**Liability and Responsibility**

**Introduction to Strict and Vicarious Liability**

So far, we've been talking about liability predicated upon fault—intentional torts, reckless torts, and negligence. However, now we're going to start talking about strict liability and vicarious liability, both of which are situations where somebody can be held liable without having done anything wrong at all.

Strict liability, in a nutshell, is liability without fault. The defendant does an act, and someone is injured; therefore, the defendant is liable. Unlike intentional torts or negligence, strict liability is indifferent to whether the defendant had a particular mental state, or whether the defendant observed a particular standard of care.

Vicarious liability is if the defendant is held liable for someone else's tort, usually because of the defendant’s special relationship with the primary tortfeasor. If vicarious liability results, then the defendant is held liable for what someone else did, even though the defendant might have done nothing wrong at all.

**I. Strict Liability**

Let's talk a little more about strict liability generally. Strict liability generally means liability without a finding of fault or culpability. Put in the form of an equation, one could say that strict liability equals the five elements of negligence minus breach—*i.e.*, there is no need to show unreasonable behavior or failure to abide by any standard of care. A person is held liable just because the person did an act which proximately caused an injury; the plaintiff does not need to prove any particular mental state (like intent), nor that the defendant failed to observe any particular standard of care. Therefore, in a strict liability situation, the defendant is held liable for the plaintiff’s injury even though the defendant exercised all the care in the world, and even though the defendant never meant to hurt a fly.

The particulars of when and under what circumstances strict liability will result tend to vary somewhat by jurisdiction, but the following are some general situations were you'll tend to see it. One situation where you often see strict liability imposed is in the case of trespassing animals; another is in the case of abnormally dangerous activities. We'll talk more about these concepts in a later video.

**II. Vicarious Liability**

Now, let's talk a little more about vicarious liability. As we touched on earlier, vicarious liability is derivative in nature.

A defendant is held liable for the damage caused by a second defendant, even though the first defendant is not in any way at fault. The second defendant’s tortious actions are imputed to the first defendant simply by virtue of the defendants’ relationship.

The employer-employee or master-servant relationship is probably the most common situation where we see vicarious liability, and it's the only one we'll treat with any depth in this tutorial, because it is the most likely to show up on your torts exam. If a “servant,” usually an employee, commits a negligent or intentional tort in the course of carrying on the employer's business, the employer will be held derivatively liable for that tort. The employee is still liable as a primary tortfeasor, but now the employer's presumably deeper pocket is in play as an additional source of recovery for the plaintiff.

Even so, bear in mind that the plaintiff is limited to recovering only the full amount of damages, one time. Thus, even though vicarious liability gives the plaintiff multiple sources for recovery, the plaintiff only gets one full satisfaction.

Some finer points about vicarious liability generally.

Remember that vicarious liability is derivative liability, meaning that the person held vicariously liable is only liable to the same extent as the primary tortfeasor. Therefore, using the employer-employee relationship as an example, any defense that would be available to the tortfeasing employee will be available to the employer.

Moreover, if someone like an employer is held vicariously liable for an employee's torts, the employer can sue the employee for indemnification (assuming the employee has the means to pay).

# **Vicarious Liability I**

Now, let's delve more deeply into what is probably by far the most common situation where vicarious liability arises in tort law: respondeat superior. Respondeat superior is a Latin phrase that let the boss answer. Respondeat superior is the Latin name for the doctrine introduced in the last video—the doctrine that, under the right circumstances, employers are liable for the torts of their employees.

The Second Restatement of Agency states that employers may be liable for employees’ torts committed within the scope of employment.

**I. Elements of Respondeat Superior**

Respondeat superior has two basic components to it:

(1) The relationship of employer and employee must exist, with the primary tortfeasor being the employee and the party sought to be held vicariously liable being the employer.

(2) When the employee committed the underlying tort, he or she must have been acting within the scope of their employment.

