficiently identify the tortfeasor to be discharged. Peak v. Adams, 799 N.W.2d 535, 546 (Iowa 2011).

i. 668.8 Tolling of Statute

i. "The filing of a petition under this chapter tolls the statute of limitations for the commencement of an action against all parties who may be assessed any percentage of fault under this chapter."

j. 668.9 Insurance Practice

i. "It shall be an unfair trade practice, as defined in chapter 507B, if an insurer assigns a percentage of fault to a claimant, for the purpose of reducing a settlement, when there exists no reasonable evidence upon which the assigned percentage of fault could be based. The prohibitions and sanctions of chapter 507B shall apply to violations of this section."

k. 668.10 Governmental Exemptions

i. "(1) In any action brought pursuant to this chapter, the state or a municipality shall not be assigned a percentage of fault for any of the following:"
   1. "(a) The failure to place, erect, or install a stop sign, traffic control device, or other regulatory sign as defined in the uniform manual for traffic control devices adopted pursuant to section 321.252. However, once a regulatory device has been placed, created, or installed, the state or municipality may be assigned a percentage of fault for its failure to maintain the device."
   2. "(b) The failure to remove natural or unnatural accumulations of snow or ice, or to place sand, salt, or other abrasive material on a highway, road, or street if the state or municipality establishes that it has complied with its policy or level of service for snow and ice removal or placing sand, salt, or other abrasive material on its highways, roads, or streets."

ii. "(2) In any action brought pursuant to this chapter, the state shall not be assigned a percentage of fault for contribution unless the party claiming contribution has given the state notice of the claim pursuant to section 669.13."

iii. Other Defenses
   1. Last Clear Chance – This doctrine no longer exists in Iowa. Bokhoven v. Klinker 474 N.W.2d 553 (Iowa 1991).
   2. Assumption of the Risk – This is a defense only pursuant to the Comparative Fault Act § 668.1. In Coker v. Abell-Howe Co., 491 N.W.2d 143 (Iowa 1992), the Court held assumption of the risk cannot be offered as a defense in any case where contributory negligence is a defense under the Comparative Fault Act.
   3. Seat Belt Statute – The failure to wear a seat belt can result in a reduction of plaintiff's recovery, not to exceed 5% of the damages awarded after any reductions for comparative fault, if the defendant can establish that the failure to wear

the seat belt or safety harness contributed to the plaintiff's injuries.

4. Sole Proximate Cause – This defense relieves a defendant of liability if it can establish the plaintiff's or a third party's conduce was the overriding cause of injury. Comparative fault has no application if this is proven.

XVIII. Minors' Claims and Damages

a. Definition of a minor

i. A minor is someone less than 18 years of age. I.C.A. § 599.1.

ii. All minors attention majority by marriage. I.C.A. § 599.1.

iii. Any person less than 18 years of age who is tried, convicted, and sentenced as an adult is deemed to have attained the age of majority for purposes of making decisions and giving consent to medical care and treatment during that persons' incarceration. I.C.A. § 599.1.

b. Who can file a minor's action

i. An action of a minor's legal incapacity to bring an action in his own right, the action must be brought by his guardian if he has one; otherwise, the minor may sue by a next friend (usually a parent). I.R.C.P. 1.210.

ii. If a minor attains legal majority during the pendency of a lawsuit, he must continue the action is his own right. I.R.C.P. 1.225.

c. Defense of a minor

i. No judgment without a defense can be entered against a minor unless a guardian ad litem is appointed to represent the minor. However, a defense can be made by a regular guardian or attorney appearing for a competent party. I.R.C.P. 1.211. Failure to follow this procedure will make a judgment obtained against a minor void. In re Marriage of Payne, 341 N.W.2d 772 (Iowa 1983).

d. Minor's personal injuries

i. A minor child may recover for his own present and future pain and suffering, present and future loss of function of the body, and future lost wages for the time after he attains age 18.

ii. It is the parent, in the parent's own individual capacity, who is entitled to recover for the child's medical expenses up to the time of majority (see below). The minor may only recover for future medical expenses to be incurred after majority, unless the parent assigns the parent's claim to the minor in a timely fashion. Reilly v. Straub, 282 N.W.2d 688 (Iowa 1979).

