

Strict Liability

Office Hours

This Friday, office hours will be at 1pm.

Midterm

My unhelpful rubric

5 and under ->

6 ->

7 ->

8 ->

9 ->

10 ->

My unhelpful rubric

5 and under -> Did not competently answer the question

6 ->

7 ->

8 ->

9 ->

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My unhelpful rubric

5 and under -> Did not competently answer the question

6 -> Showed competency but made errors

7 ->

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My unhelpful rubric

5 and under -> Did not competently answer the question

6 -> Showed competency but made errors

7 -> Competent answer, checked all the boxes

8 ->

9 ->

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My unhelpful rubric

5 and under -> Did not competently answer the question

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7 -> Competent answer, checked all the boxes

8 -> Persuasive answer

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8 -> Persuasive answer

9 -> Opposing counsel would be scared of you

10 ->

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8 -> Persuasive answer

9 -> Opposing counsel would be scared of you

10 -> Why are you better than me at torts?

My unhelpful rubric

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8 -> Persuasive answer

9 -> Opposing counsel would be scared of you

10 -> Why are you better than me at torts?

Exercise: Causation & Vicarious Liability (pg. 99)

Cooper (defendant who put out trashcan) seeks to dismiss the case against her for two independent reasons:

1. Cooper did not breach a duty of care to Boyd.
2. Cooper did not proximately cause Boyd's injuries.

Greene (driver) seeks to dismiss the case against her for two independent reasons:

1. Cooper putting out the trashcans was an intervening cause of Boyd's injuries.
2. Even if Cooper's actions were not an intervening cause, Greene still did not proximately cause Boyd's injuries.

ACME seeks to dismiss the case against it for two reasons:

1. ACME is not liable for Greene's tortious acts because she was acting outside the scope of her employment.
2. ACME is not liable because asking Greene to pick up a birthday cake was not a factual cause of Boyd's injuries.

Two parts to causation

1. Factual cause

2. Proximate cause

Two different tests for factual causation

1. “But for”
2. Substantial factor

Factual Cause

Stubbs v. City of Rochester: “Sewage in the Drinking Water”

Zuchowicz v. United States: “Prescribed Drug Overdose”

Anderson v. Minneapolis, St. Paul & Sault Ste. Marie Railway Co.:
“Multiple Fires Whodunnit”

Summers v. Tice: “Hunting Party Whodunnit”

Garcia v. Joseph Vince Co.: “Fencing Sabre Whodunnit”

Sindell v. Abbott Laboratories: “Toxic Harms”

Proximate Cause

About scope of liability. Is the harm too attenuated? Policy question based on a rough sense of justice.

Rule-like carveouts:

- Danger invites rescue
- Eggshell plaintiff
- Intervening / Superseding Cause

In re Polemis: “The Plank that Made a Ship Explode”
Wagner v. International Railway Co.: “The Injured Rescuer”
Benn v. Thomas: “The Time-Delayed Heart Attack”
Steinhauser v. Hertz Corp.: “Sudden Schizophrenia”
Gibson v. Garcia: “The Rotten Telephone Pole that Fell on the Car”
Berry v. Borough of Sugar Notch: “The Rotten Tree that Fell on the
Speeding Car”
Palsgraf v. Long Island Railway Co.: “Fireworks on the Train
Platform”

Vicarious Liability

Three criteria for scope of employment

- 1) Employee's conduct must be of the general kind the employee is hired to perform.
- 2) Employee's conduct must occur substantially within the hours and ordinary spatial boundaries of the employment.
- 3) Employee's conduct must be motivated, at least in part, by the purpose of serving the employer's interest.

