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1 OF 3

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LECTURE #2

Court System – 3 tier

1. Supreme Court
2. Appellate Court (Court of Appeals)
3. Trial Court

*Most cases we'll be studying are appellate. There has been a trial, a verdict was reached and then one appeals. Then, there is a panel of judges that hear lawyers. Judges will then write their decision – affirmed/reversed & remanded

Phrases:

Plaintiff Π - brings a civil action

Defendant Δ

*if defendant loses & appeals – appellant (petitioner)
plaintiff – appellee (respondent)

Cultural Setting of Business Law:

- 1) Anglo-American Law
 - 2) Civil Law or Code Law – continental Europe
- *much more difficult to bring negligence

-we concentrate on #1:

- a) we're in MD
- b) commercially
- c) can't be exposed to everything

-we'll view how American gov't has influenced American Law

Federal level – broken in to 3 parts – “system of checks & balances”

&

State level (“sovereignty of the states”)

*federal system distributes power between a central national government and an individual state government; if direct conflict between the two, federal law prevails

-Figure 1-2, p. 16, pp. 17-19 IMPORTANT!



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Purposes of Law:

1. maintain social order
2. promote rational decision making, helps predict future legal consequences
3. shape social behavior

Sources:

1. Primary (authoritative):

- (a) treaties – undertaken by executive branch, with concurrence of 2/3 Senate
- (b) statute – passed by Congress, signed by President; Federal or State
- (c) ordinances – local level legislation ex. Zoning -- # houses on lot, etc.
- (d) administrative regulations – Congress will pass a law & then regulations are set ex. Clean Air Act of '90 passed led to emissions level testing
- (e) Court Rules (rules of how a case will proceed through court)
& Executive Orders (how executive branch handles own business)
- (f) Case Law – judge made law, interpret legislation or prior case law
Precedent = prior judicial decision on a similar factual or legal issue

2. Secondary (nonauthoritative) – NOT BINDING ON JUDGES –

- (a) treatises – books where legal scholars look at law & tell how it is & how it should be changed
- (b) legal periodical
- (c) restatements of law – similar to treatise, reduce mass judicial opinion to clear/precise statements

Classification:

1. Procedural – governs by method by which a legal right is enforced
2. Substantive – governs existence & definition of those rights

Civil Actions – noncriminal actions

- plaintiff vs. defendant
- plaintiff seek damages or injunction
- plaintiff has “burden of proof”, requires proof by a preponderance of the evidence

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Criminal Actions

- public is injured party
- remedy is imprisonment, fine, or death

Strategic Planning:

- trend toward hiring in-house counsel
 1. spiraling costs for legal services
 2. understands corporation & its personnel
 3. recognized need for preventive law
 4. outside counsel is retained when lawsuit

-Read Soldano v. O'Daniels

At trial level, case was dismissed. In case law, you have no civil liability to come to the aid of a person unless you caused peril. At appeal level, case was reversed & sent back to trial level. Once you decide to render aid, you are held to a certain level.

-Question #8, p. 25:

- other info needed -- Did he know or see her take the poison?
 - Did he give it to her?
 - Did he refuse to render aid?
 - Is he responsible for being a jerk to her?



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LECTURE #3

Chapter 1 Continued

Essay pp. 21-22 – “Cultural Defense”

- man slaughter implies emotion vs. murder
- How can you fit this in our system? Can't use Japanese law, can tie into an insanity plea under influence of culture, only need one juror to hang it up.

-Preventive Law – co. strategies structured to avoid future legal problems

-Roles of Lawyers (p. 24)

1. Counselor
2. Advocate
3. Lobbyists – paid professionals who attempt to influence decisions of lawmakers

Chapter 3: Civil Process & Dispute Resolution

-Typical Court Structure (p. 52, Figure 3-1)

-certiorari – can't automatically go to Supreme Court, must convince them why your case is important; Supreme (hears 4,000, 100 decisions)

Court of Appeals (hears 15,000)

District (hears 200,000)

-Diversity of Citizenship – involve a citizen of one state suing a citizen of another state in amount greater than \$50,000

-Concurrent Jurisdiction

-A corporation is both a citizen of state where incorporated & where has principal place of business *can get into federal court for diversity jurisdiction*

<u>Del corp.</u>	17 VA	Can't get into federal court because one from
Business in MD	1 MD	