This video deals only with the first prong, when an employer-employee relationship arises. The next video deals with the second, and far more difficult, inquiry of whether the employee was acting within the scope of employment.

**II. The Employer-Employee Relationship**

So, when does an employer-employee relationship exist?

Firstly, it is worth noting that this is usually the easy part of the inquiry, from a practical perspective. It’s relatively simple to determine who is the employer and who is the employee.

A. Employee v. Independent Contractor

However, sometimes the analysis gets tricky if you encounter a situation that falls outside of the traditional employer-employee paradigm. For example, the person may be an independent contractor, rather than an employee in the classic sense. In this situation, the general rule is that the employer is not liable for the torts of the independent contractor, but there are exceptions. Thus, in many cases you'll see the main fight being about whether the primary tortfeasor was an employee or an independent contractor.

Often, employers will try to draw up their contracts with their employees so that the contracts refer to the employees as independent contractors, but this is not necessarily determinative of the outcome. While courts will give some weight to the labels that parties place on their relationships, the true test is whether the actual facts and circumstances, and the conduct of the parties, indicate the primary tortfeasor to be an employee or an independent contractor.

1. Control

The main difference between an employee and an independent contractor can be summarized in one word: control. Indeed, in every case, the primary criterion in evaluating whether an employer-employee relationship exists is the extent to which the alleged employer controls the actions and performance of the employee. Generally, if the employer can direct the moment-to-moment actions of the employee in the performance of the employee’s duties, then an employer-employee relationship exists, even if the employer does not actually choose to exercise that degree of control. However, the control actually exercised is relevant to the analysis, because it indicates how the parties really viewed their relationship).

Whether the primary tortfeasor is an independent contractor or an employee, the employer will always exercise some control over things. Thus, the degree of control the employer exercises over the person in question is key. The cases usually turn on whether the employer gets to control the end result, or whether the employer also gets to control the process and procedures that the employee uses to get to the end result. If the employer basically only dictates the end result, then the primary tortfeasor is probably an independent contractor. If the employer controls the process and procedures, then the primary tortfeasor is probably an employee.

According to the Third Restatement of Agency, an employee is an agent whose employer controls or has the right to control the way in which the employee performs the work. Other factors are relevant as well, such as:

(1) Whether the agent is engaged in the agent’s own distinct occupation or business;

(2) whether the type of work done by the agent is customarily done independently or with supervision;

(3) the degree of specialized skill required in the agent's occupation;

(4) whether the agent or the principal supplies the tools and instruments required for the work, as well as the workplace;

(5) the length of time during which the agent is engaged by a principal;

(6) whether the agent is paid by the job or by the time worked; and

(7) whether the agent's work is part of the principal's regular business;

To sum it up, if the employer exercises significant control over the employee's actual work, trains the employee, has an ongoing and indefinite, continual relationship with the employee, and supplies the tools and workplace, and if the employee does not carry on an independent business, then you likely have an employee. If the employer needs one special job done and creates a temporary arrangement with the worker, which is of a definite duration, and if the employee independently acquired the knowledge and expertise needed for the task and supplies his or her own tools and carries on his or her own independent business, and if the employer only cares about the end result and not how it is achieved, then you likely have an independent contractor.

It is worth noting that an employer-employee relationship can arise even if the employee is not getting paid, if the employee has agreed to submit himself or herself to the control of the employer to the requisite extent.

2. The Borrowed Employee Doctrine

Now, let's talk about the borrowed employee doctrine. Under the borrowed employee doctrine, an employee who is loaned by one employer to another is deemed to be the employee of the borrowing employer while he is lent out. The effect of this is that the borrowing employer, and not the lending employer, is held vicariously liable for the employee's negligence while the employee is acting for the borrowing employer.

However, not all jurisdictions observe the borrowed employee doctrine, and instead may apportion the liability between both employers. The borrowed employee doctrine is not to be confused with a situation where the employee is serving two employers at the same time. In that situation, if the employee commits a tort while acting within the scope of employment for both employers, then both employers are liable.

