

I. MAJOR TOPICS: Listed below are the major topics in this chapter. You should have a complete understanding of each of these topics and be able to conduct complete analyses that utilize the corresponding concepts, principles, etc.

1. Describe how irrational behavior by decision makers could effect the efficiency of specific liability rules. In particular, explain how an underestimate or overestimate of the probability of an accident would affect the level of precaution taken relative to the efficient level.
2. Explain how regulation can serve as both a substitute for, and a complement to, tort liability. Under what circumstances is regulation (tort liability) likely to more effective than tort liability (regulation) as means to reduce the cost of accidents? Why?
3. Is insurance generally assumed to interfere with the goals of tort law? Why or why not? Explain the concepts of moral hazard and adverse selection and the effects they might have on the efficiency of insurance and tort law. Explain, in general terms, how insurance can be expected to affect the efficiency of the tort liability system.
4. Describe how bankruptcy and litigation costs can affect the behavior of potential injurers and victims and, consequently, the efficiency of tort law.
5. What is vicarious liability? Distinguish between strict vicarious liability and negligent vicarious liability. Which rule is likely to be more efficient? Why?
6. Explain how the rule of joint and several liability works. Under what circumstances is such a rule likely to induce efficient behavior? Why? Be sure to include the concept of “contribution” in your answer.
7. Explain how evidentiary uncertainty can affect the relative efficiency of comparative negligence and negligence with a defense of contributory negligence. On balance, is there any reason to believe that one rule is likely to be more efficient than the other? Why or why not?
8. Distinguish between compensatory damages and the risk-equivalent (Hand-rule) method of computing damages. Under what circumstances is each method preferred? What problems are encountered with each method?
9. Describe the conditions under which punitive damages should be awarded and be able to explain how the amount of punitive damages should be computed. In particular, be able to demonstrate that punitive damages, when used properly, can compensate for “enforcement error” and create incentives for injurers to take an efficient level of precaution to avoid accidents.
10. Summarize the empirical evidence on the number of tort cases heard each year, the breakdown of the cases according to broad categories, and the extent of punitive awards in tort cases. What do these statistics say about the perception that there has been an explosion in tort actions in the United States and, more to the point, that jury awards are out of control.

11. List and describe the conditions under which a producer could be found liable under the “strict products liability standard” in a product-related accident.
12. Describe what we would consider the efficient liability standard in the case of product-related accidents.
13. Describe the arguments in favor of products liability reform in the United States. In particular, what kinds of changes have manufacturers argued for and why? What do the available data suggest about the need for substantial reform of the products liability laws in the United States?

II. REVIEW QUESTIONS

1. In many situations, a bartender or party host who serves liquor to an already intoxicated person can be held vicariously liable for any damages the intoxicated person subsequently inflicts on other people or their property. Does this form of vicarious liability make economic sense? Why or why not?
2. The area of products liability law is full of examples in which individuals have been severely injured or killed as a result of use, and sometimes misuse of a product. One example concerns the Johns-Manville Corporation and the use of asbestos, a fire retardant material used in many construction projects, most notably as insulation. The long and the short of it is that researchers determined that asbestos fibers, when inhaled over a period of time, can lead to severe respiratory ailments including lung cancer. However, estimates of the acceptable level of exposure to asbestos fibers developed in the 1940s, which industry used in setting safety standards for workers, turned out to be much too high; on the order of 50 to 100 times too high. A more informed understanding of the relationship between exposure to asbestos and adverse health effects emerged decades later. In the 1960s and 1970s, large numbers of individuals, primarily workers in plants that manufacture asbestos products, began to develop clear signs of adverse effects from exposure. Most of these workers had been in their jobs for 20 years or more. As a consequence, various individuals and groups brought law suits against employers, including Johns-Manville, seeking compensatory damages for harms suffered. Considering the criteria that must be met under the standard of “strict products liability” and the economically efficient standard for products-related accidents, how do you think the court should rule in such cases? Why?