Law 201
Model Answer #2
Schwartz
Fall-2009

Question 1

J = Joe
E = Ellen
S = Susan
RRW = Randy Rodeo World
AWFS = Acme World Film Studio

(1)

J v. RRW / AWFS

Negligence

In order to make a claim for negligence four elements must be met. First, it must be established that the defendant had a duty to the plaintiff. Second, it must be established that the defendant in fact breached the duty he had towards the plaintiff. Third, it must be established that the breach of the defendant's duty was the proximate cause of the plaintiff's injury. Finally, it must be established that the plaintiff did in fact suffer harm.

Duty

Everyone has a general duty not to act unreasonably in such a way as to cause harm to others. Beyond the general formulation there are a number of additional relationships which give rise to duties. A defendant has a duty to a plaintiff once the defendant begins to help the plaintiff if the plaintiff was in peril. If the defendant created the risk, even if the risk was created non negligently, the defendant has a duty to exercise reasonable care to prevent or minimize harm resulting from the risk. Common carriers such as trains or airlines have a heightened duty to all passengers. In some

circumstances, medical professionals have a duty to warn, such as in *Tarasoff* where a psychologist was held liable for not warning a victim of an impending attack.

The defendant can also have a duty if the defendant owns the building the plaintiff was in when injured. This duty is different depending on the relationship of the plaintiff to the defendant. If the plaintiff is an *invitee*, someone with whom the owner had a joint interest, then the owner has a duty to take reasonable care that the premises were safe. If the plaintiff is a *licensee*, a social guest or someone the owner has no explicit interest shared with, then the owner has a duty not to allow concealed dangers to go uncorrected or unannounced. If the plaintiff is a trespasser, and the owner knows the trespasser is there, the owner only has a duty not to do active negligent acts towards the plaintiff. If the owner is unaware of the trespasser, there is no duty to the trespasser.

In the instant case J is an invitee of RRW and AWFS. This establishes that RRW had a duty to exercise reasonable care that the premises of its park were safe.

Breach

One breaches their duty when they fail to act as a reasonably prudent person would with regard to it. This is an objective standard. If an individual is mentally deficient in some way, they are still held to the same standard as everyone else. An exception to this is children, who are held to a more subjective standard, taking into account their age, experience and mental development. While the reasonably prudent person standard does not require people to do the impossible, like demanding blind men see, it

does demand that people with disabilities act with reasonable care regarding their disabilities. If they are unable to do an activity safely due to their disability, they ought to not do it.

There are various methods of analysis which can be employed in order to determine whether or not someone acted reasonably with regard to their duty. Two common methods are custom and various calculi of risk analyses.

Custom

The industry standards or customs governing an activity can figure in to whether or not a course of action was reasonable. The weight of custom varies on a case by case basis. Sometimes custom can show a defendant acted with the skill and cautiousness required by his profession, thus acting reasonably. However, a court can also find that the custom itself is negligent, and if they do then it is no excuse that someone adhered to custom. It is useful as evidence when the defendant fails to meet the industry standard; if they did not act as most people in their industry would have, it is unlikely they were nonetheless acting reasonably. This would not be the case only if the industry dictated precautions which far exceeded their duty of care.

In the instant case it appears that RRW may have created a mechanical bull which exceeds the common strength and danger of other mechanical bulls. J has ridden many a mechanical bull in his day, and he is surprised mid ride at how strongly Bad Bill begins to buck. This is not a clear violation, but further factual investigation could show that RRW exceeded the standards of how dangerous a mechanical bull can be. If they

did exceed custom, it would be good evidence to support J's claim that RRW breached its duty to take reasonable care to keep the premises of the amusement park safe.

Calculus of Risk

One way to determine if someone acted reasonably is to engage in a calculus of risk. This is a broad term for analyzing the rationality of a given act using an economic methodology. One type of calculus of risk proposed by Learned Hand is BPL analysis. In BPL analysis, one assess whether the burden of preventing the harm for the defendant is less than the cost of the loss associated with the risk times the probability the risk would occur. If the burden is less, then on BPL grounds it was not reasonable not to take the precaution and the defendant is liable. This can be tricky to analyze precisely, but it is useful if one can show one side of the equation or another is negligible in size.

