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Occupational safety and health , Health and Safety at Work etc. Act , UK labour law , Insurance in the United Kingdom , and National Health Service One of the principal terms that accompanies the employment relationship is that the employer will provide a "safe system of work". As the industrial revolution developed, accidents from a hazardous working environment were a front line target for labour legislation, as a series of Factories Acts , from , required minimum standards in workplace cleanliness, ventilation, fencing machinery, not to mention restrictions on child labour and limits to the working day. These Acts typically targeted particular kinds of workplaces, such as mines, or textile mills, before the more generalised approach took hold now seen in the Factories Act That applies to any workplace where an article is made or changed, or animals are kept and slaughtered. Today the Health and Safety at Work etc. Act , enforced by the Health and Safety Executive , is the main law. The HSE can delegate enforcement to local authorities, whose inspectors have the power to investigate and require changes to workplace systems. In addition, HSWA section 2 foresees that employees will set up their own workplace committees, elected by the employees and with the power to codetermine health and safety matters with management. Spelling out the general duties found in HSWA , are a set of health and safety regulations , which must also stay in line with the European-wide harmonised requirements of the Health and Safety Directive. Although the legislative provisions are not automatic, breach of a statutory duty is evidence that a civil law duty has been breached. Injured employees can generally claim for loss of income, and relatives or dependents recover small sums to reflect distress. First, until , if an employee was injured by a co-worker, the doctrine of common employment , the employer could only be liable if it was shown they were personally liable by carelessness in selecting staff. Lord Wright held there were "fundamental obligations of a contract of employment The second old restriction was that, until , volenti non fit injuria meant workers were assumed to voluntarily accept the dangers of their work by agreeing to their contracts of employment. Third, even if a worker was slightly at fault, until such contributory negligence precluded the whole of the claim. Now the court will only reduce damages by the amount the employee contributed to their own injury. In Hewison v Meridian Shipping Services Pte Ltd [24] Mr Hewison concealed his epilepsy so that he could work offshore was technically guilty of illegally attempting to gain a pecuniary advantage by deception under the Theft Act section After being struck in the head by a defective gangplank he suffered worse fits than before, but the Court of Appeal, by a majority, held his illegal act precluded any compensation. The common law of tort also remains particularly relevant for the type of liability an employer has where there is scientific uncertainty about the cause of an injury. In asbestos disease cases, a worker may have been employed with at a number of jobs where he was exposed to asbestos, but his injury cannot with certainty be traced to any one. Although he may be able to sue all of them, a number may have already gone insolvent. Immediately Parliament passed the Compensation Act section 3 to reverse the decision on its facts. It has also been held in Chandler v Cape plc , [27] in , that even though a subsidiary company is the direct employer of a worker, a parent company will owe a duty of care. Thus shareholders may not be able to hide behind the corporate veil to escape their obligations for the health and safety of the workforce. Road safety[edit] Many serious accidents in practice take place on the roads. Like workplaces, this encouraged Parliament to require compulsory insurance for harm. Using an uninsured motor vehicle on public roads is an offence. Private land to which the public have a reasonable right of access for example, a supermarket car park during opening hours is considered to be included within the requirements of the Act. Police may seize vehicles that do not appear to have necessary insurance in place.

Chapter 2 : Evidence (law) - Wikipedia

The results are the first direct evidence that tort reform reduces healthcare costs in aggregate; prior research has focused on particular medical conditions. Dafny LS, Avraham R, Schanzenbach M. The impact of tort reform on employer-sponsored health insurance premiums.

