

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?