dismissals based on policy grounds supporting open-air viewing of the game, or alternatively, as no-negligence claims for corresponding risk-benefit reasons. Beyond baseball, conceptualizing this category of cases as an assumed-risk defense obfuscates the threshold determination of duty of due care through reliance on a superfluous, conclusory label.[39]

In contrast, secondary assumed-risk cases do involve breach of a duty of due care. But in these cases, a plaintiff is barred from recovery (or, in the modern era of comparative fault, partially barred) because of contributory fault. *Davenport v. Cotton Hope Plantation Horizontal Property Regime*[40] was decided after Sugarman's essay but still nicely tracks his approach. There, defendant landlord was negligent in failing to replace lighting over the middle of three outside stairways leading down to the ground level in an apartment complex.[41] But the plaintiff, an apartment resident who slipped and fell while descending the darkened middle stairway, was partially at fault because he failed to take one of the two well-lit side stairways.[42] Once again, assumed risk as a categorical defense adds nothing conceptually because it is redundant of contributory fault as a counter to a defendant's negligence.

Sugarman disentangles policy and doctrine in these scenarios with customary rigor and clarity. But he doesn't stop there. The essay proceeds to provide illuminating discourse on informed consent, assumed risk by contract, and duty to warn, as well—the Sugarman trademark of tackling a conceptual concern and then framing it in the broadest possible terms.[43]

V.
HISTORICAL PERSPECTIVES

History reveals itself as a prominent strand in the weave of Sugarman's engagement with the tort system and welfare-based alternatives. In view of his persistent commitment to critiquing and transforming traditional modes of thinking about injury law, it comes as no surprise that a historical perspective at times should emerge front and center in his work. A prominent example is his essay *A Century of Change in Personal Injury Law*, fittingly published at the turn of the new century.[44]

The essay canvasses the grand scheme of accident law as it evolved over the twentieth century. This exercise in interdisciplinary thinking reflects attentiveness to changes in legal culture, sociology of the profession, and institutional analysis. How has tort law evolved over these hundred years? It has

39. Sugarman's discussion is framed in the context of the well-known "Flopper" case, *Murphy v. Steeplechase Amusement Co.*, 166 N.E. 173 (N.Y. 1929). *See id.* at 833–36.

40. 508 S.E.2d 565 (S.C. 1998).

41. *Id.* at 567, 574–75.

42. *Id.*

43. Sugarman, *supra* note 38, at 857–76.

44. Stephen D. Sugarman, *A Century of Change in Personal Injury Law*, 88 CALIF. L. REV. 2403 (2000).

expanded, Sugarman recounts, through normative transformation of rights-based cultural attitudes, through the corresponding emergence of a specialized plaintiffs' bar, through the easing of restrictions on attorney advertising and promotion; through easier access to expert witnesses, and through the wider availability of liability insurance—to identify the most salient developments.[45] At the same time, limits that have been established on the tort system counter a century of growth. Most prominently, workers' compensation for employment-based injuries and, to a lesser extent, auto no-fault compensation for motor vehicle accidents replaced tort.[46]

To enrich the scope of his analysis, Sugarman draws on empirical data on the changing patterns of tort-claiming and critiques the growth (and influence) of ideological movements in torts scholarship, ranging from the law and economics movement to corrective justice and libertarian thought. Once again, he offers a map of a landscape with attention to all of its prominent features.

VI.
JURISPRUDENTIAL REFLECTIONS

Sugarman's principal contribution in this area grew out of the volume of essays he and I published, *Torts Stories*, which features in-depth treatment of leading cases in tort law.[47] He opted to contribute an essay on *Vincent v. Lake Erie Transportation Co.*,[48] a case of enduring interest to torts scholars.[49] But to Sugarman, the chapter on *Vincent* was simply a prelude to broad-gauged thinking about an individual's responsibilities to another in need of assistance.

Vincent is a staple of torts casebooks for good reason: a straightforward set of factual circumstances serves as a springboard to exploring intellectual perspectives on moral philosophy and economic theorizing. Defendant moored its ship at plaintiff's dock for purposes of unloading its cargo.[50] A violent storm arose, and defendant's ship captain was pressed to decide between navigating in hazardous waters or keeping the vessel moored to plaintiff's dock.[51] Choosing the latter option, the boat weathered the storm, but only after causing property damage to plaintiff's dock by keeping the lines fast.[52] Not surprisingly, plaintiff sought compensation.[53]

Strict liability? Fault? Intentional harm? Necessity as a qualifying circumstance? All are at play from a doctrinal perspective. And Sugarman deftly

45. *Id.* at 2409–13.
46. *Id.* at 2414–17.
47. TORTS STORIES (Robert L. Rabin & Stephen D. Sugarman eds., 2003).
48. 124 N.W. 221 (Minn. 1910).
49. Stephen D. Sugarman, Vincent v. Lake Erie Transportation Co.*: Liability for Harm Caused by Necessity*, *in* TORTS STORIES, *supra* note 47, at 259.
50. *Vincent*, 124 N.W. at 221.
51. *Id.*
52. *Id.*
53. *Id.*

discusses these competing themes in the context of a lucid treatment of the trial and appellate processes in the Minnesota state courts.[54] Then, in a brief concluding section, he turns to the scholarship on *Vincent*, and sketches out the moral and economic perspectives in the literature.[55]

But his brief engagement with the scholarship in the concluding section of his *Torts Stories* chapter set the stage two years later for a remarkable 150-page essay, which exhaustively engages with philosophical and economic views representing every conceivable viewpoint on the circumstances when exercising self-help in the course of an emergency causes damage to an involuntary rescuer.[56] Virtually all of this scholarship supports the majority view of the Minnesota Supreme Court, holding the defendant to an obligation to compensate the plaintiff for the damage to the dock.

Strikingly, Sugarman takes a contrary position, offering a line of reasoning that raises the stakes in *Vincent* to the most salient considerations of moral obligation. In his own words:

> My position rests on these values. First, I believe that people should be under, and should feel themselves under, a moral obligation to help others in relatively easy rescue situations . . . . In the society in which I would like to live, ordinary people would readily act upon that obligation without expecting to be paid for what they do . . . . Indeed, when fate picks you out to be the one to rescue a fellow ordinary citizen, I believe that this provides you with what should be a welcome (but rare) opportunity to demonstrate your commitment to this important social norm.
>
> . . . .
>
> Second, if you (whose property is consumed or harmed) decide afterwards to make a claim for compensation against the self-help rescuer, you are, in my view, saying that you do not want, and implicitly, would not have wanted, simply to make a gift of what was necessary for the person in need. Unwilling simply to share what was initially yours, you seek recovery so as to force your loss on the self-help rescuer.[57]

The subtlety of Sugarman's argument cannot be conveyed in this brief Article. Nonetheless, it is a fitting note on which to conclude this commentary on his scholarship. Never content exclusively to take a first cut at addressing accident law policy or doctrine, he consistently plumbs the depths of any problem that engages his intellectual curiosity.

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54. Sugarman, *supra* note 49, at 262–78.

55. *Id.* at 283–90.

56. Stephen D. Sugarman, *The "Necessity" Defense and the Failure of Tort Theory: The Case Against Strict Liability for Damages Caused While Exercising Self-Help in an Emergency*, 5 ISSUES LEGAL SCHOLARSHIP, no. 2, 2005, at i.

57. *Id.* at 2.