Vicarious Liability

Miller v. Reiman-Wuerth Co.: “The Bank Errand”

Christensen v. Swenson: “The Lunch Break”

Kuehn v. Inter-city Freight: “Road Rage”

Sage Club v. Hunt: “The Violent Bartender”

Contributory / Comparative Negligence and Assumption of Risk

Contributory Negligence in General:

The defendant is not liable

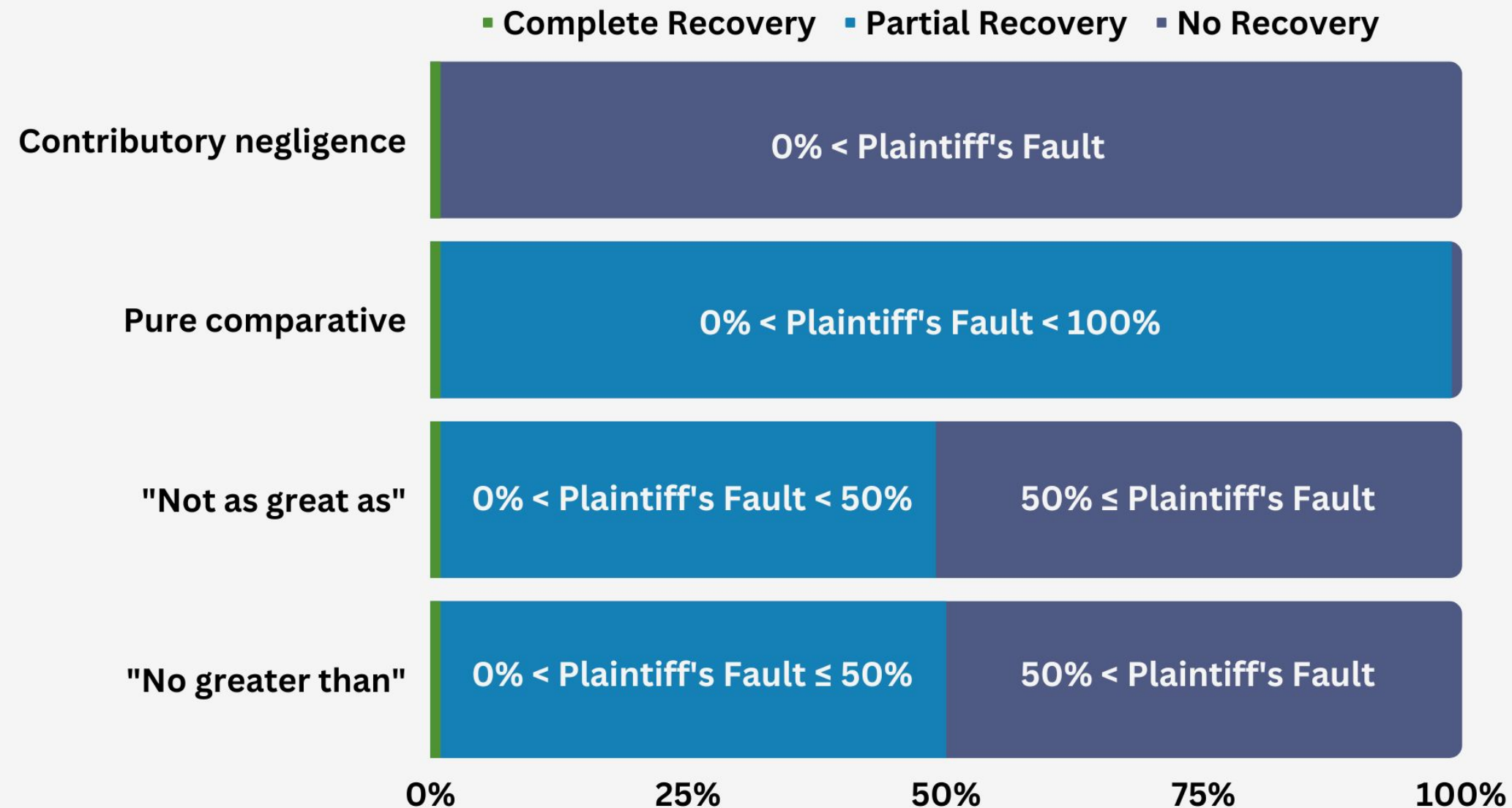
If the plaintiff was also negligent

- Duty,
- Breach,
- Causation, and
- Harm

Unless an exception applies:

- Last clear chance,
- Recklessness or willfulness of defendant, or
- Statute

Can the negligent plaintiff recover damages?



