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?)
     - negligence = breach of the duty owed the plaintiff
   - harm suffered by the plaintiff
     - why must harm be suffered?
     - recent trends
   - the breach = the proximate cause of the harm. 2 kinds of causation
     - cause in fact = the but for rule
     - proximate cause
     - 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)
     - strict liability = must show causation and harm but not negligence
       • historical use of strict liability
   - punitive damages
     - 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.)
     - 2 situations where punitive damages may be assessed
       • intentional torts
       • gross negligence
   - liability without causality
     - doctrine of res ipsa loquitur
     - 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.)
       • focus on transaction costs (TC)
       • 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).
       • why?
   - what about the gray area between (TC are neither high or low)?
     - product liability
     - medical malpractice
     - etc.
   - causation and externalities
     - 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_xx + 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_xx + w_yy + 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
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?