Law for Medical Students and Physicians: Jurisprudence

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I. Pre-Lecture Questions: True, or False?

1) Tort Reform is here to stay at last.
2) Now that the Legislature has enacted Tort Reform, that will be the law of Ohio until the legislature changes the law.
3) The Ohio Constitution has no practical relevance to my life as a doctor.
4) Doctors and Lawyers should work together to preserve freedom.
5) The standard of Care is defined by academic physicians.

II. Introduction

Jurisprudence means different things to different groups of people. To the student of law, it is the study of law as a subject in itself, including the philosophy, the structure, and the taxonomies of different legal systems.

For you as either medical students or physicians, we may take jurisprudence to mean something else, which is the study of the field of law as it relates to our lives, in particular our professional lives.

The traditional learned professions are physicians, lawyers, clergy, architects; and some would include professional statesmen or politicians. Now in this century, one adds accountants, certain independent practitioners of various healing arts, engineers, and certain professionals involved with money and investing.

The things that are special about learned professionals are:

a) They must study academic topics to do their jobs.
b) They are independent (self-supervising).
c) Their own profession polices its own members.
d) They do things which people need.
e) Usually, only they can do those things (monopoly).
f) If they perform below a certain standard, they are liable for their mistakes.

Lawyers and Physicians could be said to be the pre-eminent learned professionals in this secular society, and as such have a leadership role thrust upon them, like it or not. Many economic interests would like to control the actions of these independent professionals, but this must not be. For this reason

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it is essential that lawyers and physicians view each other as co-equal independent guardians of a certain public trust, not as enemies to each other.

All lawyers, and all doctors, have stories of being humiliated or attacked by members of the other profession; but this must be avoided. If the major independent learned professionals fight, they become easy prey for the enemies of independence, which often are property or political interests; and the public trust (upon which the monopoly power to practice is granted) is breached.

This segment of your *Law for Physicians* course will describe for you in a very general way what American law is, how it does its work, and what conflicting interests it seeks to balance. Then, we shall discuss a case study on tort reform in Ohio, and how likely it is that the 2003 tort reform act will be found unconstitutional by the Supreme Court of Ohio. The purpose of this segment is that you would obtain a rudimentary academic understanding of the other great independent profession whose actions daily affect your lives as doctors.

III. American Law is Conservative

American law grows out of European law in the 18th and 19th centuries. Louisiana law grows out of a code of French law called the *Code Napoleon*. Law in states west of Kansas-Nebraska, and in Puerto Rico, is heavily influenced by Spanish law. The law of the Virgin Islands is influenced by Danish Law. The laws of the original thirteen colonies and Vermont are more heavily influenced by English law than newer states, which are more “code” based. There is a specific part of American law dealing with Native Americans, and with Military law. Public International Law, or the laws between nations, grows out of medieval (latinate) law of merchants and the sea.

The law’s conservatism makes it complex.

American law grows by individual decisions made by judges in particular cases, or by statutes. Very rarely will a court say what the law would be in such and such a situation; courts try only to adjudicate actual conflicts, usually about money or freedom, between actual parties. A notable exception is *Sheward* in your case study below, where hypothetical parties’ complaints were adjudicated.

IV. American Law is Radical

American law was born by an act of rebellion from Britain, monarchical France, or Spain; and is based on the radical concept that power springs from the people, not from their rulers.

Statutes in America have introduced radical government programs to foster equality, such as income taxes, social security, and public protection programs such as environmental protection laws.

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Sometimes, case law makes a dramatic leap, in an area such as abortion, for instance. But courts usually serve as a brake on legislatures, opposing raw majoritarianism.

V. Justice Trumps Efficiency

The concern of American law has traditionally been that each claimant or litigant or accused criminal must get a fair chance at what is right or reasonable, even if the process of doing that takes a long time is inefficient, or is slow. It is a commonplace of American law that "it is better that ten criminals should go free than that one innocent man should be executed."

The legal process is highly ordered as to time, but has a certain timeless quality which is frustrating to doctors. There are limits as to when a suit can be brought, but they are generous limits. Once a suit is joined, the law really doesn't care how long the case takes, only that justice is done. This in itself can seem unjust, as it is a commonplace of American business (and healthcare is the largest per-capita American business) that "Time is money."

