

In *Ploof v. Putnam*, had the boat owner been able to stay tied to the dock, would the boat owner have had to pay damages for harm caused to the dock?

The rule from *Vincent v. Lake Erie* seems to indicate “Yes,” but the court in *Ploof* says “No.” How can we reconcile these cases?

# Alternatives to Tort Law

*Insurance*

# The Big Picture

Torts

~~Remedies~~

~~Negligence~~

~~Breach~~

~~Duty~~

~~Causation~~

~~Defenses~~

~~Strict Liability~~

~~Traditional view~~

~~Products liability~~

~~Intentional Torts~~

Not Torts

----- Insurance

----- Workers' Compensation

----- Alternatives to Tort

**Why are we learning this?**



# 1) Positive and Negative Space

*Napoleon Leading the Army over the Alps*  
Kehinde Wiley





**2) Tort concepts are infectious.**

**3) I want you to look smart.**

**But it's not torts.**



# How do laws that are not tort law teach us about tort law?

1. They remove issues from tort law
2. They influence how tort cases are litigated
3. They affect the substantive doctrine of tort law
4. They help us understand tort law as a comparison

**First party insurance**

*versus*

**Third party (liability) insurance**

# Insurance-related rules in tort suits

- Collateral source rule
- Subrogation

# Understanding these rules in combination

A defendant injures a plaintiff. The plaintiff's health insurance provider covers most of the plaintiff's medical bills. The plaintiff wins a lawsuit against the defendant. Consider the process and outcomes for this case under three different legal regimes. What potential problems arise?

1. Only the collateral source rule exists — no subrogation
2. Only subrogation exists — no collateral source rule
3. Both the collateral source rule and subrogation exist (our actual legal regime)

Straightforward example:

Defendant negligently burns down plaintiff's home.  
Plaintiff is insured.



# But it gets complicated with:

- Personal injury
- Settlement



# Liability Insurance

# 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**

# Hypotheticals on Impact of Insurance

First party insurance for dock owner in  
*Vincent v. Lake Erie Transport Co.*

Liability insurance for recommendation writers in  
*Randi W. v. Muroc Joint Unified School District*

# Pavia v. State Farm

“Insurance Bad Faith”