

# Products Liability Exercise

You are a junior associate at a plaintiff-side firm. A partner at the firm has brought you in to work on an interesting new case. The potential plaintiff, a nine-year-old boy named Augustus Gloop, choked on a hot dog during lunch in his elementary school cafeteria. The child survived — thanks to a gym teacher's training in first aid and CPR — but suffered serious injuries. His family is now interested in suing Oscar Meyer Weiner, the company that produced this hot dog.

The partner at your firm doesn't typically litigate products liability cases, so she wants you to catch her up to speed. She'd like you to sketch out arguments supporting a failure to warn claim, a design defect claim, and a manufacturing defect claim. For each claim, provide an example of a piece of evidence that would help our client win. And let her know which claims have the best chance of success. On the failure to warn claim, you should know that Oscar Meyer Weiner does not have any warning labels on its packaging. The partner would also like you to evaluate any affirmative defenses that Oscar Meyer Weiner might raise.

# 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

# Hypos 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”