The timeless quality of a lawsuit is also foreign to medicine as a healing art, because biological processes are time-limited: 4 minutes of anoxia is irreversible; one can bleed to death in 3 minutes; our lifespan is time limited; and so forth.

VI. Individual Rights Trump Group Rights

American law, unlike some tribal laws and socialist legal systems, is highly individual-oriented, such that, unless a special state interest or special public safety concern is at issue, the tendency in American law is to champion the rights of the individual. Of course, the question is, "Which Individual?" That is, if a patient sues a doctor, who is the favored one? In general, the party with the least power, which traditionally would be the one with less money and less education, is favored. Sometimes people doubt this: the economic analysis of law jurisprudence movement claimed that while the law claimed to be championing individual rights, it was really doing economic insurance-type functions (that is, being hypocritical).

For medical law, this creates a problem. There is an inherent conflict between a contract model of the doctor-patient relationship, and a tort model of the doctor-patient relationship. For the last 60 years, as medicine has become more of an industry with lots of money, the contract model has waned and the tort model has become large.

Contract Model. Here, each party is viewed as equal, and they make a deal with each other: you operate on me according to your school of healing, and I will pay you for the operation (not the outcome unless explicitly so contracted).

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a. In this model, all of the risk and cost of a bad outcome falls on the parties: the immediate loss on the patient; the business loss on the practitioner (*i.e.*, if one practitioner consistently does bad work, people will no longer seek that practitioner out).

b. The responsibility for regulation of the different schools of healing arts remains within the particular school (but if they don't work, they will die out by the operation of market forces).

Tort Model. Here, one party is seen as disadvantaged, and hence not able to truly make an agreement between equals. The tort model is inherently a classist model. The patient is relegated to the level of a disadvantaged consumer, who must rely on the state-granted monopolistic knowledge and good will of the doctor. In this case, there is no agreement, but rather a paternalistic relationship between the powerful doctor and the powerless patient. Because of that formulation, the patient has other rights if things don't turn out well: to compensation for many aspects of injury if the doctor has performed in a way that was negligent (which is now defined by the court or society, not by usage of trade or how the profession does things); and also to the "right" to medical services.

c. This model acts as a public insurance model, spreading the risk of bad outcomes to healthcare providers as well as to the patient who is affected.

d. This model locates some of the responsibility for policing the medical profession outside of the profession itself, into the economic and judicial realms.

e. This model seems to limit competition among healing arts systems, tending to shore up the favored one as the "true" system.

Arbitration has been increasingly favored by the US Supreme court, and may be an avenue to blend the Tort and Contract models.

Many doctors and medical students are angry about the tort model of the doctor patient relationship. They are not aware that over the past 60 years, we as doctors have given up the contract relationship, in return for a monopoly to practice medicine. This monopoly is supposed to allow us to make reliable salaries, and to increase our education level so as to be better doctors; but also carries with it two prices: 1) we are regulated in return for the monopoly; and 2) we no longer deal with our patients as equals, but as dependents .

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Social activists have decried this inequality between the doctor and the patient; and yet it has arisen as medicine has become more efficacious and costly. Social activists want a return to the contract model, but without the necessary corollaries of the contract model: 1) no monopoly on medical practice for doctors; 2) equal status and risk of loss between doctor and patient.

VII. There are Four Sources of Everyday Law

a) Cases: As mentioned above, the law is full to overflowing with cases of individuals who have had a specific disagreement, have not been able to come to a resolution, and have come to the court for a resolution imposed from outside (from the court). Each such resolution is a point of law as applied to a specific set of facts, which lawyers call "a fact pattern". The facts and the law applied can be very specific: a blind pedestrian stumbles on a three inch bump in a sidewalk outside of a supermarket and breaks his leg; *as distinguished from* a blind pedestrian stumbles on a one inch bump in the sidewalk in front of the same store, and breaks his leg in the same way.