In the instant case it is fairly easy to engage in BPL style analysis. There are 11 results in the case from people riding the ride. 2 of 11 stayed on the bull for the full duration. 9 fell off of the ride, with two of those persons suffering injuries (one a twisted ankle, and the other J's injuries). While this is too small a sample size to make definitive statements as to the danger of the ride, if one assumes this sample is representative of the general trend, it shows that there is roughly an 18% chance of injury when riding Bad Bill, and a 22% chance of injury when one falls from Bill. The injuries can range in severity from a twisted ankle to J's severe injuries which require hospitalization. The burden of preventing these injuries is relatively low. The cost of using padding rather than carpet around the mechanical bull and of erecting a fence at a safe distance to

keep children away would undoubtedly be lower than the cost of both the medical treatment and pain suffered by all of those injured in the status quo.

Another type of calculus of risk was proposed in the Harvard Law Review. On this view there are five separate factors to evaluate to determine the reasonableness of an action. First one should assess the magnitude of the risk. Second one should assess the value of the object exposed to the risk. Third one should assess the value of the collateral object or interest that the risk is taken for. Fourth one should assess the probability that the collateral benefit will be obtained by taking the risk (this is the utility of the risk). And finally one should assess whether the risk was the only way to attain the collateral object. This is not a bright line test like BPL would be in its purest form, but rather it names the factors one should look to when deciding whether or not someone acted reasonably when taking a risk.

In the instant case this analysis leads to a similar conclusion as seen above. The risk is serious injury. People are of very high value, although difficult to quantify. The collateral object in this case is savings by not adding safety devices, which is probably not too expensive. Clearly the amusement park saves some money by not deploying the safety devices. However, the park can minimize costs in other ways than skimping on safety; in fact, employing safety may minimize costs of litigation and restitution to those injured in the park.

Causation

In the instant case there are two contributing causes from RRW to J's injuries. First is the dangerous strength of Bad Bill, and second is the lack of safety measures around bad bill (including both padding and a fence).

The dangerous strength of Bad Bill satisfies both the modern foreseeability analysis and the older directness analysis of causation. Because patrons are regularly bucked from bill, it should be fairly easy to establish that it is foreseeable for RRW that patrons will be thrown from Bill. Furthermore, only brief watching gives examples of injury resulting from such bucking. On directness, one can show that, even in the case of experienced and skilled riders from the great state of Texas, Bill bucks people from his back and onto unpadded ground around him, resulting not infrequently in injury. From the bucking to the injury there are no exterior supervening causes.

Similarly, the lack of safety measures meets both tests. It is reasonably foreseeable that patrons will move close to the ride unless otherwise stopped; human curiosity is a common driving force that leads people to do things which are generally speaking ill advised. It is also foreseeable that persons being thrown from an object to unpadded ground may suffer injury resultant from that impact. Since the bucking is foreseeable (see above) the injury from the resulting impact is also foreseeable. The force of impact and unexpected objects directly cause the injuries in the case of J; his contortion and impact on the unpadded surface cause his injuries.

Damages

J suffers serious injuries which require hospitalization. These are actual damages.

Res Ipsa Loquitur

Res Ipsa Loquitur provides an assumption of negligence in situations where the defendant controls all of the evidence of action prior to the event. The burden is then on the defendant to overcome the assumption of negligence. In order for a plaintiff to establish negligence they must show three things according to the Restatement (Second) of Torts. First, the event which occurred must be an event which normally does not occur in the absence of negligence. Second the plaintiff must sufficiently eliminate other possible causes of the event with evidence. Third, the negligence still must be within the scope of the defendant's duty to the plaintiff. If these three requirements are met, negligence on the part of the defendant is assumed unless he can prove otherwise.

J could argue that Bill's strength was negligent whether RRW intended for the ride to be that strong or if it was as a result of a malfunction. RRW would have to show that either it was not negligent to have the ride be that strong or that they exercised due care in maintaining the ride and it malfunctioned anyway.

Defenses for RRW / AFWS

Assumption of Risk

J has ridden many a mechanical bull in his time. Inherent in the concept of riding a mechanical bull is being thrown from it. Furthermore, J observed 80% of previous

riders were thrown from Bill. As Cardozo would say, the timorous may stay at home. The fun of a mechanical bull is in the possibility of being thrown from it, and the accomplishment of avoiding that. J knew this all too well, having ridden many a mechanical bull in his day. By getting on the ride J assumed the risk of being thrown and also the risk of being injured, since he saw one of the people before him get injured.