e. Injury to parents—Loss of consortium

i. A minor can recover for his loss of consortium for injury sustained by his parents. Parental consortium is the right of the child to intangible benefits of companionship, comfort, guidance, affection and aid and the tangible benefits of general usefulness, industry and attention within the home and family, but does not include the

value of tangible contribution or loss of monetary support from the injured parents. Gail v. Clark, 410 N.W.2d 662 (Iowa 1987).

ii. Limitations
    1. A child is not entitled to damages for loss of parental consortium unless the parents' death or injury has caused a significant disruption or diminution of the parent-child relationship.
    2. Damages for loss of parental consortium are limited in time to the shorter of the child's or the parents' normal life expectancy. Iowa Civil Uniform Jury Instruction 200.20.
    3. A child may not recover for loss of a grandparent's consortium. Hutchinson v. Broadlawns Medical Center, 459 N.W.2d 273, 277 (Iowa 1990).

iii. Who brings loss of consortium claim
    1. The injured parent is the property party to bring the action for the minor's loss of consortium. Madison v. Colby, 348 N.W.2d 202 (Iowa 1984).
    2. In the case of a death, the executor or administrator of the decedent's estate is the proper party to bring the child's claim. I.C.A. §§ 633.336 and 613.15.

f. Minor's liability for his own torts

i. In Iowa, the general rule is that a fact-finder must first subjectively determine the capacity of a particular child to perceive and avoid the specific risk involved based on evidence of the child's age, intelligence, and experience, and then must objectively determine how a reasonable child of like capacity would have acted under similar circumstances. Peterson v. Taylor, 316 N.W.2d 869 (Iowa 1982).
    1. Peterson overruled previous rulings by the Iowa Supreme Court that applied the common-law rule of a rebuttable presumption that children under the age of 14 were incapable of contributory negligence and that such presumption was conclusive for children under 7 years of age.

ii. However, courts still have the option to hold as a matter of a law that a child is incapable of negligence if the child is so young or the evidence of incapacity is so overwhelming that reasonable minds could not differ on the issue. Peterson v. Taylor, 316 N.W.2d 869, 873 (Iowa 1982).

g. Parental responsibility for a minor's torts

i. A parent can be liable for injury caused by a minor child at common law by showing that the parent knew or should have known that their child was prone to cause injury in an unusual, intentionally harmful, or other wrongful manner. Van Camp v. McAfoos, 156 N.W.2d 878 (Iowa 1968). In addition, parents can be liable for damages caused by children where the children are

acting as agents for the parents or where the parent's own negligence is the proximate cause of the children's conduct. Smith v. Shaffer, 395 N.W.2d 853 (Iowa 1986).

ii. Absent this showing, a parent's liability is limited to actual damages to persons or property caused by unlawful acts of a child of not more than $2,000 for any one act or not more than $5,000 to the same person for two or more acts. I.C.A. § 613.16.

1. A parent not entitled to legal custody of the minor child is not liable for such damages. I.C.A. § 613.16.
2. For purposes of this type of action, both the parent and child must be named as defendants and the filing of answer by the parents alleviates the need for requiring a guardian ad litem for the child. I.C.A. § 613.16.

h. Minor's claims against his parents

i. The doctrine of absolute parental immunity in torts actions has been abrogated in Iowa. Turner v. Turner, 304 N.W.2d 786.

ii. However, parental immunity still exists for actions involving exercise of parental authority over a child or parental discretion with respect to provision of food, clothing, shelter, education, medical and dental services, and other care. Wagner by Griffith v. Smith, 340 N.W.2d 255, 256 (Iowa 1983).

iii. Parental immunity is an affirmative defense that must be pled. Smith v. Smith, 646 N.W.2d 412, 415 (Iowa 2002).

XIX. Parental Claims and Damages

a. Parents' claims generally

i. A parent or parents may sue for the expense and actual loss of services, companionship, and society resulting from injury to or death of a minor child, and may recover for the expense and actual loss of services, companionship, and society resulting from the death of an adult child. I.C.A. § 613.15A.

b. Medical Expenses

i. A parent may recover for medical expenses incurred or expected to be incurred during the child's minority. I.R.C.P. 1.206; Gookin v. Norris, 261 N.W.2d 692 (Iowa 1978).

ii. Because the parent has the duty of support, the parent has a duty pay past and future medical expenses during the child's minority. Thus, the ordinary two-year statute of limitations applies and will not be tolled due to the minority. Gookin v. Norris, 261 N.W.2d 692 (Iowa 1978).