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-Jurisdiction – authority of court to decide a case, must get jurisdiction over defendant
SEE p. 55, Fig. 3-3

- a) Subject Matter Jurisdiction – court has power to hear a particular case
- b) Personal Jurisdiction – court generally has p.j. over defendant in state boundaries and serve with a notice of suit, called a summons
- c) Long-arm Statute – reach across state boundaries & “pull” nonresident defendant’s back to state where plaintiff is suing

-Amendment 14 (p.1186)

-Burger King v. Rudzewicz (p.55)

- What was connection with Florida? Sent their checks, went to training, contract governed by Florida.
- trademark infringement – Federal Law
- BK won in Florida courts, used long-arm statute due to contracts, at trial level
- appellate court – not minimum contact to satisfy 14th Amendment
- Supreme Court took case – signing contract showed intent to enter long-term contact with a Florida corporation, intent to be bound by Florida law



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Assignment: Read Ch. 4 for Monday

LECTURE #14

Ch. 3 Continued

How to study cases:

- for an exam, the prof will tell you what cases to study for specific ques.
- most questions will be hypothetical application of the law
- read cases to understand principles & be able to apply

Question #5, p. 70

- no commitment to a long-term contract
- where could you sue? Arkansas, Illinois, Minnesota
to decide between states, look at state law to determine most beneficial

Question #6

- decision to sell nationwide led to legal implications, subject to state law--
minimum contact

-In Rem Jurisdiction (p. 57): If a party is disputing over a “thing” or property, they don’t need to get personal jurisdiction over a party to pull them back, they can start without them

-Venue

-Strategy

- Time – most states will set a time limit on how long you have to sue, varies across states ex. You have surgery in ’91, discover sponge in stomach in ’95, is it too late to sue; no many states say you have 2 years from date of discovery
- Statutes of Limitation: time period within which a particular suit must be lodged

-Stages of Lawsuit (p.58, Fig 3-4)

*most amount of work by lawyer is in Discovery stage

1)Pleading

- “notice” of pleading tells defendant he/she is being sued & general reasons why



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- must respond within specific time-Answer
OR will result in default judgment
- counterclaim – individual action defendant claims against plaintiff
- **p.60, Fig. 3-8

Know the following terms: motion to dismiss, motion for judgment on pleadings, motion for summary judgment, motion for judgment “not withstanding the verdict”

- if Plaintiff survives these motions, lawsuit becomes more significant/valuable with each motion

2)Discovery (mostly done outside of court)

- deposition: sworn testimony, both lawyers present; most expensive way to do discovery
- written interrogatories (see Slatnick, p. 62)
- request for admissions
- production of documents
- physical & mental examination

Sanctions: if one side is not cooperating, can get court involved

Summary Judgment (p.63): looked at all facts & summarize

3)Trial

- in most states & federal courts there are mandatory pre-trial conferences
- only a small %age (10-15) of cases go to trial
- How do you get a jury? Voir Dire: examination & selection of prospective jurors
 - *criminal cases have more opportunity to throw out jurors than civil cases
- trial begins with opening statements which provide a summary for jurors
- rules of evidence: designed to assist fact finder in arriving at truth
- hearsay evidence: generally excluded because statements not made under oath, out-of-court, have been historically proved



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LECTURE #5

Chapter 3 Continued

- Trial Motions (p.67) – to control spurious litigation (litigants who haven't done their homework) and jury verdicts (jury going with sympathy & not facts); can appeal decision made by judge
- Appellate Stage – appeal specific motions, evidence not let in, etc.; judges usually know their decision going in
- Contingent fees – most countries don't allow these & in some its illegal; in our country it is common but not allowed on everything
ex. Lawyer gets 1/3 of amount awarded to their client in a law suit
- Alternative Dispute Resolution
 - Arbitration is most common for labor contracts, after arbitration, the ability to take it to court is greatly reduced
 - reasons to use: time (can get quicker because docket is too full), get expertise (not “the luck of the draw”)
 - arbitrator may or may not have a written decision
- Question #7, p. 70
 - failure to warn of known hazards – popular way to win lawsuits
 - What rule of evidence? Mock court room argument: 1. Hearsay – 2. It was a sworn testimony under oath and cross examined – 1. They weren't cross examined by me, it wasn't our litigation so it will be prejudicial hearsay, judge at least get rid of the sworn statement because it was not cross examined.