Cases have "precedence" or govern future disputes, but there is a hierarchy of precedence as follows:

Strongest	U.S. Supreme Court (if relevant)
	Your state's Supreme Court
	Your state's other Courts
	Federal court decisions applying your state's rules
	Decisions in other states trying to apply your state's rules
	Decisions in states that have legal (jurisprudential) history similar to that of your state.
	Decisions in states that are quite different from yours (i.e. Louisiana versus New York).
	Decisions from English-law ("common law") countries.
Weakest	Decisions from civil law countries.

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b) Constitutions and Statutes

Constitutions are the organizing documents of a state or country, and many (but not all) modern nations have them. They are "the ground rules" of the country's laws, and are the ultimate reference for how to make laws in such a state or country.

Ohio has a strange constitution, which dates only to 1851. The state of Ohio was formed in 1803, out of the Northwest Territories operating under a charter dating to 1787. This charter granted too much power to the governor, people thought, so they made a constitution which granted a lot of power to the legislature; ultimately, the legislature ran away with its power, in the opinion of some, by granting special privileges to various industrial enterprises in this state. These special privileges had to be paid for by taxes, and the people ultimately complained. Meanwhile, a big battle between the courts and the legislature of Ohio resulted in a constitutional convention being held and a new constitution being ratified in 1851. Now, some people say the judiciary has too much power.

When there is a disagreement about the interpretation of a state constitution, the state's Supreme Court is the ultimate arbiter of what is "correct". In the case of a disagreement between two states or a disagreement between a state and the federal constitution, the US Supreme Court is the arbiter of what is "correct".

Statutes are "laws" made by legislatures. These legislatures have various constitutionally defined methods of making laws, but in general all states have two-chamber legislatures, each chamber must in some manner approve proposed new laws, and the governor of such a state must then either approve or, in some conditions, disapprove such legislation. The Ohio state legislature is very active, and makes more laws per year than most of the other fifty states.

There are also federal, or U.S. laws, governing things like interstate commerce; and that is important to you, because all pharmaceuticals and most hospitals are governed by federal laws. They are also governed by state laws. Medical practice itself is regulated by state laws; but some aspects of medical practice (prescription of certain drugs, financing of some care) are also regulated by federal laws.

c) Regulations

Regulations are particular operationalizations of statutes. A legislature may delegate the operation of a certain big law to an agency, allowing it to make regulations. An example is the Drug Enforcement Agency, which makes regulations to carry out its mandate (by the US government) of the statute to regulate certain pharmaceuticals. As far as you are concerned, these regulations are laws.

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d) Trade or Profession Codes or Practice

Many trades and professions have codes of practice. Medicine is no exception, as it has written codes of ethics. Not only does it have codes, it has a kind of "case law" which is the plethora of scholarly articles which you have been studying. There is a hierarchy of articles, just as there is a hierarchy of law cases (double-blind placebo-controlled is better than case reports, for instance). In addition, the way that a particular trade or profession is practiced is persuasive as a kind of authority as to how it is supposed to be practiced.

"The standard of care" is the phrase used to describe the medical industry's usage of trade or trade practices. We shall talk about this thing, and who defines it, in lecture 5 of 18 (January, 2004). As you can see, however, the standard of care is no longer defined only by doctors.

VIII. Jurisdiction: There are Various ways to Divide Up American Law

Jurisdiction is a legal term which means whether a certain court (or legislature) has any business getting involved in a particular case. The easiest examples are: if a Dutchman hits another Dutchman over the head with a hammer while both are in Holland, the Ohio courts have no business adjudicating (handing down a "verdict") on such a case. On the other hand, if a Dutchman hits another Dutchman while both are visiting Athens, Ohio, the Ohio court does have business adjudicating this case -- unless they are diplomats on state business.

a) **By What Happens to you if you Lose: Civil, Criminal Jurisdictions.** In criminal law, the injury is against "the majesty of the state" (lese majeste) and so the state punishes the injury (by imprisonment, fines, or death). In civil law, the wrong is against another citizen or party (a "person") and this wrong is compensated by a money payment. The reason that the money payment system is good is that it replaces an older system: vendetta. In the private justice or vendetta system, if you wrong me, I or my relatives will retaliate; and this could result in a feud going on forever. Since "the King" (the State) was said to own every man's services (for the army or other work) this kind of feud "hurt the king" so money damages replace vendetta in private wrongs. Of course, some wrongs between private parties (killing) are also wrongs against the state (diminishes the recruit pool for the army).