c. Loss of a Child's Services

i. Loss of services resulting from injury to or death of a minor child consists of the reasonable value of the lost services minus the amount it would have cost to provide for the child's support and maintenance during the period of minority. Wardlow v. City of

Keokuk, 190 N.W.2d 439 (Iowa 1971); Iowa Civil Uniform Jury Instruction 200.29.

ii. The loss of services includes not only the amount the child would have earned but also the economic or financial value of the child's labor at home. Loss of services of a child is to be considered in conjunction with loss of companionship and loss of society.

d. Loss of a Child's Companionship and Society

i. Numerous factor are considered in determining loss of companionship and society, including the child's age, health, strength, intelligence, character, interest, personality, and activities in the household and community.

e. Child's negligence not imputed to parent

i. A parental claim is treated like other consortium claims in the sense that any negligence of the child does not decrease the recovery of the parent. Hence, the negligence of a child is a not a defense to the parent's consortium claim, unless the child's negligence is the sole proximate cause. Lake v. Schaffnit, 406 N.W.2d 437 (Iowa 1987).

f. Emotional Distress and Mental Anguish Disallowed

i. A parent cannot recover for emotional distress or mental anguish which results from the injury to or death of the child. H.L.O. by L.E.O. v. Hossle, 381 N.W.2d 641 (Iowa 1986); Wardlow v. City of Keokuk, 190 N.W.2d 439 (Iowa 1971).

XX. Spousal Claims and Damages

a. Spousal Loss of Support

i. A spouse is entitled to recover for loss of support he or she would have received by for the injury of the spouse. I.C.A. § 613.15. However, there cannot be duplicative damages, so the spouse of an injured party will ordinarily receive lost support only to the extent that lost earnings awarded to an injured party are, indirectly, a source of lost support. DeWall v. Prentice, 224 N.W.2d 428 (Iowa 1974).

1. Because the lost earnings of the injured party would entail the total amount of wage loss, lost support is usually not claimed in non-death cases even though the statute provides for it.

b. Spousal loss of consortium defined

i. Spousal consortium is the fellowship of two married persons and the right of each to the benefit of company, cooperation, affection, and aid of the other in every marital relationship, such as general usefulness, industry, and attention within home and family. It does not include the loss of financial support for the injured spouse or mental anguish over the injury. Gail v. Clark, 410 N.W.2d 662 (Iowa 1987); Iowa Civil Uniform Jury Instruction 200.19.

c. Effect of contributory fault

i. Contributory fault does not bar recovery in an action by a claimant spouse to recover damages for loss or services, companionship, society, or consortium, unless the fault attributable the person whose injury or death provided the basis for the damages is greater in percentage than the combined percentage of fault attributable to the defendants, third-party defendants, and persons who have been released pursuant o I.C.A. § 668.7, but any damages allowed are diminished in proportion to the amount of fault attributable to the person whose injury or death provided the basis of the damages. I.C.A. § 668.3.1.b.

d. Claims by one spouse against another

i. Iowa has abrogated the doctrine of interspousal immunity. Shook v. Crabb, 281 N.W.2d 616 (Iowa 1979).

XXI. Other

a. Survival and Wrongful Death

i. I.C.A. § 611.20 states:

1. "All causes of action shall survive and may be brought notwithstanding the death of the person entitled or liable to the same."

b. Legal Malpractice

i. The elements of a legal malpractice claim are:

1. "The existence of an attorney-client relationship giving rise to a duty;
2. That the attorney, either by an act or a failure to act, violated or breached that duty;
3. That the attorney's breach of duty proximately caused injury to the client; and
4. That the client sustained actual injury, loss, or damage." Burke v. Roberson, 417 N.W.2d 209, 211 (Iowa 1987).

ii. In legal malpractice claims the statute of limitations begins to run at the last possible date when the attorney's negligence becomes irreversible. Neylan v. Moser, 400 N.W.2d 538, 542 (Iowa 1987).

iii. The Supreme Court of Iowa recognizes emotional distress damages in legal malpractice cases. Miranda v. Said, 836 N.W.2d 8 (Iowa 2013). The Court evaluated the nature of the relationship between the parties, concluding there arises a duty to exercise ordinary care to avoid causing emotional harm. Id.

