

TORTS, CONT.

I. RECAP OF TUESDAY'S FRAMEWORK

A. CONTRACTS

B. TORTS

1. NEGLIGENCE - REASONABLE CARE
2. PRODUCTS' LIABILITY → STRICT LIABILITY

II. STANDARDS OF REASONABLENESS

A. WHERE DO YOU GO TO FIND STANDARDS

1. INDUSTRY STANDARDS

- a) PROFESSIONS → LAW GIVES PROFESSIONS THE RIGHT TO SET THEIR OWN STANDARDS; PROF. STANDARDS ARE THE LEGAL STANDARDS.

2. CASES

3. REGULATIONS AND STATUTES

- a) IF T^r DISCOVERS YOU VIOLATED AN APPLICABLE STANDARD IN A REGULATION OR STATUTE, YOU HAVE NEGLIGENCE PER SE, AND THE PLAINTIFF'S CASE GOES TO THE JURY.

- b) NOTE: PRIVATE ATTORNEY GENERALS → WE LET PLAINTIFFS BAR TO ENFORCE THE RULES.

B. OFTEN BECOMES AN INQUIRY OF PROCESS

1. EX: BREAST IMPLANT CASES

III. KOSA

A. FACTS: T^r HAD A BLOOD TRANSFUSION, GOT AIDS, PARENTS SUED FOR WRONGFUL DEATH. Δ'S WERE THE HOSPITAL AND THE RED CROSS.

B. STANDARD OF CARE: THE COURT DEVELOPS A TIME LINE. PRIOR TO T^r'S TRANSFUSION, THERE WAS SOME GROWING DISCUSSION OF AIDS. IT CRYSTALLIZES AFTER. [KEY: "WHAT DID HE KNOW AND WHEN DID HE KNOW IT?" LOOKING BACK, THINGS SEEM MORE CERTAIN THAN THEY WERE.] AT THE TIME, THERE WAS NO TEST FOR AIDS.

C. OUTCOME: DEFENSE VERDICT. NOTE: THESE WERE RESPECTED Δ'S THAT WOULD HAVE BEEN CRUSHED BY ADVERSE OUTCOME. A COMMERCIAL Δ WOULD LIKELY HAVE LOST. TAKEAWAY: JUDGES AND JURIES ARE PEOPLE AND GET SWAYED BY HUMAN FACTORS.

IV. STATE OF THE ART DEFENSE

- A. GIVEN THE STATE OF TECHNOLOGY AT THE TIME, THE Δ COULD NOT HAVE DONE ANY BETTER.
- B. COUNTER ARGUMENT → IT IS THE INDUSTRY THAT HAS THE BEST ACCESS TO RISK INFORMATION. THEY NEED TO ADVANCE THE STATE OF THE ART TO PROTECT SAFETY. DEVOTE RESOURCES TO FIGURING OUT IF YOUR PRODUCT IS HARMFUL.

V. GOVT. STANDARDS

- A. SHOULD IT BE A DEFENSE THAT YOU COMPLIED W/ GOVT. REGULATIONS? IT IS NOT.
 - 1. WHY? REGULATION SETS A STANDARD OF CARE, BUT IT IS NOT REASONABLE CARE.
 - 2. IT WOULD BE PROHIBITIVELY EXPENSIVE FOR GOVT TO TEST EVERY ASPECT OF PRODUCT.

VI. DUTY TO WARN

- A. CASES OFTEN TURN ON THE ADEQUACY OF WARNING. BUT, SOME WARNINGS ARE NOT ENOUGH.

VII. FIDUCIARY DUTY

- A. RELEVANCE: PROFESSIONS AND HIGHER LEVELS OF CORP. GOVERNANCE
- B. A FIDUCIARY MUST ACT IN THE BEST INTEREST OF THE OTHER PARTY.

L. TWO ASPECTS:

- 1. DUTY OF LOYALTY → DO RIGHT BY YOUR CLIENTS → AT A RESEARCH HOSPITAL, THERE CAN BE A CONFLICT BETWEEN TREATING YOU AND LEARNING FROM YOU. → THESE CAN BE COMPLICATED QUERIES.
- 2. DUTY OF CARE (DILIGENCE) → YOU DO THE WORK COMPETENTLY

NOTE: IF YOU'RE SERIOUSLY CONFLICTED, YOU'RE NOT GOING TO GET THE BENEFIT OF THE DOUBT.

		+ LOYALTY -
DILIGENCE +		HMO INFLUENCED DOCTOR
-	OVERBURDENED EXECUTIVE	

VIII. CAUSATION

A. THE BREACH OF DUTY HAS TO CAUSE THE HARM.

1. THIS IS A VERY COMPLICATED RULE OF LAW
2. REASONABLE FORSEEABILITY TEST
3. THE LAW WILL LOOK FURTHER DOWN STREAM FOR A MORE CULPABLE DEFENDANT