Doctrine of Contribution

Traditional Common Law Approach

Two versions:

1. Joint and several liability
2. Several liability

Order of operations with multiple injuries and multiple liable defendants

First step:

Separate injuries based on factual cause.

Second step:

For injuries that multiple defendants caused, sort out liability based on the contribution rule in the jurisdiction.

Explicit assumption of risk

Implicit assumption of risk

Tunkl Factors

1. Business of a type generally thought suitable for public regulation.
2. Defendant performs a service of great importance to the public (often a matter of practical necessity for some members of the public)
3. Defendant willing to perform this service for any member of the public
4. Defendant has bargaining advantage
5. Standardized adhesion contract of exculpation
6. Plaintiff placed under the control of the defendant, subject to the risk of carelessness by the seller or his agents.

Exercise: Defenses to Negligence

Version #1: contributory negligence, assumption of risk, Tunkl factors

Plaintiffs:

- Emily (baby)
- Lynn (sister)
- Tito (father)
- Tatiana (mother)

Exercise: Defenses to Negligence

Version #2: “not as great as” comparative negligence, assumption of risk

Plaintiffs:

- Emily (baby)
- Lynn (sister)
- Tito (father)
- Tatiana (mother)

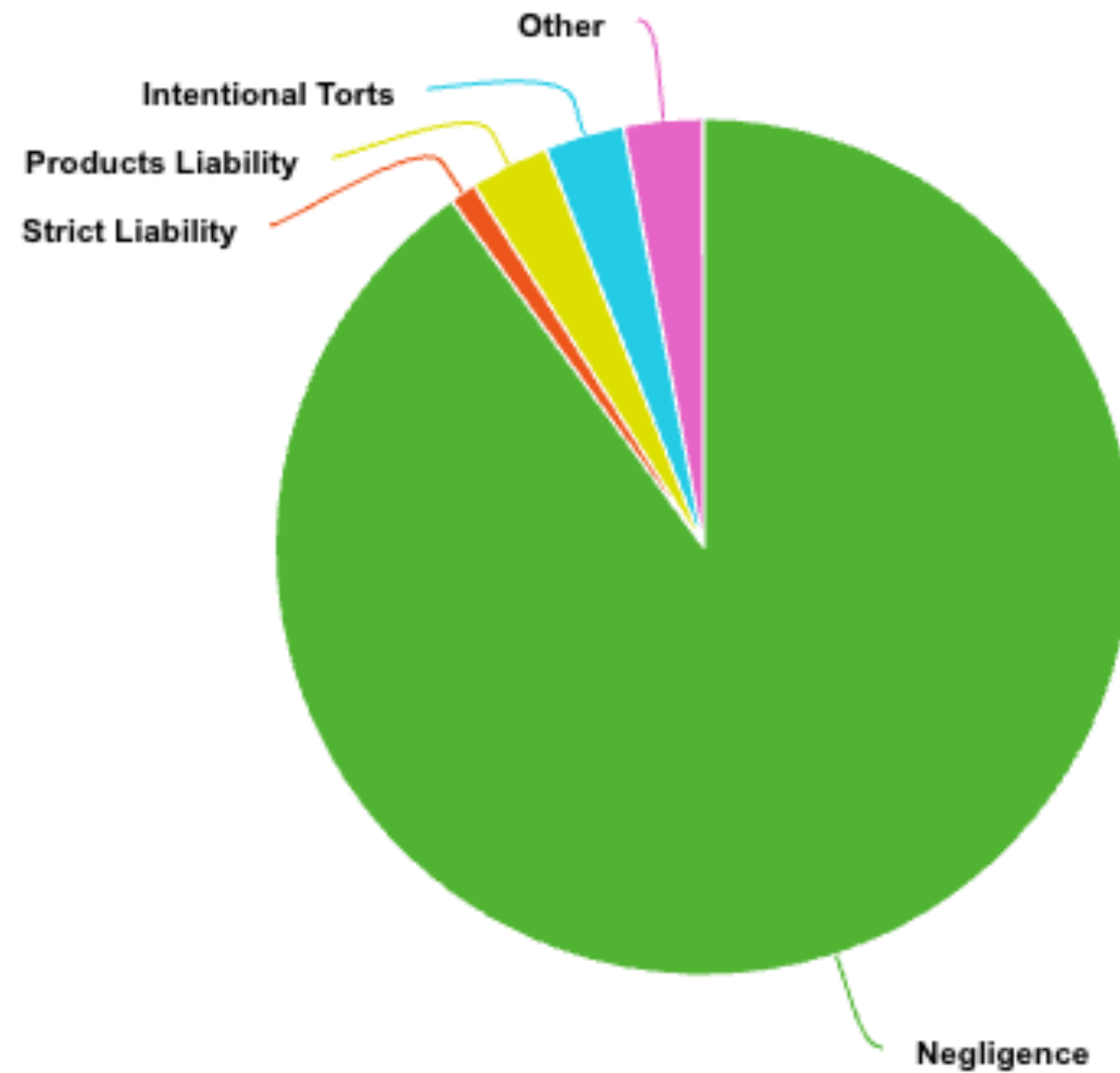


YOU DID IT!

Negligence is finished!

What's next?

- Strict liability & products liability
- Intentional torts
- Alternatives to tort (insurance, workers comp, compensation funds)



■ Negligence ■ Strict Liability ■ Products Liability ■ Intentional Torts ■ Other

Fletcher v. Rylands

Rylands v. Fletcher

Liability applies for:

PWFO PBOHL & C & K TALD M IIE

Liability applies for:

PWFO PBOHL & C & K TALD M IIE

A person who for his own purpose brings onto his land and collects and keeps there anything likely to do mischief if it escapes

Limits on Strict Liability

Fletcher v. Rylands

--- PWFOPBOHL&C&KTALDMIIE

Rylands v. Fletcher

--- PWFOPBOHL&C&KTA “non-natural” and LDMIIE

First Restatement

--- “ultrahazardous activity”

Second Restatement