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Chapter 4: Constitutional Law and Individual Liberties

- distinction between U.S. & Great Britain – Great Britain has no judicial review of legislation or judicial action; in U.S. legislation is not higher than Constitution
- Supreme Court cases are literally written into the Constitution

-Burton v. Wilmington (p.76)

When can private conduct be state action?

Burton's argument was 14th Amendment right to equal protection was violated; parking authority was so closely related to state that he sued state

-clear state involvement in this case

*there's no formula for state involvement

Question #5 (p.89): Moose Lodge v. Iris

-there is not an intimate involvement with government as in Burton therefore Iris lost under 14th Amendment claim

-What if gov't had board meetings (PUBLIC FUNCTION) there & Moose Lodge leased property from government for \$1?

*in this case, there is clear state involvement

-5th Amendment (p. 1185)

by court decision, the federal gov't has put an equal protection clause in the Amendment although you won" see it in there

-Pruitt v. Cheney (p.78)

-Pruitt was discharged from Army b/c of her status as a lesbian

-District Court dismissed, Court of Appeals reversed dismissal

-must show a rational basis for what you want; "this is not national security job, its reserve duty"



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Announcement: Read Chapter 5 for Monday and reread Ch. 4

Lecture #6: Chapter 4 Continued

Tests:

- 1) Rational Basis Test
- 2) Intermediate Test
- 3) Strict Scrutiny Test

**see p. 79, Fig. 4-3

-First 10 Amendments ---- Federal government

14th Amendment (1868) ---- States, applied a large portion of 1-10
Amendments to the States

-Supreme Court has spelled out rights, eg. right to privacy, that aren't in The Constitution

**see p. 84, Fig. 4-4 for content of Amendments

-Takings Clause (included in 5th Amendment) = protection against government
taking property without giving just compensation;

- Issues: (1) Has government taken property?,
(2) Whether property has been taken for public use?,
(3) How much compensation is due owner?

*ability to exclude someone is biggest property rights you have

-Pruneyard S.C. v. Robins (p.85) --- California Constitution considers shopping
malls a public forum; highest court in CA reversed middle decision of case
saying the students had the right to free speech; P/Y lawyer issue: value of
property is being diminished because don't have power to exclude students;
according to 14th Amendment the State Constitution is violating my property
rights --- taking of my property because can't exclude; P/Y is legally allowed
to restrict speech regarding time, place, and manner (when does regulation
become exclusion?).



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-First Amendment (p.87) --- commercial speech has less protection than political expressive (ex. burning the flag), or artistic speech

*any kind of speech can be regulated regarding time, place, or manner

-Posadas de Puerto Rico Associates v. Tourism Co. (p.87) --- Puerto Rican legislature ruled that advertising to Puerto Rican citizens for casino gambling was illegal; Posadas says there 1st Amendment rights were violated; other possible arguments they could have used: not getting equal protection (discriminating among other gambling medians), arbitrarily excluding a certain class of customers

--Test to see if Puerto Rico's decision violates 1st Amendment:

1. Assessment of government's interest in restricting gambling,
2. Fit between legislative's ends & means chosen to accomplish those ends
3. Whether restrictions directly advance government's interests.

-Question #9 (p.90) --- can restrict religion re: time, place, manner; Is this restriction reasonable? Yes, the restriction is not directed to exclude ISCON.

-Question #8 (p.90) --- Is it commercial speech? Yes.

Can a state ban it? (use the same test used in Posadas)



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2/22/99

1 OF 2

LECTURE #7

ANNOUNCEMENTS: Midterm will be ½ hypothetical and ½ more direct (simple knowledge), will be allowed a 5x8 card to write notes on; he will hand out a sample exam next week

Chapter 5: Administrative Agencies

-Federal Register = document printed to show proposed legislation, ex. currently there is a proposal to have standards for ergonomic injuries on the job

-Preemption Doctrine (taken from Article VI, Clause 2) = involves conflict between state and federal power; federal prevails, state can propose stronger standards than federal but not weaker

Ex. Case: Arizona passed a law that no trains longer than 60 cars are allowed to pass through AZ. Federal government has no ruling regarding length of trains. Is state law valid? The federal government hasn't preempted the field so more difficult to determine.

