

The Time that Remains

Today: Office Hours at 12pm, Faculty Lounge, Third Floor of Burns

Monday, November 17 - Alternatives to Tort

Wednesday, November 19 (Normal Class Time & Location) - Alternatives to Tort & Review

Friday, December 5 - (1:30pm Merrifield Hall) Optional Review Session & Office Hours

First party insurance

versus

Third party (liability) insurance

Insurance-related rules in tort suits

- Collateral source rule
- Subrogation

First Party Insurance for Plaintiffs

Can be straightforward: Defendant negligently burns down plaintiff's home. Plaintiff is insured.



But it gets complicated with:

- Personal injury
- Settlement

Remember: The plaintiff and the plaintiff's insurance company share the right to the plaintiff's tort claim.

Liability Insurance for Defendants

How does liability insurance affect tort law?

1. Changes how damages are paid.
2. Changes what lawsuits are filed.
3. Can affect substantive tort law itself.
4. Can affect policy rationale / justification for legal rules.

Remember the Rowland Factors?

- foreseeability of harm
- certainty of plaintiff's injury
- connection between defendant's conduct and plaintiff's injury
- moral blame
- policy of preventing harm
- burden to defendant
- consequences to community
- availability of liability insurance

Hypos on Impact of Insurance

First party insurance for dock owner plaintiff in

Vincent v. Lake Erie Transport Co.

Liability insurance for recommendation writer defendants in

Randi W. v. Muroc Joint Unified School District

Pavia v. State Farm

“Insurance Bad Faith”

Liability Insurance

- How does it affect what cases are litigated?
- How does it affect the consequences of liability?

Workers' Compensation

Lamson v. American Axe & Tool Co.

“The Axe that Fell on the Employee”

The “Unholy Trinity” of Common Law Defenses

1. Fellow servant rule
2. Contributory negligence
3. Assumption of risk

The Bargain of Workers' Compensation

No fault

and

Exclusive remedy

Workers' Compensation Requirements

Only compensates for work-related injuries

Benefits include:

- Medical coverage
- Percent of lost wages
- Vocational rehabilitation
- Survivor benefits

Employers must buy workers' comp insurance

When would an employee not file a workers' comp claim?

Injury wasn't work-related

Injury resulted from employer's intentional tort

Employee does not count as an employee

Revisiting Lamson v. American Axe

What does the plaintiff recover?

Tort Law

Workers Comp

Facts of actual case:

No assumption of
risk:

Revisiting Lamson v. American Axe

What does the plaintiff recover?

Tort Law

Workers Comp

Facts of actual case: Nothing

No assumption of
risk:
Full recovery

Revisiting Lamson v. American Axe

What does the plaintiff recover?

Tort Law

Workers Comp

Facts of actual case: Nothing

Partial recovery

No assumption of
risk:
Full recovery

Partial recovery

Third-party claims

Rule: Employee can file a workers' compensation claim against their employer but workers compensation' does not cover third parties.

Hypothetical: Gladys Escola is a waitress. While serving a Coca-Cola beverage at work, the bottle explodes in her hand, injuring her hand. She needs surgery and will be unable to work for months.

What's your legal advice for her?

Big Picture: Workers' Comp vs. Tort Law

Deterrence

Compensation

Administrative Cost

Equity

Ideology

Does tort law have an ideology?

-	Negligence	Strict Liability	Intentional Torts
Type of Conduct	???	???	???
Causal Connection	???	???	???
Affirmative Defenses	???	???	???
Damages Available	???	???	???

-	Negligence	Strict Liability	Intentional Torts
Type of conduct	- Fault	- Dangerous activities - Products	- Intentional harm
Causal Connection	???	???	???
Affirmative Defenses	???	???	???
Damages Available	???	???	???

	Negligence	Strict Liability	Intentional Torts
Type of conduct	- Fault	- Dangerous activities - Products	- Intentional harm
Causal connection	- Factual cause - Proximate cause	- Factual cause - Proximate cause	- Factual cause - Proximate cause
Affirmative Defenses	???	???	???
Damages Available	???	???	???

-

Negligence

Strict Liability

Intentional Torts

Type of conduct

- Fault

- Dangerous activities
- Products

- Intentional harm

Causal connection

- Factual cause
- Proximate cause

- Factual cause
- Proximate cause

- Factual cause
- Proximate cause

Affirmative defenses

- Comparative fault
- Assumption of risk

- Comparative fault
- Assumption of risk

- Consent
- Self defense
- Necessity

Damages

???