# **Vicarious Liability II**

As we've already learned, for an employer to be held vicariously liable for the torts of an employee, the employee must have been acting within the scope of employment when committing the tort. What does it mean to say that an employee was acting within the scope of employment?

**I. Scope of Employment**

The scope of employment rule has been stated several different ways in both the cases and in the various Restatements of Agency. The Second Restatement of Agency employs a cumbersome, three-element definition, which reflects the early development of the doctrine in the case law. They are:

(1)   The conduct giving rise to the tort is the kind of work the employee is employed to perform.

(2)   It occurs substantially within the authorized time and space limits imposed by the employer.

(3)   It is actuated, at least in part, by a purpose to serve the employer.

The Third Restatement of Agency explains that If an employee performs work assigned by the employer or acts in accordance with the employer’s management, then the employee is acting within the scope of employment. If an employee acts independently without the intention of serving the employer, then the employee isn’t acting within the scope of employment.

Some of the cases avoid analyzing the issue in terms of employee motive and instead analyze the issue in terms of foreseeability. They will ask whether, under all the circumstances, the tortious conduct was a foreseeable result of the operation of the employer's enterprise. The core concern that all these varying formulations are trying to address is whether there is a close enough connection, or nexus, between the employee's tort and the employer's business that it seems fair to hold the employer liable for the harm done thereby.

In many instances, it will be fairly clear whether or not an employee's conduct was within the scope of employment.  However, the concept of scope of employment has lots of wrinkles and strange permutations, which create potential pitfalls.

A. Prohibited Conduct

Always bear in mind that just because an employer prohibits a particular kind of behavior does not mean that such conduct is beyond the scope of employment.

First, we'll talk about the going and coming rule. The general rule is that an employer is not liable for the torts of employees while they are commuting to and from work, because during commuting time, employees are not acting within scope of employment. Commuting should not be confused with work-related travel. If an employee travels for work that is within the scope of employment, both when the employee is traveling from the main office to another work site or is traveling between work sites.

1. The Dual-Purpose Exception

Nevertheless, be wary of the dual-purpose exception. The going and coming rule does not apply if the trip involves some incidental benefit to the employer, or was otherwise undertaken for the employer’s benefit, and the employer would have sent another employee to accomplish the mission had the employee not done during the commute. The fundamental issue is whether there is a discernible, substantial benefit to the employer besides merely having the employee go and come from work.

A big factor in the going and coming cases is whether the employer pays the employee for time and expenses in commuting. Some courts won't apply the going and coming rule unless this is the case, and still other courts will infer a benefit to the employer on this basis alone. Some courts might not apply the dual-purpose exception unless the service to the employer was the predominant purpose of the trip, rather than an incidental motivation.

Another exception to the going and coming rule might exist if traveling to and from work involves special hazards, such as a special risk of injury to innocent third parties under the circumstances. The commuting distance alone is not usually a special hazard.

C. Frolics and Detours

Now, let's talk about frolics and detours—situations where, during working hours, an employee might go to a place other than the designated workspace for a purpose which has nothing to do with employment. In the case of torts committed in the course of a frolic, the employer is not liable. However, a mere detour involves only a minor deviation from the employer’s business during a course of conduct, which is otherwise overwhelmingly devoted to the employer’s purposes.

The employer is liable in the case of a tort committed during the course of a mere detour, since on the whole the employee is still carrying on the employer's business.

A frolic will be found if the employee is no longer acting with any significant motive to serve the employer, but rather is acting to serve is own or a third party's interests, so as to make it not reasonably foreseeable that the tortious conduct could arise from the employer's business. A frolic is often, but certainly not always, accompanied by a significant departure from the time and space constraints of the job, such as by significantly deviating from a designated route or leaving a designated workstation for an inappropriate length of time. The employee virtually completely abandons the employer's business and turns to other things.