-Wickand v. Filburn 317 U.S. 110 (1942) – Federal gov't set up standard of production of crops. It is not just what farmer produces, it's the aggregate of production. Estimated 4% is fed to family.

-Minimum Wage Law (\$5.60/hr) – if you produce a good and pay less than min. wage to employee, can't move good across states

-Federal gov't made law can't have gun 500 yards from school

-How is gov't applied? Legislation is put in place & an agency is set up to regulate it through issuing rules, such as the Environmental Protection Agency

-Administrative Procedures Act (p.95) – rules about how to set up rules

-FOIA (p.96) – passed in 1966, has undergone many changes; under this law anyone can request information from agency, if rejected can sue; see exemptions (Fig. 5-1)

-DOS v. Ray (p.96) – Plaintiffs are Haitian Nationals who wanted interviewing documents & DOS gave them doc's with names blacked out-exemption under

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2 OF 2

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FOIA says we don't have to give it (#6). Balance between privacy & right to know. If information is given, these people could be killed. Plaintiffs won at lower courts but info. Was not released – can ask for a “stay”, DOS proved would cause harm so release of info. Was stayed pending final decision; Supreme Court decision was in favor of DOS.

-Government in Sunshine Act – mandates that government meetings are open to the public

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03/01/99 1 OF 2 BMGT 380
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LECTURE #8

*Announcements: Read Ch. 6 (just for terms, not cases), Ch. 7, and Ch. 8.
Pick-up copy of old midterm.*

Chapter 5 Continued

- focus studying on informal rulemaking and rulemaking by negotiation, don't need to know formal or hybrid rulemaking
- Informal Rulemaking (a.k.a. Notice & Comment Rulemaking) – must propose rule in Federal Register, gives people opportunity to comment and then final rule is published in Federal Register no later than 30 days prior to effective date
- Adjudication (p.100)
 - must adhere to procedures eg. APA
- What kind of due process must they give? It depends. Constitution determines how much due process an individual gets. Elements (p.101): notice, opportunity to participate, disclosure of reasons for decision
- Matthews v. Eldridge (p.101) --- Supreme Court said not guaranteed hearing for disability benefits (70's), not giving hearing before termination of benefits. Lower courts were in favor of Eldridge due to Goldberg case (in 60's) which required hearing for welfare benefits. In this case no hearing because based on routine, unbiased medical reports.
- Amendment 4 (p.1185): each state has their own amendment 4, Are commercial establishments subject to as much protection as private homes?
General rule: everyone including commercial businesses should be free from unwarranted searches & seizures
- N.Y. v Burger (p.103) --- certain businesses are less protected than others. Who makes the determination? Agencies who make rule (in this case, legislature of N.Y.) See criteria on p.103.
 - What if there had been evidence of murder, could they take it? Yes, if it was in plain view.



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2 OF 2

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- What if a man is sleeping in a room in building on premises, can they go in to search it? Search must be made during normal business hours and if it is his residence they can't go in but if it is just the office they can go in because it is a closely regulated industry.
- Other closely regulated industries: food, day care centers.
- Judicial Review of Agency Action: before going to court must exhaust remedies before agency
- Question #8 (p.108): was meant to protect consumer and inmates are not consumers; drug was intended to kill the inmates so no need for protection.
- Fig 5-4, p.105---Scope of Review
If subject to adjudication, agency must provide substantial evidence on record.
- Question #10: How FTC should proceed against co? Rulemaking would have industry-wide significance. Adjudication enforcement action against single co. can do both. Decision is up to FTC.
- Managerial Perspective, p. 93: Stage of case is proposed rule so in comment stage. T-N-S can comment will interfere with business. Is it one particular model causing problem? If so, don't ban all lids just that type or proceed against manufacturer.

Chapter 7 Intentional Wrongs: Business Crimes and Torts

- in some cases, intentional torts may also be crimes
- p. 132: embezzlement vs. larceny
 - embezzlement: property entrusted to you and you take it; ex. crooked lawyer holding funds for someone
 - larceny: took property and never had it in your possession
- Foreign Corrupt Practices Act ('77) --- makes it a crime to bribe an official of another country
- Not against the law to pay money to move an application forward (out of country) but if you pay for result it is a crime.
- Bribery is anticompetitive



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LECTURE #9

Chapter 7 Continued

-illegal stock purchase:

Insider trading --- mailed in check (mail fraud) --- called thru broker (wire fraud)
In court would be charged for everything possible to see what they can prove,
“throw book at you”.

