

## Chapter 3

### Applying the Economic Model of Tort Law

This chapter applies the economic model of tort law developed in Chapter 2 to specific areas of tort law—specifically, products liability, workplace accidents, environmental accidents, and medical malpractice.

#### Key Points

- Products liability is the area of tort law concerned with accidents caused by dangerous or defective consumer products.
- Products liability in the U.S. was originally part of contract law. Under the old doctrine of *privity*, victims of product-related accidents could only file suit against the immediate seller of the product. This effectively insulated most manufacturers from liability.
- Throughout the twentieth century, products liability gradually became a part of tort law, and manufacturer liability increased to the point where the prevailing law is strict manufacturer liability for defective products.
- An economic model of products liability shows that in a perfectly functioning competitive market, price, quantity, and care levels will all be efficient in equilibrium, regardless of the liability rule. This is a consequence of the Coase Theorem.
- More realistically, however, consumer misperceptions of risk and the inability of manufacturers to monitor consumer care impede the attainment of an efficient outcome. Economic theory suggests that strict liability with a defense of contributory negligence achieves the most efficient outcome.
- Employers are strictly liable, by statute, for injuries suffered by their employees under workers' compensation laws. Employers are also liable for injuries caused by their employees under the doctrine of *respondeat superior*. This shifting of liability need not lead to insufficient care by workers, however, if employers can monitor their employees' actions.
- Environmental accidents present some unique problems for tort law, including multiple victims, dispersed costs, and causal uncertainty. For this reason, liability for these accidents is generally governed by a rule of strict liability under CERCLA (the Comprehensive Environmental Response, Compensation, and Liability Act).
- Medical malpractice claims are governed by negligence law, with a due standard based on "customary practice." Further, under the *doctrine of informed consent*, physicians must inform patients of the risks involved in a particular treatment.

- An important question in the area of medical malpractice is whether the threat of liability causes physicians to practice *defensive medicine*, defined as care beyond the efficient level.