The difference between a frolic and a detour is hard sometimes to pin down, and will often amount to a difference more of degree than of kind. A frolic will often be found if the employee goes beyond the time and space parameters of the job, but a frolic can still be found even while the employee is still at the place of work and on the clock.

1. The Special Case of Cigarettes

More often than you might think, employees cause catastrophic damage by inadvertently setting things on fire, such as due to negligent disposal of their cigarettes. Courts are divided over whether the act of smoking a cigarette is a frolic or a detour. Some courts hold that smoking a cigarette is a frolic as a matter of law, that it can never be done for employment-related purposes, but is always done for the employee’s purely personal reasons.

Other courts analyze the totality of the circumstances to determine whether there has been a frolic or a detour. To a court like this, if an employee gets up from a workstation, clocks out for break, goes outside, and smokes, it would be analogous to a frolic, since the employee has completely left off doing the employer's business and has turned entirely to what makes the employee happy.

On the other hand, if the employee is working full-steam ahead and just pauses for a moment to smoke and then dives right back into work, puffing a cigarette at the same time, then it’ll likely be more analogous to a detour.

D. Intentional Torts

The rules we've discussed so far apply generally if the tort that the employee commits is a negligent one. Courts are generally much more reluctant to find that crimes and intentional torts are within the scope of employment.

In order to find employers liable for their employees’ intentional torts, courts tend to look for a stronger nexus between conditions related to the employee's job and the commission of the tort. Usually, to find that an intentional tort was within the scope of employment, all (or at least some combination) of the following factors must be present:

(1)   The act is one that is fairly and naturally incident to the employer's business, or is a reasonably foreseeable result of the business.

(2)   The act is done while the employee is doing the employer’s business.

(3)   The act arises from some impulse or emotion that naturally emanated from, or was incident to, the attempt to perform the employer’s business.

The strength of the causal connection between work-related conditions and the intentional tort, and whether the intentional tort was a reasonably foreseeable result of the employer’s business enterprise.

If this discussion leaves you scratching your head, don't worry—the upcoming quizzes and tests will have examples to help you make sense of everything.

Most often, one sees vicarious liability for intentional torts in the context of bouncers, security guards, policemen, and similar jobs if physical force can reasonably be expected and if it would be fairly easy for an employee to lose composure and exceed the scope of force the employee is lawfully permitted to use under a given set of circumstances.

**Strict Liability I**

In the first video of this tutorial, we discussed the basic notion behind strict liability—that there are some situations where the law holds a defendant liable even without a finding of fault, such as negligence and intent. This video and the next one are both meant to provide a brief survey of the situations where you'll most often see strict liability imposed, together with a discussion of the very limited defenses available to a defendant for strict liability.

**I. Abnormally Dangerous Activities**

One situation where strict liability often arises is in the context of an abnormally dangerous activity.

A. Factors

If the following four factors are present, then an activity is likely abnormally dangerous:

(1)   The activity creates a high risk of significant harm, which cannot be eliminated even with the exercise of reasonable care by all actors, which risk is reasonably foreseeable to the defendant.

(2)   The activity is not a matter of common usage, or is not commonly carried on, in the local community or area. Some courts will examine whether the character or nature of the activity is inappropriate, or out of place, in the local community, and

(3)   The plaintiff's injury flows almost solely from that aspect of the activity that makes it abnormally dangerous and must not depend on the actions of persons other than the defendant engaging in the activity.

Thus, if the defendant controls the overall safety level of the activity for multiple persons and could make it safe for everyone through reasonable care, the activity will not usually be considered an abnormally dangerous activity.

Another way to say this is that the unavoidable and high dangerousness of the activity must inhere to the activity itself and not be dependent on the influence of outside forces.

However, according to the Restatement (Second) of Torts, a person conducting an abnormally dangerous activity may be held strictly liable for the resulting harm even if it is unexpected, such as innocent, negligent, or reckless conduct by a third party, the behavior of an animal, or the results of natural forces.

