

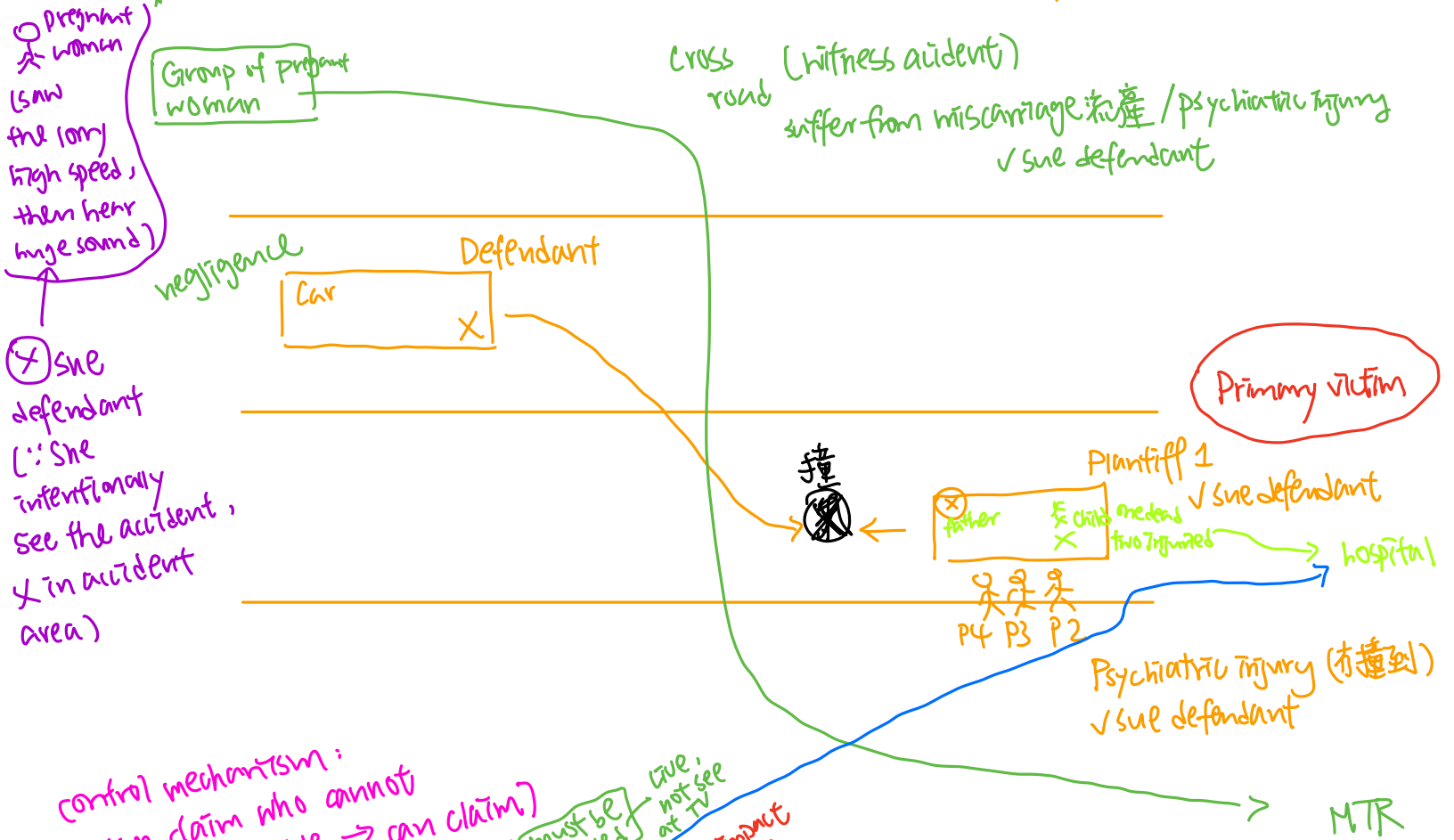
LW2903 Business and Law

Lecture 4

Tortious Liability in General

Tortious Liability

- **Tortious liability** arises from a **breach of a duty** primarily **fixed by law**. This duty is **towards persons generally** and its breach is **redressible** by an action for **damages**.
 - There are **three types** of tortious liability:
 - (a) liability for **intentional torts**: "Trespass" – to i) person ii) land iii) chattels
have motive (eg. aim at sb)
enter sb field
personal possessions (belongings)
eg. take your phone
 - ★ (b) liability for **unintentional torts** – **Donoghue v Stevenson [1932]**
negligence
 - (c) **Strict liability**
= no fault liability (X intention X negligence)
violation liability
- Trespass to person*
i) *assault – no physical contact, only verbal (threaten by sb)*
battery – ✓ physical contact
False imprisonment – lock sb without his permission
but some contact is necessary in society (eg. MTR so crowded)



control mechanism: who can claim who cannot claim (foreseeable → can claim)

Love & affection (and limit to blood related only) (grandmother & immediate family) see the state of family

secondary victim

Wife

suffer from psychiatric injury

★ ✓ sue defendant (foreseeability of harm) (what she see at hospital, actually ✓ image what happen at the scene)

must be involved to see the immediate impact live, not see at TV

Tort law

Must be involved in the area of danger (foresee)

foreseeability: foresee a likelihood of harm (you know the risk of harm)

only those closely & directly affected can sue

Lack of time & distance (closeness, time, space, unaided)