-Racketeer Influenced & Corruption Organizational Act (RICO) - p.134 - makes it a crime to acquire/operate an enterprise by a pattern (2 acts or more) of racketeering--persons, corporations, partnerships--would need to give up profits plus 2x that amount (treble damages) ex. \$25,000 + \$50,000

*if pattern affected your business, can bring a civil suit for amount lost plus treble damages

-commitment of perjury & obstruction of justice is a CRIME --- civil case

-Torts:

-p. 136 Fig. 7-2: Tort Spectrum

Intentional ----- Negligent ----- Strict Liability
(crimes) (implies fault) (explosives, dangerous products)

-another to sue for harmful product/service --- Breach of Warranty
(contract between buyer & seller)

-elements = what is needed to prove a case

-Tort Against Persons

1)Battery = intentional offensive touching of another, ex. wrong leg removed in surgery
Question #5 (p.149): yes, because he did intend to touch him.

2)Assault

3)False Imprisonment = restriction to move,must be complete,victim must be aware of it.
Faniel v. Chesapeake & Potomac Phone Co.

-if felt like had to go with officers --- Can you argue she was mentally restrained? No, not in this case because she agreed and there was no complaint; she is an adult with reasonable intelligence.



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*shopkeepers are allowed to detain shoplifters for a reasonable amount of time for the police to arrive

4) Intentional Affliction of Emotional Distress

ex. Glen Burnie, MD in 1975: Chain Saw Massacre was being shown at a movie theater and the attendant decided to start up a chain saw in the lobby to scare everyone and an old man died of a heart attack. --- THIS IS IAED

5) Defamation - tarnishing reputation; target is any living person; truth is an absolute defense; slander is verbal and libel is written

*see book for four types where Plaintiff doesn't have to prove damages in slander

6) Invasion of Privacy

-intrusion = person's privacy is physically invaded; ex. of question of privacy is drug tests for employment

-public disclosure of private facts = when information, private in character, is exposed to public gaze

-*Beard v. Akzona, Inc.* ('81) p. 140 --- husband suspected affair and tapped their home phone; tape was shared with 5 managers and Beard & Bosma were fired; Beard sued Akzona for invasion of privacy-- jury awarded Beard; reason for suing Akzona is because they have "deep pockets"; Akzona did invade privacy but wasn't public disclosure of private facts (no elements of tort)

-false light = when one publishes false material designed to make a person look bad

-appropriation = when a person's name, picture, or other likeness is used for commercial advantage without person's consent

-Torts Against Property

1) Trespass to Realty = intentional invasion of another's real property without authorization; see definition of nuisance

2) Conversion

Question #7 (p.149) -- possible charges: infliction of emotional distress, false imprisonment (this argument is weak), conversion



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1 OF 3

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LECTURE #10

Announcement: Monday (3/15) will be review days, cut-off for material will be announced this Wednesday (3/10)

Chapter 7 Continued

-when we look at torts, remember to think about what are our elements or requirements for the suit

-Chemawa v. Wnuk (p.144)

-tortious interference with contractual relations (with their members)

-judgement notwithstanding the verdict – no facts supporting the suit

-Court of Appeals stated that needed proof of economic loss, was none

-court guesses that loss of members occurred due to a shooting

-Appropriation of Trade Secrets

-Wrongful Discharge

*don't need know to know a lot about either of these

-Defenses to Intentional Torts (p.146)

1)Implied Consent (know definition)

2)Self Defense --- person has right to use force proportionate to occasion necessary for self-protection

ex. if being attacked with deadly force, you can use deadly force; doesn't mean has to be gun-to-gun or knife-to-knife

-Katko v. Briney (p.147) --- Katko committed larceny, he was convicted of a crime & turned around to sue Briney's for damages for willful and wanton injuries

-jury --- verdict against defendant

-appeal to Supreme Court --- upheld verdict

-Court said can't protect property in a lethal manner

-What if this had been Briney's garage? If it was attached to their dwelling, then would be allowed to use deadly force to protect yourself



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3/8/99

2 OF 3

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-What if they protected barn with dog? If barked before Katko entered, courts would only award nominal damages such as \$1. Had it been a snake? He would get a lot more because no warning before entering.