b) **By Subject Matter such as Law, Equity, Admiralty Jurisdictions.** All states admit that they make laws only for their own states; and they define the situations where their states are interested in various ways. The federal courts govern only certain constitutionally defined situations: where a citizen of one state sues that of another; where two states sue each other; or where a federal law is at issue. Medical malpractice is rarely a federal issue. There is a special law (now part of

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federal law, mostly) for maritime actions which is called admiralty law. There is a special law, now part of general law, for awards in cases where the "law" would do an injustice, and fairness demands a different result (equity). When people die, or when they are incapable of caring for themselves because of being children, mentally deficient, or mentally ill, probate courts handle the issues. Some states also have "family courts" and "juvenile courts" with specialized jurisdiction.

c) By where the law is written: Case, statute, regulation. Here, jurisdiction is not the issue, but rather the force or power of the legal principle. For instance, a state Supreme Court decision can beat a state statute if the court deems that statute unconstitutional. A statute beats a regulation if the issue is large, but a regulation beats a statute if the issue is very limited and particular.

d) **By how much the injury is worth.** Even in a suit between citizens of different states, for instance, the injury or issue must be worth at least $75,000 for the federal court to get involved. In Ohio, some courts (municipal, mayor's courts) can only hear small (under $2,000) matters. A court of "general jurisdiction" can hear any case up to all the money in the world.

IX. Law Suits Follow a General Pattern in Every American Court

In general, all American lawsuits follow this pattern:

1) Something happens to you.
2) You think that I have done you wrong thereby.
3) You must bring your suit before the statute of limitations or of repose bars the suite.
4) You must bring it in the right court (jurisdiction).
5) You must serve a notice on me, whom you say did you wrong, in a particular way (to be sure I get it) within a particular amount of time
6) I must respond within a set time, "I got your complaint; I didn't do it; and even if I did, I have an excuse."
7) You then must ask me for "discovery" (anything I have that could prove that you are right).
8) Then I ask for discovery back (anything you have that could prove you wrong).
9) The court meets with both sides, after discovery has gone on for a while, and deems discovery closed (ended).
10) The court tries to make us both "settle" (come to an agreement and go away happy).
11) If settlement is not possible, after a few little procedural moves, the case comes on for trial:

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a. We pick a jury, following certain rules seen on TV, and we try to get jurors whom we think will like us better than the other party; but we can't use race as a criterion.
b. You give a speech saying how much I hurt you, and how careless I was to have done this.
c. I give a speech explaining that I did the right thing, and you are a big crybaby, you aren't really hurt, and anyway, even if you are, it isn't my fault.
d. You show pictures and interview witnesses who all tend to show how careless I was and how much I hurt you.
    i. I get to "cross-examine" your witnesses and try to show that they are liars, or at least mistaken.
e. I show pictures and interview witnesses who all tend to show that you aren't hurt, that is was your fault anyway, that it wasn't my fault, and that I did right by you.
    i. You get to cross-examine my witnesses, trying to show that they are all liars, or biased, or wrong.

12) The jury has listened to all this bickering. It goes off to talk, and returns, and says who is right, who is wrong, and how much the injury, if any, is worth.
13) Whoever loses asks the judge to overrule the jury, which the judge generally will not do.
14) Whoever loses appeals to a higher court, within a set amount of time, saying the judge did something wrong, or got a law wrong. The higher court (court of appeals) either agrees to hear the case, or doesn't.
    a. If it agrees, it hears the case, agrees or disagrees, and you either lose again, or win.
    b. Then, if I lose I appeal to the Supreme Court, saying the appeals court made a mistake; or if I win, you appeal.

There are two very important exceptions to the above general plan:

1) If a regulatory agency has jurisdiction over the complaint, you and I must "exhaust our administrative remedies" before appealing to a court (usually the court of general jurisdiction; but sometimes a special court, like a tax court).
2) If you and I have signed an arbitration agreement, and if this agreement is constitutionally permissible, and if this agreement provides for binding arbitration, whoever loses, loses and that's it.

