

# Epstein's Strict Liability

PHIL 420

Philosophy of Law

Distance Delivery

## History of Torts

- The common law
- Very limited writs
- Strict liability
- Negligence
- Economic analysis
- Moral critiques

## *U. S. v. Carrol Towing*

- ⚙ **Facts**
- ⚙ **Learned Hand**
- ⚙ **Hand's formula**
- ⚙ **Law and economics?**
- ⚙ **Negligence**
- ⚙ **Epstein's criticism**

## *Vincent v. Lake Eire*

- ⚙ **Facts of the case**
- ⚙ **Rulings**
- ⚙ **Problems for negligence**
- ⚙ ***Morris v. Platt***
- ⚙ **Consistency and fairness**
- ⚙ **A better way?**

## Causation

- ⚙ **Two causal questions**
- ⚙ **Cause in fact**
- ⚙ **“But for”**
  - ⚙ **Necessary condition**
  - ⚙ **Negligence**
  - ⚙ **Subjunctive mood**
- ⚙ **What did happen**
  - ⚙ **Indicative mood**
- ⚙ **Different concepts**

## The Negligent Accident

- ⚙ **Setting the alarm**
- ⚙ **Going for a drive**
- ⚙ **Seeing the roommate**
- ⚙ **Causation by excitement**
- ⚙ **But for the negligence?**
- ⚙ **Damages?**

## Causation In the Law

- ✿ Absurdity of “but for”
- ✿ Philosophical test
- ✿ Proximate cause
- ✿ *Causation in the Law*
- ✿ *The Cost of Accidents*
- ✿ “The Problem of Social Cost”

## A Theory of Strict Liability

- ✿ Negligence should be scraped
- ✿ Common sense causation is the key
- ✿ Strict liability
- ✿ *Prima facie* liability
  - ✿ Defenses to negligence
  - ✿ Defenses to strict liability
- ✿ *Bolton v. Stone*
- ✿ *Vincent v. Lake Erie*

## Four Causal Relationships

- **Force**
  - A hit B
- **Fright and shock**
  - A frightened B
- **Compulsion**
  - A compelled B to hit C
- **Dangerous conditions**
- **Cases**
- **Strict liability makes more sense of them**

## Problem of the Good Samaritan

- **Duty to rescue**
- **Common law**
- **Scholarly discomfort**
- **Proposed change to the common law?**
- **Epstein's discomfort with change**

## Exceptions?

- The pheasant hunter
- *Montgomery v. National C & T*
- Negligence?
- Strict liability
  - Shot killed the hunter
  - Dangerous conditions caused the accident

## Epstein's Libertarianism

- Keeping government out of people's lives
- Promises
- Forced exchanges
- Good Samaritan laws as forced exchanges
- No causation!
- No strict liability!