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# Introduction to Torts

- ▶ A Tort is a wrong or harm.
- ▶ Evidence must favor plaintiff by more than 50%
- ▶ Compensation in form of monetary damages usually sort to rectify the wrong
- ▶ Punitive and exemplary damages (jury)(unrelated to economic loss)

## Example (3.1)

Nada Feckless introduces his son (aged 7) to the family tradition of “cutting wheelies” in his neighbour John’s wheat field because of it’s nice green color. Junior is quite proficient at cutting wheelies in Nada’s four wheeler. Nada post pictures of the result on the internet. John sues Nada and Junior feckless for trespass. John sought damages of

\$30,000

plus

\$30,0000

in statutory punitive damages. The state where this happened has a statute requiring that the judge doubles the damages for willful destruction of crops.

The court appoints a guardian *ad litem* to represent junior due to his age and interests adverse to his father. Junior's attorney argued he was too young to understand the nature of his actions. the jury found Nada liable for trespass but declined to find any liability in junior. The jury found actual damages of

\$29,000

to the crop. The judge doubled this to

\$58,000

. The judge orders Nada to pay

\$7,835.00

to the guardian *ad litem* for fees and expenses.

# Tort remedies are not always monetary

- ▶ Courts can ask defendants to cease or modify activity
- ▶ Note the famous Coase theorem in economics relates to torts
- ▶ Coase concentrates on monetary compensation only
- ▶ Economic basis is *compensation criteria* (ok, this requires some explanation)
- ▶ Coase is normally thought of as related to externalities but compensation criteria preclude externalities
- ▶ Moulin argues Coase is just the second fundamental theorem of welfare economics (which also precludes externalities)

- ▶ Coase can be considered as just a lump-sum transfer (redistribution of property rights)
- ▶ This is exactly how compensation criteria work
- ▶ Kaldor-Hicks doesn't require actual compensation but only theoretical

# Coase on Courts

- ▶ Coase argued that the courts were the means to compensate for wrongs (I think he is often misunderstood on this point)
- ▶ This emphasizes monetary compensation via Tort law
- ▶ Kaldor (strong criteria) hypothetical lump sum transfer
- ▶ Kaldor is like Coase but hypothetical
- ▶ Hicks losers cannot dissuade winners from action
- ▶ Kaldor winners could conceivably compensate losers for the wrong

# Scitovsky, Gorman and Samuelson

- ▶ K-H criteria not consistent unless applied together (Scitovsky)
- ▶ Gorman, Scitovsky criteria suffers from intransitivity
- ▶ Samuelson identifies conditions where this doesn't arise
- ▶ These criteria do not require actual compensation to occur
- ▶ Some writers argued that actual compensation would redress any distributional imbalance (Coase is in this category)
- ▶ If the courts argue that one should cease the wrong then this amounts to negating the need for compensation as well



# Types of Torts

- ▶ Intentional torts
- ▶ Negligence
- ▶ Strict liability

# Intentional torts

- ▶ intent to do a voluntary act that constitutes a tort
- ▶ voluntary
- ▶ plaintiff doesn't have to prove intent
- ▶ reason for act is irrelevant

# Negligence

Failure to act as a reasonable person would act under similar circumstances

- ▶ duty (Remember Hohfeld)
- ▶ breach of duty (What is the opposite of duty)
- ▶ proximate causation
- ▶ actual damages

## Discovery and *prima facie* case

- ▶ Tort cases require plaintiff to present sufficient evidence of wrong
- ▶ Need to prove defendant has a duty to plaintiff to establish *prima facie* case
- ▶ Duty may be established by law, contract or assumption
- ▶ Duty needs to be established through pre-trial discovery

# Discovery (see chapter 1)

- ▶ Court procedure:
  - ▶ Preliminary matters (Discovery comes after this)
  - ▶ Pretrial motions
  - ▶ Trial
  - ▶ Post trial motions
- ▶ Trial only needed if there is disagreement about facts
- ▶ Judge can decide on matters of law
- ▶ Discovery relates to obtaining information on facts

# Purpose of discovery

- ▶ To allow each side to discover evidence that the other side has
- ▶ You can ask the other side questions (interrogatories)
- ▶ depositions
- ▶ document requests
- ▶ Each side is required to submit to the court evidence and witnesses they wish to present

## Example 3.4

Larry is a certified lifeguard . While on at Agricultural adventures , a local agritourism operation. He saw a child who had wandered outside the boundary of the kiddie wading area. He successfully brought the child up to the shoreline but dropped the child when he turned to say hello to a friend. The child was severely injured when he hit the ground due to weak bones that were unknown to Larry. By engaging in the rescue, Larry assumed a duty to rescue non-negligently. Dropping the child on the ground is likely a breach of Larry's duty to rescue non-negligently. That a child with normal bones would not have been injured is not a defense.

