
Dorit R. Reiss **LIABILITY FOR THE HARMS
OF NON-VACCINATION**

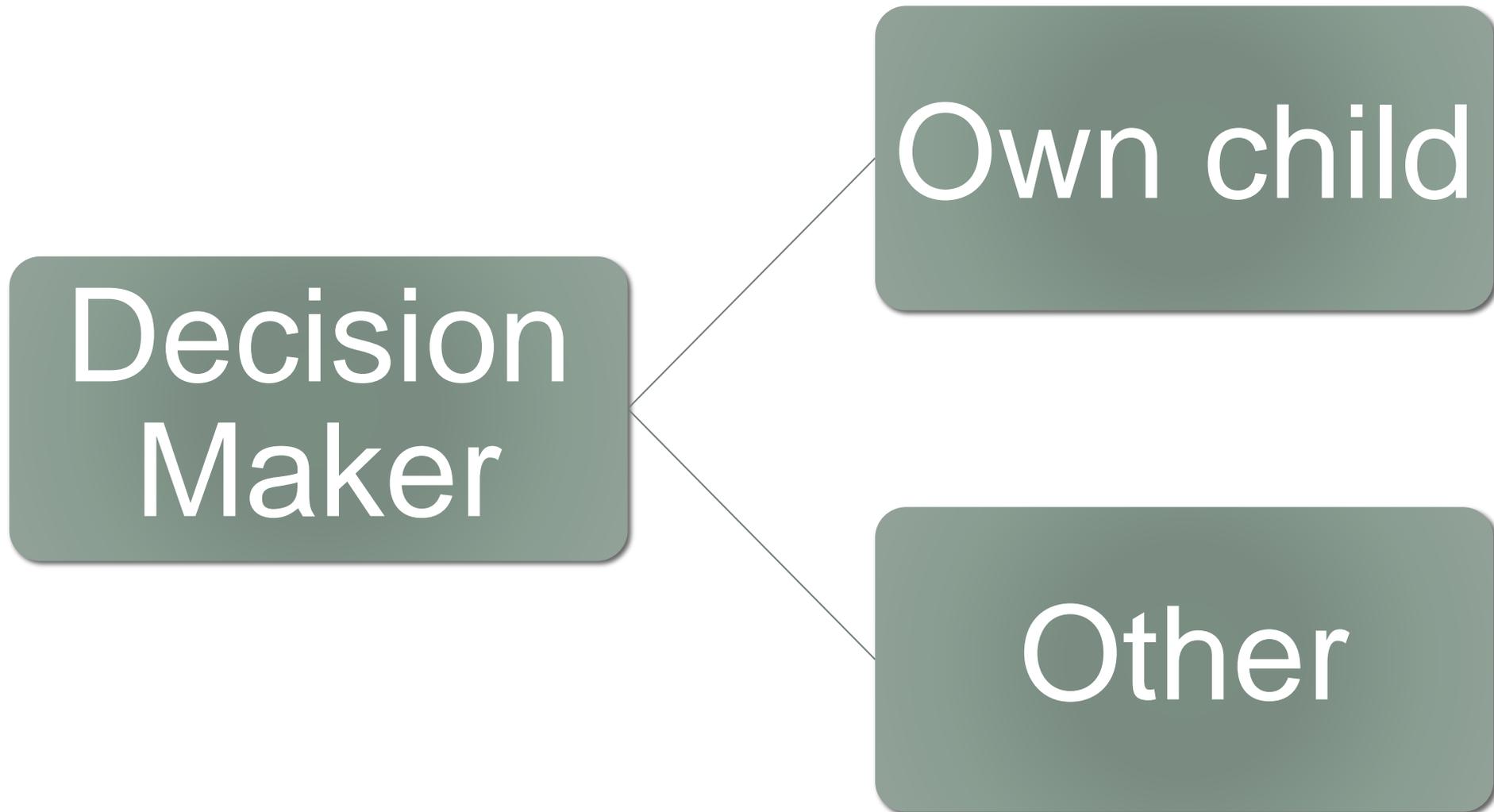
Presentation Plan:

