

## I. INTRODUCTORY OVERVIEW

### A. OVERVIEW OF TORTS LAW

#### 08/15/11- "The Nature and Functions of Tort Law" (Print out)

Tort law- concerns the rights of private parties to obtain monetary damages from those who have caused them injury or damage.

most tort law= common law (law made by cts)

most tort law= made by state

Tort law → 2 categories:

1) Accidental: **strict liability** (w/o regard to degree of care) or **negligence liability** (imposed only upon proof of carelessness)

2) Intentional: imposed only upon proof of defendant's intention to invade legally protected interest of another.

- **Does not** necessarily require/involve intent to cause harm (e.g. defamation, invasion of privacy) AS LONG AS DEFENDANT INTENDED TO TAKE ACTION THAT CAUSED PLAINTIFF HARM

Breach of standard of care is only 1<sup>st</sup> element of cause of action

- must be proof that plaintiff suffered harm + defendant's action in breaching standard of care caused that harm

#### **Four elements of any cause of action in tort:**

Duty (legal duty to comply with particular standard of care)

Breach of Duty (failure to comply)

Causation

Damages

#### (CB pp. 1-9, notes 1-3, 7-9, Supp 1/2/3/4)- INTRO TO TORT LIABILITY

Tort-- Civil harms focused on those that do not arise out of contractual disputes

#### *Hammtree v. Jenner* (p. 3)

Plaintiffs lost case and appealed

**Facts:**

Maxine Hammontree + husband sue D for personal injuries/property damage after D became unconscious during epileptic seizure and crashed into store. D used Phelantin until accident occurred. No warning of seizure before accident. Appellants' 3<sup>rd</sup> claim: jury was not given instruction on **absolute liability**: no matter what, driver is legally liable for injuries + property damage when an innocent person suffers as a result of defendant's inability to control/operate motor vehicle (even if had no warning of seizure or health failure)

Previous cases: held that liability of driver, suddenly stricken by illness rendering him unconscious, for injury resulting from accident occurring during that time rests on negligence.

P's withdrew claim of negligence, elected to stand only on theory of absolute liability

Appellants sought to have court override established law of state

Argument by analogy: "manufacturer is strictly liable in tort when article he places on market, knowing it is to be used w/o inspection for defects proves to have defect and causes injury to human being." → argue defendant should be predicated on strict liability.

- Ct. says strict liability policy hardly applies here (2 sep cases)
- **NO strict liability in auto cases**

Judgment affirmed for defendant.

Note 1 (Oliver Holmes): The req't of an act is that defendant should have made a choice. If cannot be foreseen, cannot impose strict liability

Note 2: If defendant made his living as driver and social benefits derived in his job outweighed small likelihood of injury → should we still reject strict liability and only hold him liable for negligence?

Note 3: Why does ct refuse to adopt strict liability approach?—To invoke a rule of strict liability on drivers w/o also establishing how new rule should operate contributes to confusion to the auto accident problem.

Note 6: Why can't insurance carriers bear cost of injuries to innocent victims on strict liability basis?

Note 7: Maloney v. Rath- ct. did not hold defendant strictly liable for non-negligent violation of traffic law (brake failure due to mechanic's negligence)

Note 8: Suing DMV → DMV liable only if negligently performed "mandatory duty"

- only if DMV had concluded driver was unqualified and had still issued the license would DMV be liable.

Note 9: "Strict liability" + "Absolute liability" = DIFFERENT

- ASK

### 08/15/11- CLASS

McDonald's Coffee Case: Compensatory damages: medical expenses, suffering, lost wages

### 08/17/11- CLASS

#### **2 main types of arguments seen in tort law:**

- 1) Moral arguments
- 2) Arguments of economic efficiency

#### Anti-liability claims that are moral arguments:

- Moral argument- liberty interest of people who like hot coffee, corporate autonomy of McDonalds

#### Pro-liability claims that are moral arguments:

- 700 people burned

The right outcome for moral argument is the fair one.

#### Anti-liability of economic efficiency:

- Small number of harms for billions served doesn't warrant action.

#### Pro-liability claims that are economically efficient:

- Low cost of prevention to avoid serious harms

Right outcome for economic efficiency argument is the efficient one.

### **Negligence vs. Strict liability (degree of care is irrelevant, harm is incurred)**

### *Hammontree v. Jenner*

In a negligence case, burden of proof is on the plaintiff.

- plaintiff may have had to show that Jenner hadn't taken his medication, didn't follow procedures, etc.

In a strict liability case, all the plaintiff had to show was that defendant crashed the car in the shop (defendant is liable)

- shifts burden of proof on defendant

### **08/18/11- CB (pp. 9-18, Supp 5)- LITIGATION PROCESS IN TORT SUIT**

**Motion to dismiss/request for ruling by the court/demurrer-** even if facts are true, P cannot get relief because no sound legal theory- D is essentially saying "So what"

If judge denies D's motion to dismiss → saying P's complaint states good legal theory and can recover damages if can prove facts are true

**Answer-** D can meet fact allegations by pleading this → denying some/all of allegations of fact and may add new ones.

Apparent dispute of fact- can be decided w/o trial.