X. Notes on Choice of Law ("Conflicts of Law")

Sometimes, it is hard to figure out whose law applies. Example: Quebec trucking company owns a truck, whose driver negligently runs over someone from Pennsylvania while both are in Albany, New York State. A piece of flying debris

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hits Pedestrian from New York City, and he too is injured. New York traffic tickets are issued, and the fines duly paid.

Now, the parties come on for a civil suit, saying Quebec negligently injured Pennsylvania. PA. brings this suit in Pittsburgh. NY brings suit in Buffalo, which is where he lives in a hospital being rehabilitated. Que says it has never been to PA and will not defend a suit in PA. It settles with NY in Buffalo.

The rules for choosing laws are complex, but these situations happen every day, and as doctors, you will see these problems.

A classic medical malpractice example is: State A has a damages cap; State B does not. Phys operates on Pat, and Pat is injured. Pat says Phys was negligent. The operation was in state A, and the damage is alleged to have occurred in state A; but Pat lives in state B, Phys has an office in state B, and Pat wants to sue in State B so as to have no cap on pain and suffering. Permissible?

XI. Case Study

In your medical education here at OUCOM, great emphasis has been placed on “case based learning”. Case study has been the method of learning law since time immemorial, so each lecture of the eighteen over the next 2 years will take a particular case or set of cases, which are current Ohio statutes or cases, or recent US Supreme Court Cases, and use it to illustrate a) a point of law which you need to know and b) a methodological point about law which you need to know.

Law cases are difficult to read if you have not had legal training, and this skill is not necessary for you in this course. I have abstracted the relevant cases or statutes for you, and they are attached to each lecture’s notes. Should you wish to view the originals, your core administrator may obtain access to them for you.

Today’s topic is: Tort Reform. The question presented is, “Will the new Tort Reform bill in Ohio be ruled unconstitutional?”

Hardy v. Vermeulen (1987) In 1973 and 1974, Doctor Hardy had his ears operated on by Dr. Vermeulen. After 1974 there was no further doctor-patient relationship between Hardy and Vermeulen. Dr. Vermeulen was alleged to have negligently made a mistake such that Hardy suffered an injury to his ears, but which injury Hardy could not have discovered until 1984. Under the old tort law, Hardy could bring the suit in 1985, which he did; but under the 1987 Tort Reform Act , containing a statute of repose, no medical malpractice action could be brought more than four years after the incident alleged to be the cause (through negligence) of the injury.

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Applying the newer law, Hardy's case was thrown out of court as time-barred (too late). Hardy's lawyers appealed to the Ohio Supreme Court. The majority ruled that the statute of repose was unconstitutional under Ohio Constitution Section 16, Article 1, as denying the plaintiff his remedy before he ever knew he had it:

> " [the 1987 Act] if applied to those who suffer bodily injury from medical malpractice but do not discover that injury until four years after the act of malpractice, accomplishes one purpose – to deny a remedy for the wrong. In other words, the courts of Ohio are closed to those who are not reasonably able, within four years, to know of the bodily injury they have suffered.
>
> " Section 16, Article 1 of the Ohio Constitution provides:
>
> " ' All courts shall be open and every person , for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.'
>
> "The appellant has no remedy for an injury to his body when his claim is extinguished before he knew of the injury…" Justice Brown, at 46.

The dissent thought that was a silly argument:

> "Today the majority ex cathedra revises [Section 16 Article 1] to read that 'all courts shall be open, and every person, for an injury done him in his lands, goods, or reputation, shall have a remedy.' " (at p. 52). … Who would have imagined that [in 1983 in another case] the groundwork was being laid for declaring all statutes of repose constitutionally infirm?" (at p. 55). Justice Wright.

Sedar v. Knowlton Construction Co. (1990), 49 Ohio St. 3d 193.
A nineteen year old student at Kent State put his arm through a wire mesh glass window in 1985, and hurt himself. He sued the construction company which had completed the construction in 1966 saying that they installed the window negligently, and that negligence was the cause of his hurting his arm. The 1987 Tort Reform Act had a statute of repose, which says that "no action…for damages for any injury … arising out of …unsafe condition of an improvement to real property…shall be brought …against any person … constructing such improvement…More than ten years after the performance … of such services."