Assumption of risk traditionally is a complete defense to a tort action, although typically today it is incorporated into comparative negligence, rather than acting as a defense on its own.

Contributory Negligence

Contributory negligence is conduct on the part of the plaintiff which falls below the standard of conduct to which he should conform for his own protection and which is a legally contributing cause cooperating with the negligence of the defendant in bringing about the plaintiff's harm. Contributory negligence is a complete defense for the defendant where it is still recognized.

J realized midway through the ride that it was dangerous to remain on the ride. He decided to stay despite the danger because of taunting from the crowd. While it is common knowledge that Texans are proud people, one could not say that taunting based on one's Texan heritage would make a reasonable person leap headfirst into any possible danger. J decided, against his better judgment, to remain on the ride even once he realized it was dangerous to remain. This is negligent and is a contributing cause to his injury.

Furthermore, J chose to land in an unsafe manner when avoiding the child. If J had chosen to land in a safer manner, which surely he knew how to do from his years in college riding mechanical bulls, his injuries would in all likelihood be less severe, or possibly nonexistent.

Comparative Negligence

Comparative negligence has largely replaced contributory negligence in assessing whether or not the plaintiff's negligence excuses the negligence of the defendant. Rather than acting as a complete defense, comparative negligence lessens the burden the defendant must bear in damages. The court assesses fault on a percentage basis, and each party assumes a percentage of the cost equal to their percentage of fault. There are two competing forms of comparative negligence, a pure version and a hybrid version. The pure version assess damage on the basis of % of fault, no matter how much of the fault is the plaintiff's. The hybrid version acts like the pure version until the plaintiff's negligence reaches the 50% threshold, and then bars any relief for the plaintiff. California adopted the pure model in **Li v. Yellow Cab**, but the majority of states have adopted some form of hybrid comparative negligence.

Even if all the reasoning in the sections above on contributory negligence and assumption of risk hold, it is likely that the fact finder would assess fault on the part of RRW to be higher than J's personal fault. The precise evaluation of percentages of fault is a responsibility of the fact finder, so this analysis will not spend time dwelling on it.

Responses

J may respond as to the claim that he was contributorily negligent in trying to avoid the little girl (who he would not have hit anyway) by saying that his belief was reasonable, and that it is not negligence to act reasonably to avoid a greater harm, even if it results in injury. One case in the class concerned a man 'saving' a child from an approaching train, even though the child was not on the same track as the train. The man 'saved' the child by moving it off of the tracks, but himself died. The court held that it was not contributory negligence, because the train would have been liable for the death of the child if it had hit it. In the instant case, the injuries to the child would likely have been severe had J hit it while flying from the mechanical bull, so his reasonable belief that he was going to hit the child justified his effort to avoid such a collision.

J could also argue that he reasonably expected bad bill to fall in line with other mechanical bulls he had ridden, rather than being stronger than average. As an experienced rider he could reasonably have assumed that the general park patrons were not as experienced as him, and that was why they were falling from Bill. It was not until he was on the ride that he could really assess the risk posed by Bill.

E v. AWFS

Negligence

Duty

AWFS had a duty to warn E because it created the hazard which E is subjected to.

Breach

AWFS did not include warnings or instructions with Bad Bill (at least as are mentioned in the fact pattern). By failing to provide such warnings and instructions, AWFS breaches its duty to minimize the risks associated with the dangerous version of bad bill home edition.

Causation

Had AWFS included warnings and instructions E would likely have set up the device at a safe distance from her furniture and valuables, or perhaps not used it at all if it warned of the force with which Bill could buck her to the ground. It is reasonably foreseeable that valuables in the home could be damaged by people flying from a device placed in their proximity, and the failure to instruct otherwise makes the possibility that people would set up the device near furniture foreseeable as well.

Damages

AWFS is responsible for the foreseeable consequences of its negligence. In this case, they would clearly be liable for the injury to E's shoulder. It is likely that they would be liable for the damage to both the Victrola and the records, as well as the head trauma suffered due to the Victrola falling on E's head.

Defenses for AWFS

Assumption of Risk

Since E saw the full size version of the device in action, she could reasonably assume that the home version would be similar. This would include the possibility of being thrown from the device. Because E knew she could be thrown from the device, she assumed the risk of all of consequences of falling for the sake of the thrill of the ride.

Contributory Negligence

Because she knew of the risks, her failure to pad the area around the home edition as well as her choice to set it up near furniture and valuables constituted an unreasonable departure from the care she should maintain. He E acted reasonably and set up safety measures before riding she would neither have injured herself or her possessions.