# Proof of duty and breach of duty

- ▶ tied to regulatory law
- ▶ violation of regulatory can mean application of *negligence per se* doctrine applies
- ▶ violation is sufficient to establish both duty and breach of duty



## *res ipsa loquitur* (The thing speaks for itself)

- ▶ allows plaintiff to avoid pretrial dismissal of the action for failure to prove breach of duty
- ▶ Rule of evidence that requires cause of injury to be in the defendants control
- ▶ airline and food poisoning cases.

# Trespass

- ▶ duty of care to trespasser is limited
- ▶ landowner may not use deadly force to evict trespasser
- ▶ landowner must allow use of land to prevent bodily injury or death

# Licensees and invitees

- ▶ licensees

- ▶ enter land with permission
- ▶ Hunter's or social guests

- ▶ invitees

- ▶ on land with permission for owner or tenants benefit
- ▶ repairman, vet, hunter who shares game with landowner

# Attractive nuisance doctrine

- ▶ Young trespassers can be attracted on to property
- ▶ Landowner's can be liable to injury to child trespassers
- ▶ Children do not have same level of experience as adults
- ▶ ponds, animals, exploration of arm equipment
- ▶ Duty of care for child trespassers

# Proving duty and breach of duty

- ▶ establishes negligence not liability
- ▶ proximate causation needed to prove liability
- ▶ legal or proximate causation differs from ordinary causation
- ▶ proximate causation must be foreseeable

## Example

Mrs Palsgraf was injured at a railway station when the force of an explosion caused a large clock to tip over and fall on her. The explosion was triggered when a passenger accidentally dropped a package of explosives on the track. The passenger dropped the package because the conductor employed by the defendant pushed the passenger onto the train.

NY court of appeals in Palsgraf v Long Island R.r. Co. 3 to 4 decision denied Mrs Palsgraf any recovery for her injuries because she was not in a reasonably foreseeable zone of danger.

# Causality concepts

- ▶ These differ by field
- ▶ The farm vet will use a different concept of causality
- ▶ Farm management economist advising farmer will use another concept
- ▶ Farmer's lawyer will use proximate causation

# Farm vet

**Temporality** There is a time relationship between cause and effect in that the effect occurs after the cause. Also, if it is to be expected that there is some delay between cause and effect then that delay should also be observed.

**Strength and association** Cause-and-effect may be observed by statistical correlation between these in repeated events or experiments. Full strength correlation has a coefficient of 1. A weaker association between cause and effect will see greater variation.

**Biological gradient (dose-response)** In treatment, there might be expected to be a relationship between the dose given and the reaction of the patient. This may not be a simple linear relationship and may have minimum and maximum thresholds.

**Consistency** One apparent success does not prove a general cause and effect in wider contexts. To prove a treatment is useful, it must give consistent results in a wide range of circumstances.



**Plausibility** The apparent cause and effect must make sense in the light of current theories and results. If a causal relationship appears to be outside of current science then significant additional hypothesizing and testing will be required before a true cause and effect can be found.

**Specificity** A specific relationship is found if there is no other plausible explanation. This is not always the case in medicine where any given symptoms may have a range of possible causing conditions.

**Evidence** A very strong proof of cause and effect comes from the results of experiments, where many significant variables are held stable to prevent them interfering with the results. Other evidence is also useful but can be more difficult to isolate cause and effect.

**Analogy** When something is suspected of causing and effect, then other factors similar or analogous to the supposed cause should also be considered and identified as a possible cause or otherwise eliminated from the investigation.

**Coherence** If laboratory experiments in which variables are controlled and external everyday evidence are in alignment, then it is said that there is coherence.

# Ag Economist

- ▶ Neyman-Rubin causality
- ▶ Potential outcomes
- ▶ A causes B if, if A hadn't occurred then B wouldn't have occurred
- ▶ To establish causality you need to consider the counterfactual case of A not occurring

# Actual Damages

- ▶ needed to prove negligence
- ▶ economic losses
- ▶ fair market value
- ▶ forensic economics
- ▶ reduced quality of life and pain and suffering (QALY's and DALY's)
- ▶ future medical expenses: NPV

# Strict liability

- ▶ ultrahazardous activity or abnormally dangerous activity liable for all injuries
- ▶ liability without fault (you can be non-negligent but still liable)
- ▶ aerial pesticides, in some states
- ▶ product liability (most states apply this standard)

# Vicarious liability

- ▶ employers liable for employees actions due to employment
- ▶ crop duster liable for torts but farmer not liable because crop duster is an independent contractor

## Example 3.10

Farmer Jones hired buzz Buzzard to spray his cotton with a restricted use pesticide. farmer jones's due diligence showed no violations of any pesticide law by Buzz or complaints to pesticide regulators. In the course of spraying farmer Jones's cotton, Buzz neglected to shut off his sprayer while crossing a highway. asa resulthe sprayed a rural mail carrier whose window was down as she delivered mail. The rural mail carrier was rendered permanently unable to care for herself. As Buzz is an independent contractor, Farmer Jones has no vicarious liability for hsi torts.