Some courts have been known to ask whether the social and economic usefulness of the activity to the defendant and other parties is so great as to outweigh the danger and thus make the activity a non-abnormally dangerous activity, but the Third Restatement of Torts moves away from this approach.

B. Balancing Test

The analysis is not a checklist so much as it is an evaluation of the factors to determine whether the total circumstances indicate that the activity places someone in the plaintiff's position at an unusual and high risk of harm, even if carried on with reasonable care.

Usually, the most important factor will be the level of reasonably foreseeable danger that cannot be eliminated with reasonable care; common usage in the community is about as important.

Even so, sometimes the impact of one factor will be so great that it overwhelms the others and makes the activity an abnormally dangerous activity even without the other factors—for example, the Second Restatement of Torts cites producing atomic energy as so overwhelmingly dangerous that it's an abnormally dangerous activity no matter where it is carried on or how common or beneficial or appropriate it is for the community.

**Strict Liability II**

Another situation where strict liability is likely to be imposed is if someone keeps or possesses an animal, which causes injury.

**I. Injurious Animals**

Animals are grouped into three basic categories for purposes of the strict liability rules.

A. Livestock and Other Farm Animals

The first category consists of livestock and other farm animals, exclusive of domestic animals like dogs and cats.

If livestock escapes the owner's property, intrudes upon the property of another, and causes injury, the owner or keeper of the livestock is strictly liable for any injury that is a natural and probable consequence of that animal’s escape. What is a natural and probable consequence depends on the attributes of the species of animal that escaped.

1. Physical Harm to Persons

Usually, this encompasses most predicable property damages resulting from the particular animal's escape. The damage a hen can predictably cause is a much different thing from what damage a bull or a horse could predictably cause.

The issue of physical harm to persons caused by livestock is a little trickier. If the physical harm stems from the predictable behavior of the animal, such as responding to the predictable provocation that might result if the plaintiff gets in the animal's way or tries to remove the animal from the property by force, this is likely to be a natural and probable consequence of the escape.

Unprovoked physical aggression against humans is generally less likely to be considered a natural and probable consequence in the case of farm animals, since generally livestock is thought to be tame. However, some kinds of farm animals are predictably aggressive and thus might naturally and probably attack a person, even if unprovoked. Bulls are perhaps the most frequently cited example in the case of such an animal, but the Restatement also mentions stallions in this category.

2. Fences

Under ancient common law rules, the plaintiff's ultimate ability to recover under strict liability for damage caused to property by an escaped farm animal may depend on whether the plaintiff had the foresight to erect a fence to protect the property from livestock that might foreseeably escape. In some jurisdictions, the plaintiff must erect such a fence, or the plaintiff cannot recover under strict liability.

3. The Restatement Approach

According to the Second Restatement of Torts, strict liability does not apply for damages caused by intruding livestock that are: not reasonably expected from the intrusion; done by animals straying onto abutting land while being driven on the highway; or brought about by the unexpected operation of a force of nature, action of another animal, or intentional, reckless, or negligent conduct of a third person.

B. Pets and Domesticated Animals

Now, let's talk about the strict liability rules governing keepers of dogs, cats, and other typical domestic animals besides livestock.

The common law rule here is cynically referred to by many lawyers as the one free bite rule. There is usually no strict liability for harm caused by domestic animals, unless the owner knows or has reason to know of a dangerous or aggressive propensity on the part of the particular animal, which is uncommon for its species.

Such knowledge or a reason to know usually arises if the animal has exhibited aggressive or other dangerous behavior toward people at least once—which is the one free bite.

An uncommon dangerous propensity will be different in the case of a pit bull than in the case of a Pekingese.

Be careful here—this is the common law rule, which many states tinker by statute.

C. Wild Animals

The third category of animals consists of typically non-domesticated, sometimes exotic, feral animals, which are not usually kept as pets or farm animals.

