



CLASS 15

TORTS AND PERSONAL INJURY

ACTIONS INVOLVING ONE OR MORE DEAD PARTIES

- **Survival of tort actions**

- Under common law, if either party was dead, there was no tort action.
- Today, if either part dies, it does not matter.
 - The estate of the defendant can be sued (but not the heirs individually).
 - The plaintiff's heirs can sue.
- There are no punitive damages against an estate (one cannot teach a dead person a lesson).

ACTIONS INVOLVING ONE OR MORE DEAD PARTIES (CONT.)

- Dead Plaintiff:
 - **Survival wrongful death actions:** the estate sues for the same things as if the victim had survived. The estate can recover for pain and suffering, doctor bills, etc., the same as if Plaintiff were still alive.
 - **Wrongful death:** action brought by the relatives (not the estate of the decedent) for loss of victim's services.

ACTIONS INVOLVING ONE OR MORE DEAD PARTIES (CONT.)

- Valuation of this is based on economic analyses; some states cap the amount of damages.
- Note that wrongful death actions cover entirely separate areas:
 - A **survival wrongful death** action is for the victim himself
 - A **true wrongful death** action is for the relatives to compensate for their loss (e.g., companionship, lost wages)
- These causes of action and defenses thereto are the same as they'd be if the plaintiff were alive.

ACTIONS INVOLVING ONE OR MORE DEAD PARTIES (CONT.)

- Dead Defendant:
 - Lawsuit can be filed against the decedent's estate, but
 - 1) No punitive damages, and
 - 2) The liability becomes a debt of the estate, which is subject to the same priority rules as other debts

IMMUNITY

- **Intrafamily Immunity:**
 - Under the common law, a child couldn't sue a parent and spouses couldn't sue each other.
 - Today, the only one that survives is that minor children in a parent's custody can't sue the parent(s) for negligent conduct concerning supervision, discipline, or care of the child.
- **Charitable Immunity:**
 - Used to exist, but has, for the most part, been abandoned

IMMUNITY (CONT.)

- **Sovereign immunity:**

- Rule: Sovereign entities (countries) can't be sued without their consent
- Unlike in most countries, in the US, each state is considered a sovereign state. So, no state or the federal government can be sued without its consent.

IMMUNITY (CONT.)

- Exceptions:
 - Congress can force states to submit to jurisdiction under certain clauses of the Constitution (e.g., the enforcement clause of the 14th Amendment).
 - The Federal Tort Claims Act allows federal government to be sued, but only under certain circumstances. States also have similar rules.



QUIZ TIME

JOINT AND SEVERAL LIABILITY

- Applies to cases in which torts are committed by multiple defendants, but is one “transaction or occurrence”
 - Example: 2 people beating someone with a baseball bat or partners in a confidence scheme, etc.
- **The rule is that each defendant is fully liable for 100% of the damage.**
 - If one defendant can't pay or runs away, the other will have to pay for the WHOLE THING.
 - If the plaintiff wants, he can just sue any one of the defendants
 - That defendant can “implead” the others to share in the responsibility)

JOINT AND SEVERAL LIABILITY (CONT.)

- Some states think that this leads to unfair results, so they have other systems which do not provide for 100% responsibility for one defendant if the others are not around to pay the judgment.
- **Contribution:**
 - When a party who is jointly and severally liable pays for more than his/her share of the judgment, that party can turn around and sue the other defendant for “contribution”

JOINT AND SEVERAL LIABILITY (CONT.)

- **Indemnity:**

- This is relevant when a defendant is vicariously liable (e.g., an employer for an employee in the scope of his duty). The vicariously liable party (such as employer) isn't really at fault, but he/she has to pay anyway.
- The vicariously liable party can then turn around and sue the employee for indemnity.
 - The difference between this and contribution is that indemnity is usually for the whole amount and is brought by a party not really responsible for the damage at all.