- Introduction: The tort system and possibilities
- Failure to vaccinate and third parties
- Child v. parents
- Suing providers of misinformation
- Conclusion

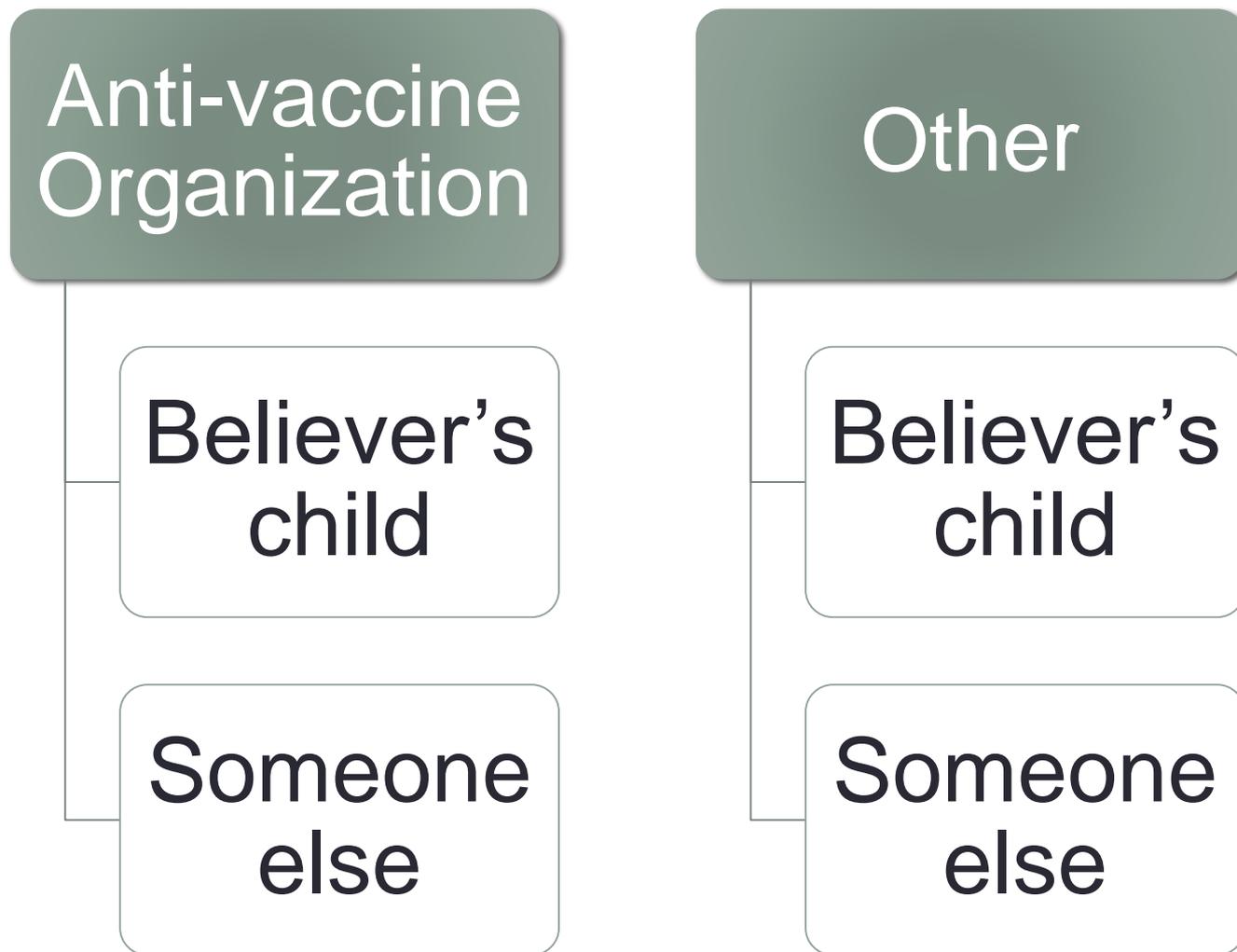
Goals of Torts:

