- Begin with general negligence
    - Mont. Code Ann. § 27-1-701: "Except as otherwise provided by law, each person is responsible for the results of the person's willful acts but also for an injury occasioned to another by the person's want of ordinary care or skill in the management of the person's property or person except so far as the person has willfully or by want of ordinary care brought the injury upon the person."
    - Duty:
        - Duty of care—think of driving a car
    - Breach:
        - Was that duty met
    - Causation:
        - Did the breach of the duty result in harm
    - Damages
        - Was there harm and what is the harm
    - Mont. Code Ann. § 27-1-702: Diminish a damage award by the percent at fault the injured person was
- Everything else today is an exception to these general rules
- Public duty doctrine
    - Briefly
    - Doctrine: "Duty of all is a duty to none"
        - Oversimplified
    - If the government is tasked with undertaking a function for the public as a whole, the duty is to the public as a whole rather than an individual
        - Police officers: Protect everyone; if something bad happens, police aren't liable
        - Licensure: License people for general safety and health; if a doctor commits malpractice, licensing board not liable
    - Special relationships
    - *Gatlin-Johnson v. City of Miles City*, 2012 MT 302
        - 8 year old went to a city park
        - Fell off slide and suffered a severe head injury
        - Suit against the City for failure to maintain a safe depth of impact-absorbing material (Kids go down slides, kids fall off slides; we know that, so there is a duty to protect)
        - District Court dismissed on public duty doctrine (among other things)—found that because it was a public park, the city's duty was to the public as a whole rather than to an individual playing in the park

        - Supreme Court reversed: "The fact that members of the public are allowed to enter or use these facilities does not mean that the public duty doctrine applies to any negligence claim arising from that entry or use, or that liability for negligence can only be found if the plaintiff establishes that there is a special relationship with the public entity or person. … Because clear and established rules of premises liability apply to this case the District Court erred in applying the public duty doctrine and erred in granting summary judgment to the City."
- Restriction on landowner liability Mont. Code Ann. § 70-16-302: "A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct."
    - A few pieces of that:
        - "recreational purposes" defined as "hunting, fishing, swimming, boating, waterskiing, camping, picnicking, pleasure driving, biking, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions."
        - Cannot pay for the use of land
        - Landowner can't engage in willful or wanton misconduct
    - *Gatlin-Johnson* –remember, this is the slide case that said PDD didn't apply
        - What about this limitation?
        - Parties agreed that using the park and slide were "recreational uses," so the Court didn't rule on it
        - BUT: "Gatlin asserts that she is ready and able to prove willful and wanton misconduct by the City in maintaining the park and the playground area."
        - Court noted the difficulty of such proof, but didn't have in the record before it a basis to deny the opportunity
    - *Estate of Hilston v. State*
        - Hilston was in a wildlife management area hunting; got an elk and was field dressing it
        - He was killed by grizzly bears

        - Suit alleged negligence by the State in control of the land and management of grizzly bears
        - Hunting is one of the "recreational purposes" in the statute
        - "The dispositive issue in this case is whether the statute provides immunity for an attack by an indigenous wild animal on the property. Thus, the pertinent question here is whether wild animals are a 'condition of the property' for which a landowner owes no duty of care."
        - Court confirmed that grizzlies, as wild animals, are a condition of the property—state was immune from suit
    - *Saari v. Winter Sports Inc.*
        - Plaintiff went intertube sledding with her church group at Big Mountain ski resort after hours and without paying any fee or renting equipment from the resort
        - Tube went out of control, crashed into a creek bed, and Saari was killed from the injuries
            - Relevant here: dispute was about remuneration and whether it existed: Plaintiff argued people allowed to tube after hours will likely come back—court rejected: needed direct payment for the access
    - *Weinert v. City of Great Falls*
        - Weinert was sledding and got injured hitting a net the city had put up to cushion sledders who did not stop on their own
        - Was this a recreational purpose under the act? Yes: the purpose of the Act was to encourage landowners to make land available to the public: "city parks are discretionary rather than necessary, so the legislative rationale behind the act—encouraging the availability of recreational areas—applies."
    - *Jobe v. City of Polson*
        - Plaintiff injured falling through boards in a dock owned by the city
        - There was a dispute about timeline for City discovering the board: it was either just before the accident, or a few days after; a month prior to the accident, inspected and no issue
        - Some definitions presented by the court:
            - Willful, as defined in § 1-1-204, is "a purpose of willingness to commit the act or make the omission referred to. It does not require any intent to violate the law, to injure another, or to acquire any advantage."
            - Wanton is synonymous with reckless

        - In the light most favorable to the plaintiff, Court concluded a jury might find the City knew about the broken board prior to the accident
        - However, recreation use statute did apply
        - Court also rejected effort to create a "heightened" standard for public facilities designed to attract users: "The intention of this statute is to 'grant a landowner relief from liability to persons gratuitously entering land for recreation purposes.' A landowner's relief from liability can only be divested through 'willful and wanton misconduct.'"
- Montana Recreation Responsibility Act (Mont. Code Ann. § 27-1-751, *et seq.*).
    - 27-1-753: "A person who participates in any sport or recreational opportunity assumes the inherent risks in that sport or recreational opportunity, whether those risks are known or unknown, and is legally responsible for all injury or death to the person and for all damage to the person's property that result from the inherent risks in that sport or recreational opportunity."
    - Goes on: "A provider is not required to eliminate, alter, or control the inherent risks within the particular sport or recreational opportunity that is provided."
    - So, what's an "inherent risk"?
        - Defined: 27-1-752: "those dangers or conditions that are characteristic of, intrinsic to, or an integral part of any sport or recreational activity that cannot be prevented by the use of reasonable care"
        - Inherent risk is an inherent risk…
        - BUT: important that the risk "cannot be prevented by the use of reasonable care."
    - MRRA liability waivers
        - Mont. Code Ann. § 27-1-753 expressly permits liability waivers
            - Must have: state known inherent risks, and contain the following in bold: "By signing this document you may be waiving your legal right to a jury trial to hold the provider legally responsible for any injuries or damages resulting from risks inherent in the sport or recreational opportunity or for any injuries or damages you may suffer due to the provider's ordinary negligence that are the result of the provider's failure to exercise reasonable care."