History of contract law Roman law contained provisions for torts in the form of delict , which later influenced the civil law jurisdictions in Continental Europe , but a distinctive body of law arose in the common law world traced to English tort law. Medieval period[edit] Torts and crimes at common law originate in the Germanic system of compensatory fines for wrongs OE unriht , with no clear distinction between crimes and other wrongs. After the Norman Conquest , fines were paid only to courts or the king, and quickly became a revenue source. A wrong became known as a tort or trespass, and there arose a division between civil pleas and pleas of the crown. The trespass action was an early civil plea in which damages were paid to the victim; if no payment was made, the defendant was imprisoned. The plea arose in local courts for slander , breach of contract , or interference with land, goods, or persons. It may have arisen either out of the "appeal of felony", or assize of novel disseisin, or replevin. Later, after the Statute of Westminster , in the s, the "trespass on the case" action arose for when the defendant did not direct force. The English Judicature Act passed through abolished the separate actions of trespass and trespass on the case. Liability for common carrier , which arose around , was also emphasized in the medieval period. As transportation improved and carriages became popular in the 18th and 19th centuries , however, collisions and carelessness became more prominent in court records. English influence[edit] The right of victims to receive redress was regarded by later English scholars as one of the rights of Englishmen. However, tort law was viewed[who? Long Island Railroad Co. Modern development[edit] The law of torts for various jurisdictions has developed independently. In the case of the United States, a survey of trial lawyers pointed to several modern developments, including strict liability for products based on Greenman v. Yuba Power Products, the limitation of various immunities e. However, there has also been a reaction in terms of tort reform , which in some cases have been struck down as violating state constitutions, and federal preemption of state laws. Even among common law countries, however, significant differences exist. For example, in England legal fees of the winner are paid by the loser the English rule versus the American rule of attorney fees. The Jewish law of rabbinic damages is another example although tort in Israeli law is technically similar to English law as it was enacted by British Mandate of Palestine authorities in and took effect in There is more apparent split between the Commonwealth countries principally England, Canada and Australia and the United States, although Canada may be more influenced by the United States due to its proximity. The influence of the United States on Australia has been limited. This occurs particularly in the United States, where each of the 50 states may have different state laws , but also may occur in other countries with a federal system of states, or internationally. Outline of tort law Torts may be categorized in several ways, with a particularly common division between negligent and intentional torts. Quasi-torts may be used to refer to torts which are similar to but somewhat different from typical torts. Particularly in the United States, "collateral tort" is used to refer to torts in labour law such as intentional infliction of emotional distress "outrage" ; [19] or wrongful dismissal ; these evolving causes of action are debated and overlap with contract law or other legal areas to some degree. The tort of negligence provides a cause of action leading to damages, or to relief, in each case designed to protect legal rights, including those of personal safety, property, and, in some cases, intangible economic interests or noneconomic interests such as the tort of negligent infliction of emotional distress in the United States. Product liability cases, such as those involving warranties, may also be considered negligence actions or, particularly in the United States, may apply regardless of negligence or intention through strict liability. Intentional torts include, among others, certain torts arising from the occupation or use of land. Trespass allows owners to sue for entrances by a person or his structure, such as an overhanging building on their land. Several intentional torts do not involve land. In some cases, the development of tort law has spurred lawmakers to create alternative solutions to disputes. In other cases, legal commentary has led to the development of new causes of action outside the traditional common law torts.