-Question #10 (p. 150) --- if golf balls were deliberately being hit it would be trespass or intrusion or attempted battery or intentional infliction of emotional distress. If trap had been built to drive Fenton's away, it would be intentional infliction of emotional distress.

-What about damages? Would need to prove broken windows were the result of intentional tort & the result of living by a golf course. Possibility of punitive damages.

Chapter 8: Negligence & Strict Liability

-know elements of negligence (p. 154, Fig. 8-1)

-negligence is basically carelessness

-doctrine of Respondent Superior – when employee is working within scope of employment, employer is responsible for damages

-Quinones v. U.S. (p. 155) --- Quinones sued for negligence failure to maintain complete & adequate records, Federal District Court dismissed case and Court of Appeals reversed this decision

-element: due care, breach of duty

-Res Ipsa Loquitur --- “the thing speaks for itself”

-Question #7 (p. 165) --- rather than having to prove duty or breach of duty, if you can show res ipsa the defendant will have to prove was not his fault

-THIS IS NOT RES IPSA, not exclusive control of defendant

-Violation of a Statute --- note limitations

-Proximate Cause --- in fact or foreseeability

-Causation in Fact – defendant's conduct was a substantial factor in contributing to Plaintiff's injury; burden of proof on Plaintiff

-Foreseeability – question is whether, at time of act or omission, the consequences of injury are reasonably foreseeable



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3 OF 3

BMGT 380
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-Chrystal v. The Hawkes Hospital (p. 157) --- sued for negligence, ordering a blood transfusion was negligence

-judgement for Plaintiff for both jury & Court of Appeals

-If they had screened the blood and she still got AIDS, what would she have to prove? That the blood was properly screened, ie.: are they using most current tests or cheapest tests, what was the test. If the test was the state of the art, the hospital is probably not liable



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1 OF 2

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ANNOUNCEMENT: Mid-Term Exam on Wednesday, 3/17/99!

LECTURE #11

Chapter 8 Continued & Exam Review

- Negligence need to prove: duty, breach of duty, proximate cause, injury
- Proximate Cause (must have both):
 - 1)Causation in Fact
 - 2)Foreseeability (focus on Chrystal v. Hospital, p. 157)
- Injury --- compensatory damages is “making the person whole”, ie. medical expenses, loss of wages, etc.
- Defenses to Negligence:
 - Contributory Negligence --- when Plaintiff’s own negligence is contributing cause of own injury, absolute bar to Plaintiff’s recovery
 - Comparative Negligence --- Plaintiff’s recovery is diminished by the percentage he/she contributed to injury; modified & pure
- Assumption of the Risk (p. 160) --- when Plaintiff voluntarily assumes risk of exposure, bars Plaintiff recovery
- Question #6, p. 165
 - who is duty to? Safe job site for employees
 - breach of duty? Yes, should have barriers and/or warning signs
 - proximate cause? Can prove foreseeability because could know people would run off the road
 - injury? Yes
 - *all elements satisfied therefore Felix is liable*
- Strict Liability --- in past this applied to unreasonably dangerous activity such as storing explosives, keeping wild animals; by statute it has been expanded to include more activities such as field burning, unreasonably dangerous product
- Yukon Equipment v. Fireman’s Fund Insurance Co. (p.161) --- if there was a superseding cause, they would not impose liability
 - ex. of a superseding cause: lighting bolt, plane crash

THESE NOTES DO NOT REPRESENT THE PROFESSOR’S LECTURE VERBATIM



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absolute and strict liability are interchangeable in this case

-Question #10, p. 166

-was whirlwind unforeseen? In Kansas, no. In Maine, yes.

-was wind unforeseeable?

-superseding cause is what?

-was it so extraordinary & uncommon?

-Answer: sued under both, negligence & strict liability, this guy was found strictly liable

-Exam Review

-bring 3x5 card, can write on both sides, and pencils

-32 multiple choice & 18 true/false

-will not be on exam: substantive due process p.83-84, only interested in informal rulemaking on pp. 98-100, Restatement Test p.161

-general suggestions: study elements of tort, review cases, how issues come up in context of facts, proximate cause, motions

-two cases to know in detail: Burger King and Burton