Comparative Negligence

E would likely be found to be less than 50% liable for the initial injury, but more than 50% liable for the later injuries. Because of this, the amount awardedin damages could vary widely based on whether the jurisdiction adopted pure or hybrid comparative negligence.

Responses

E could not reasonably be expected to set up safety measures when AWFS and RRW failed to set up safety measures around the full sized version of Bill.

S (on behalf of her child) v. AWFS

Negligence

Because the device was set up at home by an agent of AWFS pursuant their responsibilities as an employee AWFS is liable for the actions of the agent. The mechanical bull would likely constitute an attractive nuisance, which creates a duty on behalf of AWFS toward the child. AWFS does not warn of the attractive nuisance or instruct the agent to assemble the device with measures in place to keep children away from it. Such a failure to warn in conjunction with the attractive nuisance duty constitutes a breach of duty. That breach directly causes the child's injury of a broken arm.

Defenses

Because the version assembled was the beginner edition, AWFS could argue it was not foreseeable that it would cause injury. Whether or not it was foreseeable would be an empirical question based upon the strength of the beginner edition, which is not discussed in the fact pattern.

(2)

Murphy v. Steeplechase

The above fact pattern is very similar to **Murphy v. Steeplechase** in the section relating to J. Both cases involve amusement park rides, and in both cases strapping men are injured by rides they thought they could handle (an probably impress others in so doing). In **Murphy** Judge Cardozo claimed that the chief allure of amusement park rides was the risk inherent in them. That seems to be the case in the instant case as

well, since people continue to ride Bill even after it is shown how frequently people are bucked from his back.

In comparing the instant case to **Murphy** it is interesting to consider the difference that time makes in the analysis of the cases. In **Murphy** Cardozo held that the amusement park was not liable for the damages suffered because the riders assumed the risk when they got on the rides. The analysis above with regard to modern tort law seems to reach a very different conclusion. It is interesting to look at the two highly similar fact patterns as lenses through which one can see the differences between tort law in 1929 as compared to 2009, 80 years later. Today as a society we are much more likely to hold others responsible for our injuries than we would have in 1929. We can also look at the explosion of litigation resultant from that change in vantage, and try to assess whether or not the broader net of liability employed today is a good thing for society as a whole.

Daniels v. Evans

At first blush the instant case may not seem very similar to **Daniels v. Evans** but both speak to a similar issue. In both cases someone underage is injured, and one must assess whether or not the child is responsible for their actions. In **Daniels** the court holds that the child is responsible since riding a motorcycle is an adult activity. This raises the question of whether or not riding mechanical bulls is an adult activity. In the cases about children, there is mention of license requirements making something an adult activity. However, in **Harrelson v. Whitehead** the court held speed boating was an adult activity because of its inherent dangers, despite not having a license

requirement. It is also interesting to compare that, in the instant case, the child is but one year beyond the age where he cannot be negligent under the law (age 5).

The case law establishes that the court must engage in a subject analysis of the child's mental faculties to determine whether or not he was acting reasonably. But that analysis could be disregarded if riding a mechanical bull is considered dangerous enough to qualify as an adult activity. It is also unclear whether the beginner bull may be something children could engage in, while the dangerous bull could be an adult activity.

The differences between the instant case and **Daniels** is useful to illustrate that, despite the caselaw on the subject, dealing with children in negligence cases is still very much a case by case analysis that is very difficult to predict. The decisions made by the fact finder, either jury or judge, could vastly alter the scheme of liability operating within the case. This provides a lot of ground for creative and interesting legal argument on the part of lawyers on both sides of the case.

Question 2

(1)

R: Ralph Rossnagel
W: Wolfgang Rossnagel
A: Ronald Asheton
J: James Williamson
T: Frank Thorne
S: Suzanne Smith
D: Dr. Tamar Weisman

C: Children on property in general

R v. C

To establish the tort of trespass, there are four elements which must be satisfied. First, the act must have been done intentionally. Second, the defendant must have entered the land in question. Third, the land must be owned by the plaintiff. Fourth, it is trespass whether the defendant himself enters, or a 3rd party compelled by the plaintiff or an object.

In the instant case, since the children were playing on the top of the plaintiff's sheds it seems reasonable to surmise that they entered the area intentionally. One need not show that they knew that the land was the plaintiff's. (**Dougherty v. Stepp**)

It is clear that the children did in fact enter the land.