1. In order to recover emotional distress damages, it must be shown that the lawyer is contracted to perform services involving deeply emotional responses in the event of a breach. Id.

iv. In the same Miranda case, the Supreme Court acknowledged that submission of punitive damages are appropriate in legal malpractices cases where the lawyer's conduct demonstrates a willful or reckless disregard for the plaintiff's rights. Id.

c. Slander of Title

i. The elements to a slander of title action are: (1) "An uttering and publication of slanderous words; (2) Falsity of those words; (3) Malice; (4) Special damages to the plaintiffs; and (5) An estate or interest of the plaintiff in the property slandered." Brown v. Nevins, 499 N.W.2d 736, 738 (Iowa 1993).

d. Domesticated Animal Activities

i. I.C.A. § 673.2 codifies: "A person, including a domesticated animal professional, domesticated animal activity sponsor, the owner of the domesticated animal, or a person exhibiting the domesticated animal, is not liable for the damages, injury, or death suffered by a participant or spectator resulting from the inherent risks of a domesticated animal activity."

ii. Except, I.C.A. § 673.2(5), "a domesticated animal activity which causes damages, injury, or death to a spectator who is in a place where a reasonable person who is alert to inherent risks of domestic animal activities would not expect a domesticated animal activity to occur."

XXII. Statutes of Limitations

a. Generally

i. Iowa Code Chap. 614 establishes general time limitations on bringing actions.

ii. Generally, the statute of limitation for a personal injury action in Iowa is two years. I.C.A. § 614.1.2.

1. But see Lemrick v. Grinnell Mutual Reinsurance Co., 263 N.W.2d 714 (Iowa 1978), regarding a claim pursuant to the uninsured motorist provision of an automobile insurance policy. The court held that the claim was governed by the ten-year statute of limitations for a written contract and not a two-year statute of limitations for a tort. Essentially, the court reasoned that the action against the insurance co. was based on the insurance policy (written contract) and not the action of the uninsured motorist's negligence (tort), notwithstanding the proof of which negligence is an essential element of the proof of the claim for such policy benefits.
2. Since the entry of Lemrick, the Supreme Court has consistently recognized that parties to an insurance contract can modify the deadline for bringing a lawsuit. Robinson v. Allied Prop. & Cas. Ins. Co., 816 N.W.2d 398 (Iowa 2012)("Iowa has long recognized the rights of insurers to limit time for claims, irrespective of the legislative imprimatur on such provisions.")
    a. The Supreme Court of Iowa recently extended this time limitation to third-party beneficiaries of the

contract (i.e passengers in a vehicle). Osmic v. Nationwide Agribusiness Ins. Co., 841 N.W.2d 853 (Iowa 2014).

iii. The general rule is that a cause of action accrues when the aggrieved party has a right to institute and maintain a suit. Chrischilles v. Griswold, 150 N.W.2d 94, 100 (Iowa 1967).

b. Discovery Rule

i. The discovery rule holds that the statute of limitation begins to run from the time an injured person discovers or in the exercise of reasonable care should have discovered the wrongful act. Chrischilles v. Griswold, 150 N.W.2d 94 (Iowa 1967). The rule is based on the theory that the statue of limitations should not bar an action by a person who has been excusably unaware of the existence of the cause of action. However, it is knowledge of the facts that would support a cause of action that is important. It is not necessary that the plaintiff know that the facts are actionable. Franzen v. Deere & Company, 377 N.W.2d 660 (Iowa 1985). The discovery rule is used most often in professional negligence cases.

ii. The discovery rule does apply to claims brought under the Iowa Tort Claims Act. Vachon v. State, 514 N.W.2d 442 (Iowa 1994).

c. Exception: Minority or Incapacity

i. Except in medical malpractice actions, all limits extend for minors and the mentally ill for one year after the termination of the disability. I.C.A. § 614.8.

ii. For medical malpractice actions, I.C.A. § 614.1(9) imposes a two year limitation period, unless the minor was under the age of eight at the time of the malpractice. If so, the action must be commenced by the child's tenth birthday, or within two years of malpractice—whichever is later.

iii. Majority is when a person attains the age of eighteen years. I.C.A. § 599.1.

iv. I.C.A. § 614.8 does not generally toll any statute of limitations outside of those specified in Chapter 614.

d. Exception: Death

i. If the plaintiff dies within one year of the expiration of the applicable limitations period, the limitation will not apply until one year after death. I.C.A. § 614.9.

e. Exception: Nonresident or Unknown Defendant

i. When the defendant is a non-resident of Iowa or the claims involve personal injuries or death resulting from a felony or indictable misdemeanor and the identity of the defendant is unknown after diligent effort to discover it, the statute of limitations is tolled. I.C.A. § 614.6.

f. Exception: Dram Shop Notice

i. I.C.A. § 123.93 provides that injured persons shall give written notice to the licensee or permittee or such licensee's or permittee's insurance carrier of the claim within six months of the injury.