Sedar's lawyer said that such a statute took away his client's right to a remedy for hurting his arm and was unconstitutional. The court said that was not so, and that the statute of repose was constitutional:

> "The legislature's choice of ten years to achieve its valid goal of limiting liability here was neither unreasonable nor arbitrary(at p. 200) … the situation presented in medical malpractice cases , particularly in Hardy … is clearly distinguishable from [this] situation." (at p. 201). Justice Holmes.

Justice Wright concurred. Then, in 1994, Sedar was overruled by Brennaman v. R.M.I. Co. (1994) 70 Ohio St. 3d 460 on right to remedy grounds as violating Section 16, Article I of the Ohio Constitution.

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Morris v. Savoy (1991) 61 Ohio St. 3d 684. Certified to the United States District Court for the Northern District of Ohio that limitation of general damages to $200,000 was unconstitutional under the Ohio State constitution.

Sorrell v. Thevenir (1994) 69 Ohio St. 3d 415. In the Tort Reform Act of 1987, one section tried to eliminate "double recovery": "RC 2317.45 requires trial courts to deduct from a plaintiff's jury award collateral benefits which have been or will be received by the plaintiff". (at page 422). Several cases were mixed together in **Sorrell**, but in one part, a jury awarded Sorrell $10,128.26 after her boss negligently hurt her; but since she got $14,000 in worker's compensation, she got no award from the jury.

The Ohio Supreme Court found that this part of the Tort Reform Act of 1987 violated three parts of the Ohio State Constitution: Section 16, Article I (due process and right to remedy); Section 2, Article I (equal protection); and Section 5, Article I (right to a jury trial).

> "Instead of eliminating a double recovery…[the Act] eliminated any recovery the jury found that Mrs. Sorrell was entitled to for her pain and suffering(at p. 422) …As pointed out earlier, the right to a jury trial in negligence and personal injury actions is a fundamental right. … [the Act] has not been shown to be necessary to promote a compelling state interest …[because] the statute can arbitrarily reduce damages (at pp 423-424) …[thus, the Act] does not accord due process to tort victims under … strict scrutiny or rational basis… and therefore we hold that it violates the Due Process Clause found in Section 16, Article I [and the right to jury trial clause in section 5, Article I] of the Ohio Constitution.
> "Under [several parts of the Tort Reform Act of 1987] medical malpractice claims are subject to a collateral source rule different from the rule for awards in all other tort cases …Accordingly we hold that [the statutes] also violate[] section 2, Article I [Equal Protection] of the Ohio Constitution. (at pages 425 and 426).
>
> "In Sorrell's case the statute not only denies plaintiffs a meaningful remedy, it completely obliterates the entire jury award…[therefore] we hold that [the statute] violates 2, 5, and 16 [right to remedy] of Article I of the Ohio Constitution." (at pages 426 and 427). Justice Sweeney.

The Tort Reform Act of 1996 (H.B. 350, 1996) The Ohio legislature was disappointed that its Tort Reform Act of 1987 had been turned into Swiss cheese by the Ohio Supreme Court, so they tried again to address what they saw as a crisis in the business of tort suits. The Tort Reform Bill of 1996 was a large and comprehensive bill covering many aspects of tort practice, with an eye to reducing a perceived insurance crisis especially caused by products liability and medical malpractice cases. It contained, among others, the following provisions:

1) 2305.011: plaintiffs must file certificates of merit in medical malpractice actions.
2) 2305.11: various statutes of repose were placed, including a 15 year statute on architects and builders; and a six year statute of repose for

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medical malpractice, but with a two year extension if one was disabled and thereby unable to discover the negligence.

3) 2315.21: Caps on non-economic damages (250,000 with various exceptions).
4) 2317.45: collateral source rule eliminated in medical malpractice actions, that is: if you have some form of insurance which also pays for this injury, you must deduct that payment from your tort damages award.
5) 2315.21: Limit punitive damages to three times the compensatory damages only (with exceptions).

