Chandler Schewe Torts Outline for October 15,22,29 and November 5

1. October 15
2. Plaintiff has to prove case by preponderance of the evidence
3. Plaintiff’s obligation to prove by the probability of each element of his claim
4. Standard of proof does not change but burden of proof can
5. Rule of Sevens- child under age of 7 is incapable off being negligent, 7-14 rebuttal in terms of negligence, 14 and up child is presumed capable of negligence
6. Presumptions can be rebutted in which case they disappear
7. Evidence of what is normally done can be taken into account
8. Just because something is customary does not mean it is correct
9. Res ipsa loqitur- “the thing speaks for itself” rule for circumstantial evidence. Allows an inference that the tortfeasor was negligent if certain requirements were met. The object that produced the injury must have been under the defendant’s control at the time of
 the act. Plaintiff has to establish that the harm was not the product of his own conduct. allows jury to infer but DOES NOT require it.
10. Res ipsa loqitur is not a substitute for proof, plaintiff must still prove every element of the claim
11. In TN re ipsa loqitur can apply in a medical malpractice case
12. October 22
13. Probability not possibility
14. Foreseeability rule- if emotional injury was foreseeable, plaintiff can recover
15. General negligence approach if plaintiff proves all elements of negligence, he can recover
16. One who negligently causes
an injury to an unborn child is liable for that harm, generally. However, most states require that the child be viable at the time of act
17. In most jurisdictions it does not matter if child is stillborn or if it dies as a result
18. Recovery is only allowed if vhild is born alive, then dies
19. Quick standard- permits recovery for death of unborn child. Child has to be capable of movement in the womb
20. Full Recovery rule- allows parents in wrongful pregnancy case to recover full amount of raising child
21. Benefits rule- parents are allowed to recover ordinary cost of rearing child but jury is allowed to consider the benefit the child has had to the family
22. No recovery rule- parents may not recover the normal cost of raising the child
23. TN has the no recovery rule
24. Physical manifestation rule- plaintiff can recover if there was proof of a physical injury or that mental injury manifested itself physically
25. Zone of danger test- plaintiff either suffers a physical injury or was placed in danger of physical injury AND feared for his safety
26. The element of foreseeability does not require a plaintiff to establish a relationship to the injured 3rd party
27. October 29
28. Wrongful birth0 the same damages in wrongful pregnancy but in a wrongful birth case the parents can also recover the normal expenses that are associated with raising the child
29. Wrongful life-seeking to recover for having been born
30. No legal obligation to come to the aid or rescue of another person even if there is no risk or inconvenience to the rescuer
31. Special relationship exception- if the plaintiff and defendant have a special relationship there is a duty to aid or rescue- such as innkeepers and their guests, employers and employees, schools and students, family members
32. Even if a defendant doesn’t have a duty, once performance has begun then the defendant has assured a duty of care where he otherwise would not have had one
33. Good Samaritan Rule- no liability for ordinary negligence when the defendant is acting in good faith. They are not liable if they make things worse.
34. If you did not raise the issue in the court below, you can not raise the issue in appellate court
35. A duty to render aid is required when the defendant is the cause of the situation requiring aid
36. Statutes can impose duties to aid another
37. Once performance has begun you can be held liable
38. The obligation to warn is to those that are identifiable, immediate
39. A business does have a duty to use reasonable measures to protect customers for foreseeable acts
40. Prior incidents rule- if this type of event has happened prior at this place of business, it is foreseeable
41. Totality of the circumstances- courts will consider all of the facts and circumstances
42. Parents are not vicariously liable for the actions of their children.
43. November 5
44. Under common law there is no duty from seller of alcohol. The consumption of the alcohol is viewed as the cause of what happened, not the purchase
45. Without any duty, no liability for negligence
46. Convenience store employee owes a duty of reasonable care to not provide gasoline to obviously intoxicated persons.
47. Stores have a duty to act reasonably
48. Defendants negligence must have been the cause of plaintiffs injuries
49. Tortfeasors are liable separately only if it is a divisible injury – exceptions
50. Defendants are acting together b. when one tortfeasor’s conduct causes harm and foreseeably exposes plaintiff to further harm, that original tortfeasor is responsible for other damages even from other tortfeasors