These are loosely grouped into quasi-torts or liability torts. Negligence Negligence is a tort which arises from the breach of the duty of care owed by one person to another from the perspective of a reasonable person. Although credited as appearing in the United States in Brown v. Donoghue drank from an opaque bottle containing a decomposed snail and claimed that it had made her ill. She could not sue Mr. Stevenson for damages for breach of contract and instead sued for negligence. The majority determined that the definition of negligence can be divided into four component parts that the plaintiff must prove to establish negligence. The elements in determining the liability for negligence are: The plaintiff suffered damage as a result of that breach The damage was not too remote; there was proximate cause to show the breach caused the damage In certain cases, negligence can be assumed under the doctrine of res ipsa loquitur Latin for "the thing itself speaks" ; particularly in the United States, a related concept is negligence per se. However, as per Esanda Finance Corporation Ltd v. Peat Marwick Hungerfords , such auditors do NOT provide a duty of care to third parties who rely on their reports. An exception is where the auditor provides the third party with a privity letter, explicitly stating the third party can rely on the report for a specific purpose. In such cases, the privity letter establishes a duty of care. Proximate cause Proximate cause means that you must be able to show that the harm was caused by the tort you are suing for. A common situation where a prior cause becomes an issue is the personal injury car accident, where the person re-injures an old injury. For example, someone who has a bad back is injured in the back in a car accident. Years later he is still in pain. He must prove the pain is caused by the car accident, and not the natural progression of the previous problem with the back. A superseding intervening cause happens shortly after the injury. For example, if after the accident the doctor who works on you commits malpractice and injures you further, the defense can argue that it was not the accident, but the incompetent doctor who caused your injury. Intentional tort Intentional torts are any intentional acts that are reasonably foreseeable to cause harm to an individual, and that do so. Intentional torts have several subcategories: Torts against the person include assault , battery , false imprisonment , intentional infliction of emotional distress , and fraud , although the latter is also an economic tort. Property torts involve any intentional interference with the property rights of the claimant plaintiff. Those commonly recognized include trespass to land, trespass to chattels personal property , and conversion. An intentional tort requires an overt act, some form of intent, and causation. In most cases, transferred intent, which occurs when the defendant intends to injure an individual but actually ends up injuring another individual, will satisfy the intent requirement. Statutory torts[edit] A statutory tort is like any other, in that it imposes duties on private or public parties, however they are created by the legislature, not the courts. State of California in which a judicial common law rule established in Rowland v. Christian was amended through a statute. In some cases federal or state statutes may preempt tort actions, which is particularly discussed in terms of the U. Nuisance "Nuisance" is traditionally used to describe an activity which is harmful or annoying to others such as indecent conduct or a rubbish heap. Nuisances either affect private individuals private nuisance or the general public public nuisance. The claimant can sue for most acts that interfere with their use and enjoyment of their land. In English law, whether activity was an illegal nuisance depended upon the area and whether the activity was "for the benefit of the commonwealth", with richer areas subject to a greater expectation of cleanliness and quiet. Fletcher , strict liability was established for a dangerous escape of some hazard, including water, fire, or animals as long as the cause was not remote. Defamation Defamation is tarnishing the reputation of someone; it has two varieties, slander and libel. Slander is spoken defamation and libel is printed or broadcast defamation. The two otherwise share the same features: Defamation does not affect or hinder the voicing of opinions, but does occupy the same fields as rights to free speech in the First Amendment to the Constitution of the United States, or Article 10 of the European Convention of Human Rights. Related to defamation in the U. Abuse of process and malicious prosecution are often classified as dignitary torts as well. Economic tort and Misrepresentation Business torts i. Negligent misrepresentation torts are distinct from contractual cases involving misrepresentation in that there is no privity of contract; these torts are likely to involve pure economic loss which has been less-commonly recoverable in tort. One criterion for determining whether economic loss is recoverable is the "foreseeability" doctrine. Supreme Court adopted the doctrine in East River S. In the European Union, articles and of the Treaty on the Functioning of the European Union apply but

allowing private actions to enforce antitrust laws is under discussion. Touche limited the liability of an auditor to known identified beneficiaries of the audit and this rule was widely applied in the United States until the s. White in Massachusetts, this rule spread across the country as a majority rule with the "out-of-pocket damages" rule as a minority rule.

Chapter 3 : Health and life insurance as an alternative to malpractice tort law

Get this from a library! Statistical Reasoning in Law and Public Policy: Volume 2:Tort Law, Evidence and Health.. [Joseph L Gastwirth] -- To reach reasoned decisions involving issues of public policy and law, statistical data and studies often need to be assessed for their accuracy and relevance.