- Compensation
- Deterrence
- Economic benefits
- Administrative efficiency
- Justice

Negligence claims:



Misrepresentation claims:



Liability to others:



Challenges:

- Duty
- Causation
- Insurance

Answers to the “no duty to act” problem:

- Not vaccinating is not passive.
- Policy reasons to acknowledge a duty.
- Possibility of Statutory duty.

Challenges:

- Duty
- Causation
- Insurance

Causation – Standard:

- More likely than not – over 50%
- Defendant's negligence more likely cause than other causes

Here -

- Vaccinating would more likely than not prevent disease.
- Unvaccinated child more likely than not source of disease

Causation, *Stubbs v. Rochester*:

- Physician investigated outbreak, found contamination, testified it was cause of outbreak, in his opinion.
- 58 people who drank the contaminated water from same location got typhoid fever.
- Plaintiff testified:
 - He drank only city's water.
 - His habits – eating and living.
- Statistics:
 - Higher number of typhoid cases in city than in 9 previous years.
 - 1/3 of cases in city in area with contaminated water.

Insurance: Communicable Disease Exclusion

- No coverage for bodily injury that “arises out of the transmission of a communicable disease by an insured.”



Suing within the family?

Her parents decided
not to vaccinate.



She didn't get a vote.

Challenges:

- Parental Immunity.
- Relationship.

Suing for Misinformation?

Encephalopathy. Allergies. Asthma.
MTHFR. Mitochondrial
disease. Oxidative stress.
Heavy metal poisoning.
Autoimmune disease.
Etc. Etc. Etc. If only it
was 'just' autism.



Suing for Misinformation?

If I ever tell you the measles is dangerous please fire me and find a doctor who knows what he's talking about.



[FACEBOOK.COM/THEVACCINEMACHINE](https://www.facebook.com/thevaccinemachine)

MemeCenter.com

Suing for Misinformation?

§311 of the Restatement (Second) of Torts:

Negligent Misrepresentation Involving Risk Of Physical Harm:

- (1) One who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information...
 - (a) to the other, or
 - (b) to such third persons as the actor should expect to be put in peril by the action taken.

Elements of Misrepresentation that causes physical harm:

- The information was false.
- It was given negligently.
- Reasonable reliance.
- Causation
- Legally recognizable harm.

Challenges:

- Reasonable reliance
- Causation
- Free speech

Thank you!

Questions? Comments?

reissd@uchastings.edu

415-5654844

Additional Slides:

Elements of Negligence:

- Duty
- Breach
- Causation
- Proximate cause/ legal cause/ scope of liability
- Damages

Negligent Misrepresentation that Causes Harm:

§311 of the Restatement (Second) of Torts:

Negligent Misrepresentation Involving Risk Of Physical Harm

(1) One who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information, where such harm results

- (a) to the other, or
(b) to such third persons as the actor should expect to be put in peril by the action taken.

(2) Such negligence may consist of failure to exercise reasonable care

- (a) in ascertaining the accuracy of the information, or
(b) in the manner in which it is communicated.

Conscious Misrepresentation:

Restatement (Second) of Torts § 310:

Conscious Misrepresentation Involving Risk Of Physical Harm

An actor who makes a misrepresentation is subject to liability to another for physical harm which results from an act done by the other or a third person in reliance upon the truth of the representation, if the actor

- (a) intends his statement to induce or should realize that it is likely to induce action by the other, or a third person, which involves an unreasonable risk of physical harm to the other, and
- (b) knows
 - (i) that the statement is false, or
 - (ii) that he has not the knowledge which he professes.