

TORTS 3 -- Duncan Kennedy

Second Syllabus

Second Assignment Sheet

Outline of Unintentional Torts

Fletcher Outline

Outline of Impact of Pre-Existing Relationship on Tort Liability

Note on Crisci

Note on Employment Contracts

Two Outlines on Compulsory Terms

Supplemental Materials

TORTS 3 -- Duncan Kennedy

Second Assignment Sheet

II. Unintentional Torts

October 24, Wednesday

21: Negligence vs. Strict Liability: Historical Introduction

Note, p. 85-86

Cases & Notes, p. 105-127

Holmes, The Common Law, p. 131-138

Note, p. 151-153

OPTIONAL

Ames Law & Morals, Supp. 3

A. The Negligence System (Incorporating Many Strict Liability Elements)

October 29, Monday

22: The Reasonable Person

Cases & Notes, p. 153-63, but omit notes 2 & 3 to Vaughn v. Menlove

Prosser on Torts, Supp. 8

October 30, Tuesday

23: The Calculus of Risk

U.S. v. Carroll Towing & Notes 1, 2 (1st para only), 4, 5 (1st 3 paras only), p. 187-94

Shavell, "Strict Liability & Negligence," Supp. 12

Ross, Settled Out of Court, p. 196-97

OPTIONAL:

Calabresi, "Risk Distribution," Supp. 7

Calabresi, "General Deterrence," Supp. 16

Calabresi, "Secondary Accident Cost Avoidance," Supp. 19

Note 7, p. 196

October 31, Wednesday

24: Respondeat Superior

Cases & Notes, p. 413-32

November 5, Monday

25: Custom and Statutes

Cases & Notes, p. 201-211

Note 1, 4, 5, 7, p. 216-25

Cases & Notes, p. 242-53

November 6, Tuesday

26: Cause in Fact

Cases & Notes, p. 433-38

Cases & Notes, p. 461-79

November 7, Wednesday

27: Proximate Cause

Cases & Notes, p. 497-527 (BUT omit Note 3, p. 511, Note 5, p. 513, Notes 2 & 3, p. 521-24)

Fletcher outline, p. 27-34

Bauer, "Degree of Moral Fault," Supp. 22

November 13, Tuesday

28: Res Ipsa Loquitur

Cases & Notes, p. 280-88

Cases & Notes, p. 297-306

November 14, Wednesday

29: Contributory Negligence, Last Clear Chance, Comparative Negligence

Note, p. 307-08

Butterfield v. Forrester, p. 308-09

Gyerman v. U.S. Lines & Notes. p. 313-21

Cases & Notes, p. 331-36

Notes & Li v. Yellow Cab & Note 1, p. 360-369

November 19, Monday

30: Joint and Several Liability & Contribution among Defendants

Cases & Notes, p. 385-404

B. The "No Duty" Boundary of the Negligence System

November 20, Tuesday

31: Owners & Occupiers of Land

Cases & Notes, p. 565-88

November 21, Wednesday

32: Negligent Infliction of Emotional and Economic Harm

Dillon v. Legg & Notes, p. 534-45

People Express Airlines v. Consolidated Rail & Notes, p. 1284-95

C. The Strict Liability Boundary of the Negligence System

November 26, Monday

33: Ultrahazardous Activities

Prosser on Torts, Supp. 37

Cases & Notes, p. 647-69

Terry, "Legal Duties and Rights," Supp. 40

November 27, Tuesday

34: Nuisance

Cases & Notes, p. 669-79

Cases & Notes, p. 694-706

Kennedy, "Cost Benefit Analysis of Entitlement Problems," Supp. 28

**III. Liability for Intentional and Unintentional Invasions of LPI's
in Situations in which There Is a
Pre-existing Relationship Between the Parties**

A. How Does Freedom of Contract Actually Work?

November 28, Wednesday

35: The Interaction of Contract and Tort Doctrines about Consumer Contracts

(a) Review of Contract Doctrines Purporting to Police Consumer Contracts

Calamari & Perillo, Duress, Unconscionability, Consumer Protection Legislation,
Contracts of Adhesion, Supp. 43-48, 49-52, 53-63

Kessler & Gilmore Note, Supp. 64

Macneil, Manipulating Manifestations of Intent, Supp. 65

Hart & Sacks, The Legal Process, Supp. 68

Prosser on Torts, Supp. 74

(b) Intentional Infliction of Emotional Harm in Contractual Contexts

Eckenrode v. Life of America Ins. Co., Supp. 75

George v. Jordan Marsh, p. 81

Rockhill v. Pollard, p. 81

Agis v. Howard Johnson Co., Supp. 76

"The Brothers," Supp. 82

OPTIONAL:

Austin, Employer Abuse, Worker Resistance, and the Tort of Intentional Infliction
of Emotional Distress, Supp. 83

December 3, Monday

36: From Assumption of Risk to Workmen's Compensation

Cases & Notes, p. 341-360

Notes, p. 961-68

B. Contractual Relationship as a Source of Tort Liability

December 4, Tuesday

37: Insurance Contracts: Refusal to settle a suit against the insured

Crisci v. Security Ins. Co. & Note, p. 951-59

Material from Crisci omitted by Epstein, Supp. 93

Samuelson, Economics, Supp. 95

Kennedy Note on Crisci

December 5, Wednesday

38: Residential Leases: Landlord's Duties to Repair and Secure Premises

Simon v. Solomon, Supp. 106

Kline v. 1500 Mass. Ave. Apt. Corp. & Notes 1, 2, p. 608-17

Posner, Strict Liability -- A Comment, Supp. 111

Calabresi, The Costs of Accidents, Supp. 114

Calabresi, The Costs of Accidents, Supp. 117

Kennedy Note on Employment Contracts

Bellow-Kennedy correspondence, Supp. 120

C. Products Liability

December 10, Monday

39: Privity: A's Relationship to B Immunizes Her from Suit by C

Cases & Notes, p. 715-29

December 11, Tuesday

40: Basis of Products Liability

Cases & Notes, p. 729-49

Appendix A to Kennedy, Paternalist & Distributive Motives

December 13, Wednesday

41: Product Defects and Plaintiff's Conduct

Cases & Notes, p. 769-74

Barker v. Lull Engineering and Notes, p. 788-97

Cases & Notes, p. 831-42

[[[OMIT ASSIGNMENTS 42, 43 AND 44 IN FALL 2001

D. Medical Malpractice

42: The Coming and Going of the Malpractice Insurance Crisis

Obstetrics and Gynecologists v. Pepper & Notes, p. 353-60

Paul Weiler, Malpractice on Trial, Supp. 123

43: The Patient's Bill of Rights Controversy

Alice Noble & Troyen Brennan, The Stages of the Managed Care Revolution: Developing
Better Rules, Supp. 133

E. No-Fault Insurance Plans

44: No Fault Insurance Plans

Cases & Notes, p. 995-1118]]]