History[edit] The rules of evidence were developed over several centuries and are based upon the rules from Anglo-American common law brought to the New World by early settlers. Their purpose is to be fair to both parties, disallowing the raising of allegations without a basis in provable fact. They are sometimes criticized as a legal technicality , but are an important part of the system for achieving a just result. Perhaps the most important of the rules of evidence is that, in general, hearsay testimony is inadmissible although there are many exceptions to this rule. There are several examples where presiding authorities are not bound by the rules of evidence. These include the military tribunals in the United States and tribunals used in Australia to try health professionals. Relevance and social policy[edit] This section needs additional citations for verification. Please help improve this article by adding citations to reliable sources. Unsourced material may be challenged and removed. October Main article: Relevance law In every jurisdiction based on the English common law tradition, evidence must conform to a number of rules and restrictions to be admissible. However, the relevance of evidence is ordinarily a necessary condition but not a sufficient condition for the admissibility of evidence. For example, relevant evidence may be excluded if it is unfairly prejudicial, confusing, or the relevance or irrelevance of evidence cannot be determined by logical analysis. There is also general agreement that assessment of relevance or irrelevance involves or requires judgements about probabilities or uncertainties. Beyond that, there is little agreement. Many legal scholars and judges agree that ordinary reasoning, or common sense reasoning, plays an important role. There is less agreement about whether or not judgements of relevance or irrelevance are defensible only if the reasoning that supports such judgements is made fully explicit. However, most trial judges would reject any such requirement and would say that some judgements can and must rest partly on unarticulated and unarticulable hunches and intuitions. According to Rule of the Federal Rules of Evidence FRE , evidence is relevant if it has the "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. California Evidence Code section also allows for exclusion to avoid "substantial danger of undue prejudice. The majority of people now reject the formerly-popular proposition that the institution of trial by jury is the main reason for the existence of rules of evidence even in countries such as the United States and Australia; they argue that other variables[clarification needed] are at work. Evidence of a confession may be excluded because it was obtained by oppression or because the confession was made in consequence of anything said or done to the defendant that would be likely to make the confession unreliable. Such illegal evidence is known as the fruit of the poisonous tree and is normally not permitted at trial. Authentication[edit] Certain kinds of evidence, such as documentary evidence, are subject to the requirement that the offeror provide the trial judge with a certain amount of evidence which need not be much and it need not be very strong suggesting that the offered item of tangible evidence e. This authentication requirement has import primarily in jury trials. If evidence of authenticity is lacking in a bench trial, the trial judge will simply dismiss the evidence as unpersuasive or irrelevant. Other kinds of evidence can be self-authenticating and require nothing to prove that the item is tangible evidence. Examples of self-authenticating evidence includes signed and certified public documents, newspapers, and acknowledged documents. Please help improve this section by adding citations to reliable sources. August Learn how and when to remove this template message In systems of proof based on the English common law tradition, almost all evidence must be sponsored by a witness , who has sworn or solemnly affirmed to tell the truth. The bulk of the law of evidence regulates the types of evidence that may be sought from witnesses and the manner in which the interrogation of witnesses is conducted such as during direct examination and cross-examination of witnesses. Other types of evidentiary rules specify the standards of persuasion e. Today all persons are presumed to be qualified to serve as witnesses in trials and other legal proceedings, and all persons are also

presumed to have a legal obligation to serve as witnesses if their testimony is sought. However, legal rules sometimes exempt people from the obligation to give evidence and legal rules disqualify people from serving as witnesses under some circumstances. Privilege rules give the holder of the privilege a right to prevent a witness from giving testimony. These privileges are ordinarily but not always designed to protect socially valued types of confidential communications. Some of the privileges that are often recognized in various U. A variety of additional privileges are recognized in different jurisdictions, but the list of recognized privileges varies from jurisdiction to jurisdiction; for example, some jurisdictions recognize a social workerâ€"client privilege and other jurisdictions do not. Witness competence rules are legal rules that specify circumstances under which persons are ineligible to serve as witnesses. For example, neither a judge nor a juror is competent to testify in a trial in which the judge or the juror serves in that capacity; and in jurisdictions with a dead man statute , a person is deemed not competent to testify as to statements of or transactions with a deceased opposing party. Often, a Government or Parliamentary Act will govern the rules affecting the giving of evidence by witnesses in court. Hearsay Hearsay is one of the largest and most complex areas of the law of evidence in common-law jurisdictions. The default rule is that hearsay evidence is inadmissible. Hearsay is an out of court statement offered to prove the truth of the matter asserted. A party is offering a statement to prove the truth of the matter asserted if the party is trying to prove that the assertion made by the declarant the maker of the out-of-trial statement is true. For example, prior to trial Bob says, "Jane went to the store. However, at both common law and under evidence codifications such as the Federal Rules of Evidence , there are dozens of exemptions from and exceptions to the hearsay rule. Circumstantial evidence[edit] Direct evidence is any evidence that directly proves or disproves a fact. The most well-known type of direct evidence is a testimony from an eye witness. In eye-witness testimonies the witness states exactly what they experienced, saw, or heard. Direct evidence may also be found in the form of documents. In cases that involve a breach of contract, the contract itself would be considered direct evidence as it can directly prove or disprove that there was breach of contract. Circumstantial evidence , however, is evidence that does not point directly to a fact and requires an inference in order to prove that fact. A common example of the distinction between direct and circumstantial evidence involves a person who comes into a building, when it may be raining. Legal burden of proof Different types of proceedings require parties to meet different burdens of proof , the typical examples being beyond a reasonable doubt, clear and convincing evidence, and preponderance of the evidence. Many jurisdictions have burden-shifting provisions, which require that if one party produces evidence tending to prove a certain point, the burden shifts to the other party to produce superior evidence tending to disprove it. One special category of information in this area includes things of which the court may take judicial notice. This category covers matters that are so well known that the court may deem them proved without the introduction of any evidence. For example, if a defendant is alleged to have illegally transported goods across a state line by driving them from Boston to Los Angeles , the court may take judicial notice of the fact that it is impossible to drive from Boston to Los Angeles without crossing a number of state lines. In a civil case, where the court takes judicial notice of the fact, that fact is deemed conclusively proved. In a criminal case, however, the defense may always submit evidence to rebut a point for which judicial notice has been taken. Evidentiary rules stemming from other areas of law[edit] Some rules that affect the admissibility of evidence are nonetheless considered to belong to other areas of law. These include the exclusionary rule of criminal procedure , which prohibits the admission in a criminal trial of evidence gained by unconstitutional means, and the parol evidence rule of contract law , which prohibits the admission of extrinsic evidence of the contents of a written contract. Evidence as an area of study[edit] In countries that follow the civil law system , evidence is normally studied as a branch of procedural law. All American law schools offer a course in evidence, and most require the subject either as a first year class, or as an upper-level class, or as a prerequisite to later courses. Furthermore, evidence is heavily tested on the Multistate Bar Examination MBE - approximately one-sixth of the questions asked in that test will be in the area of evidence. The MBE predominantly tests evidence under the Federal Rules of Evidence , giving little attention to matters on which the law of different states is likely to be inconsistent. Tampering, falsification, and spoliation[edit] Main articles: Tampering is usually the criminal law variant in which a person alters, conceals, falsifies, or destroys