        - No case law on this that I'm aware of
- Important that MRRA doesn't apply to all recreation:
    - Mont. Code Ann. § 27-1-752 defines a "sport or recreational opportunity" as "any sporting activity, whether undertaken with or without permission, including but not limited to baseball, softball, football, soccer, basketball, bicycling, hiking, swimming, boating, hockey, dude ranching, Nordic or alpine skiing, snow boarding, snow sliding, mountain climbing, river floating, whitewater rafting, canoeing, kayaking, target shooting, hunting, fishing, backcountry trips, horseback riding and other equine activity, snowmobiling, off-highway vehicle use, agritourism, an on-farm educational opportunity, and any similar recreational activity."
    - BUT
    - Mont. Code Ann. § 27-1-754 provides a host of exceptions (because they have their own liability limitation statutes)
        - Recreational use of waters or lands
        - Snowmobiling
        - Skiing
        - Off-highway vehicle operation
        - Hunter safety courses
        - Equine activity
        - Sponsored rodeos
        - Amusement rides
        - Recreational use of land
        - Wildcrafting
        - Placement of a sign warning of a hazard in water
- Inherently dangerous
    - *McJunkin v. Yeager* (Billings federal district court)
        - Yeager was a fishing guide
        - McJunkin (81) hired Yeager to go on a fishing trip
        - McJunkin fell overboard and drown
        - Yeager argued drowning is an inherent risk of fishing from a raft, therefore can't be liable
        - "Yeager reads the MRRA much too broadly. Construing the statute in this fashion would immunize providers of recreational activities from their own negligence."
        - Went to the definition of inherent risk and noted that it had to be something "that cannot be prevented by the use of reasonable care."
        - This has to be a fact intensive inquiry

        - "It is not enough to find that falling out of a boat and drowning is a general risk of fishing from a raft; therefore, drowning is an inherent risk in fishing. Although there may be circumstances where the risk of drowning cannot be prevented with the use of reasonable care, it is undoubtedly true the risk may be prevented in many other circumstances."
        - Also noted that an overbroad immunization from liability could render the MRRA unconstitutional
            - Previous decision held that prohibiting negligence liability for a private actor was unconstitutional
    - INHERENTLY DANGEROUS UDNER SKIING
    - *Waschle v. Winter Sports Inc.*
        - Waschle, an experience skier, "was found unresponsive, headfirst in the snow at the base of a tree by other skiers on a run off the T-Bar ski lift, within the boundary of Whitefish Mountain. Niclas had fallen into what is known as a 'tree well.'"
        - Skiing immunization statute defines inherent risk to include a whole variety of snow-related risks
        - Question was whether a tree well was an inherent risk of skiing
        - Some timing issues legally
        - Between the time of the injury and the time of the suit, the Legislature got involved: amended the skiing liability statute specifically to include tree wells; sponsor actually told the committee that one of his changes was so that the statute included tree wells explicitly
            - important fact for the Court in rejecting inherent risk; if tree wells were included in the statute by implication before the amendment, then the amendment didn't do anything, and that couldn't be permitted
    - *Kopeikin v. Moonlight Basin Mgmt., LLC*
        - Experienced skier who had skied various resorts in the Rocky Mountain west
        - Skiing down a black diamond trail, went over a cat track. Skis hit rocks, he fell and landed on other rocks and suffered serious a disabling injuries
        - Testified he was aware of rocks generally, there were signs for the black diamond, he was aware of low snow coverage, had skied other runs and seen rocks that day

        - "Skiing is a sport in which thrill-seeking skiers embrace its inherent dangers and risks. It is a sport that occurs on a mighty mountain, with fluctuation in weather and snow conditions that constantly change." "Fundamentally, a skier bears much of the responsibility for avoiding injury to himself, which is a principal that is consistent with Montana law."
        - The Court held that Kopeikin's injuries were part of the inherent risks of skiing; "To impose a duty on Moonlight to mark or remove all submerged rocks, which are not readily visible, would be to require Moonlight to undertake an impossibility."
    - *Anker v. Wineglass Mountain Trail Rides* (state district court)
        - Haug's leased land to trail riding company
        - Anker broke her arm when her saddle slid
        - Equine Liability Statute at issue
        - Everyone agreed horseback riding was inherently dangerous
        - Question was whether the lessor, who had no other involvement with the situation, could be liable for the inherently dangerous activity on land they owned
        - "Montana recognizes that equine activity is inherently dangerous, but also recognizes that equine activity is inherent to the culture of the west and many tourists desire and expect to engage in equine activity when they are in this state."
        - While the Haugs were "equine sponsors" under the act, they had engaged in nothing which could render them liable