Williams v. Aetna Fin. Co. (1998) 83 Ohio St. 3d 464. An award in compensatory damages was given by a jury for $15,000; but a punitive award was given for $1,500,000. The Ohio Supreme Court specifically held that this was not unconstitutional , that it did not violate the company's substantive due process.

State ex rel. Ohio Academy of Trial Lawyers (1999), 86 Ohio St. 3d 451. In 1997, the Ohio Academy of Trial Lawyers, the AFL-CIO in Ohio, and two individuals filed a suit seeking to have six Ohio lower court judges (including Sheward) stop enforcing various sections of the 1996 Tort Reform Act because these statutes were alleged to be unconstitutional.

The appeals court said that they had no right ("standing") to bring such a case against a whole statute; but that the correct procedure was for individual plaintiffs, who alleged they were hurt by the operation of the statute, should challenge the statute piece by piece.

The Ohio Supreme Court said it was OK for these people to bring the suit, and indeed, that the whole statute was unconstitutional on two basic grounds:

1) That the bill attempts to usurp judicial power in violation of the doctrine of separation of powers.
2) That the bill violates the one-subject rule of Ohio Constitution Section 15(D), Article II.

That being the case, a hodgepodge of previous laws was resurrected, including the 10 year statute of repose applying to architects, discussed in *Sedar v. Knowlton Construction Co.* above.

RC 2323.43 (Otherwise, the Tort Reform Act of 2003). This statute was enacted, in no small part through the lobbying of the Ohio State Medical Association, and has the following provisions, among others:

1) Medical malpractice non-economic damages caps, but not in claims against the state.
2) Statute of repose of four years.

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3) Elimination of collateral source rule.
4) Limit punitive damages to between 3 and 4 times the economic damages only.

State Farm Mut. Automobile Insurance Co. v. Campbell __US__ (2003). The Supreme Court of the United States held that a Utah Supreme Court case upholding an award of $145,000,000 punitive damages on $1,000,000 economic damages violates the due process clause of the U.S. Constitution.

Three tort reform bills have been passed in Ohio, in 1987, 1996, and in 2003. All are similar in content; two have been struck down by the Ohio Supreme Court. But this year, the US Supreme Court has, by implication, overruled one of the cases upon which the Ohio Supreme Court based striking down the 1996 act.

Westfield Insurance Co. v. Galatis (2003) 100 Ohio St. 3d 216: In this case, a man had a fatal car wreck, and sought damages under his Father's company's auto insurance policy; even though this would have been allowed under another case (*Scott-Ponzer v. Liberty Mutual Insurance Co* (1999) 85 Ohio St. 3d 660) the Ohio Supreme Court overruled itself, saying it could overrule itself in the following circumstances:

1) The decision was wrongly decided at the time, or circumstances have now changed so it would be wrong if decided now.
2) The decision defies practicable workability.
3) Abandoning the precedent would not create an undue hardship for those who have relied upon it.

Will the Ohio Supreme Court strike down the Tort Reform Act of 2003?
If you were an insurance company, would you start lowering your rates for doctors, based on the 2003 Tort Reform Act (RC 2323.43) being voted into law in Ohio? Is *Sheward* a case that could be reversed under *Galatis*?

You be the Judge!!!

XII. Post-Lecture Questions: True or False?

1) The Legislature of Ohio has enacted tort reform bills three times in the last 16 years.
2) The Ohio Supreme Court, interpreting the Ohio Constitution, has invalidated all or most of the first two tort reform acts.
3) Statutes of repose are the same as statutes of limitation.
4) The Ohio Supreme Court can never overrule itself.
5) This year, the Supreme Court of the U.S. has ruled that punitive damages of 145 million dollars, when the economic damages are 1 million dollars, are against due process in the US Constitution.

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XIII. Table of Cases and Statutes Cited

Statutes:

Ohio Tort Reform Act of 1987 (H.B. 1, 142, 1987).
Ohio Tort Reform Bill of 1996 (H.B. 350, 1996).
RC 2323.43 Tort (medical malpractice) Reform statute of 2003.

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