evidence to interfere with a law-enforcement, governmental, or regulatory investigation, and is usually defined as a crime. Parallel construction is the creation of an untruthful, but plausible, explanation for how the evidence came to be held, which hides its true origins, either to protect sources and methods used, or to avoid the evidence being excluded as unlawfully obtained. Depending on the circumstances, acts to conceal or destroy evidence or misrepresent its true origins might be considered both tampering and spoliation.

Chapter 4 : Patient Fall: Medical Malpractice or General Tort? | Bill of Health

2 Scientific Evidence in the Tort Law 3 Joint Causation, Torts, and Administrative Law in Environmental Health Protections 4 Scientific Procedures in Regulatory Agencies.

Received Dec 18; Accepted Jun 2. Abstract Background Tort law has legitimate social purposes of deterrence, punishment and compensation, but medical tort law does none of these well. Tort law could be counterproductive in medicine, encouraging costly defensive practices that harm some patients, restricting access to care in some settings and discouraging innovation. Discussion Patients might be better served by purchasing combined health and life insurance policies and waiving their right to pursue malpractice claims. A health and life insurer would attempt to minimize mortal risks to policyholders from any cause, including medical mistakes and could therefore pursue systematic quality improvement efforts. If policyholders trust the insurer to seek, develop and reward genuinely effective care; identify, deter and remediate poor care; and compensate survivors through the no-fault process of paying life insurance benefits, then tort law is largely redundant and the right to sue may be waived. If expensive defensive medicine can be avoided, that savings alone could pay for fairly large life insurance policies. Summary Insurers are maligned largely because of their logical response to incentives that are misaligned with the interests of patients and physicians in the United States. Patient, provider and insurer incentives could be realigned by combining health and life insurance, allowing the insurer to use its considerable information access and analytic power to improve patient care. This arrangement would address the social goals of malpractice torts, so that policyholders could rationally waive their right to sue. Background Health care is a risky endeavor [1]. The industry has made some progress in improving safety following the Institute of Medicine report, "To err is human", but malpractice reforms to reduce blame and improve accountability have lagged consistently [2]. Malpractice tort law has three theoretically important purposes [3]. First, threats of malpractice suits should deter physicians from practicing beyond their expertise. Second, malpractice suits should punish those who practice low quality care. Third, malpractice awards are a process for compensating patients injured by low quality care. One might hope that by achieving these purposes, malpractice tort law would further the broader goals of better health care and outcomes. Unfortunately, current malpractice tort law does none of these tasks very well. Malpractice suits are not sensitive: This is in part due to the difficulty of detecting negligence: Malpractice suits are not specific: Malpractice claim history is predictive of future malpractice claims [13 , 14], but such claims largely reflect poor interpersonal skills [15 - 17]. High quality training may reduce risk [18] but in some cases the most knowledgeable physicians have been more likely to be sued than their peers [19]. In one specialty, board certified physicians experienced fewer state disciplinary actions than non-certified physicians, but equal numbers of malpractice claims [20]. It is therefore not at all clear that malpractice tort law compensates victims of medical mistakes or identifies clinically incompetent physicians. Furthermore, adverse events are about equally frequent in malpractice tort systems and less expensive "no fault" systems for compensating disabled patients [21 , 22]. These observations suggest that malpractice tort law does no better at preventing mistakes or compensating victims than alternative systems. Malpractice tort law has important unintended effects. Believing that they face a capricious threat of losing time, money and reputation, many physicians practice expensive defensive medicine [23 - 27]. Defensive medicine can be harmful as well [25 , 31]. For instance, all x-ray images entail at least a small risk of causing cancer [32]. Collectively, defensive radiographic imaging could pose a non-trivial public health problem [33]. False positive test results can initiate an injurious and expensive cascade of events. Still worse, high risk of malpractice suits may discourage technically qualified physicians from offering services that would benefit patients [25 , 34 - 37]. The unintended consequences of malpractice torts could cause harm without offsetting benefits to society. Constructive change has been hard to achieve. A small survey reported that physicians do not believe that lawyers have the moral authority to guide medical practice and would prefer physician-led quality control measures [38]. Deliberate quality control efforts can reduce harmful variation in practice, decrease adverse events and prevent litigation [39 - 41]. The improvement occurred before the investigators learned anything