The Third Restatement of Torts defines a wild animal as one of a species that has usually not been domesticated and could cause personal injury unless restrained. Domesticated generally means animals that have been bred and trained to serve the needs of human society and to depend on human society for survival, so that they can no longer survive in the wild, and whose dangerous wild instincts have been bred out or suppressed.

The general rule here is that the keeper of a wild animal is strictly liable for all harm caused by the wild characteristic of the animal. This also depends on the species of the animal.

Physical aggression falls under this category if the species is generally known for its aggressive tendencies. Even so, people's reasonably foreseeable reactions to being confronted with a wild animal are also caused by the wild characteristic, such as when they hurt themselves or others in foreseeable attempts to get away from the animal or protect themselves.

Whether or not the animal is actually tame or aggressive is not the issue so much as what harm can reasonably be expected to result from a wild animal of the kind that caused plaintiff's harm.

**II. Defenses to Strict Liability**

Now, let's talk about the sparse defenses that might be available to the defendant in a strict liability case.

A. Statutory or Public Duty

If a defendant engages in an abnormally dangerous activity, or if the defendant keeps an animal pursuant to a public duty or statutory obligation, there can be no strict liability, and the plaintiff must proceed under a negligence theory.

B. Contributory Negligence

In a contributory negligence jurisdiction, contributory negligence is not a defense to strict liability unless the plaintiff knowingly and unreasonably subjected himself or herself to the risk from the abnormally dangerous activity or the wild animal.

C. Assumption of the Risk

Assumption of the risk is a defense to strict liability.

D. Voluntary Participation

There can be no strict liability if the plaintiff voluntarily participates in or near the abnormally dangerous activity, or interacts with or gets near the animal, for the purpose of obtaining some benefit for himself or herself.

E. Trespassers

The defendant is not usually strictly liable for harm done to trespassers if the trespasser is doing so intentionally or flagrantly, unless the use of a wild or abnormally dangerous domestic animal amounts to an intentional tort—such as by deliberately keeping a known vicious guard dog to attack and maul intruders on the property.

This is the view set forth in the Second Restatement of Torts; the Third Restatement seems to treat most animals as dangerous conditions on the property, and deals with them under the rules pertaining to the liability of a possessor of land to trespassers.

**Joint and Several Liability**

This video talks about apportionment of responsibility for the plaintiff’s harm among multiple tortfeasors and negligent parties, including the plaintiff.

**I. The Plaintiff’s Injuries**

A. Divisible Injuries

First, let’s discuss the plaintiff’s injuries. We’ll cover both divisible and indivisible injuries.

Let's talk about what happens if multiple tortfeasors cause divisible injuries.

Say, for example, Jill is walking along, and Bruno negligently breaks her arm; a few minutes later, Jack negligently breaks her leg. Let's say the jury finds that the damages from the arm are $100,000, and the damages from the leg are $200,000. Under this scenario, Jill can collect $100,000 only from Bruno for the arm and can only collect $200,000 from Jack for the leg.

Since we can easily tell which defendant caused which injury, each individual defendant is responsible for the harm from the discrete injury that each defendant caused.

B. Indivisible Injuries

Things get a little trickier when we're talking about indivisible injuries.

Let's say, for example, that Jill is negligent. Jill's negligence foreseeably exposes Jill to risk of harm from Bruno's negligence. Bruno's negligence, in turn, puts Jill in a position where Jack's negligence causes her to fall into a hole and break every bone in her body. Here, Bruno isn’t responsible for one injury, while Jack is responsible for another. Rather, both are responsible for the broken bones. Hence, the injuries are indivisible.

If a plaintiff has indivisible injuries, the defendants will either be held severally liable or jointly and severally liable, depending on the jurisdiction.

**II. Several Liability & Joint and Several Liability**

Now let’s discuss several liability and joint and several liability.

A. Several Liability

First, we'll talk about several liability.