It is undisputed that the plaintiff owns the land.

The children were themselves on the property.

Relief for R in a trespass case would probably be an injunction against further trespassing, although if the fireworks caused any damage while on the property the children would be liable for that damage.

R v. T

R could attempt to raise a claim for intentional infliction of emotional distress against T. To establish the tort, R would have to show that T engaged in extreme or

outrageous conduct intentionally or recklessly which caused him severe emotional distress.

The fact that R is extremely sensitive about his stutter could contribute to show that the conduct was extreme or outrageous. However, in order for this to contribute the defendant must have known about this sensitivity. It is unclear based on the fact pattern whether or not T was aware that R was sensitive about his stutter.

The duration of the activity can also contribute. T continued to taunt R for twenty minutes, which is a fairly long time for one taunting session. Furthermore, it could be argued that R's discomfort during the twenty minute period could inform T that R is sensitive about his stutter.

T did not have to act with the intent to cause the severe emotional harm. The requirement is mere recklessness which could be influenced by the reaction of R to T throughout the 20 minutes. While the initial taunting my not have been reckless, the continuation after it clearly bothered the driver of the car could be argued to be reckless.

R would have to show that there was actual damage as a result of the taunting. It is unclear whether R actually suffers severe emotional distress, and the success of the claim could turn on the absence of such evident. R could try to argue that the damages to his and the other car were the result of this emotional distress, making T and joint tortfeasor in the action of **S v. R**.

T v. W

T has a battery claim against W. To establish battery one must show that there was (1) intentional (2) contact with another (3) that is offensive, harmful, or unauthorized and (4) not justified by the other's apparent wishes or a privilege.

While W apparently did not intend to hit T specifically, his intent to hit one of the boys satisfies the intent requirement for battery. This is commonly referred to as transferred intent.

W made contact with T using a stick he threw, which counts for battery, as evinced in **Talmage v. Smith**.

The deep gash which required a trip to the hospital is clear evidence of harm, and there is no evidence to show that T wished to have a stick thrown at him.

While W was perhaps insane, insanity is not a defense to intentional torts, unless the defendant is unable to formulate intent at all. Since W was aware the trespassers were children, and threw the stick at them, his dementia does not absolve him of liability.

S v. R

Negligence

In order to make a claim for negligence four elements must be met. First, it must be established that the defendant had a duty to the plaintiff. Second, it must be established that the defendant in fact breached the duty he had towards the plaintiff. Third, it must be established that the breach of the defendant's duty was the proximate

cause of the plaintiff's injury. Finally, it must be established that the plaintiff did in fact suffer harm.

One has a duty to take reasonable care while driving on the road, and by veering into the lane next to him and striking S's car R breached that duty. As noted above, R could possibly bring T in as a joint tortfeasor because of his contribution to distracting him while driving. By veering into the lane to his right, R caused the accident which directly resulting in the breakage of S's leg.

R could counter by arguing that S exhibited negligence per se by driving in the manner that she did.

Negligence Per Se

Breach of duty can be established when someone violates the law under specific circumstances. In order to impute negligence from breaking the law, the situation must have two characteristics. First, the person who was harmed must be a member of the class which the statute is meant to protect. Second, the statute must protect against the type of harm which occurred. However, some statutes do not provide for a right of action. If the statute does not include immunity against a right of action in the text of the statute, one still must consider whether or not recognizing a right of action would promote the purpose of the legislation. One should also consider whether such a right is consistent with the overall legislative scheme.

S violated three separate driving statutes when she passed R. She passed on the right, she was speeding, and she (possibly) was driving under the influence. The

question then turns to whether or not the required elements are met to infer negligence from these violations. Other drivers on the road are the class of persons meant to be protected by these laws, which R satisfies. Injuries and vehicular damage are the type of harm meant to be avoided.

Contributory Negligence

Contributory negligence is conduct on the part of the plaintiff which falls below the standard of conduct to which he should conform for his own protection and which is a legally contributing cause cooperating with the negligence of the defendant in bringing about the plaintiff's harm. Contributory negligence is a complete defense for the defendant where it is still recognized.

Negligence per se can establish contributory negligence as well as negligence on the part of a defendant. This means that R would have a complete defense in a jurisdiction with contributory negligence if R can establish that S's negligence per se was a legally contributing cause of the accident.