Genuine dispute of fact- w/ trial

**Discovery-** during period before trial, affords parties opportunity to get evidence before

**Plaintiff has burden of proving essential facts to case. Two components to burden of proof:**

- 1) plaintiff must introduce sufficient evidence that jury could find in her behalf
- 2) "burden of persuasion"- must persuade factfinder her version is correct

D can make "**motion for directed verdict/ judgment as a matter of law/judgment not withstanding the verdict**"

- asks judge to rule that plaintiff's evidence lacks on at least 1 essential fact that no jury could reasonably find in plaintiff's favor (pointless to continue trial).
- Plaintiff can do this too--if after all evidence, permit only outcome for plaintiff

If both parties make closing arguments, jury is “**charged**” (given instructions on burdens of proof/legal rules applied to facts, etc.)

Judge can “**reserve decision**”- delay in deciding

If judge makes same decision as jury= result is clear

If judge makes different decision= can dismiss the case and appellate ct can reverse trial judge’s decision and reinstate jury’s decision.

If judge granted D.V. w/o waiting for jury’s verdict and appellate ct disagreed→ new trial

**Damages-** goal of tort law is to restore person to equivalent of condition prior to harm

“**Single judgment rule**”- plaintiff sues only once for harm suffered and statute of limitations establish time limits within which she must do so.

ex. on p. 15 (after sued, part of skull came out→ couldn’t sue again)

For judgment to become final→ all appeals are exhausted + time for more appeals have expired

Losing litigants pay atty fees and litigation costs

Trial ct (superior court), appellate court (ct. of appeal), highest ct (supreme ct)

## 08/18/11- CLASS

### *Hammontree v. Jenner*

Strict liability- plaintiff must show defendant’s action caused harm

- Then, the burden shifts to D to prove his/her case

Negligence- fault-based regime

- P has burden of proof
- Plaintiffs must have shown that Jenner’s actions were unreasonable.

Should this be a strict liability case? IF YES,

- Moral principle that everyone should cost bear costs of harm you cause
- Unfair for innocent victim to pay
- Inherently dangerous activity
- Act vs. inaction
- More efficient/lower cost

- Clarity on who pays/ more administrative efficiency (e.g. having Jenner then sue DMV or doctors)
- Higher cost of doing business for business owners

Should this be a strict liability case? IF NO,

- Makes it more difficult for people who have economic circumstances (e.g. two jobs) to get to where they need to go.
- Many more problems

Hammon trees ask the appeals court to give them a new trial where the judge in the case will be ordered to give jury instructions on absolute liability (really meant strict liability)

For judge to be able to make a decision, facts must be SO clear, jury couldn't find otherwise

- Ct. refuses to try case under strict liability. Strict liability does not apply in auto cases (relies on precedent/stare decisis) – Look at cases

Ct says law applies strict liability in manufacture defect products: can avoid those harms and this is cost of doing business → does not apply in this case

Negligence is a better argument (p.4) → being stricken by a sudden illness which renders him unconscious rests on principle of negligence.

“ suddenly stricken?” – can argue both sides

Can shift burden of proof in a negligence case, as well.

Cts denied appeal because 1) negligence is in line with precedent, not strict liability 2) actual jury instructions requested are overly broad.

It's not up to us to change the laws (up to legislatures). If want to hold people auto accidents strictly liable → legislatures need to change it.

- Cts are using the institutional competence argument → not institutionally competent to change the law associated with this case.

Who bears the cost of accidents?

- Let losses lie where they fall
- Social insurance (spread all risks equally across society)

**Negligence more towards let losses lie where they fall, strict liability more towards social insurance.**

Note #1: Posner- Let losses lie where they fall so long as it is efficient to do so.

Note #2: Holmes- default rule is let losses lie where they fall

**Negligence regime-** not fair to hold Jenner liable b/c:

- consequences were unforeseen
- did all he could to comply with law/took reasonable standard of care

**General rule:** if you can't anticipate a harm, morally wrong to hold someone accountable for it, especially if have taken all the necessary precautions.

**Moral argument-** don't want to discriminate against certain categories of people (negligence allows you to look at all factors, instead of taking a category of people and imposing liability on them)

**Economic argument:** Don't want to diminish people from engaging in economy, don't want to lower productivity if you prevent people from driving

- Small likelihood of accident.
- Cost of accident compared to the productivity/economical standpoint is miniscule- vehicles used for transporting, etc.

## **II. THE NEGLIGENCE PRINCIPLE**

### **A. DUTY/STANDARD OF CARE**

**(CB pp. 30-43, note 2 on 34, notes 1-3 on pp. 37-38)- HISTORICAL DEVELOPMENT AND STANDARD OF CARE**

Concept of strict liability → inherent in pre-1800 English law (aka "writ of trespass") originally addressed to *intentional* harm-causing conduct. Gradually, became harm that was forcibly, even if accidentally, inflicted.

- Ex: Strict liability was not applied to fires accidentally set, only intentionally

Note 2: “No liability” thinking influenced tort law during pre-industrial era

***Brown v. Kendall***: Trial Ct of Massachusetts

**Facts**: Def. Kendall was trying to separate dogs from fighting. In raising his stick over his shoulder to strike the dogs, he accidentally hit the plaintiff. Severe eye injury.