The Third Restatement states that under several liability, an injured plaintiff may only recover a severally liable defendant’s comparative-responsibility share of the injured plaintiff’s damages.

Thus, suppose that, in the above example where Jill fell into the hole, the jury had found that Jack and Jill were each 30 percent responsible, and Bruno was 40 percent responsible. Suppose further that total damages were $100,000. If, for example, Bruno is only able to pay $20,000, or half his share of the responsibility, then Jill has nowhere else to look to make up the difference. She cannot force Jack or anyone else to make up for Bruno's shortfall.

B. Joint and Several Liability

Joint and several liability, however, is a different story.

According to the Third Restatement of Torts, under joint and several liability, the injured plaintiff may sue and obtain the full amount of damages from any jointly and severally liable defendant.

Under the previous example, in a joint and several liability system, Jill would have the right to turn around and force Jack to pay over not only his $30,000 share of the liability but also Bruno's $20,000 shortfall. Indeed, she could recover the full $70,000 in excess of her own share of the responsibility from any one of the two jointly and severally liable defendants.

C. Contribution

In some jurisdictions, a defendant who is jointly and severally liable, and who winds up paying more than his or her assigned share of responsibility, can turn around and sue the non-paying defendant for contribution.

Thus, if the jurisdiction has a right of contribution, in the previous example Jack could turn around and sue Bruno for the $20,000 that Jack paid in excess of his share of the allocated responsibility, but not for any part that represents Jack's $30,000 share.

**III. Indemnity**

Indemnity works a little differently. If a defendant has a right of indemnity, then the defendant can sue the person against whom the defendant has that right for the full amount paid in satisfaction of the plaintiff's claim.

Thus, if an employer is held vicariously liable solely because of the employer’s relationship to an employee as a primary tortfeasor, and the employer pays damages of $100,000 in full satisfaction of the plaintiff’s adjudicated claim, then the employer can sue the employee for the full $100,000.

Suppose one defendant is vicariously liable for the torts of another, solely because of the defendant’s relationship with the primary tortfeasor. Here, the vicariously liable party is liable for the entire share of comparative responsibility assigned to the primary tortfeasor, whether the prevailing rule in the relevant jurisdiction is joint and several liability or several liability.

As between the vicariously liable party and the primary tortfeasor, this produces an effect very similar in operation to joint and several liability, in that the plaintiff may recover the full damages as assigned to the primary tortfeasor from either the primary tortfeasor or the vicariously liable party. To the extent the vicariously liable party actually has to pay, the party can sue the primary tortfeasor for indemnification.

Suppose a court finds Bruno to be negligent because he failed to use reasonable care to protect Jill from Jack's intentional tort when Bruno had a duty to do so.

Here, according to the Third Restatement, Jack is jointly and severally liable with Bruno because all intentional tortfeasors are jointly and severally liable for all harm resulting from their intentional conduct. Bruno is liable for his share of the comparative responsibility as found by the jury, and is jointly and severally liable with Jack for Jack's share.

Suppose multiple defendants act in concert to inflict an indivisible injury upon a plaintiff. Say that in the previous example, Bruno and Jack were acting together, and their concerted tortious action caused Jill to fall into the hole.

According to the Third Restatement of Torts, persons acting in concert who cause an indivisible injury are jointly and severally liability for the injury, regardless of whether independent tortfeasors causing that same injury would be severally liable or jointly and severally liable.

Next, let’s discuss the plaintiff’s fault.

**IV. Plaintiff’s Fault**

In a comparative fault scheme, the plaintiff simply does not recover for that percentage of the damages attributed to the plaintiff’s own fault unless it is a modified comparative fault scheme and the plaintiff’s fault is 51 percent or more, in which case the plaintiff recovers nothing.

In a contributory negligence regime, the contributory negligence rules govern.

Remember, that no matter how many people the plaintiff can sue in order to recover damages, the plaintiff is only entitled to one satisfaction—in other words, the plaintiff can only recover 100 percent of the damages once.