

LESSON PLAN - MEDICAL MALPRACTICE

I. Theory of Medical Malpractice

- What is a tort?
- Goals of the tort liability system
 - Compensation
 - deterrence
- The optimal deterrence of injuries
 - Assumptions of the model
 - Definitions of the model
 - The impact of precaution on total (expected) accident costs
 - Expected accident losses
 - Precaution costs
 - Efficient precaution defined
 - The total (expected) accident cost approach
 - MB/MC approach
- The effect of 3 liability rules on levels of precaution taken
 - Definition of the three rules
 - Assumptions
 - The impact of a Negligence rule on precaution
 - The impact of a Strict Liability rule on precaution
 - The impact of a No Liability rule on precaution
 - Problems with the theory
- Why not allow private contracting for liability?
 - When the patient has full information
 - When the patient has incomplete or faulty information
 - Problems with the analysis

II. Empirical Evidence

- Definitions
 - Malpractice frequency, severity and probability
- The medical malpractice “crisis”
 - Contention of the proponents of the belief in a crisis
 - What are the roots of the belief that a crisis exists?
 - Data on historical frequency, probability and severity
 - Medical Malpractice Reform
 - Types of reforms
 - Popularity of reforms
 - Is malpractice reform warranted?

- Empirical question – Does a malpractice crisis actually exist?
 - Has physician liability actually increased?
 - Was physician liability actually stable historically, as assumed?
 - Historical data on frequency, severity and probability
 - Why has physician liability increased in the past, especially past 3 decades?
 - Theory proposed by proponents of medical malpractice “crisis”
 - What is the evidence?
 - Studies on malpractice negligence
 - Studies on malpractice probability
 - Evidence on jury competence
 - Why has physician liability increased both historically and recently?
 - Insight from theoretical model in Section I above
 - Importance of physician productivity, precaution costs and enforcement costs in determining efficient levels of physician liability (x^* in the theoretical model.)
 - Does physician liability behave as predicted by the model?
 - Evidence regarding physician productivity
 - Precaution costs
 - Enforcement costs
 - Contemporary evidence

III. Alternatives to Medical Malpractice

- Private contracting
 - The case for private contracting
 - How would parties contract over liability?
 - Problems
 - Transactions costs
- No-fault insurance plans
 - How does no-fault work?
 - What is the impact of no-fault?
 - On total (expected) accident costs
 - On deterrence
 - On compensation