Facts do not show that blow was intentional. (Executrix- summoned in on behalf of Kendall and if he loses, must pay out of Kendall’s estate).

Trespass (damage complained of is the immediate effect of the act of defendant) vs. Action of the case (consequential only and not immediate)

If both plaintiff and defendant were using ordinary care at time of blow, or if def was and plaintiff wasn’t, or if neither was, plaintiff can NOT recover.

“**Ordinary care**” – kind/degree of care, which reasonable person would use, as is req’d by demand of case, and necessary to guard against probable danger.

“**Inevitable accident**”- defendant could not have avoided by use of kind/degree of care necessary to the demand, and in circumstances

Jury instructed: if not necessary act and defendant did not have to part dogs, he was responsible for consequences of the blow unless he was using extraordinary care, so accident was inevitable. if jury believed interference in the fight was unnecessary, burden of proving **extraordinary** care was on **defendant**

Court disagrees and says 1) you don’t need to show “extraordinary care” and 2) burden of proof is on **plaintiff**.

**General rule**: If defendant was doing lawful act and unintentionally hurt plaintiff, unless defendant can be charged with some fault (negligence, carelessness, etc.), and plaintiff fails to sustain burden of proof, plaintiff cannot recover.

**Negligence**: breach of standard of reasonable care, allows plaintiff to recover.

**Diff b/w trespass and case:** whether you can bring a suit in the first place. Next step: proving negligence and plaintiff has to do so.

- In introducing negligence regime, trying to protect people from strict liability regime, which would reduce people from engaging in society, industrial expansion. On the other hand, if you have strict liability regime, people would be more careful.
- Standard of negligence: ordinary care whereas in strict liability was extraordinary care.

**Precedent set in this case:** broadly setting a rule that **negligence** is the standard to apply in tort cases, but simple **rule** coming out of this case: **In lawful act, if plaintiff sues def for harm and plaintiff shows def was negligent → plaintiff wins (shifting burden to plaintiff)**

PUT IN CHART

**MAIN RULE: \*\*When there is lawful act, plaintiff must show def is negligent to recover.**

**Hypo:** if Brown is egging dogs on and inducing them to fight and Kendall hits Brown to stop, and then gets injured, who is liable?

- If not a lawful act, won't fit into negligence regime at all.

Ordinary torts obligation: duty not to be negligent. Failure to do so is a breach.

- 1) Duty not to be negligent. 2) Breach is when you are negligent.

**What does negligent mean?**- Generally decided by juries

- Jury looks at evidence and figure out whether act falls into realm of negligence.

“It is negligent to fail to take reasonable precautions”

**Adams v. Bullock:** Court of Appeals Opinion of NY (highest ct in NY)

**Facts:** Trolley line ran by D. Road is crossed by bridge pedestrians use and children play on. 12 yr old boy swung 8 ft. wire and brought it in contact with trolley wire beneath the bridge. Shocked and burned. Verdict for P. Divided ct at appellate level (opinion is of those dissenting).

**Reasoning:** Defendant was in lawful use of it's business. Did not ignore reasonable precautions necessary to minimize dangers.

- Trolley wire was placed so that no one standing or *even bending* on bridge could reach it. Only extraordinary casualty could make it dangerous.
- No ordinary precaution could have predicted this danger (nothing like this had happened before, nothing special about this point in the trolley line)
- Distinction b/w electric light and trolley wires (if it was electric light line, could be insulated, but these specific wires cannot be insulated, so only other thing to avert possibility of this accident, D must have abandoned overhead system and put wires underground. No duty to do this.)

No reasonable jury could have found them negligent in this case. No reading of these facts that should make this company negligent so judge involved decides this case as matter of law.

**Rule of judge:** Duty to adopt all reasonable precautions. No way a jury should find company liable in this case.

- Factual inquiry about the duty to adopt all reasonable precautions: different minds could think differently about.
- No negligence

What if wires could be insulated? May look at expense and time to quantify this matter.

To consider something as a matter of reasonable precaution: attorneys will argue about this and juries will consider. If plaintiff doesn't bring up reasonable precaution, jury can't consider it.

If you could foresee the danger, could take precautions to it happening again. If this happened before, could have foreseen it?

- At what point is it foreseeable and risky enough that they have to respond?

***Braun*** (P. 41-42) ct of appeals says that it is quite possible and likely jury will find def negligent in this case. J. Cardozo says this is in line with Adams: no negligence.

***Greene v. Sibley*** (P.42)- trial ct says def is negligent, but Cardozo reverses. Same thing in Adams. No way jury could find negligence. Ordinary provisions to be looked for in busy world (obligation of two people to each other, not store to a person). Other side → could have had sign saying: be careful, tied off the area, etc. Company didn't take these small, minute precautions, but Cardozo ultimately says "world is dangerous place, you must be careful"

- Defendants need not do anything to prevent it (principles behind this: people should just watch out, none of these things are foreseeable).
- No negligence