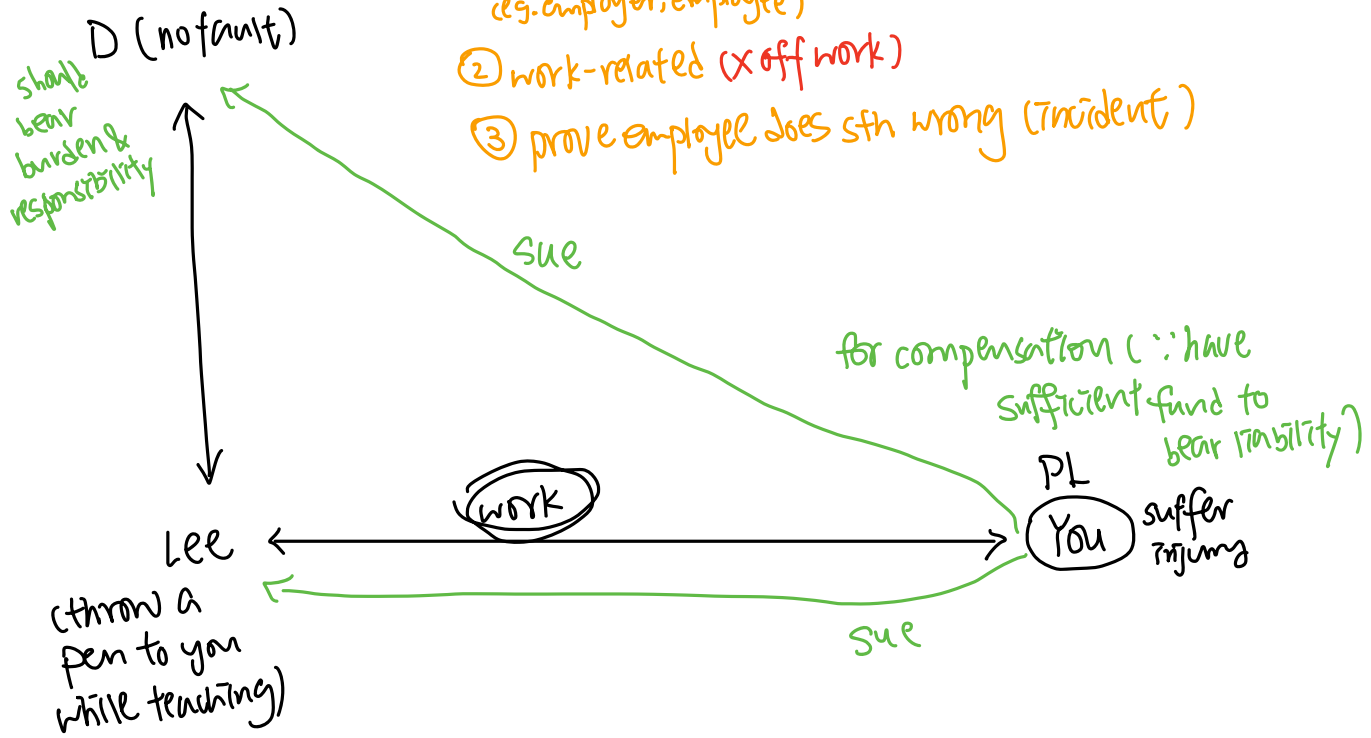
↳ X sue (eg. wife at UK fly to HK)

C) Strict liability

requirement
① master-servant relationship
(e.g. employer, employee)

② work-related (x off work)

③ prove employee does sth wrong (incident)



no limited number of people that
we can sue

Tortious Liability

- There is **no general liability in tort**, unless damage suffered could be brought under a **known head of liability** (e.g. **negligence**, **nuisance** or **trespass**).
 — a cause of action ★
 eg. *Kip J sue landlord for not fixing problems*
- ① Difference between Tort and Crime
- ② Difference between Tort and Contract

= responsibility to prove Tort
 ① burden of proof; balance of probabilities (prove the case to court)
 (eg. 51/49) ← no need to 100% certain
 ↳ for compensation (A v B)
 civil action criminal action
 → Liability v. guilty — for distinguish ^{responsibility} liability
 * no body is guilty unless the court said it

no need 100% is defendant fault vs
 crime = beyond doubt (100%) certain
 ↳ for punishment (HKSAR v X)

private law
(A v B)
② Tort v contract

both civil law action
difference: purpose of

Tort: restore plaintiff back to original position — compensation

P1 car case
leg injury (left - ^{cut-off} amputated)
- Taxi driver
reason for suing (loss of income)
other expense also affected

P2
leg injury (same)
- accountant
reason for ... (same)
other expense also affected

Court consider
- how many years left he can work
- income he loss bcs of accident
- other expenses bcs of accident

contract: move forward & complete the transaction — compensation

Specific Torts

Negligence – the breach of a **legal duty to take care** which results in damage, undesired by the defendant to the plaintiff.

Torts affecting a person – assault & battery, false imprisonment.

Torts affecting property – **trespass to land**, wrongful interference with goods.

Breach of statutory duty – the breach of an ordinance ^{條例} which stipulates an obligation of individuals **e.g. the industrial and safety legislation to protect the safety of workers.**

^{誹謗} **Defamation** – causing **harm to the reputation** of a person by **false statements**.

Nuisance – the **unreasonable interference** with the **use and enjoyment of land**. ^{← must be owner of land to sue} ^{Eg noise, smoke, smell, light ...}

Vicarious liability – if the **servant/employee is liable** for tort **in the course of his employment**, the **master/employer will be liable**, though without personal fault on his part.

Passing off – **infringement** of registered **trade mark or design**. ^{侵權}

Remedies

- **Remedies for breach of duty of care are similar to those available for breach of contractual obligations.** Including: (i) **damages**; (ii) **injunction** and (iii) **specific performance**.

- **Egg-Shell Skull Rule.** — legal concept

normal skull v egg-shell skull
eg. normal adult eg. elderly

Cannot say: I don't know he has egg-shell skull!

whenever defendant did anything wrong → need to bear all full responsibility