new about adjusting ventilator settings for ARDS patients [40]. This is evidence-based medicine at its best: It was possible, at least in principle, for any hospital to deliver comparable care to ARDS patients, but only one group of researchers perceived a need to standardize a complex and variable health care process as a prerequisite for their studies. Physician-led quality control can be very effective, but is rare and usually addresses less complex problems than ARDS. No-fault compensation for poor medical outcomes and independent arbitration are less confrontational and potentially less expensive complements to malpractice tort law. Apology laws have been advocated as another means of indirectly reducing medical error, ideally in combination with no-fault compensation [42]. The right can be abridged by legislative acts only if the justice system agrees that a compelling argument favors the abridgement. Therefore, US citizens would have to be persuaded by some compelling argument to waive this right. Guaranteed compensation would help, but it is not clear how strongly this would encourage general improvements in the quality of medical outcomes unless health care insurers provide the guarantee. Physicians often call for caps on malpractice awards [43]. This may reduce malpractice insurance costs and even state health care costs [44], although a recent analysis suggests no effect [45]. Some argue that caps are not nearly ambitious enough reforms and call for a new system of medical justice [46 , 47], but sweeping reform is unlikely [43]. Other countries restrain malpractice activity by avoiding jury trials and contingency fees, restricting pretrial discovery and forcing the loser to pay the legal costs of the winner [48]. Caps and stronger reforms leave physician reputations at risk and the prospect of defending a suit remains daunting. The path of least resistance still may be to charge a patient, or an insurance pool, for a test that suggests that the physician left no stone unturned in the effort to serve the patient, even if the test has negative expected value and drains the insurance pool. Physicians facing any serious threat of malpractice suits are likely to feel similar pressure. Furthermore, these reforms do not provide direct incentives to improve patient care. The Obama administration has rejected major tort reform as a component of federal health care reform. However, the administration has acknowledged that state experiments in tort reform could be instructive. The following discussion describes a possible insurance reform that could be implemented by states and how it might obviate medical tort law. Discussion Health and Life Insurance There is only one group in the US health care industry that routinely collects enough data to monitor, compare and reward quality care. That group is not patients, physicians, pharmaceutical companies, public health agencies, hospitals, academics, or politicians. That every other group views insurers with deep and largely justified distrust is a tragic result of misaligned incentives: Insurers must maintain a sufficiently respectable reputation to collect premiums from policyholders and must abide by contracts. A tense relationship with health care providers and patients is not surprising. Policyholders would pay insurance premiums for both health and life insurance, while the insurer would reimburse medical care. Neither the insurer nor the policyholder could casually terminate the relationship. Policies that endure a minimum of 5 years would give insurers the opportunity to reap some short-term reward for influencing health. Policyholders could use a combination of term and permanent life insurance to convey longevity preferences to the insurer. Term policies convey interest in avoiding fatal accidents, while permanent policies variable and whole life insurance imply interest in longevity. Ideally, a basic policy would be established relatively early in life, with the expectation that policyholders could negotiate amendments to the life insurance policy. As in any viable insurance program, policyholders would need to initiate coverage while healthy, or pay a premium to purchase coverage with a pre-existing condition. The insurer could profit in two ways. First, it could keep aggregate spending on health care below the sum of collections of health insurance premiums. Second, it could earn more from invested life insurance premiums than it pays in life insurance benefits if it can increase average life expectancy, whether by preventing accidental deaths, increasing longevity, or both. If the insurer finds inexpensive ways to heal, maintain health and extend longevity, the policyholders benefit. Conversely, neglect and other health care mistakes are likely to manifest as losses on life insurance and increased long-term health costs. This should create a tense resource allocation decision. It needs to be shared, as much as possible, between suffering patients, harried physicians and well-informed, highly analytical insurers. Profitable activities could be as diverse as lobbying against anti-health interests, subsidizing healthy behaviors and reducing environmental risks. A health and life insurer should have an especially strong interest in the quality