--- “abnormally dangerous activity”

Indiana Harbor Belt v. *American Cyanamid*



Indiana Harbor Belt v. *American Cyanamid*

Strict liability applies for behavior that is:

- Very risky and that risk cannot be eliminated at reasonable cost

AND

- Not susceptible to due care analysis

Restatement Definitions

“In determining whether an activity is abnormally dangerous, the following factors are to be considered: (a) existence of a high degree of risk of some harm to the person, land or chattels of others; (b) likelihood that the harm that results from it will be great; (c) inability to eliminate the risk by the exercise of reasonable care; (d) extent to which the activity is not a matter of common usage; (e) inappropriateness of the activity to the place where it is carried on; and (f) extent to which its value to the community is outweighed by its dangerous attributes.” Restatement (Second) of Torts § 520 (1977).

“An activity is abnormally dangerous if: (1) the activity creates a foreseeable and highly significant risk of physical harm even when reasonable care is exercised by all actors; and (2) the activity is not one of common usage.” Restatement (Third) Torts: Liability for Physical and Emotional Harm § 20 (2010).

Tort law is the law of
negligence.

Strict liability is the law of tort law when negligence fails.

MacPherson v. Buick Motor Co.



MacPherson v. Buick Motor Co.

Escola v. Coca Cola

**Activism
in Pursuit
of the
Public Interest:**

**The
Jurisprudence of
Chief Justice**

ROGER J. TRAYNOR



BEN FIELD

Rationale

Power dynamics

Cost spreading / insurance

Deterrence

Extensions of Liability

Plaintiffs: Not just consumers but bystanders.

Defendants: Not just manufacturers but retailers.

Defect Requirement

Barker v. Lull Engineering

Two tests:

- 1) Consumer expectations
- 2) Excessive preventable danger

Soule v. General Motors

**When does the consumer
expectations test apply?**

Not at all clear!

It depends upon the “everyday experience of the product’s users”

~~1) Consumer expectations~~

2) Excessive preventable danger

“Reasonable *Alternative* Design”