Lecture 5. Products liability and medical malpractice
Lecture outline

• Strict products liability
• Types of defects (warning, design, manufacturing)
• “Outrageous” cases
• Proposals for reform
• Some data on products liability cases
• Some data on medical malpractice
• Trends in medical malpractice rules over the last 30-40 years
• Reaction of states to these trends
Strict products liability

• Strict products liability: the manufacturer is liable for damages if the product is defective

• Types of defects:
  – Defect in warning (e.g., smoking cases) although “obvious” dangers don’t require a warning
  – Defect in design (Ford Pinto)
  – Defect in manufacturing (ladders, etc.)
Wacky warnings

• "Remove child before folding" – on a baby stroller
• "Does not supply oxygen" – a label on a common dust mask
• "Get rid of children“ - a label on a cell phone battery booster
• "Not for use on moving vehicles" – the warning on the "Off-Road Commode," a portable toilet seat that attaches to a trailer hitch
• "Do not drink“ – A warning on a printer ink toner cartridge
• "Danger: Avoid Death" – a warning on a small tractor!
• "Harmful if swallowed” – a warning on a brass fishing lure with a three-pronged hook
• "This product moves when used" – a warning on a popular children's scooter!

“Outrageous” cases

• California: a thief climbed a roof of a school building to steal a floodlight. Afterwards, he stepped on a skylight and fell in and badly injured himself. He sued the school for negligence in not making the skylight strong enough to withstand his weight and won about $1 mln. (*Bodine v. Enterprise High School*)
  – Actually: $260,000 settlement + $1,200/month for life – i.e., much less than $1 mln. in PV terms (*Bodine v. Enterprise High School*)

• New Mexico: McDonald’s coffee case (*Liebeck v. McDonald's Restaurants*)
Proposals for reform

• Products-liability standards should be made uniform across all states
• Cap non-economic damages
• Limit punitive damages
A look at some numbers

- In the early 1990s, plaintiffs filed about 750,000 tort cases per year, accounting for about 10% of all civil cases filed. More than ¾ of these cases involved auto accidents and property liability claims. Medical malpractice and product liability cases accounted for less than 10% of the cases. (Products liability appear to constitute only about 3.4% of the total). The average award for personal injury was $48,000.

- Punitive damages are extremely rare (353 awards between 1965 and 1990, averaging, after appeal, about $135,000).

- Products liability insurance adds less than 1% to the price of products (why is this not a strong argument against products liability reform?)
Medical malpractice

• In the 1950’s there was approximately one claim per 100 doctors per year. By the early 1990s there was one claim per 10 doctors per year. Between the 1960s and 1980s the average malpractice awards measured in real terms have increased by more than a factor of 10 (from around $100,000 to over $1 mln.). Naturally, the malpractice insurance costs have also increased several fold.

• Why has this been happening?
Trends in medical malpractice rules

• Go to handout:

http://mypage.iu.edu/~malexeev/e351_class_handouts.html
Reactions of states

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http://mypage.iu.edu/~malexeev/e351_class_handouts.html