TORTS, CONT.

I. RECAP OF TUSCANY'S FRAMEWORK
   A. CONTRACTS
   B. TORTS
      1. NEGLIGENCE - REASONABLE CARE
      2. PRODUCTS' LIABILITY vs. STRICT LIABILITY

II. STANDARDS OF REASONABLENESS
   A. WHERE DO YOU GO TO FIND STANDARDS
      1. INDUSTRY STANDARDS
         a) PROFESSIONS - LAW GIVES PROFESSIONS THE RIGHT TO
            SET THEIR OWN STANDARDS; PROF. STANDARDS ARE
            THE LEGAL STANDARDS.
      2. CASES
      3. REGULATIONS AND STATUTES
         a) IF IT DISCOVERS YOU VIOLATED AN APPLICABLE STANDARD
            IN A REGULATION OR STATUTE, YOU HAVE NEGLIGENCE
            PER SE, AND THE PLAINTIFF'S CASE GOES TO THE JURY.
         b) NOTE: PRIVATE ATTORNEY GENERAL vs. WE LET PLAINTIFFS
            BAR TO ENFORCE THE RULES.
   B. OFTEN BECOMES AN INQUIRY OF PROCESS
      1. EX: BREAST IMPLANT CASES

III. KOSA
   A. FACTS: IT HAD A BLOOD TRANSFUSION, GOT AIDS, PARENTS SUED
      FOR WRONGFUL DEATH, Δ'S WERE THE HOSPITAL AND THE RED
      CROSS.
   B. STANDARD OF CARE: THE COURT DEVELOPS A TIMELINE. PRIOR TO IT'S
      TRANSFUSION, THERE WAS SOME GROWING DISCUSSION OF AIDS. IT
      CRYSTALIZES AFTER. KEY: "WHAT DID HE KNOW AND WHEN DID HE
      KNOW IT?" LOOKING BACK, THINGS SEEM MORE CERTAIN THAN
      THEY WERE. AT THE TIME, THERE WAS NO TEST FOR AIDS.
   C. OUTCOME: DEFENSE VERDICT. NOTE: THESE WERE RESPECTED Δ's THAT
      WOULD HAVE BEEN CRUSHED BY ADVERSE OUTCOME. A COMMERCIAL
      Δ WOULD LIKELY HAVE LOST. TAKEAWAY: JUDGES AND JURIES ARE
      PEOPLE AND GET SWAYED BY HUMAN FACTORS.
IV. STATE OF THE ART DEFEENSE
   A. GIVEN THE STATE OF TECHNOLOGY AT THE TIME, THE Δ COULD
      NOT HAVE DONE ANY BETTER.
   B. COUNTER ARGUMENT → IT IS THE INDUSTRY THAT HAS THE BEST
      ACCESS TO RISK INFORMATION. THEY NEED TO ADVANCE THE
      STATE OF THE ART TO PROTECT SAFETY. DEVOTE RESOURCES
      TO FIGURING OUT IF YOUR PRODUCT IS HARMFUL.

V. GOVT. STANDARDS
   A. SHOULD IT BE A DEFENSE THAT YOU COMPLIED W/ GOVT. REGULATIONS?
      IT IS NOT.
      1. WHY → REGULATION SETS A STANDARD OF CARE, BUT IT IS
         NOT REASONABLE CARE.
      2. IT WOULD BE PROHIBITIVELY EXPENSIVE FOR GOVT TO
         TEST EVERY ASPECT OF PRODUCT.

VI. DUTY TO WARN
   A. CASES OFTEN TURN ON THE ADEQUACY OF WARNING. BUT, SOME WARNINGS
      ARE NOT ENOUGH.

VII. FIDUCIARY DUTY
   A. RELEVANCE: PROFESSIONS AND HIGHER LEVELS OF CORP. GOVERNANCE
   B. A FIDUCIARY MUST ACT IN THE BEST INTEREST OF THE OTHER
      PARTY.
   C. TWO ASPECTS:
      1. DUTY OF LOYALTY → DO RIGHT BY YOUR CLIENTS. AT A RESEARCH
         HOSPITAL, THERE CAN BE A CONFLICT BETWEEN TREATING YOU AND
         LEARNING FROM YOU. THESE CAN BE COMPLICATED QUERIES.
      2. DUTY OF CARE (Diligence) → YOU DO THE WORK COMPETENTLY

\[\begin{array}{c|c|c}
\text{Diligence} & \text{Loyalty} & \text{HMO Influenced Doctor} \\
\hline
+ & - & \\
\hline
- & + & Overburdened Executive
\end{array}\]
VIII. CAUSATION
A. THE BREACH OF DUTY HAS TO CAUSE THE HARM.
   1. THIS IS A VERY COMPLICATED RULE OF LAW
   2. REASONABLE FORSEEABILITY TEST
   3. THE LAW WILL LOOK FURTHER DOWN STREAM FOR A MORE CULPABLE DEFENDANT