Causation

This leaves a question of whether in this case the breaches of the traffic laws caused the accident. While S should not have been passing on the right, she could legally have been there driving at an equal speed to R. S did not appear to be swerving or reacting slowly, which are the dangers of driving drunk. This seems to show that, rather than causing the accident, the negligence on the part of S simply put her at that spot at the time R acted negligently. Based on **Berry v. Sugar Notch** negligence which

puts someone at a place at a certain time is not considered a contributing cause of the damage. Therefore, while R could argue for negligence per say as contributory negligence, the claim is unlikely to succeed.

T v. D

T could try to raise a claim against D for negligent infliction of emotional distress. The requirements are similar to intentional infliction of emotional distress, but it has a lower intent requirement. To counteract this though, NIED requires immediate physical contact in order to proceed with the tort. In many cases very very slight contact was sufficient to proceed with the action, sometimes as little as dust landing on the eye. Must would turn in the instant case on whether or not the breath and the residual odor of alcohol it contained entering T's nose could be construed to be such a physical harm.

If it is construed as such, T would still have to show damages resulting from the trauma he experiences, at that is not covered in the fact pattern.

J v. A

J has a claim for battery against A. A's action of placing a firecracker in J's shoe before J put it on would satisfy the intent requirements formulated in both Vosburg and Garratt. In Vosburg the court found that the defendant is liable for all damages resulting from unlawful intent. It is not allowed to place explosives within the shoes of other people, and therefore his intent to place the firecracker in the shoe is sufficient to satisfy the tort of battery. In Garratt the court holds that intent is met if the defendant acted with the knowledge that the consequence was substantially certain to result. While the fact

pattern is silent as to whether or not the firecracker was it, the natural function of a firecracker is to explode. Thus the severe burns are a substantially certain result, and furthermore the boys had been detonating firecrackers previously, so the boy knew what firecrackers did. Based upon this, A's actions would likely satisfy both constructions of intent for battery.

The harm and contact are clear in this case, in that the firecracker exploded (contact) and J suffered burns (harm).

(2)

Tortfeasors in intentional torts and in negligence are inevitably going to be treated differently. In the modern world, for example, tortfeasors in negligence cases can be partially excused of liability if the plaintiff acted negligently (under a scheme of comparative negligence). In intentional torts there is no such defense. If the defendant intentionally harms the plaintiff, they must pay for the full cost of that harm, regardless of how negligent the plaintiff was in arriving at that situation.

This difference, however, seems justified. Negligence concerns the world of accidents. Intentional tort law concerns the world of willful acts. It is a common understanding that accidents happen. No one can, nor is expected to, exercise an impossibly high standard of care. Negligence law allows people to be partially forgiven for their own accidents by analyzing whether or not they acted with due care, and whether the other people involved acted with due care.

In intentional torts such considerations of the negligence of others ought not factor in, because the culpability of the defendant resides in his intent to cause contact or harm to the plaintiff. Even if the plaintiff was drunkenly stumbling about in the middle of the street, it does not mitigate the culpability of someone who then walks into the street and strikes the drunkard with a baseball bat. The intentional tortfeasor takes the world as it is, with all the people in it who act negligently, and then makes an active decision to do some harm or engage in an activity which could result in harm. The actions of others are only important insofar as they factor into defenses such as self-defense and necessity. These defenses are allowed because they mitigate the culpability with which the defendant is charged. Hitting someone for fear of being his is not a bad act in the same way that hitting someone for the fun of it is.

It is interesting to note that if the law were to switch to a strict liability scheme that the treatment of negligent and intentional tortfeasors would be much more similar. Because in a strict liability regime there is no excuse for harm caused, the failure on the part of others to assess risks in their actions would not factor in to the damages the defendant would have to pay out. It is possible that in a strict liability scheme those who cause harm to others by accident could be held even *more* responsible than intentional tortfeasors. While the intentional tortfeasor has access to defenses such as a necessity and self defense, by definition someone violating a strict liability statute has no such option. If harm results, they must pay for it. Epstein argues that strict liability works better than negligence in situations in which people know each other, but that negligence works better when strangers are involved. Currently we favor a general

regime of negligence, but perhaps a hybrid system such as Epstein suggest would be superior. But it is important to note Epstein's view is largely based on efficieny; it does seem like, at an intuitive level, holding a negligent person more responsible than an intentional actor would be unjust.