

## REVIEW NOTES THE ECONOMICS OF TORT LAW

### I. What is a Tort?

- breach of a duty owed to the plaintiff by defendant (when does the "duty" exist?)
  - o negligence = breach of the duty owed the plaintiff
- harm suffered by the plaintiff
  - o why must harm be suffered?
  - o recent trends
- the breach = the proximate cause of the harm. 2 kinds of causation
  - o cause in fact = the but for rule
  - o proximate cause
  - o why use the latter?

### II. Exceptions to this definition of a Tort

- liability without fault (i.e., without a breach of a duty or negligence)
  - o strict liability = must show causation and harm but not negligence
    - historical use of strict liability
- punitive damages
  - o if harm caused is not intentional why force injurer to pay?
- especially relevant, why force injurer to pay damages in excess of the actual harm (i.e., pay punitive damages.)
  - o 2 situations where punitive damages may be assessed
    - intentional torts
    - gross negligence
- liability without causality
  - o doctrine of res ipsa loquitur
  - o other examples?

### III. The economics of Tort Law Preliminaries

- distinguishing between Torts and Contracts
- that is, why allocate risk using tort law when we could just have private parties bargain (as we suggested we wanted them to do in our analysis of Contract law.)
  - o focus on transaction costs (TC)
  - o if TC are high => tort law does 4 things
    - compensation
    - dispute resolution
    - deterrence
    - rule creation to guide future behavior
- if TC are low => don't use tort law, rather use private bargaining (i.e., contracts).
  - o why?
- what about the gray area between (TC are neither high or low)?
  - o product liability
  - o medical malpractice
  - o etc.
- causation and externalities
  - o in economics terms causation = externality (why?)

- damages
  - o what is an appropriate level of damages?

#### IV. The economics of Tort Law Negligence

- the normative calabresian rule = the rules of tort law should be structured to be efficient (i.e., minimize the sum of precaution, accident, and administration costs.)
- a model of simple negligence
  - o assumptions and definitions (make sure you know them all)
  - o total social costs of accidents =  $w_x x + p(x)A$ 
    - what does this look like graphically?
    - what is the socially optimum precaution level?
- what does the potential injurer do under two different liability rules? (assuming that the injurer always wishes to minimize his own private costs => must find out what the injurers private costs equal.)
  - o no liability
    - definition
    - result?
  - o simple negligence
    - definition
    - result?
    - assumptions?
- forms of the negligence rule (joint care)
  - o assume that accidents are bilateral (what does that mean?)
  - o other assumptions
  - o now social costs =  $w_x x + w_y y + p(x,y)A$ 
    - what does this look like graphically?
    - what is the socially optimum precaution level?
      - for the injurer?
      - for the victim?
  - o what is simple negligence?
    - what is negligence with contributory negligence?
      - the victim's contributory negligence is a complete bar to recovery
  - o what is comparative negligence?
    - the cost of liability is borne in proportion to each parties negligence
    - how can we measure comparative negligence?
      - cooter and ulen rule
      - proportional negligence
      - marginal harm
  - o the efficiency of the negligence rules
    - all three forms of the negligence rule lead to efficiency (why?)

#### V. Strict Liability

- what happens when the injurer is strictly liable for harms?
  - o what is strict liability
  - o graphical
  - o efficiency?
    - unilateral precaution
    - bilateral precaution
  - o strict liability with contributory negligence (the mirror image of simple negligence)
    - definition

- efficiency?

#### VI. Problems with the model?

- the assumptions are artificial
  - o assumes litigation costs = 0
    - what happens if litigation costs are non-zero?
  - o assumes perfect information by the courts.
    - if not, what happens?
  - o suppose accident costs vary dependent upon who is involved in the accident?
- negligence versus strict liability
  - o assumed administration costs = 0, but not true => consider them
- advantage of strict liability is that Administration costs < administration costs under any of the negligence rules (why?)
- disadvantage of strict liability is that more suits will be filed than under negligence rules (why?)
  - o also strict liability gives more of an incentive to increase the technology of precaution
    - why?
    - how could the negligence rule be changed to give the same incentive?
  - o activity level
    - negligence may give efficient incentives for precaution but not for activity
    - what is activity?
    - strict liability gives the correct incentive for both

#### VII. Topics in the Economics of Torts

- computing compensatory damages
- an economic rationale for allowing punitive damages
  - o assumptions
  - o what is the punitive multiple?
  - o how do punitive damages assure efficiency?
- the model with uncertainty
  - o evidentiary uncertainty = uncertainty about the legal standard
  - o result?