???

???

Available

-

Negligence

Strict Liability

Intentional Torts

Type of conduct

- Fault

- Dangerous activities
- Products

- Intentional harm

Causal connection

- Factual cause
- Proximate cause

- Factual cause
- Proximate cause

- Factual cause
- Proximate cause

Affirmative defenses

- Comparative fault
- Assumption of risk

- Comparative fault
- Assumption of risk

- Consent
- Self defense
- Necessity

Damages available

- Past and future damages
(economic,
noneconomic, punitive)
(lump sum payment)

- Past and future damages
(economic,
noneconomic, punitive)
(lump sum payment)

- Past and future damages
(economic,
noneconomic, punitive)
(lump sum payment)

	Negligence	Strict Liability	Intentional Torts	Workers' Comp
Type of conduct	- Fault - Products	- Dangerous activities	- Intentional harm	???
Causal connection	- Factual cause - Proximate cause	- Factual cause - Proximate cause	- Factual cause - Proximate cause	???
Affirmative defenses	- Comparative fault - Assumption of risk	- Comparative fault - Assumption of risk	- Consent - Self defense - Necessity	???
Damages available	- Past and future damages (economic, noneconomic, punitive) (lump sum payment)	- Past and future damages (economic, noneconomic, punitive)	- Past and future damages (economic, noneconomic, punitive)	???

	Negligence	Strict Liability	Intentional Torts	Workers' Comp
Type of conduct	- Fault - Products	- Dangerous activities	- Intentional harm	- Workplace injuries
Causal connection	- Factual cause - Proximate cause	- Factual cause - Proximate cause	- Factual cause - Proximate cause	???
Affirmative defenses	- Comparative fault - Assumption of risk	- Comparative fault - Assumption of risk	- Consent - Self defense - Necessity	???
Damages available	- Past and future damages (economic, noneconomic, punitive) (lump sum payment)	- Past and future damages (economic, noneconomic, punitive)	- Past and future damages (economic, noneconomic, punitive)	???

	Negligence	Strict Liability	Intentional Torts	Workers' Comp
Type of conduct	- Fault - Products	- Dangerous activities - Products	- Intentional harm	- Workplace injuries
Causal connection	- Factual cause - Proximate cause	- Factual cause - Proximate cause	- Factual cause - Proximate cause	- Injury must be “work-related”
Affirmative defenses	- Comparative fault - Assumption of risk	- Comparative fault - Assumption of risk	- Consent - Self defense - Necessity	???
Damages available	- Past and future damages (economic, noneconomic, punitive) (lump sum payment)	- Past and future damages (economic, noneconomic, punitive)	- Past and future damages (economic, noneconomic, punitive)	???

	Negligence	Strict Liability	Intentional Torts	Workers' Comp
Type of conduct	- Fault - Products	- Dangerous activities - Products	- Intentional harm	- Workplace injuries
Causal connection	- Factual cause - Proximate cause	- Factual cause - Proximate cause	- Factual cause - Proximate cause	- Injury must be “work-related”
Affirmative defenses	- Comparative fault - Assumption of risk	- Comparative fault - Assumption of risk	- Consent - Self defense - Necessity	- Employee was outside “scope of employment”
Damages available	- Past and future damages (economic, noneconomic, punitive) (lump sum payment)	- Past and future damages (economic, noneconomic, punitive) (lump sum payment)	- Past and future damages (economic, noneconomic, punitive) (lump sum payment)	???

	Negligence	Strict Liability	Intentional Torts	Workers' Comp
Type of conduct	- Fault	- Dangerous activities - Products	- Intentional harm	- Workplace injuries
Causal connection	- Factual cause - Proximate cause	- Factual cause - Proximate cause	- Factual cause - Proximate cause	- Injury must be “work-related”
Affirmative defenses	- Comparative fault - Assumption of risk	- Comparative fault - Assumption of risk	- Consent - Self defense - Necessity	- Employee was outside “scope of employment”
Damages available	- Past and future damages (economic, noneconomic, punitive) (lump sum payment)	- Past and future damages (economic, noneconomic, punitive) (lump sum payment)	- Past and future damages (economic, noneconomic, punitive) (lump sum payment)	- Unlimited medical compensation - Fraction of lost wages (with statutory cap) (paid in installments)