XXIII. Statutes of Repose

a. A statute of repose differs from a statute of limitation in that is sets a time after the plaintiff's cause of action accrues that the plaintiff must file their action. Generally, in Iowa that is two years. The statute of repose is not attached to the accrual of the plaintiff's cause of action but to the date of a fixed event.

b. I.C.A. § 614.1.9 states a medical malpractice action may not be brought more than six years after the date on which occurred the act or omission or occurrence alleged in the action to have been the cause of the injury or death unless a foreign object unintentionally left in the body caused the injury or death. If a plaintiff does not discover his injury within six years the statute of repose bars their action.

c. I.C.A. § 614.1.11 codifies: "In addition to limitations contained elsewhere in this section, an action arising out of the unsafe or defective condition of an improvement to real property based on tort and implied warranty and for contribution and indemnity, and founded on injury to property, real or personal, or injury to the person or wrongful death, shall not be brought more than fifteen years after the date on which occurred the act or omission of the defendant alleged in the action to have been the cause of the injury or death. However, this subsection does not bar an action against a person solely in the person's capacity as an owner, occupant, or operator of an improvement to real property."

XXIV. Punitive Damages

a. I.C.A. § 668A.1 states:

i. "(1) In a trial of a claim involving the request for punitive or exemplary damages, the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating all of the following:

1. (a) Whether, by a preponderance of clear, convincing, and satisfactory evidence, the conduct of the defendant from which the claim arose constituted willful and wanton disregard for the rights or safety of another.
2. (b) Whether the conduct of the defendant was directed specifically at the claimant, or at the person from whom the claimant's claim is derived.

ii. (2) An award for punitive or exemplary damages shall not be made unless the answer or finding pursuant to subsection 1, paragraph 'a', is affirmative. If such answer or finding is affirmative, the jury, or court if there is no jury, shall fix the amount of punitive or exemplary damages to be awarded, and such damages shall be ordered paid as follows:

1. (a) If the answer or finding pursuant to subsection 1, paragraph 'b', is affirmative, the full amount of the punitive or exemplary damages awarded shall be paid to the claimant.
2. (b) If the answer or finding pursuant to subsection 1, paragraph 'b', is negative, after payment of all applicable costs and fees, an amount not to exceed twenty-five percent of the punitive or exemplary damages awarded may be ordered paid to the claimant, with the remainder of the award to be ordered paid into a civil reparations trust fund administered by the state court administrator. Funds placed in the civil reparations trust shall be under the control and supervision of the executive council, and shall be disbursed only for purposes of indigent civil litigation programs or insurance assistance program.

b. (3) The mere allegation or assertion of a claim for punitive damages shall not form the basis for discovery of the wealth or ability to respond in damages on behalf of the party from whom punitive damages are claimed until such time as the claimant has established that sufficient admissible evidence exists to support a prima facie case establishing the requirements of subsection 1, paragraph 'a'."

c. Punitive damages may not be recovered from the estate of a deceased tortfeasor. In re Estate of Vajgrt, 801 N.W.2d 570 (Iowa 2011).

XXV. Practice Pointers

a. Use jury instructions to draft petition.
b. Use petition to prepare for depositions.
c. Use requests for admissions to narrow issues.
d. Designation of experts in professional negligence cases – 180 days from answer regardless of what scheduling order says. – I.C.A. § 668.11.
e. Expert witnesses are expensive. Make sure your fee agreement addresses responsibility for payment.
f. Identify statutes of limitations, calendar them; make sure they are met.
g. Identify subrogation interests and contact them early.
h. Medicaid is difficult to deal with and dealings take many months. Be prepared; plan ahead.
i. Stay on top of discovery.
j. Join a list-serve and participate (Iowa Association for Justice, Iowa Defense Council, various subgroups of Iowa State Bar Association).
k. Participate in bar association and collegiality building groups like American Inns of Court.
l. Be reasonable.