of medical care provided to policyholders. In many situations, the insurer could profit twice from directing policyholders to high quality care, once if the care succeeds in avoiding complications and disability that would create additional medical expenses and again if the care reduces mortal risk. Conversely, the insurer would pay twice for failure to obtain high quality care for the average policyholder. Therefore, the insurer could reimburse health care systems or even individual physicians based on the quality of the care they deliver. Health and life insurers would have incentives to develop nuanced measures of the quality of care. Pay for performance initiatives typically use simple quality measures and may not change outcomes appreciably [51 - 56]. Simple quality measures also are likely to focus too much attention on marginal improvements that are not cost-effective with respect to health. For instance, a provider might have greater financial incentive to help five patients reduce their hemoglobin A1c from 7. The health and life insurer also should maintain a healthy skepticism regarding extrapolated quality measures. For instance, anticoagulation to prevent blood clots is clearly valuable for many orthopedic surgery patients, but involves serious trade-offs and may not change short-term mortality among internal medicine inpatients [58]. Nevertheless, thromboprophylaxis is a common quality measure in both orthopedic and medical settings. A health and life insurer could reasonably and credibly reject thromboprophylaxis as a quality measure in medical settings, or develop a nuanced policy identifying subsets of medical inpatients who do benefit from thromboprophylaxis. A similar analysis could address the recent controversy regarding breast cancer screening among women under age 50 [59]. These calculations suggest a reimbursement strategy that could be called "fee for expected benefit" [60]. A health and life insurer has an opportunity to divide the profits accrued by delaying deaths, avoiding complications and reducing unnecessary care among providers and patients. The insurer could tailor these reimbursements to reinforce the careful teamwork required to achieve significant benefits for patients [61]. Most importantly, a health and life insurer paying fees for expected benefits should gain the credibility needed to reduce or deny payment for useless or overly expensive treatments - if the service could save costs by reducing disability and death at a reasonable price, the insurer would pay for it. Replacing Malpractice Suits Health and life insurers would provide nearly all of the social benefits of tort law. The insurer could reward and penalize providers based on average patient outcomes. Observing poorly executed care, the insurer should demand quality improvements or end reimbursements. The insurer increases profits when it employs providers who have, or can learn, the skills required to manage high-risk cases.

Chapter 5 : Mental Injury and Tort Laws

Statistical Reasoning in Law and Public Policy, Volume 2: Tort Law, Evidence, and Health (Statistical Modeling and Decision Science) by Joseph L. Gastwirth (Author).

Chapter 6 : Medical Tort System | U.S. Health Policy Gateway

(2) In mass tort cases, epidemiologic studies are used either to refute or to support claims involving an increased risk of disease from exposure to a toxic substance. (3) Consequently, how to use epidemiology when deciding mass tort cases is becoming an increasingly important question in public health law.

Chapter 7 : Tort - Wikipedia

3 I. INTRODUCTION A principal goal of tort law is to deter negligent behavior. However, empirical evidence on a deterrent effect is scarce. To obtain convincing evidence, one needs an external shock to.

Chapter 8 : English tort law - Wikipedia

provide evidence that tort reform in Texas had little effect on the levels of losses incurred by private health insurers on behalf of insured patients (in other words, claims for.